

IT-03-69-T
D 11771-5 11766
19 June 2012

11771 913

**UNITED
NATIONS**



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

Case No. IT-03-69-T
Date: 19 June 2012
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 19 June 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**NINTH DECISION ON STANIŠIĆ DEFENCE BAR TABLE
MOTION OF 17 FEBRUARY 2012 AND DECISION ON
PROSECUTION REQUESTS FOR ADMISSION OF
REBUTTAL EVIDENCE**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Scott Martin

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 17 February 2012, the Stanišić Defence (“Defence”) filed a motion, requesting the admission into evidence of 674 documents from the bar table (“Motion”).¹ On 23 March 2012, the Prosecution filed a response (“Response”).² The Simatović Defence did not respond to the Motion.

2. On 23 May 2012, the Chamber issued the First Decision on the Stanišić Defence Bar Table Motion of 17 February 2012 (“First Decision”). The Chamber refers to the First Decision for the procedural history and submissions of the parties in respect of the Motion.

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing the admission of documents from the bar table as set out in the First Decision.³

III. DISCUSSION

4. In the present Decision, the Chamber will deal with 12 out of the 19 categories of documents included in the First Bar Table Chart, namely SRS / SCP: General (“Category 1”); SRS / SCP: operative processing of specific members: Slobodan Miljković (“Category 2”); SRS / SCP: CRDB overview of OA Thompson measures against SRC / SCP between 1991-1995 (“Category 3”); SRS / SCP: operative processing of specific members: Boban Kosić (“Category 4”); SRS / SCP: operative processing of specific members: Siniša Maksimović (“Category 5”); SRS / SCP: operative processing of specific members: Zarko Kanački aka Kane (“Category 6”); SRS / SCP: operative processing of specific members: Branislav Vakić (“Category 7”); SRS / SCP: other notes / measures (“Category 8”); Operation Thompson (“Category 9”); Miscellaneous DB reports on SAO SBWS (“Category 10”); Miscellaneous DB reports on Croatia (“Category 11”), and; Miscellaneous DB reports on Bosnia (“Category 12”).⁴

5. A number of the documents to be addressed in this decision are redacted. The Chamber has previously provided general guidance regarding the tendering of redacted documents.⁵ The majority of the redacted documents addressed in this decision have, since they were first uploaded into eCourt, been uploaded in their original unredacted form. However, the translations of the

¹ Stanišić Motion for Admission of Documents through the Bar Table, with Confidential Annexes A, B, and C, 17 February 2012.
² Prosecution Response to Stanišić Motion and Additional Motion for Admission of Documents into Evidence through the Bar Table, with Confidential Annexes A and B, 23 March 2012.
³ First Decision, paras 9-10.
⁴ See Motion, Confidential Annex A.
⁵ Fifth Decision on Stanišić Defence Bar Table Motion of 17 February 2012, 24 May 2012, para. 9.

documents remain redacted. As an exception to the general practice, the Chamber will analyse the nature and extent of the redactions by comparing the now unredacted B/C/S original with the translation - still attached - of the previous, redacted version. The nature and extent of the redactions thus established, only if limited, may allow the Chamber to already determine the admissibility of unredacted originals. Full translations will have to be uploaded and attached subsequently.

6. With respect to the documents bearing Rule 65 *ter* nos 1D01391, 1D01403 (Category 2),⁶ 1D01575, 1D01596, 1D01794 (Category 4),⁷ 1D01428, 1D01434 (Category 5),⁸ 1D01879, 1D01880 (Category 6),⁹ 1D01436, 1D01438, 1D01440, 1D01442, 1D01446, 1D01449, 1D01452, 1D01460, 1D01458, 1D01564, 1D01567, 1D01568, 1D01569, 1D01570 (Category 7),¹⁰ 1D01145, 1D01151, and 1D01139 (Category 10), the Chamber notes that the Prosecution, while disputing their purported relevance as characterised by the Defence, does not object to their admission provided that a revised translation is uploaded that corresponds to the unredacted original version of these documents currently in eCourt. The Prosecution provided a similar response with respect to documents bearing Rule 65 *ter* nos 1D01948, 1D01952 (Category 8),¹¹ 1D01973 (Category 9),¹² and 1D03522 (Category 11), but the Chamber notes that translations of the originals of these documents have been uploaded in eCourt. In line with its previous decisions, the Chamber considers that only unredacted copies of these documents, which have been made available to the parties and the Chamber, should be admitted.

⁶ The Chamber notes that the Prosecution, in relation to documents bearing Rule 65 *ter* nos 1D01383, 1D01391, and 1D01403 has argued that it should be allowed to introduce documents bearing Rule 65 *ter* nos 1D1313, 1D1396, and 1D1406 in rebuttal, Response, Confidential Annex A, pp. 90-93, 95-98, 102-103.

⁷ The Chamber notes that the Prosecution, in relation to documents bearing Rule 65 *ter* nos 1D01575, 1D01596, and 1D01794, has argued that it should be allowed to introduce, "among others" documents bearing Rule 65 *ter* nos 1D01593, 1D01594, 1D01595, 1D01786, 1D01788, and 1D01797 in rebuttal, Response, Confidential Annex A, pp. 113-122.

⁸ The Chamber notes that the Prosecution, in relation to documents bearing Rule 65 *ter* nos 1D01428 and 1D01434, has argued that it should be allowed to introduce documents bearing Rule 65 *ter* nos 1D01427, 1D01429, 1D01432, and 1D01433 in rebuttal, Response, Confidential Annex A, pp. 122-127.

⁹ The Chamber notes that the Prosecution, in relation to documents bearing Rule 65 *ter* nos 1D01879 and 1D01880 has argued that it should be allowed to introduce documents bearing Rule 65 *ter* nos 1D01881, 1D01882, 1D01883, 1D01884, and 1D01885 in rebuttal, Response, Confidential Annex A, pp. 128-129.

¹⁰ The Chamber notes that the Prosecution, in relation to documents bearing Rule 65 *ter* nos 1D01436, 1D01438, 1D01440, 1D01442, 1D01446, 1D01449, 1D01452, 1D01460, 1D01458, 1D01564, 1D01567, 1D01568, 1D01569, and 1D01570 has argued that it should be allowed to introduce documents bearing Rule 65 *ter* nos 1D03411, 1D03146, 1D01566, and 1D01572 in rebuttal, Response, Confidential Annex A, pp. 131-150. The Prosecution further stated with regard to all documents in Category 7 that it "may offer" documents bearing ERN nos 0607-9200-0607-9202 and 0607-9219-0607-9221, depending on the outcome of this Decision. Lastly, the Chamber notes that duplicate translations of document bearing Rule 65 *ter* no. 1D01570 have been uploaded in eCourt, Response, Confidential Annex A, pp. 130-131.

¹¹ The Chamber notes that, with regard to all documents in Category 8, the Prosecution stated that it "may tender" document bearing ERN 0607-9219-0607-9221 and "other documents", depending on the outcome of this Decision, Response, Confidential Annex A, pp. 152-153.

¹² The Chamber notes that the Prosecution, in relation to document bearing Rule 65 *ter* no. 1D01973 has argued that it should be allowed to introduce documents bearing Rule 65 *ter* nos 1D01963, 1D01359, and 1D03098 in rebuttal, Response, Confidential Annex A, pp. 172-173.

7. In relation to some of the aforementioned documents, the Chamber has only been provided with a translation of the redacted version. The Chamber has analysed the nature and extent of the redactions in the translation comparing them with the original unredacted version of the document, and has found that they do not negatively affect the original's admissibility. The Defence has also shown that the documents are relevant and probative and has demonstrated with sufficient specificity where the documents fit into its case. Therefore, the Chamber will allow the admission of the unredacted original versions of the aforementioned exhibits into evidence from the bar table, uploaded in eCourt as Rule 65 *ter* nos 1D01391.1, 1D01575.1, 1D01596.1, 1D01794.1, 1D01428.1, 1D01430.1, 1D01434.1, 1D01879.1, 1D01880.1, 1D01436.1, 1D01438.1, 1D01440.1, 1D01442.1, 1D01446.1, 1D01449.1, 1D01452.1, 1D01460.1, 1D01458.1, 1D01564.1, 1D01567.1, 1D01568.1, 1D01569.1, 1D01570.1, 1D01948.1, 1D01952.1, 1D01973.1, 1D01145.1, 1D01151.1, 1D01139.1, and 1D03522.1. The Chamber instructs the Defence to upload complete translations of these documents in eCourt within 3 weeks from the issue of this Decision.

8. With respect to documents bearing Rule 65 *ter* nos 1D01120 and 1D01130 (Category 3), the Chamber notes that the Prosecution supports the Defence request for their admission into evidence from the bar table, but that it requests the Defence to provide further information as to whether document bearing Rule 65 *ter* no. 1D01120 is complete.¹³ As a result, the Chamber requested the Defence on 13 June 2012, through an informal communication, to provide information whether the version uploaded in eCourt of document bearing Rule 65 *ter* no. 1D01120 was the complete document. On 14 June 2012, the Defence responded it received this document from the Serbian National Council as a response to its request for an unredacted and completed version of this document. The Chamber accepts the Defence's submission in this respect.

9. With respect to the documents bearing Rule 65 *ter* nos 1D01105 (Category 1), 1D01114, 1D01120, 1D01133, 1D01135, 1D01131, 1D01125, 1D01130 (Category 3), 1D01574 (Category 4),¹⁴ 1D01431 (Category 5),¹⁵ 1D03149 (Category 7),¹⁶ 1D03558, 1D03058, 1D03092, 1D03099,¹⁷

¹³ Response, Confidential Annex A, pp. 105-106.

¹⁴ The Chamber notes that the Prosecution, in relation to document bearing Rule 65 *ter* no. 1D01574, has argued that it should be allowed to introduce documents bearing Rule 65 *ter* nos 1D01593, 1D01594, 1D01595, 1D01786, 1D01788, and 1D01797 in rebuttal, Response, Confidential Annex A, pp. 113-114.

¹⁵ The Chamber notes that the Prosecution, in relation to document bearing Rule 65 *ter* no. 1D01431 has argued that it should be allowed to introduce documents bearing Rule 65 *ter* nos 1D1427, 1D1429, 1D1432, and 1D1433 in rebuttal, Response, Confidential Annex A, p. 126.

¹⁶ The Chamber notes that the Prosecution, in relation to document bearing Rule 65 *ter* no. 1D03149 has argued that it should be allowed to introduce documents bearing Rule 65 *ter* nos 1D3411, 1D3146, 1D1566, and 1D1572 in rebuttal, Response, Confidential Annex A, pp. 150-151.

¹⁷ The Chamber notes that the Prosecution, in relation to document bearing Rule 65 *ter* no. 1D03099 has argued that it should be allowed to introduce document bearing Rule 65 *ter* nos 1D03100 in rebuttal, Response, Confidential Annex A, pp. 158-159.

1D03414 (Category 8),¹⁸ 1D00393, 1D01004, 1D01005, 1D01007, 1D01008, 1D01009 (Category 9), and 1D03068 (Category 12), the Chamber notes that the Prosecution, while disputing their purported relevance as characterised by the Defence, and questioning with regard to a few documents whether they were generated as submitted by the Defence¹⁹, does not object to their admission. The Chamber finds that the Defence has shown with sufficient specificity (i) the relevance and probative value of these documents and (ii) how they would fit in the Defence case. Therefore, the Chamber will admit these documents into evidence from the bar table. With respect to documents bearing 65 *ter* nos 1D01431 and 1D01574, the Chamber notes that while the Defence did not indicate that these were to be admitted “under seal”, other documents provided through the same RFA were to be admitted under seal.²⁰ Therefore, out of an abundance of caution, the Chamber will admit these documents provisionally under seal, and instructs the Defence to verify within 10 days of the issue of this Decision whether these documents should be admitted publicly.

10. The Chamber observes that documents bearing Rule 65 *ter* nos 1D01785, 1D01444, 1D01457, 1D01426, and 1D01975 contain redactions, and that no unredacted versions have been provided thus far. The Chamber is not satisfied that these documents can be admitted in their current, redacted, form. It notes that on 24 May 2012, the Defence has informally communicated to the parties and the Chamber that, with respect to document 1D01444 and 1D01457, a request for the unredacted versions of these documents is currently pending with the relevant Serbian authorities.

11. Additionally, the Chamber notes that no translation has been provided for the document bearing Rule 65 *ter* no. 1D03408, and that the original version of 1D03412 is partly illegible and, therefore, only partially translated. With regard to documents bearing Rule 65 *ter* nos 1D01383, 1D01384, 1D01390, 1D01392, 1D01401, 1D01404, 1D01425, 1D01430, 1D01437, 1D01441, 1D01443, 1D01450, 1D01451, 1D01453, 1D01459, 1D01565, 1D01577, 1D01582, 1D01585, 1D01586, 1D01589, 1D01590, 1D01591, 1D01592, 1D01385, 1D01386, 1D01388, 1D01393, 1D01394, 1D01395, 1D01397, and 1D01399, the Chamber notes that unredacted versions of these documents have been uploaded in the meantime, but that revised translations of the unredacted versions have not been made available by either party. The Chamber also observes that the portions that were initially redacted in these documents are significant, and considers that it is unable to decide on their admission based on translations of the substantially redacted versions of these

¹⁸ The Chamber notes that the Prosecution stated with regard to all documents in Category 8 that it “may tender” document bearing ERN 0607-9219-0607-9221 and “other documents”, depending on the outcome of this Decision, Response, Confidential Annex A, pp. 152-153.

¹⁹ With regard to the documents in Category 3, the Prosecution noted that “[t]here is no indication from the contents of this document that this material was generated as part of OA Thompson”, Response, Confidential Annex A, pp. 104-113.

documents. With respect to 1D03531 and 1D01977, the Chamber notes that the Defence originally did not provide the original versions of these documents, but instead provided a copy from a book where this document was reproduced.²¹ While original versions of these documents have now been uploaded in eCourt, the Chamber notes that the translations provided do not correspond to the original version of these documents, and notes that the original version of 1D01977 as uploaded in eCourt contains heavy redactions. It further notes the Prosecution's observation with respect to 1D03531, namely that no underlying RFA was provided to the parties for inspection.²² With respect to document bearing Rule 65 *ter* no. 1D03541, the Chamber notes that the Defence similarly did not provide the original version of this document, but only provided a copy from the aforementioned book where this document appears to have been reproduced.²³

12. Accordingly, the Chamber denies admission into evidence of documents bearing Rule 65 *ter* nos 1D01785, 1D01444, 1D01457, 1D01426, 1D01975, 1D03412, 1D03408, 1D01383, 1D01384, 1D01390, 1D01392, 1D01401, 1D01404, 1D01425, 1D01430, 1D01437, 1D01441, 1D01443, 1D01450, 1D01451, 1D01453, 1D01459, 1D01565, 1D01577, 1D01582, 1D01585, 1D01586, 1D01589, 1D01590, 1D01591, 1D01592, 1D01385, 1D01386, 1D01388, 1D01393, 1D01394, 1D01395, 1D01397, 1D01399, 1D03531, 1D01977, and 1D03541.

13. Lastly, the Chamber observes that a number of documents admitted have been introduced in order to show a *negative*, i.e. that something did *not* occur because the document made no reference to it. In this respect, the Chamber refers to its guidance set out in earlier Decisions on the Motion.²⁴

Prosecution requests for rebuttal evidence

14. The Chamber notes that in this Decision and before, it has recorded Prosecution requests for the admission of rebuttal evidence that were included in the Response to the Motion.²⁵ These are documents that the Prosecution argued should be admitted in the event the Chamber would admit certain Defence documents from the bar table. The Chamber considers that such requests are

²⁰ Motion, Confidential Annex A, pp. 100, 110. For both documents, see RFA (1D01626) and Submission of Serbia (1D01474).

²¹ With respect to 1D01977, the Chamber notes that although the BCS "book" version of this document has not been uploaded into eCourt, it considered the Prosecution's comment that "[p]reviously, this document was provided to the Prosecution from a published book [...]. Although the Defence has now obtained a redacted version of the original the uploaded translation has not been revised to correspond to the original", Response, Confidential Annex A, p. 87.

²² Response, Confidential Annex A, pp. 84, 86-87.

²³ See also Response, pp. 153-154.

²⁴ See e.g. Second Decision on Stanišić Defence Bar Table Motion of 17 February 2012, 23 May 2012, para. 16; Fourth Decision on Stanišić Defence Bar Table Motion of 17 February 2012, 24 May 2012, para. 10; Sixth Decision on Stanišić Defence Bar Table Motion of 17 February 2012, 1 June 2012, para. 7; Seventh Decision on Stanišić Defence Bar Table Motion of 17 February 2012, 6 June 2012, para. 25.

²⁵ See footnotes 6 to 19 of the Present Decision; See also Second Decision on Stanišić Defence Bar Table Motion, 23 May 2012, para. 10, fn. 15.

premature, and should be properly made in a separate Prosecution motion for the admission of rebuttal evidence, if any.

IV. DISPOSITION

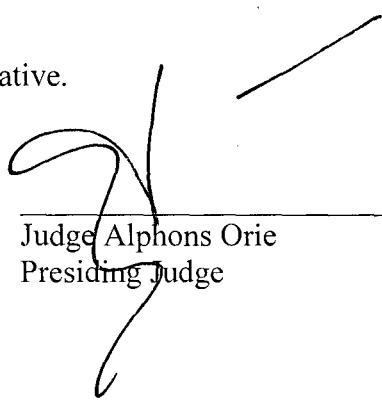
- 15. For the foregoing reasons, the Chamber **GRANTS** the Motion **IN PART**, and
 - (i) **ADMITS** into evidence, under seal, documents bearing Rule 65 *ter nos* 1D01391.1, 1D01403.1, 1D01575.1, 1D01596.1, 1D01794.1, 1D01428.1, 1D01434.1, 1D01879.1, 1D01880.1, 1D01436.1 1D01438.1, 1D01440.1, 1D01442.1, 1D01446.1, 1D01449.1, 1D01452.1, 1D01460.1, 1D01458.1, 1D01564.1, 1D01567.1, 1D01568.1, 1D01569.1, 1D01570.1, 1D01948.1, 1D01952.1, 1D01973.1, 1D01145.1, 1D01151.1, 1D01139.1, 1D03522.1, 1D03149, 1D03058, 1D03092, 1D03099, 1D03414, and 1D03068;
 - (ii) **ADMITS** into evidence, publicly, documents bearing Rule 65 *ter nos* 1D01105, 1D01114, 1D01120, 1D01133, 1D01135, 1D01131, 1D01125, 1D01130, 1D03558, 1D00393, 1D01004, 1D01005, 1D01007, 1D01008, and 1D01009;
 - (iii) **ADMITS** into evidence, provisionally under seal, documents bearing Rule 65 *ter nos* 1D01431 and 1D01574;
 - (iv) **INSTRUCTS** the Registry to lift the provisional confidentiality of documents bearing Rule 65 *ter nos* 1D01431 and 1D01574 after ten days of the filing of this decision, unless a request for protective measures for these documents is made within that time frame;
 - (v) **DENIES** the admission into evidence of documents bearing Rule 65 *ter nos* 1D01785, 1D01444, 1D01457, 1D01426, 1D01975, 1D03412, 1D03408, 1D01383, 1D01384, 1D01390, 1D01392, 1D01401, 1D01404, 1D01425, 1D01430, 1D01437, 1D01441, 1D01443, 1D01450, 1D01451, 1D01453, 1D01459, 1D01565, 1D01577, 1D01582, 1D01585, 1D01586, 1D01589, 1D01590, 1D01591, 1D01592, 1D01385, 1D01386, 1D01388, 1D01393, 1D01394, 1D01395, 1D01397, 1D01399, 1D03531, 1D01977, and 1D03541;
 - (vi) **INSTRUCTS** the Defence, within 3 weeks of the issue of this Decision, to upload complete translations of documents bearing Rule 65 *ter nos* 1D01391.1, 1D01403.1, 1D01575.1, 1D01596.1, 1D01794.1, 1D01428.1, 1D01434.1, 1D01879.1, 1D01880.1, 1D01436.1, 1D01438.1, 1D01440.1, 1D01442.1, 1D01446.1, 1D01449.1, 1D01452.1,

476k

1D01460.1, 1D01458.1, 1D01564.1, 1D01567.1, 1D01568.1, 1D01569.1, 1D01570.1,
1D01145.1, 1D01151.1, 1D01139.1;

- (vii) **INSTRUCTS** the Registry, upon notification by the Defence of the document ID numbers, to attach the translations to the exhibits and to file a notification on the record;
- (viii) **REQUESTS** the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned; and
- (ix) **DENIES** the Prosecution requests for the admission of rebuttal evidence, as contained in the Response, without prejudice.

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



Judge Alphons Orie
Presiding Judge

Dated this nineteenth day of June 2012
At The Hague
The Netherlands

[Seal of the Tribunal]