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: 5 November 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: **5 November 2012**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTION FOR ADMISSION OF STATEMENT OF VEHID KARAVELIĆ PURSUANT TO RULE 92 *BIS*

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 Accused's "Motion to Admit Statement of General Vehid Karavelic and Associated Exhibits Pursuant to Rule 92 *bis*", filed on 1 October 2012 ("Motion"), and hereby issues its decision thereon.

I. Background and Submissions

1. On 15 August 2012, in relation to the Motion, the Accused requested an extension of time until 30 September 2012 of the 27 August 2012 deadline imposed on him by the Chamber to file any motion for the admission of evidence pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules").[1] On 27 August 2012, the Chamber granted the Accused's request and ordered him to file the Motion no later than 28 September 2012.[2] On 27 September 2012, the Accused filed confidentially the "Motion for Second Extension of Time: Rule 92 *bis* Motion" ("Motion for Second Extension of Time"), requesting a further extension of time until 2 October 2012 to file the Motion.[3] On 28 September 2012, the Office of the Prosecutor ("Prosecution") informed the Chamber and the Accused *via* email that it would not file a response to the Motion for Second Extension of Time. On 1 October 2012, the Chamber informed the parties *via* email that it had decided to grant the Motion for Second Extension of Time and considered that the Motion was filed in a timely manner.

2. In the Motion, the Accused seeks the admission of a statement given by General Vehid Karavelić ("Statement"), as well as the documents referenced therein ("Documents") pursuant to Rule 92 *bis* (collectively, "Proposed Evidence").[4] The Accused submits that the Statement satisfies all of the criteria for admission under Rule 92 *bis* and is relevant to his defence that there were legitimate military targets throughout Sarajevo, including in residential areas, and therefore the shelling was not indiscriminate as charged in Counts 9 and 10 of the Third Amended Indictment ("Indictment").[5] The Accused further submits that the Proposed Evidence has probative value because it will be used during the testimony of his expert witnesses as part of their illustration on maps of the location of legitimate military targets in Sarajevo and, moreover, the evidence does not

[1] Motion for Extension of Time: Rule 92 *bis* Motion, Confidential, 15 August 2012, paras. 1–2, 7.
[2] Decision on Accused's Motion for Extension of Time for Filing of Rule 92 *bis* Motion, Confidential, 27 August 2012, para. 5.
[3] Motion for Second Extension of Time, para. 4.
[4] Motion, paras. 1, 10, Annex A.
[5] Motion, paras. 3–4.

go to the acts, conduct, or "mental state" of the Accused.[6] In the Accused's submission, there is nothing to be gained by calling Karavelić ("Witness") for cross-examination, as his evidence only relates to the crime base and because his evidence is akin to that of Prosecution witnesses who the Accused was not allowed to cross-examine; however, he submits that he would have no objection to the Witness being called for cross-examination.[7] In relation to the Documents, the Accused contends that because the Statement deals exclusively with the Documents, they form an indispensable and inseparable part of his evidence.[8] He requests that they be admitted as associated exhibits, as without the Documents, the Statement has no value.[9] Finally, the Accused informs the Chamber that the Statement has been certified by a Presiding Officer appointed by the Registry of the Tribunal and thus conforms with the requirements under Rule 92 *bis*(B) of the Rules.[10]

3. On 10 October 2012, the Prosecution filed the "Prosecution Response to Motion to Admit Statement of General Vahid Karavelić and Associated Exhibits Pursuant to Rule 92 *bis*" ("Response"), wherein it states that it opposes the Accused's request in the Motion to admit the Proposed Evidence pursuant to Rule 92 *bis*.[11] The Prosecution submits first that the Statement is "bare of substance" other than a brief description of the Witness's background, a list of documents referenced therein, and a few general remarks by the Witness.[12] In particular, the Witness states that he "has not read the Documents, cannot exclude forgery or manipulation and does not address the content of the documents", but yet he adds that the Documents appear genuine in form.[13] As a result, the Prosecution asserts that the Statement is of limited value, even for the narrow purpose of document authentication.[14] The Prosecution further contends that the Motion resembles more a bar table motion than a Rule 92 *bis* motion, yet the Accused does not comply with the specific requirements for the admission of documents from the bar table.[15]

4. The Prosecution notes that, in principle, it is permissible under Rule 92 *bis* to tender a witness statement to authenticate documents for the purposes of marking them for identification to later seek the full admission of the documents through another witness or bar table motion.[16] However, the Prosecution notes that *inter alia* (1) the majority of the Documents do not require

[6] Motion, paras. 5–6.
[7] Motion, para. 8.
[8] Motion, para. 9.
[9] Motion, para. 9.
[10] Motion, para. 7, Annex A.
[11] Response, paras. 1, 13.
[12] Response, paras. 1, 4.
[13] Response, paras. 1, 4; *see* Statement, paras. 6–7.
[14] Response, para. 4. *See also* Response, para. 7.
[15] Response, para. 5.
[16] Response, para. 7.

further authentication;[17] (2) five of the documents have already been admitted in this case;[18] (3) during previous communications between the parties regarding the authenticity of proposed Defence exhibits, the Prosecution did not object to the authenticity of 51 of the 58 Documents, thus making the Statement largely redundant;[19] (4) the Witness does not appear to be capable of authenticating some of the Documents;[20] (5) five of the Documents do not have an English translation uploaded into e-court;[21] and (6) one document is not available in e-court.[22] As such, in the Prosecution's submission, "there was no need for the Defence to waste the Tribunal's resources in order to meet with a witness and prepare a Statement that from its outset was, in all likelihood, meaningless".[23]

II. Applicable Law

5. On 15 October 2009, the Chamber issued its "Decision on the Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Sarajevo Municipality)" ("Decision on Third Rule 92 *bis* Motion"), in which it outlined the law applicable to motions made pursuant to Rule 92 *bis*. The Chamber will not discuss the applicable law again here, but refers to the relevant paragraphs of the Decision on Third Motion when necessary.[24]

6. The Chamber recalls that when a party tenders evidence pursuant to Rule 92 *bis*, it may also tender for admission into evidence documents that have been discussed by the witness in his or her witness statement or previous testimony.[25] As set out in the Decision on Third Rule 92 *bis* Motion, only those associated exhibits that "form an inseparable and indispensable part of the testimony" may be admitted.[26] To fall into this category, the witness must have discussed the associated exhibit in the transcript of his or her prior evidence or written statement, and that transcript or

[17] Response, para. 8.
[18] Response, para. 8.
[19] Response, para. 9.
[20] Response, para. 10.
[21] Response, para. 11.
[22] Response, para. 11.
[23] Response, para. 12.
[24] Decision on Third Rule 92 *bis* Motion, paras. 4–11.
[25] Decision on Accused's Motion for Admission of Prior Testimony of Thomas Hansen and Andrew Knowles Pursuant to Rule 92 *bis*, 22 August 2012 ("Decision on Accused's Rule 92 *bis* Motion"), para. 11; Decision on Third Rule 92 *bis* Motion, para. 11.
[26] Decision on Third Rule 92 *bis* Motion, para. 11.

written statement would become incomprehensible or of less probative value if the exhibit is not admitted.[27]

III. Discussion

7. The Chamber recalls that pursuant to Rule 89(C) and (D) of the Rules, relevance and probative value are fundamental requirements for the admission of evidence pursuant to Rule 92 *bis*.[28]

8. The Chamber first notes that the Accused offers the Proposed Evidence to show that there were legitimate military targets throughout Sarajevo and thus that the shelling in Sarajevo was not indiscriminate as charged in Counts 9 and 10 of the Indictment.[29] The Chamber notes that the Witness was the Deputy Commander, and later the Commander, of the 1st Corps of the Army of Bosnia and Herzegovina ("ABiH") from September 1992 to August 1995.[30] The Chamber further notes that the Statement consists of seven short paragraphs,[31] four of which provide basic facts about the Witness's background, including only his birth date and a summary of his military service with the ABiH.[32] The remainder of the Statement consists of a list of 58 documents, about which the Witness states that each of them "*appears* to be in the form and content of genuine documents of the ABiH", but that he did not read any of them and only looked at their "form".[33] As such, the Chamber does not find that the Statement alone is of any probative value to this case. Furthermore, the Chamber does not consider that the Statement qualifies as the type of written evidence admissible under Rule 92 *bis* as it is devoid of substance. The Chamber therefore finds that the Statement shall not be admitted into evidence.

9. For the sake of completeness, the Chamber has reviewed the Documents referred to in the Statement and first notes the following: (1) four of the Documents have already been admitted as exhibits in this case[34] and one has been marked for identification;[35] (2) one of the Documents is not

[27] Decision on Third Rule 92 *bis* Motion, para. 11.

[28] Decision on Third Rule 92 *bis* Motion, para. 4. *See also* Decision on Accused's Rule 92 *bis* Motion, para. 6.

[29] *See* Motion, para. 4.

[30] *See* Statement, para. 3.

[31] The Chamber notes that the last paragraph of the Statement is a handwritten note by the Witness which seems to have been added by the Witness during the certification process. *See* Statement, para. 7. The Chamber also notes that the Witness made a handwritten correction to the date of one of the Documents (assigned Rule 65 *ter* number 1D20062) on the original version of the Statement; however, this correction is not reflected on the English translation of the Statement. *See* Statement, p. 5.

[32] Statement, paras. 1–4.

[33] Statement, paras. 6–7 [emphasis added].

[34] *See* D181, D185, D496, D858.

[35] *See* MFI D183. The Chamber notes that the Accused does not specify in the Motion that D183 is marked for identification but instead refers to the document's exhibit number.

available in e-court;[36] (3) six of the Documents have no English translation uploaded into e-court;[37] and (4) five of the Documents are not ABiH documents.[38] With respect to the remaining Documents which are available in e-court and not already admitted in this case, since the Witness does not comment on the contents of *any* of the Documents, they would in any event not be admissible as indispensable and inseparable parts of the Statement had the Chamber decided to admit it into evidence.

10. Therefore, the Chamber considers that the Proposed Evidence fails to satisfy the requirements for admission. Moreover, as the Proposed Evidence does not reach the minimum threshold for the admission of evidence under Rule 89, the Chamber will not further consider the factors in favour of admitting evidence in written form pursuant to Rule 92 *bis*.

11. Based on the Chamber's prior rulings on the admission of evidence in this case, the Accused and his legal team should have known that the Proposed Evidence may not meet the test for admission under Rule 89 and Rule 92 *bis* of the Rules. The Chamber therefore notes its concern regarding the Accused's use of the Tribunal's resources and time in filing such a motion, in addition to two motions requesting an extension of time to file it, and in particular in requesting that the Registry of the Tribunal appoint a Court Officer to travel to certify the Statement.

IV. Disposition

12. Accordingly, pursuant to Rules 54, 89, and 92 *bis* of the Rules, the Chamber hereby **DENIES** the Motion.

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

Judge O-Gon Kwon
Presiding

Dated this fifth day of November 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

[36] *See* 65 ter number 1D20073.
[37] *See* 65 *ter* numbers: 1D00331, 1D00381, 1D00445, 1D00502, 1D01831, 1D20063.
[38] *See* 65 *ter* numbers: 1D20071, 1D20072, 1D20074, 1D20075, 1D20076.