



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: 21 July 2009
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French

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 21 July 2009

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE STOJIĆ DEFENCE MOTION
FOR THE ADMISSION OF DOCUMENTARY EVIDENCE
(COOPERATION BETWEEN THE AUTHORITIES AND
THE ARMED FORCES OF HERCEG-BOSNA
AND THE AUTHORITIES AND THE ARMED FORCES OF THE ABiH)**

The Office of the Prosecutor:

Mr Kenneth Scott
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Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A. A. Khan 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 Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

I. INTRODUCTION

1. 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”) is seized of “Bruno Stojić’s Motion for the Admission of Documentary Evidence Related to Cooperation Between Herceg-Bosna/HVO Authorities/Forces and ABiH Authorities/Forces with Annexes I, II and III”, to which three annexes are attached, publicly filed by Counsel for the Accused Stojić (“Stojić Defence”) on 7 May 2009 (“Motion”), whereby the Stojić Defence requests the admission into evidence of 116 documents (“Proposed Exhibits”).

II. PROCEDURAL BACKGROUND

2. On 11 May 2009, the Stojić Defence publicly filed the “Corrigendum to Bruno Stojić’s Motions for the Admission of Documentary Evidence” together with two annexes (“Corrigendum”).¹

3. On 21 May 2009, Counsel for the Accused Praljak (“Praljak Defence”) and Counsel for the Accused Petković (“Petković Defence”) publicly filed the “Joint Response of Slobodan Praljak and Milivoj Petković to Bruno Stojić’s 7 May 2009 Motion for the Admission of Documentary Evidence Related to Cooperation between the Herceg-Bosna/HVO Authorities/Forces and ABiH Authorities/Forces with Annexes I, II and III” (“Joint Response”).

4. On 25 May 2009, the Praljak Defence and the Petković Defence publicly filed the “Joint Response of Slobodan Praljak and Milivoj Petković to 11 May 2009 Corrigendum to Bruno Stojić’s Motions for Admission of Documentary Evidence” (“Joint Response to the Corrigendum”).²

¹ Although in paragraph 1 of the Corrigendum, the Stojić Defence puts forth, in particular, that it is supplementing the Motion by requesting the admission of supplementary evidence, the Chamber notes that this evidence does not concern the subject of the Motion, namely, cooperation between the forces/authorities of Herceg-Bosna and the forces/authorities of the ABiH, so that the Chamber will not examine the Corrigendum any further.

² The Chamber notes that inasmuch as none of the pieces of supplementary evidence whose admission is requested in the Corrigendum concerns the subject of the Motion, namely, cooperation between the

5. On 26 May 2009, the Stojić Defence publicly filed “Bruno Stojić’s Addendum to Motions for Admission of Documentary Evidence with Annex” together with one annex (“Addendum”).
6. On 27 May 2009, the Stojić Defence publicly filed “Bruno Stojić’s Request for Leave to Reply to Joint Response of Slobodan Praljak and Milivoj Petković to Bruno Stojić’s 7 May 2009 Motion for the Admission of Documentary Evidence Related to Cooperation Between the Herceg-Bosna/HVO Authorities/Forces and ABiH Authorities/Forces With Annexes 1, II and III & Bruno Stojić’s Reply to the Joint Response” (“Reply to the Joint Response”).
7. On 28 May 2009, the Office of the Prosecutor (“Prosecution”) publicly filed the “Prosecution Response to the Five Motions Filed by Bruno Stojić Pursuant to Rule 89(C) with Public Annex” together with one annex (“Response”).
8. On 28 May 2009, the Chamber issued an oral decision authorising the Stojić Defence to file a request to reply to the Response by 11 June 2009 at the latest.³
9. On 27 May 2009, the Stojić Defence publicly filed “Bruno Stojić’s Request for Leave to Reply to Joint Response of Slobodan Praljak and Milivoj Petković to 11 May 2009 Corrigendum to Bruno Stojić’s Motion for Admission of Documentary Evidence & Bruno Stojić’s Reply to the Joint Response” (“Reply to the Joint Response to the Corrigendum”).⁴
10. Finally, on 11 June 2009, the Stojić Defence publicly filed “Bruno Stojić’s Request for Leave to Reply to Prosecution Response to the Five Motions Filed by

forces/authorities of Herceg-Bosna and the forces/authorities of the ABiH, the Chamber will not examine the Corrigendum or the Joint Response to the Corrigendum any further either.

³ Transcript in French (“T(F)”) of the hearing of 28 May 2009, pp. 40961 to 40963.

⁴ The Chamber notes that inasmuch as none of the pieces of supplementary evidence whose admission is requested in the Corrigendum concerns the subject of the Motion, namely, cooperation between the forces/authorities of Herceg-Bosna and the forces/authorities of the ABiH, the Chamber will not examine the Corrigendum or the Joint Response to the Corrigendum or the Reply to the Joint Response to the Corrigendum any further either.

Bruno Stojić Pursuant to Rule 89(C) with Public Annexes I & II & Bruno Stojić's Reply to the Joint Response" together with two annexes ("Reply").

III. ARGUMENTS OF THE PARTIES

11. In the Motion, the Stojić Defence first states that the Proposed Exhibits are being presented pursuant to Rule 89(C) of the Rules of Procedure and Evidence ("Rules") and Guideline 9 of the Decision Adopting Guidelines for the Presentation of Defence Evidence of 24 April 2008 ("Guideline 9").⁵ It states from the outset that the legal arguments presented in the Motion also apply to the motions for the admission of documentary evidence that it filed on 4 May 2009 and 6 May 2009.⁶ It adds that, on the basis of a decision rendered by the Chamber on 5 May 2009,⁷ it is authorised to file a general motion requesting the admission of exhibits that have not been admitted by orders on the admission of evidence through witnesses of the Stojić Defence on the grounds that the witness did not comment on the relevance, probative value or reliability of the document.⁸

12. The Stojić Defence further submits that, regarding the admission of documentary evidence, it must be allowed the same rights the Prosecution had during the presentation of its case.⁹ Furthermore, it states that although the subjects raised in the Motion have been discussed through the testimony of witnesses in court, it could not tender the Proposed Exhibits through these witnesses because of a lack of time.¹⁰ It also submits that the Proposed Exhibits are the outcome of a strict selection process that it applied in an effort to present the most relevant evidence.¹¹ Finally, the Stojić Defence submits that the Proposed Exhibits have been authenticated and are reliable

⁵ Motion, para. 1.

⁶ Motion, para. 2, reference being made to the following motions: 1) "Bruno Stojić's Motion for the Admission of Documentary Evidence Related to the Functioning of the HVO Defence Department, HVO/HZ H-B and Related Structures with Annexes I and II", filed on 4 May 2009; 2) "Bruno Stojić's Motion for the Admission of Documentary Evidence Related to Cooperation between Herceg-Bosna/HVO Authorities and International Organisations and Compliance with International Humanitarian Law Norms with Annexes I, II, III", filed on 6 May 2009; 3) Motion for the admission of documentary evidence related to the functioning of HVO authorities/brigades and their relationship with the HVO centralised authorities in Mostar, filed on 6 May 2009.

⁷ Decision on Stojić Defence Motion Regarding the Filing of Motions Pursuant to Guideline 9, 5 May 2009.

⁸ Motion, para. 2.

⁹ Motion, para. 3.

¹⁰ Motion, para. 4.

and relevant,¹² and states that it will soon supply to the Chamber and the parties information on the source of certain Proposed Exhibits disclosed by the Prosecution.¹³

13. In the Joint Response, the Praljak Defence and the Petković Defence state that Proposed Exhibits 2D 00020 and 2D 00975 have already been admitted into evidence.¹⁴ Furthermore, they point to an error regarding the identity of the author of Proposed Exhibit 2D 01295.¹⁵

14. In the Addendum, the Stojić Defence specifies the source – which it did not have at the time of the filing of the Motion – of 11 Proposed Exhibits that were disclosed to it by the Prosecution.¹⁶

15. In the Reply to the Joint Response, the Stojić Defence requests leave from the Chamber to reply to the Joint Response because of the existence of compelling circumstances, that is, the necessity to clarify some issues related to the documents already admitted into evidence as well as to the description of one document.¹⁷ The Stojić Defence further states that it withdraws its request for the admission of Proposed Exhibits 2D 00020 and 2D 00975 since they have already been admitted.¹⁸ Moreover, the Stojić Defence admits that the description of exhibit 2D 01295 contains an error and requests that the Chamber accept a new description of the exhibit in question.¹⁹

16. In the Response, the Prosecution requests that the Chamber deny the admission of the exhibits whose rejection it requests in its Annex for the reasons stated therein or for such other reason that the Chamber determines.²⁰ In support of its Response, the Prosecution argues that it does not agree with the interpretations and descriptions provided by the Stojić Defence for a great deal of documents whose admission is requested in the Stojić Defence Motion and adds that these descriptions

¹¹ Motion, para. 5.

¹² Motion, paras 6-8.

¹³ Motion, para. 6.

¹⁴ Joint Response, para. 3.

¹⁵ Joint Response, para. 3.

¹⁶ Addendum, paras 2 and 3, and Annex I.

¹⁷ Reply to the Joint Response, para. 1.

¹⁸ Reply to the Joint Response, para. 2.

¹⁹ Reply to the Joint Response, para. 3.

are arguments of the Stojić Defence and not evidence as such.²¹ In the Annex to the Response, the Prosecution objects to the admission of many of the Proposed Exhibits on the grounds that, *inter alia*, they fall under the *tu quoque* principle or have no relevance with regard to the amended Indictment of 11 June 2008 (“Indictment”).²²

17. In the Reply, the Stojić Defence requests leave of the Chamber to reply to the Response because of the existence of compelling circumstances, that is, the necessity to clarify some issues related to the documents already admitted into evidence and to the grounds for the admission of the Proposed Exhibits.²³ It further notes that the Prosecution has not specified the reasons why it objects to the admission of documents obtained from the Accused Stojić or the reasons why a document obtained from an accused through a defence investigation would be any less reliable than a document obtained from an accused during a prosecutorial investigation.²⁴ It adds that inadequate or insufficient information on the source of a document is an issue that affects the weight or probative value of that document, but does not affect its admissibility.²⁵

18. In the Reply, responding to the Prosecution’s argument that many of the Proposed Exhibits fall under a *tu quoque* defence and are therefore not admissible, the Stojić Defence further submits that these exhibits are relevant since they aim to disprove the allegations in the Indictment.²⁶ As to the Proposed Exhibits describing the relationship, tensions and conflicts between the ABiH and the HVO as well as the Proposed Exhibits illustrating crimes committed against Croatian civilians in Bosnia and Herzegovina, the Stojić Defence submits that they describe the attacks launched by the ABiH in the municipalities of Novi Travnik and Gornji Vakuf, in Sovići and Doljani and in Stolac, Čapljina and Jablanica, and that, consequently, they counter the allegation that the HVO launched attacks as part of a greater plan to subjugate Muslims in large parts of Bosnia and Herzegovina after 15 January 1993 and 15 April

²⁰ Response, paras 2 and 4.

²¹ Response, para. 3.

²² Annex to the Response.

²³ Reply, para. 1.

²⁴ Reply, paras 4-5. The Chamber notes that in the Response and the Annex to the Response, the Prosecution did not object to the admission of the Proposed Exhibits for this reason so that the Chamber will not examine this argument any further.

²⁵ Reply, paras 6-7. See The Chamber’s comment to the footnote on page 24.

²⁶ Reply, paras 8 to 15.

1993.²⁷ According to the Stojić Defence, these Proposed Exhibits disprove the allegations made in paragraphs 33 and 34 of the Indictment.²⁸ Moreover, as to the Proposed Exhibits describing crimes committed against Croatian civilians in Bosnia and Herzegovina, the Stojić Defence submits that they also illustrate the consequences of the offensive that the ABiH launched against the HVO in the municipalities of Konjic, Fojnica, Busovača, Novi Travnik and Travnik in early March 1993.²⁹ It adds that these documents facilitate a better understanding of the state of mind of the HVO soldiers and the atmosphere that prevailed when they discovered the crimes committed against the civilians and that, in this sense, these Proposed Exhibits are relevant with regard to the allegations of the responsibility of the Accused Stojić as a superior, pursuant to Article 7(3) of the Statute of the Tribunal (“Statute”), and his participation in a joint criminal enterprise for failure to prevent the commission of crimes as alleged in paragraph 17.2(r) of the Indictment.³⁰ It further states that these Proposed Exhibits counter the allegations in paragraph 37 of the Indictment.³¹

19. Finally, in the Reply, the Stojić Defence requests leave of the Chamber to withdraw its request for the admission of Proposed Exhibits 2D 01302 and 2D 01385.³²

IV. APPLICABLE LAW

20. Under Rule 89(C) of the Rules, a Chamber may admit any evidence it deems to have probative value. In addition, under Rule 89(C), any decision of the Chamber on a request for admission of documentary evidence is based on this Rule. Furthermore, the Chamber recalls its previous decision in which it set out the principles for the admissibility of evidence, in particular the “Decision on Admission of Evidence”, rendered on 13 July 2006, the “Decision Amending the Decision on the Admission of Evidence, 13 July 2006”, rendered on 29 November 2006, and the

²⁷ Reply, paras 11 and 12.

²⁸ Reply, para. 11.

²⁹ Reply, para. 12.

³⁰ Reply, para. 12.

³¹ Reply, para. 13. The Chamber notes that in the Reply, the Stojić Defence also puts forward arguments about four documents relating to the efforts made by the HVO to get medical aid from international organisations. Nevertheless, the Chamber notes that these documents are not part of the Motion so that the Chamber will not examine this argument of the Stojić Defence any further.

³² Reply, para. 16 and Annex 1.

“Decision Adopting Guidelines for the Presentation of Defence Evidence, 24 April 2008” (“Decision of 24 April 2008”).

21. Guideline 9 of the Decision of 24 April 2008 refers more specifically to the admission of documentary evidence by way of a written motion. According to Guideline 9, a Defence team presenting its case may seize the Chamber of a written motion requesting the admission of documents that have not been put to a witness in court.³³ The said motion, providing sufficient reasons, must contain the following information, failing which it may be denied: 1. Number, title, and description of the exhibit; 2. Source of the exhibit and a description of its indicia of reliability; 3. Reference to the relevant paragraphs of the Indictment; 4. References to the witnesses who have already appeared before the Chamber and to the exhibits admitted as evidence dealing with the same paragraphs of the Indictment; 5. Reasons why the exhibit is not introduced through a witness; 6. Reasons why the party considers the document important for the determination of the case.³⁴

V. DISCUSSION

22. As a preliminary matter, the Chamber decides to authorise the filing of the Reply to the Joint Response on the grounds that by seeking the withdrawal of two Proposed Exhibits and the correction of the description of one Proposed Exhibit, the Stojić Defence puts forward circumstances of a sufficiently compelling nature to justify the filing of this written submission. Likewise, the Chamber authorises the filing of the Reply on the grounds that, *inter alia*, the Response puts forward new arguments on which the Stojić Defence did not provide any opinion in the Motion.

23. The Chamber further takes note of the fact that, in the Reply to the Joint Response, the Stojić Defence withdrew its request for the admission of Proposed Exhibits 2D 00020 and 2D 00975 since these documents had already been admitted into evidence by the Chamber.³⁵ Consequently, the Chamber henceforth deems moot the initial request for the admission of the two aforementioned documents.

³³ Decision of 24 April 2008, para. 35.

³⁴ Decision of 24 April 2008, para. 35.

³⁵ Reply to the Joint Response, para. 2.

24. The Chamber also takes note of the fact that in the Reply, the Stojić Defence withdrew its request for the admission of Proposed Exhibit 2D 01302 since that document had already been admitted into evidence under exhibit number 2D 00448.³⁶ Consequently, the Chamber declares moot the initial request for the admission of exhibit 2D 01302.

25. Furthermore, the Chamber notes that the Stojić Defence has not provided the translation into English of Proposed Exhibit 2D 01385 so that the Chamber is not in a position to rule on its admissibility and therefore decides to reject that document. The Chamber adds that while this document is a duplicate of document 2D 00759, document 2D 00759, contrary to what the Stojić Defence alleges in the Reply, has not been admitted into evidence.

26. The Chamber further notes that seven of the Proposed Exhibits do not present sufficient indicia of reliability.³⁷ The absence of a signature, stamp, letterhead or date as well as the illegibility of the original of a document are the factors that the Chamber took into consideration when determining that these Proposed Exhibits were not *prima facie* reliable. Consequently, the Chamber decides to reject these Proposed Exhibits.

27. Moreover, the Chamber notes that many of the Proposed Exhibits relate to the delivery of military materiel – that is, MTS – by the HV and the HVO to the ABiH or to Croatian Muslims in the Republic of Croatia, and that some of the Proposed Exhibits relate to the delivery of MTS in geographical areas not covered by the Indictment or in unspecified geographical areas.³⁸ In this connection, the Chamber recalls that the Prosecution has reiterated on several occasions that it does not contest the existence of co-operation between the Army of the Republic of Croatia, the HVO and the ABiH in certain regions and during certain periods and, more specifically, the sending of weapons by the Army of the Republic of Croatia to the ABiH between

³⁶ Reply, para. 16 and Annex 1.

³⁷ These are exhibits 2D 00177, 2D 00827, 2D 01099, 2D 01173, 2D 01292, 2D 01384, 2D 01466.

³⁸ These are Proposed Exhibits 2D 00525, 2D 00526, 2D 00528, 2D 00529, 2D 00530, 2D 00531, 2D 00951, 2D 00956, 2D 00959, 2D 00960, 2D 00961, 2D 00962, 2D 01099, P 00204, P 00231, P 00238, P 00262, P 00267.

1991 and 1995.³⁹ The Chamber is of the opinion that these Proposed Exhibits are too vague as regards the allegations in the Indictment or do not allow a relationship to be established between the said Proposed Exhibits and the Indictment. They do not provide any information that could contribute to a better understanding or assessment of the evidence relating to the issue of MTS that has already been admitted, in particular through the witnesses Anđelko Makar, Dragutin Čehulić and Mario Miloš. The Chamber therefore holds that these Proposed Exhibits do not present sufficient indicia of relevance and decides not to admit them. The Chamber holds that the same reasoning applies to several Proposed Exhibits relating to the medical aid provided to Bosnian Muslims by the Croatian Government, the HV or the HVO,⁴⁰ as well as to the existence of good relations between the HVO and the ABiH⁴¹ in geographical areas not covered by the Indictment or in unspecified geographical areas.

28. The Chamber further notes that a certain number of the Proposed Exhibits relate to crimes committed against Croatian civilians in Bosnia or to tensions and conflicts between the HVO and the ABiH. In several decisions,⁴² the Chamber recalled the jurisprudence of the Tribunal according to which the *tu quoque* principle does not constitute a ground of defence in international humanitarian law. Therefore, the Chamber concludes that evidence intended to prove that Bosnian Muslims committed atrocities against Croatian civilians in other villages of Herceg-Bosna or in municipalities falling outside the scope of the Indictment is without any relevance inasmuch as it does not contribute to disproving the allegations made against the Accused in the Indictment.⁴³ In the same way, evidence produced to demonstrate that one of the parties to the Croat-Muslim conflict was responsible for the start of the war is also without any relevance and therefore cannot be admitted into evidence in this

³⁹ See for example the “Prosecution Motion to Exclude the Irrelevant Evidence of Witness Mario Miloš” of 25 March 2009, para. 4, and the T(F) of 30 March 2009, p. 38639.

⁴⁰ These are Proposed Exhibits 2D 01013, 2D 01038, 2D 01131, 2D 01132, 2D 01133, 2D 01134, 2D 01135, 2D 01136.

⁴¹ These are Proposed Exhibits 2D 01127, 2D 01128, 2D 01129.

⁴² “Order to Admit Defence Evidence Relative to Witness Christopher Beese”, 27 September 2006 (“Decision of 27 September 2006”), p. 3; Oral decision of 16 February 2009, T(F), p. 36878; “Decision on Prosecution Motion to Exclude the Testimony of Dragan Pinjuh”, 27 February 2009, p. 3; “Order Admitting Evidence Related to Witness Veso Vegar”, 5 May 2009, pp. 2 and 3.

⁴³ In this respect, see *The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, Vladimir Šantić alias Vlado*, Case No. IT-95-16, “Decision on Evidence of the Good Character of the Accused and the Defence of *tu quoque*”, 17 February 1999 (“*Kupreškić Decision*”), p. 3.

case.⁴⁴ Nevertheless, in the Decision of 27 September 2006, recalled in several other decisions,⁴⁵ the Chamber clearly stated that evidence related to atrocities committed against Bosnian Croats may be admissible on the assumption that it aims to disprove one of the allegations in the Indictment, but that unless the Defence shows how this evidence aims to disprove one or several of these allegations and thus has a certain degree of relevance, the Chamber will not admit it.

29. In the present case, in the Motion, the Reply and the corresponding annexes, the Stojić Defence requests the admission of the Proposed Exhibits relating to crimes committed against Croatian civilians in Bosnia or to tension and conflicts between the HVO and the ABiH primarily on the grounds that 1) they counter the allegation that the HVO launched attacks as part of a greater plan to subjugate Muslims in large parts of Bosnia and Herzegovina after 15 January 1993 and 15 April 1993 and thus disprove the allegations in paragraphs 33 and 34 of the Indictment; 2) they facilitate a better understanding of the state of mind of the HVO soldiers and thus are relevant in relation to the allegations in paragraph 17.2(r) of the Indictment and to the allegations of the responsibility of the Accused pursuant to Article 7(3) of the Statute; and 3) they disprove the allegations in paragraph 37 of the Indictment.⁴⁶

30. The Chamber holds that it may be legitimate to present evidence related to attacks by the opposing side on the civilian population of the side of an accused if this evidence aims to refute, for example, the allegation of a widespread or systematic attack on a civilian population or the allegation of the existence of a plan of concerted attacks on several villages, or to explain the behaviour of the accused.⁴⁷ In that case, however, it is important that such evidence relates to clearly specified issues. In other words, it is for the party wanting to adduce such evidence to explain, for each and every piece of evidence, the exact link, in particular in geographical and temporal terms, with the crimes alleged to have been committed in the municipalities covered

⁴⁴ *Ibidem*.

⁴⁵ “Decision on Prosecution Motion to Exclude the Testimony of Dragan Pinjuh”, 27 February 2009, p. 3; “Order Admitting Evidence Related to Witness Veso Vegar”, 5 May 2009, pp. 2 and 3.

⁴⁶ Reply, paras 8 to 15.

⁴⁷ In this respect, see the “Kupreškić Decision”, p. 4; *The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, Vladimir Šantić alias Vlado*, Case No. IT-95-16-T, Judgement, 14 January 2000, paras 515-520; *The Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23&23/1-A, Appeal Judgement, 12 June 2002, paras 87-88.

by the Indictment and/or with the alleged responsibility of the Accused for these crimes, irrespective of whether these crimes are alleged to have been committed within or without the framework of a joint criminal enterprise.

31. Thus, for example, the Stojić Defence argues that Proposed Exhibit 2D 00403, which concerns the attack by the ABiH on Konjic in April 1993, presents sufficient indicia of relevance as it demonstrates that the ABiH initiated a series of attacks on Gornji Vakuf, Sovići and Doljani, Stolac, Čapljina and Jablanica and therefore counters the Prosecution's allegation that the HVO offensive was part of a plan to subjugate Bosnian Muslims in large parts of Bosnia and Herzegovina after 15 January 1993 and 15 April 1993, as alleged in paragraphs 33 and 34 of the Indictment.⁴⁸ The Chamber cannot subscribe to this argument inasmuch as the Stojić Defence does not establish a relationship between the attack by the ABiH on Konjic and the crimes alleged to have been committed in one or several municipalities of the Indictment. On the other hand, while the Stojić Defence submits, for example, that Proposed Exhibit 2D 00484 concerns preparations for combat operations by the ABiH in the municipality of Jablanica on 16 April 1993 – that is, the day before the alleged offensive by the HVO on several villages of Jablanica on 17 April 1993 – and presents sufficient indicia of relevance since it counters the allegation of a large-scale HVO offensive on Jablanica as part of a plan to subjugate Bosnian Muslims,⁴⁹ the Chamber can accept such an argument inasmuch as this document relates to a clearly specified issue and may present a link with the crimes alleged to have been committed in the municipality of Jablanica.

32. To sum up, the Chamber holds that the admissibility of evidence related to crimes committed against Croatian civilians in Bosnia or to tension and conflicts between the HVO and the ABiH depends on the purpose for which this evidence is adduced. If the reasons put forth in support of its admissibility allow a precise link to be established, in particular in geographical and temporal terms, with the crimes alleged to have been committed in the municipalities covered by the Indictment and/or with the alleged responsibility of the Accused for these crimes, this evidence

⁴⁸ Annex 1 to the Motion; Reply, para. 11 and Annex 1.

⁴⁹ Annex 1 to the Motion; Reply, para. 11 and Annex 1.

may present sufficient indicia of relevance. Nevertheless, it will not be admitted unless it also presents sufficient indicia of reliability and has probative value.

33. On the basis of these considerations, the Chamber deems that for a certain number of the Proposed Exhibits⁵⁰ the Stojić Defence has not established a sufficient link with the crimes alleged to have been committed in the municipalities covered by the Indictment and/or with the alleged responsibility of the Accused for these crimes. Consequently, the Chamber rejects the admission of these Proposed Exhibits as they do not present sufficient indicia of relevance.

34. The Chamber wishes to state that at this stage of the trial, it is only examining the admissibility of the Proposed Exhibits and does not need to make a final assessment of their probative value. It will only do so at the end of the trial when all the Prosecution and Defence evidence has been admitted. During this assessment, the Chamber will take into account, in particular, the fact that there may be inconsistencies between the exhibits, that the Prosecution contests the interpretation of these exhibits by the Stojić Defence or their authenticity, that certain information derives from hearsay and that the Prosecution has not had an opportunity to put the Proposed Exhibits to the test during cross-examination.

35. In light of the information provided by the Stojić Defence in the Motion, the Reply and the Reply to the Joint Response as well as in view of the objections raised by the Prosecution in the Response, the Chamber decides to admit the Proposed Exhibits marked as “Admitted” in the annex attached to this decision inasmuch as they present sufficient indicia of reliability and relevance and have probative value with regard to the Indictment and, consequently, it is appropriate to admit them.

36. Finally, the Chamber rejects the Proposed Exhibits marked as “Not admitted” in the annex attached to this Motion, specifying in the annex the grounds for the rejection of each of the Proposed Exhibited.

⁵⁰ These are Proposed Exhibits 2D 00175, 2D 00176, 2D 00180, 2D 00181, 2D 00234, 2D 00248, 2D 00256, 2D 00403, 2D 00407, 2D 00408, 2D 00475, 2D 00476, 2D 00639, 2D 00641, 2D 00647, 2D 00648, 2D 00673, 2D 00679, 2D 01468.

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 89(C) of the Rules,

DECIDES to authorise the Reply and the Reply to the Joint Response,

DECLARES moot the Motion with regard to Proposed Exhibits 2D 00020, 2D 00975 and 2D 01302 for the reasons set out in the annex attached to this decision,

DECIDES to admit into evidence the Proposed Exhibits marked as “Admitted” in the annex attached to this decision, **AND**

REJECTS, by majority, the Motion in all other respects for the reasons stated in the annex attached to this decision.

Judge Antonetti appends a dissenting opinion to this decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-first day of July 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

Dissenting Opinion of Judge Jean-Claude Antonetti

The majority of the Trial Chamber has decided to reject the request for the admission of exhibits no. 2D00175, 2D00176, 2D00177, 2D00180, 2D00181, 2D00234, 2D00248, 2D00256, 2D00403, 2D00407, 2D00408, 2D00475, 2D00476, 2D00525, 2D00526, 2D00528, 2D00529, 2D00530, 2D00531, 2D00639, 2D00641, 2D00647, 2D00648, 2D00673, 2D00679, 2D00827, 2D00951, 2D00956, 2D00959, 2D00960, 2D00961, 2D00962, 2D00975, 2D01013, 2D01038, 2D01099, 2D01127, 2D01128, 2D01129, 2D01131, 2D01132, 2D01133, 2D01134, 2D01135, 2D01136, 2D01173, 2D01280, 2D01292, 2D01384, 2D01385, 2D01466, 2D01468, P00204, P00231, P00238, P00262, P00267.

At the current stage of the trial, I cannot share this point of view inasmuch as:

- It is not necessary for a document always to bear a signature, a stamp, a letterhead or a date in order for it to bear indicia of reliability, because unless it is a **fake document**, if it has a degree of relevance and has probative value, it must be admitted.
- Furthermore, it is not justified to reject documents only on the grounds that they are *tu quoque*. A document related to a crime committed by one warring party may show that this crime entailed the commission of another crime by another warring party without, however, exonerating anyone from criminal responsibility.
- It is also not justified to reject a document related to actions carried out by the ABiH because the argument of the Defence is that the attacks were not an act committed by the HVO, but by the ABiH.

The mere fact that these attacks took place in other locations which are not covered by the Indictment should not lead to the rejection of these exhibits because, in military activities, it is advisable to have a general picture of the battlefield so as not to commit errors of assessment.

Consequently, I am for the admission of **all** the documents presented by the **Stojić** Defence.

/signed/

Jean-Claude Antonetti
Presiding Judge

ANNEX

Proposed Exhibits	Admitted/Not Admitted/ Moot
IC 00960	Admitted
2D 00020	Moot (withdrawn by the Stojić Defence since it had already been admitted by a written decision of 6 March 2009 under exhibit number 1D 01946)
2D 00099	Admitted
2D 00175	Not admitted (the document does not present sufficient indicia of relevance)
2D 00176	Not admitted (the document does not present sufficient indicia of relevance)
2D 00177	Not admitted (the document does not present sufficient indicia of reliability: absence of a signature, stamp and letterhead)
2D 00180	Not admitted (the document does not present sufficient indicia of relevance)
2D 00181	Not admitted (the document does not present sufficient indicia of relevance)
2D 00185	Admitted
2D 00196	Admitted
2D 00201	Admitted
2D 00206	Admitted
2D 00208	Admitted
2D 00234	Not admitted (the document does not present sufficient indicia of relevance)
2D 00244	Admitted
2D 00248	Not admitted (the document does not present sufficient indicia of relevance)
2D 00249	Admitted
2D 00256	Not admitted (the document does not present sufficient indicia of relevance)
2D 00277	Admitted
2D 00286	Admitted
2D 00310	Admitted
2D 00332	Admitted
2D 00403	Not admitted (the document does not present sufficient indicia of relevance)
2D 00407	Not admitted (the document does not present sufficient indicia of relevance)
2D 00408	Not admitted (the document does not present sufficient indicia of relevance)
2D 00475	Not admitted (the document does not present sufficient indicia of relevance)
2D 00476	Not admitted (the document does not present sufficient indicia of relevance)
2D 00484	Admitted

2D 00525	Not admitted (the document does not present sufficient indicia of relevance)
2D 00526	Not admitted (the document does not present sufficient indicia of relevance)
2D 00527	Admitted
2D 00528	Not admitted (the document does not present sufficient indicia of relevance)
2D 00529	Not admitted (the document does not present sufficient indicia of relevance)
2D 00530	Not admitted (the document does not present sufficient indicia of relevance)
2D 00531	Not admitted (the document does not present sufficient indicia of relevance)
2D 00545	Admitted
2D 00546	Admitted
2D 00639	Not admitted (the document does not present sufficient indicia of relevance)
2D 00641	Not admitted (the document does not present sufficient indicia of relevance)
2D 00644	Admitted
2D 00647	Not admitted (the document does not present sufficient indicia of relevance)
2D 00648	Not admitted (the document does not present sufficient indicia of relevance)
2D 00665	Admitted
2D 00673	Not admitted (the document does not present sufficient indicia of relevance)
2D 00679	Not admitted (the document does not present sufficient indicia of relevance)
2D 00818	Admitted
2D 00821	Admitted
2D 00824	Admitted
2D 00826	Admitted
2D 00827	Not admitted (the document does not present sufficient indicia of reliability: absence of a date)
2D 00828	Admitted
2D 00829	Admitted
2D 00830	Admitted
2D 00951	Not admitted (the document does not present sufficient indicia of relevance)
2D 00956	Not admitted (the document does not present sufficient indicia of relevance)
2D 00958	Admitted
2D 00959	Not admitted (the document does not present sufficient indicia of relevance)
2D 00960	Not admitted (the document does not present sufficient indicia of relevance)
2D 00961	Not admitted (the document does not present sufficient indicia of relevance)

2D 00962	Not admitted (the document does not present sufficient indicia of relevance)
2D 00969	Admitted
2D 00975	Moot (the Stojić Defence withdrew its request since the exhibit had already been admitted by a written decision of 6 May 2009)
2D 00976	Admitted
2D 01010	Admitted
2D 01011	Admitted
2D 01013	Not admitted (the document does not present sufficient indicia of relevance)
2D 01038	Not admitted (the document does not present sufficient indicia of relevance)
2D 01099	Not admitted (the document does not present sufficient indicia of reliability: absence of a date. Furthermore, the document does not present sufficient indicia of relevance)
2D 01127	Not admitted (the document does not present sufficient indicia of relevance)
2D 01128	Not admitted (the document does not present sufficient indicia of relevance)
2D 01129	Not admitted (the document does not present sufficient indicia of relevance)
2D 01131	Not admitted (the document does not present sufficient indicia of relevance)
2D 01132	Not admitted (the document does not present sufficient indicia of relevance)
2D 01133	Not admitted (the document does not present sufficient indicia of relevance)
2D 01134	Not admitted (the document does not present sufficient indicia of relevance)
2D 01135	Not admitted (the document does not present sufficient indicia of relevance)
2D 01136	Not admitted (the document does not present sufficient indicia of relevance)
2D 01173	Not admitted (the document does not present sufficient indicia of reliability: the BCS and the English versions do not tally. Furthermore, the document does not present sufficient indicia of relevance)
2D 01250	Admitted
2D 01278	Admitted
2D 01279	Admitted
2D 01280	Not admitted (the document does not present sufficient indicia of relevance)
2D 01281	Admitted
2D 01282	Admitted
2D 01283	Admitted
2D 01284	Admitted
2D 01285	Admitted
2D 01286	Admitted
2D 01287	Admitted
2D 01288	Admitted

2D 01289	Admitted
2D 01290	Admitted
2D 01291	Admitted
2D 01292	Not admitted (the document does not present sufficient indicia of reliability: absence of a signature and stamp)
2D 01293	Admitted
2D 01295	Admitted
2D 01302	Moot (the Stojić Defence withdrew this document since it had already been admitted by a written decision of 5 May 2009 under exhibit number 2D 00448)
2D 01384	Not admitted (the document does not present sufficient indicia of reliability: absence of a signature, stamp and letterhead)
2D 01385	Not admitted (the Stojić Defence did not download the English version of 2D 01385). The Chamber notes that while this document is a duplicate of 2D 00759, document 2D 00759, contrary to what the Stojić Defence submits in its Reply, has not been admitted into evidence.
2D 01402	Admitted
2D 01464	Admitted
2D 01466	Not admitted (the document does not present sufficient indicia of reliability: absence of a signature, stamp and letterhead)
2D 01468	Not admitted (the document does not present sufficient indicia of relevance and does not have probative value)
2D 01488	Admitted
2D 01492	Admitted
P 00204	Not admitted (the document does not present sufficient indicia of relevance)
P 00231	Not admitted (the document does not present sufficient indicia of relevance)
P 00238	Not admitted (the document does not present sufficient indicia of relevance)
P 00262	Not admitted (the document does not present sufficient indicia of relevance)
P 00267	Not admitted (the document does not present sufficient indicia of relevance)
P 01201	Admitted
P 01541	Admitted
P 05079	Admitted
P 05365	Admitted
P 05984	Admitted