IT-02-60-T
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17 DECEMBER 2003

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**UNITED NATIONS**

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-02-60-T

Date: 17 December 2003

Original: English

**IN TRIAL CHAMBER I, SECTION A**

**Before:** **Judge Liu Daqun, Presiding**
**Judge Volodymyr Vassylenko**
**Judge Carmen Maria Argibay**

**Registrar:** **Mr. Hans Holthuis**

**Decision of:** **17 December 2003**

**PROSECUTOR**

**v.**

**VIDOJE BLAGOJEVIĆ**
**DRAGAN JOKIĆ**

# DECISION ON PROSECUTOR'S REQUESTS FOR ADMISSION OF WITNESSES AND EXHIBITS PURSUANT TO RULE 92 *BIS* (D)

**The Office of the Prosecutor:**

Mr. Peter McCloskey

**Counsel for the Accused:**

Mr. Michael Karnavas and Ms. Suzana Tomanović for Vidoje Blagojević
Mr. Miodrag Stojanović and Ms. Cynthia Sinatra for Dragan Jokić

**TRIAL CHAMBER I, SECTION A,** ("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"),

**BEING SEISED OF** Prosecution's Motion for Admission of Witness Statements and Prior Testimony pursuant to Rule 92 *bis* and Incorporated Motion *In Limine* to Admit Related Exhibits, filed under seal on 14 February 2003 ("First Motion"), and of Prosecution's Motion to Amend Witness List and Incorporated Motion to Admit Evidence under Rule 92 *bis*, filed under seal on 10 June 2003 ("Second Motion"),

**NOTING** the responses of the two accused Vidoje Blagojević and Dragan Jokić[1] to the First Motion,

**NOTING** that the Prosecutor, pursuant to Rule 92 *bis* (D) of the Rules, through the First Motion seeks to have admitted in written form the testimony of witnesses W91, W92, W94, and W95, including the exhibits admitted during their testimony as detailed by the Prosecutor in a list provided to the Trial Chamber, dated 21 October 2003, and through the Second Motion seeks to have admitted in written form the testimony of witness W81,

**NOTING** the "First Decision on Prosecution's Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92 *bis*", rendered by the Trial Chamber on 12 June 2003, in which the Trial Chamber considered the jurisprudence in relation to Rule 92 *bis* of the Rules of Procedure and Evidence ("Rules") in detail,

**CONSIDERING** that the prior testimony of witness W81 is cumulative in nature,

**CONSIDERING** that the prior testimony of witness W91 is cumulative in nature; that of the eleven intercepted conversations ("intercepts") tendered with this testimony, all, except one[2], have been discussed by live witnesses and are the focus of a subsequent decision on intercepts; and that this one exhibit does not have probative value under Rule 89(C) of the Rules,

**CONSIDERING** that the prior testimony of witness W92 is cumulative in nature; that two[3] of the exhibits tendered with this testimony are relevant to the present case, have probative value under

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[1] Vidoje Blagojević's Response to the Prosecution's Motion Concerning Rule 92 *bis*, filed 31 March 2003, and Dragan Jokić's Response to "Prosecution's Motion for Admission of Prior Testimony and Witness Statements pursuant to Rule 92 *bis* and Incorporated Motion *In Limine* to Introduce Related Exhibits", filed 31 March 2003.
[2] P225/c for identification purposes, no 65 *ter* number.
[3] Exhibits P196/a for identification purposes, no 65 *ter* number, and P201/a for identification purposes, 65 *ter* number 914.

Rule 89 (C) of the Rules, and do not go to the acts or conduct of the accused; that one intercept[4] is cumulative in nature; that three intercepts[5] tendered through this witness have been discussed by live witnesses and are the focus of a subsequent decision on intercepts; and that three exhibits[6] are already in evidence,

**CONSIDERING** that the prior testimony of witness W94 is cumulative in nature; that one intercept[7] tendered with this testimony is relevant to the present case, has probative value under Rule 89 (C) of the Rules, and does not go to the acts or conduct of the accused; that another intercept[8] does not have probative value under Rule 89(C) of the Rules; and that the remaining intercept[9] has been discussed by live witnesses and is the focus of a subsequent decision on intercepts,

**CONSIDERING** that the prior testimony of witness W95 is cumulative in nature; and that both intercepts[10] tendered through this witness are relevant to the present case, have probative value under Rule 89 (C) of the Rules, and do not go to the acts or conduct of the accused;

**CONSIDERING** that the handwritten intercept notebooks tendered with the written testimony of witnesses W91, W92, W94, and W95[11] do not in their present untranslated form have probative value under Rule 89 (C) of the Rules,

**FOR THE FOREGOING REASONS**

**PURSUANT TO** Rules 54 and 92 *bis* (D) of the Rules

**HEREBY GRANTS** the First and Second Motions in so far as they request the admission into evidence of

1. the testimony of witness W92 together with exhibits P196/a and P201/a,

2. the testimony of witness W94 together with exhibit P212/a, and

3. the testimony of W95 together with exhibits P307/a and P308/c,

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[4] Exhibit P197/a for identification purposes, 65 *ter* number 909.
[5] Exhibits P194/a, P208/a, and 213/a (65 *ter* numbers 907, 921, and 926, respectively).
[6] Exhibits P319, P320, and P346.
[7] Exhibit P212/a for identification purposes, 65 *ter* number 925.
[8] Exhibit P238/a for identification purposes, 65 *ter* number 952.
[9] Exhibit P245/k for identification purposes, no 65 *ter* number.
[10] Exhibits P307/a and P308/c for identification purposes (65 *ter* numbers 1021 and 1022, respectively).
[11] Handwritten intercept notebooks numbers 1, 21, 24, 29, 30, 92, and 231 (exhibits P322, P326, P328, P331, P332, P334, and P344, respectively for identification purposes).

**REJECTS** the First and Second Motions in so far as they request the admission into evidence of witnesses W81 and W91, and of exhibits P197/a, P225/c, and

**RESERVES** its decision on the following exhibits: P179/a, P185/a, P186/a, P188/c, P189/a, P191/a, P193/a, P194/a, P203/a, P206/c, P208/a, P216/a, P213/a, and P245/k, respectively for identification purposes,

**DISMISSES** the First and Second Motions in so far as they request the admission into evidence of exhibits P319, P320, and P346.

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

Dated this seventeenth day of December 2003,
At The Hague
The Netherlands

Judge Liu Daqun
Presiding

**[Seal of the Tribunal]**