

IT-09-92-PT
D36748-D36738
15 February 2011

36748
SMS

**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-09-92-PT
Date: 15 February 2012
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr. John Hocking

Order of: 15 February 2012

PROSECUTOR

v.

RATKO MLADIĆ

***PUBLIC
WITH CONFIDENTIAL ANNEX***

SCHEDULING ORDER

Office of the Prosecutor
Mr. Dermot Groome
Mr. Peter McCloskey

Counsel for Ratko Mladić
Mr. Branko Lukić

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. At the 8 December 2011 Status Conference, the Chamber set the deadlines for the filing of the Prosecution's Pre-Trial Brief and witness and exhibit lists pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence ("Rule 65 *ter* filings" and "Rules", respectively) to 10 February 2012 and the filing of the Defence's Pre-Trial Brief to 2 March 2012.¹ The Chamber also announced that it expected to schedule the Pre-Trial Conference for 26 March 2012 and the opening statements of the parties and statement of Mr. Mladić ("Accused"), if any, to commence on 27 March 2012.² At the 16 January 2012 Rule 65 *ter* meeting, the parties were given the opportunity to make submissions on scheduling matters.³ At the 19 January 2012 Status Conference, the Chamber informed the parties that it would hold an additional status conference on 7 March 2012 and that the Chamber would issue a new scheduling order containing the additional status conference and other upcoming scheduling dates, taking into consideration the submissions made at the 16 January 2012 Rule 65 *ter* meeting.⁴ At that same Status Conference, the parties were given the opportunity to make further submissions for the Chamber's consideration in relation to scheduling issues.⁵

2. On 8 February 2012, the Prosecution filed an urgent motion requesting an extension of time for the filing of its Pre-Trial Brief to 24 February 2012 ("Request for Time Extension").⁶ On 9 February, through an informal communication, the Defence informed the Chamber that it had no objections to the Request for Time Extension and, therefore, would not file a response. On that same day, in an informal communication, the Chamber exceptionally granted the Request for Time Extension, in consideration of the specific reasons provided by the Prosecution.⁷ The Chamber hereby puts that decision, as well as the Defence's response, on the record.

3. The Defence submits that the Chamber should take into consideration: 1) the health of the Accused;⁸ 2) the current incomplete staffing level of the Defence team;⁹ and 3) the current status of Defence preparations for trial.¹⁰ In relation to the first consideration, the health of the Accused, the Defence submits that the Accused is in poor health and requests that the Chamber schedule sitting weeks of less than five days, only hold morning court sessions, and shorten the length of each court

¹ T. 127.

² T. 129.

³ Transcript of 16 January 2012 Rule 65 *ter* meeting (Closed Session), T. 21.

⁴ T. 157.

⁵ T. 157-158.

⁶ Prosecution Urgent Motion for Extension of Time to File its Pre-Trial Brief, 8 February 2012 (Public with Confidential Annex A), paras 3-4.

⁷ See Request for Time Extension, para. 2. On 8 February 2012, the Chamber, through an informal communication, set the deadline for the Defence Response to 9 February 2012.

⁸ Transcript of 16 January 2012 Rule 65 *ter* meeting (Closed Session), T. 22.

⁹ T. 160.

¹⁰ T. 158-159; Transcript of 16 January 2012 Rule 65 *ter* meeting (Closed Session), T. 21.

session.¹¹ In relation to the second consideration, the current staffing level of the Defence team, the Defence submits that it is not yet fully staffed and, specifically, that a co-counsel has not yet been assigned.¹² Related to the current status of Defence preparations for trial, the Defence submits that the Chamber should take into consideration the time required for the review and organisation of the large amount of documents and witness statements that have been disclosed to it, as well as the fact that disclosure is still ongoing.¹³ Based on this third consideration, the Defence requests that the trial begin no earlier than October of 2012.¹⁴

4. The Prosecution defers to the Chamber as to the start of the trial.¹⁵ Neither party made submissions on the anticipated date of the Pre-Trial Conference.

II. APPLICABLE LAW

5. Rule 65 *bis* (A) of the Rules provides that the Trial Chamber shall convene a status conference within one hundred and twenty days of the initial appearance of the accused and thereafter within one hundred and twenty days of the last status conference.

6. Rule 65 *ter* (E) of the Rules provides that the Prosecution's Pre-Trial Brief must be filed not later than six weeks before the Pre-Trial Conference required by Rule 73 *bis* of the Rules.

7. Rule 65 *ter* (F) of the Rules provides that the Defence's Pre-Trial Brief must be filed not later than three weeks before the Pre-Trial Conference required by Rule 73 *bis* of the Rules.

8. Rule 73 *bis* (A) of the Rules provides that, prior to the commencement of the trial, the Trial Chamber shall hold a Pre-Trial Conference.

9. Rule 84 of the Rules provides that, before presentation of evidence by the Prosecutor, each party may make an opening statement. However, the Defence may elect to make its statement after the conclusion of the Prosecutor's presentation of evidence and before the Defence's presentation of evidence.

10. Rule 84 *bis* of the Rules provides that, after the opening statements (or statement of the Prosecutor, if the Defence elects to make its statement before the presentation of its evidence), the accused may make a statement under the control of the Trial Chamber, if he so wishes and the Trial

¹¹ T. 157; Transcript of 16 January 2012 Rule 65 *ter* meeting (Closed Session), T. 22.

¹² T. 160.

¹³ T. 158-159; Transcript of 16 January 2012 Rule 65 *ter* meeting (Closed Session), T. 21.

¹⁴ T. 158; Transcript of 16 January 2012 Rule 65 *ter* meeting (Closed Session), T. 21.

¹⁵ T. 162.

Chamber so decides. The accused shall not be compelled to make a solemn declaration and shall not be examined about the content of the statement.

III. DISCUSSION

11. In relation to the Accused's health, the Chamber considers it appropriate to provide some detail of the procedural history on this topic, some of which will be set out in the confidential annex to this order. On 10 November 2011, the Accused did not attend the scheduled Status Conference. In relation to this, the Registry submitted an Absence from Court Due to Illness Form, signed and completed by the Accused, and a statement of a nurse of the United Nations Detention Unit ("UNDU").¹⁶ On that same day, the Accused was examined by a UNDU medical officer and the Registry filed the medical officer's report.¹⁷

12. On 16 November 2011, the Chamber noted that despite numerous intimations in court and in various filings by both parties it had not been seised of a request from either party for a medical examination, and as such, ordered, *proprio motu*, a complete expert medical examination of the Accused and that the corresponding report ("Expert Medical Report") be filed no later than 6 December 2011.¹⁸ In the interim, the Chamber received three medical reports from the UNDU Reporting Medical Officer ("RMO"), each indicating that the Accused was well enough to attend court proceedings.¹⁹ On 2 December 2011, the expert medical examination was conducted.²⁰ The Expert Medical Report detailed the current state of the Accused's health as well as his medical history and past illnesses.²¹

13. The Chamber has received no subsequent information indicating any change in the status of the Accused's health condition from that contained in these medical reports. The Chamber is not convinced that the Accused's health condition requires modification of the daily and weekly sitting schedule, namely sitting less than five days per week and for shorter court sessions. The Chamber remains alert to the Accused's health condition and may consider ordering further medical reports, should it consider there is a need to do so. Although no medical reason has been established, the Chamber considers that it is appropriate to grant the Defence's request to schedule morning court sessions, to the extent the Registry is able to do so. The Chamber hereby informs the Registry of this preference and urges it to do its utmost to meet the request.

¹⁶ T. 97; UNDU Absence from Court Due to Illness Form, 10 November 2011.

¹⁷ T. 97; UNDU Medical Report, 10 November 2011 (Confidential).

¹⁸ Order for a Medical Examination Pursuant to Rule 74 *bis*, 16 November 2011 ("Expert Medical Examination Order"), paras 6-7.

¹⁹ T. 139.

²⁰ See "Medical Expert Report" Registrar's Submission of Medical Report, 5 December 2011 (Confidential) ("Expert Medical Report Submission"), pg. 1.

²¹ Expert Medical Report Submission.

14. As to the current composition of the Defence team, the Chamber has been regularly updated by the Registry, and also directly by the Office of Legal Aid and Detention Matters (“OLAD”), on this issue since the Accused raised it at the 6 October Status Conference.²² Additionally, the Chamber finds that the history of assigning co-counsel in the present case should be taken into account. The Chamber will address this matter in the confidential annex to this order. Taking into consideration the communications from OLAD and the Defence, the Chamber is of the view that the Defence could have pursued other options that may have led to a faster resolution of this issue.

15. Finally, in relation to this consideration, at the 16 January Rule 65 *ter* meeting, the Defence indicated that it may request that legal assistants cross-examine witnesses in addition to counsel.²³ Given the current circumstances, the Chamber would look favourably on such a request, provided that the legal assistant in question is qualified, that either counsel or co-counsel is present, and that it is clearly announced in advance. The Chamber has taken into account the above and the procedural history contained in the confidential annex to this order, when determining the scheduling of the initial phase of this case.

16. In relation to the Defence’s current state of trial preparations, the Chamber acknowledges that the pre-trial phase has proceeded at a steady pace and that the Prosecution, pursuant to its obligations under Rules 66 (A)(ii) and 68 (i) of the Rules, has disclosed large amounts of material to the Defence since its first disclosure on 18 August 2011.²⁴ The Chamber also notes that, as of 6 January 2012, the majority of Rule 68 (i) materials have been disclosed.²⁵ Further, the Chamber recalls that it set the deadline for the completion of the review of material in the Prosecution’s possession and disclosure in relation to Rule 68 (i) to 30 April 2012²⁶ and to 10 February 2012 in relation to Rule 66 (A)(ii).²⁷ In a filing related to concerns about the Prosecution’s proposed Electronic Disclosure System process, the Defence has separately requested that the start of the trial be delayed.²⁸ Submissions related to this matter will be addressed by the Chamber in a separate decision.

17. Taking into consideration these Defence submissions, the Chamber is convinced that certain modifications to the initial phases of the trial from that which it previously announced are necessary. The Defence has proposed that the trial begin in October 2012. The Chamber is of the

²² T. 92.

²³ Transcript of 16 January 2012 Rule 65 *ter* meeting (Closed Session), T. 28-29.

²⁴ See Second Prosecution Report on Pre-Trial Preparations, 1 November 2011 (Confidential with Confidential Annexes A through C), para. 8, Annex A, Table 2.

²⁵ Fourth Prosecution Report on Pre-Trial Preparations, 6 January 2012 (Confidential with Confidential Annexes A through C), para. 6.

²⁶ T. 99; see also Prosecution Motion for Variation of Deadline for Rule 68 (i) Disclosure, 1 November 2011.

²⁷ T. 78.

view that while the Defence will undoubtedly be able to review more disclosed materials by October 2012, as opposed to any earlier date, the exact number of pages reviewed by the Defence, in percentage to the total disclosed or otherwise, is not exclusively what determines the start of trial. In this respect, the Chamber also needs to consider the ability of the Defence to prepare for specific witnesses and, in the meantime, continue its preparations on other matters. The Chamber considers that, in relation to the amount of disclosed material, the Defence is sufficiently prepared to start the trial before October 2012 and for the testimony of upcoming witnesses.

18. Having considered all of the above, the Chamber hereby decides that the start of trial should be on 14 May 2012, rather than on 27 March 2012 as the Chamber previously indicated. This will allow the parties time to complete any outstanding pre-trial preparations and provide the Defence with additional preparation time for scheduled Prosecution witnesses and associated exhibits in the early stages of the trial. In this respect, the Chamber recalls the Prosecution's statement at the 19 January 2012 Status Conference to give the Defence "as much notice as possible as to the order of witnesses and exhibits that will be used" to facilitate its preparations, and expects the Prosecution to provide the Defence with this information at the earliest date possible.²⁹ Further, the Chamber limits the number of sitting weeks for the early stages of the trial, *i.e.* for the period of the opening statements commencing on 14 May 2012 through 20 August 2012. The Chamber will not sit for the period of the week of 14 May 2012 following the conclusion of any statements under Rules 84 and 84 *bis*. In addition, the Chamber will not sit for three weeks - those of 21 May, 13 July, and 13 August 2012. These additional non-sitting weeks will also allow the parties more preparation time. In this respect, the Chamber also notes that the three week summer recess, when no court proceedings take place at the Tribunal, will occur during this same period of the trial's early stages.

19. The Chamber will be in a position to reassess the schedule if necessary, with the parties' input, prior to the summer recess and make any further modifications to the trial schedule at that time.

20. Distinct from any of the above considerations and pursuant to Rule 65 *ter* (E), the expected date of the Pre-Trial Conference must be adjusted so as to comply with the six week interval between it and the new deadline for the filing of the Prosecution's Pre-Trial Brief. Additionally, although no Defence request has been made, the Chamber considers that it is appropriate to also adjust the deadline for the filing of the Defence Pre-Trial Brief. This will allow the Defence the same amount of time, *i.e.* three weeks, as it would have had from the previously announced

²⁸ See Amended Defence Submission Pursuant to Instruction From Chambers, And Motion Relative to Problems with Disclosure that Prevent Trial Preparations, 10 February 2012 (Public with Confidential Annexes A and B).

²⁹ T. 162.

deadlines. Further, the Chamber considers that these changes negate the need for the previously announced 7 March 2012 Status Conference. However, the Chamber considers that it would be beneficial to the parties and the Chamber to schedule a Rule 65 *ter* meeting and status conference later in the month of March. Additional schedule and deadline adjustments in relation to these new dates are contained in the Disposition section of this order.

IV. DISPOSITION

21. For the foregoing reasons and, pursuant to Rules 54, 65 *bis* (A), 65 *ter* (E), 65 *ter* (F), 73 *bis*, 84, and 84 *bis* of the Rules, the Chamber

CANCELS the status conference scheduled for 7 March 2012;

SCHEDULES a Rule 65 *ter* meeting for 26 March 2012 and a status conference for 29 March 2012;

ADJUSTS the deadline for the joint filing of all those facts upon which the parties have agreed to 16 March 2012 and **INSTRUCTS** the parties to include this as an annex to the regular progress report on negotiations on agreed facts;

ADJUSTS the deadline for the filing of the Defence's Pre-Trial Brief to 16 March 2012;

ORDERS as follows:

1. the Pre-trial Conference in this case shall be held on Tuesday, 17 April 2012, at a courtroom and exact time to be communicated by the Registry at a later stage;
2. the trial shall commence on Monday, 14 May 2012, with the opening statement of the Prosecution, pursuant to Rule 84 of the Rules;
3. the trial proceedings shall continue with the opening statements of the Defence, if any, pursuant to Rule 84 of the Rules, with 1 May 2012 as the deadline for the Defence to inform the Chamber and the Prosecution, if it elects to make an opening statement before the presentation of the Prosecution's evidence and, if so, how much time it would require for making such a statement;
4. the trial proceedings shall then continue with the statement of the Accused, if he so wishes and the Trial Chamber so decides, pursuant to Rule 84 *bis* of the Rules, with 1 May 2012 as

the deadline for the Defence to inform the Chamber and the Prosecution, if the Accused wishes to make a statement and, if so, how much time he would require for making such a statement; and

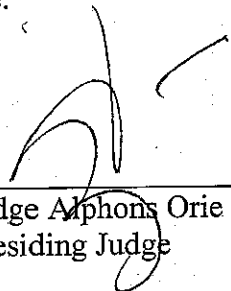
5. the presentation of the Prosecution evidence shall commence on 29 May 2012;

SCHEDULES trial proceedings for the period of 29 May to 13 July 2012, and **INFORMS** the parties that the Chamber will not sit in the weeks of 16 July 2012 and 13 August 2012;

GRANTS the Defence request for morning court sessions, and **URGES** the Registry to do its utmost to schedule morning court sessions; and

REMINDS the parties that, pursuant to the Chamber's Rule 92 *ter* Guidance,³⁰ Rule 92 *ter* motions should be filed as early as possible, but, in any case, no later than thirty days before the witness's expected testimony;

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



Judge Alphons Orie
Presiding Judge

Dated this fifteenth day of February 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

³⁰ T. 106-108.