

**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-09-92-T
Date: 16 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: 16 August 2012

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION IN RELATION TO PROSECUTION'S RULE 92 TER
MOTION FOR WITNESS RM-114**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 23 July 2012, the Prosecution filed a motion pursuant to Rule 92 *ter* of the Tribunal's Rules of Procedure and Evidence ("Rules") with regard to Witness RM-114 ("Motion").¹ The Defence responded on 6 August 2012 ("Response").² On 13 August 2012, the Prosecution requested leave to reply to the Response ("Leave to Reply"), attaching its reply.³

II. SUBMISSIONS OF THE PARTIES

2. The Prosecution seeks leave to tender parts of the witness's sworn Rule 92 *bis* package from the *Slobodan Milošević* case as one statement pursuant to Rule 92 *ter* of the Rules.⁴ The package consists of a statement, an addendum to the statement, a witness's declaration, a Presiding Officer's verification, and five annexes.⁵ In the alternative, the Prosecution requests that the five annexes be admitted as associated exhibits.⁶ Further, the Prosecution acknowledges overlaps between some parts of the proffered evidence and some of the adjudicated facts this Chamber has taken judicial notice of, but prefers not to redact the proffered evidence so as to "provide a coherent narrative [of the witness's evidence]" to the Chamber.⁷

3. The Defence raises four objections to the Motion. It objects to the admission of the Rule 92 *bis* package as one statement, arguing that it includes documents other than the witness's statement, which should be tendered separately ("First Objection").⁸ The Defence also contests the indispensable and inseparable character of the associated documents and objects because some of the annexes do not include a B/C/S translation ("Second Objection").⁹ Furthermore, the Defence requests that some parts of the witness's statement and of the annexes be redacted because they go beyond the geographic and temporal scope of the Indictment ("Third Objection").¹⁰ The Defence also seeks redactions of the statement in relation to passages constituting expert evidence ("Fourth Objection").¹¹ Lastly, the Defence requests that in case the Motion is granted, it receive additional time to cross-examine the witness.¹²

¹ Prosecution 92 *ter* Motion: RM114 (Colm Doyle), 23 July 2012.

² Defence Response to Prosecution 92 *ter* Motion: RM114 (Colm Doyle), 6 August 2012.

³ Prosecution Request for Leave to Reply to Defence Response to Prosecution 92 *ter* Motion: RM114 (Colm Doyle), 13 August 2012.

⁴ Motion, paras 1, 10-13, 15, Annex A.

⁵ Motion, paras 1, 13, Annex A.

⁶ Motion, para. 12.

⁷ Motion, para. 14.

⁸ Response, paras 5, 8.

⁹ Response, paras 6, 10-12.

¹⁰ Response, paras 13-14.

III. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law governing the admission of documents pursuant to Rule 92 *ter* as set out in a previous decision.¹³

IV. DISCUSSION

5. As indicated previously, the Chamber will only decide on the admission of evidence tendered pursuant to Rule 92 *ter*, once all requirements have been met.¹⁴ At this time, the Chamber will address some of the objections raised by the Defence. In relation to the Leave to Reply, the Chamber is satisfied that the Prosecution's reply would assist in disposing of the Motion.

6. With respect to the First Objection, the Chamber considers that Rule 92 *ter* of the Rules governs the admission of witness evidence in the form of written statements or transcripts of evidence. The tendered Rule 92 *bis* "package" is not limited to a written statement but also contains a number of other clearly distinguishable documents. The Chamber therefore grants the First Objection and will not consider the Rule 92 *bis* "package" as one statement.¹⁵ The Chamber will thus decide on the admission of the witness's statement, the addendum thereto, and the five associated documents, once all requirements of Rule 92 *ter* of the Rules have been met.¹⁶ Accordingly, there is no need to further address the Defence's Second Objection at this stage.

7. With respect to the Third Objection, the Chamber refers to its previous statement on evidence relating to matters outside the temporal and geographic scope of the Indictment. At the Pre-Trial Conference, the Chamber indicated that "references [in the Prosecution's Pre-Trial Brief] to matters that are outside the temporal, geographic, and/or subject-matter scope of the indictment are not per se irrelevant to the indictment. For example, background information may be important to understand or to contextualise later events".¹⁷ The passages pointed out by the Defence provide such background information. The Chamber considers that the Third Objection is without merit.

¹¹ Response, paras 15-16.

¹² Response, para. 4, Conclusion.

¹³ 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.

¹⁴ Harland Decision, para. 5.

¹⁵ As a result, the Defence submissions and requests in relation to a disclosure breach under Rule 66 (A) (ii) of the Rules in relation to B/C/S versions of some of the annexes require no further discussion.

¹⁶ It is unclear what purpose the witness's declaration and the Presiding Officer's verification serve in the context of this witness being presented as a Rule 92 *ter* witness in this case.

¹⁷ T. 327.

8. With respect to the Fourth Objection, the Chamber incorporates its views expressed in a previous decision.¹⁸ The Chamber considers that the Fourth Objection is without merit.

9. With respect to the Prosecution's approach to refrain from redacting some parts of the proffered evidence solely in order to "provide a coherent narrative" for the Chamber, the Chamber clarifies that the interest of non-duplication of evidentiary material outweighs the interest of receiving a coherent narrative of the events from one witness. In this regard, the Chamber acknowledges that in other motions the Prosecution has found a more balanced approach for the different interests involved.¹⁹ The Chamber considers that this approach should also be used with regard to the proffered evidence of Witness RM-114.

V. DISPOSITION

10. For the foregoing reasons, the Chamber

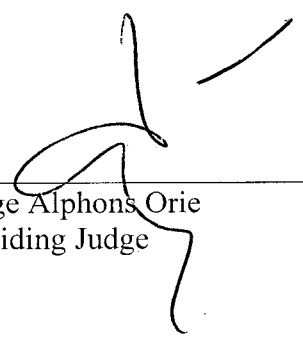
GRANTS the Leave to Reply;

DENIES the Motion in part;

DEFERS its decision on admission of the statement and the addendum of Witness RM-114 and the five associated documents; and

INSTRUCTS the Prosecution to redact Witness RM-114's evidence in line with paragraph 9.

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



Judge Alphons Orié
Presiding Judge

Dated this Sixteenth of August 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁸ Harland Decision, para. 8.

¹⁹ See e.g. Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 24 July 2012 (Confidential), para. 5.