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-95-5/18-T

Date: 25 May 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: **25 May 2012**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON PROSECUTION MOTIONS FOR ADMISSION OF ITEMS 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 seised of the "Prosecution Motion for Admission of Exhibits Marked for Identification", filed on 4 May 2012 ("First Motion"), and the "Prosecution Motion for Admission of P740 Previously Marked for Identification", filed on 22 May 2012 ("Second Motion"), and hereby issues its decision thereon.

1. In the First Motion, the Office of the Prosecutor ("Prosecution") requests that the Chamber admit into evidence 25 items previously marked for identification ("MFI").[1] 22 of these were marked for identification pending English translation, namely MFI P3894, P3909, P4713, P4719, P4860, P4861, P4864, P4868, P4874, P4875, P4877, P4879, P4881, P4884, P4885, P4886, P4888, P4891, P4893, P4895, P4896, and P4900.[2] The two items containing photographic images, MFI P2846 and P2847, were marked for identification pending further evidence on the location of the mosque depicted therein.[3] Lastly, MFI P3508 was marked for identification pending the uploading of the complete document into e-court.[4] The Prosecution acknowledges that English translations have not been completed for nine of the items for which it is seeking admission, but informs the Chamber that it has pre-emptively included these items in the First Motion in order to comply with the deadline of 4 May 2012 imposed by the Chamber for the submission of all evidence-related motions.[5] On 4 May 2012, the Chamber's legal officer informed the parties *via* email that the Chamber had decided that the Accused should respond to the First Motion no later than 11 May 2012, should he wish to do so. On 9 May 2012, the Accused's legal adviser informed the Chamber and the Prosecution, *via* email, that the Accused did not intend to respond to the First Motion.

2. In the Second Motion, the Prosecution requests that the Chamber admit into evidence the document assigned MFI P740, a set of 43 death certificates for individuals who died on 28 August 1995 in relation to Scheduled Shelling Incident G19 of the Third Amended Indictment ("Indictment").[6] The Prosecution submits that one page of MFI P740 was admitted through witness Sulejman Crnčalo, while the remainder of the document was marked for identification after the Accused indicated that he wanted to review the remaining death

[1] Motion, paras. 1, 7.
[2] Motion, paras. 5–6.
[3] Motion, paras. 2–3.
[4] Motion, para. 4.
[5] Motion, para. 6, referring to Scheduling Order on Close of the Prosecution Case, Rule 98 *bis* Submissions, and Start of the Defence Case, 26 April 2012 ("Scheduling Order"), para. 16.
[6] Second Motion, paras. 1, 7.

certificates.[7] On 22 May 2012, the Accused's legal adviser informed the Chamber and the Prosecution, *via* email, that the Accused did not intend to respond to the Second Motion.

3. The Chamber recalls the "Order on the Procedure for the Conduct of the Trial" issued on 8 October 2009 ("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.[8]

4. On the basis of the information provided by the Prosecution in the First Motion, and having reviewed the documents, their proposed translations, and the relevant transcripts, the Chamber is satisfied that the following 22 items should now be marked as admitted: MFI P3894, P3909, P4713, P4719, P4860, P4861, P4864, P4868, P4874, P4875, P4877, P4879, P4881, P4884, P4885, P4886, P4888, P4891, P4893, P4895, P4896, and P4900.

5. With regard to MFI P2846 and P2847, the Chamber notes that copies of the photographic images in both documents can be found on pages 274 and 275 of exhibit P4308. The Chamber further notes that when shown exhibit P4308 during direct examination, Jean-Rene Ruez testified that the composite photograph on page 274, which was taken from a video shot by Zoran Petrović on 13 July 1995, "depicts the central mosque in the centre of Srebrenica town".[9] Ruez then identified the photograph on page 275 as one he had taken "on 16 or 18 April 1996" of the same mosque after its destruction.[10] The Chamber is satisfied that the photographs which comprise MFI P2846 and MFI P2847 are identical to those found in exhibit P4308 and is thus satisfied that the location of the mosque has been sufficiently established. The Chamber will therefore admit MFI P2846 and MFI P2847 into evidence.

6. The Chamber notes that the original BCS version of MFI P3508 is an introductory letter followed by a 32-page list of names and a short addendum correcting that list. The document's translation contains the English version of both the introductory letter and the addendum, as well as the first two pages from the list of names. The Chamber is satisfied that the remaining pages of the list of names require no further translation. The Chamber will therefore admit MFI P3508 into evidence.

[7] Second Motion, paras. 2–4.
[8] Order on Procedure, Appendix A, paras. O, Q.
[9] Hearing, T. 23868–23869 (30 January 2012).
[10] Hearing, T. 23869 (30 January 2012).

7. In relation to the Second Motion, the Chamber recalls that after admitting one page of MFI P740 during the testimony of witness Sulejman Crnčalo on 15 April 2010, the Chamber marked the remainder of the document for identification in order to grant the Accused, upon his request, an opportunity to review the remaining death certificates contained therein.[11] Having reviewed the document, the Chamber notes that each of the 43 death certificates records the date of death of the individuals as 28 August 1995 and each certificate is stamped and signed by Dr. Ilijaš Dobrača. The Chamber further notes that the death certificates are relevant to Scheduled Shelling Incident G19 of the Indictment which relates to the shelling of Markale Market on 28 August 1995. Finally, the Chamber notes that since the document was marked for identification over two years ago, the Accused has not furnished any objection to the admission of the remaining death certificates, and moreover, the Accused has now indicated that he did not wish to respond to the Second Motion. Therefore, the Chamber is satisfied that the remaining death certificates contained in MFI P740 are relevant and of probative value pursuant to Rule 89(C), and thus, shall admit MFI P740 into evidence at this time.

Disposition

8. Accordingly, the Trial Chamber, pursuant to Rule 89 of the Rules, hereby:

(A) **GRANTS** the First Motion and **ADMITS** into evidence the items currently marked for identification as: MFI P2846, MFI P2847, MFI P3508, MFI P3894, MFI P3909, MFI P4713, MFI P4719, MFI P4860, MFI P4861, MFI P4864, MFI P4868, MFI P4874, MFI P4875, MFI P4877, MFI P4879, MFI P4881, MFI P4884, MFI P4885, MFI P4886, MFI P4888, MFI P4891, MFI P4893, MFI P4895, MFI P4896, and MFI P4900; and

(B) **GRANTS** the Second Motion and **ADMITS** into evidence the item currently marked for identification as MFI P740.

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

Judge O-Gon Kwon
Presiding

Dated this twenty-fifth day of May 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

[11] Hearing, T. 1280 (15 April 2010).