



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: 10 February 2012

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: 10 February 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

CONFIDENTIAL

DECISION ON SECOND SITE VISIT

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”) *proprio motu*, issues this decision in relation to a site visit to locations in and around Srebrenica, Bosnia and Herzegovina (“BiH”).

I. Background and Submissions

1. During the hearing held on 24 January 2012, the Chamber informed the parties that it was considering organising a site visit to locations in Srebrenica. The Chamber also stated that while it was not envisaging visiting other locations related to the “municipality component” of the case, it wished to hear the parties as to whether a visit to the municipalities covered in the Indictment would be beneficial. The Chamber also requested that the parties identify proposed sites, itinerary, and participants for the purpose of the site visit.¹

2. On 31 January 2012, the Accused filed his submission first opining that a site visit to “certain municipalities” may be beneficial but that the Chamber would be in a better position to determine which sites to visit after hearing from defence witnesses in the municipality component of the defence case.² The Accused further submits a list of proposed locations to be visited in and around Srebrenica and reiterates his request to be present during the site visit.³ As an alternative, the Accused states that he will be represented by the legal advisor, Mr. Peter Robinson.⁴

3. Also on 31 January 2012, Standby Counsel filed a submission arguing that “it falls within his mandate and responsibilities to participate in any future site visit, should the Trial Chamber determine that such a visit would assist its understanding.”⁵ Standby Counsel thus requests that he and his legal consultant be invited to participate in the site visit.⁶

4. On the same day, the Office of the Prosecutor (“Prosecutor”) filed a submission first stating that given the number of municipalities and crime sites as well as the circumstances of the present case, it does not propose a visit to any of the municipalities and crime sites covered in the municipality component of the Indictment.⁷ In Appendix A, the Prosecution suggests an

¹ Hearing, T. 23481–23482 (24 January 2012) (private session).

² Defence Submission on Srebrenica Site Visit, confidential, 31 January 2012 (“Accused’s Submission”), para. 2.

³ Accused’s Submission, paras. 3, 5, Annex A.

⁴ Accused’s Submission, para. 4.

⁵ Submission by Standby Counsel in Response to Trial Chamber’s Invitation to Parties to Address Issues Related to Possible Site Visit, confidential, 31 January 2012 (“Standby Counsel Submission”), para. 7.

⁶ Standby Counsel Submission, para. 8.

⁷ Prosecution’s Third Submission on Site Visit, confidential, 31 January 2012 (“Prosecution Submission”), para. 2.

itinerary incorporating visits to 23 locations which are relevant to the charges in the Indictment related to the Srebrenica component of the case.⁸

5. On 7 February 2012, the President of the Tribunal authorised the Chamber's request to conduct a site visit in these proceedings.

II. Applicable Law

6. Rule 4 of the Rules of Procedure and Evidence of the Tribunal ("Rules") provides that a "Chamber may exercise its functions at a place other than the seat of the Tribunal, if so authorised by the President in the interests of justice."

III. Discussion

7. First with regard to the reiterated request by the Accused to be present during the site visit, the Chamber maintains its view that it is neither necessary nor appropriate for the Accused to participate in the site visit. In relation to the site visit to Sarajevo organised in May 2011 ("Sarajevo Site Visit"), the Chamber already held that the purpose of the site visit was to provide the Chamber with the opportunity to observe certain landmarks and locations referred to in the Indictment in order to get a tri-dimensional and first-hand impression of these locations and of the general geography and topography of the area.⁹ This purpose remains for this site visit. The Chamber has already stated, and reiterates herein, that evidence will not be gathered during the site visit and that the parties will be requested to refrain from making submissions in accordance with the protocol appended to this Decision ("Protocol"). As such, the site visit will not breach the right of the Accused to be tried in his own presence as envisaged in Article 21(4)(d) of the Statute of the Tribunal.

8. As far as the delegation is concerned, the Chamber takes note of the Prosecution's nomination of Mr. Julian Nicholls and the Accused's designation of Mr. Peter Robinson, and takes no issue with Mr. Nicholls and Mr. Robinson accompanying the Chamber. The Chamber has also considered the Standby Counsel's request to participate in the site visit and is of the view that it is reasonable given his duty to "maintain the capacity to step in to represent the interests of the Accused should the Chamber determine that it is necessary".¹⁰ However, the Chamber does not consider it necessary that Standby Counsel's legal consultant also be present.

⁸ Prosecution Submission, paras. 3, 4, Appendix A.

⁹ Decision on Site Visit, 28 January 2011, para. 12 (confidentiality lifted by Order Lifting Confidentiality of Decision on Site Visit and Related Pleadings, 24 May 2011).

¹⁰ Decision on Designation of Standby Counsel, 15 April 2010, para. 8.

9. The Chamber further considers that in order to ensure the adequate independence of the preparations and because such preparations necessitate liaising with all parties involved, including the Chamber and the authorities of BiH, the primary responsibility for the site visit's preparations should be borne by a staff member employed by the Registry, who will liaise with the Chamber and the parties as required.

10. As it did for the Sarajevo Site Visit, the Chamber maintains its view that it is appropriate to request that a Registry representative of the Court Management and Support Section of the Tribunal ("CMSS") accompany the Chamber to maintain an accurate and detailed record of the site visit and to ensure that the Protocol is observed. The record will indicate the locations viewed and/or visited, the date and time at which the locations were viewed and/or visited, and any observations made pursuant to paragraphs 3 and 4 of the Protocol.

11. The Chamber reminds the parties of the necessity to maintain the confidentiality of any site visit related discussion. Given the extreme security concerns in relation thereto, the Chamber will not publicise any aspect of the site visit preparations. However, upon completion of the site visit, the Accused may submit a request that the confidentiality of all site visit related pleadings be lifted.

IV. Disposition

12. Accordingly, the Chamber, pursuant to Rules 4 and 54 of the Rules, hereby **DECIDES** that a site visit to locations in and around Srebrenica shall take place in these proceedings at the end of May or the beginning of June 2012, at a precise date to be later determined by the Chamber, and **ORDERS** that:

- 1) A precise itinerary will be prepared by the Chamber, on the basis of the locations pertinent to the Indictment, the parties' respective proposed itineraries, and the relevant security and budgetary concerns;
- 2) During the site visit, the Chamber will be accompanied by:
 - a. A staff member employed by the Registry;
 - b. Mr. Julian Nicholls, on behalf of the Prosecution;
 - c. Mr. Peter Robinson, on behalf of the Accused;
 - d. Standby Counsel;

- e. A member of the Chamber's legal support staff;
 - f. One interpreter;
 - g. A representative from CMSS, whose role is limited to that described in paragraph 10 above and paragraphs 6 and 7 of the Protocol;
 - h. The number of security personnel and drivers required for a delegation of this size;
- 3) The parties shall respect the Protocol.
- 4) The confidentiality of all site visit related pleadings shall be maintained until further order of the Chamber.

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



Judge O-Gon Kwon
Presiding

Dated this tenth day of February 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

CONFIDENTIAL ANNEX A
PROTOCOL ON CONDUCT DURING SITE VISIT

Procedure during the Site Visit

- 1) The parties shall not seek the admission of evidence;
- 2) The parties shall not make submissions;
- 3) Upon the Judges' request, the parties may identify geographical locations, or features thereof, referred to in the Indictment or parties' pre-trial briefs;
- 4) Upon the Judges' request, the parties may make comments about the events alleged to have taken place in these locations only by reference to the Indictment or their pre-trial briefs;
- 5) The parties shall have no contact with the media;

Record of the Site Visit

- 6) During the site visit, a representative of CMSS shall be present in order to maintain a written record of the visit, to ensure that this protocol is respected, and to prepare minutes upon completion of the visit; and
- 7) After completion of the visit and upon approval by the Chamber, the minutes of the visit referred to in paragraph 6 above shall be filed.