

IT-09-92-T
D 70970 - D 70967
16 September 2013

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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-T
Date: 16 September 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 16 September 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADD EXHIBITS
TO ITS RULE 65 TER EXHIBIT LIST**

Office of the Prosecutor
Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 2 July 2013, the Prosecution filed a motion (“Motion”) seeking leave to add two documents (“Documents”) to its Rule 65 *ter* exhibit list of 10 February 2012 (“Exhibit List”).¹ The Prosecution submits that the Documents, two reports from the Army of Bosnia-Herzegovina, are *prima facie* relevant and probative of the alleged presence of snipers and military personnel from the Army of the Bosnian-Serb Republic (VRS) both at the orthodox church in Sarajevo related to scheduled incident F3, as well as in other parts of Sarajevo related to the alleged campaign of terror.² The Prosecution states that it came into possession of the Documents on 17 May 2013 following an urgent request to the Ministry of Defence of Bosnia and Herzegovina.³ It also argues that the addition to the Exhibit List will not prejudice or impose an undue burden on the Defence as the Documents are brief, one consisting of six pages in the original BCS language and the other of eight pages, three of which are certifications.⁴

2. On 15 July 2013, the Defence filed a response objecting to the Motion in its entirety (“Response”).⁵ The Defence contends that the Prosecution has failed to demonstrate good cause for its Motion and has not exercised due diligence in identifying additional exhibits at the earliest possible opportunity.⁶ The Defence further argues that, although the addition of the two documents to the Exhibit List alone would not cause an undue burden to the Defence, the Prosecution’s continuing practice of requesting additions of new documents to its Exhibit List is prejudicial to the Defence.⁷ In the event the Documents are admitted into evidence from the bar table, the Defence requests the Chamber to take into account that they were not tendered through a witness, which it submits decreases their probative value.⁸

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing amendments to the Rule 65 *ter* exhibit list as set out in a previous decision.⁹

¹ Prosecution Ninth Motion to Add Documents to its 65 *ter* Exhibit List, 02 July 2013 (with Annex A), paras 1, 8.

² *Ibid.*, para. 4.

³ *Ibid.*, para. 5.

⁴ *Ibid.*, para. 7.

⁵ Defence Response to Prosecution Ninth Motion to Add Documents to its 65 *ter* Exhibit List, 15 July 2013, para. 2 and Section III. Conclusion.

⁶ *Ibid.*, paras 4-7, 11.

⁷ *Ibid.*, paras 12-15.

⁸ *Ibid.*, paras 8-10.

⁹ Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

III. DISCUSSION

4. The Prosecution seeks leave to add the Documents to its Exhibit List at the present stage of the proceedings because it only received them on 17 May 2013 in response to an urgent request to the Bosnian authorities. The Prosecution indicates that it was an urgent request, but does not specify when this urgent request was sent to the Bosnian authorities and why it was sent at that moment. The Chamber therefore considers that the Prosecution has not demonstrated good cause for the addition of the Documents to its Exhibit list at this late stage of the proceedings. The Chamber recalls, however, that the showing of good cause is only one factor to be considered in determining whether, on balance, such an addition is in the interests of justice.¹⁰ The Chamber further recalls that the Prosecution has the responsibility to continually investigate its case until final judgement.

5. The Chamber observes that the Defence does not dispute the Documents' *prima facie* relevance and probative value. The Chamber finds the Documents to be *prima facie* relevant and probative of the alleged presence of VRS snipers at the scene of scheduled incident F3, as well as other VRS positions relevant to the alleged campaign of terror in Sarajevo.

6. With regard to the question of prejudice, the Chamber notes that the Documents comprise two military reports that do not appear to be of a complex nature. Further, the Chamber notes that the Documents are relatively short with half the pages being identical security certifications. Moreover, the Defence will be able to further raise any prejudice it may suffer from the late addition to the Exhibit List when the Documents are tendered by the Prosecution.

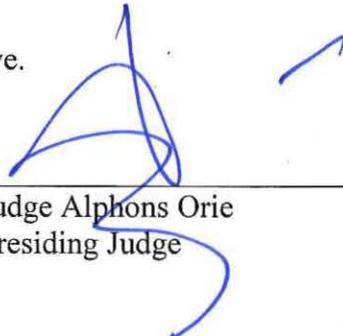
7. For the reasons listed above, the Chamber finds that the addition of the Documents to the Exhibit List at this stage of the proceedings will not unduly burden the Defence in the preparation of its case. In light of this, and taking into account the Prosecution's obligation to present available evidence to prove its case, the Chamber finds that it is in the interests of justice to grant the request for addition of the Documents to the Exhibit List.

¹⁰ Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, para. 6.

IV. DISPOSITION

8. For the foregoing reasons, pursuant to Articles 20 (1) and 21 (4) of the Tribunal's Statute and Rule 54 and Rule 65 *ter* (E) (iii) of the Tribunal's Rules of Procedure and Evidence, the Chamber **GRANTS** the Motion to add the two documents bearing ERNs 0685-5706-0685-5711 and 0685-5739-0685-5746 to the Exhibit List.

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



Judge Alphons Orié
Presiding Judge

Dated this sixteenth of September 2013
At The Hague
The Netherlands

[Seal of the Tribunal]