

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-04-81-T

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Pedro David
Judge Michèle Picard

Registrar: Mr. John Hocking

Date Filed: 19 November 2009

THE PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC WITH PUBLIC ANNEX A

**DEFENCE RESPONSE TO PROSECUTION FOURTH
BAR TABLE MOTION, WITH PUBLIC ANNEX A**

The Office of the Prosecutor:

Mr. Mark Harmon
Mr. Daniel Saxon

Counsel for Momčilo Perišić:

Mr. Novak Lukić
Mr. Gregor Guy-Smith

**DEFENCE RESPONSE TO PROSECUTION FOURTH
BAR TABLE MOTION**

I. Introduction

1. Mr. Perišić hereby responds to the Prosecution's Fourth Bar Table Motion, filed 3 November 2009 ('Prosecution Motion'). On November 18, 2009 the Defence informed the Trial Chamber's Legal Officer that this Motion would be filed on the 19 November, 2009.

II. Background

2. On 3 November 2009, the Prosecution submitted its fourth bar table motion, seeking to admit 16 documents into evidence without presenting them to a witness.¹
3. The Prosecution attaches a table to the Prosecution Motion in which it purports to provide information in relation to each tendered document, including its source, relevance and probative value.
4. The Defence hereby responds to the Prosecution Motion and for the reasons that follow opposes the motion.

III. Discussion

5. In his response to the Prosecution's first bar table submission, Mr. Perišić detailed his position concerning to the procedure being utilised by the Prosecution with respect to bar table submissions.² Mr. Perišić reiterates that position and incorporates by reference the arguments stated there as if set forth fully herein.
6. Mr. Perišić maintains his objection to this last minute inundation of the record with documents which were never shown to, discussed or identified by any

¹ Prosecution Fourth Bar Table Motion, with Public Annex A, 3 November 2009.

² Defence Response to Prosecution Motion for Leave to File a Tenth Supplemental Rule 65^{ter} Exhibit List, 30 October 2009.

witness during trial. The Prosecution had ample opportunity to tender motions to admit the documents in evidence during trial, while appropriate witnesses were still available or to call witnesses to tender the documents through, or to do both. Any of those procedures would have allowed the Defence to cross-examine witnesses on the documents in question during the Prosecution case-in-chief. Because the Prosecution failed to follow any of these procedures, it is no longer possible for Mr. Perišić to challenge the documents during the Prosecution case. Instead, Mr. Perišić is forced to challenge this evidence in his defence case. This violates fundamental principles of international law because it illegally shifts the burden of proof onto the Defence.

7. The Prosecution is offering two open source documents for the truth of their contents.³ This position is in stark contrast with that taken regarding previous open source documents, where proposed exhibits from open sources were being tendered as relevant to notice of events and not for the reliability of the information contained therein.⁴
8. In addition to the comments and objections asserted above, the Defence makes additional comments or objections to the documents individually in the Annex attached hereto.

³ 65ter 1273, 1274.

⁴ See, Decision on Prosecution's Second and Third Bar Table Motions, 16 November 2009, para. 20,

IV. Relief requested

9. For the foregoing reasons, Mr. Perišić objects to the admission of documents through the Prosecution Fourth Bar Table Motion in its entirety. He respectfully requests the Trial Chamber to deny the admission of the documents contained therein.

Respectfully submitted this 19 November 2009,



NOVAK LUKIC
Counsel for Momčilo Perišić



GREGOR D. GUY-SMITH
Co-counsel for Momčilo Perišić

Word count: 537

PUBLIC ANNEX A

Annex A
Fourth bar table motion

65ter #	Short description	Date	English ERN	BCS ERN	Relevance and probative value	Source	Defence Comments and Objections
1273, partial	Video “JNA - srpska verzija sloma” by Serbian version of the Break-Up	23-06-05	ENG V000-5591	V000-5591-1A	This video includes excerpts of an interview with Perišić, in which he states that: - The VJ had close ties in the RS and the RSK, in that there was one single army, that army had its members in the RS and the RSK, and that army had equipment which was getting its logistics support mostly from the FRY. (Timecode: 01:01:35 – 01:02:23, p.27 English translation). - He thought it necessary that the VJ Chief of General Staff be someone who had “sublimated the Serbian entities” i.e. the RSK and the RS, but who was born in Serbia. He states that “I was precisely like that, because I was together with the people and the Army, the JNA at the time, we were creating the RSK, and we created it... we were creating RS and we created it” (Timecode: 01:08:30 – 01:09:05, p.30 English translation) - An attack on the RSK, the RS or the FRY would mean an attack on all three. (Timecode: 01:11:59-01:12:23, p. 32 English translation) The video is probative to the allegations at paras.8-28 of the Indictment regarding the provision of personnel, material and logistical assistance by the VJ to the VRS and SVK; and those at paras.34-37 regarding the superior/subordinate relationship between the Accused and VJ officers serving in the VRS and SVK. Perišić’s statement that the VJ, VRS and SVK were one army is consistent with the views of VRS Main Staff Commander and VJ 30th PC member Mladić (P1529, p.1), SVK Main Staff Commander and 40th PC member Mrksić (P1054, Eng p.29, BCS p.19) and VJ 30th PC member Lt. Col. Gen. Gvero (P1976, Eng p.9).	Open source “Mreža” (Net) Production Group, Belgrade Author: Filip Švarn 2001	Mr. Perišić refers to his position regarding “open source” documents in paragraph 7 of the response, <i>supra</i>. This documentary contains segments of an interview with Perišić, as well as other political and military figures, interposed with commentary from a narrator and video footage from the conflict. It is impossible to tell the context and timeline of the interview with Perišić, due to the editing and manipulation of information by a third party. If the Trial Chamber is inclined to admit this documentary then the Defence Requests it admit the complete transcript for the sake of completeness.

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8909	Meeting of the Supreme Command Staff, Army Commanders, Commanders of Air Force and AAD, Navy and Special Corps Units in Dobanovacki zabran, discussing current military - political problems and problems of staffing, on 27th May 1993	25-May-1993	ET 0630-5461-0630-5461	0630-5461-0630-5461	65ter #8909, #8909.01 and #8909.02 should be read together. 65ter #8909 is a telegram of 25 May 1993 from the Office of the VJ CGS to VJ Command Staff, including Perišić as Commander of the 3 rd Army, convening a meeting of the Supreme Command Staff on 27 May 1993. Together with 65ter #8909.01 and 65ter #8909.02, this is probative to the allegation at paras.32 and 56 of the Indictment that Perišić was aware of the propensity of certain members of the VRS to engage in criminal and persecutory conduct.	VJ Military Archives, Belgrade	The OTP comments regarding relevance and probative value are inaccurate and misleading, and are not supported by the document. The Defence does not accept the alleged relevance which the Prosecution claims this document has in relation to the charges.
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8909.01	Meeting of the Supreme Command Staff, Army Commanders, Commanders of Air Force and AAD, Navy and Special Corps Units in Dobanovacki zabran, discussing current military - political problems and problems of staffing, on 27th May 1993.	25-May-1993	0630-5478-0630-5480-EDT	0630-5478-0630-5480	65ter #8909, #8909.01 and #8909.02 should be read together. 65ter #8909.01 is the Closing Remarks by FRY President Dobrica Cosić at the meeting of the Supreme Command Staff on 27 May 1993. As evidenced by 8909 and 8909.02, Perišić attended this meeting as Commander of the VJ 3rd Army. FRY President Dobrica Cosić stated that “We unnecessarily and irrationally used up massive war reserves. That is particularly evident in BiH. How could we allow one commander using more than 5,000 shells around Žepa to unnecessarily destroy Muslim houses? For such an irrational act, he should, at the very least, have been stripped of his rank of officer. Such an irrational use of war material reserves resulted in us no longer being able to assist RS and the RSK as we have so far.” This is probative to the allegation at paras.32 and 56 of the Indictment that Perišić was aware of the propensity of certain members of the VRS to engage in criminal and persecutory conduct.	VJ Military Archives, Belgrade	The OTP comments regarding relevance and probative value are inaccurate and misleading, and are not supported by the document. The Defence does not accept the alleged relevance which the Prosecution claims this document has in relation to the charges.
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8909.02	Meeting of the Supreme Command Staff, Army Commanders, Commanders of Air Force and AAD, Navy and Special Corps Units in Dobanovacki zabran, discussing current military - political problems and problems of staffing, on 27th May 1993.	25-May-1993	ET 0630-5490-0630-5490	0630-5490-0630-5490	65 ^{ter} #8909, #8909.01 and #8909.02 should be read together. 65 ^{ter} #8909.02 is a list of participants at the meeting of the FRY Supreme Command Staff on 25 May 1993, including Perišić. Together with 8909.01, this is probative to the allegation at paras.32 and 56 of the Indictment that Perišić was aware of the propensity of certain members of the VRS to engage in criminal and persecutory conduct.	VJ Military Archives, Belgrade	The OTP comments regarding relevance and probative value are inaccurate and misleading, and are not supported by the document. The Defence does not accept the alleged relevance which the Prosecution claims this document has in relation to the charges.
00532, Partial	Transcript of Tape recording of the 50th Session of the BiH SDS Assembly, ENG p.316-317	15-Apr-1995	ET 0084-5781-0084-6113, p.316-317	0084-6058-0084-6059	Karadžić, describing the beginning of the war, stated to the Bosnian Serb Assembly in 1995: "Gentlemen, we got the officers we asked for. I asked for MLADIĆ. General NINKOVIĆ, then a colonel, and General PERIŠIĆ had visited me before that, and I had noticed MLADIĆ's blunt statements in the newspapers. He was already in Knin then. I took an interest in him, and together with Mr KRAJIŠNIK, I went to General KUKANJAC's office and listened to him issuing orders and commanding around Kupres and Knin. We spent countless nights in the office of General KUKANJAC at that time." The document illustrates that Perišić met with Karadžić prior to Mladić becoming VRS Commander, at a time when, as evidenced by the Kadijević Directive of 10 December 1991(P164), the JNA was protecting the interests of the Serb people. It corroborates Perišić's statement in his OTP interview (at P803, ET p.4-5) that Karadžić asked him to become VRS commander in April 1992, but he declined. Mladić was appointed VRS Commander in May 1992 (P188). 65 ^{ter} #532 illustrates the JNA's close working relationship with the RS leadership, as alleged at para.9 of the Prosecution Pre-Trial Brief.	RS National Assembly	Portions of this document are already in evidence as P312. Rather than continuing to introduce portions of this document in a piecemeal fashion thereby diluting and confusion the context of any particular statement, the defence suggests, in the event that Chamber is inclined to admit the transcript of this SDS session, it should be admitted in its entirety.

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1274	Momcilo PERIŠIĆ statement in Belgrade weekly VREME	2-Jan-1995	ET 0606-5235-0606-5235	0606-5235-0606-5235	Perišić statement in Vreme International, 1 January 1995 that: "Mladic and I are acquaintances and war comrades. Our relationship is utterly normal, it is a relationship of two professional officers who are fighting against the physical extermination of their people". This is probative to the allegations at para.14 of the Indictment regarding the close co-ordination between the VJ and the VRS, specifically Mladić.	Open source	Mr. Perišić refers to his position regarding "open source" documents in paragraph 7 of the response, <i>supra</i>. This page from Vreme contains a quote from Perišić, the reliability and context of which is impossible to assess based on this open source document. The Defence does not accept the alleged relevance which the Prosecution claims this document has in relation to the charges.
7523, partial	The stenographic records with the tasks of the Collegium of the Chief of the VJ General Staff, held on 29/12/95	29-Dec-1995	ET 0611-3550-0611-3563, pages 14-19	0611-3560-0611-3563	At the VJ Collegium of 29 December 1995, Perišić stated that Mladić could not be appointed as a liaison with IFOR "since they won't accept Mladić, because he has been suspected of war crimes...". This is probative to the allegation at paras.33, 45 and 62 of the Indictment that Perišić had reason to know that Mladić participated in the crimes in Sarajevo and Srebrenica alleged in the Indictment.	Serbian Minister of Foreign Affairs	The defence submits that taking sections of transcript out of context does not establish the relevance of those matters sought to be proved. In the event the Chamber is inclined to admit this document, it should be admitted in its entirety.

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9013	Report from Bosanski Novi Public Security Station	15-08-1992	0096-8599-0096-8605	B003-2565-B003-2573	The Prosecution alleges that General Perišić was aware of the substantial likelihood that a Bosnian Serb take over of the Srebrenica safe area would result in the persecution, killings and forcible transfer of Bosnian Muslims on the basis of, <i>inter alia</i> , the pattern of ethnic cleansing undertaken by the Bosnian Serbs, frequently assisted by the JNA (Prosecution PTB, para.92). This document evidences one such instance, namely the ethnic cleansing of the Japra Valley and Bosanski Novi in May 1992. This report from Bosanski Novi Public Security Station states, at page 1, that: "Thus on 24 May 1992, the entire population from the villages of Japra Valley was accommodated in the central part of Blagaj Japre...All these attacks were carried out by armed and uniformed persons who self-organised or members of Territorial Defence units or combat units of the JNA...".	Banja Luka CSB	Not only is this document far outside the indictment period, it is not even related to any indictment locations. There is no connection between this 1992 MUP document and General Perišić. The Defence objects. The document is irrelevant and the Prosecution's submissions to the contrary should be rejected.
09014	The War Record of the 6th Infantry Brigade, signed by Colonel Branko BASARA	01-12-1992	0110-2240-0110-2242	0047-8672-0047-8677	The Prosecution alleges that General Perišić was aware of the substantial likelihood that a Bosnian Serb take over of the Srebrenica safe area would result in the persecution, killings and forcible transfer of Bosnian Muslims on the basis of, <i>inter alia</i> , the pattern of ethnic cleansing undertaken by the Bosnian Serbs, frequently assisted by the JNA (Prosecution PTB, para.92). One such instance was the ethnic cleansing of Una/Bosanska Krupa in May 1992. The assembly deputy from Bosanska Krupa, Miroslav Vjestica, reported at 16th Session of the Bosnian Serb Assembly (P339, ENG p.25) that: "On the right bank of the Una river there are no more Muslims in the Serbian Municipality of Bosanska Krupa." This War Record of Colonel Branko BASARA of the JNA 6th Brigade evidences the JNA involvement in this operation, explaining in relation to the fighting at Bosanska Krupa that: "About 150 fighters were engaged in the operation with the support of armoured vehicles, mortars, 128 mm guns and rockets. The operation was carried out swiftly and effectively, The enemy forces were scattered and heavy losses were inflicted on them, and by nightfall on the same day we emerged on the Una. Since we belonged to the JNA we were not allowed to reveal our results."	Draganovic Adil, Sanski Most Investigating Judge	This is a handwritten, undated document purportedly relating to events in 1991. Not only is the content of the document far outside the indictment period, it is not even related to any indictment locations. There is no connection between this document and General Perišić. The Defence objects. The document is irrelevant and the Prosecution's submissions to the contrary should be rejected.

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9010.01	Intercepted conversation of 24 October 1991 between Karadžić, and Milošević	24-Oct-91	0302-7341-0302-7348	0211-6674-0211-6679 (Audiota pe24109 1A062-2231s)	Intercepted conversation of 24 October 1991 between Karadžić, and Milošević, in which the former stated there was “no way” Bosnian Serbs would live in a country with the Muslims and that they had prepared a “de facto situation...which they will break their teeth on” (Eng p.1). Karadzic further stated that “We are moving on. We will establish full authority over Serbian territories in BiH...He (referring to Alija Izetbegović) will not have control over 65% of his territory. That is our goal.” (Eng p.7). The Prosecution alleges that Perišić was aware of the discriminatory intent of the perpetrators of the crimes at Srebrenica (Indictment, para.60). Karadžić’s clear statement to Milošević in October 1991 illustrates that, from the very beginning of the conflict, President Milošević was aware of the discriminatory intent of the Bosnian Serb leadership. This direct knowledge of Perišić’s political superior is circumstantial evidence of Perišić’s knowledge of the discriminatory intent of the Bosnian Serb leadership.	AID Sarajevo	The Defence objects. This document relates to a conversation in 1991. The document is irrelevant and the Prosecution’s submissions to the contrary should be rejected.
6670, partial	Stenographic notes from Council for Co-ordination of positions of State Policy	18-Aug-92	ET 0294-3703-0294-3801, p.1-2 and 18-19	0294-3703-0294-3704; 0294-3720-0294-3722	At the meeting of the FRY Presidency Council for Co-ordination of State Policy held on 18 August 1992 at which, inter alios, Slobodan Milošević and then VJ CGS Zivota Panić were present, FRY President Milan PANIĆ stated - (at ENG p.18-19) "This afternoon I received the following information - ethnic cleansing has begun: fifteen thousand Muslims from Sanski Most were given eight hours to leave their homes and make 20 kilometres to Jajce in order to reach the Muslims. This information was received from the United Nations... It’s important that we discuss here whether it’s possible to stop the war and to take such an attitude that we don’t provide assistance in ethnic cleansing and financing the war of the Serbs in Bosnia." The Prosecution alleges that Perišić was aware of the discriminatory intent of the perpetrators of the crimes at Srebrenica (Indictment, para.60), and the likelihood that those crimes would occur (Indictment, para.56). Panić’s statement corroborates and gives background to the evidence of Pyers Tucker at TX9104:1-9104:8 that Jajce had become a collecting area for refugees who had been ejected from Bosnian Serb territory, prior to its being attacked by the Bosnian Serbs. The discussion illustrates that, based on information they received from the UN, the FRY leadership was aware that ethnic cleansing was taking place in BiH. This widespread knowledge in the FRY leadership is circumstantial evidence of Perišić’s knowledge that ethnic cleansing had taken place in BiH, which is probative to the allegations at paras.56 and 60 of the Indictment.	Ministry of Foreign Affairs Serbia and Montenegro	The Defence does not accept the alleged relevance which the Prosecution claims this document has in relation to the charges. The defence further submits that taking sections of transcript out of context does not establish the relevance of those matters. In the event the Chamber is inclined to admit this document, it should be admitted in its entirety.

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8089	UNPROFOR Code Cable: Summary of meeting with President MILOSEVIC, P815 IT-98- 29-1	30-05- 1992	R003-3874- R003-3876	R018- 3898- R018- 3899	Summary of UNPROFOR meeting with President Milosevic held on 30 May 1992, in which Milošević characterised the bombardment of Sarajevo as "a bloody, criminal" bombardment, for which there was no justification. This clear acknowledgement by Milošević of the criminality of the bombardment of Sarajevo illustrates that the FRY leadership were, from an early stage, aware of the criminality of the Bosnian Serb attack on Sarajevo, an attack which continued during Perišić's tenure as VJ CGS. Milošević's characterization is consistent with Perišić's acknowledgement in his OTP interview that the shelling of Sarajevo "was continuing the crime" (P806, Eng p.32) . These statements reflect an awareness in the FRY military and political leadership of the criminal nature of the attack on Sarajevo, which is probative to the knowledge of the Accused that crimes were committed in Sarajevo during his tenure (Indictment paras.33 and 45).	UN DPKO Archive	This document is outside the indictment period. The Defence does not accept the alleged relevance which the Prosecution claims this document has in relation to the charges.
2115	Fifth periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz MAZOWIEC KI, Special Rapporteur of the Commission on Human Rights	17-Nov- 1993	0117-6442- 0117-6477	0670- 4832- 0670- 4878	This Fifth Mazowiecki report was in the binder of materials reviewed by Witness Sacirbey and discussed at TX:7202-7214 but was overlooked in error when the Mazowiecki reports were being tendered. Chapter I of this report deals with the situation in Bosnia and Herzegovina, and the Special Rapporteur's concern about the continuation of 'ethnic cleansing' in all its forms, noting an escalation in the shelling of Sarajevo in late 1993. It also mentions that in Srebrenica and Tuzla in particular supplies of food, water and fuel have been the primary objective of attack. This is probative to the notice of Perišić of the criminal actions of his subordinates in relation to Sarajevo and Srebrenica, as alleged at paras.45 and 62 of the Indictment.	UN	The Defence does not object, assuming that this document is being offered only for notice as is the case with the admitted Mazowiecki Reports, T.7203.

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2181	United Nations Security Council Resolution no. 913	22-Apr-1994	0299-1343-0299-1345	0299-1343-0299-1345-BCSDT	UN Security Resolution 913 dated 22 April 1994 “condemning in the strongest possible terms the Bosnian Serb forces for their continued offensive against the safe area of Gorazde, which has resulted in the death of numerous civilians and tremendous human suffering.” Prosecution evidence has shown that the FRY Diplomatic Mission in New York kept the FRY military and political leadership informed of debates taking place at the UN (P852-P855). 65ter #2181 is circumstantial evidence of Perišić’s knowledge of the continued offensive against the Gorazde safe haven in 1994 resulting in civilian casualties, and therefore the foreseeability that an attack on Srebrenica, another safe haven, would result in civilian casualties (Prosecution Pre-Trial Brief para.92, Indictment para.56).	Open source	The Defence objects to the purported relevance the Prosecution maintains this document has.
8217, partial	Collegium of the Chief of the general Staff VJ	27-Nov-1995	ET 0618-7653-0618-7656	0618-7653-0618-7656	VJ Collegium in which there is a discussion of the results of the investigations carried out pursuant to Perišić’s order on establishing the responsibility and resolving the service status of VJ soldiers who held duties in the 40 th PC (P2413). This is probative to the allegation at para.37 of the Indictment regarding Perišić’s ability to investigate the actions of his subordinates serving in the 30 th and 40 th Personnel Centres, and evidences his exercise of this ability, as alleged at para.38 of the Indictment.	Serbian Minister of Foreign Affairs	The Defence questions the authenticity of these documents. Official government records of meetings, and most certainly meetings of the Collegium would be memorialised in Cyrillic Script not in Latin Script. The Collegium minutes which are the subject of this motion are in a non-original format: to wit, Latin Script. They should not be admitted. See further, Defence Submission regarding Outstanding Documents Labelled “Marked for Identification”, 19 November 2009, paras 16-25.

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8299, partial	Stenographic record of the Collegium of the Chief of the VJ General Staff, dated 12/01/1996	12-Jan- 1996	ET 0618- 8713-0618- 8714	0618- 8713- 0618- 8714	In this extract from the VJ Collegium of 12 January 1996, Matovic tells Perišić about the "30th Personnel Centre military and discipline court's decision" to terminate the employment of 26 professionals who are also VJ members. After clarifying that the relevant individuals are below the rank of general and therefore under his jurisdiction, Perišić states that he will sign off on the terminations immediately. Matović explains that the problem is that while the service of some had already been terminated for various reasons, 10 were still working in the VJ. Matović says that "we propose, considering that they could beat us in court, that they send their appeals [from the 30 th PC court] to the GS higher disciplinary court to overturn the decision terminating their services, and keeping them in the VJ." This document is corroborative of Witness Starčević's evidence that a VRS disciplinary court judgment cannot legally serve as grounds for termination of service of a VJ member (TX6833:25-TX6834:4), that the discipline, punishment and service termination of a VJ soldier is under the ultimate jurisdiction of the authorized VJ official (TX6839:21-TX6840:6), and that proceedings against persons temporarily deployed at the 30 th PC would be under the jurisdiction of a VJ court (TX6847:8-TX6847:15). It is probative to the allegations at para.34-37 of the Indictment regarding the superior/subordinate relationship between Perišić and his VJ subordinates serving in the VRS and SVK.	Serbian Minister of Foreign Affairs	The Defence objects to this based on authenticity. Official government records of meetings, and most certainly meetings of the Collegium would be memorialised in Cyrillic Script not in Latin Script. The Collegium minutes which are the subject of this motion are in a non-original format: to wit, Latin Script. They should not be admitted. See further, Defence Submission regarding Outstanding Documents Labelled "Marked for Identification", 19 November 2009, paras 16-25.
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