

IT-09-92-T
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24 AUGUST 2012

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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: 24 August 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: **Mr John Hocking**

Decision of: **24 August 2012**

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT THE
EVIDENCE OF WITNESS RM-147 PURSUANT TO RULE 92
TER AND TO AMEND 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 8 June 2012, the Prosecution filed a motion (“Motion”) pursuant to Rule 92 *ter* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) with regard to witness RM-147 (“Witness”), seeking to adduce a new statement signed by the witness on 3 June 2012 which consolidates his prior testimony before the Tribunal in two other cases, three earlier witness statements, and certain new information (“Consolidated Statement”).¹ In addition, the Prosecution seeks the admission of fourteen exhibits, which, it submits, form an integral part of the Consolidated Statement and, as such, qualify as associated exhibits.² Eight of these exhibits consist of maps and photographs marked by the witness during a proofing session with the Prosecution in early June 2012 and the Prosecution seeks leave to add these to its Rule 65 *ter* exhibit list.³ The Prosecution further seeks fifteen minutes of additional time for its examination-in-chief of the Witness or, in the alternative should admission of the associated exhibits be denied, an additional 60 minutes.⁴

2. On 25 June 2012, the Defence responded (“Response”) objecting to the Motion.⁵ First, the Defence objects to the tendering of the Consolidated Statement and its Annexes as it: (a) “improperly” refers to transcripts and earlier statements that are not in evidence and to documents which, the Prosecution confirms, will not be tendered; and (b) includes expert opinion and legal conclusions which should be redacted (“First Objection”).⁶ Second, the Defence objects to the tendering of the proposed exhibits under Rule 92 *ter* as no “exceptional circumstances” warrant such departure from the Chamber’s guidance on this matter (“Second Objection”).⁷ Third, it objects to increasing the time for examination-in-chief unless the time for cross-examination is likewise increased (“Third Objection”).⁸ Finally, the Defence submits that the request to amend the Prosecution’s Rule 65 *ter* exhibit list should be denied as the addition of numerous new exhibits so close to the Witness’s testimony deprives it of a fair opportunity to prepare its cross-examination (“Fourth Objection”).⁹ In the event that the sought amendment is granted, it requests that the

¹ Prosecution 92*ter* Motion: RM147, 8 June 2012 (confidential), paras 2 and 8.

² Motion, paras 15-16, Annex B.

³ Motion, paras 1, 15, 21.

⁴ Motion, paras 15, 17, 20-21.

⁵ Defence Response to Prosecution Rule 92*ter* Motion: RM147, 25 June 2012 (confidential), para. 3.

⁶ Response, paras 9-11.

⁷ Response, para. 9.

⁸ Response, paras 3 and 6 (requesting at least 30-45 additional minutes).

⁹ Response, paras 3, 12-13.

Prosecution be barred from calling the Witness for a period of 90 days from the disclosure of the exhibits to the Defence.¹⁰

3. On 2 July 2012, the Prosecution requested leave to reply to the Defence Response, submitting its proposed reply in an Annex, and on 11 July 2012 the Chamber granted leave and informed the parties accordingly through an informal communication.¹¹

II. APPLICABLE LAW

4. The Chamber refers to the applicable law governing the admission of documents pursuant to Rule 92 *ter* as set out in a previous decision.¹² Further, the Chamber refers to the applicable law on requests for additions to the exhibit list submitted pursuant to Rule 65 *ter* (E) (iii) as set out in a previous decision.¹³

III. DISCUSSION

5. As previously indicated, the Chamber will only decide on the admission of evidence tendered pursuant to Rule 92 *ter*, once the witness appears in court and attests to the accuracy of his or her statement.¹⁴ Nevertheless, the Chamber will address at the present stage a number of objections raised by the Defence. First however, the Chamber notes that the Response was filed outside the scope of the time-limit provided by Rule 126 *bis* of the Rules, and that no leave for delayed response has been sought. The Chamber will exceptionally consider the Response, noting however that this should not be interpreted as setting precedent for such deviations from the Rules.

6. With regard to the First Objection, the Chamber refers to its previous reasoning concerning proposed fact witnesses providing conclusions or opinions and concerning references in a consolidated statement to other statements or documents and finds that the Prosecution does not need to redact the impugned information from the Consolidated Statement.¹⁵

7. With regard to the Second Objection, the Chamber refers to its Additional Clarification and Amendment of the Guidance on the Tendering and Presentation of Evidence of 9 and 20 July 2012

¹⁰ Response, para. 14.

¹¹ Prosecution Request for Leave to Reply to Defence Response to Prosecution Rule 92 *ter* Motion: RM147, 2 July 2012 (confidential) ("Reply").

¹² Decision With Regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012 ("Harland Decision"), para. 4.

¹³ Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

¹⁴ Harland Decision, para. 5.

¹⁵ Harland Decision, para. 8; Decision with regard to Prosecution Rule 92 *ter* Motions with regard to Joseph Kingori, Eelco Koster, and Christine Schmitz, 9 July 2012, para. 8.

which deals with the tendering of associated exhibits.¹⁶ The Chamber will decide on the admission of the associated exhibits after its decision on the witness statement.

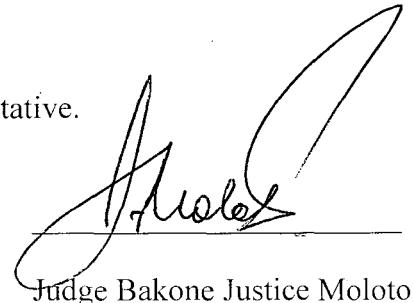
8. With regard to the Third Objection, the Chamber recalls that on 24 April 2012 it accepted the Prosecution's estimations as to the time necessary for its examination-in-chief for Rule 92 *ter* witnesses and allowed therefore an average of one hour for examining such witnesses and tendering related documents.¹⁷ Therefore, the Chamber will not consider this objection.

9. With regard to the Fourth Objection, the Chamber considers that the proposed amendments to the Prosecution's Rule 65 *ter* exhibit list concern exhibits that are *prima facie* relevant and of probative value, that they have only been created in the course of the proofing sessions in early June 2012, and that they consist exclusively of marked photographs and maps. Further, the Chamber considers that they have been disclosed to the Defence more than two months before the Witness's testimony. The Chamber therefore finds that it is in the interests of justice to allow the amendments to the Prosecution's Rule 65 *ter* exhibit list. For the same reasons, the Chamber denies the Defence request to postpone the Witness's testimony.

IV. DISPOSITION

10. For the foregoing reasons, the Chamber **DEFERS** its decision on admission of the proffered Rule 92 *ter* material of the Witness and **GRANTS** the request for addition of the eight proffered exhibits to the Prosecution's Rule 65 *ter* exhibit list.

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



Judge Bakone Justice Moloto

Dated this Twenty-fourth of August 2012
 At The Hague
 The Netherlands

[Seal of the Tribunal]

¹⁶ T. 530, 1252-1253.

¹⁷ T. 313-314.