

IT-09-92-T  
D76443 . D76488  
13 February 2014

IT-09-92-T p.76498

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**UNITED  
NATIONS**



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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: 13 February 2014 Original: English
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**IN TRIAL CHAMBER I**

**Before:** Judge Alphons Orie, Presiding  
Judge Bakone Justice Moloto  
Judge Christoph Flügge

**Registrar:** Mr John Hocking

**Decision of:** 13 February 2014

**PROSECUTOR**

v.

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION 31<sup>ST</sup> MOTION TO ADMIT  
EVIDENCE PURSUANT TO RULE 92BIS**

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**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 1 July 2013, the Prosecution filed a motion (“Motion”) seeking to admit, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the evidence of seven witnesses, namely Witnesses RM-403, RM-409, and Marcus Helgers (“Hostage Witnesses”) and Witness RM-076, Charles Kirudja, Ahmet Zulić and Azra Blažević (“Municipalities Witnesses”).<sup>1</sup> The Prosecution further requests leave to add four documents to its Rule 65 *ter* exhibit list (“Exhibit List”).<sup>2</sup> On 14 August 2013, after having been granted an extension of time to respond to the Motion, the Defence filed its response (“Response”), objecting to the admission of the evidence.<sup>3</sup>

## II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules, including the admission of associated exhibits, as set out in previous decisions.<sup>4</sup>

3. With regard to the applicable law related to amendments to the Exhibit List, the Chamber recalls and refers to a previous decision dealing with this matter.<sup>5</sup>

## III. DISCUSSION

### *i. Preliminary matters*

4. The Chamber grants the Prosecution’s request to exceed the word limit considering the number of witnesses that are the subject of the Motion.

5. The Chamber notes that Witnesses RM-403 and RM-409 testified with pseudonym as a condition imposed by the Rule 70 provider. These measures do not automatically continue to apply in this case, and, to date, no protective measures have been requested for these witnesses in this

<sup>1</sup> Prosecution 31<sup>st</sup> Motion to Admit Evidence Pursuant to Rule 92 *bis* (Confidential), 1 July 2013. For details of the Prosecution’s submissions the Chamber refers to the Motion.

<sup>2</sup> Motion, paras 50-52.

<sup>3</sup> T. 14530; Defence Response to Prosecution 31<sup>st</sup> Motion to Admit Evidence Pursuant to Rule 92*bis* (Confidential), 14 August 2013. For details of the Defence’s submissions the Chamber refers to the Response.

<sup>4</sup> Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-7; Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 pursuant to Rule 92 *quarter*, 23 July 2012, para. 13; Decision on Prosecution’s Motion for Reconsideration, Granting Admission from the Bar Table, or Certification in relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 8.

<sup>5</sup> Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

case.<sup>6</sup> Out of an abundance of caution, the Chamber has not referred to both witnesses by their name in this decision, but instead only by pseudonym. If the Rule 70 provider insists on the condition of using pseudonym in this case as well the Prosecution should make a request in this regard. One document related to Witness RM-403 was tendered under seal. The Chamber will instruct the Registry to change the status of this document, if admitted, into public, unless the Prosecution files a submission explaining why this should remain under seal.

6. The Prosecution has not submitted the required attestations and declarations with the statements of Witnesses RM-403, Charles Kirudja, Ahmet Zulić and Marcus Helgers, but instead has tendered excerpts of these witnesses' testimony in previous cases in which they provided in-court attestations. The Chamber recalls and refers to its previous decision where it set out that in-court attestations given in connection with Rule 92 *ter* testimony do meet the requirements of Rule 92 *bis* (B) of the Rules, and considers that the in-court attestations of the above witnesses meet these requirements.<sup>7</sup> With regard to the witness statements of Witness RM-409, Witness RM-076 and Azra Blažević the Chamber also notes that there are neither corresponding attestations and declarations as required by Rule 92 *bis* of the Rules, nor are there in-court attestations. Unattested witness statements have previously been conditionally admitted by this Chamber pending their formal attestation pursuant to Rule 92 *bis* (B) of the Rules.<sup>8</sup> In line with this practice, the Chamber will conditionally admit the unattested witness statements of those witnesses, pending the filing of the required attestations and declarations, provided that all other admissibility requirements are met.

ii. Additions to the Rule 65 *ter* Exhibit List

7. The Chamber notes that the Prosecution has not shown good cause for the addition of the four documents to the Exhibit List at this stage of the proceedings. However, the Chamber considers the list of persons bearing Rule 65 *ter* number 29031 and discussed by Ahmet Zulić; the map of the Prijedor area bearing Rule 65 *ter* number 29029, and the sketch of the Trnopolje camp bearing Rule 65 *ter* number 29030, both related to the testimony of Azra Blažević, to be *prima facie* relevant to and probative of the charges in the Indictment. Furthermore, considering the uncomplicated nature of these three documents the Chamber finds that their addition to the Exhibit List at this stage of the proceedings does not unduly burden the Defence or prejudice the Accused, and is consistent with the interests of justice.

<sup>6</sup> *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on Motion for and Notification of Protective Measures, 26 May 2009, paras 17-18, citing *Prosecutor v. Militunović et al.* Case No. IT-05-87-T, Second Decision on Prosecution Motion for Leave to Amend its Rule 65 *ter* Witness List to Add Wesley Clark, 16 February 2007.

<sup>7</sup> Decision on Prosecution Fourth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Hostage Witnesses, 19 October 2012, para. 7.

<sup>8</sup> Decision on the Third 92 *bis* Motion, para. 27.

8. With regard to the document bearing Rule 65 *ter* number 29032, for which the Prosecution requests leave to add to its Exhibit List as an associated exhibit to Charles Kirudja's statement, the Chamber notes the poor quality of the document, that it is partly illegible and contains certain redacted portions. However the Chamber finds that it is sufficiently legible to verify the *prima facie* relevance and probative value and considers it to be in the interests of justice to add this document to the Exhibit List.

*iii. Compliance with guidance and overlap with adjudicated facts*

9. The transcript pages of the previous testimony of Marcus Helgers which are attached to the Motion have not been redacted to reflect the excerpts that the Prosecution wishes to tender according to the summary chart and submissions.<sup>9</sup> In light of the summary chart and the Prosecution's submissions, the Chamber will only consider for admission the selected parts of the transcript pages.

10. In relation to the admission of transcript evidence under Rule 92 *bis* of the Rules, the Chamber has reviewed the tendered portions of transcripts of the previous testimony of Witness RM-076, Witness RM-403, Marcus Helgers, and Azra Blažević in light of its guidance.<sup>10</sup> The Chamber notes that the Prosecution has tendered limited portions of the transcripts of Witness RM-403, Marcus Helgers, and Azra Blažević, which supplement the statements of these witnesses. With regard to Witness RM-076, the Chamber considers that from the lengthy transcript of this witness's previous testimony the Prosecution has endeavoured to make a selection of those portions it considers most relevant and has presented the transcripts in a focussed manner providing details which are not present in the witness's written statement. Under these circumstances the Chamber finds that the tendering of the transcripts of these four witnesses is in accordance with the Chamber's guidance.<sup>11</sup>

11. With regard to part of the tendered material which might overlap with adjudicated facts the Prosecution argues against redaction so as to preserve detailed and contextual information. In light of this the Chamber allows deviation from its guidance in this regard.

12. The number of tendered associated exhibits for some witnesses is in excess of the Chamber's guidance. However, the Chamber notes the limited number of pages concerned of most of the documents and considers the overall burden to be limited and therefore will exceptionally consider their admission.

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<sup>9</sup> Motion, para. 20 and Confidential Annex A.

iv. Admissibility pursuant to Rule 89 (C) of the Rules

13. The Chamber considers that the material tendered with the Hostage Witnesses provides information in relation to the alleged taking of UN personnel as hostages between 26 May 1995 and 19 June 1995, and therefore finds the evidence to be relevant to Count 11 of the Indictment. The Chamber finds the evidence of the Municipalities Witnesses to be relevant to allegations of crimes in Banja Luka, Sanski Most, and Prijedor, covered by Counts 1, and 3 through 8 of the Indictment.

14. With respect to the Defence objection that parts of the material related to Witness RM-076, Marcus Helgers, Charles Kirudja, Ahmet Zulić, and Azra Blažević contain hearsay evidence, the Chamber recalls, as it has done on numerous occasions, that hearsay evidence is, in principle, admissible in proceedings before the Tribunal and that the weight to be attributed to it will be assessed in light of all the evidence before the Chamber.<sup>12</sup> Moreover, the Chamber does not consider that the portions of hearsay evidence affect the overall reliability of the evidence. With regard to the sections objected to by the Defence on the basis that they constitute impermissible expert testimony, the Chamber considers that these portions merely consist of conclusions of the witnesses, the bases for which are apparent from their respective statements. Further, the Chamber refers to the approach it has previously taken in relation to proposed fact witnesses providing conclusions or opinions.<sup>13</sup>

15. While the Defence submits that the tendered excerpts of trial transcripts are unreliable because they do not include cross-examination and that, if cross examination was conducted in relation to Witness RM-076, Witness RM-403, and Marcus Helgers, it was conducted by a self-represented accused, the Defence has not demonstrated, nor does the Chamber find, that the excerpts are unreliable on this basis. The Chamber recalls that the tendering party is not required to submit a witness's testimony in its entirety.<sup>14</sup> Instead, only the portions of a transcript upon which the tendering party seeks to rely should be tendered for admission, including any portions necessary for contextualizing or clarifying those portions.<sup>15</sup> In its response to such a motion, the other party should then tender any portions it considers relevant to the proper understanding of the witness's

<sup>10</sup> T. 106-110, 137-138, 315-325, 525-532.

<sup>11</sup> T. 106-110, 137-138, 194, 315-325, 525-532.

<sup>12</sup> Response, paras 15-17; See *Prosecutor v. Aleksovski*, Case No. IT-95-41/I-AR73 Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15;

<sup>13</sup> Response, paras 18-20; see Decision with regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.

<sup>14</sup> T. 5406-5408

<sup>15</sup> T. 5407.

testimony.<sup>16</sup> The Chamber notes that with regard to Witness RM-076, Witness RM-403 and Marcus Helgers, the Defence did not tender such portions in its Response.

16. For the reasons stated above, the Chamber finds, that the evidence of the Hostage Witnesses and the Municipalities Witnesses meets the requirements for admission set out in Rule 89 (C) of the Rules.

*v. Admissibility pursuant to Rule 92 bis of the Rules*

17. With regard to the admissibility of the witnesses' evidence pursuant to Rule 92 *bis* of the Rules, the Defence does not argue, and the Chamber does not find that the proffered evidence relates to the acts and conduct of the Accused. The Chamber considers that the evidence relates to specific incidents of the crime-base part of the case and concerns the impact of crimes upon victims. The Chamber notes that the evidence of the Hostage Witnesses is cumulative to the oral evidence provided by Witnesses RM-401, Patrick Rechner, and Jonathan Riley. The evidence provided by the Municipalities Witnesses is cumulative to the oral evidence that other witnesses have already provided.<sup>17</sup> Further, the Chamber finds that the proposed evidence of Charles Kirudja relates to political and military background that is relevant to charges in the Indictment. In view of the above, the Chamber finds that the requirements of Rule 92 *bis* of the Rules have been met, and will admit the proffered evidence.

*vi. Associated exhibits*

18. The Chamber notes that the tendered material bearing Rule 65 *ter* numbers 8989 (P2562), 13122 (P2480), 9670 (P1849), 28393, 12817, 6389, 6635, 6412, 7087, 6572 (P2411), 2798 (P2405), 28398 and 5981 (P2409) has already been (conditionally) admitted in a previous decision and therefore considers their tendering to be moot.<sup>18</sup> Also, the document bearing Rule 65 *ter* number 22302A is already in evidence as part of a larger exhibit, namely P157, and its tendering is also therefore moot.

<sup>16</sup> Ibid.

<sup>17</sup> Charles Kirudja's evidence is cumulative to the evidence of Witnesses RM-018, RM-051, RM-015, Adil Medić, Osman Selak, Mevludin Sejmenović, Colm Doyle, Nusret Sivac, and Safet Taci; Witness RM-076's evidence is cumulative to the evidence of Witnesses RM-015, RM-018, RM-051, Osman Selak and Adil Medić; Ahmet Zulić's evidence is cumulative to the evidence of Rajif Begić, Adil Medić, Osman Selak, Witnesses RM-015, RM-018, and RM-051; Azra Blažević's evidence is cumulative to the evidence of Ivo Atljija, Edward Vulliamy, Osman Selak, Mevludin Sejmenović, and Nermin Karagić.

<sup>18</sup> See Decision on 28<sup>th</sup> Motion to admit evidence pursuant to Rule 92 *bis* of the Rules, 2 December 2013; Decision on 29<sup>th</sup> Motion to Admit Evidence Pursuant to Rule 92 *bis* of the Rules, 2 December 2013; Oral Decision on Admission of Associated Exhibits for Witness RM-015; Decision on Prosecution Motion to Admit Evidence from the Bar Table: Excerpts from Mladić's audio tapes, 18 September 2013; Decision on Prosecution Bar Table Motion, 11 February 2014; T. 15084, 18534.

19. With regard to the remaining associated exhibits, the Chamber has analysed them with a view to determining whether they form an inseparable and indispensable part of the witnesses' testimony. The Chamber considers that the following associated exhibits do not meet this test and will therefore deny their admission into evidence: the documents bearing Rule 65 *ter* numbers 8049, 8044, 10769, 8048, 08045, 10762, 15793, 8001, 8046, 10781, 15769, 15771, 6371, 10772, 8003, 8017, 19743, 15794, 15920, 8019, 8018, 6641, 6635, 8052, 7023, 6364, 6412, and 6380.

20. The Prosecution has tendered the document bearing Rule 65 *ter* number 6641 in the alternative from the bar table. The Chamber considers the document to be relevant and probative and will admit the document from the bar table.

21. As for the remaining associated exhibits, the Chamber finds that they form an inseparable and indispensable part of the witnesses' evidence and will therefore admit them into evidence.

#### IV. DISPOSITION

22. For the foregoing reasons, pursuant to Rules 54, 89, and 92*bis* of the Rules the Chamber

**GRANTS** the Prosecution request to exceed the word limit in the Motion;

**GRANTS** the Motion **IN PART**;

With respect to

(i) *Witness RM-403*

**ADMITS** into evidence **UNDER SEAL**

- a) the Procés-Verbal of Witness RM-403, dated 10 March 1998, with ERNs 0065-0763-0065-0775;

**ADMITS** into evidence

- b) excerpts of the testimony of Witness RM-403 from *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, namely T. 10716:19-10717:14, 10717:24-10718:25, 10720:13-10723:9, and 10725:13-10729:16;
- c) the associated exhibits with Rule 65 *ter* numbers 19782, 19780, and 29035;

**DECLARES MOOT** the tendering of the documents with Rule 65 *ter* numbers: 8989 (P2562), and 13122 (P2480);

(ii) *Marcus Helgers*

**ADMITS** into evidence

- a) the ICTY Witness Statement of Marcus Helgers, dated 3 August 1995, with ERNs 0033-3479-0033-3483;
- b) excerpts of the testimony of Marcus Helgers from *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, namely T. 10744:3-10745:24, 10747:19-10748:3, 10748:23-10749:3, 10749:17-10749:22, 10750:15-10750:23, 10751:8-10752:22, 10756:21-10757:14, and 10758:23-10762:17;
- c) the associated exhibits with Rule 65 *ter* numbers 19784, 9832, and 29036;

**DECLARES MOOT** the tendering of the document with Rule 65 *ter* number 9670 (P1849);

(iii) *Witness RM-409*

**CONDITIONALLY ADMITS** into evidence the witness statement of Witness RM-409, dated 18 March 1998, with ERNs 0065-0781-0065-0800, pending the filing of a corresponding attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

(iv) *Charles Kirudja*

**GRANTS LEAVE** to add the document bearing Rule 65 *ter* number 29032 to the Exhibit List;

**ADMITS** into evidence

- a) the redacted ICTY witness statement of Charles Kirudja, dated 17 November 2010, with ERNs 0678-9962-0678-9963 and 0678-9974-0679-0003;
- b) the associated exhibits with Rule 65 *ter* numbers 6625, 15770, 10711, 8050, 8051, 8007, 10718, 15773, 10763, 6641, 3362, 15820, 17905, 10759, and 29038;

**DECLARES MOOT** the tendering of the document with Rule 65 *ter* number 6635;

**DENIES** the admission of the documents with Rule 65 *ter* numbers 8049, 8044, 10769, 8048, 8045, 10762, 15793, 8001, 8046, 10781, 15769, 15771, 6371, 10772, 8003, 8017, 19743, 15794, 15920, 8019, 8018, 8052, 7023;

(v) *Witness RM-076*

**CONDITIONALLY ADMITS** into evidence, **UNDER SEAL** pending the filing of a corresponding attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

- a) the ICTY witness statement of Witness RM-076, dated 20 July 2000, with ERNs 0101-2061-0101-2076;

**ADMITS** into evidence **UNDER SEAL**

- b) excerpts of the testimony of Witness RM-076 from *Prosecutor v. Brđanin*, Case No. IT-99-36-T, namely T. 7630:13-7631:14, 7634:12-7638:1, 7639:23-7641:24, 7643:5-22, 7644:11-7649:21, 7658:6-7659:5, 7663:6-7665:12, 7666:22-7667:11, 7682:1-7685:11, 7704:16-7713:10, 7714:13-7716:19, 7717:23-7722:14, 7723:6-7728:20, 7733:21-24, 7734:23-7738:7, 7740:4-7742:5, 7762:1-7763:9, 7812:6-7813:22, 7907:21-7909:20, and 7912:15-7913:10;
- c) excerpts of the testimony of Witness RM-076 from *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, namely T. 19245:1-19250:17;
- d) the associated exhibits with Rule 65 *ter* numbers 29039, 29040, and 29037;

**ADMITS** into evidence

- e) the associated exhibits with Rule 65 *ter* numbers 6407 and 6592;

**DECLARES MOOT** the tendering of the documents with Rule 65 *ter* numbers 28393, 6412, 6572 (P2411), 2798 (P2405), and 5981 (P2409);

**DENIES** the admission of the document with Rule 65 *ter* number 6364;

(vi) *Ahmet Zulić*

**GRANTS LEAVE** to add the document bearing Rule 65 *ter* number 29031 to the Exhibit List;

**ADMITS** into evidence

- a) the ICTY witness statement of Ahmet Zulić, dated 21 February 2010, with ERNs 0674-4987-0674-5024;
- b) the associated exhibits with Rule 65 *ter* numbers 6381, 6382, 17582, 29031, and 29034;

**DECLARES MOOT** the tendering of the documents with Rule 65 *ter* numbers 12817, 6389, 7087, and 22302A;

**DENIES** the admission of the document with Rule 65 *ter* number 6380;

(vii) *Azra Blažević*

**GRANTS LEAVE** to add the documents bearing Rule 65 *ter* numbers 29029 and 29030 to the Exhibit List;

**CONDITIONALLY ADMITS** into evidence pending the filing of a corresponding attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules:

- a) the ICTY witness statement of Azra Blažević, dated 10 November 1994, with ERNs 0020-3146-0020-3174;
- b) the associated exhibit with Rule 65 *ter* number 29030;

**ADMITS** into evidence

- c) excerpts of the testimony of Azra Blažević from *Prosecutor v. Tadić*, Case No. IT-94-1-T, namely T. 2419:5-2423:17, 2430:17-2431:3, 2435:1-2436:14, 2443:16-2445:25, 2446:7-2450:3, 2454:19-2455:15, 2474:2-2475:8, 2489:13-2491:23, 2498:12-2500:2, 2503:17-25, 2525:4-11, 2527:17-2528:22, 2530:22-24, 2534:6-25, 2539:11-18, and 2555:23-25;
- d) the associated exhibit with Rule 65 *ter* number 29029;

**INSTRUCTS** the Registry to change the status of the evidence identified in paragraph *i (a)* above into public, unless the Prosecution files a request for protective measures for Witness RM-403, within 14 days of the filing of this decision;

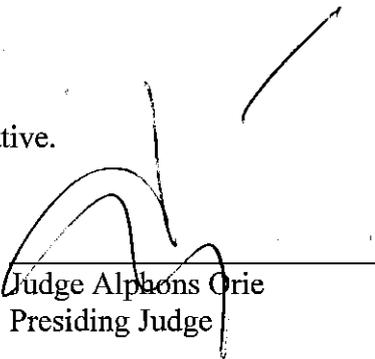
**INSTRUCTS** the Prosecution to file the corresponding attestations and declarations to the witness statements of Witness RM-409, Witness RM-076 and Azra Blažević within one week of the date of filing of this decision;

**INSTRUCTS** the Prosecution to upload into eCourt all admitted documents within one week of the date of filing of this decision, insofar as it has not done so already;

**INSTRUCTS** the Registry to change the status of the evidence identified in paragraph *i (a)* above to public, unless the Prosecution files a submission explaining why the document should remain under seal within two weeks of the date of filing of this decision; and

**REQUESTS** the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned.

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



Judge Alphons Orie  
Presiding Judge

Dated this thirteenth day of February 2014  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**