

IT-98-29/1-T
D4351 - D4348
23 APRIL 2007

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AT

**UNITED
NATIONS**



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

Case No. IT-98-29/1-T

Date: 23 April 2007

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Frederik Harhoff

Registrar: Mr. Hans Holthuis

Decision of: 23 April 2007

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

**DECISION ON PROSECUTION'S THIRD MOTION FOR
LEAVE TO AMEND ITS RULE 65 *ter* EXHIBIT LIST**

The Office of the Prosecutor:

Mr. Alex Whiting
Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

TRIAL CHAMBER III (“Trial Chamber”) of the 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 (“Tribunal”);

BEING SEISED of the “Prosecution’s Third Motion for Leave to Amend its 65 *ter* Exhibit List, with Annex A” filed by the Prosecution on 11 April 2007 (“Motion”) in which the Prosecution seeks leave to amend and supplement its original exhibit list by adding ten exhibits;¹ the exhibits being excerpts of video footage filmed by British Broadcasting Corporation (“BBC”) reporter Martin Bell, W-127, depicting alleged shelling and sniping incidents in Sarajevo;

NOTING that the Defence does not object to the Motion;²

NOTING the arguments of the Prosecution as set forth in the Motion:

(i) The proposed additional exhibits were not within the possession of the Prosecution prior to its initial Rule 65*ter* filings, but identified as relevant and probative after witness Martin Bell was added on the Prosecution Witness List;³

(ii) The proposed additional exhibits are relevant and probative to the charges against the Accused since they provide evidence on shelling and sniping in Sarajevo. The video clips would form an “integral part” of the testimony of Martin Bell, elucidating his observations of shelling and sniping in the city of Sarajevo during the period of the indictment in the case, and its effects on the people of the city;⁴

(iii) The Accused has been given sufficient notice to properly prepare and meet the case against him, including sufficient time to examine exhibits the Prosecution intends to use during trial.⁵ The eight minutes of film that comprise the proposed exhibits were disclosed to the Defence on 21 February 2007, as soon as possible after it had been processed by the Evidence Unit. The testimony of Martin Bell is currently scheduled for 26 April 2007, providing the Defence with more than two months to consider the exhibits. The exhibits were widely broadcast by the BBC at the time they were created, and thereby are within the public domain;⁶

¹ The Prosecution in its Motion requests the admission of twelve exhibits, but in the Annex to the Motion, only lists eleven exhibits. On 18 April 2007, the Trial Chamber admitted as Exhibit P555 a part of the video clip, number V000-7160, that is, a video clip dated 7 April 1995.

² Trial Hearing, 19 April 2007, T. 4779.

³ Motion, para. 11.

⁴ Motion, paras 5, 7.

⁵ Motion, para. 8-10.

⁶ Motion, para. 10.

(iv) The Accused suffers no prejudice by the addition of the proposed exhibits at this stage of the trial proceedings and it is in the interests of justice for the Trial Chamber to have all relevant materials admitted in order to decide the case fairly for all parties;⁷

CONSIDERING that pursuant to Rule 73 *bis* (F) the Trial Chamber may grant a motion requesting an amendment of a Rule 65 *ter* witness list if it is satisfied that to do so is in the “interests of justice”;⁸

CONSIDERING that the “interests of justice” must be considered in the light of Articles 20(1) and 21(4)(b) and Rule 89(D) of the Statute of the Tribunal, which protect the right of the Accused to a fair and expeditious trial and to have adequate time and facilities for the preparation of his defence;

CONSIDERING that the Trial Chamber must therefore be satisfied that amendments to the exhibit list at this stage of the proceedings provide an accused sufficient notice and do not adversely affect his ability to prepare for trial;⁹

CONSIDERING that the Trial Chamber may also take into account additional criteria, including, whether the proposed evidence is *prima facie* relevant and of probative value to the charges against an accused¹⁰ and whether good cause for amending the exhibit list is shown;¹¹

CONSIDERING that the Trial Chamber is satisfied that the Prosecution has demonstrated the *prima facie* relevance and probative value of the proposed additional exhibits for the charges against the Accused;

CONSIDERING that due to the fact that the proposed exhibits were provided to the Defence on 21 February 2007, the limited length of the proposed video evidence and the fact that these images were widely broadcast by the BBC, the Defence will not be unduly burdened in their preparation of the case;

CONSIDERING THEREFORE that it is in the interests of justice to allow the requested variation of the Prosecution Rule 65 *ter* exhibit list;

⁷ Motion, para. 12.

⁸ See also *Prosecutor v. Dragomir Milošević*, IT-98-29/1-PT, Decision on Prosecution Motion to Amend its Rule 65 *ter* Witness List, 21 December 2006, p. 3

⁹ See *Prosecutor v. Dragomir Milošević*, IT-98-29/1-T, Decision on Prosecution’s Second Motion for Leave to Amend its Rule 65 *ter* Exhibit List, 14 February 2007, with further references.


¹⁰ *Ibid.*

¹¹ *Ibid.*

FOR THE FOREGOING REASONS and **PURSUANT TO** Rules 54, 73 *bis* (F), and 89 (C) of the Rules

HEREBY GRANTS the Motion.

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



Judge Patrick Robinson
Presiding

Dated this twenty-third day of April 2007

At The Hague

The Netherlands

[Seal of the Tribunal]