

**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

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

PROSECUTOR

V

RADOVAN KARADŽIĆ

PUBLIC

**SUBMISSION ON THE CONTINUING NEED
FOR STANDBY COUNSEL AFTER
CLOSE OF DEFENCE CASE,
REBUTTAL AND REJOINDER**

Date: 12 December 2013

The Office of the Prosecutor

**Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff**

The Accused:

Dr. Radovan Karadzic

Standby Counsel:

Mr. Richard Harvey

I. INTRODUCTION

1. Once the evidence concludes, many of the duties assigned to Standby Counsel under the terms of the Trial Chamber's Designation Decision of 15 April 2010 will automatically cease in whole or in part.¹ Accordingly, the Trial Chamber has invited the parties and Standby Counsel to make submissions by 13 December 2013 "as to whether Standby Counsel should continue to perform the duties to which he was assigned after the close of the Defence case or of rebuttal and rejoinder, if any, and until the completion of the closing arguments."²

II. STANDBY COUNSEL'S MANDATE

2. Standby counsel was mandated by the Designation Decision:
 - a) To receive copies of all court documents, filings, and disclosed materials generated by or sent to the Accused;
 - (b) To be present in the courtroom during the proceedings, assisted by one member of his team, should he consider it to be necessary;
 - (c) 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; and
 - (d) To address the Chamber whenever so requested by the Chamber.³

¹ *Prosecutor v. Radovan Karadzic*, IT-95-5/18-T, Decision on Designation of Standby Counsel, 15 April 2010 ("Designation Decision")

² 8 December 2013 T: 44682:11-18

³ Designation Decision at paragraph 9.

3. At the conclusion of the Prosecution Phase, the Trial Chamber sought the views of the Parties and Standby Counsel on whether those duties should continue after the close of the Prosecution case and, if so, to what extent. In its Decision, the Trial Chamber took note of Standby Counsel's submission that "the continued role of Standby Counsel is essential to the smooth running of the trial and to the protection of the fair trial rights of all parties."⁴

4. The Trial Chamber ordered that "the role of Standby Counsel as defined in the Designation Decision shall remain unchanged during the Accused's Defence case," and ruled 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.⁵

5. In line with the Trial Chamber's instructions, Standby Counsel has continued throughout the Defence phase to maintain a state of readiness to take over at any time, up to and including the closing argument phase of the case. Counsel has made preparations for filing a final brief should, that be required or requested by the Trial Chamber. While the Accused and his team of advisors have continued to present his case with professionalism and considerable stamina, Standby Counsel has continued to prepare for the contingency that the Accused might for any reason be unable to continue do so.

⁴ *Prosecutor v. Radovan Karadzic*, IT-95-5/18-T, Decision on Continuation of Standby Counsel Assignment, 21 June 2012 ("Continuation Decision"), at page 2.

⁵ *Id.*, at page 3.

6. As the conclusion of the Accused's Defence case approaches, Standby Counsel respectfully submits that the interests of justice and of the continued smooth running of the case until closing arguments are best served by the Trial Chamber making full use of the experience and analytical work already performed by the Standby Counsel team. We summarise in outline form below the work conducted in preparation for and during the Defence Phase. In the concluding section of this submission, we will invite the Trial Chamber to consider how best to utilise the benefits of Standby Counsel's contribution to the case.

III. SUMMARY OF STANDBY COUNSEL'S ACTIVITIES DURING DEFENCE PHASE

Preparation for The Defence Phase

7. In preparation for, and throughout the duration of the Defence phase, the Standby Counsel team has conducted investigations in the former Yugoslavia to identify testimony of potential value to the Defence case. This includes identifying potential expert witnesses and gathering information in the region.

Witness Spreadsheets and Document Analysis

8. Throughout the Defence phase, the Standby Team has continued to create witness folder spreadsheets with hyperlinked documents in relation to the statements and associated exhibits for each of the witnesses disclosed in the Accused's 65ter lists. The Standby Team has prepared file folders well in advance of the testimony of each witness. Each folder has two Excel spreadsheets; one with associated 65ter exhibit numbers, the other with hyperlinks to:
 - i. Witness's 65ter summary;

- ii. Prior statements and the amalgamated statement;
- iii. Transcripts of the witness's prior testimony;
- iv. Documentary disclosure relating to the witness;
- v. Rule 68 materials and other relevant information.

The spreadsheets include detailed analysis of each of the relevant hyperlinked documents, a significant number of which are in BCS.

9. Analysis continued on the considerable volume of documentary disclosure that has continued under Rules 65*ter*, 66(A)(ii), 66(B) and 68. Standby Counsel calculates that some 425,000 pages of disclosure have been provided by the OTP since May 2012,⁶ thus bringing to over 1,100,000 pages the OTP's total documentary disclosure since testimony began in April 2010.⁷

Confidential Materials from Related Cases

10. At various stages in the case, continuing through the Defence phase, many thousands of pages of confidential materials from other cases, both completed and ongoing, have been disclosed to Standby Counsel pursuant to the Trial Chamber's orders.⁸ These materials, in turn related to tens of thousands of pages in other related cases, have required ongoing analysis to determine their impact on the charges contained in the Karadzic indictment and their relevance to witnesses for the Defence.

⁶ Calculated from the monthly disclosure reports filed by the OTP, including some 289,000 pages of "Rules of the Road" disclosure referred to in the February and March 2013 reports.

⁷ As noted by Standby Counsel in his May 2012 submission, over 675,000 pages were disclosed by the Prosecution between April 2010 and May 2012. *See, Prosecutor v. Radovan Karadzic*, IT-95-5/18-T, Submission to Trial Chamber on the Continuing Need for Standby Counsel, 9 May 2012 at para.5(b).

⁸ Cases include *Prosecutor v Mladic*, IT-09-02, *Prosecutor v Tolimir*, IT-05-88/2, *Prosecutor v Popovic et al.*, IT-05-88, *Prosecutor v Galic*, IT-98-29, *Prosecutor v S. Milosevic*, IT-02-54, *Prosecutor v D. Milosevic*, IT-98-29/1, *Prosecutor v Brdjanin*, IT-99-36, *Prosecutor v Plavsic*, IT-00-39&40/1, *Prosecutor v. Krstic*, IT-98-33, *Prosecutor v Krajisnik*, IT-00-39, *Prosecutor v Stanisic & Zupljanin*, IT-08-91.

Adjudicated Facts

11. Analysis of documents and exhibits has continued in relation to Standby Counsel's schedules of adjudicated facts in the case to assess the effect of Defence witness testimony on the potential for challenging the reliability of such prior adjudications.

Preparing for Rebuttal Evidence

12. Although it is not yet known whether and, if so, to what extent, the OTP may seek to present any testimony in rebuttal, the Standby team continues to prepare for any such contingency.

IV. PREPARATION FOR LEGAL FILINGS

13. As noted in Standby Counsel's Submission of 9 May 2012⁹ the Standby team has continued to prepare for any requests from the Trial Chamber to address any issues at the conclusion of the case.

14. Exhibit Schedules: the Standby Team has compiled detailed schedules for all Prosecution and Defence exhibits, hyperlinked and cross-referenced to the indictment. These provide great assistance throughout the Defence phase and are also designed as an invaluable asset in writing any final brief.

15. Witness Summaries: the Standby team has continued to compile summaries of each witness's testimony within seven days of the conclusion of that evidence. All legal and factual issues are flagged and cross-referenced for future use, to assist in cross-examination of future witnesses and for insertion in the appropriate section of the closing brief.

⁹ *Prosecutor v. Radovan Karadzic*, IT-95-5/18-T, Submission to Trial Chamber on Continuing Need for Standby Counsel, 9 May 2012 at paragraph 10.

16. Spreadsheet Database: Standby Counsel's Daily Spreadsheet database separates filings into subfolders for each Party, the Trial Chamber, Appeals Chamber and Registry. This system assures instant retrieval of documents needed in all phases of case preparation, up to and including final brief writing.

17. Transcript Analysis: the Standby Team continues to prepare daily transcript analyses, annotating the evidence of each witness in relation to ongoing evidentiary issues and analysis in preparation for writing a final brief.

18. Legal Analysis: Standby Counsel has continued monitoring the developing international criminal jurisprudence in Appellate rulings and Trial Chamber judgements of the ICTY, SCSL and ICC on issues relevant to the case. Such issues include:

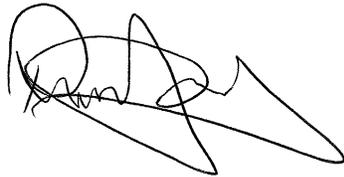
- i. Genocidal Intent
- ii. Aiding and Abetting
- iii. Joint Criminal Enterprise
- iv. Command Responsibility
- v. Hostage Taking

V. CONCLUSION

19. The above information is provided to aid the Trial Chamber in determining whether, in addition to the original grounds for appointing and continuing Standby Counsel, the considerable institutional knowledge of the Standby Team may be of further assistance, once the Defence case and any rebuttal and/or rejoinder testimony have concluded.

Word Count: 1286

Dated this 12th day of December 2013
At The Hague
Netherlands

A handwritten signature in black ink, appearing to read 'Richard J. Harvey', written in a cursive style.

Richard J. Harvey