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: 6 October 2010

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IN TRIAL CHAMBER III

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

Registrar: **Mr John Hocking, Registrar**

Decision of: **6 October 2010**

THE PROSECUTOR

v.

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

PUBLIC

DISSENTING OPINION OF THE PRESIDING JUDGE OF THE CHAMBER, JEAN-CLAUDE ANTONETTI, CONCERNING THE DECISION ON THE PROSECUTION'S MOTION TO RE-OPEN ITS CASE

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 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

When reading **only** the Prosecution's submissions, I was initially inclined, upon first impression, to **admit** the proposed exhibits, and inclined to do so thanks to the **principle** I adopted at the beginning of the proceedings, which is to be generous in admitting any evidence submitted by the Prosecution or the Defence, while reserving a final option, during deliberations, to exclude the exhibit so admitted for lack of relevance or probative value.

My subsequent review of the Defence's submissions, taking into account the issue of the declared "authenticity" of the Notebooks, of the potential added value of the documents in relation to the exhibits already admitted and especially of the effects on the speed of the trial, brought me to the conclusion that they ought to be **excluded** from evidence.

The Motion by the Prosecution seeking the reopening of its case for purposes of admitting evidence leads me to describe in depth the posture of **exclusion** which I am adopting across the board with respect to the Motion.[1]

The virtual absence of useful data produced by the Prosecution concerning any information on General Mladić has led me, for purposes of better informing myself, to seek out criteria to use for assessment, either by consulting the reference works in the Tribunal's Library, or by reading the judgements rendered by this Tribunal, or by looking at the public transcripts of cases adjudicated at the ICTY or still pending, by looking at publicly available articles from the media and also at the Indictment brought against General Mladić.

I had the impression, while reading the Motion, that the Prosecution assumed that the judges were well-informed about the background of the trial – far from certain in my case, given the complexity of the dismantling of the former Yugoslavia, and the fact that I had **no connection** to these events prior to my arrival at the Tribunal in October 2003. In this area, one must be particularly humble and let oneself be informed through the submissions of the parties, which the Prosecution has not done in its Motion since it did not disclose the essential exhibit in its custody,

[1] *The Prosecutor v. Prlić et al,*, Case No. IT-04-74, "Prosecution Motion to Admit Evidence in Reopening", public document with confidential Annex 2, 8 July 2010.

which is the *procès-verbal* concerning the seizure of the documents that was prepared by the MUP police officers as they conducted their second search of the premises, if we can rely upon the OTP investigator's own words.[2] As a consequence, I have indicated in footnotes those references that are needed to properly understand my opinion. In my own effort to fully understand, I have read quite attentively the *Prlić* Defence and *Praljak* Defence submissions, particularly all of the details concerning the events recounted in the Motion.

This request by the Prosecution leads a **professional judge** to ask himself the key question of handwriting analysis. The Prosecution, in its Motion on 8 July 2010 states: "[t]he Mladić Notebooks are authentic" and, in support of this statement, cites in paragraphs 23 and 24 of its submission the 92 *bis* statements taken from General Manojlo Milovanović and from Erin Gallagher, the investigator from the Office of the Prosecutor. Thus, for the Prosecution, there is no debate over authenticity.[3]

However, in various places, dissenting voices have spoken, casting doubt at times upon the authenticity of these submissions.[4] In a criminal proceeding, the reflex of a judge with experience examining documents is to inquire whether this document is authentic, because the document may hold probative value during final deliberations. To hold this obligation in contempt poses a challenge to ensuring that a **fair trial** is held. As Franklin Kuty[5] puts it so well, "*la contradiction et l'impartialité sont 2 garanties essentielles du caractère équitable de la procedure*"/adversarial argument and impartiality are 2 fundamental guarantees of the fairness of the trial".

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[2] *The Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Hearing of 20 August 2010, Tomasz Blaszczyk, T(F), p. 6059.

[3] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Prosecution Motion to Admit Evidence in Reopening", public document with confidential Annex 2, 8 July 2010, §§ 23 and 24.

[4] GLOBUS newspaper article, "Globus istražuje Mladićevi dnevnici ili venika prevara"/GLOBUS reports: Mladić Diaries or a Big Swindle/, 4 June 2010.

[5] Franklin Kuty is a Doctor of Law and Lecturer at the Free University of Brussels (ULB) as well as Deputy Prosecutor of the Kingdom of Belgium in Verviers. Works by Franklin Kuty include: *L'impartialité du juge en procédure pénale* [Judicial Impartiality in Criminal Proceedings], Larcier, 2005; *Justice pénale et procès equitable, Tome 1 : Notions générales-Garanties d'une bonne administration de la justice*, et *Tome 2 : Délai raisonnable-Présomption d'innocence-Droits spécifiques du prévenu* [Criminal Justice and Fair Trial, Volume I: Overview: Guarantees of the Proper Administration of Justice, and Volume II: Reasonable Time: the Presumption of Innocence – Specific Rights of the Suspect], Larcier, 2006; *Principes généraux du droit pénal belge, Titre I : la loi pénale* [General Principles of Belgian Criminal Law, Volume I: Criminal Law], Larcier, 2009; *Principes généraux du droit pénal belge, Titre II : L'infraction pénale* [General Principles of Belgian Criminal Law, Volume II: Criminal Offences], Larcier, 2010.

The European Court of Human Rights (ECHR) aims to ensure that "*l'appréciation faite, résultant du délibéré, intervienne avec le Jugement et s'appuie sur les éléments produits et débattus à l'audience*"/[h]aving weighed the various aspects of the case coming out of deliberations, [the Court] will produce a Judgement, relying on the evidence produced and contested at the hearing/".[6] "It is a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which relate to procedure, should be adversarial ...."[7]

Mr Kuty stated moreover that "*le principe du contradictoire des délits constitue une garantie d'impartialité en ce qu'il impose que le juge ne forge sa conviction qu'une fois dûment informé de tous les éléments de la cause et qu'il ne néglige aucune de ces informations*"/the principle of subjecting crimes to adversarial argument constitutes a guarantee of impartiality in that it obliges the judge to delay forming any decided opinion until he has been properly informed of all of the facts of the case and to not neglect any of this information/.

Faced with a doubt such as the one raised by the Defence, the Chamber is obliged to examine the matter more closely,[8] and to at least order an **expert evaluation of the handwriting**. Handwriting analysis is not a recent phenomenon because one discerns traces of it during the third century AD during the time of Emperor Constantine the Great and it became widespread in Italy thanks to Prosper Aldesirius (1594) and Giovanni Frigioli (1610). So then this is an advanced technique making it possible to reach certainty as to the identity of the writer. Without entering into the details concerning the benefits this expert ability brings to technical analysis, one should note that the modern methods (microscope-based methods, electro-static detection analysis, electro-magnetic ray images in the dark, psycho-chemical analysis,

[6] ECHR, *Case of Didier v. France*, 27 April 2002.
[7] ECHR, *Case of P.G. and J.H. v. The United Kingdom*, 25 September 2000; *Case of Brandstetter v. Austria*, 15 April 1991; European Human Rights Commission, *Report on Tripodi v. Italy*, 14 October 1992 and *Report on Biondo v. Italy*, December 1983.
[8] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Bruno Stojić's Response to Prosecution Motion to Admit Evidence in Reopening", 22 July 2010, § 12; the Pušić and Ćorić Defences joined this Response: "Berislav Pušić's Motion to Join Bruno Stojić's Response to Prosecution Motion to Admit Evidence in Reopening", 23 July 2010, and "Joinder of Valentin Ćorić in 'Bruno Stojić's Response to Prosecution Motion to Admit Evidence in Reopening'", 26 July 2010. "Petković Defence Response to the Prosecution Motion to Admit Evidence in Reopening", 22 July 2010, §§ 28-30. "Slobodan Praljak's Response to the Prosecution Motion to Reopen", 23 July 2010, §§ 8-13.

etc…) would be especially useful inasmuch as the Prosecution alleges in its submissions that the 15 exhibits are sufficiently important that they warrant reopening the trial. There must therefore not be even a shadow of a doubt concerning the authenticity of the Notebooks.

We have a duty therefore to be nearly entirely persuaded that the author of these documents is indeed General Mladić; the two 92 *bis* Statements do not in and of themselves ensure from a technical perspective that these writings originate in whole or in part from the hand of General Mladić, although a cursory analysis, at first impression, might lead one to think that these writings originate with the same author (numerous pages contain identical script).

The recent testimony of a Prosecution witness in the *Karadžić* case only adds to the confusion concerning the Mladić[9] Notebooks. **Mr Blaszczyk**, an investigator in the Office of the Prosecutor,[10] starts by publicly making a significant disclosure, namely that there were **two searches** that led to the seizure of the Mladić[11] Notebooks. The first search occurred back in 4 December 2008,[12] where, among other **documents**, the investigator, **Mr Blaszczyk, who was not present at the site of the search**,[13] made a selection, retaining five Mladić[14] Notebooks.

The investigator said that he sorted through the documents; his sentence is ambiguous, were there notebooks among those documents?[15] No question was put to him concerning this issue. I observe moreover, that he went back to Belgrade to recover documents.[16]

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[9] *The Prosecutor v. Karadžić*, Case No IT-95-5/18-T, Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), pp. 6044-6117.
[10] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), p. 6050.
[11] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), pp. 6049-6050.
[12] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), p. 6051.
[13] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), p. 6053.
[14] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), p. 6055.
[15] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), p. 6055 "(…) And first, as far as I remember, it was 25, 26 March 2009, I went to Belgrade to look at the original material seized by – by the Serbs MUP, and at that **time I selected the most important – I believe at that time the most important material**, useful material for our investigation. It was five notebooks which were discussed few minutes ago and plus four video-tapes (…)".
[16] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), p. 6055.

To ensure that there was no confusion or later subsequent addition of documents, it would have been necessary to **compare** the list of documents discovered and seized during the search with the list of documents filed and kept at the Office of the Prosecutor in order to be quite certain that these were really the same documents, without subtraction, omission or addition.[17] These two lists were not disclosed to the Trial Chamber. Why not?

The second search reported by the witness, who, once again was **not present** but draws conclusions on the basis of facts reported to him by persons unknown, prominently draws attention to the fact that there were **15 notebooks** duly catalogued, which I list in Annex 1[18] using the transcript of 20 August 2010:

We should note that several notebooks were simply cited during this hearing, notebooks which, in the *Karadžić* case, were assigned 65 *ter* reference numbers 22842, 22845, 22847, 22848, 22849, 22850,[19] without there being any debate over these notebooks or questions put to the witness.

We should at this stage closely examine the 92 *bis* Statements of Witness **Erin Gallagher**. Witness Erin Gallagher, an investigator with the Office of the Prosecutor, formerly a police officer who previously worked as an investigator with the District Attorney's Office in **San Francisco**, said that she was informed by **Tomasz Blaszczyk** of certain facts. She was also informed by another investigator, **Piotr Bysina** that "the Serbian National Council for Cooperation" had sent the Office of the Prosecutor in Belgrade all of the material (including the originals) and that it was **Piotr Bysina** who had opened the package in front of Blaszczyk and that the latter had transported all of the material to The Hague on **11 May 2010**. Piotr Bysina had himself examined the diplomatic seals placed by Blaszczyk (No 0521736).

During her hearing in the *Karadžić* case, Ms Gallagher[20] mentioned the 15 notebook exhibits assigned a Serbian ERN No. and an "OTP Number". It thus appears

[17] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), pp. 6048, 6051 and 6056-6058.
[18] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), pp. 6056-6063.
[19] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), pp. 6059-6060.
[20] This investigator testified for the first time on 29 September 2010 at 11 am in the *Tolimir* case concerning videos not relevant to our case, whereas she had not testified in the *Popović* case ….

that this 92 *bis* witness is quite secondary in comparison with Witness **Tomasz Blaszczyk**, who testified in the *Karadzić* case. The investigator did indeed list the 15 exhibits and the comparative chart provided above establishes that Exhibits **11377 and 11388** were not submitted to it, as they do not appear in the chart. Thus, these are two supplemental exhibits that have nothing to do with the Mladić Notebooks. Reading **Exhibit 11377** reveals that the source of this is the Kozara Barracks in Banja Luka, and reading Exhibit **11388** indicates that it comes from the military archives in Belgrade.

It would have been easier for the Prosecution simply to present a chart referring **solely** to the exhibits from the notebooks, and not to mix these exhibits with documents admitted into evidence, or originating with the Croatian or Serbian archives, which is an additional source of confusion.

Another source of confusion enters in from the fact that the witness mentions **17 notebooks**, not **15**.[21] To what is he referring? What are these two additional notebooks? How is it that this witness, who appears to be thoroughly acquainted with criminal procedure, given his previous responsibilities (Polish police officer), is not the 92 *bis* Witness in our proceedings, and the Prosecution has produced a statement from some other witness? Why was this done? We still do not know.

The "mystery" over the number of notebooks grows greater still if we refer to the 92 *bis* Statement of General **Manojlo Milovanović** who states that, on 22 April 2010, he examined the **18 notebooks** in the Office of the Prosecutor. Confusion has now reached its high-water mark: no one knows whether there were **18 notebooks, 17 notebooks or 15 notebooks**! In a chart annexed to his statement, he lists these **18 notebooks** as follows:

1. Diary: 29 June 1991 to 25 August 1991
2. Diary: 27 August 1991 to 22 November 1991
3. Diary: 23 November 1991 to 29 December 1991
4. Diary: 31 December 1991 to 14 February 1992

[21] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), pp. 6055 and 6056.

5. Diary: 14 February 1992 to 25 May 1992
6. Diary: 27 May 1992 to 31 July 1991
7. Diary: 16 July 1992 to 9 September 1992
8. Diary: 10 September 1992 to 30 September 1992
9. Diary: 5 October 1992 to 27 December 1992
10. Diary: 2 January 1993 to 28 January 1993
11. Diary: 2 April 1993 to 24 October 1993
12. Diary: 28 October 1993 to 15 January 1994
13. Diary: 9 January 1994 to 21 March 1994
14. Diary: 31 March 1994 to 3 September 1994
15. Diary: 4 September 1994 to 28 January 1995
16. Diary: 14 July 1995 to 18 September 1995
17. Diary: 28 August 1995 to 15 January 1996
18. Diary: 16 January 1996 to 28 November 1996

One ought to note that these **18 notebooks** are listed in chronological order, starting on 29 June 1991, yet with the following "**time gaps**":

- 26 August 1991
- 30 December 1991
- 26 May 1992
- 1 to 5 October 1992
- 28 December to 2 January 1993
- 29 January 1993 to 2 April 1993
- 24 October to 28 October 1993
- 22 March to 31 March 1994
- 29 January 1995 to 14 July 1995

One should also note that certain notebooks straddle identical time periods:

- Notebook No. 12 (28 October 1993 to 15 January 1994)
- Notebook No. 13 (9 January 1994 to 21 March 1994)
- Notebook No. 16 (14 July 1995 to 8 September 1995)
- Notebook No. 17 (28 August 1995 to 15 January 1995)

Likewise, there is a noticeable gap for the time period running from **28 January 1995 to 18 September 1995**. There must then be one or more notebooks for this period which were not located, or which may have been destroyed by General Mladić, or which are still in his possession if he is alive. It is therefore quite obvious that this witness saw **18 notebooks**. Taking account of the dates, it is thus possible to establish a link between the 15 exhibits tendered, whose admission is sought, and the notebooks:

Exhibit 11374 (18 August 1992) **Notebook No. 7**
Exhibit 11375 (27 September 1992) **Notebook No. 8**
Exhibit 11376 (5 October 1992) **Notebook No. 9**
Exhibit 11377 (6 October 1992) **Military Archives**
Exhibit 11378 (18 October 1992) **Notebook No. 9**
Exhibit 11379 (21 October 1992) **Notebook No. 9**
Exhibit 11380 (26 October 1992) **Notebook No. 9**
Exhibit 00665 (28 October 1992) **Document Admitted**
Exhibit 11381 (4 January 1993) **Notebook No. 10**
Exhibit 11382 (8 January 1993) **Notebook No. 10**
Exhibit 11383 (11 January 1993) **Notebook No. 10**
Exhibit 11384 (23 January 1993) **Notebook No. 10**
Exhibit 09965 (6 July 1993) **Document Admitted**
Exhibit 11266 (7 July 1993) **Civilian Archives**
Exhibit 11385 (8 July 1993) **Notebook No. 11**
Exhibit 11386 (8 July 1993) **Notebook No. 11**
Exhibit 11387 (25 August 1993) **Notebook No. 11**
Exhibit 11388 (31 January 1994) **Serbian Archives**
Exhibit 11389 (3 February 1994) **Notebook No. 12**
Exhibit 11390 (11 June 1994) **Notebook No. 14**

One may therefore deduce that the 15 entries tendered for admission correspond to notebooks nos 7, 8, 9, 10, 11, 12 and 14, that is, to **seven notebooks**. Nevertheless, of these 20 exhibits, only 15 exhibits relate to the notebooks: two documents were

already admitted (00665 and 09965) and three documents originate from the Croatian and Serbian archives.

When confronted with this technical issue, the requisite response is to turn immediately to a handwriting expert. But how can the Chamber do this, given the **late stage of the proceedings**? Does it have the means available for doing so? And above all, is there not a risk that this expert analysis will consume vast quantities of time – because there are many documents and the results will lead to new requests by the Defence or the Prosecution followed by opposing expert reports? For those with experience in this area, expert analysis of the sort will take several months or even several years for a complex case especially if requests are brought for cross-examination ….

The other issue that arises, and naturally results from handwriting analysis, is the following: how is it that the Prosecution, which already had the notebooks in its custody for more than a year, did not consider it helpful to use its own means to obtain expert handwriting analysis? An article which was published in the magazine *Vreme* on 24 June 2010, written by a certain Dejan Anastasijević, says this: "In 2008, during the first search of his home in Belgrade, where his spouse still lives, two were found, covering the period from January to April 1993. They contained nothing of significance. Last 23 February, the Serbian police again raided the Mladić home, rummaging through the attic in particular (…) in a specially outfitted cache, the police officers discovered 18 notebooks, minutes of meetings of the Supreme Defence Council, as well as 120 video and audio recordings. In approximately 3,500 pages the notebooks cover the period running from 29 June 1991 through 28 November 1996".

This article, which must be read against the testimony of Witness Blaszczyk on 20 August 2010 in the *Karadžić* case, confirms the difficulty with the number of notebooks discovered, **two** notebooks in 2008 and **18** notebooks in 2010. Without entering into closer examination of the details mentioned in this article, it thus appears that, as early as 2008, that is, over two years ago, the Prosecutor had the option, from a technical point of view, to turn to handwriting analysis, in order to have a clear conscience, because two notebooks had been located. He did not do so, and now he is

merely side-stepping the issue by annexing two 92 *bis* statements devoid of scientific value in any sense that is relevant to the handwriting.[22]

Reading the transcript of the *Karadžić*[23] case brings to light the fact that the Prosecution knew about five Mladić Notebooks **as of December 2008**, having taken custody of the said Notebooks on 25 February 2009 by means of the scanned version,[24] and that it had therefore disposed of ample time to request that a handwriting expert provide it with an **airtight technical opinion**. In lieu of accomplishing this basic task, the Prosecution waited **until the last minute** for General Milovanović to appear, to ask his opinion, and at the mere sight of these documents, he could only conclude that this was indeed the handwriting of General Mladić, while observing that there were loose-leaf sheets featuring another handwriting whose author this same General did not identify.[25]

This event is important because in the context of searching for the fugitive Mladić, the Office of the Prosecutor, made up of "experienced investigators", has had **five Mladić Notebooks** in its possession since November 2008.

The most basic reflex for any investigator worthy of the name is to proceed **immediately** to verify the writing contained in the Notebooks in order to establish that they do indeed come from the hand of General Mladić. For this purpose, the Prosecution has substantial means at its disposal to proceed about its work to accomplish such a task. It could thus, **with no difficulty whatsoever**, have started by conducting an **expert analysis of the handwriting** and it could have done so starting in December 2008.

By the same token, it is beneficial, regarding the fugitive's character, to learn more about facets of his personality for the purpose of arresting him under optimal conditions. In this spirit, the Prosecution ought to have also made use of handwriting analysis because graphology reveals the **personality of the individual.**

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[22] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Prosecution Motion to Admit Evidence in Reopening", public document with confidential Annex 2, 8 July 2010, §2 (Annex 3 and Annex 4).
[23] *The Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), pp. 6044-6117.
[24] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), p. 6054.

Having these exhibits in its possession, the Prosecution could have resorted to the use of a profiler. In the United States, this method is known by the name of "profiling", "offender profiling" or "psychological profiling". Without delving into criminological analysis, surely the Office of the Prosecutor is aware that in an investigation, the first step is to analyze indicia; the second step is to study the crime scene; and the third step is to analyze the psyche of the suspected individual.

It seems to me that the Prosecutor's motion, supported by these 15 exhibits, obscures various factors which ought to have been brought to the attention of the Chamber, or at least, that of the experienced judges, especially those who may possibly have had experience with cases of this type in their prior employment. Thus, attaching the 92 *bis* statements of a witness, is for me, simply not an adequate basis upon which to validate this request.

The testimony does not allow one to scientifically conclude that this is the handwriting of General Mladić. Judicial experience teaches us that even a person intimately acquainted with the person in question may err in relation to someone's handwriting, persuaded that a sample is indeed the handwriting of X, whereas the expert would say that it has been falsified.

Given the majority's decision, which has just been promulgated and will have a significant impact on the duration of the trial, I need to lay out, in **detailed fashion,** the reasoning which leads me to favour a straightforward decision to deny the motion for reopening the case.

I will have the opportunity to analyze the issue of reopening the case in depth from a legal standpoint, but I must, at this stage, reproduce in full, by way of introduction, **Paragraph 27 of the Trial Chamber's Decision in the *Delalić* case, which was upheld by the Appeals Chamber**[26]:

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[25] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), pp. 6063-6065, 6097-6098.
[26] *The Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Decision by the Trial Chamber, "Decision on the Prosecution's Alternative Request to Reopen the Prosecution's Case", 19 August 1998; Decision by the Appeals Chamber, "Decision on Prosecutor's Applications for Leave to Appeal the Order of 30 July 1998 and Decision of 4 August 1998 of Trial Chamber II *Qua[r]ter*", 29 August 1998.

"When the Trial Chamber is deciding how to exercise its discretion in this situation, the advanced stage of the trial must be a relevant consideration. As a general rule, it may be considered that where the Prosecution seeks to adduce further evidence, the later in the trial that the application is made the less likely the Trial Chamber is to accede to the request. The Trial Chamber must also consider the delay likely to be caused by a reopening of the Prosecution case, and the suitability of a possible adjournment in the overall context of the trial. It must further take into account the nature of the evidence sought to be presented. While it is axiomatic that all evidence must fulfil the requirements of admissibility, for the Trial Chamber to grant the Prosecution permission to reopen its case, the probative value of the proposed evidence must be such that it outweighs any prejudice caused to the accused. Great caution must be exercised by the Trial Chamber lest injustice be done to the accused, and it is therefore only in exceptional circumstances where the justice of the case so demands that the Trial Chamber will exercise its discretion to allow the Prosecution to adduce new evidence after the parties to a criminal trial have closed their case."

This distinct and specific case-law is almost entirely side-stepped in the submissions of the Prosecution, which limits itself primarily to emphasizing the concept of "**fresh evidence**", while blocking out the issue of the **late stage of the proceedings**.

The strict application of the criteria developed must lead a **professional judge** to deny these submissions for the reason that the reopening of a case cannot occur at a late stage of the proceedings save in exceptional circumstances, and then the Chamber is obliged to proceed **circumspectly** in order to spare the accused from becoming the victim of an injustice, and, in addition, the probative value of this evidence must more than outweigh the prejudice thereof.

The issue is thus, one that is easy to resolve: are the exhibits fresh in such a way that the interests of Justice require the reopening of the Prosecution's case? For me, the answer is "**no**". I am thus obliged to enter into detail in order to develop all of

these points, inasmuch as there is the possibility, given the posture adopted by the majority, that one of the parties will request certification to appeal.

The first question we ought to explore, as the name of **General Mladić** does not appear either in the Indictment[27] or in the Pre-Trial Brief,[28] involves discovering **who** this individual is, beyond the scope of the media coverage concerning him.

A **publicly known** fact appears in paragraph 90 of the *Popović et al.* Judgement,[29] which reads thus: "On 12 May 1992, the Army of RS ("VRS") was formed. Radovan Karadžić, the President of the RS, became the Supreme Commander of the VRS; General Ratko Mladić became the Commander of the VRS Main Staff. The VRS enjoyed military superiority, while the Army of BiH ("ABiH") adopted a type of guerilla warfare, which towards the end of 1992 was quite successful".

It thus appears that **General Mladić was the Commander of the Main Staff of the VRS**. To place matters in a clearer light, due to the lack of information supplied by the Prosecution, which thought that all of this was well known by the members of the Chamber, it is stated in paragraph 103 of this Judgement that the VRS had been created out of parts of the JNA and that the command and control of its corps was ensured by the "Main Staff", which, according to paragraph 104, was the highest-ranking operational corps of the VRS, with General Mladić as Commander, who operated under the oversight of Radovan Karadžić, the "Supreme Commander" and who therefore answered directly to Karadžić.[30]

Upon reaching this stage, where it has become apparent that **Radovan Karadžić** is No. 1 atop the chain of command, why then does the Prosecution not **also** request the admission of documents coming directly from Radovan Karadžić, especially insofar as his trial is underway and the 65 *ter* (G) List in his case must surely mention the existence of these documents which are of undisputed relevance and interest, if one looks to his preliminary statement at the outset of the trial about deliveries of arms by

[27] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, Second Amended Indictment, 10 July 2008.
[28] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, Pre-Trial Brief by the Prosecution, 19 January 2006 (partially confidential document - Annexes 1 to 12 are confidential).
[29] *The Prosecutor v. Popović et al.*, Case No. IT-05-88, Judgement rendered on 10 June 2010.
[30] *The Prosecutor v. Popović et al.,* Case No. IT-05-88, Judgement rendered on 10 June 2010.

the Republic of Croatia to the Republic of Bosnia and Herzegovina "[o]nly at first glance, Your Honour. Namely, before the opening of the Tuzla airport, Croatia was a filter and a transit station for all these arms shipments, and Croatia took a part of these weapons for itself. They know about each rifle, each bullet, each uniform, and each pair of boots that arrived, and they have records on that because it went through them. After the Tuzla airport was opened – perhaps they don't know everything – but before that they took one-third or one-quarter for their own needs and they must be aware of it."[31]

Thinking along the same lines, did the arrest of Radovan Karadžić, cloaked in mystery, also lead to the discovery of documents in his possession of the Mladić Notebooks variety? As of this date, we know absolutely nothing about such matters. It should be noted that he, when cross-examining Witness **Blaszczyk**, mentioned that documents had been seized from persons close to him during his arrest.[32]

It must be observed that this description, alluded to in the *Popović et al.* Judgement, originates with Witness **Manojlo Milanović**, whose statement the Prosecutor is seeking to have admitted.[33] At this stage, I will draw no definitive conclusion in this regard inasmuch as the Judgement has been subjected to an appeal, but the paragraphs cited may perhaps better allow us to understand, in some sense, the presumptive role of General Mladić in these events.

Regarding the *Popović* case, it is interesting to note the description on page 12 of Annex II relating to the procedural background, that on 7 April 2008, a request to reopen the case was brought by the Prosecution, while the Accused Pandurević had testified on 12 March 2009, which then led to another request on 23 April 2009, then another on 15 December 2009; such that the other various Accused had thereby requested the reopening of their case (Miletić and Gvero) and that, in the end, the final arguments continued until **14 September 2009**. Careful review indicated that, as a result of the reopenings of the case, which had been firmly requested as of 7 April 2008, that it took an extra **six months** for closing arguments!

[31] *The Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Hearing on 15 February 2010, T(F), p. 791.
[32] Tomasz Blaszczyk, Hearing of 20 August 2010, T(F), pp. 6095 and 6096.

Without question, this precedent illustrates the significant procedural **impact** on the length of a trial, and as a responsible judge, I am compelled to digest this fundamental fact. This leads me to consider the legal issue of the reopening of the case, in addition to the precedential principles expounded in the *Delalić* case-law set forth above. It is nearly certain that the Defence teams will also request the reopening of their cases (they said as much in their submissions), which will lead to a submission by the Prosecution, then replies, etc. … It then will take several months to resolve these problems – a crucial fact apparently overlooked by the majority.

In regard to the law, do the Rules contain within them a rule devised for the reopening of the case? The answer is **no**, because Rule 85 of the Rules stipulates the order of presentation of the evidence, without making mention of the reopening of the case. This is perfectly understandable because trials before the Tribunal are **extremely long** and the Prosecution and the Defence have been given more than enough time to elaborate upon their theories of the case during witness examination and cross-examination.

It would be astonishing to see that, after **several years**, a need would exist to reopen the presentation of Prosecution – or Defence - evidence in order to provide a "**second chance**" to the requesting party. Nevertheless, despite the specific language of the Rules, very narrow, very restricted case-law has been developed over time.

It was in the *Furundžija* case that the Tribunal first encountered an instance of the reopening of the case during a trial, due to serious error by the Prosecution under Rule 68 of the Rules, causing substantial prejudice to the Defence.[34] The key case after that was the *Delalić* case, where the Trial Chamber rendered its decision rejecting the Prosecution's request to reopen its case.[35]

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[33] *The Prosecutor v. Popović et al.*, Case No. IT-05-88, Manojlo Milanović, Hearing of 31 May 2007, T(F), p. 12319.
[34] *The Prosecutor v. Furundžija,* Case No. IT-95-17/1, "Decision", 16 July 1998.
[35] *The Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, "Decision on the Prosecution's Alternative Request to Reopen the Prosecution's Case", 19 August 1998.

The Chamber, thus, possesses absolute discretion in the matter and must take into account the unescapable challenge posed by the **speed of the trial**.

As the *Delalić* case-law puts it, the principal consideration that must be taken into account when ruling on a request to reopen the case in order to admit fresh evidence is to determine whether, with reasonable diligence, the requesting party could have identified and presented this evidence during the presentation of its case-in-chief. If it finally turns out that, despite all of its diligence, this was not so, then the Trial Chamber is called to exercise its discretion **to approve or deny** their admission, balancing their probative value against the injustice that would be done to the Accused, if they are admitted at such a late stage. These two final aspects may be considered to fall within the broad sweep of authority enjoyed by a Chamber, under Rule 89 (D) of the Rules, to exclude any exhibit whose probative value does not balance out with the requirements of a fair trial.[36]

Applying this case-law to the letter, I am obliged to find out whether this is a fresh fact and whether the Prosecution has shown diligence by not producing these exhibits during the presentation of its case-in-chief. At first impression, they did not, because the Prosecution was already acquainted with the well-known Mladić Notebooks in the *Popović* case, which has just been publicly confirmed in the *Karadžić* case.

Regarding the theory elaborated by the Prosecution in submissions in July 2010,[37] insofar as the close ties between certain Croats and the Serbs are concerned: is this a fresh theory or the continued exploration of a theory touched upon in the Indictment and the Pre-Trial Brief?

In paragraph 18 of the Indictment, it states "[t]he Republic of Croatia was at war with nationalist Serb forces attempting to incorporate parts of Croatia into a 'Greater Serbia'".

[36] *The Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Appeals Judgement, rendered on 20 February 2001, § 283.
[37] *The Prosecutor v. Delalić et al.*, Case No. IT-04-74, "*Prosecution Motion to Admit Evidence in Reopening*", public document with confidential Annex 2, 8 July 2010.

" (…) By the spring of 1992, Bosnian Serb forces had already begun an armed campaign to dismember the fledgling country and expel Muslims and Croats from territory claimed as Greater Serbia".

In paragraph 27 of the Indictment, it is stated that the HVO forces at the beginning of the JCE carried out military operations with the armed forces of the BH government in response to the military operations of the JNA and the Bosnian Serbs. In the same paragraph, **substantial co-operation** is mentioned following a meeting between Karadžić and Boban on 6 May 1992 in **Graz**, co-operation which continued until the end of 1993.

In paragraph 208 of the Indictment, the said co-operation appears to be exemplified by the statement "[t]he HVO forces passed through Bosnian Serb-controlled territory".

The essential issue in the Prosecution's theory concerning the **co-operation** between the Serbs and certain Croats is whether it was clearly set forth during the phase of presentation of evidence for the Prosecution.

The three paragraphs from the Indictment cited above (18, 27 and 208): were they explained by the Prosecution witnesses in keeping with the meaning suggested by the Prosecution's theory of the case? To answer this question, we merely need to look to the submissions of the Prosecution which, in an annex, mention these paragraphs in the Indictment that needed to be introduced into evidence with witnesses and documents.

Overall, therefore, this led to **18 witnesses** testifying concerning these three paragraphs and **25 documents being admitted.** Without going into detail concerning this testimony and the documents, it seems that the questions put were not focussed on the collusion between Serbs and Croats.

In the **Pre-Trial Brief in paragraph 27.1**, it states: "there was actually a broad consensus between the Croats and Serbs on the division of Bosnia and Herzegovina (…) there was far more Croat-Serb co-operation than actual conflict".

"From mid-1992 to early 1994, (…) the Croats and the Serbs, for the most part, recognised each other's core territorial claims and often assisted each other against the Muslims".

In paragraph 27.2, the Serb member of the BH Presidency, Nikola Koljević, and the Croat member, Franjo Boras, discussed partition and the resettlement of populations and Nikola Koljević is alleged to have said "[i]t is not so impossible to divide Bosnia".[38]

In paragraph 27.3, "Boban and Karadžić held secret meetings in Graz". It is thus undeniable that the Prosecution discussed **co-operation** with the Serbs without entering into the specific details of that co-operation. Would it not be possible for us to say that this co-operation went as far as a form of complicity? That was not written; nor was it said. The French term "**coopération**"/co-operation/ is defined as follows: "*Action de participer à une œuvre commune*"/the act of participating in a common endeavour/. In another one of its definitions, the term "cooperation" is said to denote "*un système par lequel des personnes intéressées à un but commun s'associent et se répartissent le profit selon un pourcentage en rapport avec leur part d'activité*" /a system whereby persons seeking an objective associate and divide profits according to a percentage formula based on their share of activity"/ (Definitions taken from the dictionary *Le Petit Robert*).

In the Pre-Trial Brief, reference is made, on a few occasions, to the Serbs.[39] During the trial, the evidence introduced over the course of the hearings and the testimonies of witnesses have emphasized different factors regarding the role of the Serbs, as a result of the documents admitted or the words of the witnesses:

- there was a front line where the Serbs faced Croat-Muslim forces,[40]
- Serb forces were positioned around Mostar,[41]

[38] P00108.
[39] Prosecution's Pre-Trial Brief, 19 January 2006 (partially confidential – annexes 1 to 12 are confidential), §§ 18-19, 24.1, 25.3, 27-27.7, 29, 29.2, 31.2, 34.2, 37.3, 40.1 and 40.2.
[40] Hearing of 28 November 2006, T(F), p. 10822.
[41] Milivoj Gagro, Hearing of 29 May 2006, T(F), pp. 2695 and 2746.

- it became very quickly apparent, by means of various documents, that during military operations, refugees passed through Serb lines,[42]
- there was a military operation conducted around the village of Stupni Do which was only rendered possible by military forces passing through Serb lines,[43]
- certain documents established the purchase of arms sold by the Serbs to the Croats.[44]

Thus, it came out, over the course of the proceedings, that Serb forces were present on the field of combat, but the Prosecutor, in his Indictment, sought to circumscribe the conflict to one between Croats and Muslims only. Then, as the trial drew to a close in July, the Prosecutor, through this Motion to reopen the case, cast another light on the events, one which was not that strictly defined by the Indictment such as the Defence teams might be inclined to interpret it; neither was it raised at all by the Prosecution during its examination-in-chief nor during the cross-examination of the witnesses of the Defence.

The case-law is emphatic on this point: the Accused must know the charges against him with specificity from the outset.[45] Of course, an Indictment can be amended; however, from my point of view, this can only be done with the leave of the Chamber seized of that particular case. The strict interpretation I am making is tantamount to saying that such an amendment can only happen at the very commencement of the trial, not at its close.

The principle of informing the Accused of the charges was recalled by a judge of the ICTR, in Case No. 01-65, *The Prosecutor v. Jean Mpambara*, in an individual opinion to paragraph 10: "/So, in accordance with the opinion of the Appeals

[42] For example, during a BH Army offensive in Central Bosnia, causing the Croats of Bugojno to move towards the Serb front line. Philip Watkins, Hearing of 23 May 2007, T(F), pp. 19026-19027; 4D 00567 (Map of Central Bosnia, situation in November 1993).
[43] P 10090 (written statement by Ruždi Ekenheim, 11 July 1995), § 51.
[44] Peter Galbraith, Hearing of 12 September 2006, T(F), p. 6453; Hearing of 15 November 2007, T(F), pp. 24635 and 24636; P 06425 (Order of Milivoj Petković to the commanders of Operative Group 2 at Kiseljak, 4 November 1993). Hearing of 14 November 2007, T(F), p. 24548, and Hearing of 21 November 2007, T(F), pp. 24910-24912.
[45] *The Prosecutor v. Erdemović*, Case No. IT-96-22, Appeals Judgement rendered on 7 October 1997, §§ 16-21. *The Prosecutor v. Simić*, Case No. IT-95-9-A, Judgement rendered on 28 November 2006, §§ 15-25.

Chamber, the obligation placed upon the Prosecutor to inform the Accused clearly and in detail of the charges brought against him, must be considered, not in isolation, but as a function of the right of the Accused to provide for his own defence. Therefore, it is necessary to evaluate whether the Prosecutor has supplied adequate information in light of the Defence's understanding of the charges. For though it is true that "no sentence of guilt may be made when the obligation to inform the person prosecuted of the legal and factual grounds on which the charges brought against that person are based has violated that person's right to a fair trial", it is no less true that the Chamber must assess with specificity whether the Accused was or was not "in a reasonable position to understand the charges against him or her". Once again, in the language of the Appeals Chamber, if the Trial Chamber "considers that the Indictment is flawed because it is vague or ambiguous, it must seek to find out whether the Accused has at least had a fair trial, or, in other words, whether the flaw observed has prejudiced the Defence"/.

It is therefore a fact that the information that ought to have been provided to the Accused is broadly deficient concerning the role of the Serbs and the "collusion" between the Serbs and the Croats and to interject this aspect into the Proceedings now, in this late stage preceding the final briefs and closing arguments, via the 15 exhibits taken from the Mladić Notebooks, is indeed problematic for the rights of the Defence.

The Prosecution has the right to submit these exhibits when presenting its case but once more this theory should have been made explicit equally everywhere, in the Indictment and in the Pre-Trial Brief as well as by the witnesses summoned and the evidence produced. I note, from this chair, that that was not done, as this theory has surfaced during the final stage of the trial.

At this stage, I can only deduce, without prejudice, that there had been contacts between the warring parties and that in certain cases these contacts were corroborated by material acts.

What is the exact nature of these contacts? To reply to this question would first require putting the question to one of the Serbian participants (not to General

Mladić who is still at large), but the state of the proceedings does not allow that, and especially so at the end of the proceedings.

Going down this road would risk delaying the proceedings by several months, indeed by several years (cf. the *Popović* case).[46] On reflection, a reasonable trier of fact can also ask hypothetically whether these contacts were not perhaps due to an attempt to resolve the conflict peacefully or to the essential issue of the exchange of prisoners which would have obliged all sides to have permanent contacts with each other in order to exchange their prisoners. This supposition can be considered if one refers to the documents originating from General Morillon who mentions these issues in detail.[47]

It must be noted that we have absolutely nothing and that in the Prosecution's opinion, we do not have to ask ourselves these types of questions, which I do not agree with. If the Prosecution had considered it useful to concentrate on paragraphs 18, 27 and 208 of the Indictment, it was incumbent upon the Prosecution at the beginning of the proceedings to call Serbian witnesses, which is something that it did not do.

Despite the fact that it did not call Serbian witnesses to appear, several witnesses have referred to the nature of Croat-Serb relations. In its written submissions, the Prosecution puts forward the collusion between the Serbs and Croats as a new fact and confirmed by the Mladić Notebooks.

This subject was brought up on several occasions during the proceedings as can be seen from:

- The Prosecution expert, witness **Robert Donia** who declared that, according to certain information, President Tuđman of Croatia and

[46] The trial of the *Popović et al.* case opened on 14 July 2006. The Prosecution closed the presentation of its case on 7 February 2008. The presentation of the Defence case began on 2 June 2008 and concluded on 12 March 2009. From 30 June to 15 July 2009, the Defence teams of the three Accused called a certain number of witnesses. The closing arguments took place from 2 to 15 September 2009. And the Judgement was rendered on 10 June 2010.
[47] *See*, for example, P 00827, P 00831.

President Milošević of Serbia held a private meeting on 13 June 1991.[48]

- The Chamber rendered a decision relating to the judicial notice for the third fact relating to the *Blaškić* case: "These aspirations for a partition were furthermore displayed during the confidential talks between Franjo Tudman and Slobodan Milošević in Karadorđevo on 30 March 1991 on the division of Bosnia Herzegovina", (*Blaškić* Judgement, paragraph 150).

With regard to the role of Serbs notably in Mostar:

- A **witness** said that there was sniper fire from either the HVO or the Serbs and that the Serbs held the positions on the hill.[49]

- Map **3D 03791** shows that there were Serbs positioned around Mostar.

- Witness **Milivoj Gagro**, President of the Municipal Assembly of the Crisis Staff in Mostar claimed that Serb forces entered Mostar on 19 September 1991, and subsequently they positioned themselves on the hills on the right bank of the Neretva river in the direction of Čitluk and towards Široki Brijeg.[50]

- Witness **Bo Pellnas**[51] claimed that Serb forces were situated in the mountains east of Mostar.

- A **witness,** from an international organisation, saw gunfire on one or the other part of the town which seemed to be coming from Serb lines which were occupying a hill overlooking the town of Mostar. This military action led to a fuelling of the conflict between the HVO and the BH Army.[52]

[48] Robert Donia, Hearing of 11 May 2006, T(F), pp. 1935-1936.
[49] Hearing of 6 February 2007, T(F), p. 13641.
[50] Milivoj Gagro, Hearing of 29 May 2006, T(F), pp. 2746 and 2747.
[51] Bo Pellnas, Hearing of 7 June 2007, T(F), p. 19718.
[52] Hearing of 14 November 2006, T(F), p. 10155.

– Witness **Miro Salčin** declared that the Serbs bombarded 10% of Donja Mahala.[53]

– A **witness** declared that the Republika Srpska Army gave the HVO permission to cross areas under its control.[54] This witness claimed that the Serbs were selling equipment at exorbitant prices.[55]

– A **witness** declared that the Bosnian Croats who arrived in Mostar during the spring/summer of 1993 had to have passed through Serbian-controlled territory.[56]

– The **ECMM Report** of 3 February 1993 claimed that the Serbs had the possibility of bombarding the BH Army but not the HVO.[57]

– American Ambassador to Zagreb, **Peter Galbraith**, claimed that the HVO and the Bosnian Serb Army cooperated at a military level.[58]

– A **witness** specified that the Bosnian Serb Army helped the HVO in Kiseljak to reach Vareš in October 1993 by giving them permission to pass through territory under their control.[59]

Taken together, all this evidence attests to the fact that the subject mentioned by the Prosecution in its written submissions concerning its request to reopen its case is not a **new subject** given that all of this has been presented in great detail over many hours. I note however that this information has come from witnesses themselves and the Prosecution has failed to examine these points in more detail in order to establish the existence of Serb/Croat collusion which does not seem to be its priority.

[53] Miro Salčin, Hearing of 15 February 2007, T(F), pp. 14170 and 14171.
[54] Hearing of 12 November 2007, T(F), pp. 24338 and 24339.
[55] Hearing of 21 November 2007, T(F), pp. 24903 and 24904.
[56] Hearing of 25 September 2006, T(F), p. 7218. Hearing of 27 September 2006, T(F), pp. 7379-7383.
[57] Hearing of 26 June 2007, T(F), pp. 20506 and 20507.
[58] Peter Galbraith, Hearing of 12 September 2006, T(F), p. 6453.
[59] Hearing of 15 March 2007, T(F), pp. 15755 and 15756.

The Prosecution has not provided all the ICTY Chambers with the **3,500 pages**[60] of the Mladić Notebooks, but only chosen extracts. The admitted exhibits consist in total of 23 pages in the English translation. In relation to the 3,500 pages, we therefore have 0.06% of the entire exhibit (not even 1%!). Furthermore, with regard to the pages which were admitted, how many words in relation to the exhibit itself do the relevant passages of the exhibit represent? For example, in Exhibit P11376, where Praljak allegedly talks about the Banovina, how many relevant lines are there compared to the number of pages of the document? That phrase is only a tiny line in the document.

Out of intellectual curiosity and using the sophisticated *e*-court software, I looked up how often the name **Mladić** appeared in documents originating from the parties, of which there are thousands that have been tendered into evidence. The software indicated (subject to error) that his name appeared in **39 Prosecution documents** and in **20 Defence documents.** The same software revealed that there are **20,968** documents marked as P in the *e*-court system (Prosecution: admitted or not admitted), whereas it must be noted that **9,000** documents were tendered into evidence (Defence and Prosecution). As such, the ratio is very low 39/20,968 = 0.18% or 39/9,000 = 0.4%. It could be argued that this **extremely minute** figure – 0.18% or 0.4% – has little significance compared to the importance of General Mladić. So why, therefore, is his name not mentioned in the Indictment which consists of almost 100 pages?

Another question which comes to mind on the subject of this request is: Why the Mladić Notebooks, given that the Prosecution did not call any Serbian witness who were in the VRS or Serb forces? Even though the Prosecution had almost **400 hours**[61] in which to present its case?

[60] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Prosecution Motion to Admit Evidence in Reopening", public with two confidential Annexes, 8 July 2010, § 8.
[61] *The Prosecutor v. Prlić et al.,* Case No. IT-04-74, "Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings", 28 April 2006, § 7; "Decision on Adoption of New Measures to Bring the Trial to an End within a Reasonable Time", 13 November 2006, § 19 and 20.

Examining the disclosed pages, it is amazing to discover that systematically and at all meetings, General Mladić wrote down in full all the names of the participants, their remarks and took notes both during and after the meetings.

This leads us to examine usual procedures at **top level** meetings. The person who presides over the meeting or who is a key figure does not usually take notes and delegates this task to a subordinate, since he has to be in control of the meeting, look at the people who are talking and react to what is being said. It is therefore surprising that a man of General Mladić's standing was able to scribble away, filling pages over the days in real time even though with his responsibilities he should have delegated the task to someone else.

This technical particularity does not therefore fail to surprise and the question begs to be asked whether **during** the meeting he could technically have made pages of notes even though he himself was the main focus of the meeting? I have my doubts …

Perhaps there is a technical explanation which would be that, in agreement with the participants, or **unbeknownst to them**, an audio recording of the meeting was taken and General Mladić listened to the tapes again in his office and, with time at his disposal, reconstructed the remarks by making a summary of the audio tape in a scholarly fashion, retaining only those aspects considered important in his opinion, but perhaps significant in relation to the real remarks that were uttered.

The Prosecution's Motion concerns **15 extracts**, carefully chosen from amongst 3,500 pages of the Mladić Notebooks, in order to consolidate its Indictment. In reality, these 15 extracts, totalling 97 pages, constitute less than 3% of the Mladić Notebooks. This figure alone should lead to their rejection as how can one believe that less than 3% of the document gives one an understanding of General Mladić's overall point of view of events in the former Yugoslavia? This is not serious and I cannot go along with it. At this stage, the Prosecution forgets that we are at a very advanced stage of the trial after four and a half years of proceedings.[62]

[62] The trial opened on 26 April 2006.

The exact number of pages is also shrouded in mystery. If one refers to the article published in *Le Monde* newspaper on 5 October 2010, written by "a specialist", a well-informed journalist of this newspaper since she published the page number 5000-1508 corresponding to page 178 as far as the ICTY is concerned (filed under No. P 1487), it would seem that in fact the Notebooks contain 4,000 pages and the last entry is dated 28 November 1996.[63]

Before the filing of the consolidated motion on 8 July 2010,[64] the Trial Chamber had entered the **closing stage of the proceedings** with the imminent release of a **scheduling** order for the closing arguments and that, therefore, we would have been in a position from the month of September/October this year to conclude the proceedings, thereby respecting the obligations imposed on the Judges to ensure an expeditious trial as set out in the Statute.[65]

The Prosecution seized this Chamber, and other Chambers of the Tribunal, of a request to either amend the 65 *ter* List or to be given leave to reopen its case.[66]

Likewise, how is it that these exhibits are of such importance, which would lead ***ipso facto*** to the admission of these exhibits, even though documents that are extremely significant for an understanding of events from key figures involved in the conflict such as those written by Bill Clinton,[67] Margaret Thatcher,[68] Lord Owen[69] and other experts,[70] which are freely available, were not tendered into evidence by the Prosecutor, or not even mentioned?

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[63] "Mladić Journal de Guerre", *Le Monde*, 5 October 2010, pp. 16 and 17 (Stéphanie Maupas and Remy Ourdan).
[64] *The Prosecutor v. Prlić et al.,* Case No. IT-04-74, "Prosecution Motion to Admit Evidence in Reopening", public with two confidential Annexes, 8 July 2010.
[65] Article 20 of the Statute.
[66] *See*, for example the request for reopening that occurred on 30 September 2010 in *The Prosecutor v. Perišić,* Case No. IT-04-81-T, "Motion to Reopen Prosecution Case and Tender Document Through the Bar Table", 30 September 2010.
[67] Book by Bill CLINTON, *My Life*, 2004, Random House (refers to the situation in the former Yugoslavia amongst other subjects).
[68] Books by Margaret THATCHER, *The Downing Street Years*, 1993, HarperCollins and *The Path to Power*, 1995, HarperCollins.
[69] Book by Lord OWEN, *Balkan Odyssey*, 1995, Harcourt Brace.
[70] Books by: John B. ALLCOCK, *Conflict in the Former Yugoslavia: an encyclopedia*, ABC-CLIO Ltd, 1999 (Doc..No. 2189); X. BOUGAREL, *Bosnie: anatomie d'un conflit*, La Découverte, 1996 (Doc. No. 2734); P. GARDE, *Fin de siècle dans les Balkans 1992-2000 : analyses et chroniques*, p. 149, 153, 159-160, 214, Editions Edile Jacob, 2001 (Doc. No. 6490); Mirko GRMEK, Marc GJIDARA, Neven SIMAC, *Le nettoyage ethnique: documents historiques sur une idéologie serbe*,

How could the notebooks of an actor in the conflict who was never mentioned in the Indictment be admitted, on any grounds, when documents regarding other participants of the JCE were not tendered, with the Prosecution completely ignoring Bobetko, Kordić, Blaškić and Naletilić, with the exception of, in terms of evidence, some documents in which their names were mentioned? Their personal notebooks, if they kept any, could be as important as the four exhibits of the Mladić Notebooks …

Are General Mladić's personal notes more important than the books written by these distinguished politicians whose descriptions of events were surely brought to their attention by way of their diplomatic services, their secret services or their various extremely top level diplomatic contacts?

At this stage, it is a case of general contemplation which can militate in favour of the rejection of the motion. A key figure in the Indictment, Mr Jadranko Prlić, wrote a personal document of 396 pages[71] for which he sought admission which the Chamber denied unanimously on procedural grounds.

Notwithstanding this rejection and the fact that the Accused Prlić decided not to reintroduce this document during the appearance of a witness, I find myself asking whether the Accused Prlić's **personal document** might not have more relevance than General Mladić's Notebooks and is, therefore, in the Interests of Justice?

A judge must be **fair** towards the accused, by listening and taking into consideration his version of events, even if it means eventually that he does not agree with him. Is it right, as the majority has decided, that these four exhibits (General

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Fayard, 1993 (Doc. No. 5002); Y. HELLER, *Des brasiers mal éteints: un reporter dans les guerres yougoslaves 1991-1995*, p. 97 to 100, Le Monde éditions, 1997 (Doc. No. 3051); I.L. KOST, *Selective bibliography on the conflict in the former Yugoslavia in the Peace Palace Library*, Peace Palace Library, 1997 (Doc. No. 13341); T. LANDRY, La *Bosnie hier, le Kosovo aujourd'hui et demain ?: le pourquoi de la guerre dans les Balkans*, L'Harmattan, 1999 (Doc. No. 4928); Ian OLIVER, *War and Peace in the Balkans: The Diplomacy of Conflict in the Former Yugoslavia*, I.B. Tauris, 2005 (Doc. No. 10808), freely available, (the Tribunal library has almost 200 books on the history of the Balkans). I wish to thank the assistant interns, Ms Anaïs Bouchet and Ms Camille Péron, who carried out the bibliographical research.

[71] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Decision on Prlić Defence Motion for Admission of Documentary Evidence", 6 March 2009.

Mladić's Notebooks) are relevant and have probative value when these same Judges rejected a written document from the Accused Prlić on procedural grounds?

The response is to be found in the procedure which allows the Accused and the Prosecution the same procedural rights with regard to the admission of evidence **without any distinction**. That being the case, Judges must carefully assess the admissibility conditions with regard to the request to reopen the case which is not provided for in the Rules, yet which is possible, in theory, according to jurisprudence, on condition that several hard and fast criteria have been satisfied such as those set out in paragraph 33 of the Decision.

I note that the majority does not take into account these criteria when it refers to the judicial notion of the **advanced stage of the proceedings** which, in my opinion, must lead to the dismissal of any further motion from the parties for reopening, taking into consideration the length of the proceedings and the amount of time the Accused have spent in provisional detention. This point of view was admirably advanced in the written submissions from the Stojić Defence.[72]

The "miraculous" discovery of the Mladić Notebooks, should this have occurred under normal circumstances, would prompt a professional investigator and, subsequently the Judge, to ask the following questions after the search operation and seizure:

- Are the documents relevant to the ongoing proceedings?

- If the documents are relevant, were they written by the **perpetrator** of the offence?

- Are the documents which were discovered **authentic** or **false?**

- If the documents contain elements attesting to their veracity, in particular written documents (this is the case with the Mladić

[72] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Bruno Stojić's Response to Prosecution Motion to Admit Evidence in Reopening", 22 July 2010.

Notebooks), can it be ascertained that the actual writer of the document is indeed the person who is supposed to have drawn it up?

– If the documents are false, when were they introduced and for what purpose?

The above-mentioned questions prompt me to point out two other questions which could be of significance to our case:

The first question relates to the veracity of these documents: is General Mladić the real author of these documents?

The Prosecution attaches to its Motion the statement from General Manojlo Milovanović which attests to the fact that they are definitely in General Mladić's handwriting. I will bear it in mind and at this stage of the proceedings I cannot afford to consider the technical possibility of a handwriting expert which would take several months.

Within the framework of a textbook continental legal system, it would be necessary to use a handwriting expert insofar as the author is still at large. We do not have either the time or the means to do this. We, unfortunately, must make do with the statement from General Mladić's former Chief of Staff and also take due note of the fact that in his proceedings the Accused Karadžić did not have any objection to this point.[73]

However, I would like to bring a word of **caution** to the content of paragraph 47 of the Decision on veracity. While it is true in the *Karadžić* case that Judge Kwon concluded, for its admission, that there were no observations on the veracity, it should, nevertheless, be noted that reservations were expressed before by the Karadžić Defence. Mr Robinson, the standby attorney, said this: "Yes, Mr President. If I can answer that on Dr Karadžić's behalf. We're putting the Prosecution to its proof to see whether or not they can prove or it's established that – through the

[73] *The Prosecutor v. Karadžić,* Case No. IT-95-5, Hearing of 20 August 2010, T (F), pp. 6047 and 6048, 6063 and 6107.

testimony of this next witness with – that these notebooks were authored by General Mladić".[74]

The Accused Karadžić himself objected to the content as interpreted by the Prosecution by putting the emphasis on several occasions on the translation.[75] At the end of the day he did not oppose the admission for reasons certainly linked to his defence for which it is not up to me to comment upon. But I must however observe that his position may be different from those of others concerned who, likewise, might have reasons to be **for** or **against** the admission. Consequently, the fact that he does not object does not mean, as would seem to be indicated by the majority, that he no longer has any doubt regarding their authenticity which would require in any event the opinion of an expert.

The second supposition to consider is the possibility, on a theoretical level, that the Mladić Notebooks, in his own handwriting, could have, in whole or in part, been compiled for his own defence. A reasonable investigator, trained in investigations, must ask whether or not the fugitive returned to the scene (his attic?) to leave behind evidence in his favour so as to clear himself of any responsibility by way of the personal diaries which could have been compiled, in whole or in part, after the events. General Milovanović says that it is indeed General Mladić's handwriting but for all that, he does not offer formal proof that the Notebooks were written line by line in his presence. I must also consider the supposition that the evidence was falsified by somebody who leaves behind him, like the "Little Thumbling", signs that clear himself of responsibility, in whole or in part, knowing that in any event the investigators would one day or another "come across" these documents.

It is curious to say the least that it is the fugitive's wife herself who tells the investigators that the Notebooks **are important**![76] And she goes as far as numbering the pages herself.[77] This is extraordinary; she gives the impression of **directing** the

[74] *The Prosecutor v. Karadžić,* Case No. IT-95-5/18-T, Hearing of 20 August 2010, T(F), pp. 6047 and 6048.
[75] *The Prosecutor v. Karadžić,* Case No. IT-95-5/18-T, Hearing of 20 August 2010, T(F), pp. 6089, 6097-6099, 6102.
[76] *The Prosecutor v. Karadžić,* Case No. IT-95-5/18-T, Hearing of 20 August 2010, T(F), p. 6061.
[77] *The Prosecutor v. Karadžić,* Case No. IT-95-5/18-T, Hearing of 20 August 2010, T(F), p. 6061.

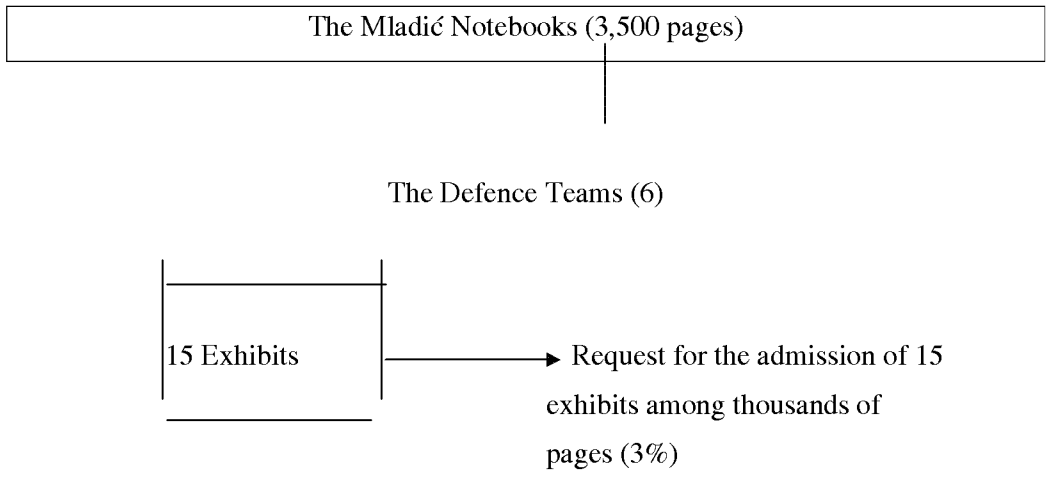
investigation as if she were obeying her husband's instructions, or is she quite simply, as the wife of an innocent fugitive, asking the investigators to look at these documents which prove that her husband acted in good faith? At this stage, I do not know, because the Prosecution did not deem it useful to bring his wife to court who in normal circumstances should have been questioned by the MUP in Serbia, which is the least that should have been done …

The discovery of these Notebooks presents a Judge with another problem: the disclosure of the documents is provided for by Rules 66 and 68 of the Rules, but the latter does not stipulate that the documents must be disclosed to the Judges. The practice that has been followed over the years demonstrates that it is incumbent upon the Prosecution, which as a general rule is in possession of almost all the evidence, to disclose all the evidence to the Defence and also not to seek the admission of any of it during the trial without giving the Judges the opportunity to acquaint themselves with **all** the evidence. To summarize, I submit the following diagram which clearly explains the problem:

Mrs Mladić's residence (the attic?) (23 February 2010)

Serbian Authorities: who: Legal authorities, police officers, administrative authorities, the secret services? (The Serbian MUP according to the witness …)

The Prosecution



This diagram shows that the Judges do not know and are not acquainted with a large part of the Notebooks, namely **almost all** of their contents.

The fugitive, General Mladić, has been pursued for several years – since the release of his Indictment[78] – by both the relevant services in the Republic of Serbia and by authorised international missions,[79] and by the Office of the Prosecutor which these last years has intensified its travels to the region[80] and made numerous statements.[81]

[78] The first Indictment against Radovan Karadžić and Ratko Mladić was confirmed on 25 July 1995. The latter were charged with genocide and other crimes committed against the civilian population throughout the whole of Bosnia and Herzegovina (Case IT-95-5). A second version of the Indictment, confirmed on 16 November 1995 focused on events that took place in Srebrenica in July 1995 (Case No. IT-95-18). The two Indictments were joined in July 1996 under Case No. IT-95-5/18. With regard to Ratko Mladić, the Indictment was amended on 11 October 2002. On 15 October 2009, the case regarding Ratko Mladić was officially separated from that of Radovan Karadžić and it was given Case No. IT-09-92.

[79] Resolution 1031 (1995) of the Security Council established a multinational Force for peace IFOR (cf. § 4 and 18). This was replaced by the NATO Stabilisation Force in Bosnia and Herzegovina (SFOR) from January 1996 to December 2004. From that date on, the stabilisation mission was entrusted to the European Union (EUFOR).

[80] Ms Carla Del Ponte, the Prosecutor, went to Sarajevo on 9 March 2005 for the inauguration of a tribunal in Bosnia and Herzegovina. In February 2006 she went to Belgrade. On 11 July 2006, she went to Bosnia and Herzegovina to attend the commemoration service for Srebrenica in Potočari. Furthermore, during the months of November and December 2008, Prosecutor Serge Brammertz went to Zagreb on 10 and 11 November and then to Sarajevo on 12 and 13 November and to Belgrade on 17 and 18 November. In each of these three capitals, the Prosecutor met, amongst others, the representatives of different governments and those in charge of cooperation with the Tribunal.

The search operations that have been conducted, which the Judges are unfamiliar with regarding the specific details and techniques employed and which have led to nothing to date with regard to locating the fugitive, nevertheless, resulted in the discovery of the said Notebooks at his wife's house on **23 February 2010.**

On a technical level, it seems incredible that after all these years and all the efforts expended, these Notebooks were discovered a few weeks ago!

The discovery of these Notebooks cannot fail to surprise. The question one asks oneself is what exactly were the investigators doing earlier when they searched the Mladić family homes, something we will never know unless we come into possession of the documents on the procedures carried out by the relevant Serbian services. The only response that we have is that given by the witness **Blaszczyk** in the *Karadžić* case who brings up the MUP of Serbia while noting that he himself was not present at the scene.[82]

It must be noted that in its written submissions, the Prosecution provides little information on the legal aspect of this discovery, so that a Chamber Judge currently seized of the case, does not know **who** exactly discovered this evidence. They should have copied all the procedural acts which led to the search operation together with the

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Furthermore in 2009, the Prosecutor went to Zagreb on 5 February, to Belgrade on 26 and 27 March, to Sarajevo on 4, 5 and 6 May and again to Belgrade on 11 and 12 May, to Croatia on 25 and 27 May as well as on 28 and 29 September, to Sarajevo on 28 and 29 October and to Belgrade on 2 and 3 November. Finally in 2010, the Prosecutor attended for the first time the commemoration service for Srebrenica in Potočari in April. He then went to Belgrade from 12 to 14 May and to Croatia from 25 to 27 May.

[81] These diplomatic statements were given in Brussels. In January 2006, Ms Carla Del Ponte, the Prosecutor, led a series of meetings, accompanied by the Secretary General of NATO, the European Commissioner for Enlargement and European Neighbourhood Policy and the High Representative of the European Union for Foreign Common and Security Policy. Furthermore, on 26 June 2007, the Prosecutor addressed members of the European Union Foreign Affairs Commission on the subject of Ratko Mladić's arrest. In addition, on 3 July 2007, the Prosecutor met the High Representative of the European Union for Foreign Common and Security Policy together with the European Commissioner for Enlargement and European Neighbourhood Policy to discuss, amongst other issues, cooperation of the Member States with the Tribunal. On 5 September 2007, the Prosecutor, Mr Serge Brammertz, accompanied by President Pocar and the Registrar Mr Holthuis, went to a seminar. Furthermore, on 15 September 2008, the Prosecutor, Serge Brammertz, attended the meeting of Foreign Affairs Ministers. Lastly, on 18 September 2009, the Prosecutor explained how the cooperation between the Member States and the Tribunal should take place, and he did the same on 25 March 2010 during his meeting with Štefan Füte, the European Commissioner for Enlargement and Neighbourhood Policy.

[82] *The Prosecutor v. Karadžić,* Case No. IT-95-5/18-T, Hearing of 20 August 2010, T(F), p. 6051 and 6053.

statements that might have been taken in connection with – to say the least – the hearing with the fugitive's wife. If it is true that there are some exhibits that respond to these issues in the *Karadžić* case, and which were admitted as evidence, **we** ourselves do not have anything![83]

To go down the path as suggested by the Prosecution, namely the admission of the Mladić Notebooks, would mean asking the following question: are there other personal notebooks similar or superior in value to these Notebooks? The reply would be positive because, following the theory of the notebooks compiled by JNA officers, personal notebooks would exist for all the former JNA officers who completed their service in the JNA or in other armies (VRS, HVO, ABiH). As such, did, or does, the Accused Petković who testified have a similar notebook?

In this respect, when Petković gave his testimony,[84] the Prosecutor, who was in possession of the Mladić Notebooks, did not ask him about the said Notebooks nor did he ask him if he had kept a daily notebook like the other JNA officers. This is all the more regrettable since the Prosecution knew this type of Notebook existed since the first search operation. Could it be that this information did not circulate around the offices of the Prosecutor …?

Likewise, did the various individuals who testified in this trial, either for the Prosecution or the Defence, have personal notebooks? If so, why admit the Mladić Notebooks and not the others?

Reading Mr Prlić's hearing (P 09078),[85] I did not find this type of question and still less the mention of personal notes. Why since then, do we now have to focus on these Notebooks even though the name of General Mladić is not mentioned in the Indictment? It is to be noted that during this hearing a "Senior Trial Attorney" was present: "Mr Prlić perhaps I would take now this opportunity to introduce ourselves to

[83] *The Prosecutor v. Karadžić,* Case No. IT-95-5/18-T, Hearing of 20 August 2010, T(F), p. 6056.
[84] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, the cross-examination of the Accused Petković by the Prosecutor began on 3 March 2010 and ended on 10 March 2010: T(F), 3 March 2010 (p. 50305: start of the cross-examination by the Prosecutor), T(F), 4 March 2010, T(F), 8 March 2010, T(F), 9 March 2010, T(F), 10 March 2010, p. 50742 (end of the cross-examination).

you and the modalities of this interview. Mr Kenneth Scott, as you've heard, is our Senior Trial Attorney and as such is in charge of this entire investigation …"

It was incumbent upon the investigators under the authority of the Prosecutor to think about this beforehand, at the start of the investigation, and to ask every witness at every hearing the following question: **Do you have in your possession any documents that are relevant to the case and, in particular, a personal notebook recounting your activities and if so, would you consent to provide it in the interests of the truth?**

It is obvious that the search for General Mladić has gained worldwide fame since the former Prosecutor of the Tribunal saw fit to publish, firstly in Italy, a book co-written with an "expert witness" of the Prosecution,[86] in particular in order to raise the issue relating to the search for General Mladić and Radovan Karadžić with the cover page: *Con la collaborazione di Chuck Sudetic - Carla del Ponte - La Caccia - Io e i criminali di Guerra* /Madame Prosecutor: Confrontation with Humanity's Worst Criminals and the Culture of Impunity/, published by Feltrinelli in Milan, Italy, which she presented at the Buenos Aires (Argentina) Book Fair in the presence of two members of an international court, one of whom was a former Appeals Chamber Judge …[87]

It would seem that she did everything she could to apprehend General Mladić, as can be seen from an interview she gave in Bordeaux (France).[88] Likewise, she took

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[85] Trial Chamber III "Decision on Request for Admission of the Statement of Jadranko Prlić", 22 August 2007. T (F), 4 February 2008, pages 27032, 27076, 27098 et seq.; T(F), 20 February 2008, pages 27217 et seq.; T(F), 6 May 2008, page 27555.

[86] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, Prosecution Motion: "Prosecution Submission of the Expert Report of Charles A. Sudetić dated 14 February 2007, with Corrigendum", public document filed on 23 May 2007. Oral decision of the Chamber denying the request on 4 July 2007, T (F), pp. 20762 and 20763, confirmed on 6 September 2007: "Decision on Prosecution Motion for Review of a Decision or, in the alternative, for Admission of Documentary Evidence (Presidential Transcripts)". *See* also T(F), pp. 37187 and 37205.

[87] *See* the article on the website swissinfo.ch dated 22 May 2010.

[88] Interview with the *Libération* newspaper of 21 October 2006 (excerpts).
Q: For Mladić?
A: There is a real lack of political resolve to do anything in Belgrade. Luckily the international community is now unanimous that he be transferred to The Hague.
Q: Where is Mladić at the moment?
A: He is in Serbia, in Belgrade and the surrounding areas since he moves freely.

part in a documentary film entitled "Carla's List" devoted to the search for criminals still at large.

The current Prosecutor, **Mr Serge Brammertz**, in line with his predecessor, declared at a meeting with the foreign press in The Hague some time ago, "there is a discrepancy between the political speeches, what happens on the ground and what should be done to be more efficient," and he added, "the situation is still far from being perfect".[89]

The Statute requires that the Tribunal conduct the trials **expeditiously**. As such, Article 20 of the Statute sets out: "The Trial Chambers shall ensure that a trial is fair and expeditious". That a trial be conducted expeditiously is a requirement imposed in any legal system; furthermore the European Court of Human Rights has on several occasions defined the notion of reasonable delay.[90] In his report to the Security Council, the Secretary General referred to the requirement that a trail be conducted expeditiously.[91]

This notion of expeditiousness is understandable because in all of the trials at the ICTY there is an accused under provisional detention. That being the case, provisional detention cannot be excessively prolonged for reasons linked to implementing procedures at the whim of the parties, which result in unnecessarily prolonging the trial.

In this respect, it should be noted that the Rules of Procedure and Evidence, as drawn up by the Judges, refers in several rules to the need for the expeditious conduct of the trial.[92]

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[89] AFP dispatch of 29 October 2010, Mladić free: "the worst sign" (TPI).
[90] Kemmach Judgement v. France of 27 November 1991, § 60; Reinhardt and Slimane-Käid v. France of 31 March 1998, § 97. "The Court reiterates that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities".
[91] United Nations Secretary General Report S/25704 and Corr., p. 27, § 99.
[92] Rules of Procedure and Evidence "RPE" adopted 11 February 1994 and amended on 10 December 2009: Rule 72 (B)(ii) of the RPE "Preliminary Motions"; Rule 73 (B) of the RPE "Other Motions"; Rule 90 (F)(ii) "Testimony of Witnesses"; Rule 98 *ter* (C) and (D) "Judgement"; Rule 117 (B) "Judgement on Appeal".

In this context, the sudden appearance of a new procedural fact must be examined meticulously in order that the main pivotal factor of the procedure – the expeditious conduct of the trial – is not affected. This is the reason for which Tribunal jurisprudence[93] put in place strict conditions for reopening trials, a factor that is well understood to entail further delays.

In history books, it is not difficult to compile a list of discoveries for one country or another which were later revealed to be fabricated or manipulated.[94] The best example is that of the Irishmen in Vincennes.[95] This unfortunate precedent leads me to be extremely careful when the Prosecution comes up with a fantastic discovery, taking into account the media hype.[96] The practice in the past was to keep evidence confidential which was sometimes the subject of confidential, indeed *ex parte*, requests, without all the media fanfare.

At the time of the discovery of the other Maldić Notebooks in February 2010, the *Popović* Judgment was being prepared.[97] It would seem that the Prosecution did not deem it useful to request that the *Popović* Chamber reopen its case, even though the Notebooks concerned Mladić who in the Indictment is charged with crimes

[93] *The Prosecutor v. Delalić et al.*, Case no. IT-96-21-A, Judgement on Appeal, 20 February 2001.

[94] *See* in this regard, several controversial cases such as the Calas case in which a judgement rendered by an assembly of 80 judges in 1765 was overturned by the King's Council. Also the Dreyfus case in which in 1894, Captain Alfred Dreyfus, a Jewish Alsatian, was accused of espionage and sentenced by a military tribunal to cashiering and deportation to Devil's Island. Two years later, it was ascertained that the judgement was based on falsified documents and there were serious grounds for believing that an officer with multiple debts, Commander Esterhazy, was the culprit. Furthermore, the Reichstag fire, where on 10 January 2008 the services of the Federal German Prosecutor "Generalbundesanwaltschaft beim Bundesgerichtshof Karlsruhe", officially found "illegal" the conviction of Marinus van der Lubbe and therefore squashed the verdict 75 years later. In addition, the case of Mr and Mrs Rosenberg which gave rise to a decision of the "United States District Court, Southern District of New York, Case Number C.134-245; United States of America v. Julius Rosenberg, Ethel Rosenberg, Anatoli A. Yakovlev, also known as "John", David Greenglass and Morton Sobell" which was received by fierce criticism both nationally and internationally. Lastly, the Katyn case in which the leader of the USSR Mikhail Gorbachev recognised in 1990 that the NKVD was responsible for the massacre and he offered his official apologies to the Polish people.

[95] Cour de Cassation, Criminal Chamber, public hearing of 26 March 2003, 02-81.307, judgement not published in the bulletin.

[96] On 18 June 2010, before the Security Council, Serge Brammertz publicly announced that: "The Serbian authorities have provided notebooks containing the handwritten wartime notes of Ratko Mladić, and associated tapes. These were seized during a search operation conducted by the Action Team in charge of tracking fugitives in February 2010. The valuable, voluminous material recovered is currently being analysed, and we have sought and will continue to seek its introduction as evidence in several trials".

[97] *The Prosecutor v. Popović et al.*, Case No. IT-05-88, the closing arguments took place on 15 September 2009 and the Judgement was rendered by Trial Chamber II on 10 June 2010.

committed in Srebrenica,[98] crimes that were also attributed to *Popović et al.*[99] and confirmed in the Judgement rendered on 10 June 2010.[100] This omission may seem surprising given the mission of the Tribunal, and all the more so since the Prosecutor submitted requests for admission in other cases.[101]

According to the statement attached to the Motion, in keeping with the tradition of the JNA officers, Officer Mladić kept a notebook in which he noted down on a daily basis key events of the day.[102]

As far as the statement of the Chief of Staff conforms to the truth – and I do not have to date any facts that would allow me to make a different assessment – I can nevertheless come to a provisional conclusion that these are personal notes written in a sloping fashion on pages which relate to different events that occurred during the period covered in the Indictment. This can be supported by the statements of the Prosecution witness in the *Karadžić* case.

From the technical point of view, it is unquestionable that such a document, if relevant, might have a certain probative value, yet these notes would still need to be compared to other documents. The relevance and probative value would be still better established if the witness were present to be confronted with the very content of his written notes. This is a theoretical possibility, because as an accused, he could refuse to respond, which is his absolute right. Similarly, from the theoretical point of view, the Accused Karadžić could give evidence if he wished to testify, just as other

[98] *The Prosecutor v. Mladić,* Case No. IT-09-02, Indictment against Ratko Mladić, 11 October 2002, § 25, 32-36.
[99] *The Prosecutor v. Popović et al.*, Case No. IT-05-88, Indictment against Popović et al. dated 26 October 2006, § 26, 28-58, 61-64, 72-83, 87, 89-91, 96 and 98.
[100] *The Prosecutor v. Popović et al.*, Case No. IT-05-88, Judgement rendered on 10 June 2010.
[101] *The Prosecutor v. Stanišić and Župljanin,* Case No. IT-08-91, "Sixteenth Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List with Confidential Annex (Mladić Notebooks)" public with confidential Annex, 14 May 2010; *The Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91, "Prosecution's Motion for Leave to Amend its 65 *ter* Exhibit List with Annex A (Mladić Notebooks)", public document, 17 May 2010; *The Prosecutor v. Šešelj,* Case No. IT-03-67, "Prosecution's Motion for Admission of Evidence Relating to Mladić Notebooks and for Leave to Amend its Rule 65 *ter* Witness and Exhibit Lists", public document, 16 July 2010.
[102] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Prosecution Motion to Admit Evidence in Reopening", public document with two confidential Annexes, 8 July 2010.

accused have done in other cases (the Accused Šešelj testified in the Milošević trial).[103]

The fugitive status of the person concerned, of whom there has been no news for some time, does not, and will not, give us an opportunity in the short term to confront him. As such, everything that could have been mentioned can only be **relative** and must be checked against other evidence that has already been admitted, with the contents of the Notebooks; and the contents of the Notebooks and its author must be corroborated with other evidence in order to increase the probative value of all the evidence that has already been admitted and not the other way around. It should also be pointed out that a procedure on a request from Mladić's wife was initiated before the relevant courts in Serbia in order to establish a judicial notice on the death or disappearance of the fugitive since 2003.

In my opinion, the evidence that has already been admitted – which consists of thousands of documents and transcript pages – already has a certain probative value for which a final assessment will be made after the closing arguments and during the deliberation so that the contents of the Mladić Notebooks cannot be of greater importance than the other evidence. That being the case, the Mladić Notebooks will, if the need arises, increase or diminish the value of all these documents but by no means is the opposite possible, namely because every document already admitted into evidence has a **relative value** and the Mladić Notebooks have an **absolute value.** Therefore, I can only conclude that in some cases the very content of the Mladić Notebooks can only be **very relative** compared with the admitted evidence which is of far greater importance because it consists of thousands of admitted documents and tens of thousands of transcript pages.

If in the month of July, the Prosecution had found it useful to seize the Chamber, the question to be asked is why the Prosecutor did not open an investigation of its case file, as is required by the Statute, by investigating those persons close to General Mladić, the Chief of Staff, his various deputies within the hierarchical military structure and by tendering into admission all the documents originating from

[103] *The Prosecutor v. Milosević*, Case No. IT-02-54, Testimony of 19, 23, 24, 25, 30 and 31 August 2005 and 1, 5, 6, 7, 14, 15, 16 and 20 September 2005.

the VRS units implicated in the commission of crimes for which the Accused are charged. If this work had been done, the essential facts would have served to highlight the key evidence and the Mladić Notebooks would have only confirmed – in the typical military hierarchy – that the chain of command creates the same consequences for all the military actors at whatever level they may be, as the order is issued from on high and descends to the soldier who is on the ground. In light of this, the Prosecutor has been in possession of all the evidence for a long time. The Mladić Notebooks supposedly originating from the head or deputy head of the VRS can only be in accordance with the others which must also be found, but never seen to date …

A serious and professional investigation on any event must ensure that the investigators collect **all** the evidence. Rather than emphasising these Notebooks, even if the author is well-known, and at the last moment, when we are in the closing stages of the trial, there is an issue which at least deserves a response, that we do not have.

A reasonable trier of fact must not – especially in the assessment of the Mladić Notebooks – be satisfied with the said Notebooks, but must compare them with other documents, which is something that the Prosecutor fails to do in a thorough manner.

My conclusion is therefore that the probative value of the Notebooks is very low given the absence of other evidence that has not been brought to our attention. I can only conclude with their unqualified rejection.

The requirement for an expeditious trial implies that the actors in the trial are responsible for their personal actions.

The Prosecutor has a duty, pursuant to the Statute, to prepare a file based on a serious and professional investigation.

The Defence, in its crucial mission of exercising the rights of the accused, must, as should the Prosecutor, prepare its evidence in a professional manner taking into account the issues at stake.

With regard to the Judges, they have the mission, as set out by the Statute and specifically by Rule 90 (F) of the Rules, to ensure that the conduct of the trial is expeditious by using all the procedural mechanisms placed at their disposal, provided that they use them and do not leave it to the parties themselves to conduct the proceedings. Rule 54 of the Rules provides the Judges with the necessary mechanisms: they can issue orders for the conduct of the proceedings without **consultation.**

Within this framework, jurisprudence is interesting because it outlines very precisely the actions of the Judges and reminds the parties of their obligations. As such, in 1998, in a decision rendered in the *Delalić* case, *"Čelebići* Decision", the Chamber was able to specify that the reopening of the Prosecution case was only authorised "in exceptional circumstances where the justice of the case so demands".[104] This argument was reiterated subsequently in 2005 in the jurisprudence of this Tribunal in the *Milošević* case,[105] and later in the *Hadžihasanović and Kubura* case.[106] The **duty of diligence** rests on the Prosecution. This duty of diligence was, moreover, specified in the *"Čelebići* Decision", as the Chamber explained that as a general rule, the later in the trial the Prosecution seeks to submit further evidence, the less likely the Chamber is to accede to the said request, and the Chamber therefore rejected the Prosecution's request.[107] Furthermore, the notion of diligence was subsequently defined. The Trial Chamber stated in the *Milošević* Decision that "the reasonable diligence standard is not satisfied where no attempt to locate or obtain the evidence in question was made until after the close of the party's case, and no explanation for such delay is provided". It is clearly established in Tribunal jurisprudence that it is incumbent upon the party requesting the reopening of its case to demonstrate that its evidence is "new".[108]

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[104] *The Prosecutor v. Delalić et al.*, Case No. IT-96-21-T "Decision on Prosecution's Alternative Request to Reopen the Prosecution's Case", 19 August 1998, § 27.
[105] *The Prosecutor v. Milošević*, Case No. IT-02-54-T, "Decision on Application for a Limited Re-opening of the Bosnia and Kosovo Components of the Prosecution Case with Confidential Annex", 13 December 2005, § 33 and 37.
[106] *The Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-T, "Decision on the Prosecution's Application to Re-open its Case", 1 June 2005, § 47.
[107] *The Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, "Decision on Prosecution's Alternative Request to Reopen the Prosecution's Case", 19 August 1998.

Knowing of the existence of a first Mladić Notebook in February 2009, it was incumbent upon the Prosecution to notify the parties and the Chamber, taking into account the details outlined in paragraphs 18, 27 and 208 of the Indictment. In my opinion, the lack of diligence alone warrants the inevitable rejection of the request.

I cannot fail to underline in addition that following the hearing of the last witness of the *Ćorić* Defence,[109] since we had been notified that the *Pušić* Defence would not be presenting any witnesses,[110] we were in a position to issue a scheduling order for the closing arguments. My approach was not adopted because the Chamber was unable to rule due to the existence of the pending 92 *bis* request from the *Praljak* Defence[111] and subsequently the Prosecution's request to reopen its case.[112] This reminder, which I believe is necessary, attests to the fact that the Judges are not in total control of the proceedings despite the requirement expressed by both the Security Council and the Judges themselves, and the implementation of the recommendations of the Bonomy Reports I and II.

In a civil law system, the issue would not have arisen because the Presiding Judge would have done the scheduling **himself**, given that he is the only one authorised to do so and today we would not be waiting yet more months for the closing arguments.

Nevertheless, I have conducted a **personal examination** of the notebook material and composed the table below, which contains my personal valuation and a synthesis of the parties' positions on each of the exhibits:

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[108] *The Prosecutor v. Milošević*, Case No. IT-02-54-T, "Decision on Application for a Limited Re-opening of the Bosnia and Kosovo Components of the Prosecution Case with Confidential Annex", § 33 and 37.
[109] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, Hearings on 29, 30, 31 March and 1 April 2010, of the Witness Zvonko Vidović.
[110] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Berislav Pušić's Notice Regarding Presentation Of Evidence In The Defence Case", 7 April 2010, and "Berislav Pušić's Notice Regarding Motion For Admission Of Documentary Evidence", 13 May 2010.
[111] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Slobodan Praljak's Second Motion For Admission Of Written Evidence In Lieu Of Viva Voce Testimony Pursuant to Rule 92 *bis*", public document with confidential Annexes, 22 July 2010.
[112] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Prosecution Motion to Admit Evidence in Reopening", public document with two confidential Annexes, 8 July 2010.

Excerpt	Date	Contents	Indictment Paragraph	Observations of the Defence
P 11374	18 August 1992	Meeting of the Bosnian Serb Presidency in Pale on 18 August 1992. Brings up strategic issues and the nature of relations between Bosnian Serbs and Croats.	Para. 27.	**Prlić Defence**: this exhibit is not relevant, brings nothing new to previous discussions (absence of probative value, need to ensure a fair trial) and the Prosecutor is trying to establish conclusions on Serb-Croat co-operation in spite of numerous examples pointing to the contrary. **Praljak Defence**: general observations: the authenticity and relevance of the documents has not been shown, the probative value of the chosen excerpts is largely overwhelmed by the need to ensure a fair trial, the trial is at an late stage and the reopening of the case-in-chief would inevitably require the presentation of a large number of documents and defence witnesses. **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** this exhibit could certainly illustrate the strategy adopted by the Bosnian Serbs but provides no information on the existence of the alleged joint criminal enterprise or the assumed intention of the Accused to achieve its objectives. **Petković Defence:** Bosnian Serbs regarded Bosnian Croats and Muslims as a coalition opposed to the Serbs.
Observations				

<table>
<tr><td colspan="5">It would be necessary to have all documents pertaining to presidency-level meetings, in particular those of the Bosniak Presidency, which the Prosecution has never done in full.

The Mladić notebook also raises the issue of his relations with the civilian political authorities, namely Radovan Karadžić and others.

For this reason, document P 11374 should have been compared to the entire Karadžić case file during the trial, which is not possible.</td></tr>
<tr><td>P 11375</td><td>27 September 1992</td><td>Meeting of the representatives of the Bosnian Serb Presidency and the VRS held on 27 September 1992.</td><td>Paras. 15, 16, 16-1, 17b, 23 and 27.</td><td>Prlić Defence: there is nothing new in this exhibit which only reports that the conflicting groups concluded bilateral agreements.

Praljak Defence: (general observations, previously cited for Exhibit P 11374).

Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence): general observations: this is not new evidence, the trial is at a late stage, the trial will be delayed due to the reopening of the case-in-chief, the Accused has the right to a fair trial.

Petković Defence: general observations: the relevance and the probative value of the proposed evidence are negligible and do not justify admission at such a late stage of the proceedings, and the need to guarantee the fairness of the trial greatly outweighs the probative value of the proposed evidence.</td></tr>
<tr><td colspan="5">Observations

This is an internal meeting of the military and civilian authorities of a warring party.</td></tr>
</table>

<table>
<tr><td colspan="5">This internal meeting from this document must be put back into the overall context of all meetings held between the civilian and military authorities.

That being the case, why this document and not others?</td></tr>
<tr><td>P 11376</td><td>5 October 1992</td><td>Meeting on the negotiations with a delegation from Croatia and Herceg-Bosna. Exhibit relating, in particular, to the discussions between Mladić, Prlić, Praljak, Stojić and Marić (Croat negotiator).</td><td>Paras. 15, 16, 16-1, 17b, 17-1a, 17-1b, 17-1r, 17-2a, 17-2b, 17-2c, 17-3a, 17-3b, 17-3f, 23, 27 and 37.</td><td>Prlić Defence: there is nothing new in this exhibit which reports that the conflicting parties reached bilateral agreements and discussed prisoner exchanges; this had all been discussed previously.

Praljak Defence: the Prosecution's interpretation is completely arbitrary and incorrect. Requests authorisation to respond to the Prosecution's allegations to explain, among other things, the situation in Posavina. Confirms that the circumstances of this meeting should not be ignored.

Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence): the exhibit deals with discussions concerning Posavina and Slavonski Brod; during the trial, the Prosecution noted the irrelevant character of this topic.

Petković Defence: (general observations cited previously for Exhibit P 11375).</td></tr>
<tr><td colspan="5">Observations

The reality of this meeting, held on 5 October 1992, is not contested since the Prlić Defence described it in its submissions as concerning the provision of water and electric power. The Stojić Defence adds that the geographical area concerns regions that, according to the Prosecution, are not relevant. In these conditions, what is the scope of the document?
Furthermore, I note that the meeting was held at the Palatinus Hotel in Pečuj (west of Sarajevo) where negotiations with a delegation from Croatia and Herceg-Bosna took place between 1200 et 1600 hours. The Accused Prlić talked about the exchange of prisoners and the fact that the signing was not possible without the presence of the international community.
Praljak first brought up the ceasefire with the submission of documents to Boban and Karadžić, and specified that</td></tr>
</table>

the shelling in Slavonski Brod was ceasing (this locality is not in the Indictment). Praljak then allegedly said that Bosnia and Herzegovina could not be established without either the Serbs, the Muslims or the Croats. He then talked about the position of the Mujahidin whose numbers kept on rising. He then allegedly stated that they had a battalion in Posavina. The element emphasized by the Prosecution is the following phrase, "*The goal is the Banovina of 1939; if not, we'll continue the war.*" This phrase could substantiate the idea that this was Croatia's goal because Praljak intervened as a member of the Croatian delegation, not as that of Herceg-Bosna (see the reference to the 4th Brigade). What is more, the Accused Praljak allegedly indicated that nobody in Croatia wanted to prolong the war. Subsequently, Praljak brought up the agreement between Tuđman and Izetbegović, reached, according to him, at the insistence of the Americans. After Marić's intervention, Praljak took the floor again to speak about the current agreement according to which he proposed that the war be stopped and prisoners exchanged. He then said that the Muslims had expelled all Croats from Zenica and Tuzla, that the Muslims had no ammunition, that they had not given them any, that 10,000 Muslims had arrived in Mostar and that they were difficult to control. Praljak concluded by saying that killing 50,000 more Muslims would serve no purpose. The Accused Stojić also intervened in order to speak about the hydroelectric power plant. An examination conducted word by word, line by line, paragraph by paragraph, intervention by intervention allows us to conclude that all subjects raised here had already been raised during the trial, there is no new evidence. It is interesting to note that the transcript of this meeting, entitled "negotiations", mentions only Croat interventions and that General Mladić never intervenes. These are, thus, fragments, there is no thread that connects them, i.e. negotiations between the two sides. The other point that needs to be brought to the fore is the fact that General Mladić is supposed to have taken notes during the meeting, which seems technically impossible bearing in mind, on the one hand, the intensity of the issues raised and, on the other, the compact nature of the negotiations (4 hours). It is therefore possible that he wrote this not **during**, but **after** the meeting. At which point? We know nothing about that. Therefore, we can no longer exclude the possibility, bearing in mind General Mladić's high rank, of him being assisted by an aide-de-camp, an assistant, who was taking notes which General Mladić subsequently added to his notebook which, in my opinion, relativizes the import of the notes.				
P 11378	18 October 1992	Report of the members of the VRS Main Staff. Brings up strategic issues and the nature of relations between Bosnian Serbs and Croats.	Paras. 15, 16, 16-1, 17b, 17-1a, 17-1b, 17-1r, 17-2a, 17-2b, 17-2c, 17-3a,	**Prlić Defence**: Tolimir here confirms several points already posited by the Prlić Defence. **Praljak Defence**: Prosecution's interpretation is completely arbitrary and incorrect. **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** this exhibit could certainly illustrate the strategy adopted by the Bosnian Serbs but it provides no information on the

			17-3b, 17-3f, 23, 27 and 37.	existence of the alleged joint criminal enterprise or the assumed intention of the Accused to achieve its objectives. **Petković Defence:** (general observations previously cited for Exhibit P 11375).
Observations This is an internal document of the VRS Main Staff. Why this document and not all other VRS documents? There should be many of them.				
P 11379	21 October 1992	Meeting of the Bosnian Serb representatives with President Ćosić, held on 21 October 1992.	Paras. 15, 16, 23 and 27.	**Prlić Defence**: in this document there is some important evidence that the Defence has specified, notably on the meaning of words, and it believes that the Prosecutor is confusing questions on the relations between the Croats and the Serbs with the situation in Bosnia and Herzegovina. **Praljak Defence**: this meeting was already mentioned during one of the hearings (ID 1541). The Prosecution's interpretation is completely arbitrary and incorrect. **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** (general observations previously cited for Exhibit P 11375). **Petković Defence:** Serb political and military officials considered the Croats of Bosnia and Herzegovina as the adversary.
Observations This is not a new evidence because this meeting was already mentioned in ID 1541.				
P 11380	26 October 1992	Meeting on the negotiations with a	Paras. 15, 16,	**Prlić Defence**: this exhibit and the Prosecution's allegations show the extent of the Prosecution's

		Croatian delegation attended by some of the Accused (Prlić, Petković, Praljak and Stojić), their words are reported in this exhibit.	16-1, 17b, 17-1a, 17-1b, 17-1r, 17-2a, 17-2b, 17-2c, 17-3a, 17-3b, 17-3c, 17-3f, 23, 24 and 27.	imagination when it argues that the HVO and the VRS planned the fall of Jajce. Evidence concerning this topic was previously presented to the Chamber. **Praljak Defence**: the Prosecution's interpretation is completely arbitrary and incorrect. **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** (general observations previously cited for Exhibit P 11375). **Petković Defence:** representatives of the international community constantly exercised pressure on the three conflicting parties to organize bilateral contacts, end hostilities and find a political solution.

Observations

This is a meeting possibly organised by the "warring parties" in order to find solutions to concrete problems. It was held on 26 October 1992 and concerns negotiations attended by Praljak, Petković, Prlić and Stojić on behalf of Herceg-Bosna. The document mentions Praljak's interventions which referred to a previous meeting, bringing up the line near Mostar and the power connection with Jajce. He mentions that the bridge in Mostar had to be crossed under constant fire and that it would be opportune to establish communications ("hotlines") with Jajce and Mostar. According to Praljak, Tudman agreed to meet Karadžić, Ćosić and Boban, and he added that they had to stop shooting. Regarding the borders, he said that those with the Croatian state were undisputed and that those with Bosnia and Herzegovina had to be established. Moreover, Praljak added that the position of Serbia and Yugoslavia was not stable. Praljak mentioned the name *Bruno*; should this correspond to the Accused Stojić? *Bruno* allegedly indicated that, starting with 1 November 1992, all Serb prisoners had to be released.

Under the chapter "*Agreed*", the document seems to summarise five points which were agreed. Thus, starting from 27 October 1990 until mid-day on 29 October 1992, communications had to be established with Mostar, Dubrovnik and Jajce (item 1). Call-signs are indicated: the call-sign for Mostar of the Croatian side is "*Ozren*" and of the Serbian "*Velež*". For Dubrovnik, the call-sign of the Croatian side is "*Plat*" and of the Serbian side "*Leotar*". Item 2 deals with the cessation of activities on 27 October 1992 at 1200 hours. Item 3 states that all prisoners would be released on 1 November 1992. Item 4 concerns a meeting to be held between Vučurević and Bobetko on 28 October 1992 to discuss the line of separation. Item 5, entitled "*To hurry up with the T-Ć-O-V-K-B/expansion unknown/*

meeting" seems obscure. If admitted, what would this document bring that the Chamber does not already know? The Chamber has had evidence on the "hotlines" between the warring parties, this is not a new point. Issues of electricity, cease-fire and the release of prisoners is information which has already been brought up. From my point of view, at first analysis, the crossing of the Mostar bridge (certainly the old bridge), which would have been done under fire, constitutes interesting evidence. Nevertheless, Praljak's words do not indicate who is shooting: the Croats? the Serbs? the Muslims? We do not know by reading just this exhibit.				
P 11381	4 January 1993	A session of the Geneva negotiations with one reference to the remarks made by Boban and Tudman regarding the division of Bosnia. The Accused Petković was present.	Paras. 17-1l, 17-2i, 17-3e, 17-4c, 29 and 31.	**Prlić Defence**: this exhibit adds nothing to everything that had been presented to Chamber III over a long period of time, notably during General Praljak's testimony. **Praljak Defence**: (general observations previously cited for Exhibit P 11374). **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** (general observations previously cited for Exhibit P 11375). **Petković Defence:** at the Geneva peace conference and other meetings and conferences, Alija Izetbegović represented one of the three conflicting parties in Bosnia and Herzegovina.
Observations This document is dated the beginning of January 1993, i.e. at the time of the Geneva conference. We already have many documents on this conference.				
P 11382	8 January 1993	Meeting of Serbian representatives of the territorial entities of the former Yugoslavia.	Paras. 15, 16, 23 and 27.	**Prlić Defence**: this exhibit does not bring anything new for the establishment of truth. **Praljak Defence**: (general observations previously cited for Exhibit P 11374). **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** (general

				observations previously cited for Exhibit P 11375). **Petković Defence:** (general observations previously cited for Exhibit P 11375).
Observations This is a document concerning Serbian entities and it is difficult to assess its relevance in terms of the Indictment, except for its reference to the existence of territorial entities in the Constitution of the former Yugoslavia. This is therefore not a new subject.				
P 11383	11 January 1993	Meeting between the Bosnian Serb delegation and the representatives of the international community in Geneva.	Para. 29.	**Prlić Defence**: this exhibit does not concern the Croats, it is more useful for the *Karadžić* case than the *Prlić* case. **Praljak Defence**: (general observations previously cited for Exhibit P 11374). **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** lack of relevance because none of the representatives of either the HZHB or the HVO were present and because the Prosecution failed to show the relevance and probative value of Owen's statement for the allegations against the Accused. **Petković Defence:** (general observations previously cited for Exhibit P 11375).
Observations This is an international meeting which brought together the Serbs and the international community in January 1993. This document may be interesting for an understanding of the Geneva conference, but is not directly relevant				

because it brings nothing new to the information provided by all the witnesses (Prosecution and Defence)				
P 11384	23 January 1993	A session of the Geneva negotiations. Alija Izetbegović mentions the zones affected by the ethnic cleansing.	Paras. 17-1l, 17-2i, 17-3e, 17-4c, 29 and 31.	**Prlić Defence**: this exhibit brings nothing new to what has previously been presented to the Chamber. **Praljak Defence**: (general observations previously cited for Exhibit P 11374). **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** (general observations previously cited for Exhibit P 11375). **Petković Defence:** at the Geneva peace conference and at other meetings and conferences, Alija Izetbegović represented one of the three conflicting parties in Bosnia and Herzegovina.
Observations This document falls in the same category as the documents examined above.				
P 11385	8 July 1993	Meeting of Bosnian Serb representatives in the presence of, notably, Milošević and Karadžić.	Paras. 15, 16, 23 and 27.	**Prlić Defence**: this exhibit adds nothing new whatsoever to what has already been presented to Chamber III during the hearings, it is redundant and cumulative with respect to the previously presented documents. **Praljak Defence**: (general observations previously cited for Exhibit P 11374). **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** (general observations previously cited for Exhibit P 11375). **Petković Defence:** (general observations previously cited for Exhibit P 11375).

Observations This document provides no elements relevant to the previously admitted evidence.				
P 11386	8 July 1993	Meeting/discussion between Mladić and Petković on the co-operation between the VRS and the Croatian Defence Council.	Para. 27.	**Prlić Defence**: this exhibit concerns the Petković Defence. **Praljak Defence**: (general observations previously cited for Exhibit P 11374). **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** (general observations previously cited for Exhibit P 11375). **Petković Defence:** the co-operation between the Croats and the Serbs in Central Bosnia since June 1993, as a preliminary condition for the survival of Croatian enclaves, has already been confirmed and explained by various witnesses.
Observations The issue of "co-operation" established between the Serbs and the Croats was raised on many occasions and is not contested by General Petković. This is a meeting held with Petković on 8 July 1993 at 1235 hours. He evoked issues of military equipment (110th Brigade, 115th Brigade, weapons, RPG, ammunition…). This document, very difficult to decipher, could possibly indicate that, according to Petković, they received 499,500 bullets of 7.9 mm calibre, 66,780 bullets of 7.62 mm calibre, 440 bullets of 30 mm calibre … in exchange for 1,191,246 German marks and two fuel tankers. In the document, under the title "Agreed", there are 16 items, of which item 2 is the payment for services rendered in the amount of 8,092,032 dinars? German marks? We do not know. Item 6 seems to indicate that a meeting will be held between Karadžić and Boban the following week. Item 8 mentions the situation in the Croat-held villages of Mala and Velika. Items 9 and 10 say that it had been demanded that the population and the 115th and 108th Brigades leave the sector of Tuzla and that the 107th Brigade is composed of 90% Muslims. Item 12 could be of interest regarding the old Mostar bridge: "That we activate the cannon (ZIC/7.63 field gun/) against the dam in Mostar – to hinder the crossing of our 'Friends-the Muslims' OK. That's the dam north of Mostar." A reasonable trier of fact could deduce from this that the Serbs could have activated their cannon against the Mostar bridge. Under item 14, Petković allegedly said "I would first like to defend Fojnica, Kreševo, Kiseljak and link up with Busovača. Push your				

cannons forward a bit, and let /?my/ guys from Travnik die, they haven't fought, that's for sure." Within the context of the defence of the localities, he seems to be asking the Serbs to push their cannons beyond a certain point. The question here is to know if Exhibit P 11386 brings any new evidence useful to the revelation of truth. As for the purchase and sales of weapons, this was established through documents presented in the course of the proceedings (see, for example, Exhibits P09962, P09967 and P 10253). Thus, at most, this exhibit confirms what has already been revealed by other documents.				
P 11387	25 August 1993	Meeting between Bosnian Serb representatives and General Pellnas. Pellnas mentions Boban and Tudman as well as the situation in Mostar around 9 May 1993. This is his subjective evaluation of the situation (discussed during his testimony).	Para. 94.	**Prlić Defence**: this exhibit does not add anything to what has already been presented by the Prosecution. Nevertheless, it reveals that Pellnas was a high-ranking representative in the United Nations. **Praljak Defence**: (general observations previously cited for Exhibit P 11374). **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** this exhibit should be rejected on the grounds that it is noticeably similar to the evidence admitted during the case-in-chief. **Petković Defence:** (general observations previously cited for Exhibit P 11375).
Observations Witness Pellnas testified and the document provides nothing new.				
P 11389	3 February 1994	Discussion with the delegation in charge of Croatian defence, attended, among others by: Karadžić, Mladić, Krajišnik, Stanišić and Prlić. The Accused Prlić allegedly said, "The Muslims are our	Paras. 15, 16, 17-1a, 17-1b, 21 and 23.	**Prlić Defence**: this exhibit concerns a meeting which referred to the situation in Montenegro, not on the "island of Krk". The Prosecution has committed an error in its translation. Moreover, at the time, and in particular if we take into consideration the events in Central Bosnia, it is not surprising that Prlić *allegedly* qualified "Muslims as a common enemy". **Praljak Defence**: this exhibit concerns events which

		common enemy".		occurred outside of the temporal scope of the Indictment. **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** (general observations previously cited for Exhibit P 11375). **Petković Defence:** (general observations previously cited for Exhibit P 11375).
Observations This document is not relevant for the Indictment. This is a meeting held at 1245 hours on 3 February 1994, at Njivice, with two delegations, one consisting of the Serbs led by Mladić and Karadžić, and the other consisting of the HVO with Boban, Prlić and General Roso. It seems that Karadžić said that the Ustashas need to be hit on the head. It is surprising that Karadžić should qualify the Croats as Ustashas in the presence of the members of the HVO, unless he did not consider these ones to be Ustashas. Boban intervened to say, first of all, that he would not agree with there being less than three republics in the Union of Bosnia and Herzegovina, that the Croatian people would not accept that and, finally, that the Turks were manufacturing more than 50 % of the Muslims' weapons. He also specified that the most important task was to destroy the legitimacy of Bosnia and Herzegovina and that they have been saying for a long time that the war had to be stopped, as well as the humanitarian aid for the Muslims. Prlić intervened to state that it was necessary to reach an agreement on two to three items, including the fact that the Muslims were a common enemy. The second point raised by Prlić could be interpreted as the situation resulting from the international recognition of Bosnia and Herzegovina, which could not be challenged, but I have to say that this phrase is not clear and that another interpretation is possible. Boban intervened again to confirm that France, England and Germany did not want a Muslim state in Europe. General Roso confirmed that it was important that there be a ceasefire between the VRS and Croatia. We therefore see in this document that the Serbian position is not voiced, there are only scraps of information and, based on this, it is difficult to understand certain phrases correctly. Nevertheless, the Chamber is already familiar with all these events and there is no new evidence that would justify the admission of this exhibit.				
P 11390	11 June 1994	Report of the members of the VRS Main Staff.	Paras. 15 and 23.	**Prlić Defence**: this exhibit confirms that the embargo imposed by the UN Security Council was still in place, but the Chamber already had proof of that. **Praljak Defence**: this exhibit concerns the events

				which occurred outside of the temporal scope of the Indictment. **Stojić Defence (response joined by the Ćorić Defence and the Pušić Defence):** (general observations previously cited for Exhibit P 11375). **Petković Defence:** (general observations previously cited for Exhibit P 11375).
Observations This exhibit, as emphasized by the Prlić Defence, concerns the embargo which is an event already widely spoken of.				

Having presented my point of view on the admitted evidence, I shall now indicate precisely which paragraphs of the Decision, in my opinion, constitute a serious problem.

In the decision I was procedurally obliged to sign, the majority of the Chamber decided to admit Exhibits **P 11376, P 11377, P 11380, P 11386, P 11388, P 11389, P 11391, P 11312** and reject the others. I agree with the rejection of other exhibits but, nevertheless, disagree as a **matter of principle** with the admission of all elements.

The observations I have made above for each of the excerpts must be taken as a *prima facie* examination of the contents of the exhibit, with a provisional evaluation of the relevance and probative value without any effect upon the final examination to be carried out during the deliberations in secret.

It is the duty of Trial Chamber judges to explain why a document is admitted or not, using arguments based solely on its relevance and *prima facie* probative value. The final weight to be awarded to a document is determined at **the very end**, during deliberations when it is compared with other documents.

At this stage, I cannot but make a general assessment, without comparison to other Defence or Prosecution evidence that has been admitted. The conclusions are therefore **very** provisional and this is not my definitive position on the weight to be accorded to them. For example, in the case of Exhibit P 11391, I did not have to evaluate its weight but simply to say whether this exhibit was **indispensable** for an understanding of the case from the point of view of the Prosecutor and the submissions of the Defence.

While, on the one hand, I fully agree with the analysis carried out by the majority of paragraphs 1 to 34 and 37, 38, 39, 42, 43, 44, 45, 48, 49 and 50 of the Decision, on the other, I have strong reservations over the other paragraphs, in particular paragraphs 21, 35, 40, 46, 47 and 51 which cause me to put forward in detail my view on the contents of these paragraphs taken up by the majority, noting that I have discussed the issue of paragraph 47 earlier in the text.

Noting that the majority definitively admits only **4 elements** of the 15 sought (**P 11376, P 11380, P 11386 and P 11389**) I could consider myself satisfied because, for the 20 exhibits sought, the rejection is significant: 4/20 = 20%. However, I cannot agree because the admission of four elements poses a **problem of principle** which, in terms of consequences, undermines the entire Decision.

Paragraph 21 of the Decision makes reference to the position of the *Praljak* Defence, raising two issues of a different nature:

1) The Prosecution did not ask for the Notebooks to be added to the list of exhibits prior to seeking their admission.

2) The Prosecution could have applied Rule 92 *quater* of the Rules.

Regarding the first argument, I consider that the *Praljak* Defence is asking for the strict application of the Tribunal's jurisprudence and practice in the admission of evidence since the amendment of the Rule 65 *ter* (G) List.[113] In my view, this obligation, provided for in the Rules and confirmed by the jurisprudence, applies

[113] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "*Slobodan Praljak's Response to the Prosecution Motion to Reopen*", 23 July 2010, paras. 14-15.

equally to the reopening of the case because of the obligation to add evidence to the list. No addition may be made to the 65 *ter (G)* List unless the requesting party demonstrates that the requested addition is **essential** to its case.

The Prosecution's submissions indicate nothing in this sense. The "essential" element of its case is eclipsed by the fact that, according to the Prosecution, this evidence concerns the JCE. An exhibit is not essential to the case just because it concerns the JCE; all the more so since the theory of the JCE was discussed at lenght by both the Prosecution and the Defence during the testimony of witnesses. The application of the jurisprudence must lead to the **rejection** of the motion for admission on procedural grounds, all the more so since it is a general principle that all evidence must be included on the 65 *ter* (G) list.

Regarding the second argument presented on the implementation of Rule 92 *quater*, it cannot be applied because this Rule concerns only evidence presented in the form of a written statement or a transcript, not excerpts from notebooks. Therefore, even though retaining the first argument, I cannot subscribe to the second one. Having retained the first argument on **procedural grounds**, I do not understand why the majority denies admission of the confidential annex presented by the *Prlić* Defence (cf. paragraph 35 of the Decision) on other procedural grounds.

I insist on recalling that the Chamber has repeatedly expressed its concern over the strict adherence to procedures (cf. rejection of the document introduced by the Accused Prlić).
Why are double standards being applied?

In **paragraph 35** of the Decision, the majority decided to reject the confidential annex on the grounds that it does not respect the instructions of the Practice Direction.

I do not share this view because a **practice direction**, as stipulated by the **Rules**, addresses particular aspects of a case, but can under no circumstances limit the rights of the Defence. In this sense, the Defence can, in its main submissions, respect the number of words prescribed by the Practice Direction but also add an annex

without any limitation to the number of words.[114] It is up to the judges to show **flexibility** because it is in the interest of justice and the revelation of truth that the judges have at their disposal a maximum of relevant evidence for ruling on the case, in particular during the final phase of the trial.

Taking into account the importance of the topic brought up, the Defence could have also sought authorisation to exceed the word limit, which the Chamber has always allowed.[115] If it has not done so, I suppose it was in order to avoid wasting everyone's time, knowing in advance that it would have been granted an authorisation by the Chamber's jurisprudence.

In **paragraph 36**, the submission of the *Ćorić* Defence was dismissed on the grounds that it arrived three days after the time-limit of 14 days. I note that on that date the Trial Chamber was no longer in session and that it is possible that the *Ćorić* Defence was focused on the contents of the 3,500 pages of Mladić Notebooks and that it had not realised what date it was, all the more so since 23 July was a Friday (the final deadline of the 14 days) and 26 July a **Monday.** I therefore cannot subscribe to the reasoning of the majority expressed in paragraph 36.

In **paragraph 40**, the majority deems that the Prosecution employed due diligence based on the fact that it was in the possession of the Notebooks on 29 March 2010. Now, the present Chamber was sitting on that date because witness Zvonko Vidović was testifying on 29, 30, 31 March and 1 April. During these four days, the Prosecution could have told us that it had just obtained notebooks **likely** to contain evidence relevant for our case, which it did not do, and it was only on 21 April 2010, in other words, almost a **month** later, that the Chamber was seized of this; this delay is perplexing, all the more so since the Prosecution had been aware of the existence of Mladić Notebooks for several months, since the *Popović* case.

[114] "Practice Direction on the Length of Briefs and Motions", adopted on 16 September 2005, notably paragraph 6 concerning the fact that there is no limit to the number of words in annexes.
[115] See for example: *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Order Granting the Prosecution Leave to Exceed the Number of Words in the Pre-trial Brief", 25 January 2006, "Order granting the Defence Counsel for the Accused Valentin Ćorić Leave to Exceed the Number of Words in the Pre-trial Brief", 22 February 2006.

In **paragraph 41**, which concerns exhibits P 11376, P 11385 and P 11389, had the Prosecution assessed that they were of crucial importance for the Indictment, it should have sought their admission, not the amendment of the 65 *ter* list. Furthermore, I am sorry to say, I do not see why I should dwell on the fate of these exhibits.

In **paragraph 46**, I do not agree with the assessment of potential authenticity for reasons presented elsewhere in my opinion.

In **paragraph 51**, the majority of the Chamber declares itself in favour of the admission of the Mladić Notebooks, which I cannot admit for the reasons stated above.

As indicated in the *Delalić*[116] case-law, which is very strict, the evidence sought for admission must be essential and have probative value to justify the Chamber's acceptance to reopen the case. So, as regards the JCE, mentioned in the submissions of the Prosecution,[117] what is it that makes the exhibits sought so fundamentally important, especially since the Prosecution added an annex to its motion, confirming that nine excerpts from the Mladić Notebooks it seeks to admit,[118] refer, among other things, to paragraph 15 of the Indictment, "Joint Criminal Enterprise"?

In conclusion, **we must be in a position to put an end to the trial**. Now is the opportunity. Very strict jurisprudence does not allow the case to be reopened for lack of diligence and a lack of fresh facts.

The outcome of the trial is not called into question by the Notebooks, the value of which is but very relative due to the uncertainties regarding their author, which have not been eliminated to date. It is highly possible that they may never be eliminated if, as the Mladić family fears, he has died. If not, he will certainly take a

[116] *The Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001, para. 283.
[117] *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Prosecution Motion to Admit Evidence in Reopening", public document with confidential Annex 2, 8 July 2010, para. 22.
[118] P 11375, P 11376, P 11378, P 11379, P 11380, P 11382, P 11385, P 11389, P 11390.

position on the Notebooks within the context of his Indictment, but when? Especially now that we have to end the trial in several months?

Fairness will inevitably once again mean taking time in dealing with the numerous motions likely to be filed for the reopening of the Defence case. As I have already said, a competent judge has the duty to envisage the impact of a decision…

Trials in continental legal systems are extremely short, lasting for several days or weeks, regardless of the complexity of the case,[119] except for Italy where mafia cases last for several months.[120] In the common law systems, the duration of the trial is also limited.[121] Furthermore, when it comes to international criminal courts, it is worth noting that trials in Nuremberg and Tokyo were quick.[122] In Cambodia, the *Duch* trial, held at the Extraordinary Chambers for the Prosecution of Crimes Committed by the Khmer Rouge, lasted less than a year and a half.[123]

In this context, it seems that the *Prlić* trial will enter the Guinness Book of Records (together with the ICTR case of *Butare* which involves six accused: it started on 12 June 2001, the trial ended on 30 April 2009 and the Judgement is planned for 2010) for being the longest trial of multiple accused in history, as much for its duration and the number of hearings as the number of documents admitted. That being the case, at this moment I cannot but be hostile to all requests which may prolong the trial, except for those which concern an exceptional event which significantly affects

[119] Article 309 of the French Code of Criminal Procedure (as amended by Law No. 93-1013 of 24 August 1993 amending Law No. 93-2 of 4 January 1993 reforming the criminal procedure): "The President maintains order in court and conducts the proceedings. He dismisses anything which might tend to compromise their dignity or protract them without expectation of any greater degree of certainty in the outcome of the hearing". Article 331 of the Swiss Code of Criminal Procedure, 5 October 2007.
[120] See, for example, the "maxi trial" in Palermo which commenced on 10 February 1986 and ended on 17 November 1987, thus lasting for a little longer than a year and a half, implicating 465 accused, and pronouncing 365 sentences in all.
[121] In Canada, see for example the Criminal Code, (Decree 650-2005), 19 October 2005, Division VII "Court Sittings", paragraph 17 "Fixing of the dates of sittings; The sittings of the court shall be fixed by the president judge, the judge responsible for the court or the judge, in all cases, after consulting the clerk". In Canada, in 2001-2002, a trial for aggravated robbery lasted for an average of 218 days, for grave assault the average of 224 days and for sexual aggression 293 days (see "*An Examination of the Average Length of Prison Sentence for Adult Men in Canada: 1994 to 2002*" by Roger Boe, Larry Motiuk and Mark Nafekh, 2004, Correctional Service Canada). In the United Kingdom, see for example Article 245 of the Code of Criminal Procedure, "The president is appointed for the duration of each quarter and for each assize court by an order made by the president of the court of appeal which fixes the date for the beginning of the sessions.", 1 January 2006.
[122] The Nuremberg war crimes trial opened on 20 November 1945 and ended on 1 October 1946. In Tokyo, the Tribunal was in session from 3 May 1946 to 12 November 1948.

the Indictment; it must be said from the start that, should the Defence move for a reopening of the case, several more months would be needed, in my view, before we can get to the closing arguments.

Pointless prolongation of a trial can entail a **major risk** for the trial itself. This risk is twofold because it directly concerns the judges. While the Prosecution is young, plentiful and interchangeable at any moment, the **judges** are elderly and the Tribunal's history has witnessed a number of trials where Chambers had to be restructured due to judges' illness or death.

The health of the Accused must also be taken into account. On many occasions, the Accused were released on medical grounds.

I have a duty now to explore in detail the **tentative schedule** which may result from this Decision (see Annex 2). I cannot ignore the consequences a decision may have on the **time aspects** and, taking into account the effect of such a decision, I do not wish to assume any responsibility because I do not want to be a legal Dr Strangelove, handling the trial without proper judgment.

The table in the Annex, without being exhaustive, goes into the details of the procedure by taking into account numerous factors linked to the time periods as foreseen by the Rules, the constraints imposed by the translation and the necessary time taken before the Appeals Chamber and required by the Trial Chamber when drafting the Decision.

The table shows that the acceptance of this motion could lead to a delay of **8 months to a year** without allowing for the occurrence of new unforeseen events. The reopening of an ICTY case is exceptional; it occurred recently in the *Popović* case due to the deposition of an important witness. It should be noted in this case that the reopening procedure lasted for almost a year.

The paragraph of Annex 2 of the *Popović et al.* Judgement (p. 35439) allows us to take a good look at the prolongation of a trial. This Chamber was seized of the

[123] The Duch trial started on 17 February 2009 and ended on 26 July 2010.

motion to reopen on 7 April 2008 and it was only on 24 September 2008 that the Appeals Chamber confirmed the reopening, in other words, it took **5 months.** I will not go into detail on other procedural delays in this case.

I am simply saying that it took several months for a definitive decision to be reached. There is no reason whatsoever to think that the same will not happen in our case, and all that for **4 exhibits! Consequently, what is in the nature of these 4 exhibits that would require us to wait for a year for the closing arguments?** Except for the hope that, after this Decision and in the light of my opinion, the parties will stop making submissions to allow for the closing arguments hearing to be held as quickly as possible; this is a matter of their own responsibility.

The issue of the **date of filing** of the Decision, and of my opinion, has become crucial following the decision of the President of the Tribunal rejecting the Prlić and Praljak Defence motion for the disqualification of Judge Prandler.

Should one rush to issue these decisions while the issue of the disqualification of **Judge Prandler** has not been definitively resolved from the procedural point of view and when an appeal is still possible?

In my opinion, the decision of the President of the Tribunal, dated 4 October 2010, is subject to appeal by the parties pursuant to the following part of Rule 15 of the Rules, "The decision of the panel of three Judges shall not be subject to interlocutory appeal".

Explicit reference in the President's Decision to Rule 126 *bis* of the Rules stipulating the times, means that the Prlić and Praljak defence teams can appeal within 14 days. Strictly **theoretically** speaking, this hypothesis could result possibly in the panel of three judges taking a contrary decision with certain consequences…

However, the *Prlić* Defence, having requested an **adjournment of the trial**, which was granted until the President's Decision, has not come forward about a potential extension of the adjournment. From this, **a reasonable trier of fact** could

conclude that there would be no appeal or that the defence has not yet found anything to say concerning the decisions to be reached.

Consequently, taking into account the decision on adjournment that the Chamber has already reached, which, on simple reading, could be interpreted to the effect that the adjournment has come to an end, and the new decision on the resumption of the trial that was reached today, I can only sign all these decisions in the light of my commentaries above.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this sixth day of October 2010
At The Hague
The Netherlands

ŠSeal of the TribunalĆ

Annex 1

OTP receipt number: list of numbers from the notebook inventory sheet, created during the search	Description of the notebook on the inventory sheet created during the search (as specified during the hearing)	65 *ter* Ref., *Karadžić* case	Name, contents, date and place (as specified during the hearing)	Number of pages (as specified during the hearing)	References in the transcript: *Karadžić* case, hearing of 20 August 2010
41	Notebook, brick-red, with a JNA emblem.	22838		394 pages of handwritten text	T(F), pp. 6058 and T(E), p. 6050
39	Work notebook, brick-red, with a JNA emblem.	22839		399 pages of handwritten text	T(F), pp. 6058 and T(E) p. 6050.
40	Notebook, burgundy red, with a JNA emblem, containing a letter from "FAD" and two small sheets of handwritten text. According to the witness, an officer of the Serbian MUP stuck a post-it on the first page.	22840	"Pale, 1992, Tuesday, 9 June, 2000 hours, meeting with SRBH Presidency" Participants: Karadžić, Koljević, Plavšić, Krajišnik, Đerić, Mladić, Gvero and Tolimir. This notebook also mentions 6 June 1992 (T(F), p. 6098). The accused mentions a problem with the translation of the notebook (T(F) pp. 6097-6099).	396 pages of handwritten text, the witness specified that Mrs Mladić wrote down that the notebook had 396 pages.	T(F), pp. 6058, 6061, 6076, 6097-6099.
37	Notebook, red, with a JNA emblem, containing four handwritten notes.	22841		180 pages of handwritten text	T(F), pp. 6058 and 6059.
33		22842			(T(F), p. 6059).
46		22843	17 December 1992, the notebook records the reports submitted at the National Assembly, 23rd session of the National Assembly of Republika Srpska.		T(F), pp. 6077 and 6078.
30		22844	"Pale, 19 January 1993, 25th session of the Assembly of Republika Srpska".		T(F), pp. 6078 and 6079.
36		22845			(T(F), pp. 6059).
44		22846	18 November 1993, the notebook mentions the negotiators present in Geneva, representing all parties.		T(F), pp. 6080.
35		22847			(T(F), p. 6060).
31		22848			(T(F), p. 6060).
34		22849			(T(F), p. 6060).
29		22850			(T(F), p. 6059).
32		22851	About Dobanovci and the date of 25 August 1995 "Meeting of the		T(F), pp. 6060, 6084, 6089.

			Serbian leadership" (according to the witness: follows notebook 65 *ter* ref. 13452, seized in 2008). The Accused spoke concerning this notebook, mentioning a problem with the translation in the notebook (p. 6089).		
28		22852	The Accused mentions a problem with translation. Meeting of 22 March 1996, meeting that Mladić and his associates had with Karadžić.		T(F), p. 6102.

Annex 2

Tentative Schedule

First Decision *Day N*

Translation *Day N+15 days*

Defence motions *Day N+15 days +7 days*
(Reconsideration or certification to appeal)

Prosecution submissions *Day N+15 days +7 days + 14 days*

Second Decision of the Chamber *Day N+15 days +7 days +14 days +21 days*

Translation *Day N+15 days +7 days +14 days +21 days +15 days*

In case of certification to appeal (2 to 4 months)

Defence motion to reopen
Day N1

Prosecution submissions
Day N1+14 days

Replies of the Defence
Day N1+14 days +7 days

Third Decision of the Chamber
Day N1+14 days +7 days +21 days

Translation
Day N1+14 days +7 days +21 days +15 days

Motion to reconsider or certification to appeal

Prosecution submissions (*14 days)*

Fourth Decision of the Chamber
Day N1+14 days +7 days +21 days +15 days +14 days +21 days

In case of certification to appeal (2 to 4 months)