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-04-75-T

Date: 3 May 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: **3 May 2013**

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE OF GH-124 PURSUANT TO RULE 92 *ter*

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 Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-124)", filed confidentially with a confidential annex on 18 January 2013 ("Motion").

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-124 pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence of the Tribunal ("Rules"), arguing that the evidence is probative, relevant, and reliable and meets the requirements for admission under that Rule.[1] 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.[2]

3. The Defence indicated that it would make no submissions in relation to the Motion.[3]

B. Applicable Law

4. The main objective of Rule 92 *ter*—entitled "Other Admission of Written Statements and Transcripts"—is to ensure an effective and expeditious trial, while simultaneously ensuring and respecting the rights of the accused.[4] The jurisprudence of the Tribunal has applied the Rule as permitting, by necessary inference, the admission of exhibits where they accompany written statements or transcripts and form an "inseparable and indispensable" part of the evidence.[5] In order to satisfy this requirement, the document must be one without which the witness's testimony would become incomprehensible or of lesser probative value.[6] Moreover, the evidence sought to be

[1] Motion, paras 1, 3, 5.
[2] Motion, para. 1.
[3] Email from the Defence to the Trial Chamber, 1 February 2013.
[4] *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-T, Decision on Prosecution's Motions for Admission of Evidence Pursuant to Rule 92 *ter* (ST012 and ST019), 29 September 2009 (confidential) ("*Stanišić and Župljanin* Decision"), para. 18; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Application of Rule 92 *ter* of the Rules, 25 June 2007, p. 2; *Prosecutor v. Delić*, Case No. IT-04-83-T, Decision on Prosecution Motion to Admit Written Witness Statements under Rule 92 *ter*, 27 September 2007, para. 10.
[5] *Stanišić and Župljanin* Decision, para. 18; *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 ("*Lukić and Lukić* Decision"), para. 15; *Prosecutor v. Ljubičić*, Case No. IT-00-41-PT, Decision on Prosecution's Motion for Admission of Transcripts Pursuant to Rule 92 *bis* (D) of the Rules, 23 January 2004, p. 3; *Prosecutor v. Đordević,* Case No. IT-05-87/1-T, Decision on Prosecution's Motion for Admission of Evidence Pursuant to Rule 92 *ter*, 10 February 2009 ("*Đordević* Decision"), para. 5.
[6] *Stanišić and Župljanin* Decision, para. 18; *Lukić and Lukić* Decision, para. 15; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution's Motion for the Admission of Written Evidence of Witness Slobodan Lazarević Pursuant to Rule 92 *ter* with Confidential Annex, 16 May 2008, para. 19; *Prosecutor v. Haraqija and Morina*, Case No. IT-04-84-R77.4, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* and/or 92 *ter*, 2 September 2008 ("*Haraqija and Morina* Decision"), para. 12; *Đordević* Decision, para. 5.

admitted, whether a written statement or a transcript of oral testimony, must fulfil the general requirements of admissibility of Rule 89(C): the proposed evidence must be relevant and have probative value.[7]

C. Discussion

5. GH-124's proposed evidence, in the form of a written statement, contains information about (a) the Serbian Ministry of Internal Affairs ("MUP") during the relevant Indictment period; (b) meetings between alleged members of the joint criminal enterprise, including Hadžić; and (c) the alleged activities of the JNA, MUP, and Željko Ražnatović ("Arkan") and their alleged cooperation during the fall of Vukovar. Noting that the Prosecution tenders the statement of the witness up to and including paragraph 74 and excluding paragraphs 75–153, the Trial Chamber finds that the tendered statement—except for paragraphs 75 through 153—is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter*. The Trial Chamber notes that the two hand drawn maps annexed to the statement do not relate to the tendered evidence because the witness appears to only discuss them in the portion of the statement that the Prosecution is not tendering.[8]

D. Disposition

6. Accordingly, the Trial Chamber, pursuant to Rules 54, 89(C), and 92 *ter* of the Rules, hereby

(a) **DECIDES** that the evidence of GH-124—with the exception of the two hand drawn maps labelled "VD-MK-01" and "VD-MK-02"—is appropriate for admission into evidence;

(b) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit the evidence of GH-124, if the conditions set forth in Rule 92 *ter* have been fulfilled, when the witness gives evidence in these proceedings;

(c) **ORDERS** the Prosecution—by no later than 21 May 2013—to upload to and release in eCourt a version of the statement of the witness with paragraphs 75–153 and the hand drawn maps labelled "VD-MK-01" and "VD-MK-02" redacted;

[7] *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đordević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.
[8] *See* Rule 65 *ter* 02506, pp. 39-40 (two hand drawn maps labeled VD-MK-01 and VD-MK-02 respectively). GH-124 refers to map "VD-MK-01" at paragraph 99 of his statement and to map "VD-MK-02" at paragraph 100 of his statement.

(d) **ORDERS** the Prosecution—by no later than 21 May 2013—to remove the non-redacted version of the statement from eCourt; and

(e) **INSTRUCTS** the Registry to take all necessary and appropriate measures to implement this decision.

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

Done this third day of May 2013,
At The Hague,
The Netherlands

Judge Guy Delvoie
Presiding

[Seal of the Tribunal]