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CASE/AFFAIRE NO. IT-95-5/18-T (R. KARADŽIĆ) **DATE** 09 February 2011

FROM/DE RAM DORAISWAMY, COURT OFFICER *Alfred*

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0 Trial Chamber I/ Chambre de 1ère instance I	0 Chief of Investigations/ Chef des enquêtes	<input checked="" type="checkbox"/> Legal Advisers/ Conseillers juridiques MR. G. PETRONIJEVIĆ MR. P. ROBINSON MR. M. SLADOJEVIĆ
0 Trial Chamber II/ Chambre de 1ère instance II		<input checked="" type="checkbox"/> Standby Counsel MR. R. HARVEY
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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Date: 9 February 2011

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/ Confidential Annexes

THIRTY-NINTH MOTION FOR FINDING OF DISCLOSURE
VIOLATION AND FOR REMEDIAL MEASURES

The Office of the Prosecutor:

Mr. Alan Tieger

Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves for a finding that the prosecution has once again violated Rule 68 by failing to disclose, as soon as practicable, an exculpatory statement concerning crimes committed by the Bosnian Muslims in Sarajevo, which has been in its possession since 2003. By delaying its disclosure, the prosecution prevented Dr. Karadzic from using the information contained in the statement in his cross examination of prosecution witnesses during the Sarajevo component of the case .

2. The document in question was disclosed by the prosecution on 31 January 2011.¹

3. The document is a statement taken by the Office of the Prosecutor in 2003 from a member of the Forensics Department of the Bosnian Ministry of Interior. The statement details a huge number of crimes committed by members of the Bosnian Muslim Army against Serb civilians in Sarajevo. It includes information that:

On 17 October 1993 or sometime around that date, the deputy commander of the BH Army Supreme Command Staff, Jovan DIVJAK, told me that the latest Sarajevo shelling incident had been caused by the 10th Mountain Brigade, and in response the VRS /Army of Republika Srpska/ shelled Sarajevo. The same day, the 1st Corps Commander wrote an article in *Oslobojenje*, in which he stated that he believed that the enemy was preparing an attack. The 10th Mountain Brigade was under the command of Mu{an TOPALOVIC] aka Caco.²

4. The exculpatory nature of this document is that it tends to show that Serb shelling was in response to Muslim attacks and that the ABiH falsely accused the Serbs of the same types of crimes for which Dr. Karadzic is charged in the indictment. It also shows that military operations were conducted throughout Sarajevo by ABiH elements in which Serbs were rounded up and killed, or killed in their own homes. The site of each of these military operations constituted a legitimate military target for the Bosnian Serbs and tends to rebut the allegation that the shelling and sniping in civilian areas of Sarajevo was indiscriminate.

5. This document has been in the possession of the prosecution since 2003. The failure to disclose this statement prior to the testimony of numerous witnesses to the Sarajevo events prejudiced Dr. Karadzic by preventing him from using it during his cross

¹ The disclosure letter is attached as Confidential Annex "A".

² A copy of this statement is attached as confidential Annex "B". The annex is filed on a confidential basis because it appears that the witness requested confidentiality. The quoted material is found at para. 66.

examination of witnesses who claimed that the shelling and sniping incidents were caused by the Serbs and that the shelling and sniping was indiscriminate.

6. Dr. Karadzic has also been prejudiced by the late disclosure because he was unable to assess the document in preparing for trial as part of the development of his overall defence strategy.

7. The Trial Chamber has already held that the prosecution's policy of delaying disclosure of exculpatory material violates Rule 68.³ This latest example indicates that the violations are continuing.

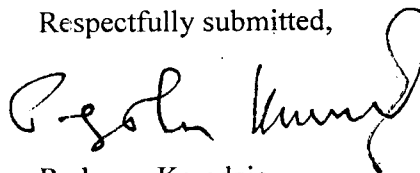
8. Therefore, the Trial Chamber is requested to first make a finding that Rule 68 has been violated by the failure to disclose the transcript of the Mandic intercept as soon as practicable.

9. As a remedial measure, Dr. Karadzic renews his request for suspension of the trial for a three month period prior to the municipalities' component of the case so that the prosecution can complete its compliance with Rule 68 before Dr. Karadzic is expected to cross examine additional prosecution witnesses without the benefit of the disclosure to which he is entitled. The sheer magnitude of the disclosure violations which have continued since the winter recess requires a re-evaluation of the Trial Chamber's wishful thinking that the trial can go merrily on.

10. Dr. Karadzic wishes to point out that the document from this disclosure batch represents a tiny fraction of the Rule 68 violations represented by that disclosure. Dr. Karadzic is only able to include in these disclosure violation motion documents which are (1) in English and (2) relate to witnesses who have already been called. The vast majority of the disclosure is documents in Serbian and which relate to the municipalities component of the case.

Word count: 834

Respectfully submitted,



Radovan Karadzic

³ *Decision on Prosecution's Motion for Reconsideration of Trial Chamber's 11 November 2010 Decision* (10 December 2010) at para. 11; *Decision on Accused's Seventeenth bis and Twenty-Eighth Disclosure Violation Motions* (16 December 2010) at para. 23