



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

Case No.: **STL-13-04/PT/PTJ**

The Pre-Trial Judge: **Judge Daniel Fransen**

The Registrar: **Mr Daryl Mundis**

Date: **10 February 2014**

Original language: **French**

Classification: **Public**

THE PROSECUTOR
v.
HASSAN HABIB MERHI

**DECISION ON THE DEFENCE OFFICE REQUEST TO DETERMINE THE
WORKING LANGUAGES IN THE PRE-TRIAL PHASE
OF THE *MERHI* CASE**

Office of the Prosecutor:
Mr Norman Farrell

Counsel for Mr Hassan Habib Merhi:
Mr Mohamed Aouini

Defence Office:
Mr François Roux



I. The purpose of the decision

1. By way of this decision, the Pre-Trial Judge rules on the Defence Office Request of 19 December 2013 relating to the working languages in the pre-trial phase of the *Merhi* case (the “Request”).¹

II. Procedural background

2. On 17 December 2013, the Trial Chamber issued an interim order establishing English as the working language before it during the pre-trial phase in the *Merhi* case (the “Interim Order”).²

3. On 19 December 2013, prior to the initiation of proceedings *in absentia* against Mr Merhi, the Defence Office filed the Request.

4. On 20 December 2013, following the decision of the Trial Chamber to initiate proceedings *in absentia* against Mr Merhi (the “Decision of 20 December 2013”)³ and the request of the Pre-Trial Judge in accordance with Rule 105 *bis* (B) of the Rules of Procedure and Evidence (the “Rules”), the Head of Defence Office proceeded to assign counsel for the purposes of the proceedings *in absentia* against Mr Merhi.⁴

5. On 23 December 2013, the Prosecution responded to the Request (the “Prosecution Response”).⁵

6. On 2 January 2014, the Defence for Mr Merhi (the “Defence”) filed its observations relating to the working languages in the *Merhi* case (the “Observations of the Defence”).⁶

¹ STL, *The Prosecutor v. Merhi*, Case No. STL-13-04/I/PTJ, *Requête relative aux langues de travail dans le cadre de la mise en état de l'affaire Merhi*, 19 December 2013. Any further reference to filings and decisions relate to that case number, unless otherwise indicated.

² STL, *The Prosecutor v. Merhi*, Case No. STL-13-04/I/TC, Interim Order on Working Language(s) for Filings, 17 December 2013.

³ STL, *The Prosecutor v. Merhi*, Case No. STL-13-04/I/TC, Decision to Hold Trial *In Absentia*, 20 December 2013.

⁴ Assignment of a Counsel for the *In Absentia* Proceedings Held Pursuant to Rule 106 of the Rules, 20 December 2013. On 30 December 2013, the Head of Defence Office assigned two co-counsel to represent the rights and interests of Mr Merhi; Assignment of Co-counsel, 30 December 2013.

⁵ Prosecution Response to « *Requête relative aux langues de travail dans le cadre de la mise en état de l'affaire Merhi* », 23 December 2013.

⁶ *Observations de la Défense relatives aux langues de travail pendant la phase de mise en état*, 2 January 2014.

7. On 3 January 2014, the Prosecution informed the Pre-Trial Judge that it did not intend to respond to the Observations of the Defence or to object to the Pre-Trial Judge extending the practice introduced by way of the decision relating to the use of languages in the case of *Ayyash et al.* rendered on 11 September 2011 by the Pre-Trial Judge (the “Decision on Languages”)⁷ to the *Merhi* case.⁸

8. On 30 January 2014, the Trial Chamber rendered a decision⁹ stating that the provisions of the Interim Order applied to a limited number of specified written filings relating to the pre-trial phase before the Trial Chamber (the “Decision of 30 January 2014”). In all other respects, the Chamber would apply the Decision on Languages with, where appropriate, any necessary adjustments.¹⁰

III. The arguments

A. The Request of the Defence Office

9. The Defence Office requests that the Pre-Trial Judge declare that he has jurisdiction to determine the working language(s) that shall be used during the pre-trial phase of the *Merhi* case. In this respect, and subject to any possible observations or objections presented by Mr Merhi or his counsel, the Defence Office requests that the provisions relating to the use of languages taken in the pre-trial phase of the case of *Ayyash et al.* be extended to the case of *Merhi*.¹¹

10. With regard to the jurisdiction of the Pre-Trial Judge in the *Merhi* case, the Defence Office points out that, although the Trial Chamber issued an Interim Order, it is incumbent upon the Pre-Trial Judge, pursuant to the provisions of the Statute of the Tribunal and the Rules, to determine the working languages at the preliminary stage of the proceedings.¹² Indeed, with the exception of the issue of initiating proceedings *in absentia* provided for by

⁷ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, Decision on Languages in the Case of *Ayyash et al.*, 16 September 2011.

⁸ E-mail from the Office of the Prosecutor to the Pre-Trial Judge, 3 January 2014.

⁹ STL, *The Prosecutor v. Merhi*, Case No. STL-13-04/PT/TC, Decision Re Interim Order on Working Language(s) and Application for Leave to Appeal, 30 January 2014.

¹⁰ *Id.*, para. 2.

¹¹ Request, paras 1, 2, 13 and 14.

¹² *Id.*, paras 5 and 6.

Rule 106 of the Rules, which is determined by the Trial Chamber, the Pre-Trial Judge remains seised of “[TRANSLATION] the entire proceedings in the *Merhi* case”.¹³

11. With regard to the choice of working languages to be used in the *Merhi* case, the Defence Office recalls the already well-established practice before the Tribunal that has been applied since the Decision on Languages. That practice consists in making oral observations in the three official languages of the Tribunal, namely French, English or Arabic. As for written submissions, these may be filed by the Parties in French or English and in Arabic if an accused is not represented by a counsel.¹⁴

12. In this regard, the Defence Office emphasizes the need to maintain this modality on account of the possible joinder of the cases of *Ayyash et al.* and *Merhi* and considers that, in the event of a modification of the Decision on Languages, such an alteration cannot be made for any purpose other than to include Arabic as a working language.¹⁵

13. The Defence Office is also of the opinion that to limit the use of languages to only one of the official languages of the Tribunal would cause prejudice not only “[TRANSLATION] to the right of the Accused to assign counsel of his own choosing and to the independence of the Defence Office”, but also to the public nature of the proceedings, which means that “[TRANSLATION] Lebanese Arabic or French-speaking citizens and lawyers have access to the proceedings before the Tribunal”.¹⁶ Lastly, the Defence Office submits that such a restriction would be contrary to the modality established before the Pre-Trial Judge, since he “[TRANSLATION] himself issues his decisions in the two languages”.¹⁷

B. The Prosecution Response

14. The Prosecution considers that the Interim Order issued by the Trial Chamber does not preclude the Pre-Trial Judge from determining the working language(s) in the preliminary stage of the *Merhi* case, of which he is seised.¹⁸

¹³ *Id.*, para. 4.

¹⁴ Request, paras 7 and 8; Decision on Languages, para. 44 and the disposition, pp. 21-22.

¹⁵ Request, paras 12 and 15. The Pre-Trial Judge notes that the order of 16 December 2011 to which the Defence Office refers should be replaced by his Decision on Languages in the case of *Ayyash et al.* rendered on 16 September 2011.

¹⁶ Request, paras 9 and 10.

¹⁷ *Id.*, para. 11.

¹⁸ Prosecution Response, para. 2.

15. Furthermore, the Prosecution notes that the Trial Chamber, in its Interim Order, established English as the working language. The Prosecution considers that it would be preferable that the working languages be the same at the pre-trial and trial stages. Insofar as the Pre-Trial Judge remains seized of the *Merhi* case, it is for him to determine the working language(s) at the preliminary stage of the proceedings. As long as English is included as one of the working languages chosen, the Prosecution has no objection in principle as to the choice of languages which is, at this stage of the proceedings, a matter falling under the jurisdiction of the Pre-Trial Judge.¹⁹

16. The Prosecution recalls that the Pre-Trial Judge, in his Decision on Languages, found that “considerations of time and resource limitations justify the adoption of a practical approach to the modalities of language use” and specified that although oral submissions could be made in any one of the three languages of the Tribunal, written submissions must be filed in French or English.²⁰

17. By contrast, the Prosecution considers that the Defence Office’s submissions, arguing for the need to use the three official languages of the Tribunal as working languages, are not convincing. In point of fact, the arguments relating to the accused’s counsel of choice, and also to access of Lebanese citizens and lawyers to the documents filed by the participants before the Registry of the Tribunal and to decisions and orders issued by the Tribunal do not, in themselves, lead to the conclusion that it is necessary to use the three languages. The Prosecution recalls in this respect that, to the best of its knowledge, no written submission, nor even a request for leave to file submissions in Arabic, has been filed in the case of *Ayyash et al.*²¹

18. The Prosecution considers that the matter of access by Lebanese citizens and lawyers to the Tribunal’s case law is not linked to the matter of the working languages. Furthermore, a number of measures were taken by the Pre-Trial Judge so as to ensure that Lebanese French or Arabic-speaking citizens and lawyers had access to the Tribunal’s decisions and to the documents filed before it. As such, in the Decision on Languages, the Pre-Trial Judge ordered that all decisions and orders be translated into the three official languages of the Tribunal. He also decided that written submissions and “materials of fundamental importance” should be

¹⁹ *Id.*, paras 6 and 7.

²⁰ Prosecution Response, para. 9; Decision on Languages, para. 32.

²¹ Prosecution Response, paras 3, 4 and 10.

translated into French and Arabic subject to prior authorization from the Pre-Trial Judge or relevant Chamber.²² The Prosecution further recalls that the definition of the term “working language” defined by the Pre-Trial Judge refers to the working languages in which the Tribunal “conducts its judicial proceedings in a particular case”.²³

19. Lastly, as to the Accused’s right to choose his own counsel, the Prosecution submits that the risk of prejudice to that right does not arise in light of the decision initiating proceedings *in absentia* rendered by the Trial Chamber in the case of *Merhi*.²⁴

20. Consequently, the Prosecution advocates not departing from the principle established by the Decision on Languages.²⁵ According to the Prosecution, the Pre-Trial Judge has two options. Either he could determine, by way of an order, the working languages to be applied during the *Merhi* pre-trial proceedings before him. In that instance, if the Defence demonstrates the need to divert from those working languages, it could always bring a motion seeking reconsideration of the order. Alternatively, the Pre-Trial Judge could, prior to his decision on the choice of working languages in the *Merhi* case, seek the views of the Defence on this matter.²⁶

C. The Observations of the Defence

21. The Defence adheres in all respects to the arguments developed in the Request.²⁷

22. Firstly, it is of the opinion that the Interim Order issued by the Trial Chamber only applies to proceedings falling within its own jurisdiction.²⁸

23. Secondly, the Defence considers that the modality established before the Tribunal²⁹ in the case of *Ayyash et al.*, which consists on the one hand of making oral submissions in the three official languages of the Tribunal and, on the other, of filing written submissions in English or in French, should be maintained.³⁰ It states that this practice, the criteria of which

²² Prosecution Response, para. 11; Decision on Languages, para. 42 and disposition.

²³ Prosecution Response, para. 11; Decision on Languages, para. 27.

²⁴ Prosecution Response, para. 12; Decision of 20 December 2013.

²⁵ Prosecution Response, para. 10.

²⁶ *Id.*, para. 12.

²⁷ Observations of the Defence, para. 4.

²⁸ *Id.*, para. 6.

²⁹ The Defence recalls moreover that this practice was applied both before the Pre-Trial Judge and before the Trial and Appeals Chambers; Observations of the Defence, para. 8.

³⁰ *Id.*, paras 5 and 7.

are in accordance with the provisions of the Rules,³¹ was in fact taken into consideration when the members of the Defence team in the *Merhi* case were assigned, as those team members are Arabic and French speaking.³² According to the Defence, given that in the case of *Ayyash et al.* “[TRANSLATION] the four defence teams (...) are authorized to submit their written filings in English or in French as they choose”, this modality should be extended to the *Merhi* case so as to guarantee the same procedural rights to the defence teams in both two cases.³³

24. Thirdly, the Defence submits that access by the Lebanese public – at whom the acts and decisions of the Tribunal are primarily directed – to the work of that institution is an essential factor directly linked to the use of working languages.³⁴ However, according to the Defence, the translation of the documents of the Tribunal from English into French or Arabic would not compensate for “[TRANSLATION] the use of French and/or Arabic as the original working language”.³⁵

25. Indeed, the Defence considers, firstly, that a translated document does not have the same value as an original document and, secondly, that the translation process, which is subject to the discretion of a judge and to predetermined criteria, better serves the principles of transparency, the public nature of proceedings and information guaranteed by the Tribunal than the principle of public access to the work of the Tribunal.³⁶

26. Furthermore, contrary to what the Prosecution states, the issue of the use of working languages, which is unquestionably linked to public access to the work of the Tribunal, should not be limited to “materials of fundamental importance”.³⁷ Indeed, “[TRANSLATION] language, itself an essential component of the public’s understanding, becomes incontrovertibly vital for the public to access the work of the Tribunal”.³⁸ However, the Defence recalls that Lebanon is an Arab country, which is Arabic and French speaking.³⁹

³¹ *Id.*, para. 9; Rules 58 (A) (ii) and 59 (B) of the Rules.

³² Observations of the Defence, para. 10.

³³ *Id.*, paras 11 and 12.

³⁴ *Id.*, paras 13 and 14.

³⁵ *Id.*, para. 16.

³⁶ *Id.*, para. 16.

³⁷ *Id.*, para. 17.

³⁸ *Id.*, para. 14.

³⁹ *Id.*, para. 13.

Consequently, the Pre-Trial Judge, who has jurisdiction to determine the working languages for that phase of the proceedings, should give priority to one of those two languages.⁴⁰

27. For these reasons, the Defence seeks that the Pre-Trial Judge extend the practice established in the Decision on Languages to the *Merhi* case. It also requests that in the event of the aforementioned practice being altered, French and/or Arabic be employed as working language(s) in the context of those proceedings.⁴¹

IV. Statement of reasons

28. As a preliminary matter, the Pre-Trial Judge recalls that, pursuant to Rule 57 (F) of the Rules, the Head of Defence Office may, where the interests of justice so require, *proprio motu*, have rights of audience in relation to matters of general interest to defence teams, the fairness of the proceedings or the rights of a suspect or accused. The Pre-Trial Judge notes that the Request is not based on this regulatory provision and contains no grounds in connection with it. Nevertheless, insofar as the proper administration of justice requires that matters raised by the Request be determined at the earliest opportunity after the start of proceedings and, considering that the Counsel for the Merhi Defence joined the requests regarding this matter from the time he was assigned, the Pre-Trial Judge considers that the Request is admissible. In any event, pursuant to Rule 77 (E) of the Rules, the Pre-Trial Judge may, *proprio motu*, issue this decision.

A. The jurisdiction of the Pre-Trial Judge

29. Pursuant to Articles 14 and 16 (4) of the Statute and Rules 10 (A) and 77 (E) of the Rules, and bearing in mind the need, for the proper administration of justice, to rule on the matter as soon as possible after the start of the proceedings, the Pre-Trial Judge has jurisdiction to rule on the matter of working languages at this stage of the proceedings, without prejudice to any future order or decision that the Trial Chamber or Appeals Chamber may issue, where necessary.

30. In this respect, it should be noted that the Interim Order issued by the Trial Chamber in which it established English as the working language applies, as indicated in the Decision

⁴⁰ *Id.*, para. 18.

⁴¹ *Id.*, paras 5 and 19.

of 30 January 2014, to the proceedings pending before it or, at least, which were before it at the time the order was issued, namely those mentioned at Rule 106 of the Rules which fell within its jurisdiction. As a consequence, the Pre-Trial Judge still has jurisdiction at the preliminary stage of the *Merhi* case of which he is seised in order to determine the use of languages in the proceedings.

31. Furthermore, in accordance with Rule 10 (B) of the Rules, the Pre-Trial Judge took note of the arguments developed in the Request and in the responses and observations of the Parties.

32. Lastly, it should be noted that, to date, no victim has been authorized to participate in the proceedings and no legal representative of those victims has been appointed. Therefore, they have not been consulted on the matter of determining the working languages. However, if they consider it useful, once assigned, they may request the Pre-Trial Judge or the Trial Chamber to reconsider the matter of the working languages as defined in the present decision.

B. The determination of the working languages

33. The Pre-Trial Judge recalls that on 16 September 2011, he rendered the Decision on Languages. That decision was based in particular on the fact that the determination of the working languages was one of the measures necessary for the expeditious preparation for trial by providing the Office of the Prosecutor, the Defence Office, counsel for the Defence, the future representatives of potential victims, and the Registry, some degree of clarity and certainty during the pre-trial phase. The choice of the working language(s) was based on the requirement to strike “a delicate equilibrium [...] between the rights of the accused”, the need to ensure a fair and expeditious trial, and the need to manage the Tribunal’s finite resources responsibly.⁴²

34. The Pre-Trial Judge considers that the principles laid down in the Decision on Languages must likewise be applied to the pre-trial phase of the *Merhi* case.⁴³

35. In point of fact, the overall consistency in the use of languages before the Tribunal contributes towards maintaining the proper administration of justice and the smooth conduct

⁴² Decision on Languages, para. 10.

⁴³ A number of minor adaptations, based on experience in the case of *Ayyash et al.*, have however been made to this decision.

of the proceedings. In this respect, as the Defence Office pointed out, extending the practice established in the case of *Ayyash et al.* to the *Merhi* case is all the more desirable given that those cases might be joined.⁴⁴

36. Accordingly, the Pre-Trial Judge recalls that the three official languages of the Tribunal – Arabic, English and French – enjoy equal status. Nevertheless, certain considerations of time as well as limited resources justify the adoption of a practical approach with regard to languages. The Pre-Trial Judge recalls likewise that in his Decision on Languages, he ruled that although oral submissions could be made in one of the three languages of the Tribunal, written submission should, themselves, be filed in French or in English. As such, English and French were used in all decisions, orders, written submissions and filings, with the Registry ensuring that those documents were translated into the other language, including Arabic, if necessary.

37. Consequently, the Pre-Trial Judge considers that, bearing in mind the experience gained to date, the addition of Arabic as a written working language in the *Merhi* case is not necessary. Indeed, in accordance with Article 14 of the Statute, the Pre-Trial Judge may decide that one or two languages from the three official languages of the Tribunal may be used. Furthermore, in accordance with Rule 58 (A) (ii) of the Rules, the Defence must have “written [...] proficiency in English or French”. That obligation also applies to the Legal Representatives of Victims participating in the proceedings, pursuant to Rule 51 (C) (i) of the Rules.

38. In view of the foregoing, the above Rules provide the most appropriate solution regarding the use of languages.

1. Oral proceedings

39. Any participant in the proceedings may express themselves orally in any one of the official languages of the Tribunal⁴⁵ and an accused has the right to use his own language.⁴⁶

⁴⁴ On this point, the Pre-Trial Judge notes that the Prosecution filed a request in this respect before the Trial Chamber. See, STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Prosecution Motion for Joinder, 30 December 2013.

⁴⁵ Rule 10 (A) of the Rules.

⁴⁶ Rule 10 (C) of the Rules. Where an accused is not represented by counsel, or represents himself, he also has the right to file his submissions in any one of the three official languages of the Tribunal.

40. In accordance with Rule 10 (D) of the Rules, any other person appearing in the context of the proceedings, other than counsel, may use their own language if they do not have sufficient knowledge of the official languages, subject to authorization of the Pre-Trial Judge or the relevant Chamber.

2. Decisions and Filings

a. Documents emanating from Chambers

41. The practice of having decisions and orders issued in English or French translated into the three official languages of the Tribunal must be adopted in the *Merhi* case. However, if that practice should result in an excessive workload for the Registry, the Pre-Trial Judge or the relevant Chamber may, if necessary, determine which decisions are to be translated.

b. Written submissions from the Parties, the Legal Representatives of Victims and persons appearing other than counsel

42. Procedural documents from Parties or the Legal Representatives of Victims must be filed in English or French. Due to the limited resources of the Registry and the need to ensure an expeditious preparation for trial, procedural documents filed in English or French will be translated into the other official languages of the Tribunal, with the prior authorization of the Pre-Trial Judge or the relevant Chamber, acting *proprio motu* or at the request of a Party or of a Legal Representative of Victims showing good cause.

43. Any person appearing in the proceedings, other than counsel, may file written submissions in their own language if they do not have sufficient knowledge of the official languages, with the authorization of the Pre-Trial Judge or relevant Chamber. Those written submissions shall be translated into English. They will be translated into Arabic and/or French, with the prior authorization of the Pre-Trial Judge or the relevant Chamber, acting *proprio motu* or at the request of a Party or of a Legal Representative of Victims showing good cause.

c. Materials under Rule 91 of the Rules

44. The Prosecution pre-trial brief and witness list mentioned in Rule 91 (G) of the Rules must be filed in one of the three official languages of the Tribunal and translated into the other two official languages of the Tribunal.

45. The Prosecution exhibit list mentioned in Rule 91 (G) (iii) of the Rules must be filed in Arabic and English and the Prosecution exhibits served in those two languages.

46. The witness and exhibits lists of the victims participating in the proceedings mentioned in Rule 91 (H) of the Rules must be filed in English or in Arabic and translated into the other language as appropriate.

47. The Defence pre-trial brief mentioned in Rule 91 (I) of the Rules must be filed in English or French.

3. Materials for disclosure

48. Taking account of the rights of the accused and the limited resources of the Tribunal, the Prosecution must disclose all evidentiary materials in support of the indictment provided for by Rule 110 (A) of the Rules and all other documents subject to disclosure under Rule 113 (A) of the Rules in their original language, as well as in English and in Arabic.

49. Insofar as counsel for the Defence are Arabic and French speaking (and not English speaking), it is appropriate to take, as a minimum, the measures described hereinafter. Materials of fundamental importance shall be submitted for translation into French in their entirety, or summarized and then submitted for translation into French. Those materials shall be identified by the Pre-Trial Judge or by the relevant Chamber, acting *proprio motu*, or at the request of a Party or of a Representative of Victims.

50. So as to enable the Pre-Trial Judge or the relevant Chamber to verify that this obligation is being met, the Prosecution must report monthly to the Pre-Trial Judge and the relevant Chamber on the status of the preparation of the summaries and other translations detailed above.

51. With regard to the disclosure obligations incumbent on the Defence mentioned at Rule 112 of the Rules, the Pre-Trial Judge considers that the Defence must meet that obligation in English or French and, where appropriate, in their original language.⁴⁷

52. Lastly, the Pre-Trial Judge notes that, in accordance with Rule 113 (B) of the Rules, victims participating in the proceedings shall have the same disclosure obligations as the Prosecution in terms of exculpatory evidence.⁴⁸ Therefore, the aforementioned modalities applicable to the Prosecution shall apply *mutatis mutandis* to the victims participating in the proceedings.⁴⁹

4. The language regime applicable to victims participating in the proceedings

53. The language that a victim participating in the proceedings and authorized to appear without the assistance of counsel may use⁵⁰ shall be determined, where appropriate, on a case-by-case basis by the Pre-Trial Judge or the relevant Chamber.

5. The language regime applicable to transcripts of hearings

54. For technical reasons, the transcripts of hearings in real time are only produced in English. However, Arabic and French transcripts shall be made available within a reasonable time after the hearing has ended.⁵¹

⁴⁷ Rule 112 of the Rules on “Disclosure by the Defence” sets forth the case where the Defence is under an obligation to disclose. In accordance with Rule 112 (A) of the Rules, that obligation arises “at the end of the Prosecutor’s case, following a Defence election to present its case, within the time-limit prescribed by the Pre-Trial Judge or the Trial Chamber, but not less than one week prior to the commencement of the Defence case”.

⁴⁸ Rule 112 *bis* of the Rules relating to “Disclosure by Victims Participating in the Proceedings” (namely materials other than those under Rule 113 (B) and which are not exculpatory) provides that where the Trial Chamber grants a victim participating in the proceedings the right to call evidence, the Chamber shall decide on the corresponding disclosure obligations that shall be imposed.

⁴⁹ See para. 48, *supra*.

⁵⁰ While Rule 10 (B) stipulates that the Pre-Trial Judge shall consult “the Parties and the legal representative of victims participating in the proceedings”, Rule 86 (C) (ii) sets forth that a “victim participating in the proceedings may only do so through a legal representative unless the Pre-Trial Judge authorizes otherwise.” Rule 86 (C) (ii) thus provides for the eventuality where victims — provided they have been authorized — are not represented and appear in person.

6. Additional translation requests

55. Notwithstanding the various modalities mentioned above, the Parties, as well as the Legal Representatives of Victims may, at any time, file before the Pre-Trial Judge or the relevant Chamber a request showing good cause in order to obtain the translation by the Registry of specific documents or the preparation of summaries of specific evidence by the participant concerned for the purposes of translation.⁵²

V. Disposition

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT to Articles 14 and 16 of the Statute, as well as Rules 10, 57, 58, 59, 77 (E), 88 (G), 89 (B), 91, 110 and 113 of the Rules;

GRANTS IN PART the Request;

WITHOUT PREJUDICE to any future orders or decisions which the Pre-Trial Judge or another relevant Chamber may issue;

WITHOUT PREJUDICE to any, duly reasoned, future request from a Party or a Legal Representative of Victims seeking to obtain the translation of specific documents by the Registry, or the preparation of summaries of specific evidence by the Party concerned for the purposes of translation by the Registry;

⁵¹ The Pre-Trial Judge notes however that if an accused is unable to understand one of the three official languages of the Tribunal, his right to receive transcripts in his own language is still to be defined. It was previously submitted before the ICTY that “transcripts of the proceedings are provided in one or both of the working languages on request simply as an *aide-mémoire* for courtroom participants. As with motions and other similar documents, the Defence is not entitled to have the transcripts translated into the language of the accused”, *The Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, para. 14.

⁵² The Pre-Trial Judge points out that the summaries, in whatever language, will not have the effect of officially written materials or other documents provided for by the Rules, but are intended to assist the participants in the proceedings’ understanding of the case.

STATES that the decisions and orders issued by the Pre-Trial Judge or by a Chamber of the Tribunal, shall, unless otherwise decided, be translated into the three official languages of the Tribunal;

STATES that participants in the proceedings may express themselves orally in any of the official languages of the Tribunal of their choice, with the proviso that an accused may use his own language;

STATES that any other person appearing in the proceedings, other than counsel, may use their own language if they do not have sufficient knowledge of the official languages, with the authorization of the Pre-Trial Judge or the relevant Chamber;

ORDERS that the procedural documents of the Parties and the Legal Representatives of Victims be drafted in English or French;

ORDERS that the procedural documents drafted in English or French be translated into the other official languages of the Tribunal with the authorization of the Pre-Trial Judge or the relevant Chamber, acting *proprio motu* or at the request of a Party or of a Legal Representative of Victims showing good cause;

STATES that any person appearing in the proceedings, other than counsel, may file written submissions in their own language if they do not have sufficient knowledge of the official languages of the Tribunal, with the authorization of the Pre-Trial Judge or the relevant Chamber;

ORDERS that the written submissions filed by persons appearing in the proceedings, other than counsel, be translated into English and, with the prior authorization of the Pre-Trial Judge or the relevant Chamber, acting *proprio motu* or at the request of a Party or of a Legal Representative of Victims showing good cause, translated into Arabic and/or French;

ORDERS that the materials filed by the Prosecution under Rule 91 (G) of the Rules, with the exception of materials mentioned at Rule 91 (G) (iii) of the Rules, be filed in one of the three official languages of the Tribunal and translated into the two other official languages of the Tribunal;

ORDERS that the Prosecution exhibit list mentioned at Rule 91(G) (iii) of the Rules be filed in Arabic and English and the exhibits served in those two languages;

ORDERS that evidence filed by the Legal Representatives of Victims pursuant to Rule 91 (H) of the Rules be filed in English or in Arabic and translated into the other language as appropriate;

ORDERS that materials filed by the Defence pursuant to Rule 91 (I) of the Rules be filed in English or French;

ORDERS that materials to be disclosed by the Prosecution and the Legal Representatives of Victims be filed in English and in Arabic and, where appropriate, in their original language;

ORDERS that materials of fundamental importance, as identified by the Pre-Trial Judge or the relevant Chamber, acting *proprio motu* or at the request of a Party or a Legal Representative of Victims, be translated into French in their entirety, or summarized by the Prosecution or, where necessary, by the Legal Representative of Victims concerned, and that those summaries be translated into French;

ORDERS that materials disclosed by the Defence be filed in English or French and, where appropriate, in their original language;

ORDERS the Prosecution to provide to the Pre-Trial Judge and the relevant Chamber monthly reports on the status of the preparation of the summaries and other translations; and

ORDERS the transcripts of hearings in real time to be produced in English and made available in French and Arabic within a reasonable time after the hearing has ended.

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

Leidschendam, 10 February 2014

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[signature]

Daniel Fransen
Pre-Trial Judge

