



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-04-75-T  
Date: 24 January 2013  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Guy Delvoie, Presiding  
Judge Burton Hall  
Judge Antoine Kesia-Mbe Mindua

**Registrar:** Mr. John Hocking

**Decision:** 24 January 2013

**PROSECUTOR**

v.

**GORAN HADŽIĆ**

**PUBLIC**

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**DECISION ON PROSECUTION OMNIBUS MOTION FOR ADMISSION  
OF EVIDENCE PURSUANT TO RULE 92 *bis* AND PROSECUTION MOTION  
TO ADMIT GH-139'S EVIDENCE PURSUANT TO RULE 92 *bis***

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**The Office of the Prosecutor:**  
Mr. Douglas Stringer

**Counsel for Goran Hadžić:**  
Mr. Zoran Živanović  
Mr. Christopher Gosnell

1. **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 “Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *bis*”, filed on 21 August 2012 with a confidential annex (“First Motion”). On 4 September 2012, the Defence filed its confidential “Response to Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *bis*” (“First Motion Response”). On 12 September 2012, the Prosecution submitted the “Prosecution Request for Leave to Reply and Reply to Response to Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *bis*” (“First Motion Reply”).

2. On 27 September 2012, the Prosecution filed a confidential “Supplement to Prosecution Omnibus Motions for Admission of Evidence Pursuant to Rule 92 *quater* and Rule 92 *bis*”, with confidential annexes A-G (“First Supplement”). On 11 October 2012 the Defence confidentially filed its “Response to Supplement to Prosecution’s Omnibus Motions for Admission of Evidence Pursuant to Rule 92 *quater* and Rule 92 *bis*” (“First Supplement Response”). On 17 October 2012 the Prosecution confidentially filed “Prosecution Request for Leave to Reply and Reply to Response to Supplement to Prosecution’s Omnibus Motions for Admission of Evidence Pursuant to Rule 92 *quater* and Rule 92 *bis*” (“First Supplement Reply”).

3. On 8 October 2012 the Prosecution filed a second “Supplement to Prosecution’s Motions for Admission of Evidence Pursuant to Rules 92 *bis*, *ter*, and *quater*” with a confidential annex (“Second Supplement”). On 23 October 2012 the Defence confidentially filed its “Response to Supplement to Prosecution’s Motions for Admission of Evidence Pursuant to Rules 92 *bis*, *ter*, and *quater*” (“Second Supplement Response”). On 30 October 2012 the Prosecution confidentially filed the “Prosecution Request for Leave to Reply and Reply to Response to Supplement to Prosecution’s Motions for Admission of Evidence Pursuant to Rules 92 *bis*, *ter*, and *quater*” (“Second Supplement Reply”). The objections raised in the Second Supplement Response and addressed in the Second Supplement Reply do not relate to witnesses whose evidence is tendered pursuant to Rule 92 *bis* and will not be addressed further in this decision.

4. The Trial Chamber is also seised of the “Prosecution Motion to Admit GH-139’s Evidence Pursuant to Rule 92 *bis*” filed confidentially with annexes on 18 October 2012 (“Second Motion”). On 1 November 2012 the Defence confidentially filed its “Response to Prosecution Motion to Admit GH-139’s Evidence Pursuant to Rule 92 *bis*” (“Second Motion Response”). The Prosecution confidentially filed its “Prosecution Request for Leave to Reply and Reply to Response to Prosecution Motion to Admit GH-139’s Evidence Pursuant to Rule 92 *bis*” on 9 November 2012 (“Second Motion Reply”).

### A. Background

5. In the Order on Pre-Trial Work Plan (“Pre-Trial Work Plan”), the Pre-Trial Judge set 19 June 2012 as the deadline for the Prosecution to file its exhibit and witness lists as required by Rule 65 *ter* (E) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) and 21 August 2012 as the deadline for the Prosecution to submit any filings seeking the admission of evidence pursuant to Rule 92 *bis* of the Rules.<sup>1</sup> On 20 June 2012, the “Prosecution Notice of Rule 65 *ter* (E) Filings” was filed pursuant to the Pre-Trial Work Plan.<sup>2</sup> It included *inter alia* the Prosecution exhibit list (“Exhibit List”) and the Prosecution witness list (“Witness List”).

### B. Submissions

6. In the First Motion, the Prosecution requests the admission of the evidence of 25 witnesses pursuant to Rule 92 *bis* of the Rules, arguing that the evidence is probative, relevant, and reliable and meets the requirements for admission under that Rule.<sup>3</sup> The Prosecution submits that admitting the evidence in this manner will enable it to present its case-in-chief in an efficient and expeditious manner, without compromising the fairness of the proceedings.<sup>4</sup> The Prosecution submits that the evidence does not go to proof of the acts and conduct of Hadžić as charged in the Indictment and that any references to Hadžić in the evidence are not significant.<sup>5</sup> The Prosecution requests that, should the Chamber find any such references inadmissible, the references be redacted and the remaining evidence be admitted.<sup>6</sup> The Prosecution requests the admission of a number of associated exhibits that accompany the statements and transcripts that, in its view, form an integral part of the witnesses’ evidence.<sup>7</sup> At the time the First Motion was filed, the written statements of five witnesses were not accompanied by a declaration satisfying the requirements of Rule 92 *bis* (B).<sup>8</sup>

7. In the First Motion Response, the Defence challenges the reliability of the tendered evidence where (a) the statements were taken by Prosecution investigators and may, as the Defence asserts, not contain a full and accurate record of what was said during the interview;<sup>9</sup> (b) the statement is based on hearsay or second-hand sources;<sup>10</sup> and (c) the evidence contains specific details without giving the basis for such knowledge on the part of the witness and which may have “unforeseeable

<sup>1</sup> Order on Pre-Trial Work Plan, 16 December 2011, Annex, p. 1.

<sup>2</sup> With confidential Annexes A, B, C, and E, and confidential and *ex parte* Annexes D and F. The Pre-Trial Judge allowed the Prosecution to file its corrected Rule 65 *ter* (E) Filings on 20 June 2012.

<sup>3</sup> First Motion, paras 3-6, 12-18.

<sup>4</sup> First Motion, paras 1, 3, 17-18,

<sup>5</sup> First Motion, paras 9-11.

<sup>6</sup> First Motion, para. 11.

<sup>7</sup> First Motion, paras 1, 19.

<sup>8</sup> First Motion, para. 7.

<sup>9</sup> First Motion Response, paras 6, 14, 16, 17, 28, 34, 36, 37.

<sup>10</sup> First Motion Response, paras 7, 17, 23, 24, 28, 30, 31, 34, 41.

relevance to the trial".<sup>11</sup> The Defence challenges the Prosecution's assertion that the statements are corroborated arguing that the Prosecution merely lists other witnesses whose evidence goes to generally the same topics as the proposed Rule 92 *bis* witness without discussing discrepancies in the evidence.<sup>12</sup> It asserts that such evidence does not meet the requirements of Rule 92 *bis* (A) and (B) and should not be admitted.<sup>13</sup>

8. The Defence submits that evidence going to the acts and conduct of Hadžić is inadmissible pursuant to Rule 92 *bis*. It asserts that there is no *de minimis* exception to this requirement. It asserts that, where there is a reference to Hadžić in a tendered statement, it is not an appropriate remedy for the Chamber to expunge such reference, because neither party will have had an opportunity to address the judicially-edited statement and such redactions may subtly enhance the reliability of the statement.<sup>14</sup>

9. The Defence further argues that, even if the evidence meets the formal requirements of Rule 92 *bis*, the Trial Chamber should require that the witness appear for cross-examination where the evidence relates to the acts of Hadžić's proximate subordinates or where the evidence is otherwise pivotal to the Prosecution case.<sup>15</sup>

10. Finally, the Defence submits that the Chamber should consider denying any reply filed by the Prosecution. It argues that the vagueness of the Prosecution's First Motion obliged the Defence to respond without specific submissions by the Prosecution on how the evidence of each witness satisfies the requirements of Rule 92 *bis*.<sup>16</sup>

11. In its First Motion Reply, the Prosecution submits that all of the evidence should be admitted without cross-examination.<sup>17</sup> It submits that the Defence erroneously conflates the standard for admitting evidence with the analysis of its ultimate weight, which should be assessed only at the end of trial in light of the complete trial record.<sup>18</sup> The Prosecution rejects the Defence's arguments regarding reliability, submitting that each witness statement includes the witness's sworn acknowledgement as to its accuracy and an interpreter's certification, which further supports the reliability of the evidence, and that the statements were all taken in accordance with the requirements of Rule 92 *bis* (B).<sup>19</sup> The Prosecution asserts that hearsay evidence is generally

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<sup>11</sup> First Motion Response, paras 16, 17, 18, 21, 24, 34.

<sup>12</sup> First Motion Response, para. 10.

<sup>13</sup> First Motion Response, paras 1, 6-8.

<sup>14</sup> First Motion Response, paras 2, 15, 17, 35, 37.

<sup>15</sup> First Motion Response, paras 4-5, 8, 17, 25, 35, 37.

<sup>16</sup> First Motion Response, para. 11.

<sup>17</sup> First Motion Response, paras 4, 13.

<sup>18</sup> First Motion Reply, paras 4-5.

<sup>19</sup> First Motion Reply, para. 6.

admissible and that this includes Rule 92 *bis* witness statements.<sup>20</sup> The Prosecution submits that it has demonstrated the cumulative nature of the proposed Rule 92 *bis* evidence and satisfied the threshold requirements for admissibility pursuant to Rule 89.<sup>21</sup> The Prosecution further submits that the Defence fails to demonstrate why the witnesses should have to appear for cross-examination because it has not demonstrated that the evidence's probative value is outweighed by its prejudicial effect.<sup>22</sup>

12. In the First Supplement, the Prosecution, *inter alia*, (a) indicates that it no longer seeks admission of the evidence of GH-143 or GH-160 pursuant to Rule 92 *bis*;<sup>23</sup> (b) seeks leave to add GH-166 to its Witness List and substitute GH-158's evidence with that of GH-166; (c) seeks leave to add the statement of GH-166 to the Exhibit List; and (d) tenders the evidence of GH-166 for admission pursuant to Rule 92 *bis*.<sup>24</sup> The Defence objects to the admission of the evidence of GH-166 in the First Supplement Response.<sup>25</sup> In the First Supplement Reply, the Prosecution seeks leave to add the Rule 92 *bis* packages of GH-121, GH-138, and GH-166 to its Exhibit List.<sup>26</sup>

13. In the Second Motion, the Prosecution, *inter alia*, requests that the evidence of witness GH-139, which the Chamber has already deemed appropriate for admission pursuant to Rule 92 *ter*, be instead admitted pursuant to Rule 92 *bis*.<sup>27</sup> In the Second Motion Response, the Defence objects to the admission of the evidence of GH-139 pursuant to Rule 92 *bis*.

### C. Applicable Law

14. Rule 92 *bis* of the Rules governs admissibility of written witness statements and transcripts from previous proceedings in lieu of *viva voce* testimony. Any evidence admitted pursuant to Rule 92 *bis* must satisfy the fundamental requirements for the admission of evidence, as set out in Rule 89 (C) and (D) of the Rules, namely, the evidence must be relevant and have probative value, and its probative value must not be substantially outweighed by the need to ensure a fair trial.<sup>28</sup> Thus, the Trial Chamber must find that the evidence contained in the proposed statements and

<sup>20</sup> First Motion Reply, para. 7; *cf.* Response, paras 16-18, 21, 34.

<sup>21</sup> First Motion Reply, paras 5, 8-9.

<sup>22</sup> First Motion Reply, para. 11.

<sup>23</sup> First Supplement, paras 3, 17, 18.

<sup>24</sup> First Supplement, paras 3, 19-20.

<sup>25</sup> First Supplement Response, paras 11-12.

<sup>26</sup> First Supplement Reply, paras 6-10.

<sup>27</sup> Second Motion, paras 1, 8, *referring to* Decision on Prosecution Motion for Admission of Evidence of GH-067, GH-099, and GH-139 Pursuant to Rule 92 *ter*, 9 October 2012. *See also* Second Motion Reply, paras 1-6.

<sup>28</sup> *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on 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), 15 October 2009 ("*Karadžić* Decision"), para. 4; *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis*, 7 June 2002 ("*Galić* Appeal Decision"), paras 12-13; *Prosecutor v. S. Milošević*, Case No. IT-02-54-T, Decision on Prosecution's Request to Have Written Statements Admitted under Rule 92 *bis*, 21 March 2002 ("*S. Milošević* Decision"), para. 6.

transcripts is relevant to the charges in the Indictment. It is for the Prosecution to demonstrate the relevance and probative value of the evidence of which it seeks admission.<sup>29</sup>

15. For written evidence to be admissible pursuant to Rule 92 *bis*, it must not relate to the acts and conduct of the accused as charged in the Indictment. The phrase “acts and conduct of the accused” has been interpreted in the Tribunal’s jurisprudence as an expression that must be given its ordinary meaning: “deeds and behaviour of the accused”.<sup>30</sup> Furthermore, a clear distinction must be drawn between: (a) the acts and conduct of others who commit the crimes for which the accused is alleged to be responsible and (b) the acts and conduct of the accused as charged in the Indictment, which establish his or her responsibility for the acts and conduct of those others.<sup>31</sup> Evidence pertaining to the latter is inadmissible under Rule 92 *bis* and includes evidence that the Prosecution seeks to rely on to establish that the accused:

- (a) committed (that is, that he or she personally physically perpetrated) any of the crimes charged;
- (b) planned, instigated, or ordered the crimes charged;
- (c) otherwise aided and abetted those who actually did commit the crimes in the planning, preparation, or execution of those crimes;
- (d) was a superior to those who actually committed the crimes;
- (e) knew or had reason to know that those crimes were about to be or had been committed by his or her subordinates; or
- (f) failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.<sup>32</sup>

16. Where the Prosecution case is that the accused participated in a joint criminal enterprise (“JCE”) and is therefore liable for the acts of others in that JCE, Rule 92 *bis* (A) excludes any written statement that goes to proof of any act or conduct of the accused upon which the

<sup>29</sup> *Karadžić* Decision, para. 4; *Prosecutor v. Boškoski and Tarčuloski*, Case No. IT-04-82-PT, Decision on Prosecution’s First Revised Motion Pursuant to Rule 92 *bis* and on Prosecution’s Motion Pursuant to Rule 92 *ter*, 30 March 2007 (“*Boškoski and Tarčuloski* Decision”), para. 95, citing *S. Milošević* Decision, para. 8.

<sup>30</sup> *Karadžić* Decision, para. 5; *Boškoski and Tarčuloski* Decision, para. 8.

<sup>31</sup> *Karadžić* Decision, para. 5; *Galić* Appeal Decision, para. 9.

<sup>32</sup> *Karadžić* Decision, para. 5; *Galić* Appeal Decision, para. 10.

Prosecution relies to establish that the accused either: (a) participated in that JCE or (b) shared with the person who actually did commit the crimes charged the requisite intent for those crimes.<sup>33</sup>

17. Even if a written statement or the transcript of prior testimony is admissible pursuant to Rule 92 *bis*, it is for the Chamber to determine whether to exercise its discretion and admit the evidence in written form.<sup>34</sup> Pursuant to Rule 92 *bis* (A)(i), factors in favour of admission include whether the evidence: (a) is of a cumulative nature; (b) relates to relevant historical, political, or military background; (c) consists of general or statistical analysis of the ethnic composition of the population; (d) concerns the impact of crimes upon victims; (e) relates to issues of the character of the accused; or (f) relates to factors to be taken into account in determining sentence. By contrast, pursuant to Rule 92 *bis* (A)(ii), factors against admission include whether: (a) there is an overriding public interest in the evidence in question being presented orally; (b) a party objecting demonstrates that its nature and source renders it unreliable or that its prejudicial effect outweighs its probative value; or (c) there are any other factors that make it appropriate for the witness to attend for cross-examination.

18. The fact that the written statement goes to proof of the acts and conduct of a subordinate of the accused or of some other person for whose acts and conduct the accused is charged with responsibility is relevant to the exercise of the Trial Chamber's discretion in deciding whether the evidence be admitted in written form. Where the evidence is pivotal to the Prosecution case, or where the person whose acts and conduct the written statement describes is too proximate to the accused, the Trial Chamber may find that it would not be fair to the accused to permit the evidence to be given in written form.<sup>35</sup>

19. When the evidence sought to be admitted pursuant to Rule 92 *bis* consists of a written statement, the formal requirements set out in Rule 92 *bis* (B) must be fulfilled. However, various Chambers have taken the approach that, in order to expedite the proceedings, it is permissible for a party to propose written statements for provisional admission pending their certification under Rule 92 *bis* (B).<sup>36</sup>

<sup>33</sup> *Karadžić* Decision, para. 6; *Galić* Appeal Decision, para. 13.

<sup>34</sup> *Karadžić* Decision, para. 7; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecution Rule 92 *bis* Motion, 4 July 2006, para. 7.

<sup>35</sup> *Galić* Appeal Decision, para. 13; *Karadžić* Decision, para. 8.

<sup>36</sup> *Karadžić* Decision, para. 9; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's Confidential Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*, 12 September 2006 ("*Popović et al.* Decision"), paras 19-21; *Prosecutor v. Martić*, Case No. IT-95-11-T, Decision on Prosecution's Motion for the Admission of Written Evidence Pursuant to Rule 92 *bis* of the Rules, 16 January 2006, paras 11, 37.

20. Should the Chamber consider that the written evidence is admissible, the Chamber may order the witness to be brought for cross-examination pursuant to Rule 92 *bis* (C) and under the conditions set out in Rule 92 *ter* of the Rules. In making this determination, the Chamber should always take into consideration its obligation to ensure a fair trial under Articles 20 and 21 of the Statute of the Tribunal.<sup>37</sup> Furthermore, there are a number of criteria established in the case-law of the Tribunal, which should be taken into account when making such a determination, including: (a) the cumulative nature of the evidence;<sup>38</sup> (b) whether the evidence is “crime-base” evidence;<sup>39</sup> (c) whether the evidence touches upon a “live and important issue between the parties, as opposed to a peripheral or marginally relevant issue”;<sup>40</sup> and (d) whether the evidence describes the acts and conduct of a person for whose acts and conduct the accused is charged with responsibility (*i.e.*, subordinate, co-perpetrator) and how proximate the acts and conduct of this person are to the accused.<sup>41</sup> Moreover, a general factor to be taken into consideration in relation to written evidence in the form of a transcript of previous testimony is whether the witness was extensively cross-examined and whether there is a “common interest” between the Defence in the previous case and the present case.<sup>42</sup>

21. In addition to the admission of a witness’s written evidence, documents accompanying the written statements or transcripts which “form an inseparable and indispensable part of the testimony” can also be admitted pursuant to Rule 92 *bis*.<sup>43</sup> Not every document referred to in a witness’s written statement or transcript from a prior proceeding automatically forms an “inseparable and indispensable part” of the witness’s testimony. Rather, a document falls into this category if the witness discusses the document in his or her written statement or transcript and if that written statement would become incomprehensible or have lesser probative value without admission of the document.<sup>44</sup>

<sup>37</sup> *Karadžić* Decision, para. 10; *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 22 August 2008 (“*Lukić and Lukić* Decision”) para. 20.

<sup>38</sup> *Karadžić* Decision, para. 10; *Lukić and Lukić* Decision, para. 20, citing *Prosecutor v. Mrksić et al.*, Case No. IT-95-13/1-T, Decision on Prosecution’s Motion for Admission of Transcripts and Written Statements pursuant to Rule 92 *bis* (confidential), 25 October 2005 (“*Mrksić et al.* Decision”), para. 9.

<sup>39</sup> *Karadžić* Decision, para. 10; *Lukić and Lukić* Decision, para. 20, citing *Mrksić* Decision, para. 8; see also *Bošković and Tarčuloski* Decision, para. 19.

<sup>40</sup> *Karadžić* Decision, para. 10; *Lukić and Lukić* Decision, para. 20, citing *S. Milošević* Decision, paras 24-25.

<sup>41</sup> *Karadžić* Decision, para. 10; *Galić* Appeal Decision, para. 13.

<sup>42</sup> *Karadžić* Decision, para. 10; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 27.

<sup>43</sup> *Karadžić* Decision, para. 11; *Prosecutor v. D. Milošević*, Case No. IT-98-29/1-T, Decision on Admission of Written Statements, Transcripts and Associated Exhibits Pursuant to Rule 92 *ter*, 22 February 2007, p. 3; *Lukić and Lukić* Decision, para. 21.

<sup>44</sup> *Karadžić* Decision, para. 11; *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses Pursuant to Rule 92 *ter*, 9 July 2008, para. 15.



22. The applicable law on amending the Witness List was set out in detail in the Trial Chamber's decision of 21 September 2012.<sup>45</sup> The applicable law on amending the Exhibit List was set out in detail in the Trial Chamber's decision of 8 November 2012.<sup>46</sup>

#### **D. Discussion**

##### **1. Preliminary matters**

23. In accordance with paragraphs (C)(5) and (7) of the Practice Direction on the Length of Briefs and Motions ("Practice Direction"),<sup>47</sup> the Trial Chamber will grant the Defence request for leave to file a response to the First Motion that exceeds the applicable word limit for responses.

24. Having considered the submissions of the parties, the Trial Chamber, in accordance with Rule 126 *bis* of the Rules, will grant the Prosecution leave to (a) reply to the First Motion Response, (b) reply to the First Supplement Response, and (c) reply to the Second Motion Response.

##### **2. Issues that relate to all witnesses**

25. The Prosecution seeks, pursuant to Rules 89 and 92 *bis*, the admission of written evidence in lieu of *viva voce* testimony for a total of 24 witnesses and associated exhibits. The Trial Chamber will first address issues raised in respect of much of the tendered evidence and then specifically address the evidence of each witness.

26. *Statements prepared by the Prosecution.* As the Defence submitted in the First Motion Response, the Appeals Chamber in *Galić* noted that questions of reliability have arisen before the Tribunal as to the manner in which written statements are compiled.<sup>48</sup> However, the Appeals Chamber concluded that the requirements of Rule 92 *bis* were introduced specifically to emphasise the need to ensure reliability in such circumstances.<sup>49</sup> The Chamber finds that, by requiring each witness to sign a declaration that his or her statement is true and correct to the best of his or her knowledge along with a declaration by a presiding officer appointed by the Registrar, Rule 92 *bis* is designed to procure sufficiently reliable evidence. Accordingly, the Chamber dismisses the Defence objections to tendered witness statements on this ground.

<sup>45</sup> Decision on Prosecution Motion for Leave to Amend Prosecution Witness List by Adding Three Witnesses (confidential), 21 September 2012, paras 4-5.

<sup>46</sup> Decision on Fourth Prosecution Motion for Leave to Amend Prosecution Rule 65 *ter* Exhibit List, 8 November 2012, para. 5.

<sup>47</sup> IT/184 Rev. 2, 16 September 2005.

<sup>48</sup> *Galić* Appeal Decision, para. 30.

<sup>49</sup> *Galić* Appeal Decision, para. 30.

27. *Hearsay and unforeseeable relevance.* The Chamber recalls that hearsay evidence is admissible.<sup>50</sup> The Chamber considers that the inclusion of hearsay evidence in written form does not preclude admission pursuant to Rule 92 *bis*, but rather goes to the weight to be attributed to the evidence. The Chamber does not consider that certain evidence should be denied admission pursuant to Rule 92 *bis* because, as submitted by the Defence, it may have “unforeseeable relevance” to the case at the time of its admission. Accordingly, the Chamber dismisses the Defence objections to tendered written evidence on these grounds.

28. *Cumulative nature of the evidence.* The Chamber notes that, where written evidence is of a cumulative nature, meaning that other witnesses will give oral testimony of similar facts,<sup>51</sup> this is a factor that weighs in favour of admitting the evidence pursuant to Rule 92 *bis*. Based on the information in the Rule 65 *ter* summaries of Prosecution witnesses (“Witness Summaries”), the Chamber is satisfied that it is able to assess the cumulative nature of the proposed evidence.

29. *Acts and conduct of the accused.* The Chamber recalls that evidence that goes to the acts and conduct of a person other than the accused who committed the crimes for which the accused is alleged to be responsible is not precluded from admission pursuant to Rule 92 *bis*. However, the Appeals Chamber in *Galić* held that the proximity of the subordinate to the accused remains relevant to the Chamber’s decision whether to exercise its discretion to reject admission of the evidence pursuant to Rule 92 *bis*. Therefore, in evaluating the tendered evidence, the Trial Chamber will consider whether the evidence goes to the acts and conduct of a person who is alleged to be so proximate to Hadžić or is so pivotal to the Prosecution’s case that it would be unfair to the accused to permit that evidence to be admitted in written form or without the opportunity for cross-examination.<sup>52</sup> In such a case, the Chamber will consider whether the evidence is admissible in a redacted form, whether the written evidence is admissible but the Defence must be given the opportunity to cross-examine the witness, or whether the evidence in written form must be rejected.

### 3. Individual witnesses

30. GH-031: The Prosecution submits that GH-031’s evidence, in the form of a written statement, is relevant to events in Erdut charged in the Indictment and is corroborated by the

<sup>50</sup> *Naletilić and Martinović* Appeal Judgement, para. 217; *Kordić and Čerkez* Appeal Judgement, para. 281; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

<sup>51</sup> *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, First Decision on Prosecution’s Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92 *bis*, 12 June 2003, para. 20.

<sup>52</sup> According to the Appeals Chamber, an example of such evidence would be where the acts and conduct of a person other than the accused described in the written statement occurred in the presence of the accused. *Galić* Appeal Decision, paras 13-15.

evidence of 23 other witnesses.<sup>53</sup> The Defence requests that the evidence be denied admission or that the witness be required to appear for cross-examination. It submits that the written statement includes a claim that implies a relationship between Hadžić and “Arkan’s Men” (the alleged perpetrators of crimes for which Hadžić is alleged to be responsible) and reference to Hadžić’s alleged presence “in the courtyard of the Duchess’ house”, which concerns the acts and conduct of Hadžić.<sup>54</sup> The Prosecution replies that GH-031 makes only a passing and general reference to Hadžić’s presence at the Duchess’s house.<sup>55</sup> The Prosecution also submits that due to GH-031’s evidence being cumulative to that of several *viva voce* witnesses, the Defence will have ample opportunity to contest issues alleged in the statement through cross-examination of those witnesses.<sup>56</sup>

31. The Chamber considers that GH-031’s evidence is relevant to charges in the Indictment. The Chamber notes that the written statement contains a reference to Hadžić being a part of the “Government for the Serbian area of Eastern Slavonia, Baranja and Western Srem” in 1991. The Chamber notes that this is not a fact that is in dispute in this case,<sup>57</sup> and finds that such evidence will not be prejudicial to the Defence. However, the Chamber considers that the witness’s assertion that: “I saw him [Hadžić] in the courtyard of the Duchess’ house and later at the castle when Arkan’s men took me there to install heating”<sup>58</sup> is too closely associated with the alleged acts and conduct of Hadžić as charged in the Indictment. The Chamber will therefore exclude this portion of the written statement. The remainder of the written statement goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Trial Chamber is satisfied that GH-031’s evidence is of a cumulative nature and finds that the tendered written evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*. The Chamber notes that Rule 65 *ter* number 02334 is an English translation of Rule 65 *ter* number 02523. An English translation is attached to Rule 65 *ter* number 02523 and therefore admission of both documents is not necessary.

32. GH-035: The Prosecution submits that GH-035’s evidence, in the form of a written statement, is relevant to events in Erdut charged in the Indictment and is corroborated by the evidence of six other witnesses and documentary evidence.<sup>59</sup> The Defence requests that the evidence be denied admission or that the witness be required to appear for cross-examination. It

<sup>53</sup> First Motion, confidential Annex A, pp. 1-2.

<sup>54</sup> First Motion Response, paras 14, 15. Also referred to as the “Mali Dvor Mansion”.

<sup>55</sup> First Motion Reply, para. 12.

<sup>56</sup> First Motion Reply, para. 12.

<sup>57</sup> See Second Joint Report on Agreed Facts and Documents, 4 April 2012, Annex A, p. 5, Agreed Fact 36.

<sup>58</sup> See Rule 65 *ter* 02523, Supplement to the Statement of Witness [GH-031], 19 June 2003, p. 1.

<sup>59</sup> First Motion, confidential Annex, p. 5.

submits that GH-035 describes the actions of an alleged proximate subordinate of Hadžić in relation to a crime for which Hadžić is allegedly responsible.<sup>60</sup> The Prosecution replies that GH-035's evidence does not concern subordinates sufficiently proximate to Hadžić to preclude its admission pursuant to Rule 92 *bis* and that further evidence linking this alleged crime to Hadžić will be established by *viva voce* witnesses at trial.<sup>61</sup>

33. The Trial Chamber considers that GH-035's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the Defence does not identify a reference to an alleged proximate subordinate in the written evidence. The Chamber is satisfied that there is no reference in the written evidence to a subordinate sufficiently proximate to Hadžić to make the evidence of GH-035 so pivotal to the Prosecution case that it would be unfair to admit the evidence in written form or that the Defence requires the opportunity to cross-examine the witness. The Chamber considers that the witness provides crime-base evidence that is cumulative in nature. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

34. GH-155: The Prosecution submits that GH-155's evidence, in the form of a transcript of his previous testimony in *Prosecutor v. Dokmanović*,<sup>62</sup> is relevant to events in Ilok and surrounding villages charged in the Indictment and is corroborated by the evidence of five other witnesses.<sup>63</sup> The Defence requests that the evidence be denied admission or that the witness be required to appear for cross-examination. It submits that, because the Prosecution alleges that Hadžić is criminally responsible for the evacuation of Ilok and was allegedly a superior of Slavko Dokmanović (whose actions are discussed in the transcript), the prejudicial effect of the evidence outweighs its probative value.<sup>64</sup> In reply, the Prosecution argues that GH-155 gives a sufficient basis for his knowledge to render his evidence reliable, that GH-155 was cross-examined in *Dokmanović* where the accused had a strong incentive to test the witness's credibility, and that *viva voce* witnesses will corroborate the evidence concerning Ilok.<sup>65</sup>

35. The Trial Chamber considers that GH-155's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber further considers that the witness's evidence is crime-base evidence that is cumulative in nature. The Trial Chamber finds that the tendered evidence has

<sup>60</sup> First Motion Response, para. 17.

<sup>61</sup> First Motion Reply, p. 5.

<sup>62</sup> Case No. IT-95-13a.

<sup>63</sup> First Motion, confidential Annex A, p. 6.

<sup>64</sup> First Motion Response, paras 18-19.

sufficient indicia of reliability, is relevant, and has probative value. The Chamber considers, however, that due to the nature of the witness's evidence, the witness should appear for cross-examination. The Chamber finds that the tendered evidence is appropriate for admission pursuant to Rules 89(C) and 92 *bis* (C).

36. *GH-051*: The Prosecution submits that GH-051's evidence, in the form of a written statement, is relevant to events in Lovas charged in the Indictment and is corroborated by the evidence of six other witnesses and documentary evidence.<sup>66</sup> The Defence requests that the evidence be denied admission or that the witness be required to appear for cross-examination.<sup>67</sup> The Chamber considers that GH-051's evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

37. *GH-053*: The Prosecution submits that GH-053's evidence, in the form of a written statement, is relevant to events in Lovas charged in the Indictment and is corroborated by the evidence of seven other witnesses.<sup>68</sup> The Defence does not object to the admission of GH-053's written evidence.<sup>69</sup> The Trial Chamber considers that GH-053's evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

38. *GH-121*: The Prosecution submits that GH-121's evidence, in the form of a written statement, is relevant to events in Vukovar and Dalj charged in the Indictment and is corroborated by the evidence of seven other witnesses and agreed facts.<sup>70</sup> The Prosecution seeks the admission of one associated exhibit.<sup>71</sup> The Defence requests that the evidence be denied admission or that the witness be required to appear for cross-examination. It submits that the statement is vague with respect to the sources mentioned therein and not sufficiently and specifically corroborated by the evidence of other witnesses.<sup>72</sup> In reply, the Prosecution submits that other listed witnesses provide

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<sup>65</sup> First Motion Reply, p. 6.

<sup>66</sup> First Motion, confidential Annex A, pp. 7-8.

<sup>67</sup> First Motion Response, para. 21.

<sup>68</sup> First Motion, confidential Annex A, p. 10. *See also* First Motion Reply, p. 6.

<sup>69</sup> The Trial Chamber notes that the Defence submits that this witness's description of the intensity and timing of the attack on Vukovar is "manifestly contrary to other evidence and wrong." First Motion Response, para. 22.

<sup>70</sup> First Motion, confidential Annex A, p. 12.

<sup>71</sup> First Motion, confidential Annex A, p. 12; Rule 65 *ter* 02448.

<sup>72</sup> First Motion Response, para 23.

corroborative evidence of her husband's killing, including the evidence of GH-118 whose husband is alleged to have been killed in the same incident.<sup>73</sup>

39. The Trial Chamber considers that GH-121's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. After reviewing the Witness Summaries and other documentation before the Chamber, the Trial Chamber is satisfied that GH-121's evidence is cumulative in nature. The Chamber considers that the witness's evidence is crime-base evidence. The Chamber determines that the tendered associated exhibit, as referenced in the written statement, forms an inseparable and indispensable part of the testimony. Although GH-121's written statement was not originally accompanied by a declaration satisfying the requirements of Rule 92 *bis* (B), the Prosecution subsequently resubmitted the statement in compliance with the formalities of Rule 92 *bis* and seeks to add this statement, Rule 65 *ter* number 06335, to its Exhibit List.<sup>74</sup> The Chamber is satisfied that, taking into account the specific circumstances of the case and the lack of opposition from the Defence, good cause has been shown for amending the Exhibit List to include the witness statement with the proper Rule 92 *bis* attestation attached. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

40. GH-059: The Prosecution submits that GH-059's evidence, in the form of a written statement, is relevant to events in Erdut and Vukovar charged in the Indictment and is corroborated by the evidence of 22 other witnesses, agreed facts, and documentary evidence.<sup>75</sup> The Defence requests that the evidence be denied admission or that the witness be required to appear for cross-examination. It submits that GH-059's statement is unreliable and vague.<sup>76</sup> In reply, the Prosecution submits that, although GH-059 does not provide precise dates, she describes events in relation to the time that other incidents are alleged to have occurred and provides other substantiating details throughout her evidence.<sup>77</sup>

41. The Trial Chamber considers that GH-059's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness's evidence is cumulative in nature and is crime-base evidence. The Trial Chamber finds that the tendered evidence has

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<sup>73</sup> First Motion Reply, p. 6.

<sup>74</sup> First Motion, para. 7; First Supplement, para. 16; First Supplement Reply, paras 7-8.

<sup>75</sup> First Motion, confidential Annex A, p. 12.

<sup>76</sup> First Motion Response, para. 24.

<sup>77</sup> First Motion Reply, p. 7.

sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

42. *GH-060*: The Prosecution submits that GH-060's evidence, in the form of a transcript of his previous testimony in *Prosecutor v. Mrkšić et al.*,<sup>78</sup> is relevant to events in Ovčara and Vukovar charged in the Indictment and is corroborated by the evidence of four other witnesses and documentary evidence.<sup>79</sup> The Prosecution seeks the admission of six associated exhibits.<sup>80</sup> The Defence requests that the evidence be denied admission or that the witness be required to appear for cross-examination. It submits that the evidence of GH-060 raises pivotal issues of fact, namely (a) the chronology of events relevant to charged incidents in Ovčara and (b) which person or entity had authority during the alleged killings there.<sup>81</sup> In reply, the Prosecution submits that other witnesses will provide *vive voce* evidence of the events at Ovčara and that GH-060's evidence was subjected to extensive cross-examination in the *Mrkšić* case.<sup>82</sup>

43. The Trial Chamber considers that GH-060's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness's crime-base evidence is cumulative in nature. The Chamber notes that GH-060 was subjected to extensive cross-examination in *Mrkšić* with respect to this evidence. The Chamber considers that the six associated exhibits, as discussed in the transcript, form an inseparable and indispensable part of the testimony. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value. The Chamber considers, however, that due to the nature of the witness's evidence, the witness should appear for cross-examination. The Chamber finds that the tendered evidence is appropriate for admission pursuant to Rules 89(C) and 92 *bis* (C).

44. *GH-063*: The Prosecution submits that GH-063's evidence, in the form of a transcript of his previous testimony in *Prosecutor v. Mrkšić et al.*,<sup>83</sup> is relevant to events in Vukovar charged in the Indictment and is corroborated by the evidence of 16 other witnesses.<sup>84</sup> The Prosecution seeks the admission of 16 associated exhibits.<sup>85</sup> The Defence requests that the evidence be denied admission or that the witness be required to appear for cross-examination. It submits that GH-063's evidence is inconsistent with previous statements and evidence given in the *Dokmanović* case, in particular

<sup>78</sup> Case No. IT-95-13/1.

<sup>79</sup> First Motion, confidential Annex A, p. 15.

<sup>80</sup> First Motion, confidential Annex A, pp. 15-16.

<sup>81</sup> First Motion Response, para. 25.

<sup>82</sup> First Motion Reply, p. 7.

<sup>83</sup> Case No. IT-95-13/1.

<sup>84</sup> First Motion, confidential Annex A, p. 18.

<sup>85</sup> First Motion, confidential Annex A, p. 12. In the Second Supplement, the Prosecution withdraws its request to tender the document with Rule 65 *ter* number 02591. Second Supplement, para. 2.

regarding which military units were present, in charge, and engaged in operations at the Vukovar hospital in November 1991.<sup>86</sup> The Defence submits that some inconsistencies in the evidence arose after the witness met with representatives of the Croatian Ministry of Defence.<sup>87</sup> In reply, the Prosecution submits that there are no inconsistencies in GH-063's proposed evidence and that the Defence will have the opportunity to cross-examine other witnesses on the events at Vukovar hospital and the Serb Forces present.<sup>88</sup> The Prosecution submits that the proofing of the witness by the Croatian Ministry of Defence does not render the statement inadmissible or require the witness to appear for cross-examination. It submits that GH-063 was extensively cross-examined on the issues that the Defence considers are inconsistent.<sup>89</sup>

45. The Trial Chamber considers that GH-063's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness's evidence is cumulative in nature and is crime-base evidence. The Chamber considers that the tendered associated exhibits, as discussed in the transcript, form an inseparable and indispensable part of the testimony. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value. The Chamber considers, however, that due to the nature of the witness's evidence, the witness should appear for cross-examination. The Chamber finds that the tendered evidence is appropriate for admission pursuant to Rules 89(C) and 92 *bis* (C).

46. GH-149: The Prosecution submits that GH-149's evidence, in the form of a transcript of his previous testimony in *Prosecutor v. Martić*,<sup>90</sup> is relevant to events in the UN Protected Area of Croatia charged in the Indictment and is corroborated by the evidence of four other witnesses and documentary evidence.<sup>91</sup> The Prosecution seeks the admission of 25 associated exhibits.<sup>92</sup> The Defence does not object to the admission of GH-149's written evidence, with the exception of the tendered associated exhibit with Rule 65 *ter* number 00743.<sup>93</sup> In relation to this document, the Defence submits that the Prosecution has not shown that it forms an integral part of the witness's testimony or that it is authentic and reliable.<sup>94</sup> In reply, the Prosecution submits that the document is

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<sup>86</sup> First Motion Response, para. 26.

<sup>87</sup> First Motion Response, para. 26.

<sup>88</sup> First Motion Reply, p. 8.

<sup>89</sup> First Motion Reply, p. 8.

<sup>90</sup> Case No. IT-95-11.

<sup>91</sup> First Motion, confidential Annex A, pp. 21-22.

<sup>92</sup> First Motion, confidential Annex A, pp. 22-25.

<sup>93</sup> First Motion Response, para. 27.

<sup>94</sup> First Motion Response, para. 27.



a copy of the Vance Plan, which was helpful in assisting the witness during his prior testimony to recall details on organisations in the Krajina.<sup>95</sup>

47. The Trial Chamber considers that GH-149's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness's crime-base evidence is cumulative in nature. The Chamber notes that GH-149 was subjected to extensive cross-examination in *Martić* with respect to this evidence. During his testimony in *Martić*, GH-149 acknowledged that a copy of the "Vance Plan", as provided to him, was helpful to his recollection of certain events.<sup>96</sup> However, the Chamber notes that the information the witness recalled with the aid of this document is reflected in the transcript of his testimony and that the written evidence will not become incomprehensible or have lesser probative value without admission of the document. The Chamber notes that the remaining tendered associated exhibits, as discussed in the written statement, form an inseparable and indispensable part of the testimony. However, Rule 65 *ter* numbers 05857, 05858, 05859, and 05860 are not included on the Exhibit List and will not be admitted.<sup>97</sup> The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and, with the exception of Rule 65 *ter* numbers 00743, 05857, 05858, 05859, and 05860, is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

48. *GH-123*: The Prosecution submits that GH-123's evidence, in the form of a written statement, is relevant to events in Erdut charged in the Indictment and is corroborated by the evidence of 26 other witnesses.<sup>98</sup> The Defence requests that the evidence be denied admission or that the witness be required to appear for cross-examination. It challenges the Prosecution's assertion that the evidence of GH-123 is corroborated, arguing that none of the listed witnesses make reference to GH-123 or her husband's disappearance, except for GH-031 who gives no basis for this knowledge.<sup>99</sup> In reply, the Prosecution submits that GH-031's testimony includes the explanation that he heard of the disappearance of GH-123's husband from different villagers.<sup>100</sup>

49. The Chamber considers that GH-123's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness's evidence relates to crime-base evidence. After reviewing the Witness Summaries and other documentation before the Chamber, the Trial

<sup>95</sup> First Motion Reply, p. 8.

<sup>96</sup> Rule 65 *ter* 05833, Transcript of testimony of GH-149 in Case No. IT-95-11-T, 30 May 2006, T. 4787.

<sup>97</sup> In the First Motion annex, the Prosecution indicates that it would apply to add these documents to the Exhibit List. First Motion, confidential Annex, p. 25, fns 2-5. It appears not to have done so.

<sup>98</sup> First Motion, confidential Annex, p. 27.

<sup>99</sup> First Motion Response, para. 28.

<sup>100</sup> First Motion Reply, para. 12.

Chamber is satisfied that GH-123's evidence is cumulative in nature. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

50. GH-013: The Prosecution submits that GH-013's evidence, in the form of a transcript from his previous testimony in *Prosecutor v. Martić*,<sup>101</sup> is relevant to events in Ilok, Novi Sad, and the Begejci camp in Vojvodina charged in the Indictment.<sup>102</sup> The Prosecution notes that, although GH-013 was previously accepted by the Tribunal as an expert witness on the issue of trauma suffered by victims of crimes, the Prosecution does not seek to lead his evidence as expert testimony pursuant to Rule 94 *bis* in the present case.<sup>103</sup> Rather, the witness will provide evidence of his own traumatic experiences from his detention at the Begejci detention facility in Serbia between 1991 and 1993 as well as the suffering of victims from detention centres throughout the RSK with whom he interacted.<sup>104</sup> The Defence does not object to the admission of GH-013's written evidence to the extent that it describes his personal experience at the Begejci camp in Serbia, but objects to the remainder of the testimony.<sup>105</sup> The Defence notes that the Prosecution has not tendered the witness's expert report and asserts that the objectionable portions of his testimony, which makes frequent reference to this report, cannot assist the Chamber.<sup>106</sup> In reply, Prosecution asserts that the witness's sworn testimony will assist the Chamber without the admission of his expert report.<sup>107</sup>

51. The Trial Chamber considers that GH-013's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness provides crime-base evidence that is cumulative in nature. However, the Trial Chamber considers that, as an expert witness in *Martić*, GH-013 was "afforded wide latitude to offer opinions within his expertise" and that his evidence was not based only on firsthand knowledge or experience.<sup>108</sup> Furthermore, GH-013's tendered evidence is not submitted in a concise and concentrated manner. Accordingly, the Chamber finds it appropriate that the evidence be led *viva voce*. The Chamber will therefore deny admission of the tendered written evidence of GH-013 pursuant to Rule 92 *bis*.

52. GH-070: The Prosecution submits that GH-070's evidence, in the form of a written statement, is relevant to the alleged killings at Grabovac charged in the Indictment and is

<sup>101</sup> Case No. IT-95-11.

<sup>102</sup> First Motion, confidential Annex A, pp. 27-28.

<sup>103</sup> First Motion, para. 17.

<sup>104</sup> First Motion, p. 8.

<sup>105</sup> First Motion Response, para. 29.

<sup>106</sup> First Motion Response, para. 29.

<sup>107</sup> First Motion Reply, p. 9.

<sup>108</sup> *Prosecutor v. Popović et al.*, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 27.

corroborated by the evidence of two other witnesses and documentary evidence.<sup>109</sup> The Prosecution seeks the admission of 44 associated exhibits.<sup>110</sup> The Defence does not object to the admission of GH-070's written evidence, but argues that cross-examination of the witness would be "helpful" in order to identify precisely who tasked the witness with performing the on-site investigations discussed in the statement.<sup>111</sup> In reply, the Prosecution argues that the Defence can make submissions on the "tangential point" it raises with respect to GH-070's evidence, but that the evidence should be admitted.<sup>112</sup>

53. The Trial Chamber considers that GH-070's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness's evidence is cumulative in nature and is crime-base evidence. The Chamber notes that the witness clearly stated that the "Beli Manastir Militia" requested the on-site investigation in relation to the alleged victims in Grabovac;<sup>113</sup> the Chamber therefore does not consider that it is necessary for the witness to appear to further clarify this issue. The Trial Chamber notes that the tendered associated exhibits, with the exception of those with Rule 65 *ter* numbers 02210 and 02902, are discussed in the written statement. However, only the associated exhibits with the Rule 65 *ter* numbers 02425 and 02033 are relevant to this case. The Chamber notes that the document with Rule 65 *ter* number 02425 is also included in the written statement and does not require admission as a stand alone exhibit. The Chamber further notes that Rule 65 *ter* number 02424 is an English translation of Rule 65 *ter* number 02522. An English translation is attached to Rule 65 *ter* number 02522 and therefore admission of both documents is not necessary. The Trial Chamber finds that the tendered evidence, comprised of the witness statement with Rule 65 *ter* number 02522 and the associated exhibit with Rule 65 *ter* number 02033, has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

54. GH-072: The Prosecution submits that GH-072's evidence, in the form of a written statement, is related to events in Vukovar charged in the Indictment and is corroborated by the evidence of six other witnesses and documentary evidence.<sup>114</sup> The Defence does not object to the admission of GH-072's written evidence.<sup>115</sup> The Trial Chamber considers that GH-072's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness's

<sup>109</sup> First Motion, confidential Annex A, pp. 31-32.

<sup>110</sup> First Motion, confidential Annex A, pp. 32-41.

<sup>111</sup> First Motion Response, para. 32.

<sup>112</sup> First Motion Reply, p. 9.

<sup>113</sup> GH-070, Rule 65 *ter* 02522, Witness Statement, 11 and 13 November 2000, p. 7.

<sup>114</sup> First Motion, confidential Annex A, pp. 42-43.

evidence relates to crime-base evidence. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*. The Chamber notes that Rule 65 *ter* number 02419 is an English translation of Rule 65 *ter* number 02541. An English translation is attached to Rule 65 *ter* number 02541 and therefore admission of both documents is not necessary.

55. GH-077: The Prosecution submits that GH-077's evidence, in the form of a transcript of his previous testimony in *Prosecutor v. S. Milošević*,<sup>116</sup> is relevant to events in Baranja charged in the Indictment and is corroborated by the evidence of three other witnesses and documentary evidence.<sup>117</sup> The Prosecution seeks the admission of four associated exhibits.<sup>118</sup> The Defence does not object to the admission of GH-077's written evidence.<sup>119</sup> The Trial Chamber considers that GH-077's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness's evidence is cumulative in nature and is crime-base evidence. The Chamber notes that GH-077 was subjected to cross-examination with respect to this evidence. The Chamber finds that the tendered associated exhibits, as discussed in the written evidence, form an inseparable and indispensable part of the testimony. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*. The Chamber notes that Rule 65 *ter* number 02513 is an English translation of Rule 65 *ter* number 02423. An English translation is attached to Rule 65 *ter* number 02423 and therefore admission of both documents is not necessary.

56. GH-082: The Prosecution submits that GH-082's evidence, in the form of written statements, is relevant to events in Erdut charged in the Indictment and is corroborated by 16 other witnesses.<sup>120</sup> The Prosecution submits that GH-082's statement contains passing references to Hadžić that are general in nature and do not significantly relate to Hadžić's acts and conduct as charged in the Indictment.<sup>121</sup> The Defence does not object to the admission of GH-082's written evidence.<sup>122</sup>

57. The Trial Chamber considers that GH-082's written evidence is relevant to the charges in the Indictment. GH-082's written evidence contains a reference to Hadžić as the head of SAO

<sup>115</sup> First Motion Response, para. 12.

<sup>116</sup> Case No. IT-02-54.

<sup>117</sup> First Motion, confidential Annex A, p. 44.

<sup>118</sup> First Motion, confidential Annex A, p. 44.

<sup>119</sup> First Motion Response, para. 12.

<sup>120</sup> First Motion, confidential Annex, pp. 45-46.

<sup>121</sup> First Motion, para. 11.

<sup>122</sup> First Motion Response, para. 33.

SBWS.<sup>123</sup> The Chamber notes that this fact is not in dispute in this case<sup>124</sup> and finds that admitting such written evidence will not be prejudicial to the Defence. The Chamber considers that the witness's evidence relates to crime-base evidence. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

58. GH-138: The Prosecution submits that GH-138's evidence, in the form of a written statement, is relevant to events in Erdut charged in the Indictment and is corroborated by evidence of 17 other witnesses.<sup>125</sup> In response, the Defence submits (a) that GH-138's statement is unreliable because much of the statement is derived from hearsay information provided by GH-032, whose statement the Prosecution seeks to tender via Rule 92 *quater*, and (b) that the statements of the two witnesses differ significantly in the description of the number and the attire of the individuals who allegedly abducted GH-138's husband.<sup>126</sup>

59. The Trial Chamber considers that GH-138's written evidence is relevant to charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness's evidence is cumulative in nature and relates to crime-base evidence. Although GH-138's written statement was not accompanied by a declaration satisfying the requirements of Rule 92 *bis* (B), the Prosecution has subsequently resubmitted the statement in compliance with the formalities of Rule 92 *bis* and seeks to add this statement, Rule 65 *ter* number 06336, to its Exhibit List.<sup>127</sup> The Chamber is satisfied that, taking into account the specific circumstances of the case and the lack of opposition from the Defence, good cause has been shown for amending the Exhibit List to include the witness statement with the proper Rule 92 *bis* attestation attached. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value. The Chamber considers, however, that due to the nature of the witness's evidence, the witness should appear for cross-examination. The Chamber finds that the tendered evidence is appropriate for admission pursuant to Rules 89(C) and 92 *bis* (C). The Chamber notes that there is no English translation attached to the statement, Rule 65 *ter* number 06336, in eCourt.<sup>128</sup> The Prosecution will be ordered to attach a translation no later than seven days from the filing of this decision.

<sup>123</sup> GH-082, Rule 65 *ter* 02346, Witness Statement, 11, 13, and 14 December 1998, p. 3.

<sup>124</sup> See Second Joint Report on Agreed Facts and Documents, 4 April 2012, Annex A, p. 5, Agreed Fact 36.

<sup>125</sup> First Motion, confidential Annex A, pp. 47-48.

<sup>126</sup> First Motion Response, para. 34.

<sup>127</sup> First Motion, para. 7; First Supplement, para. 16; First Supplement Reply, paras 7-8.

<sup>128</sup> English translation was provided for Rule 65 *ter* number 02339, the written statement of GH-138 submitted in the First Motion without a declaration satisfying the requirements of Rule 92 *bis* (B), which has enabled the Chamber to consider the written statement.

60. GH-140: The Prosecution submits that GH-140's evidence, in the form of written statement, is relevant to events in Erdut and Osijek charged in the Indictment and is corroborated by the evidence of 16 other witnesses.<sup>129</sup> The Defence does not object to the admission of GH-140's written evidence.<sup>130</sup> The Trial Chamber considers that GH-140's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness's evidence relates to crime-base evidence. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

61. GH-092: The Prosecution submits that GH-092's evidence, in the form of written statement, is relevant to events in Erdut charged in the Indictment and is corroborated by the evidence of 11 other witnesses and documentary evidence.<sup>131</sup> The Prosecution seeks the admission of two associated exhibits.<sup>132</sup> The Prosecution submits that GH-092's statement contains passing references to Hadžić that are general in nature and do not significantly relate to Hadžić's acts and conduct as charged in the Indictment.<sup>133</sup> The Defence requests that the evidence be denied admission or that the witness be required to appear for cross-examination. It submits that references in the written statement to Hadžić's alleged bodyguard, "Zorić", might link Hadžić to individuals that may fit the description of Arkan's men, potentially giving rise to prejudicial inferences that go beyond crime-base evidence.<sup>134</sup>

62. The Trial Chamber considers that GH-092's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the written statement does go to the deeds and behaviour of (a) Zorić, who, according to the witness, claimed to be Hadžić's bodyguard, and (b) soldiers described by the witness as wearing a camouflage uniform with "the tigers head on it".<sup>135</sup> The Chamber recalls that evidence that goes to the deeds and behaviour of a person other than the accused who committed the crimes for which the accused is alleged to be responsible is not precluded from admission pursuant to Rule 92 *bis*. The Chamber does not consider that these persons are so proximate to Hadžić or that the evidence is so pivotal to the Prosecution's case that it would be unfair to Hadžić to permit the evidence to be admitted in written form or without the opportunity for cross-examination. The Trial Chamber notes that the evidence is related to these

<sup>129</sup> First Motion, confidential Annex A, pp. 48-49.

<sup>130</sup> First Motion Response, para. 12.

<sup>131</sup> First Motion, confidential Annex A, pp. 50-51.

<sup>132</sup> First Motion, confidential Annex A, p. 52.

<sup>133</sup> First Motion, para. 11.

<sup>134</sup> First Motion Response, para. 35.

individuals inhabiting the home of a non-Serb who had disappeared and is crime-base evidence. The Chamber considers that GH-092's evidence is cumulative in nature. The Chamber finds that the tendered associated exhibits, as discussed in the written statements, form an inseparable and indispensable part of the testimony. However, Rule 65 *ter* numbers 05861 and 05862 are not included on the Exhibit List and will not be admitted.<sup>136</sup> The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and, with the exception of Rule 65 *ter* numbers 05861 and 05862, is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

63. GH-096: The Prosecution submits that GH-096's evidence, in the form of a written statement, is relevant to events in Tovarnik and surrounding towns charged in the Indictment and is corroborated by the evidence of four other witnesses.<sup>137</sup> The Defence objects to the admission of the fourth and sixth paragraphs of page 5 of the written statement submitting that they contain specific descriptions of forces or individuals for whose actions the Prosecution may assert Hadžić is criminally responsible.<sup>138</sup>

64. The Trial Chamber considers that GH-096's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber notes that the evidence does go to the deeds and behaviour of individuals described by the witness as "Chetniks".<sup>139</sup> However, considering the lack of specificity provided by the witness as to who these individuals were, the Chamber does not consider that the references to them in the written statement provides evidence which is pivotal to the Prosecution's case. The Chamber considers that the witness's evidence is cumulative in nature and is crime-base evidence. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*. The Chamber notes that Rule 65 *ter* number 03254 is an English translation of Rule 65 *ter* number 02219. An English translation is attached to Rule 65 *ter* number 02219 and therefore admission of both documents is not necessary.

65. GH-104: The Prosecution submits that GH-104's evidence, in the form of a transcript of his previous testimony in *Prosecutor v. Mrkšić et al.*,<sup>140</sup> is relevant to events in Vukovar charged in the

<sup>135</sup> GH-092, Rule 65 *ter* 02361, Witness Statement, 2 and 4 February 1991, p. 3.

<sup>136</sup> In the First Motion annex, the Prosecution indicated that it would apply to add these documents to the Exhibit List. First Motion, confidential Annex, p. 52, fns 10-11. It appears not to have done so.

<sup>137</sup> First Motion, confidential Annex A, p. 53.

<sup>138</sup> First Motion Response, para. 37.

<sup>139</sup> GH-096, Rule 65 *ter* 02219, Witness Statement, 12-13 December 1995, p. 5.

<sup>140</sup> Case No. IT-95-13/1.

Indictment and is corroborated by the evidence of 13 other witnesses.<sup>141</sup> The Prosecution seeks the admission of eight associated exhibits.<sup>142</sup> The Defence does not object to the admission of GH-104's written evidence.<sup>143</sup> The Trial Chamber considers that GH-104's evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber determines that the tendered associated exhibits, as referenced in the transcript, form an inseparable and indispensable part of the testimony. The Chamber considers that the witness's evidence is of a cumulative nature. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

66. GH-113: The Prosecution submits that GH-113's evidence, in the form of written statements, is relevant to events in Erdut charged in the Indictment, and is corroborated by evidence of ten other witnesses.<sup>144</sup> The Defence does not oppose the admission of GH-113's written evidence.<sup>145</sup> The Trial Chamber considers that GH-113's evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the witness's evidence is crime-base evidence. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*. The Chamber notes that Rule 65 *ter* number 02294 is an English translation of Rule 65 *ter* number 02510. An English translation is attached to Rule 65 *ter* number 02510 and therefore admission of both documents is not necessary.

67. GH-166: In the First Supplement, the Prosecution seeks leave to add GH-166 to its Witness List and substitute GH-158's evidence with that of GH-166. GH-158 was proposed as a Rule 92 *bis* witness in the First Motion, but the Prosecution was unable to obtain his voluntary consent to use his statement in the *Hadžić* proceedings.<sup>146</sup> The Prosecution submits that the evidence of GH-166, in the form of a written statement, is relevant to events in Tenja charged in the Indictment, and is corroborated by the evidence of two other witnesses and documentary evidence.<sup>147</sup> The Defence objects to admission of the statement of GH-166 pursuant to Rule 92 *bis* "on similar grounds as

<sup>141</sup> Motion, confidential Annex A, p. 58.

<sup>142</sup> Motion, confidential Annex A, pp. 58-59. The video of Rule 65 *ter* number 04997 was submitted in Annex A to the Second Supplement.

<sup>143</sup> First Motion Response, para. 12.

<sup>144</sup> First Motion, confidential Annex A, p. 62.

<sup>145</sup> First Motion Response, para. 41.

<sup>146</sup> First Supplement, para. 20.

<sup>147</sup> First Supplement, para. 20, confidential Annex G.



were set out in respect of GH-158” in the First Motion Response but makes no submissions in relation to the addition of GH-166 to the Witness List or his statement to the Exhibit List.<sup>148</sup>

68. The Trial Chamber considers that GH-166’s written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber considers that the statement contains crime-base evidence that is cumulative in nature. The Trial Chamber finds that, taking into account the specific circumstances of the case, it is in the interests of justice to permit the Prosecution to add GH-166 to the Witness List. Although GH-166’s written statement was not accompanied by a declaration satisfying the requirements of Rule 92 *bis* (B), the Prosecution has subsequently resubmitted the statement in compliance with the formalities of Rule 92 *bis* and seeks to add this statement, Rule 65 *ter* number 06337, to its Exhibit List.<sup>149</sup> The Chamber is satisfied that, taking into account the specific circumstances of the case, good cause has been shown for amending the Exhibit List to include the witness statement with the proper Rule 92 *bis* attestation attached. The Chamber notes that the objections raised by the Defence to the evidence of GH-158 being admitted pursuant to Rule 92 *bis* are not applicable to the evidence of GH-166. For example, the written statement of GH-166 was not taken by a local Croatian policeman. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*. The Chamber notes that the statement, Rule 65 *ter* number 06337, is not available in eCourt.<sup>150</sup> The Prosecution will be ordered to upload to and release in eCourt this document no later than seven days from the filing of this decision.

69. GH-139: The Prosecution submits that GH-139’s evidence, in the form of a written statement and a transcript of his previous testimony in *Prosecutor v. Stanišić and Simatović*,<sup>151</sup> is relevant to events in Dalj charged in the Indictment and is corroborated by the evidence of three other witnesses. The Prosecution submits that the evidence of GH-139 has already been deemed appropriate for admission pursuant to Rule 92 *ter*, but the circumstances of GH-139’s employment make testifying “extremely onerous” for him.<sup>152</sup> The Prosecution asserts that the evidence of GH-139 meets the requirements for admission pursuant to Rule 92 *bis* and seeks the admission of the written evidence pursuant to this Rule.<sup>153</sup> The Defence objects to the admission of the evidence of GH-139 pursuant to Rule 92 *bis* and submits that cross-examination of this witness is crucial,

<sup>148</sup> The Defence additionally objects to the Prosecution having tendered the statement of GH-166 without first securing his attestation. However, the attestation has since been filed, rendering this argument moot. First Supplement Response, paras 11-12; First Motion Response, paras 38-40; First Supplement Reply, paras 6, 8.

<sup>149</sup> First Supplement, para. 20; First Supplement Reply, paras 6, 8.

<sup>150</sup> The written statement of GH-166 without a declaration satisfying the requirements of Rule 92 *bis* (B), was submitted in annex G of the First Supplement, which has enabled the Chamber to consider the written statement.

<sup>151</sup> Case No. IT-03-69.

<sup>152</sup> Second Motion, paras 1, 2.

arguing that (a) the evidence relates to the removal of prisoners from the Dalj police station, which is a critical event in the Prosecution's case;<sup>154</sup> (b) the evidence is inconsistent with other evidence and unreliable;<sup>155</sup> and (c) GH-139's stated reluctance to testify should not be remedied by resort to Rule 92 *bis*.<sup>156</sup> In the Second Motion Reply, the Prosecution asserts (a) that the Defence has not shown that the evidence of GH-139 is inconsistent with other evidence before the Chamber and (b) that the Defence has failed to challenge a previous witness who gave evidence about the removal of prisoners from the Dalj police station.<sup>157</sup>

70. The Trial Chamber considers that GH-139's written evidence is relevant to the charges in the Indictment and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The Chamber notes that the evidence of GH-139 goes to the removal of prisoners from the Dalj police station. This evidence is based primarily on hearsay and is cumulative of other evidence presented in this case. Therefore, the Chamber does not consider it to be "pivotal" or "critical" to the Prosecution's case. The Trial Chamber notes that the witness clearly indicated what portion of his evidence was based on what he saw personally and what was based on accounts he heard from others. The Chamber is therefore satisfied that the evidence is sufficiently reliable. The Chamber notes that the witness was subjected to cross-examination in *Stanišić and Simatović*. The witness's reluctance to testify in person is not relevant to whether the evidence is appropriate for admission pursuant to Rule 92 *bis*. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

#### **E. Disposition**

71. Accordingly, the Trial Chamber, pursuant to Rules 54, 65 *ter*, 89, 92 *bis*, 92 *ter*, and 126 *bis* of the Rules and paragraphs (C)(5) and (7) of the Practice Direction, hereby

- (a) **GRANTS** the Defence leave to file a response to the First Motion that exceeds the applicable word limit;
- (b) **GRANTS** the Prosecution leave to file the First Motion Reply, the First Supplement Reply, and the Second Motion Reply;

<sup>153</sup> Second Motion, paras 1, 3-7.

<sup>154</sup> Second Motion Response, paras 1, 3.

<sup>155</sup> Second Motion Response, para. 4.

<sup>156</sup> Second Motion Response, para. 5.

<sup>157</sup> Second Motion Reply, paras 1-6.

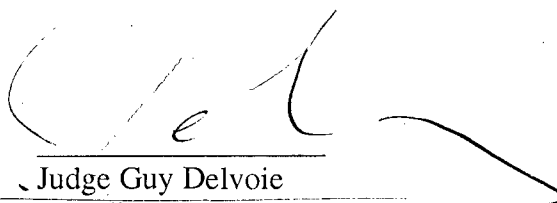
- (c) **GRANTS** the First Supplement, in part, and **GRANTS** the Prosecution leave to add GH-166 to the Witness List;
- (d) **GRANTS** the Prosecution request in the First Supplement Reply for leave to add the documents designated by Rule 65 *ter* numbers 06335, 06336, 06337 to the Exhibit List;
- (e) **GRANTS** the First Motion, in part, and the Second Motion;
- (f) **ADMITS** the following into evidence:
- (i) *GH-031*: Rule 65 *ter* number 02523 (under seal), with the relevant portions redacted;
  - (ii) *GH-035*: Rule 65 *ter* number 02337;
  - (iii) *GH-051*: Rule 65 *ter* number 02237;
  - (iv) *GH-053*: Rule 65 *ter* number 02165;
  - (v) *GH-121*: Rule 65 *ter* numbers 06335 (under seal) and 02448 (under seal);
  - (vi) *GH-059*: Rule 65 *ter* number 02367;
  - (vii) *GH-149*: Rule 65 *ter* numbers 05833, 05834, 05835, 00915, 01173, 01200, 03459, 03559, 03563, 03566, 03567, 03572, 03573, 03575, 03578, 03579, 03580, 03581, 03582, 03595, 05208, 05222, 05276;
  - (viii) *GH-123*: Rule 65 *ter* number 02338;
  - (ix) *GH-070*: Rule 65 *ter* numbers 02522 (under seal) and 02033 (under seal);
  - (x) *GH-072*: Rule 65 *ter* number 02541 (under seal);
  - (xi) *GH-077*: Rule 65 *ter* number 04513 (under seal), 02423, 02518, and 04182 (under seal);
  - (xii) *GH-082*: Rule 65 *ter* number 02346;
  - (xiii) *GH-140*: Rule 65 *ter* number 03251;
  - (xiv) *GH-092*: Rule 65 *ter* number 02361 (under seal);
  - (xv) *GH-096*: Rule 65 *ter* number 02219;

- (xvi) *GH-104*: Rule 65 *ter* numbers 04565 (under seal), 04566 (under seal), 04567 (under seal), 04568 (under seal), 00627 (under seal), 02061 (under seal), 02593 (under seal), 02595, 02596, 03038, 02878, and 04997;
- (xvii) *GH-113*: Rule 65 *ter* number 02510 (under seal);
- (xviii) *GH-166*: Rule 65 *ter* number 06337;
- (xix) *GH-139*: Rule 65 *ter* number 02432 (under seal) and 04691 (under seal);
- (g) **DECIDES** that the following evidence is appropriate for admission into evidence, if the provisions set forth in Rule 92 *ter* have been fulfilled, when the witnesses give evidence in these proceedings:
- (i) *GH-155*: Rule 65 *ter* number 04705;
- (ii) *GH-060*: Rule 65 *ter* numbers 04498 (under seal), 02296 (under seal), 02297 (under seal), 02890, 02897, 02899, and 02900;
- (iii) *GH-063*: Rule 65 *ter* numbers 04502 (under seal), 04503 (under seal), 03198, 02192, 02322, 04501 (under seal), 02872, 02811, 02843, 02676, 02677, 02678, 02675, 02680, 02684, 02681, 02298, and 02683;
- (iv) *GH-138*: Rule 65 *ter* number 06336;
- (h) **DENIES** admission of the tendered written evidence of GH-013;
- (i) **DENIES** the First Motion in all other respects;
- (j) **ORDERS** the Prosecution—by no later than 28 February 2013—to attach an English translation of Rule 65 *ter* number 06336 to the document in eCourt and to upload and release in eCourt Rule 65 *ter* number 06337 and to file a notice on the official record of the proceedings when it has done so;
- (k) **ORDERS** the Prosecution—by no later than 28 February 2013—to upload to and release in eCourt a public redacted version of each of the written statements and transcripts admitted in this decision under seal and to file a notice on the official record of the proceedings when it has done so, after which the public redacted versions shall be deemed admitted into evidence;
- (l) **INSTRUCTS** the Registry to take all necessary measures to implement this decision; and

(m) **REMAINS SEISED** of the remainder of the First Supplement and Second Supplement.

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

Done this twenty-fourth day of January 2013,  
At The Hague,  
The Netherlands.



Judge Guy Delvoie  
Presiding

**[Seal of the Tribunal]**