



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: 24 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: 24 August 2012

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION IN RELATION TO PROSECUTION RULE 92 TER
MOTION FOR WITNESS RM-018**

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 4 May 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-018 ("Motion").¹ The Defence responded on 21 May 2012 ("Response").² On 24 May 2012, the Prosecution requested leave to reply to the Response, attaching its reply.³ On 30 May 2012, through informal communications, the Chamber granted the Prosecution leave to reply and decided to consider the attached reply.⁴

II. SUBMISSIONS OF THE PARTIES

2. The Prosecution seeks to tender Witness RM-018's ("Witness") original (1999) and supplemental (2002) ICTY witness statements and eight associated exhibits.⁵ According to the Prosecution, the Witness's 2002 statement is a supplement to the 1999 statement with no meaningful overlap and the associated exhibits are relevant and necessary for the appreciation of the evidence.⁶ Furthermore, the Prosecution requests 60 minutes of court time for examination-in-chief.⁷

3. The Defence raises three objections to the Motion. Firstly, the Defence objects that tendering two statements and eight associated exhibits is contrary to the Chamber's guidelines ("First Objection").⁸ Secondly, the Defence submits that the Witness expresses expert opinions and other conclusions in his statement, and that those portions should be stricken and the Prosecution barred from eliciting any such expert testimony in examination-in-chief ("Second Objection").⁹ Lastly, the Defence argues that the subject matter to be covered by the witness is so significant that the Witness should be heard *viva voce* ("Third Objection").¹⁰

III. APPLICABLE LAW

¹ Prosecution 92 *ter* Motion: Witness RM-018, 4 May 2012.

² Defence Response to Prosecution 92 *ter* Motion: Witness RM-018, 21 May 2012.

³ Prosecution Request for Leave to Reply to Defence Response to Prosecution 92 *ter* Motion: Witness RM-018, 24 May 2012.

⁴ See Decision with Regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, footnote 4.

⁵ Motion, paras 1, 4, 11-23.

⁶ Motion, para. 4.

⁷ Motion, paras 4, 15-18.

⁸ Response, paras 4-13.

⁹ Response, paras 14-17.

¹⁰ Response, paras 18-20.

4. Rule 92 *ter* of the Rules provides in relevant part that a Trial Chamber may admit the evidence of a witness in the form of a written statement under the following conditions: (i) the witness is present in court; (ii) the witness is available for cross-examination and any questioning by the Judges; and (iii) the witness attests that the written statement accurately reflects that witness's declaration and what the witness would say if examined.

IV. DISCUSSION

5. The requirements of Rule 92 *ter* of the Rules can only be met once the witness appears in court and attests to the accuracy of his statement. Although the Chamber cannot presently decide on the admission of the Witness's statements under Rule 92 *ter* of the Rules, it can already address the Defence's objections.

6. Regarding the First Objection concerning the number of Rule 92 *ter* statements per witness and the tendering of associated exhibits, this has already been addressed by the Chamber's additional clarification and amendment of the guidance on the tendering and presentation of evidence of 9 July 2012.¹¹ The Chamber therefore finds this objection to be moot. Further, the Chamber reiterates that the Prosecution is expected to review whether all associated exhibits need to be tendered and also whether any of the proffered evidence overlaps with adjudicated facts of which the Chamber has taken judicial notice. The Chamber expects an update on these issues by the time the Witness appears in court.

7. Regarding the Second Objection, the Chamber refers to and incorporates its previous reasoning concerning proposed fact witnesses providing conclusions or opinions.¹² The Chamber finds that there is no need to redact information from the statements on this ground or to bar the Prosecution from eliciting certain evidence.

8. Regarding the Third Objection, the Chamber recalls its previous discussion concerning the significance of proffered Rule 92 *ter* evidence and concerning such evidence going to proof of the acts and conduct of the Accused.¹³ Having reviewed the Witness's statements and associated exhibits, the Chamber does not consider the Witness's proffered evidence to be of such significance that it should be led *viva voce* in order to avoid undue prejudice to the Accused.

¹¹ T. 525-532.

¹² Decision with regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012 ("Harland Decision"), para. 8.

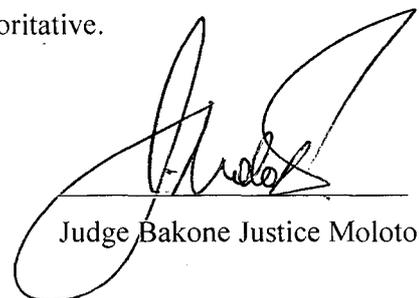
¹³ Harland Decision, para. 10; Decision with regard to Prosecution Rule 92 *ter* Motions with regard to Joseph Kingori, Eelco Koster, and Christine Schmitz, 9 July 2012, para. 6.

9. Regarding the Prosecution's request for an additional 30 minutes of court time, the Chamber has already accepted the examination estimates indicated in the Prosecution's witness list.¹⁴ Consequently, the Chamber finds this request to be moot.

V. DISPOSITION

10. For the foregoing reasons, the Chamber **DEFERS** its decision on admission of the proffered Rule 92 *ter* material of the Witness.

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



Judge Bakone Justice Moloto

Dated this twenty-fourth day of August 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁴ T. 313-315, 527.