



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: 9 March 2011

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: 9 March 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTIONS TO ADMIT DOCUMENTS PREVIOUSLY
MARKED FOR IDENTIFICATION**

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 “Motion to Admit Documents Previously Marked for Identification”, filed by the Accused on 31 January 2011 (“First Motion”), and the “Motion to Admit Documents Previously Marked for Identification”, filed by the Accused on 11 February 2011 (“Second Motion”) (together “Motions”), and hereby issues its decision thereon.

1. On 8 October 2009, the Trial Chamber issued the “Order on the Procedure for the Conduct of the Trial” (“Order on Procedure”), in which it stated *inter alia* that any item marked for identification in the course of the proceedings, either because there is no English translation or for any other reason, will not be admitted into evidence until such time as an order to that effect is issued by the Chamber.¹

2. On 6 December 2010, the Trial Chamber issued the “Order in Relation to Exhibits Marked For Identification Pending English Translation” (“Order”) in which it ordered *inter alia* the Accused to:

- i. use the Translation Tracking System to request English translations of all proposed exhibits currently marked for identification pending translation and upload those translations into the ecourt system, by 31 January 2011; and
- ii. file the requisite motion(s) for admission of those proposed exhibits that have been marked for identification pending translation, by 7 February 2011.²

3. In the First Motion, the Accused requests that 120 documents previously marked for identification be admitted into evidence now that English translations are available.³

In the Second Motion, the Accused requests that two documents and three videos previously marked for identification be admitted into evidence now that English translations are available.⁴

¹ Order on the Procedure for the Conduct of the Trial, 8 October 2009, Appendix A, paras. O, Q.

² Order, para. 4.

³ First Motion, paras. 1, 2 (MFI numbers D39, D98, D156, D164, D184, D192, D214, D231, D246, D247, D261, D298, D307, D310, D313, D341, D342, D346, D347, D362, D374, D375, D376, D395, D398, D402, D403, D413, D420, D421, D429, D433, D436, D442, D451, D455, D458, D461, D462, D463, D464, D477, D480, D496, D499, D500, D504, D508, D511, D517, D527, D557, D562, D563, D565, D566, D567, D570, D571, D575, D576, D577, D580, D582, D583, D584, D589, D591, D592, D597, D598, D599, D601, D606, D610, D612, D613, D618, D620, D621, D628, D677, D679, D683, D688, D707, D762, D771, D772, D775, D776, D777, D779, D780, D786, D795, D823, D835, D836, D837, D838, D855, D858, D859, D860, D910, D256, D257, D284, D320, D356, D384, D476, D541, D603, D604, D605, D636, D689 and D730).

⁴ Second Motion, para. 1 (MFI numbers D362, D688, D917, D918, D919).

The Chamber notes that the admission of the two documents marked for identification as MFI D362 and MFI D688 was also requested in the First Motion.

4. On 14 February 2011, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution’s Response to ‘Motion to Admit Documents Previously Marked for Identification’” (“First Response”), offering no objection to the admission of any of the documents identified in the First Motion, with the following caveats: i) the English translation of MFI D98 bears an incorrect date; ii) the transcript during which MFI D621 was discussed is inconsistent with the English translation of the document, with respect to a date; iii) the original documents uploaded for MFI D310 and MFI D313 were incorrect; and iv) only one paragraph of MFI D910 was admitted.⁵

5. On 23 February 2011, the Prosecution filed the “Prosecution’s Response to ‘Motion to Admit Documents Previously Marked for Identification’” (“Second Response”), offering no objection to the admission of the five items identified in the Second Motion, save for noting that the English transcript of MFI D917 required four revisions; and the English transcript of MFI D919 correlated to a shorter time code than that admitted and required the deletion of one word.⁶

6. In making its determination on the admission of documents previously marked for identification, the Trial Chamber shall consider whether the proposed exhibits satisfy the requirements of Rule 89(C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), namely whether they are relevant and of probative value. As previously noted in the “Decision on Accused’s Second Motion to Admit Documents Previously Marked for Identification” of 16 December 2010, for documents tendered through a witness in the courtroom, the Chamber’s assessment of their relevance and probative value should, generally, be done at that time.⁷ Thus, when documents that have yet to be translated into English are put to a witness, the Chamber will assess their relevance and probative value, where possible, and if it is satisfied that they should be admitted, mark them for identification, stating that this is pending translation. Once the English translations of such documents have been uploaded into e-court and the tendering party has filed a request for them to be admitted, the Chamber will not revisit the issue of relevance and probative value, absent special circumstances.

7. On the basis of the information provided by the Accused in the Motions, and having reviewed the documents themselves along with the relevant transcripts, in light of the caveats

⁵ First Response, p. 2.

⁶ Second Response, p. 2.

⁷ Decision on Accused’s Second Motion to Admit Documents Previously Marked for Identification, 16 December 2010, para. 4.

identified by the Prosecution which the Trial Chamber notes have all been resolved, the Trial Chamber is satisfied that the following items previously marked for identification should now be marked as admitted:

MFI D39, D98, D156, D164, D184, D192, D214, D231, D246, D247, D261, D298, D307, D310, D313, D341, D342, D346, D347, D362, D374, D375 (pp. 7-9 and pp. 19-24 in English), D376, D395, D398, D402, D403, D413, D420, D421, D429, D433, D436, D442, D451, D455, D458, D461, D462, D463, D464, D477, D480, D496, D499, D500, D504, D508, D511, D517, D527, D557, D562, D563, D565, D566, D567, D570, D571, D575, D576, D577, D580, D582, D583, D584, D589, D591, D592, D597, D598, D599, D601, D606, D610, D612, D613, D618, D620, D621, D628, D677, D683, D688, D707, D762, D771, D772, D775, D776, D777, D779, D780, D786, D795, D823, D835, D836, D837, D838, D855, D858, D859, D860, D910 (p. 4, para. 1 in English), D256, D257, D284, D320, D356, D384, D476, D541, D603, D604, D605, D636, D689, D730, D917, D918 and D919.

8. The Chamber notes that document MFI D679 has only been partially translated. This document will therefore not be admitted at this stage and remain marked for identification pending a full translation being uploaded into e-court.

9. The Chamber notes that there remain a significant number of documents used by the Accused during the proceedings that have been marked for identification because the Accused did not make English translations available through e-court at the time of their use. As the Chamber has repeatedly stated, the lack of an English translation for a particular document should be exceptional, and it is the Accused's duty, as lead counsel in his defence, to ensure that English translations of all documents he wishes to use with a witness are available, through making better use of the Translation Tracking System to locate and/or request English translations.

Disposition

10. Accordingly, for the reasons outlined above, pursuant to Rule 89 of the Rules, the Trial Chamber hereby **GRANTS** the Motions **IN PART**, and:

a) **ADMITS** into evidence the items currently marked for identification as:

MFI D39, D98, D156, D164, D184, D192, D214, D231, D246, D247, D261, D298, D307, D310, D313, D341, D342, D346, D347, D362, D374, D375 (pp. 7-9 and pp. 19-24 in English), D376, D395, D398, D402, D403, D413, D420, D421, D429, D433, D436, D442, D451, D455, D458, D461, D462, D463, D464, D477, D480, D496, D499, D500, D504, D508, D511, D517, D527, D557, D562, D563, D565, D566, D567, D570, D571, D575, D576, D577, D580, D582, D583, D584, D589, D591, D592, D597, D598, D599, D601, D606, D610, D612, D613, D618, D620, D621, D628, D677, D683, D688, D707, D762, D771, D772, D775, D776, D777, D779, D780, D786, D795, D823, D835, D836, D837, D838, D855, D858, D859, D860, D910 (p. 4, para. 1 in English), D256, D257, D284, D320, D356, D384, D476, D541, D603, D604, D605, D636, D689, D730, D917, D918 and D919.

b) **DENIES** the remainder of the Motions.

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



Judge O-Gon Kwon
Presiding

Dated this ninth day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]