

**UNITED  
NATIONS**

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International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-95-5/18-T

Date: 12 December 2013

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**IN TRIAL CHAMBER III**

**Before:**

Judge O-Gon Kwon, Presiding  
Judge Howard Morrison  
Judge Melville Baird  
Judge Flavia Lattanzi, Reserve Judge

**Registrar:**

Mr John Hocking

**THE PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**PROSECUTION SUBMISSION ON THE CONTINUATION OF  
STANDBY COUNSEL ARRANGEMENT**

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**The Office of the Prosecutor:**

Mr Alan Tieger  
Ms Hildegard Uertz-Retzlaff

**The Accused:**

Mr Radovan Karadžić

**Standby Counsel:**

Mr Richard Harvey

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**Case No. IT-95-5/18-T**

**THE PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

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**PROSECUTION SUBMISSION ON THE CONTINUATION OF  
STANDBY COUNSEL ARRANGEMENT**

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**I. Introduction**

1. On 6 December 2013, the Trial Chamber requested the parties and the standby counsel to offer their views as to whether the standby counsel arrangement that has existed since April 2010 should remain in place following the close of the Defence case or of rebuttal and rejoinder, if any, and until the completion of the closing arguments.<sup>1</sup> For the reasons detailed below, the Prosecution supports the continuation of the standby counsel role until the completion of the closing arguments.

**II. Discussion**

2. In its previous submission on this subject at the close of the Prosecution case, the Prosecution detailed how, following the Accused's objection to the timing of the start of the trial in October 2009, he only began attending and participating in the trial once standby counsel was in place, *i.e.*, once it was clear that the trial would proceed with or without the Accused's participation.<sup>2</sup> The effect of the Accused's boycott of the trial up until that point was effectively to derail the proceedings for three and a half months while the appointed counsel read into the case and prepared for his role.<sup>3</sup>

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<sup>1</sup> T.44682 (6 December 2013).

<sup>2</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Prosecution Submission on the Continuation of Standby Counsel Arrangements, 9 May 2012, paras. 2-9. All further references to filings and decisions relate to this case unless otherwise stated.

<sup>3</sup> Prosecution Submission on the Continuation of Standby Counsel Arrangements, 9 May 2012, para. 10.

3. Among the functions set forth for the standby counsel at the time of appointment were: “to engage actively in ongoing substantive preparation of the case, in order to be prepared to put questions to witnesses on behalf of the Accused, *or to represent his interests, at any time*, should the Trial Chamber find this to be necessary.”<sup>4</sup> In determining that the role of the standby counsel had not changed at the close of the Prosecution case, the Trial Chamber observed that standby counsel “must maintain a state of readiness to take over the conduct of the case at any time and that this will require him to develop a defence strategy and conduct some investigations of his own so that, if he should be ordered to represent the Accused’s interests, the proceedings would not need to be adjourned.”<sup>5</sup>

4. As the Defence case draws to a close, the risk of tactical obstructions in the absence of standby counsel remains. For example, the Accused could absent himself from any rebuttal and rejoinder stages of evidence presentation as a means to protest denial of a request for additional time to present his case-in-chief beyond the 325 hours already allotted to him. Likewise, the Accused could wait until the eve of closing arguments and then refuse to participate for the same reason. Such circumstances would clearly implicate the potential involvement of standby counsel.

5. The Accused contends that continuing the standby counsel role is unnecessary, noting that he “fully intends to comply with all of the orders and directions of the Trial Chamber, as he has done throughout the prosecution’s case.”<sup>6</sup> This is the same observation made by the Accused in his earlier submission on this issue at the close of the Prosecution case.<sup>7</sup> Leaving the fate of the concluding phase of the trial in the hands of the Accused who has already seen fit to decline participation based on his disagreement with the timing of the proceedings remains a risk that is addressed by the maintenance of standby counsel.

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<sup>4</sup> Decision on Designation of Standby Counsel, 15 April 2010, para. 9 (emphasis added).

<sup>5</sup> Decision on Continuation of Standby Counsel Assignment, 21 June 2012, p.3.

<sup>6</sup> Submission on Standby Counsel, 11 December 2013, para. 1.

<sup>7</sup> Submission on Standby Counsel, 7 May 2012, para. 1. As the Prosecution has noted, this argument is beside the point, given that the Trial Chamber has never claimed a capacity to order or direct the Accused to attend and participate in his trial. The Accused’s history of compliance with orders has no bearing on whether he would voluntarily participate in his trial as a self-represented individual in circumstances where he believes he requires additional time to present his case or for preparation purposes, and indeed, his history in this respect speaks to the contrary. *See* Prosecution Submission on the Continuation of Standby Counsel Arrangements, 9 May 2012, para. 14.

**III. Conclusion**

6. For the foregoing reasons, the Prosecution supports the continuation of the standby counsel role until the completion of the closing arguments.

Word Count: 755



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Dated this 12<sup>th</sup> day of December 2013  
At The Hague  
The Netherlands