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21 June 2013

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**UNITED
NATIONS**



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-09-92-T
Date: 21 June 2013
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 21 June 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON SIXTH PROSECUTION MOTION TO ADD
DOCUMENTS TO ITS RULE 65 TER EXHIBIT LIST**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 25 March 2013, the Prosecution filed a motion ("Motion") requesting the Chamber's leave to add 13 documents ("Documents") to its Rule 65 *ter* exhibit list to use with future witnesses or tender through a bar table motion.¹ The Prosecution submits that the Documents, which comprise VRS reports and orders to and from Tactical Group Foča, the Herzegovina Corps and the VRS Main Staff, are relevant and probative since they go to proof of an operational chain of command and reporting structure during the time period of the crimes charged in Foča.² The Prosecution further submits that the Documents, *inter alia*, reveal that the Accused was present in Foča during that time.³ The Prosecution avers that it belatedly discovered the Documents within its archives while preparing the evidence of the witnesses relating to the crimes charged in Foča, conceding that it does not have good cause for this late request to add documents to its Rule 65 *ter* exhibit list.⁴ The Prosecution argues that the late addition of the Documents will not prejudice the Defence as the Documents are generally less than two pages in length, adding that in any event, the probative value of the Documents is so great that it outweighs any prejudice that may result from their addition.⁵

2. On 5 April 2013, the Defence filed a response objecting to the Motion in its entirety ("Response").⁶ The Defence contends that the Prosecution has failed to demonstrate good cause to request the addition of the Documents to the Rule 65 *ter* exhibit list at this late stage of the proceedings and that their addition would result in prejudice.⁷ Moreover, the Defence submits that for 10 out of 13 of the Documents, there is no meta-data in the Electronic Disclosure Suite system, signifying that the documents were only recently disclosed and thus amounting to a "serious and grave" violation of the disclosure rules.⁸ The Defence, in particular taking into account the significance of the Documents and their late disclosure, submits that it would not be in the interests of justice to grant their addition to the Prosecution's Rule 65 *ter* exhibit list.⁹

¹ Sixth Prosecution Motion to Add Documents to its 65 *ter* Exhibit List, 25 March 2013, paras 1, 6.

² Motion, para. 3.

³ Ibid.

⁴ Motion, para. 5.

⁵ Motion, paras 4-5.

⁶ Defence Response to Sixth Prosecution Motion to Add Documents to its 65 *ter* Exhibit List, 5 April 2013, para. 4 and Section III. Conclusion.

⁷ Response, paras 6, 16.

⁸ Response, paras 7, 19-21.

⁹ Response, paras 19, 21.

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing amendments to the Rule 65 *ter* exhibit list as set out in a previous decision.¹⁰

III. DISCUSSION

4. The Chamber notes that the only explanation the Prosecution offers for seeking the Documents' addition to its Rule 65 *ter* exhibit list at this stage of the proceedings is that "it belatedly discovered the Documents among its archives while preparing the in-court testimony and 92bis packages of its Foča witnesses."¹¹ The Chamber therefore considers that the Prosecution has not demonstrated good cause for the addition of the Documents to its Rule 65 *ter* exhibit list. The Chamber recalls, however, that a showing of good cause is not a condition for addition, but is one factor to be considered in determining whether, on balance, the addition is in the interests of justice.¹²

5. Observing that the Defence does not explicitly contest the Documents' *prima facie* relevance and probative value, the Chamber notes that the Documents comprise 13 military correspondence scripts – telegrams, reports and orders – dated between 3 July and 31 October 1992, which relate to the events in Foča around that time.¹³ The Chamber finds the Documents to be *prima facie* relevant and of probative value as they concern the chain of command between the main staff of the VRS and the Herzegovina Corps, including the Foča unit, and further, in part, make explicit reference to the Accused.¹⁴ This gives the Documents particular significance as they relate to the location, the time-frame and alleged involvement of persons in crimes charged in the Indictment in and around Foča during the relevant time period.

6. With regard to the question of prejudice, the Chamber notes that the contents of the Documents do not raise substantially new issues different from those of which the Accused has previously been on notice on the basis of documents already on the Rule 65 *ter* exhibit list.¹⁵ Further, the Chamber notes that the Documents are short in length, ranging from one page of text to a maximum of six pages in only one instance. The Prosecution has not expressed an intention to use the Documents with any witness in the immediate future. Thus, the Chamber is of the opinion that

¹⁰ Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

¹¹ Motion, para. 5.

¹² Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, para. 6.

¹³ See Motion, Annex A, pp 1-3.

¹⁴ Cf. summarized contents of the Documents, Motion, Annex A, pp 1-3, column five of the table.

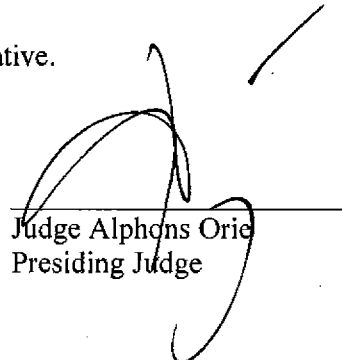
¹⁵ Oral Decision on the Prosecution's Urgent Motion to Add Five Documents to its Rule 65 *ter* Exhibit List to Tender through Witnesses RM-048 and RM-013, T. 9733-9734, 11 April 2013.

the addition of the Documents at this stage of the proceedings will not unduly burden the Defence in the preparation of its case, and taking into account the Prosecution's obligation to present the available evidence to prove its case, decides that it would be in the interests of justice to grant the Documents' addition to the Prosecution's Rule 65 *ter* exhibit list.

IV. DISPOSITION

7. For the foregoing reasons, pursuant to Articles 20 (1) and 21 (4) of the Statute and Rules 54 and 65 *ter* (E) (iii) of the Tribunal's Rules of Procedure and Evidence, the Chamber **GRANTS** the Motion to add the 13 Documents bearing provisional Rule 65 *ter* numbers 28767, 28768, 28769, 28770, 28771, 28772, 28773, 28774, 28775, 28776, 28777, 28778, and 28779 to the Prosecution's Rule 65 *ter* exhibit list.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-first day of June 2013
At The Hague
The Netherlands

[Seal of the Tribunal]