

**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-95-11-PT
Date: 15 December 2005
Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Janet Nosworthy
Judge Frank Höpfel

Registrar: Mr. Hans Holthuis

Decision of: 15 December 2005

PROSECUTOR

v.

MILAN MARTIĆ

**DECISION ON PROSECUTION'S MOTION TO AMEND ITS
RULE 65 *TER* EXHIBIT LIST**

The Office of the Prosecutor:

Ms. Hildegard Uertz-Retzlaff
Mr. Alex Whiting
Ms. Nisha Valahbji

Counsel for the Accused:

Mr. Predrag Milovančević

TRIAL CHAMBER I (“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 Motion for Leave to Amend Its Rule 65 *ter* Exhibit List” (“Motion”) filed on 17 August 2005, in which the Prosecution seeks leave to amend its exhibit list, filed on 7 May 2004 pursuant to Rule 65 *ter* (E)(iii) of the Rules of Procedure and Evidence (“Rules”), by adding seven hundred and nineteen (719) documents and video footage (“proposed additional material”) to its list, as described in confidential Annex A and confidential and *ex parte* Annex B;¹

NOTING that the Prosecution seeks leave to amend its exhibit list on the grounds that (1) it has obtained a number of proposed additional material after visits to areas of the former Yugoslavia in June and October 2004 and in January-February and June 2005, (2) it has filed, in February and July 2005, a number of motions including Rule 92 *bis* and Rule 94 *bis* motions and a motion to amend its witness list and thus the Prosecution seeks leave to add all the material associated with these items and witnesses;

NOTING that the Prosecution submits that it has already disclosed the majority of the proposed additional material to the Defence and that the remaining material is being disclosed with the Electronic Disclosure Suite tool;

NOTING that the Defence has not filed a response to the Motion;

NOTING the “Prosecution Notification Regarding Certain Witnesses on its Rule 65 *ter* List”, filed 24 November 2005, withdrawing fourteen witnesses, including three witnesses who were to provide evidence related to proposed additional material listed in confidential Annex A, because the Prosecution no longer intends to pursue the charges related to Prnjavor, Šipovo and Bosanska Gradiška;

¹ The proposed exhibits are divided into a number of categories, namely: exhibits associated with two of its expert witnesses and a witness with special expertise, documents which accompany and form part of written statements sought to be admitted under Rule 92 *bis* for which a motion was filed on 28 February 2005, documents obtained by OTP investigators from archives in certain areas of the former Yugoslavia, in missions conducted in June and October 2004 and January, February and June 2005, documents associated with the witness statements of certain new witnesses, video footage from television networks in the region of the former Yugoslavia concerning the accused Milan Martić (“Accused”), and the transcript of a video for which consent in accordance with Rule 70 was obtained from the relevant government only in May 2005.

CONSIDERING that pursuant to Articles 20(1) and 21(4) (b) of the Statute of the International Tribunal (“Statute”) an accused is entitled to a fair and expeditious trial and to have adequate time and facilities for the preparation of his defence;

CONSIDERING that the majority of the proposed material was disclosed to the Defence before 17 August 2005 and that the remainder of the proposed material was being made available to the Defence in electronic form since that date and that the Defence has known of the intention of the Prosecution to use the proposed additional material during trial since August 2005, wherefore granting this Motion will not infringe upon the right of the Accused to have adequate time to prepare his defence;

CONSIDERING that insofar the evidence that was to be provided by Witnesses MM-055, MM-057 and MM-060 specifically relate to the charges concerning Prnjavor, Šipovo and Bosanska Gradiška, the inclusion of that proposed additional material on the 65 *ter* exhibit list is no longer necessary;

CONSIDERING that the Prosecution demonstrates the significance of the remaining proposed additional material to the charges against the Accused; that it is in the interests of justice to permit the Prosecution to amend its exhibit list in this instance, with the exception of the proposed additional material that was to be introduced through Witnesses MM-055, MM-057 and MM-060, insofar as the proposed additional material relates to the charges concerning Prnjavor, Šipovo and Bosanska Gradiška;

CONSIDERING that certain proposed additional material, which the Prosecution seeks to add in its List of Exhibits, are protected by measures ordered when the material was introduced in previous proceedings before the Tribunal; that protective measures shall continue to apply in the current proceedings;

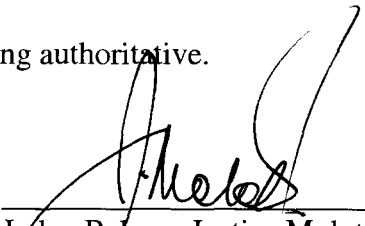
PURSUANT TO Rules 54 and 75 (G);

HEREBY GRANTS the Motion **IN PART**,

DENIES the motion insofar as the Motion seeks to add material pertaining to the charges concerning Prnjavor, Šipovo and Bosanska Gradiška, which material was to be introduced through Witnesses MM-055, MM-057 and MM-060, and

ORDERS the Prosecution to file its Amended Rule 65 *ter* exhibit list before 16 December 2005.

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



Judge Bakone Justice Moloto,
Presiding

Dated this fifteenth December 2005,
At The Hague
The Netherlands

[Seal of the Tribunal]