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09 December 2013

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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: 9 December 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 9 December 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION 37TH MOTION TO ADMIT
EVIDENCE PURSUANT TO RULE 92 *BIS***

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 30 August 2013, the Prosecution filed a motion (“Motion”) tendering evidence of Witness RM-243 pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ On 27 September 2013, after having been granted an extension of time to respond to the Motion, the Defence filed its response (“Response”), objecting to the admission of the evidence in its entirety or, in the alternative, limiting the proffered testimony to certain portions and including the prior cross-examination.²

II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules, as set out in a previous decision.³ With regard to the applicable law related to the admission of associated exhibits, the Chamber further recalls and refers to one of its previous decisions dealing with this matter.⁴

III. DISCUSSION

i. Preliminaries

3. The Defence submits that the Motion should be denied as good cause for the late addition to the Prosecution’s Rule 65 *ter* list cannot be shown.⁵ The Chamber struggled to discern the relevance of this submission considering that the Prosecution has not sought any additions to its Rule 65 *ter* list through the Motion. Accordingly, the Chamber will not further address this submission.

4. The Defence submits that the relevant cross-examinations from the witness’s previous testimony should be included in any admitted material and that this material be limited to only those portions necessary to achieve the purpose for which they were tendered.⁶ The Chamber recalls its guidance that the opposing party may tender additional passages of prior transcripts for

¹ Prosecution 37th Motion to Admit Evidence Pursuant to Rule 92*bis*: RM243, 30 August 2013 (Confidential). For details of the Prosecution’s submissions the Chamber refers to the Motion. The tendered material consists of excerpts of prior testimony from two cases and four associated documents.

² T. 17022; Defence Response to Prosecution 37th Motion to Admit Evidence Pursuant to Rule 92*bis*: [...] (RM243), 27 September 2013 (Confidential). For details of the Defence’s submissions the Chamber refers to the Response.

³ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-7.

⁴ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, para. 13. See also T. 5601-5604; Decision on Prosecution’s Motion for Reconsideration, Granting Admission from the Bar Table, or Certification in relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 8.

⁵ Response, paras 19-21.

⁶ Response, paras 32-34.

contextualisation.⁷ However, if a party so requests, it should clearly analyse which additional passages are necessary and are tendered. A wholesale argument to include cross-examination is insufficient. As for limiting the portions the Prosecution has tendered, the Chamber considers that the proffered testimony is not excessive in length. Accordingly, the Chamber will not interfere in the way the Prosecution attempts to satisfy its burden of proof by tendering evidentiary material.

ii. Admissibility Pursuant to Rule 89 (C) of the Rules

5. The tendered material provides information on radio communications intercepted by the army of Bosnia-Herzegovina, specifically in relation to events in Srebrenica in July 1995. The Chamber therefore finds that the evidence is relevant to the Indictment. The Chamber finds that the tendered transcripts appear to be internally consistent and presented in a coherent manner. In relation to the Defence's objections that the witness provides expert-like testimony in violation of Rule 94 *bis* and oversteps the boundaries of fact witness testimony by providing analyses of certain intercepts, the Chamber considers that the Defence objections do not bar admission of the tendered material but go to its weight.⁸ This notwithstanding, the Chamber considers that the tendered material contains some details on very technical matters which, however, are not the core of the witness's evidence. Under these circumstances, the Chamber finds the tendered material to be probative of the crimes charged in the Indictment. The standard for admission under Rule 89 (C) of the Rules has been met.

iii. Admissibility Pursuant to Rule 92 bis of the Rules

6. The tendered material does not relate to the acts and conduct of the Accused. Instead, it mainly focuses on the procedures for intercepting and transcribing military communications. The Defence submits that the proffered evidence is not cumulative to other evidence in this case as well as unique and important, making it unreliable and inadmissible under Rule 92 *bis* of the Rules.⁹ Having reviewed the evidence of Witness RM-279 and Witness RM-316 who also provided evidence concerning the methods and procedures used by the Army of Bosnia-Herzegovina in intercepting military communications, the Chamber is satisfied that the tendered material is cumulative to other oral evidence received. The Chamber further does not consider the evidence to be of such nature as to weigh in favour of calling the witness for cross-examination. Considering all of the above, the Chamber is satisfied that the tendered material is admissible under Rule 92 *bis* of the Rules.

⁷ T. 106-110, 203-206.

iv. Associated Exhibits

7. The Chamber is satisfied that the four tendered documents were discussed by the witness to such an extent that they form an inseparable and indispensable part of the witness's prior testimony. In relation to two of the documents, the amount of pages of the B/C/S originals of Rule 65 *ter* numbers 23255 and 5274 far exceeds the amount of pages of their English translations. The Prosecution itself stated that it only relies on the translated portions of the documents.¹⁰ The Chamber will instruct the Prosecution to upload only those parts of the B/C/S originals of these two documents upon which it relies. In addition, the Prosecution concedes that parts of Rule 65 *ter* number 23255 are already in evidence. The Chamber will instruct the Prosecution to upload a revised version of this document excluding the duplicative pages.

v. Guidance

8. Considering that the tendered transcripts are relatively short, the Chamber finds that this tendering complies with the Chamber's Guidance.¹¹

IV. DISPOSITION

9. For the foregoing reasons, pursuant to Rules 54, 89 (C) and 92 *bis* of the Rules, the Chamber

GRANTS the Motion **IN PART**;

ADMITS into evidence, **UNDER SEAL**,

- (i) excerpts of the witness's prior testimony in the *Popović et al.* case, namely T. 8444:16-8445:16, 8446:17-21, 8448:12-8460:25, and 8518:23-8522:14;
- (ii) excerpts of the witness's prior testimony in the *Blagojević and Jokić* case, namely T. 5941:4-5959:13;
- (iii) the two pseudonym sheets bearing Rule 65 *ter* numbers 30258 and 30259;

INSTRUCTS the Prosecution to upload new versions of Rule 65 *ter* numbers 23255 and 5274 in accordance with paragraph 7 of this decision;

⁸ See Decision with regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.

⁹ Response, paras 8-18.

¹⁰ Motion, Annex A, footnotes 1 and 4.

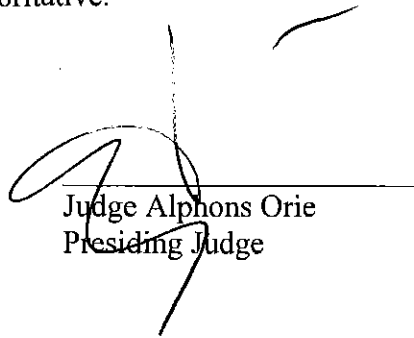
¹¹ T. 137, 194, 315-325, 525-532.

ADMITS into evidence the newly uploaded versions of Rule 65 *ter* numbers 23255 and 5274;

INSTRUCTS the Prosecution to upload into eCourt all admitted documents within two weeks of the date of issue of this decision; and

REQUESTS the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned.

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



Judge Alphons Orié
Presiding Judge

Dated this Ninth day of December 2013
At The Hague
The Netherlands

[Seal of the Tribunal]