



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-T

Date: 22 July 2010

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 22 July 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON THE SECOND PROSECUTION MOTION FOR LEAVE TO
AMEND ITS RULE 65 *TER* EXHIBIT LIST (MLADIĆ NOTEBOOKS)**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS 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”) is seized of the “Second Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List (Mladić Notebooks)”, filed by the Office of the Prosecutor (“Prosecution”) on 17 May 2010 (“Motion”), and hereby renders its decision thereon.

I. Background and Submissions

1. On 18 May 2009, the Prosecution filed its “Submission Pursuant to Rule 65 *ter* (E)(i)-(iii)”, with partly confidential Appendix III, containing a list of exhibits which it intended to offer into evidence in these proceedings. On 8 October 2009, the Trial Chamber rendered its “Decision on the Application of Rule 73 *bis*” in which it ordered the Prosecution to file a revised Rule 65 *ter* exhibit list after removing those exhibits related to the 62 witnesses removed from its witness list.¹ In compliance with this decision, the Prosecution filed the “Prosecution’s Submission of its Revised 65 *ter* Exhibit List with Confidential Appendix A” on 19 October 2009. On 14 December 2009, the Prosecution filed a motion seeking leave to supplement its exhibit list, which was granted by the Chamber in a decision issued on 18 March 2010.² In accordance with that decision, the Prosecution filed a consolidated Rule 65 *ter* exhibit list on 31 March 2010.

2. In the Motion, the Prosecution requests the Trial Chamber’s permission to further amend its exhibit list by the addition of 18 notebooks, which it asserts contain the handwritten notes of General Ratko Mladić recorded during time-periods between 29 June 1991 and 28 November 1996. These 18 notebooks run to a total of over 3,000 pages in their original language and version. The Prosecution argues that their addition to its Rule 65 *ter* exhibit list is in the interests of justice as the notebooks are both relevant to and probative of matters at issue in these proceedings.³

3. In explanation of the timing of the Motion, the Prosecution states that the notebooks were seized by the Serbian Ministry of Interior during a search of General Mladić’s wife’s apartment conducted on 23 February 2010. They were first provided to the Prosecution on 29 March 2010, in scanned form, and the originals were transferred to the Prosecution on 11 May 2010.⁴ The scanned copies of the notebooks were disclosed to the Accused on 12 April

¹ Decision on the Application of Rule 73 *bis*, 8 October 2009, para. 10.

² Decision on the Prosecution’s Motion for Leave to File a Supplemental Rule 65 *ter* Exhibit List, 18 March 2010.

³ Motion, para. 1.

⁴ Motion, paras. 2–3.

2010, and identified as potential future Prosecution exhibits.⁵ At the time of filing of the Motion, the process of translating the notebooks into English was ongoing.

4. The Prosecution argues the relevance of the notebooks to these proceedings, and their probative value, by reference to specific entries describing meetings attended by General Mladić and the Accused at which matters connected to the Indictment were discussed.⁶ It further states that they have been authenticated by General Manojlo Milovanović, who was a close associate of General Mladić in the relevant period.⁷ Finally, the Prosecution submits that the Accused will suffer no prejudice as a result of the addition of the notebooks to its Rule 65 *ter* list at this stage of the proceedings, as they were disclosed to him in a timely manner and he will have had ample time to review them.⁸

5. On 26 May 2010, the Accused filed a “Motion for Adjournment and Extension of Time to Respond: Mladić Notebooks” stating that he and his defence team have not had sufficient time to review the notebooks and therefore cannot take a position on whether or not they should be permitted to be added to the Prosecution’s Rule 65 *ter* exhibit list.⁹ For this reason he sought an extension of time in which to respond to the Motion, as well as an adjournment of the proceedings for a period of 30 days.¹⁰ After hearing from the Prosecution, the Trial Chamber granted the Accused until 14 June 2010 to respond to the Motion, but denied his request for an adjournment, while encouraging the Prosecution to rethink its order of upcoming witnesses.¹¹ On 14 June 2010, the Accused submitted his “Response to Motion to Add Mladić Notebooks to Rule 65 *ter* List”, again stating that he had had insufficient time to review the notebooks and requesting a further extension of time in order to do so. Again after hearing from the Prosecution, and in light of the fact that the English translation of the notebooks had not yet been completed, rendering it impossible for the Chamber to decide the Motion, the Chamber ordered the Accused to file his substantive response, if any, by 9 July 2010.¹² On 5 July 2010, the Accused filed his “Second Response to Motion to Add Mladić Notebooks to Rule 65 *ter* List”, yet again stating that he cannot file a substantive response to the Motion due to insufficiency of time to review the notebooks and to even determine their authenticity. He states that if the Chamber is “in a hurry” to decide the Motion it will have to do so without his input

⁵ Motion, para. 8.

⁶ Motion, para. 6.

⁷ Motion, para. 7.

⁸ Motion, para. 8.

⁹ Motion for Adjournment and Extension of Time to Respond: Mladić Notebooks, 26 May 2010, para. 2.

¹⁰ Motion for Adjournment and Extension of Time to Respond: Mladić Notebooks, 26 May 2010, paras. 4–6.

¹¹ T. 2998–2999 (28 May 2010).

¹² T. 4022 (22 June 2010).

and that he will not be in a position to make his submission on the matter until after the summer recess.¹³

6. On 12 July 2010, the Prosecution filed a “Prosecution’s Supplemental Submission regarding the Second Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List (Mladić Notebooks)” (“Supplemental Submission”) appending a declaration from one of its investigators concerning the ERN numbers of the original notebooks, and containing some additional information about the provenance, chain of custody, and authentication of the notebooks, as well as some additional material that was seized by the Serbian authorities at the same time. The Supplemental Submission clarifies that while the ERN numbers for the notebooks that were received in scanned form from the Serbian authorities differ from the ERN numbers given to the original notebooks which were scanned separately by the Prosecution upon receipt, the content of the two versions is the same.¹⁴

II. Applicable Law

7. As noted by the Trial Chamber in its previous “Decision on the Prosecution’s Motion for Leave to File a Supplemental Rule 65 *ter* Exhibit List”, Rule 65 *ter* (E)(iii) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides, *inter alia*, that the Prosecution shall file the list of exhibits it intends to offer within a time-limit set by the pre-trial Judge and not less than six weeks before the Pre-Trial Conference. If the Prosecution requests the addition of some items to its exhibit list later than six weeks before the Pre-Trial Conference, the Trial Chamber may authorise this addition in the exercise of its inherent discretion to manage the trial proceedings, and if satisfied that this is in the interests of justice.¹⁵

8. When exercising this discretion, the Trial Chamber examines whether the Prosecution has shown good cause for its request and whether the items sought to be added are relevant and of sufficient importance to justify their late addition.¹⁶ The Trial Chamber may also take into

¹³ Second Response to Motion to Add Mladić Notebooks to Rule 65 *ter* List, 5 July 2010, para. 6.

¹⁴ Supplemental Submission, Appendix A, paras. 9–10. The Serbian scanned versions contain copies of some loose pieces of paper which were found inside the notebooks, but which are not part of the notebooks themselves. The BCS transcribed versions as well as the English translations do not include these additional items, but only the pages of the notebooks themselves. This accounts, in part, for the substantial difference in the number of pages of the English translations versus the originals scanned by the Serbian authorities.

¹⁵ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.1, Decision on Appeals Against Decision Admitting Material Related to Borovčanin’s Questioning, 14 December 2007 (“*Popović et al.* Appeal Decision”), para. 27; *Prosecutor v. Perišić*, Case No. IT-04-81-PT, Decision on Prosecution Motion for Leave to File a Fifth Supplemental Rule 65 *ter* Exhibit List with Annex A (Confidential), 29 August 2008, para. 10; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Prosecution’s Third Motion for Leave to Amend Its Rule 65 *ter* Exhibit List, 23 April 2007, p. 3 (“*Dragomir Milošević* Decision”).

¹⁶ *Popović et al.* Appeal Decision, para. 37; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Confidential Decision on Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List, 8 May 2008 (“*Stanišić & Simatović* Decision”), para. 6.

account other factors which militate in favour of or against a requested addition,¹⁷ including whether the proposed evidence is *prima facie* relevant and of probative value to the charges against an accused,¹⁸ the complexity of the case, on-going investigations, and translation of documents and other materials.¹⁹ Finally, the Trial Chamber must carefully balance any amendment to the Prosecution's exhibit list with an adequate protection of the rights of the accused.²⁰ That is, the Trial Chamber must be satisfied that amendments to the exhibit list at that stage of the proceedings provide an accused sufficient notice, and do not adversely affect his ability to prepare for trial.²¹

9. The Chamber emphasises again that there is a clear difference between the addition of an item to the Prosecution's list of potential exhibits pursuant to Rule 65 *ter* of the Rules and the admission of an item into evidence as an actual exhibit. By adding an item to its list of exhibits, the Prosecution gives notice to the Defence that it intends to rely on that item at trial, which will allow the Defence to prepare its case accordingly. Thus, in deciding whether to grant leave to add a particular item to the Rule 65 *ter* exhibit list the Trial Chamber need not assess its authenticity, relevance and probative value in the same way as it would when determining its admission at trial. However, the Prosecution should not be granted leave to add to its list of exhibits items that are obviously irrelevant and would, therefore, ultimately be denied admission into evidence.²²

III. Discussion

10. The Chamber is disappointed that the Accused has chosen not to submit a substantive response to the Motion, and that he has continually complained about the insufficiency of time available to him to review the notebooks after being granted two extensions of time in which to respond. Indeed, the notebooks were first disclosed to him, in his own language, on 12 April 2010, giving him and his defence team, which includes several BCS speakers, in excess of two months to determine whether or not to challenge their relevance, or to argue that he would suffer prejudice by their addition to the Prosecution's Rule 65 *ter* exhibit list at this stage of the proceedings. It was not necessary for the Accused to conduct a thorough review and analysis of

¹⁷ *Stanišić & Simatović* Decision, para. 6.

¹⁸ *Dragomir Milošević* Decision, p. 3; *Prosecutor v. Popović et al.*, Decision on Prosecution's Motions for Leave to Amend Rule 65 *ter* Witness List and Rule 65 *ter* Exhibit List (Confidential), 6 December 2006, p. 7 ("*Popović et al.* Decision").

¹⁹ *Popović et al.* Decision, p. 7.

²⁰ *Stanišić & Simatović* Decision, para. 6.

²¹ *Dragomir Milošević* Decision, p. 3.

²² *Stanišić & Simatović* Decision, para. 7; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on Urgent Prosecution Motion for Leave to Amend its Exhibit List, 17 October 2007, p. 4; *Boškoski & Tarčulovski* Decision, para. 3.

all pages of the notebooks, in light of the test to be applied in dealing with the Motion. Moreover, he will have ample opportunity to challenge the authenticity of the notebooks, or portions thereof, if and when the Prosecution seeks their admission into evidence. The suggestion that the Chamber is “in a hurry” to decide the Motion is also unwarranted in light of the extensions of time granted to the Accused to respond. The Chamber notes that it is in the interests of all parties for it to determine the Motion expeditiously, so that they can organise their ongoing trial preparations accordingly.

11. The Chamber notes that the Motion was filed well after the commencement of the trial proceedings, and of the hearing of evidence in this case. However, in light of the fact that copies of the notebooks were only provided to the Prosecution on 29 March 2010, and the originals transferred from the Republic of Serbia on 11 May 2010, the Chamber is satisfied that the Prosecution could not have included them on its Rule 65 *ter* list in accordance with the timeline set by the pre-trial Judge, as envisaged by the Rules, nor have sought leave for their addition to that list at an earlier date.

12. Having reached this conclusion, the Chamber must examine whether the notebooks are indeed relevant to the current proceedings and of sufficient importance to justify their late addition to the Prosecution’s Rule 65 *ter* exhibit list. It was for this reason that the Motion could not be determined until full English translations had been completed, allowing the Chamber to review each of the notebooks. Having carried out this review, each of the notebooks is discussed briefly below.²³ The Chamber emphasises in this regard that where a notebook is found to be *prima facie* relevant to these proceedings for the purposes of deciding the Motion, this does not suggest that each and every page thereof is considered to be relevant and will be deemed suitable for admission into evidence. Moreover, there is no additional requirement, for the purposes of determining the Motion, that the Chamber be satisfied as to the authenticity of the notebooks, and each entry therein; this is a matter to be addressed when they are sought to be introduced as evidence. The Chamber notes, in this regard, the Prosecution’s submission that one of its witnesses will confirm that General Mladić is the author of the notebooks, and encourages it to ensure that such authentication is provided whenever it first seeks the admission of the notebooks, or portions thereof, into evidence.

²³ While the Chamber analysed the English translations of the notebooks that were prepared by the Tribunal’s own translators, it also briefly reviewed the handwritten originals that were available in ecourt, which were the versions scanned by the Serbian authorities and provided to the Prosecution. The number of pages given for the handwritten version in BCS is therefore that of the scanned copies prepared by the Serbian authorities, rather than the originals which were scanned by the Prosecution itself, which are not yet available on the ecourt system.

13. The first notebook (assigned the Rule 65 *ter* number 22835 by the Prosecution) covers a period of two months, from 29 June to 25 August 1991. It is 103 pages in court in the handwritten BCS version. All of the entries in the notebook are concerned with the situation in the area of responsibility of the Yugoslav People's Army ("JNA") Knin Corps, particularly in Benkovac, Šibenik, and Knin, all in Croatia, and discuss various incidents between the JNA and Croatian forces there. They also describe problems encountered by the JNA, such as the desertion of Croatian and Albanian soldiers, tension between the JNA and newly established Croatian forces/authorities, and tension between the JNA and local Croatian Serb leaders. The notebook does not discuss the situation in Bosnia and Herzegovina ("BiH"), nor refer to the Accused. In the Motion, the Prosecution fails to explain the relevance of this particular notebook, or specific entries therein, to these proceedings. Having reviewed its content, the Chamber is of the view that this notebook is not *prima facie* relevant to the present proceedings.

14. The second notebook (assigned Rule 65 *ter* number 22836 by the Prosecution) covers a period of almost three months, from 27 August to 22 November 1991. It is 194 pages in court in the handwritten BCS version. Once again, the time-period of the notebook predates the time-period of the actual crimes alleged in the Indictment, although this does not, of itself, render it irrelevant. Its content comprises, mainly, information about the situation in Knin, Zadar, Šibenik, Split, and Sinj, as well as some other towns in Croatia, and the various military activities in those areas involving the JNA and Croatian forces. It also records discussions during peace negotiations involving the JNA and the Croatian forces and/or authorities, as well as many references to JNA soldiers being trapped and surrounded in their barracks in Croatia and negotiations to solve those stand-offs. It contains little or no substantive reference to the developing situation in BiH, or to the Accused. In the Motion, the Prosecution fails to explain the relevance of this particular notebook, or specific entries therein, to these proceedings. Having reviewed its content, the Chamber is of the view that this notebook is not *prima facie* relevant to the present proceedings.

15. The third notebook (assigned Rule 65 *ter* number 22837 by the Prosecution) covers a period of one month, from 23 November to 29 December 1991. It is 102 pages in court in the handwritten BCS version. As above, the time-period of the notebook predates the time-period of the crimes alleged in the Indictment. It also contains a lot of information on the situation in the area of responsibility of the Knin Corps of the JNA, largely in Croatia. Its entries comprise notes of a range of meetings and conversations, primarily involving senior JNA military personnel, but including local Serb leaders. They contain information, *inter alia*, on the preparations to evacuate the JNA from Šibenik, the arrival of UN forces in the Knin Corps' area

of responsibility, and the activities of the JNA in other parts of Croatia. There are only limited references to the situation in BiH, such as arms smuggling around Bihać, and the establishment of a communications channel with Bihać, and none to the actions of the Accused. In the Motion, the Prosecution fails to explain the relevance of this particular notebook, or specific entries therein, to these proceedings. Having reviewed its content, the Chamber is not satisfied as to the *prima facie* relevance of this notebook to the present proceedings.

16. The fourth notebook (assigned Rule 65 *ter* number 22838 by the Prosecution) covers a period of one and a half months, from 30 December 1991 to 14 February 1992. It is 98 pages in ecourt in the handwritten BCS version. In contrast to the notebooks discussed above, it discusses military operations and preparations conducted by the JNA, primarily in Croatia, but also in eastern parts of BiH, as well as reports concerning the status of the various units of the JNA Knin Corps, the developing situation in BiH and within the JNA, and meetings and discussions with representatives of the international community concerning the conflict in Croatia and situation in BiH. While the time-period covered by the notebook predates the crimes alleged in the Indictment, it presents detailed information about the period leading up to the conflict in BiH, including in municipalities that are named in the Indictment as crime-sites, the forces that were ultimately involved in that conflict, and the attitude of members of the military and political leadership to the developing situation in BiH. Bearing in mind also that General Mladić is alleged to have been a member of all four joint criminal enterprises (“JCEs”) through which the Accused is charged with responsibility for the crimes alleged in the Indictment, the Chamber finds that the fourth notebook is *prima facie* relevant to these proceedings.

17. The fifth notebook (assigned Rule 65 *ter* number 22839 by the Prosecution) covers a period of three and a half months, from 14 February to 25 May 1992. It is 203 pages in ecourt in the handwritten BCS version. Its entries record discussions among senior JNA officer of the situation in the JNA Knin Corps’ area of responsibility in Croatia, including the arrival of UN forces there and discipline-problems within the JNA, such as with regard to looting. These discussions also describe the developing situation in BiH, the relocation of some of the Knin Corps’ units to BiH, the presence of Arkan in Bijelina, and some crimes being committed in Foča. It also records the views expressed about the creation of the Federal Republic of Yugoslavia (“FRY”) and the implications thereof for the Serbian people and for the JNA itself, as well as about the creation of a Serb army in BiH, and the opening of a front in eastern BiH, including in several of the municipalities covered by the Indictment. The notebook also contains entries recording meetings with Bosnian Serb political leaders, such as the Accused,

where the situation in BiH and plans for its division are discussed, as well as the new Bosnian Serb Army (“VRS”), the situation in Sarajevo and the surrounding area, and the transfer of General Mladić to Sarajevo. In light of the time-period spanned by the notebook, which covers the beginning of the conflict in BiH, as well as its content, the Chamber is of the view that it is *prima facie* relevant to the present proceedings.

18. The sixth notebook (assigned Rule 65 *ter* number 22840 by the Prosecution) covers a period of approximately two months, from 27 May until 31 June 1992. It is 398 pages in ecourt in the handwritten BCS version. It discusses, *inter alia*, military and political meetings, including meetings with the Accused, other members of the alleged JCEs, and UN representatives, at which a number of matters were discussed, such as: military preparations and reports; negotiations regarding the opening of Sarajevo airport for humanitarian aid; information about supplies, hospitals, refugees, and paramilitaries; accountings of wounded and dead; lootings and killings by various parties and sides; and the state of communications systems and propaganda. There is a description of the Accused’s account to Bosnian Serb military commanders of the international negotiations and agreement reached in Lisbon, the views he expressed about the political and military situation, and his concerns about crimes being committed in various municipalities in BiH. Given the light it sheds on these subjects, as well as the time-period covered by the notebook, the Chamber is of the view that it is *prima facie* relevant to the present proceedings.

19. The seventh notebook (assigned Rule 65 *ter* number 22841 by the Prosecution) covers a period of two months from 16 July to 9 September 1992. It is 91 pages in ecourt in the handwritten BCS version. The notebook contains notes which refer to military operations in and around Sarajevo and Srebrenica and a number of the municipalities in BiH that are the location of crimes alleged in the Indictment. It also includes notes about conversations or meetings with military commanders and personnel relating to tours of inspection, specific military operations, casualties, military capacity (including available weapons and troop numbers), requests for assistance and munitions, military gains and challenges, the treatment of prisoners, interaction with and challenges posed by paramilitary units, exchange of prisoners, and the movement of refugees. It also contains notes from meetings and/or conversations with members of the Presidency of the Republika Srpska, including the Accused, about the military and political situation in BiH at the time, and recounts reports and instructions given by the Accused. On this basis, and in light of the time-period covered by it, the Chamber is of the view that the seventh notebook is *prima facie* relevant to the present proceedings.

20. The eighth notebook (assigned Rule 65 *ter* number 22842 by the Prosecution) covers the period from 10 September to 30 September 1992. It is 70 pages in ecourt in the handwritten BCS version. It records reporting from identified commanders of the Main Staff of the VRS and commanders of specific brigades and other officials, giving information about the command structure and military capacity of specific VRS units, military movements and strategies (including in a number of the municipalities that are identified in the Indictment), troop morale and casualties, requests for military assistance and supplies, refugee issues, changes in the ethnic composition of particular regions, establishment of civilian and military structures, the formation of new battalions, challenges posed by paramilitary units, and discussions with the international community. It also records meetings with Bosnian Serb political leaders, including the Accused, during which the division of BiH and the international negotiations to end the conflict were discussed. In light of the fact that the notebook discusses these issues and the correspondence with the time-period of the crimes alleged in the Indictment, the Chamber is of the view that the eighth notebook is *prima facie* relevant to the present proceedings.

21. The ninth notebook (assigned Rule 65 *ter* number 22843 by the Prosecution) covers a period of almost three months, from 5 October to 27 December 1992. It is 313 pages in ecourt in the handwritten BCS version. Among the matters covered by the various entries in the notebook are reports from VRS commanders on the situation on the ground in various parts of BiH, including several of the municipalities that are subject of the Indictment, and on military operations and casualties and some of the problems facing the various VRS units (such as indiscipline and widespread crimes committed in the area of Prijedor); discussions with the Bosnian Serb leadership, including the Accused, about developments in the conflict, including the allegations of “ethnic cleansing”, and about the international response to the conflict; and meetings with UNPROFOR commanders and international negotiators to discuss both general and specific issues, including the situation in Sarajevo. In view of this subject-matter, and the time-period covered by the notebook, the Chamber is satisfied that it is *prima facie* relevant to the present proceedings.

22. The tenth notebook (assigned Rule 65 *ter* number 22844 by the Prosecution) covers the period from 2 to 28 January 1993. It is 92 pages in ecourt in the handwritten BCS version. The notebook contains notes of various meetings with political leaders and military commanders at which the international peace negotiations were discussed, as well as the situation on the ground in BiH. The Accused and other members of the alleged JCEs were involved in these meetings and various statements are attributed to them. It records in detail the lead up to and content of negotiations in Geneva, which General Mladić participated in, including discussions among

senior Bosnian Serb and FRY/Serbian officials concerning their strategy during the international negotiations. In light of the time period covered by the notebook, as well as its content, the Chamber is of the view that it is *prima facie* relevant to the present proceedings.

23. The eleventh notebook (assigned Rule 65 *ter* number 22845 by the Prosecution) covers a period of seven months, from 2 April to 24 October 1993. It is 407 pages in court in the handwritten BCS version. Its entries comprise notes from Bosnian Serb Assembly sessions, as well as meetings with various ministers and officials of the Republika Srpska and FRY/Serbia (including the Accused and other members of the alleged JCEs), VRS, Army of Bosnia and Herzegovina (“ABiH”), Croatian Defence Council (“HVO”), and Yugoslav Army (“VJ”) military commanders, representatives of humanitarian organizations and of the UN and international community, discussing the situation in various parts of BiH, including Sarajevo and Srebrenica, military organization and discipline, troop movements, negotiations for ceasefires, division of territory, and other ways to resolve the conflict in BiH, including the various plans being brokered by the international community. Taking into account the time-period covered by the notebook as well as its content, the Chamber is satisfied that it is *prima facie* relevant to the present proceedings.

24. The twelfth notebook (assigned Rule 65 *ter* number 22846 by the Prosecution) covers a period of two and a half months, from 28 October 1993 to 15 January 1994. It is 157 pages in court in the handwritten BCS version. This notebook contains notes relating to meetings and/or conversations with other Bosnian Serb military commanders, political leaders (including the Accused and other members of the alleged JCEs) and international representatives. They provide information relating to the exchange of prisoners, the activities of UNPROFOR, Bosnian Serb military capacity, movements, directives and strategies (including around Sarajevo, Srebrenica and a number of the municipalities that are subject of the Indictment), food supplies, changes to the civilian, military and political structures in BiH, the political objectives of the Bosnian Serb leadership, the provision of humanitarian aid, and the challenges posed by paramilitary units operating in BiH. In view of this subject-matter and the time-period covered by the notebook, the Chamber is of the view that it is *prima facie* relevant to the present proceedings.

25. The thirteenth notebook (assigned Rule 65 *ter* number 22847 by the Prosecution) covers a period of approximately two and a half months, from 9 January to 21 March 1994. It is 106 pages in court in the handwritten BCS version. The notebook records a range of meetings with various Bosnian Serb military commanders, including members of the VRS Main Staff, as well as with Bosnian Serb and FRY/Serbian political leaders (such as the Accused and other

members of the alleged JCEs), discussing the ongoing conflict, the situation in various parts of BiH, the peace negotiations and division of BiH, the developing relationships between the parties to the conflict and the conditions of their armed forces, VRS military strategy, and conditions within the VRS itself. It also includes notes from meetings with representatives of the international community, including UNPROFOR commanders, and with HVO commanders, during which the political and military situation was discussed and various issues negotiated. Among the items recorded as being discussed at these various meetings are conditions in Sarajevo, the boundaries of the UN safe zones, and the obstruction of UN forces and convoys. On this basis, and in light of the time-period covered by the notebook, the Chamber is satisfied that it is *prima facie* relevant to the present proceedings.

26. The fourteenth notebook (assigned Rule 65 *ter* number 22848 by the Prosecution) covers a period of five months, from 31 March to 3 September 1994. It is 444 pages in e-court in the handwritten BCS version.²⁴ The notebook consists of entries recording regular meetings that Mladić attended in Belgrade, Pale, Sarajevo and elsewhere with UNPROFOR representatives, state representatives, the Accused and other alleged members of the JCEs charged in the Indictment (such as Momčilo Krajišnik, Slobodan Milošević, and members of the VRS Main Staff), units of the VRS, and municipality and Serbian Democratic Party (“SDS”) officials. The meetings with UNPROFOR involved *inter alia* ceasefire and cessation of hostilities negotiations, particularly during April, June and August 1994, discussion of UNPROFOR demands, such as withdrawal of Bosnian Serb weaponry to weapons collection points, deployment of UN personnel, and access to certain areas. The notebook also contains notes on oral reports given by VRS commanders about specific issues facing their units in various areas of BiH, including military activities, and the capacities and actions of the corresponding ABiH and Croatian forces. It also includes records of reports and exchanges of views about the military and political situation more generally in BiH at the time, including discussions about strategy. In light of the time-period covered by the notebook, and its detailed descriptions of events in BiH that pertain to the charges in the Indictment, the Chamber is of the view that it is *prima facie* relevant to the present proceedings.

27. The fifteenth notebook (assigned Rule 65 *ter* number 22849 by the Prosecution) covers a period of approximately five months, from 4 September 1994 until 28 January 1995. It is 96 pages in e-court in the handwritten BCS version. The entries in the notebook comprise notes of

²⁴ The English translation of the notebook consists of 319 pages. It appears that the English translation begins from page 126 of the original BCS version scanned by the Serbian authorities, as that BCS version contains various other documents, both handwritten and typed. The Chamber understands this difference to be a consequence of the problem discussed in footnote 14 above, and the discrepancy will be remedied when the Prosecution uploads its own scanned versions of the original notebooks into e-court.

inter alia military and political meetings, including with the Accused and other members of the alleged JCEs, and with representatives of the UN and international community, shedding light on: the relationships between the various Bosnian Serb and FRY/Serbian military and political leaders; ongoing military operations and preparations in BiH, including information about supplies and weapons, accountings of wounded and dead soldiers, and problems with communications; the situation in various parts of BiH, including Sarajevo; and the ongoing peace negotiations. Given the time-period covered by the notebook, as well as its subject-matter, the Trial Chamber is satisfied that it is *prima facie* relevant to these proceedings.

28. The sixteenth notebook (assigned Rule 65 *ter* number 22850 by the Prosecution) is 11 pages in court in the handwritten BCS version, and contains only three entries, from 14 and 15 July, and 18 September 1995. The first two of these entries detail two meetings that took place between Slobodan Milošević, General Mladić and certain international personnel about matters relating to events at Srebrenica and Žepa. The third records a “discussion” concerning the purchase and supply of weapons and support from individuals in the Russian Federation, and related information. In light of the fact that the Accused is alleged to have participated in a JCE to eliminate Bosnian Muslims in Srebrenica, that Mladić is named as a member of that JCE, and that the notebook contains entries that relate specifically to events taking place in Srebrenica and Žepa during the time period charged in the Indictment, the Chamber is of the view that this notebook is *prima facie* relevant to the present proceedings.

29. The seventeenth notebook (assigned Rule 65 *ter* number 22851 by the Prosecution) covers a period of four and a half months, from 28 August 1995 to 15 January 1996. It is 248 pages in court in the handwritten BCS version. The various entries in the notebook discuss, *inter alia*, the progress of the negotiations in the lead up to the end of the conflict, and the impact of those negotiations on the situation in BiH, the condition of the units of the VRS, their movements and morale, the exchange of prisoners, the occurrence and effects of NATO bombardment, the situation in and around Sarajevo and in the various safe zones, and, after the conclusion of the Dayton Agreement, what should become of the VRS and its constitutive units. These entries comprise notes of meetings with members of the Bosnian Serb leadership, including the Accused, as well as with the leadership of Serbia and the FRY, various senior military officers in the VRS and the VJ, and with representatives of the international community. In light of this broad subject-matter, the time-period covered by the notebook, and the fact that it contains references to acts of violence and “undisciplined behaviour” by various individuals and forces, including paramilitaries, during the conflict in BiH, the Chamber is of the view that it is *prima facie* relevant to these proceedings.

30. The eighteenth notebook (assigned Rule 65 *ter* number 22852 by the Prosecution) covers a period of over ten months, from 16 January to 28 November 1996. It is 181 pages in length in the handwritten BCS version. The Chamber notes that the time-period covered by the notebook is outside of the period of the Indictment, in terms of the actual crimes charged therein. However, this fact alone does not necessarily render the notebook irrelevant, depending on its content. Like the previous ones, the entries in this notebook record various meetings and conversations between senior Bosnian Serb military and political leaders, including the Accused, and leaders from the FRY/Serbia. Most of the discussion at these meetings revolves around the situation in the territory of BiH still under the control of the VRS, and the place the VRS was to have under the Dayton Agreement, as well as the various problems it was encountering at that time. There are references to the Accused and other members of the JCEs alleged in the Indictment, as well as to events which occurred during the conflict in BiH in areas that are the subject of the Indictment, and to the operation of this Tribunal. For these reasons, the Chamber is satisfied that the notebook is *prima facie* relevant to the current proceedings, for the purposes of its addition to the Prosecution's Rule 65 *ter* exhibit list.

31. Having found 15 of the 18 notebooks to be *prima facie* relevant to these proceedings, the Trial Chamber is also satisfied that these notebooks are of sufficient importance to justify their addition to the Prosecution's Rule 65 *ter* exhibit list at this stage. While it is regrettable that the notebooks were not found and handed over to the Prosecution earlier, the Chamber recognises that this is a complex case and that new material is being gathered from a range of sources on an ongoing basis. At the same time, the Chamber notes the indications given by the Prosecution that there has been other material found by Serbia and handed over to it at the same time as the notebooks, which it is currently analysing and may be the subject of further motions to amend its Rule 65 *ter* exhibit list.²⁵ The Chamber encourages the Prosecution to make such motion, if any, at the earliest possible date, and to carefully scrutinise the relevant items and select only those few it considers essential to its case against the Accused.

32. Finally, the Trial Chamber has assessed whether permitting the Prosecution to add the above-referenced 15 notebooks to its Rule 65 *ter* exhibit list is consistent with its duty to protect the rights of the Accused. In this regard, it notes that the Accused has been in possession of a BCS copy of the notebooks since 12 April 2010, and that he and his defence team will have further time to review them and assess their implications for his case before they are used in court, making use, in particular, of the summer recess. For this reason, the Chamber is satisfied that he has been given sufficient notice of the notebooks as potential exhibits in this case, and

²⁵ Supplemental Submission, para. 3.

despite their considerable length, will have had adequate opportunity to review them before any parts are used in these proceedings. Moreover, the Chamber considers that the notebooks may contain material which is favourable to the Accused and his case. The Chamber therefore finds that it is in the interests of justice for it to grant leave to the Prosecution to amend its Rule 65 *ter* list with the addition of the notebooks with Rule 65 *ter* numbers 22838, 22839, 22840, 22841, 22842, 22843, 22844, 22845, 22846, 22847, 22848, 22849, 22850, 22851, and 22852.

IV. Disposition

33. For the reasons set out above, and pursuant to Articles 20(1) and 21(4)(b) of the Statute of the Tribunal and Rules 54 and 65 *ter* of the Rules, the Trial Chamber hereby **GRANTS** leave to the Prosecution to supplement its Rule 65 *ter* exhibit list with the items with Rule 65 *ter* numbers 22838, 22839, 22840, 22841, 22842, 22843, 22844, 22845, 22846, 22847, 22848, 22849, 22850, 22851, and 22852, and **INSTRUCTS** the Prosecution to ensure that the original BCS versions of those notebooks, as scanned by the Prosecution itself, are placed in the court system under these Rule 65 *ter* numbers, with the corresponding English translations.

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



Judge O-Gon Kwon,
Presiding

Dated this twenty-second day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]