

**UNITED
NATIONS**

IT-95-5/18-I
D 11235- D 11232
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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-95-5/18-I

Date: 1 September 2004

Original: English

BEFORE A JUDGE OF THE TRIBUNAL

Before: Judge Alphons Orié

Registrar: Mr. Hans Holthuis

Order of: 1 September 2004

THE PROSECUTOR

v.

RATKO MLADIĆ

**ORDER TO THE REPUBLIKA SRPSKA FOR THE PRODUCTION
OF DOCUMENTS**

The Office of the Prosecutor:

Ms. Carla del Ponte

Federation of Bosnia and Herzegovina, Republika Srpska

I, Alphons Orié, a Judge 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”);

NOTING the Prosecutor’s “Application for an Order Pursuant to Rule 54bis Directing the Authorities of Republika Srpska to Comply with an Outstanding Request for Assistance” filed on 28 May 2004 (“Application”), whereby the Prosecutor requests that I issue an Order to the authorities of Republika Srpska for the production of minutes of meetings held by the Supreme Command established by the Presidency of Republika Srpska (“Minutes”);

NOTING that, in the letters addressed to the authorities of Republika Srpska, the Prosecutor first requested the Minutes of all meetings held from 30 November 1992 to 30 November 1995;¹ that she later requested the minutes of all meetings held from 30 November 1992 to July 1996, which corresponds to the time when Mr. Radovan Karadžić retired;²

NOTING that the Application requests that the Duty Judge orders the authorities of Republika Srpska to assist the Prosecutor in obtaining the documents listed in Annex A of the Application; that Annex A refers to all minutes of meetings of the Supreme Command that took place between 30 November 1992 and 30 November 1995, except for the minutes of a meeting that took place on 20 December 1992, already in the possession of the Prosecutor;

CONSIDERING that Rule 28 of the Rules of Procedure and Evidence (“Rules”) provides that “[a]ll applications in a case not otherwise assigned to a Chamber [...] shall be transmitted to the duty Judge”;

CONSIDERING that Rule 54bis(A) of the Rules provides that “A party requesting an order under Rule 54 that a State produce documents or information shall apply in writing to the relevant Judge or Trial Chamber and shall (i) identify as far as possible the documents or information to which the application relates; (ii) indicate how they are relevant to any matter in issue before the Judge or Trial Chamber and necessary for a fair determination of that matter; and (iii) explain the steps that have been taken by the applicant to secure the State’s assistance”;

RECALLING the Appeals Chamber’s “Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997”, in *Prosecutor v. Blaškić*, dated 29 October 1997, (hereinafter “the Appeals Chamber Judgement”), in which the Appeals Chamber defined the following four conditions which a request for the production of documents must meet:

¹ Application, Annex A.

The request must: (1) identify specific documents and not broad categories; (2) set out the relevance of such documents to the trial; (3) not be unduly onerous; and (4) give the requested State sufficient time for compliance;

NOTING that the Prosecutor indicates that she has sought, pursuant to Rule 39(iii) of the Rules, to assure the assistance of the Republika Srpska by sending two requests to the Liaison Officer in Banja Luka on 20 July and 31 July 2001,³ respectively, followed by three reminders⁴ and a letter addressed to the President of Republika Srpska, Dragan Čavić, on 10 March 2004;⁵

CONSIDERING that the type and nature of the documents requested is indicated with sufficient accuracy; that the requirement of specificity has been met;

NOTING that the Prosecutor argues that the information requested is material and relevant to the cases against Ratko Mladić, Radovan Karadžić and other related cases/investigations;⁶

NOTING that the Application is submitted in the context of the case against Ratko Mladić and that it is sufficient, for the Order to be granted, to establish the relevance of the documents for this specific case, although this does not exclude that they could be of relevance for other cases as well;

CONSIDERING that the Minutes could provide further and vital information about the conflict between the ABiH and the VRS during the period and territory covered by the indictment against Mr. Ratko Mladić and that the relevance of the documents is thus sufficiently established;

CONSIDERING that genuine attempts have been made by the Prosecutor to obtain the documents;

CONSIDERING that, according to the Prosecutor, the Republika Srpska has provided none of the aforesaid documents;

CONSIDERING that compliance with the Requests is not unduly onerous and that the authorities of Republika Srpska have already had the time required for identifying, locating and producing the documents in question;

² Application, Annex B.

³ Attached to the Application as Annex A.

⁴ These reminders are not provided to the Trial Chamber; according to the Application, reminders were sent on 17 September 2001, 30 January 2001 and 31 July 2002.

⁵ Annex C.

CONSIDERING that, under Rule 54*bis*(E), the Duty Judge may make an order without giving the State concerned notice or the opportunity to be heard, if, having regard to all circumstances, he or she has good reasons for so doing;

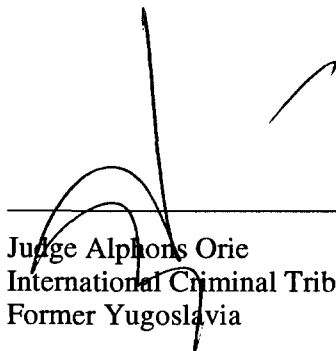
CONSIDERING that the Prosecutor made several attempts to obtain assistance from the authorities of Republika Srpska, which all remained unanswered; that she informed the authorities of Republika Srpska, in a letter dated 10 March 2004, of its intention to file a motion under Rule 54*bis* if this last attempt to obtain assistance remained unsuccessful;⁷

CONSIDERING, therefore, that in my view and with regard to all circumstances surrounding the Application, there are good and sufficient reasons to make an order under Rule 54 *bis* (E) in favour of the Prosecutor;

FOR THE FOREGOING REASONS,

PURSUANT to Article 29 of the Statute of the Tribunal and Rule 54 and 54 *bis* (E) of the Rules,

GRANT the Request and **ORDER** the Republika Srpska to provide, within a period of one month from the day this Order is served upon the Republika Srpska, the Office of the Prosecutor with the minutes of all meetings of the Supreme Command that took place in the period from 30th November 1992 up to and including 30th November 1995.



 Judge Alphons Orié
 International Criminal Tribunal for the
 Former Yugoslavia

Dated this first day of September 2004,
 At The Hague
 The Netherlands

[Seal of the Tribunal]

⁶ Application, para. 10.

⁷ See Annex C to the Application.