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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-06-90-T
Date: 17 November 2008
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Uldis Ķiniš
Judge Elizabeth Gwaunza

Registrar: Mr Hans Holthuis

Decision of: 17 November 2008

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

DECISION AND GUIDANCE WITH REGARD TO THE EXPERT REPORT,
ADDENDUM, AND TESTIMONY OF REYNAUD THEUNENS

Office of the Prosecutor

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PROCEDURAL HISTORY

1. On 19 December 2007, the Prosecution filed an expert report drafted by Reynaud Theunens (“Expert Report”).¹ On 14 and 15 January 2008, the Defence for all three Accused filed notices pursuant to Rule 94 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).² On 28 January 2008, the Prosecution filed a response to the Gotovina Notice.³
2. On 22 September 2008, the Prosecution filed an addendum to the Expert Report (“Addendum”).⁴ In notices filed on 16 October 2008, 17 October 2008, and 22 October 2008, the Defence for all three Accused objected to the Addendum.⁵ On 22 October 2008, the Prosecution responded to the Gotovina Addendum Notice.⁶ On the same day, the Gotovina Defence requested leave to reply.⁷ The Chamber invited both parties to make oral submissions on 3 November 2008 in relation to addenda filed by the Prosecution with regard to expert witnesses Reynaud Theunens and Harry Konings.⁸
3. On 3 November 2008, the Gotovina Defence filed a motion to strike the Expert Report and the Addendum.⁹ On 5 November 2008, the Markač Defence joined this motion.¹⁰ On 10 November 2008, the Gotovina Defence filed a supplemental motion to strike the Expert

¹ Prosecution Submission of Expert Report Pursuant to Rule 94 *bis*, 19 December 2007.

² Defendant Gotovina’s Notice to the Trial Chamber Pursuant to Rule 94 *bis* Concerning the Expert Report of Reynaud Theunens, 14 January 2008 (“Gotovina Notice”); Notice Regarding the Prosecution Submission of Expert Reports Pursuant to Rule 94 *bis*, 14 January 2008 (“Čermak Notice”); Defendant Mladen Markač’s Joinder to Ante Gotovina’s Notices to the Trial Chamber Pursuant to Rule 94 *bis* Concerning the Expert Report of Reynaud Theunens and the Testimony of Andrew Pringle, 15 January 2008.

³ Prosecution’s Response to Gotovina’s Notice Pursuant to Rule 94 *bis* Concerning the Report of Prosecution Expert Reynaud Theunens, 28 January 2008 (“Prosecution Response”).

⁴ Prosecution’s Submission of Addendum to Expert Report of Reynaud Theunens Pursuant to Rule 94 *bis*, 22 September 2008.

⁵ Defendant Ante Gotovina’s Notice to the Trial Chamber Pursuant to Rule 94 *bis* Concerning the Addendum to the Expert Report of Reynaud Theunens, 16 October 2008 (“Gotovina Addendum Notice”); Defendant Mladen Markač’s Joinder to Defendant Ante Gotovina’s Notice to the Trial Chamber Pursuant to Rule 94 *bis* Concerning the Addendum to the Expert Report of Reynaud Theunens (“Markač Notice”); Ivan Čermak’s Notice Concerning the Addendum to the Expert Report of Reynaud Theunens, 22 October 2008 (“Čermak Addendum Notice”).

⁶ Prosecution’s Response to Gotovina’s Notice Pursuant to Rule 94 *bis* Concerning the Addendum to the Expert Report of Reynaud Theunens, 22 October 2008 (“Prosecution Addendum Response”).

⁷ Defendant Ante Gotovina’s Request to Reply to Prosecution’s Response to Gotovina’s Notice Pursuant to Rule 94 *bis* Concerning the Addendum to the Expert Report of Reynaud Theunens, 22 October 2008.

⁸ T. 11027-11037, 11121-11126. See also Prosecution’s Submission of Addendum to Expert Report of Lieutenant Colonel Harry Konings Pursuant to Rule 94 *bis*, 30 October 2008.

⁹ Defendant Ante Gotovina’s Motion to Strike the Expert Reports of Reynaud Theunens, 3 November 2008 (“Gotovina Motion”).

¹⁰ Defendant Mladen Markač’s Joinder to Defendant Ante Gotovina’s Motion to Strike the Expert Reports of Reynaud Theunens, 5 November 2008.

Report and the Addendum.¹¹ On 12 November 2008, the Prosecution responded to the Gotovina Motion and the Gotovina Supplemental Motion.¹²

SUBMISSIONS OF THE PARTIES

4. In its Notice, the Gotovina Defence submitted that it does not accept the Expert Report.¹³ It argued that Part II of the Expert Report, dealing with the Split Military District, the Knin Garrison, and the Special Police during and after Operation Storm, is not properly subject to Rule 94 *bis* of the Rules but instead amounts to an attempt to circumvent the requirements of Rule 92 *bis* of the Rules.¹⁴ It also argued that substantial portions of Part II of the Expert Report address matters outside the temporal and geographical scope of the Indictment.¹⁵ Consequently, the Gotovina Defence argued that Part II of the Expert Report should be stricken.¹⁶ The Gotovina Defence also challenged the relevance of the Expert Report and Theunens's qualifications and requested that he appear for cross-examination.¹⁷

5. The Markač Defence joined the submissions of the Gotovina Defence and declared that it wishes to cross-examine Theunens.¹⁸ The Čermak Defence submitted that it does not accept the Expert Report and declared that it therefore wishes to cross-examine Theunens.¹⁹

6. The Prosecution responded to the Gotovina Notice arguing that the issues raised therein are properly addressed during cross-examination of Theunens and that the weight to be accorded to the Expert Report should be argued by the Parties at the close of the trial.²⁰ It further responded that Theunens is a military expert and that he “possesses the special knowledge, experience, and skills needed to assist the trial chamber in its understanding and determination of issues in dispute”.²¹ According to the Prosecution, Theunens “observes events and contextualizes material through the lens of his experience and training” and his opinions “serve as a roadmap organising groups of documents into a comprehensive

¹¹ Defendant Ante Gotovina's Supplemental Motion to Strike the Expert Reports of Reynaud Theunens, 10 November 2008 (“Gotovina Supplemental Motion”).

¹² Prosecution's Response to Gotovina's Further Motion and Supplemental Motion to Strike the Expert Report of Reynaud Theunens, 12 November 2008 (“Prosecution Second Response”).

¹³ Gotovina Notice, para. 1.

¹⁴ *Ibid.*, paras 1, 5-8.

¹⁵ *Ibid.*, paras 1, 9-12.

¹⁶ *Ibid.*, paras 1, 12, 18.

¹⁷ *Ibid.*, paras 1, 13-18.

¹⁸ Markač Notice, paras 4, 7.

¹⁹ Čermak Notice, para. 3.

²⁰ Prosecution Response, para. 1.

²¹ *Ibid.*, paras 1-7.

picture".²² Finally, the Prosecution argued that even if Theunens makes a few limited references to matters outside the scope of the Indictment, this does not expand the Indictment and it might be necessary to establish pattern, intent, knowledge, or authority.²³ The Prosecution submitted that the request by the Gotovina Defence to strike Part II of the Expert Report should be dismissed and the Expert Report should be admitted.²⁴

7. With regard to the Addendum to the Expert Report, the Gotovina Defence argued that it is in contravention of Rule 94 *bis* of the Rules since it was not disclosed within the time-limit prescribed by the Pre-Trial Judge on 26 October 2007.²⁵ It argued further that the Prosecution has not sought leave to extend the time-limit or provided any justification for the late filing.²⁶ Finally, the Gotovina Defence argued that should the Addendum be accepted, it raises the same objections to it as it does to the Expert Report itself.²⁷

8. The Čermak Defence argued that Rule 94 *bis* of the Rules does not provide for filing of addenda to expert reports, or for filing of expert reports without the scrutiny of the Trial Chamber or the Pre-Trial Judge.²⁸ The reason for this and for early disclosure of a full expert report, it further argued, is to allow the other party to take instructions and be in a position to efficiently challenge expert statements and opinions.²⁹ According to the Čermak Defence, the Prosecution has not provided any reasons or legal authority for the late submission nor has it explained the significance of the Addendum.³⁰ Finally, it submitted that it does not accept the Addendum.³¹

9. The Prosecution argued that the time-limits mentioned by the Defence were self-imposed by the Prosecution and that neither the Pre-Trial nor Trial Chamber had imposed any deadlines for filing of the Expert Report.³² The Addendum was therefore, according to the Prosecution, not filed late.³³ The Prosecution further argued that the Addendum addresses documents that became available to the Prosecution after the finalization of the Expert

²² Ibid., paras 9-10.

²³ Ibid., paras 12-15.

²⁴ Ibid., para. 16.

²⁵ Gotovina Addendum Notice, para. 2; T. 11029-11032.

²⁶ Ibid., para. 2.

²⁷ Ibid., paras 4-7.

²⁸ Čermak Addendum Notice, para. 2.

²⁹ Ibid., para. 2.

³⁰ Ibid., para. 3.

³¹ Ibid., para. 3.

³² Prosecution Addendum Response, para. 2.

³³ Ibid., paras 2-4.

Report.³⁴ Finally, the Prosecution argued that the Addendum raises no new issues beyond those covered by the Expert Report and is relatively brief.³⁵

10. In its motion of 3 November 2008, the Gotovina Defence moved to strike the entire Expert Report, as well as the Addendum, “[i]n light of the recent jurisprudence of Trial Chamber I in *Prosecutor v. Momčilo Perišić*”.³⁶ It argued that the Expert Report and the Addendum improperly usurp the Chamber’s function as the fact finder and, in particular, that they are merely summaries of documentary evidence and that Theunens offers no opinions within the area of his expertise which are in dispute in this case.³⁷ The Gotovina Defence argued that particular attention must be paid to summary evidence prepared by employees of the party wishing to submit such summaries.³⁸ The need, under these circumstances, to assess the original documents obviates, according to the Gotovina Defence, the need to present a summary of them.³⁹ The Gotovina Defence also argued that Theunens is an employee of the Prosecution and that the Expert Report and the Addendum amount to nothing more than the Prosecution’s argument about the interpretation of the documents it seeks to introduce into evidence.⁴⁰ Finally, the Gotovina Defence argued that it is not clear what methodology was used by Theunens and what criteria he used in selecting and compiling material for the Expert Report and the Addendum.⁴¹

11. In response to the Gotovina Motion and the Gotovina Supplemental Motion, the Prosecution stated that the Gotovina Defence raised no new arguments compared to the Gotovina Notice and the Gotovina Addendum Notice.⁴² Furthermore, it asserts that the Perišić Decision establishes no new law on the admissibility of expert reports but merely applies the existing law to a set of facts that are different from those underlying the Expert Report drafted by Theunens.⁴³

³⁴ Ibid., para. 4; T. 11035, 11123-11124.

³⁵ Prosecution Addendum Response, para. 5.

³⁶ Gotovina Motion, para. 1. See *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Decision on Defence Motions to Exclude the Expert Reports of Mr. Patrick J. Treanor, 27 October 2008 (“Perišić Decision”).

³⁷ Gotovina Motion, paras 2-8, 11; Gotovina’s Supplemental Motion, para. 2.

³⁸ Gotovina Motion, para. 9.

³⁹ Ibid., para. 10.

⁴⁰ Ibid., para. 11.

⁴¹ Ibid., para. 13.

⁴² Prosecution Second Response, paras 1, 4-5.

⁴³ Ibid., paras 2, 6-10.

APPLICABLE LAW

12. Rule 94 *bis* of the Rules reads:

(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 parts of the statement and/or report and, if so, which parts.

(C) If the opposing party accepts the statement and/or report of the expert witness, the statement and/or report may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

13. The general standards of admissibility set forth in Rule 89 of the Rules apply to expert reports.⁴⁴ Rule 89 (C) of the Rules provides that a Chamber “may admit any relevant evidence which it deems to have probative value”. In addition, the Tribunal’s jurisprudence sets out the following requirements for admissibility of expert reports: 1) the witness who drafted the report is considered an expert by the Chamber; and 2) the content of the expert report falls within the accepted expertise of the expert witness.⁴⁵

14. According to the case law of the Tribunal, an expert is “a person whom [*sic*] by virtue of some specialized knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute”.⁴⁶ The mere fact that the expert witness is employed by or paid by a party does not disqualify him or her to testify as an expert witness.⁴⁷

⁴⁴ *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 (“Popović Appeal Decision”), para. 22.

⁴⁵ See Popović Appeal Decision, para. 21.

⁴⁶ *Prosecutor v. Stanislav Galić*, Case No. IT-98-23-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Phillips, 3 July 2002 (“2002 Galić Trial Decision”), p. 2; *Radoslav Brđanin*, Case IT-99-36-T, 3 June 2003 (“Brđanin Decision”), pp. 3-4; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Decision on Prosecution’s Motions for Admission of Expert Statements, 7 November 2003 (“Blagojević and Jokić Trial Decision”), para. 19; *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. Milan Martić*, Case No. IT-95-11-T, Decision on Prosecution’s Motions for Admission of Transcripts Pursuant to Rule 92 *bis* (D) and of Expert Reports Pursuant to Rule 94 *bis*, 13 January 2006 (“Martić

15. An expert witness is expected to give his or her expert opinion in full transparency of the established or assumed facts he or she relies upon and of the methods used when applying his or her knowledge, experience, or skill to form his or her expert opinion.⁴⁸ The sources used in support of any expert opinion should be clearly indicated and easily accessible.⁴⁹

DISCUSSION

The filing of the Addendum

16. During a status conference in the present case on 26 October 2007, the Prosecution informed the Pre-Trial Judge that it would be able to disclose the Expert Report in December 2007. The Pre-trial Judge did therefore not issue any order with regard to time-limit for the purpose of Rule 94 *bis* of the Rules.⁵⁰ Nevertheless, the Chamber considers that, based on the Prosecution's assurance at the status conference, the time-limit was set for December 2007.

17. The time-limit to be ordered pursuant to Rule 94 *bis* of the Rules serves the purpose of giving the other party sufficient notice in order to prepare for the expert witness's testimony. The time-limit is, however, not absolute. For example, if new documentation relevant to the report is obtained by the calling party or if the expert witness identifies mistakes in his or her report, the Chamber would expect the calling party to bring that to the Chamber's and the other party's attention prior to the testimony. This could be done in the form of addenda or corrigenda to the report. However, the need for such addenda or corrigenda should, considering the purpose of the time-limit to be ordered pursuant to Rule 94 *bis* of the Rules, be balanced against the additional burden it places upon the Defence in preparing for the expert witness's testimony.

18. The Chamber considers therefore that late disclosure of an expert report or an addendum to an expert report warrants the same considerations as the addition of documents

Trial Decision"), paras 22, 37; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, 15 February 2007 ("Dragomir Milošević Trial Decision"), para. 7.

⁴⁷ 2002 Galić Trial Decision, p. 3; Brđanin Decision, p. 4; Martić Trial Decision, para. 37; 2007 Dragomir Milošević Trial Decision, para. 9.

⁴⁸ 2002 Galić Trial Decision, p. 2; *Prosecutor v. Stanislav Galić*, Case No. IT-98-23-T, Decision on the Prosecution Motion for Reconsideration of the Admission of the Expert Report of Prof. Radinović, 21 February 2003 ("2003 Galić Trial Decision"), para. 9; Blagojević and Jokić Trial Decision, para. 19; Martić Trial Decision, para. 37.

⁴⁹ 2003 Galić Trial Decision, para. 9

⁵⁰ T. 325-327.

to the Rule 65 *ter* exhibit list.⁵¹ Based on the arguments put forward by the parties, the Chamber will determine whether it is in the interests of justice to consider the Addendum for admission into evidence. In this respect, the Chamber will consider whether the Addendum is *prima facie* relevant and probative, whether the Prosecution has shown good cause to file the Addendum at this stage, and the extent to which the new filing create an additional burden on the Defence.

19. The Addendum addresses a number of documents. They have come into the possession of the Prosecution subsequent to the filing of the Expert Report in December 2007. The Prosecution could therefore not have filed the Addendum earlier and the Chamber is satisfied that the Prosecution has shown good cause to do so only on 22 September 2008.

20. The Addendum adds paragraphs or references in footnotes, to the Expert Report. The additions are all within the scope of the Expert Report. To determine whether the Addendum is *prima facie* relevant and probative, the Chamber therefore needs to consider the Expert Report and the Addendum together. The two documents deal with the structure, command and control, and discipline of the Croatian armed forces in general as well as the Split Military District, the Knin Garrison, and the Special Police during and after Operation Storm. They are based on documents which are mostly of political and military nature. The Chamber finds that the Expert Report and the Addendum are *prima facie* relevant and probative.

21. Finally, the Chamber will consider the extent to which the Addendum creates an additional burden on the Defence. The Defence has not specified the need for, or nature of possible further investigations that it considers it would need to undertake as part of the preparation for the testimony of Theunens if the Addendum were to be considered for admission into evidence. The Expert Report covers more than 600 pages and deals with a broad subject-matter (see previous paragraph). The underlying documents are numerous. The Addendum was filed on 22 September 2008, approximately two months prior to the expected testimony of Theunens. It is 40 pages long and consists of summaries or references to a number of documents, most of which are added as support for conclusions already made in the Expert Report. Therefore, the Addendum raises no new issues beyond those already dealt with in the Expert Report. Nevertheless, because of the length of the Addendum and the broad

⁵¹ See Decision on Prosecution's Motion to Amend Exhibit List, 14 February 2008; Decision on Prosecution's Second Motion to Amend the Exhibit List, 15 May 2008.

scope and complexity of the subject-matter, the Chamber considers that the Addendum creates some additional burden on the Defence.

22. In balancing the duty of the Prosecution to present the available evidence necessary to prove its case and the burden that the Addendum will place on the Defence, the Chamber finds that it is in the interests of justice to consider the Addendum for admission into evidence. To the extent the Addendum triggers a need for specific and substantial further investigations, the Defence may address the Chamber to resolve any such issue.

Requests to strike the Expert Report

23. In its initial Notice of 14 January 2008, the Gotovina Defence requested the Chamber to strike Part II of the Expert Report. In the Motion of 3 November 2008, the Gotovina Defence requested the Chamber to strike the Expert Report and the Addendum in their entirety. The Chamber understands the request to strike the Expert Report and the Addendum as a request not to admit them into evidence.⁵² The Chamber will defer the decision on admissibility until the testimony of Theunens. The Chamber will, however, address a number of arguments by the parties now, mainly for the purpose of providing guidance for the examination of Theunens.

24. As for relevance of the Expert Report, the Gotovina Defence has argued that portions of it address matters falling outside the geographical or temporal scope of the Indictment. The Prosecution has argued that these portions might still be relevant. The Prosecution is invited to explore this further with Theunens during his examination. If no relevance can be established, the Chamber will, in case the Expert Report and the Addendum are admitted into evidence simply disregard these portions, and no redaction of the Expert Report or the Addendum will be needed.

25. With regard to Theunens's expertise, the Prosecution describes him as "a military intelligence specialist [whose] area of expertise covers armed conflict and structure, command, control, and discipline of the military in the former Yugoslavia – particularly Croatia".⁵³ Theunens's CV sets out that his education is from the Royal Military Academy in Brussels and that he during the last 16 years has researched and analyzed political and

⁵² The Prosecution has requested that the Report and the Addendum be admitted into evidence; see Prosecution's Response, para. 16 and Prosecution's Second Response, para. 15. See Gotovina Motion, para. 16.

⁵³ Prosecution Response, para. 4.

military issues, in particular in the former Yugoslavia. Since 2001, Theunens has worked as Intelligence Analyst in the Military Analysis Team at the Office of the Prosecutor. In this capacity he has drafted a number of expert reports on armed forces in the former Yugoslavia in relation to other cases before the Tribunal. The Chamber is satisfied that Theunens is a military expert who can assist the Chamber on matters related to the Croatian armed forces in 1995. Any concerns that the Defence has about the impartiality or independence of Theunens should be addressed during cross-examination.⁵⁴

26. The Expert Report and the Addendum consist, to a large extent and on the face of it, of summaries of documents, some of which are in evidence and others of which the parties may intend to tender into evidence. To the extent that these documents are in evidence, the Chamber is in a position to verify the accuracy of the summaries. If a document which is not in evidence is incorrectly summarized, the Chamber expects the parties to address this during the examination of Theunens and, if necessary for the correct understanding of the document, tender it into evidence.

27. The Chamber does not consider that the Expert Report and the Addendum constitute mere summaries of documents. First, the Expert Report does include observations, assessments, and conclusions drawn by Theunens based on the reviewed documents. Moreover, for a case like the present one, in which there is a vast number of relevant and probative documents, the Chamber is assisted by expert witnesses who, through their experience, training, and knowledge, select, categorize, and organize the documents into a comprehensive picture. Although an “expert opinion” is not explicitly provided, it is presented through this selection, categorization, and organization. The Chamber considers that great transparency is needed with regard to this process and instructs the Prosecution, during the examination, to explore with Theunens his methodology in this respect.

28. The Gotovina Defence has argued that Part II of the Expert Report is an attempt to circumvent the requirements of Rule 92 *bis* of the Rules. This Rule applies, however, to witness statements taken for the purpose of the proceedings before the Tribunal, and the Gotovina Defence has not pointed to any such statements included in Part II of the Expert Report. To the extent that the Gotovina Defence is referring to the Expert Report as such being a “witness statement” for the purpose of Rule 92 *bis* of the Rules, the admission of the

⁵⁴ Popović Appeal Decision, para. 21.

Expert Report would not circumvent the Rule since Theunens is available for cross-examination.

29. Although the content of an expert report must fall within the author's expertise for it to be admissible this does not necessitate, at the admissibility stage, a scrutiny of each opinion provided by the expert. Opinions of Theunens that fall outside his field of expertise will be treated like other pieces of opinion evidence which means that the Chamber will disregard it unless the Prosecution properly explores the basis for it.

Guidance to parties and use of exhibits

30. The central item of evidence during the testimony of Theunens is the Expert Report, in which Theunens provides his conclusions and opinions. If admitted, the Chamber will assess these conclusions and opinions in the context of the all the evidence before it. The Prosecution is instructed to limit its examination-in-chief of Theunens to matters of central importance to its case which are likely to be controversial and which require further explanation, clarification, or illustration in terms of how he reached his conclusions or opinions. The Prosecution is invited to only tender documents referenced in the Expert Report which are necessary for such an examination-in-chief.

31. The Defence may tender into evidence, in addition to its own documents, any document referenced in the Expert Report which has not been tendered by the Prosecution and upon which the Defence relies during cross-examination.

32. The remaining documentation underlying the Expert Report will not be admitted into evidence unless one of the parties, showing good cause considering the guidance in the previous two paragraphs, or the Chamber itself, specifically requests admission. This will ensure that the core of the evidence is heard and understood in court, rather than buried in masses of documents which the Chamber is left to sort out and make sense of.

DISPOSITION

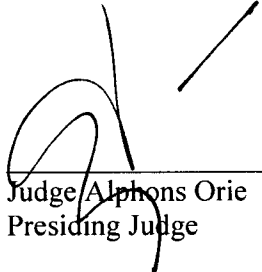
33. For the foregoing reasons, the Chamber

INSTRUCTS the parties to question Reynaud Theunens on the methodology he used in compiling his report;

INVITES the parties to adhere to the guidance set out in paragraphs 30-32, above;

DEFERS the decision on the admission of the Expert Report and Addendum until the time of the testimony of Reynaud Theunens.

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



Judge Alphons Orié
Presiding Judge

Dated this 17th day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]