



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
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IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 25 November 2010

THE PROSECUTOR

v.

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

PUBLIC

**DISSENTING OPINION OF PRESIDING JUDGE JEAN-CLAUDE
ANTONETTI ON DECISION ON JADRANKO PRLIĆ'S MOTION TO
ADMIT EVIDENCE REFUTING EVIDENCE ADMITTED BY DECISION OF
6 OCTOBER**

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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

The Chamber decided, by a majority, to reject the motion filed by the Prlić Defence for the admission of excerpts from the so-called “Mladić” notebooks.

Before substantiating my opinion, I note that in its written submission, the Prlić Defence does not dwell at length on the issue of the authenticity of the “Mladić” notebooks. However, in paragraph 7 of the present Decision¹ the Chamber notes unanimously that in its Decision of 6 October 2010² it did not limit its assessment of the authenticity, reliability and relevance of the Mladić Diaries to only the excerpts presented by the Prosecution,³ and that consequently, its decision applies *mutatis mutandis* to the other excerpts requested for admission by the Prlić Defence.

This being said, I stand, nonetheless, behind my initial opinion of principle regarding the issue of the authenticity of the so-called “Mladić” notebooks, which is based on written submissions from the Praljak Defence and the Petković Defence and to whom I indicated already that the Chamber should have reconsidered its Decision of 6 October 2010 by appointing experts.

This is understandable since I am using the same logic from the start, namely that I was in favour of a plain and simple rejection of the Prosecution’s motion for a lack of due diligence and the fact that the motion was filed late. The Prosecution could have, as of 2008, carried out an expert examination of the notebooks that were discovered, yet it did not do so and was satisfied with simply attaching the statement of General Manojlo Milovanović.

Consequently, my analysis of the Prlić Defence motion is that it is a response to the Prosecution motion, and based on my logic, I can only deny such a motion.

Nevertheless, it is necessary to specify that if the Prosecution motion had not been as late as it was, and if there had been no doubt as to the authenticity of the so-called “Mladić” notebooks, I would have been in favour of admitting the 38

¹ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, Chamber’s Decision, “Decision on Jadranko Prlić’s Motion to Admit Evidence Refuting Evidence Admitted by the Decision of 6 October 2010”, 24 November 2010.

² *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, Chamber’s Decision, “Decision on the Prosecution’s Motion to Reopen its Case”, 6 October 2010.

documents originating from the Mladić notebooks that have a direct or indirect relevance to the six exhibits admitted by the Chamber in the context of the reopening of the Prosecution case.

The equality of arms and the requirements of a fair trial impose on the Judges the obligation to respect an equal balance between the parties when it comes to admitting documents, as long as they are directly or indirectly linked to the indictment.

Hence, I will attempt, on the basis of each document requested by the Prlić Defence, and from my humble chair, to indicate the reasons why the Chamber could have admitted these documents, by a majority or unanimously, since they have a relevance and a probative value that can be discussed only during secret deliberations.

- **1D 03192**: This is a document drafted on 30 December 1995 recounting the points brought up during a meeting of ex-Yugoslav political and military authorities. This meeting was held from 1550 to 1930 hours in the office of President Milosević. There is reason to note that there are several individuals who were indicted by this Tribunal amongst the participants. This document, which is incomplete, concerns an excerpt of a remark made by President Milosević about the creation of Republika Sprska. This document touches upon several subjects that could have some relevance to the Indictment, seeing as President Milosević allegedly said that the Muslim area occupies only 30% of the territory.

- **1D03191**: I notice immediately that there is an error in this document concerning the date. The date on this document is 29 January 1993 (page 51), when it should actually be 1994, as stated in the written submission of the Prlić Defence.

Furthermore, it appears that Colonel Salapura spoke to Alija Izetbegović about support from Islamic countries for the creation of an Islamic state. This is a recurring theme already mentioned by several Croatian witnesses and which is confirmed here

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

by a Serb colonel. I deem, consequently, that this is an important fact that could have been submitted to the Chamber for consideration.

- **1D03187**: This is a document of several pages concerning a meeting held on 21 December 1993 at which the Muslim and Serb attendees allegedly discussed pending problems.

Without going into the depth of the discussions, the document is interesting because if there was Serb-Croat cooperation, as the Prosecution argues, it appears here that there were also Serb-Muslim contacts. For example, we can see notably in this document that Oručević and Pašalić intervened for the liberation of the Serbs from Konjic. It appears difficult, therefore, to consider Serb-Croat relations without taking into account Serb-Muslim relations. This document may also be included and, if necessary, taken into consideration during the closing arguments.

- **1D03198**: This concerns a meeting held in Belgrade with, amongst others, Mladić, Milosević, Karadžić, Perišić, Krajišnik, Salapura, and Milovanović.

It is interesting to note that Karadžić defines his six strategic aims including the sentence "To be separated from the Muslims and Croats". Also indicated is that Sarajevo is the priority and the key of the war. I cannot fail but note the presence of the famous General Milovanović. This Prosecution witness spoke during the meeting and gave his opinion after Milosević. This document could prove undoubtedly to be of interest.

- **1D03197**: This is a briefing involving high-ranking military personnel, including the famous General Milovanović. He speaks of the actions of Muslim forces, particularly those of the 7th and 17th Brigades. In addition, this document may serve to gain a better understanding of the internal mechanisms of the conflict as, under item 10, General Ratko Mladić provides details on all the aims to be achieved. With its multiple aspects, including those mentioned in the written submission of the Prlić Defence, this document could be of interest.

- **1D03184:** This concerns a meeting of high-ranking military personnel, such as Mladić, Milosević and Karadžić. From a military point of view, the concept of defence is indicated (page 21). President Milosević spoke of the attempts to meet with the Muslims (page 24), including a secret meeting held in Thessalonica. It is also important to note the remarks of Krajišnik (an accused before this Tribunal), which are as follows: “Bosnia could be divided into two parts, between us and the Muslims. The Croats are no force whatsoever and should be given 2-3 municipalities in Western Herzegovina”. Interestingly, the Serb party envisages the partition of Bosnia in two, disregarding the Croats who would have only two or three municipalities. This remark by Krajišnik is of interest to the case as the Serbs allegedly considered that the Croats were not militarily strong. This fact is sufficiently interesting to warrant being discussed during the judges’ secret deliberations.

- **1D03183:** This concerns a meeting on 30 October 1993 attended by General Grubač, who describes the situation in the Neretva valley.

It is interesting to note that according to him, the Croats are holding the hydro-electric plant in Mostar and controlling the water supply to the zone under Muslim control. Similarly, the description of the arming of the Muslim forces in October 1993 should be noted. Moreover, it is very important to point out the following: “In order to incite a war between Croats and Muslims, while we achieve our goals as they fight it out”. This sentence must be taken into consideration as it demonstrates the role played by the Serbs in promoting the conflict. According to this sentence, the conflict cannot be reduced simply to a conflict between the Croats and the Muslims.

Furthermore, the final point of the decision is worded as follows: “We must not allow the creation of a Greater Croatia”. Undoubtedly, it appears that the Serbs are not at all in favour of the creation of a greater Croatia. This brings up the problem of Serb-Croat cooperation. I find this document interesting and it should have been the subject of discussion during deliberations.

- **1D03182:** According to the Prlić Defence, this relates to the issue of the conflict's escalation. This document concerns a meeting held in Pale on 24 October 1993 and in item 7, I note the issue of weapons and ammunition sales to the

“Ustasha”. Furthermore, I cannot help but note the presence of General Milovanović once again. Several parts of this document are relevant to the conflict in the Neretva valley, where, as it is clearly stated, that they want Croatia to be defeated. If this document reflects solely the Serbs’ point of view, it may still be useful in assessing the conflict, specifically in October 1993.

- **1D03173**: This is a report from Blažanović, the commander of the 30th Division, who allegedly said the following regarding the situation in Bugojno: “Bugojno is controlled by them together, although the Muslims are more dominant”. The Prlić Defence alleges that the document proves the Croat-Muslim coalition and the Serbs’ efforts to destroy it. Furthermore, I note the following sentence on page 81: “What do you suggest for intensifying conflict within the coalition?”. This document could be of interest and reflect the Prosecution’s argument about a singular Serb-Croat coalition.

- **1D03180**: This concerns a meeting held on 17 August 1993 regarding combat between Muslims and Croats around Mostar according to Colonel Salapura’s point of view. The Muslims’ preparation for an attack on Vareš should also be noted here. This document may therefore be of some interest.

- **1D03175**: This is a speech of 27 May 1993, but the identity of the speaker is uncertain (General Mladić?). It should be noted that there is mention of “M – H / Muslim-Croatian/ formations”, which may be interpreted as a coalition between these two groups to intimidate the Serbs.

- **1D03162**: This concerns evidence of a statement made during the 21st session of the Republika Srpska Assembly on 31 October 1992. On page 99 in this transcript, mention is made by Trbović of the “M – H / Muslim-Croat/ coalition”. This document should be linked to others and, therefore, may be of interest during secret deliberations.

- **1D03161**: This concerns a meeting on 12 October 1992 involving several well-known persons, including General Milovanović, Karadžić, General Gvero, and Colonel Salapura. The statement of the latter is interesting in my opinion as he mentions the “Ustasha” and clashes between the Muslims and the Croats, and indicates that **Hungary** delivered equipment to Croatia and that the Croats and Muslims are training in Hungary. I am certain that this document will arouse the Judges’ interest regarding the international context.

- **1D03157**: This is a briefing on 3 September 1992 with several Generals, including General Tolimir, where the issue of the Croat-Muslim coalition is discussed on page 101.

- **1D 03185**: This concerns a meeting held on 18 November 1993 regarding the Geneva negotiations where the Croats, particularly Boban and Petković, are described as “Ustasha”. It is strange to note that the Muslims, specifically Silajdžić and Šiber, are qualified in the same manner. Aside from this oddity, this document could warrant special attention.

- **1D03181**: This concerns a meeting with President Milosević on 24 September 1993 at which the term “Ustasha” appears once again. Moreover, in this document, the Croats are considered to be the enemy. This document could also be of interest during the secret deliberations.

- **1D03179**: This concerns a meeting held at Sarajevo airport on 4 August 1993 with Briquemont and Petković. The document states, without indicating who said it: “The Ustashes have buckled”. After consulting a dictionary, it appears that this means that the Croats are in trouble. This document could be taken into consideration due to the statements contained therein.

- **1D03176**: This concerns a meeting held at Sarajevo airport on 15 June 1993 that describes a meeting with the “Ustasha”. The use of this pejorative term could, to a certain extent, characterise the Croats in the eyes of the Serbs, which begs the question of whether there was actual cooperation between the Serbs and Croats. It is

up to the Judges to deliberate on this. Consequently, this document could be of interest during secret deliberations.

- **1D03175**: This concerns the same aforementioned speech of 27 May 1993, in which the term “the H-M/Croatian-Muslim/coalition” is mentioned.

-**1D03166**: This is a briefing of 1 December 1992 which mentioned that the “Ustasha” planned an offensive on 5 December on the corridor. This document seems interesting.

- **1D03163**: This concerns a meeting on 17 November 1992 at which the enemy is named (the Croats). The term “Ustasha” appears once again on page 188. Apart from the use of this pejorative term, this document could be examined by the Judges due to the other facts contained therein.

- **1D03160**: This concerns a meeting of general officers held on 6 October 1992, during which Colonel Tolimir indicated that “The Ustasha forces are running away from their position”, and uses this pejorative term on several occasions. This document could have been compared, if necessary, to other documents that also contain this pejorative term.

- **1D03158**: This concerns a meeting on 17 September 1992, and the statements made at that meeting explain the situation at the front and confirm the presence of four “Ustasha” brigades.

- **1D03190**: This concerns a meeting between the Serbs, Croats and Muslims on 25 January 1994. This document is of interest because General Pellnas appears to have been present at the meeting and mentioned Viktor Andreev and a joint coalition between the Croats and Serbs in the northern sector. This document also establishes that there was a bilateral meeting between the parties with the aim of securing a cease-fire. This document could, therefore, qualify as being interesting and relevant.

- **1D03188**: This concerns a meeting held on 24 January 1994, at which the issue of defence against the HVO forces and their sponsors is raised. Several Generals are mentioned and they made statements, including General Milovanović, yet again!

This document describes the exchanges between Milosević and Tudjman, and between Karadžić and Akmadžić. This document is interesting and indicates a Muslim offensive by using the sentence "The Muslims leadership is planning an offensive to liberate the whole BH in the spring of 1994". This could go towards establishing the fact that at the time, there was no coalition between the Muslims and the Croats because the Muslims were preparing an offensive for the spring. Consequently, this document could be of interest during the secret deliberations.

- **1D03191**: This concerns a meeting at Sarajevo airport on 25 January 1994. I already discussed this document above and it mentions the issue of a hotline (a communication line) between the parties to the conflict.

- **1D03178**: This concerns a meeting on 25 June 1993 with General Morillon, General Vahlgren and General Cot. The remarks made at the meeting relate to different issues. General Morillon appears to give two options: the first is the extremist option with Izetbegović and the second is a moderate option with Abdić. The fact that he mentioned these two men on the same level shows that the Republic of Bosnia and Herzegovina is not homogenous as it is occupied by two currents: one extreme and the other moderate. This document could be the subject of more extensive analysis during deliberations.

- **1D03172**: This concerns a document dated 23 January 1993 that recounts the negotiations in Geneva between Boban, Izetbegović, and Tudjman. This document establishes, as the Prlić Defence states, that there were indeed negotiations in Geneva involving all the parties and each party had the opportunity to express its opinion. For example, Boban said "We accepted the Sarajevo Province, as equal for all 3 peoples". This document does not mention the presence of Jadranko Prlić and the Chamber could have examined this fact during final deliberations and asked itself why the Accused Prlić was absent during these critical negotiations.

- **1D03170:** This concerns negotiations that took place in Geneva on 10 January 1993. This document could characterise the scope of the negotiations between the different delegations that might extend to the creation of an indivisible state that would join all the parties on a constitutional basis.

- **1D03169:** This also concerns the negotiations held in Geneva on 4 January 1993 with members of the military commission. This document, like previous ones, relates to the issue of the scope of the military negotiations. It should be noted that this document does not mention the presence of Jadranko Prlić. On the other hand, I note that Tudjman remarked “Bosnie-Herzégovine is to be organised as a state of 3 constituent peoples with the decentralised authority of provinces”. Therefore, this document appears to be of interest.

- **1D03168:** This concerns once again the discussions held in Geneva on 3 January 1993, this time against the backdrop of the multilateral and bilateral discussions that include military aspects (weapons, inspection). This document should have been compared and analysed with other documents relating to this same issue.

- **1D03167:** This concerns once again the discussions held in Geneva on 2 January 1993, this time in the presence of Vance, Owen, Izetbegović, Karadžić, Tudjman, Petković and Mladić. Yet again, the absence of Jadranko Prlić is noted. Nonetheless, in item 7 on page 8, General Mladić allegedly said “Prevent the arming of HM/Croatian-Muslim/Coalition”. This document could have been considered as it is certainly of interest.

- **1D01374:** This concerns a meeting at Sarajevo airport between Generals Morillon and Petković. The latter mentioned an agreement between the parties and specified the deployment of HVO forces amongst others in the Neretva valley. This document establishes a pattern of continuity in the multilateral and bilateral

discussions, against a backdrop of the signatories to the agreements seeking peace. From this perspective, this document may be considered during final deliberations.

- **1D03171**: This is a document related to the negotiations in Geneva involving the high-ranking personnel previously mentioned. This document confirms the existence of bilateral discussions.

- **1D03164**: This is a document dated 27 November 1992 mentioning the negotiations with General Morillon in Pale, in the presence of Karadžić and Mladić. The remark made by Karadžić should be noted: "As for the cessation of hostilities with the Croats, this is a good thing because 2/3 of the front is with the Croats". Similarly, he says that the Croats are preparing war.

- **1D03165**: This concerns a meeting with General Morillon held in Pale, at which Tudjman allegedly agreed to a meeting with General Bobetko. The document also mentions the deployment of British and Canadian battalions. This meeting could be considered within the general theory of negotiations involving all the parties. This document could also fall under the Prosecution's argument about the existence of an alleged JCE.

- **P11375**: This concerns a meeting held in Pale on 27 September 1992, at which Karadžić made remarks and noted that the Croats wanted peace.

- **1D3159**: This concerns a meeting held on 22 September 1990 at which the civilian and military authorities convened and at which several participants, such as Karadžić and Čosić, made remarks. This document could certainly have been of some interest during the Judges' secret deliberations.

- **1D03199**: This concerns a meeting held on 7 May 1992, at which Krajišnik spoke of the strategic goals "To separate from the Croats and Muslims forever". This document must be linked to the document under number 1D03195.

- **1D03195**: This document precedes the previous document by a day and it is dated 6 May 1992. Several remarks made by Karadžić about Bosnia and Herzegovina should be noted here. Moreover, according to him, Germany and the United States accepted that the Serbs could create their own state and that they could not conclude anything with the Croats. Aside from Karadžić's opinion, this document appears to contain statements that would be of interest and would help with understanding the Prosecution's viewpoint.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-fifth day of November 2010
The Hague (The Netherlands)

[Seal of the Tribunal]