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31 October 2013

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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: 31 October 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 31 October 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION 32ND MOTION TO ADMIT
EVIDENCE PURSUANT TO RULE 92BIS**

Office of the Prosecutor
Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 1 August 2013, the Prosecution filed a motion ("Motion") seeking to admit into evidence, pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules"), the evidence in written form of four witnesses, namely Witness RM-207, Witness RM-311, Witness RM-323, and Milenko Todorović ("Witnesses").¹ On 12 August 2013, the Defence filed a motion to enlarge time to respond to the Motion ("Extension Request").² On 19 August 2013, the Chamber granted the Extension Request, setting the deadline at 4 September 2013.³

2. On 4 September 2013, the Defence filed its response to the Motion ("Response"), objecting to the Motion in its entirety and raising specific objections to Witness RM-323's and Milenko Todorović's prior testimony.⁴

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules, as set out in a previous decision.⁵ With regard to the applicable law related to the admission of associated exhibits, the Chamber recalls and refers to one of its previous decisions dealing with this matter.⁶

III. DISCUSSION

Preliminary matters

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

¹ Prosecution 32nd Motion to Admit Evidence Pursuant to Rule 92*bis*: Srebrenica, 1 August 2013 (Confidential with confidential Annexes A and B). For details of the Prosecution's submissions the Chamber refers to the Motion.

² Defence Motion to Enlarge Time to Respond to Prosecution 32nd Motion to Admit Evidence Pursuant to Rule 92*bis*, 12 August 2013 (Confidential).

³ T. 15305.

⁴ Defence Response to Prosecution 32nd Motion to Admit Evidence Pursuant to Rule 92*bis*: Srebrenica, 4 September 2013 (Confidential), paras 8-9, 11-12. For details of the Defence's submissions the Chamber refers to the Response.

⁵ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-8.

⁶ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, para. 13. See also T. 5601-5604; 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.

5. The Chamber notes that the statement of Witness RM-311 lacks the Attestation and Declaration as required by Rule 92 *bis* (B) of the Rules. The Chamber notes that while it is preferable to have witness statements certified before they are tendered, unattested witness statements have been provisionally admitted by the Chamber pending their formal attestation pursuant to Rule 92 *bis* (B).⁷ The Chamber considers that this practice does not violate the safeguards enshrined in Rule 92 *bis* of the Rules and will consider conditional admission of the unattested witness statement, pending the fulfilment of the requirements of Rule 92 *bis* (B) of the Rules.

Admissibility Pursuant to Rule 89 (C) of the Rules

6. The Chamber considers that Witness RM-207's evidence relates to Scheduled Incidents E3.1, E6.1, E6.2, E9.1, E9.2, E10.1 and Witness RM-311's evidence relates to Scheduled Incident E13.1. Whilst the evidence of Witness RM-323 and Milenko Todorović does not relate to specific scheduled incidents, the Chamber considers that their evidence relates to Counts 2-8 of the Indictment. The Chamber therefore finds that the proffered evidence is relevant pursuant to Rule 89 (C) of the Rules.

7. With regard to the Defence's objection that portions of Witness RM-323's and Milenko Todorović's evidence are based on unqualified hearsay, or are unfounded speculations by the witnesses, the Chamber recalls that hearsay evidence is admissible and that the weight to be attributed to it will be assessed in light of all the evidence before it.⁸ As the source of knowledge is clear from the portions at issue, the Chamber considers that there is no need for redactions of the witnesses' statements on this ground. The Chamber does not consider that the portions of hearsay evidence affect the overall reliability of the evidence.

8. Having taken the above factors into consideration the Chamber is satisfied that the Witnesses' evidence meets the requirements of Rule 89 (C) of the Rules.

Admissibility Pursuant to Rule 92 *bis* of the Rules

9. 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 also concerns the impact of crimes upon

⁷ Decision on Third 92 *bis* Motion, para. 27.

⁸ See Decision on Prosecution's Seventh Motion to Admit Evidence Pursuant to Rule 92 *bis*, 6 February 2013, para. 14.

victims. Further, the evidence of Witness RM-207, Witness RM-311, and Witness RM-323 is cumulative in nature to the evidence of other Rule 92 *ter* witnesses.⁹ In view of the above the Chamber finds that in relation to Witness RM-207, Witness RM-311, and Witness RM-323, the requirements of Rule 92 *bis* of the Rules have been met, and that the proffered evidence can be admitted.

10. With regard to Milenko Todorović's evidence, the Chamber notes that his evidence relates mainly to the chain of command for VRS Military Police units, the chain of command within the VRS, and the engagement of the East Bosnia Corps Military Police in the Drina Corps area of responsibility. The witness also provides evidence that he received an order from General Tolimir to prepare Batković prison camp for the arrival of 1,000-1,300 prisoners from Srebrenica, and shortly thereafter received a direction from Tolimir that he should cease preparing the camp for their arrival. The Chamber considers that this aspect of the witness's testimony relates to an important issue in the case. The evidence which is cumulative to the evidence of Todorović has not been received through oral testimony but was admitted under Rule 92 *bis* and Rule 92 *quater* of the Rules. In these circumstances the Chamber finds reason not to dispense with the attendance of witness Todorović in person. The decision not to admit his evidence under Rule 92 *bis* implies that the associated exhibits as tendered lose their association with admitted evidence and therefore are not fit to be admitted under Rule 92 *bis* either.

Admissibility of Associated Exhibits

11. The Prosecution seeks the admission of one associated exhibit, being a video still, which is discussed during Witness RM-311's testimony. The Chamber finds that this exhibit forms an inseparable and indispensable part of Witness RM-311's proffered evidence. Therefore the Chamber finds that the requirements for admission have been met and, thus, will admit this associated exhibit into evidence.

Compliance with Guidance

12. In relation to the admission of transcript evidence under Rule 92 *bis* of the Rules, the Chamber has reviewed the selected portions of Witness RM-311's prior testimony in light of its guidance.¹⁰ Considering the Prosecution's tendering of these focussed and limited portions of prior testimony, that supplement the evidence in the Witness's statement, the Chamber considers that the Prosecution has complied with the Chamber's guidance on this matter.

⁹ In relation to Witness RM-207: witness Saliha Osmanović; in relation to Witness RM-311 and Witness RM-323:

13. In relation to Witness RM-207 and Witness RM-323, the Chamber notes that the Prosecution tenders excerpts from their testimony in prior proceedings instead of witness statements. While the Chamber has a preference for witness statements as opposed to transcripts from prior cases, the Chamber considers that the length of the prior testimony is in accordance with the Chamber's guidance that the parties should not flood the Chamber with evidence.

IV. DISPOSITION

14. For the foregoing reasons, pursuant to Rules 54, 89 (C) and 92 *bis* of the Rules, the Chamber **GRANTS** the Motion in part;

With respect to

(i) *Witness RM-207*

ADMITS into evidence, **UNDER SEAL**, excerpts of Witness RM-207's prior testimony from *Prosecutor v. Krstić*, Case No. IT-98-33-T, namely T. 5742:22-5742:25, 5744:6-5761:22, 5763:3-5764:18, and 5764:25-5769:11;

(ii) *Witness RM-311*

CONDITIONALLY ADMITS into evidence, **UNDER SEAL**, the Rule 92 *bis* package of Witness RM-311, including the witness's statement of 5 December 2004, with ERN 0363-5472-0363-5476, pending the filing of the corresponding attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

ADMITS into evidence, **UNDER SEAL**,

- (a) excerpts of Witness RM-311's prior testimony from *Prosecutor v. Popović*, Case No. IT-05-88-T, namely T. 3300:20-3300:22, 3305:16-3308:20, and 3310:2-3315:2;
- (b) the video still taken from V000-5095, with Rule 65 *ter* number 28003;

¹⁰ witnesses Robert Franken and Mirsada Malagić.
T. 106-110, 137-138, 315-325, 525-532.

(iii) Witness RM-323

ADMITS into evidence, **UNDER SEAL**,

- (a) excerpts of Witness RM-323's prior testimony in *Prosecutor v. Tolimir*, Case No. IT 05-88/2-T, namely T. 1083:14-1084:6, and 1086:21-1087:2;
- (b) excerpts of Witness RM-323's prior testimony in *Prosecutor v. Popović*, Case No. IT-05-88-T, namely T. 3925:3-3925:4, 3927:4-3935:14, 3935:24-3936:16, 3937:1-3937:8, 3937:22-3939:3, 3939:10-3939:11, 3939:16-3940:15, 3941:17-3942:7, 3942:12-3944:7, 3944:24-3945:21, 3946:18-3946:25, 3947:12-3948:2, 3948:10-3951:7, 3954:3-3960:17, 3961:3-3972:5, 3972:17-3977:6, and 3977:18-3978:22;

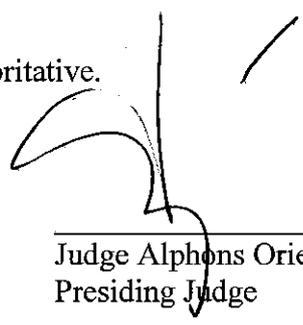
DENIES the admission of the materials tendered in relation to Milenko Todorović;

INSTRUCTS the Prosecution to file the corresponding attestation and declaration to Witness RM-311's statement;

INSTRUCTS the Prosecution to upload into eCourt all of the above documents within three weeks, insofar as they have not already done so; 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 thirty-first day of October 2013
At The Hague
The Netherlands

[Seal of the Tribunal]