

4-09-92-T  
D 45683 - D 45670  
19 October 2012

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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: 19 October 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:** 19 October 2012

**PROSECUTOR**

v.

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION THIRD MOTION TO ADMIT  
EVIDENCE PURSUANT TO RULE 92BIS: SARAJEVO  
WITNESSES**

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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 24 July 2012, the Prosecution filed a motion pursuant to Rule 92 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") seeking to admit into evidence material with regard to Witnesses RM-103, RM-104, RM-121, RM-144, RM-160, and RM-164 ("Motion").<sup>1</sup> On 6 August 2012, the Defence filed its response and sought leave to exceed the word limit ("Response").<sup>2</sup> The Prosecution requested leave to reply on 13 August 2012 ("Request"), which was granted by the Chamber on 17 August 2012 and the parties were informed accordingly through an informal communication.<sup>3</sup> The Chamber considers the attached reply to the Request as validly filed on 13 August 2012 ("Reply").

## II. SUBMISSIONS OF THE PARTIES

2. With regard to Witnesses RM-103 and RM-121, the Prosecution seeks to admit Rule 92 *bis* witness packages for both that are comprised of the respective witness statements and the associated Attestations and Declarations.<sup>4</sup> The Prosecution notes that both witness packages were admitted into evidence in the *Karadžić* case without the need for cross-examination.<sup>5</sup> Witnesses RM-104 and RM-164 have larger Rule 92 *bis* witness packages. In addition to the respective witness statements, Attestations and Declarations, the Prosecution seeks to admit each of the following for both witnesses: portions of testimony in three pages of transcript from the *Dragomir Milošević* case with associated exhibits, and a comparison chart conveying the relationship between the exhibit numbers in the *Dragomir Milošević* case and the instant case.<sup>6</sup> The statement of Witness RM-104 is accompanied by an addendum making one correction to the witness statement.<sup>7</sup> The Prosecution seeks to admit the pseudonym sheet of Witness RM-104 from the *Dragomir Milošević* case without the assignment of a Rule 65 *ter* number.<sup>8</sup> The Rule 92 *bis* witness packages of Witnesses RM-104 and RM-164 were also admitted into evidence in the *Karadžić* case without the need for cross-

<sup>1</sup> Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 24 July 2012 (Confidential).

<sup>2</sup> Defence Response to Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 6 August 2012 (Confidential). This was redistributed confidentially on 7 August 2012 due to a clerical error. The Chamber notes an error at paragraph 28 of the Response where the Defence incorrectly attributed contested portions of witness evidence to other witnesses. The contested portions claimed to belong to the evidence of Witness RM-104 belong to Witness RM-121, that of Witness RM-121 belong to Witness RM-144, and that of Witness RM-144 belong to Witness RM-104.

<sup>3</sup> Prosecution Request for Leave to Reply to Defence Response to Prosecution Third Rule 92 *bis* Motion, 13 August 2012 (Confidential).

<sup>4</sup> Motion, paras 2, 12, 14.

<sup>5</sup> Motion, paras 4, 13, 15; Reply, para. 11.

<sup>6</sup> Motion, paras 2, 21, 30.

<sup>7</sup> Motion, para. 21.

<sup>8</sup> Motion, para. 25.

examination.<sup>9</sup> The Prosecution seeks to tender the respective witness statements of Witnesses RM-144 and RM-160 provisionally pending the attestation process under Rule 92 *bis*.<sup>10</sup> With respect to Witness RM-144, the Prosecution also seeks to tender portions of testimony in four pages of transcript from the *Karadžić* case.<sup>11</sup> Further, the Prosecution notes that cross-examination of Witness RM-144 in the *Karadžić* case was fruitless as to eliciting evidence concerning military issues and that this may, as a result, be a factor against the need for cross-examination.<sup>12</sup> Concerning Witness RM-160, the Prosecution seeks to tender portions of testimony in more than ten pages of transcript from the *Dragomir Milošević* case and one associated exhibit to the statement.<sup>13</sup> The latter is a drawing by the witness of a modified airbomb launcher, which the Prosecution request to be added to the Rule 65 *ter* exhibit list.<sup>14</sup> Two redactions have been made to the proposed evidence of Witness RM-160 and replaced with the relevant adjudicated fact number.<sup>15</sup> The Prosecution admits that there may exist some overlap between adjudicated facts and other tendered evidence but clarifies that redactions have not been made as the information is necessary for the Chamber to understand and evaluate this evidence.<sup>16</sup>

3. The Prosecution considers all the tendered evidence to be relevant and probative of issues in the instant case.<sup>17</sup> Further, it does not address the acts or conduct of the Accused.<sup>18</sup> It is the Prosecution's submission that admission pursuant to Rule 92 *bis* of the Rules will substantially expedite proceedings, prevent unnecessary re-appearance of victims and witnesses at the Tribunal, and cause no prejudice to the Accused.<sup>19</sup>

4. The Defence opposes the Motion on five grounds. First, Witness RM-160's testimony is not suitable to be admitted pursuant to Rule 92 *bis* of the Rules as it relates to a central part of the Indictment or to a 'live' issue between the parties, namely the "development and possession of modified air bombs by the VRS and their reliability".<sup>20</sup> As a result, Witness RM-160 should be heard *viva voce* or, at least, be subject to cross-examination.<sup>21</sup> Second, the remaining witnesses are alleged eye-witnesses to scheduled incidents and their appearance for cross-examination should

<sup>9</sup> Motion, paras 4, 13, 15; Reply, para. 11.

<sup>10</sup> Motion, para. 2.

<sup>11</sup> Motion, paras 2, 16.

<sup>12</sup> Motion, paras 19-20; Reply, para. 11.

<sup>13</sup> Motion, paras 2, 26.

<sup>14</sup> Motion, para. 29.

<sup>15</sup> Motion, para. 28.

<sup>16</sup> Motion, para. 6.

<sup>17</sup> Motion, para. 3.

<sup>18</sup> Motion, paras 3, 8.

<sup>19</sup> Motion, para. 3.

<sup>20</sup> Response, paras 2, 12-16.

<sup>21</sup> Response, para. 17.

therefore be considered.<sup>22</sup> Third, the Defence contests portions of the evidence as unreliable assertions or impermissible or unfounded opinions/expert testimony that should, at least, be subject to cross-examination.<sup>23</sup> Fourth, the Defence objects to the Prosecution's request to add a document to the Rule 65 *ter* list.<sup>24</sup> Fifth, the Defence notes that certain of the Prosecution's proposed Rule 92 *bis* materials do not comply with either the Rules or the Chamber's Guidance on the Tendering and Presentation of Evidence ("Guidance"), namely the attempt to admit unattested witness statements for Witnesses RM-144 and RM-160, the failure to provide the Defence with BCS versions of the witness transcripts sought for admission or, in the alternative, audio excerpts of said testimony, and a failure to justify the tendering of transcript evidence under Rule 92 *bis*.<sup>25</sup>

### III. APPLICABLE LAW

#### (a) Rule 92 *bis*

5. The admission of written statements in lieu of oral testimony is governed by Rule 92 *bis* of the Rules. However, Rule 89 (C) remains the *lex generalis* for the admission of evidence and therefore the written statement or transcript must meet the general standards of relevance and probative value as set out in Rule 89 (C).<sup>26</sup>

6. Rule 92 *bis* (B) of the Rules provides the formal requirements that a statement must meet to qualify for admission. Among these requirements is that the statement must be accompanied by a declaration witnessed by a person duly authorized by domestic law to do so in the relevant jurisdiction, or by a Presiding Officer appointed by the Tribunal's Registrar for that purpose.

7. Rule 92 *bis* (A) of the Rules states that a Trial Chamber may "admit, in whole or in part, the evidence of a witness in the form of a written statement or a transcript of evidence, which was given by a witness in proceedings before the Tribunal, in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment." It also provides a non-exhaustive list of factors in favour of, and against, admitting evidence in the form of a written statement or transcript under Rule 92 *bis*. Among the factors in favour of admitting such evidence is whether it: (i) is of a cumulative nature; (ii) relates to a relevant historical, political or military background; (iii) concerns the impact of crimes upon victims; (iv) relates to issues of the

<sup>22</sup> Response, paras 2, 18-19.

<sup>23</sup> Response, paras 2, 26-28.

<sup>24</sup> Response, paras 2, 38-41.

<sup>25</sup> Response, paras 2, 8-11, 20-25.

<sup>26</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis* (C), 7 June 2002, para. 31.

character of the accused; or (v) relates to factors to be taken into account in determining sentence.<sup>27</sup> In contrast, factors weighing against admission include whether: (i) there is an overriding public interest to hear the evidence in question orally; (ii) the objecting party demonstrates the nature and source of the evidence as unreliable, or that its prejudicial effect outweighs its probative value; or (iii) there are other factors which make it appropriate to require cross-examination.<sup>28</sup> Another factor weighing against admission pursuant to Rule 92 *bis* is when the content of the evidence in question goes to a “live” or “critical” issue between the parties.<sup>29</sup>

8. 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.<sup>30</sup>

#### (b) Protective Measures

9. Rule 75 (F) of the Rules sets out, in relevant part, that protective measures ordered in a proceeding before the Tribunal shall continue to have effect *mutatis mutandis* in any subsequent proceedings.

#### (c) Additions to the Rule 65 *ter* exhibit list

10. The Chamber recalls and refers to the applicable law governing additions to the Rule 65 *ter* exhibit list, as set out in a previous decision.<sup>31</sup>

### IV. DISCUSSION

#### (a) Preliminary matters

11. The Chamber grants the Defence request to exceed the word limit for the Response given the number of witnesses it needed to address therein.

12. The Chamber notes that all witness statement Declarations submitted by the Prosecution are in BCS only. The Chamber exceptionally accepts this in the instant case but would request that for future Rule 92 *bis* motions, the standard text of Declarations be provided in English to both the Chamber and the Defence.

<sup>27</sup> Rule 92 *bis* (A) (i).

<sup>28</sup> Rule 92 *bis* (A) (ii).

<sup>29</sup> *Prosecutor v. Fatmir Limaj, Haradin Bala, and Isak Musliu*, Case No. IT-03-66-T, Decision on Prosecution’s Motion for Provisional Admission of Witness Statements under Rule 92 *bis*, 13 October 2004, para. 7.

<sup>30</sup> Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 22 July 2012, para. 13.

<sup>31</sup> Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

13. As to the Defence objection concerning a failure to furnish the Accused with BCS versions of the tendered portions of the prior witness testimonies of Witnesses RM-104, RM-144, and RM-164, the Chamber is satisfied with the Prosecution's assurance that the BCS audio of all testimony in question was disclosed to the Defence on 29 June 2012.<sup>32</sup> Further, Counsel for the Accused is able to identify the relevant segment of said audio from the English version of the transcript tendered. Therefore, the Defence's objection fails in this respect.

14. The Chamber will now assess the admissibility of the witnesses' evidence under Rule 92 *bis* in turn.

(b) Witness RM-103

15. Witness RM-103's statement describes a shelling incident on 6 June 1992 in an area of Sarajevo. The Chamber considers the evidence of this witness relevant to Scheduled Shelling Incident G.2 of the Indictment.<sup>33</sup> As to the probative value, the Defence objects to some specific portions of the witness statement as containing improper "expert-like" testimony.<sup>34</sup> In this respect, the Chamber considers that the final sentence of paragraph 10, which reads "[w]e also had a sniper shooting toward us right at the beginning of the violence, I think the shots were coming from the Tito barracks", is an unsupported or unclarified opinion. If admitted pursuant to Rule 92 *bis*, it cannot be clarified or tested through cross-examination. This sentence should therefore be redacted from the witness statement or the Prosecution should call the witness to provide testimony in court. For the remaining part, the Chamber is satisfied that the requirements of Rule 89 (C) have been met.

16. With regard to admissibility pursuant to Rule 92 *bis*, the Defence has not argued, and the Chamber does not find that Witness RM-103's evidence relates to the acts and conduct of the Accused. Further, the Chamber considers that the evidence relates to one specific incident of the crime base part of the case and that a number of other witnesses are anticipated to give evidence with regard to the same incident. This includes Witness RM-151, who is currently anticipated to give evidence pursuant to Rule 92 *ter*, and Witnesses RM-121 and RM-144, whose evidence the Prosecution requests that it be admitted pursuant to Rule 92 *bis*.<sup>35</sup> For these reasons, the Chamber finds that Witness RM-103's evidence can be admitted pursuant to Rule 92 *bis*.

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<sup>32</sup> Reply, para. 2.

<sup>33</sup> Prosecution Submission of the Fourth Amended Indictment and Schedules of Incidents, 16 December 2011, Public Annex A ("Indictment"), Schedule G, Incident 2.

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(c) Witness RM-104

17. Witness RM-104's evidence deals with, *inter alia*, the shelling incident in Sarajevo on 26 May 1995 which is described in the Indictment under Scheduled Shelling Incident G.13.<sup>36</sup> The Chamber is satisfied of the evidence's relevance pursuant to Rule 89 (C) of the Rules. With regard to probative value, the Defence has only objected to the inclusion of one specific sentence of Witness RM-104's statement that reads, "I was told that they were with a group called the 'White Eagles' but I'm not sure about that". This is unsourced hearsay and, in addition, the witness acknowledges that he has no direct knowledge about it. As this is clear from the sentence itself, the Chamber considers that there is no need for a redaction of the witness statement. The Chamber is satisfied that the requirements of Rule 89 (C) of the Rules have been met.

18. With regard to admissibility pursuant to Rule 92 *bis* of the Rules, the Defence has not argued, and the Chamber does not find, that Witness RM-104's evidence relates to the acts and conduct of the Accused. Further, the Chamber considers that the evidence of Witness RM-104 deals with the crime base part of the case, including the impact of the 26 May 1995 shelling in Sarajevo. Further, the Chamber considers that other witnesses are anticipated to give evidence with regard to this incident, including Witness RM-110 and Witness RM-175, both of whom are anticipated to testify pursuant to Rule 92 *ter*.<sup>37</sup> As a result, the Chamber finds that Witness RM-104's evidence may be admitted pursuant to Rule 92 *bis* of the Rules.

19. The Prosecution seeks to admit the pseudonym sheet of Witness RM-104 into evidence without requesting that it be added to the Rule 65 *ter* exhibit list.<sup>38</sup> The Chamber considers that the proper procedure is to first add a document to the exhibit list and then tender it into evidence. In this instance, the Chamber has considered that the document is a single page of text merely stating the witness's prior pseudonym from the *Dragomir Milošević* case. For this reason, the Chamber finds that it is in the interests of justice to add the document to the Rule 65 *ter* exhibit list.

20. Concerning the admission of associated exhibits, the Chamber is of the view that the witness-marked photograph, pseudonym sheet, and correspondence chart are an inseparable and indispensable part of Witness RM-104's prior testimony; without said documents the transcript would be of lesser probative value. In light of this, the Chamber finds that the requirements for

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<sup>34</sup> Response, paras 26-28.

<sup>35</sup> Prosecution Rule 65 *ter* Witness List, 10 February 2012 (Confidential) ("Prosecution Witness List"), p. 271.

<sup>36</sup> Indictment, Schedule G, Incident 13.

<sup>37</sup> Prosecution Witness List, pp. 224-225, 228-230.

<sup>38</sup> Motion, para. 25.

admission have been met with respect to these three associated exhibits and will admit them into evidence.

21. In relation to the admission of transcript evidence under Rule 92 *bis*, the Chamber has reviewed the tendering of selected portions of Witness RM-104's transcript evidence in light of its Guidance.<sup>39</sup> Considering in particular that the Prosecution wishes to tender a very limited portion of the transcripts from a previous case, which supplements the evidence in the witness statement, the Chamber deems that the Prosecution has complied with the Guidance.

22. The Chamber considers that protective measures granted in the previous case in which RM-104 testified continue to apply in this case pursuant to Rule 75 (F) (i).

(d) Witness RM-121

23. The statement of Witness RM-121 deals with a shelling incident in her neighbourhood in Sarajevo on 6 June 1992, which falls under Scheduled Shelling Incident G.2 of the Indictment.<sup>40</sup> The Chamber is therefore satisfied of the relevance of the evidence, pursuant to Rule 89 (C) of the Rules. With regard to probative value, the Defence has only objected to the inclusion of two specific portions of Witness RM-121's statement that read, "... the whole city seemed to be shelled very heavily" and "... we later learned that my daughter had been killed in another shelling incident, and she had been the one brought in while I was being treated". Having considered the categories of objections as set out in paragraphs 26 and 27 of the Response, namely that portions of the witness statements contain unreliable assertions, impermissible or unfounded opinion/expert testimony, hearsay, or improper legal conclusions, and absent further specification by which category these lines would be covered, the Chamber has not found the relevant lines to require redaction under any of these categories. The Chamber is satisfied that the requirements of Rule 89 (C) of the Rules have been met.

24. With regard to admissibility pursuant to Rule 92 *bis* of the Rules, the Defence has not argued, and the Chamber does not find, that Witness RM-121's evidence relates to the acts and conduct of the Accused. Further, the Chamber considers that Witness RM-121's evidence deals with the crime base part of the case, and that a number of witnesses are anticipated to give evidence on the same matter: Witness RM-103, Witness RM-144, and Witness RM-151, the last of whom is currently anticipated to give evidence pursuant to Rule 92 *ter*. For these reasons, the Chamber finds that Witness RM-121's evidence may be admitted pursuant to Rule 92 *bis* of the Rules.

<sup>39</sup> T. 106-110, 137-138, 194, 315-325, 525-532.

<sup>40</sup> Indictment, Schedule G, Incident 2.



(e) Witness RM-144

25. Witness RM-144's evidence refers to the sniping and shelling of Sarajevo, in particular to the effects of a shelling incident on or around 9 June 1992, an incident that falls under Scheduled Shelling Incident G.2 of the Indictment.<sup>41</sup> The witness's evidence is therefore relevant pursuant to Rule 89 (C) of the Rules. With regard to probative value, the Defence objected to several portions of Witness RM-144's evidence.<sup>42</sup> In paragraph 6, the witness asserts that the shelling was indiscriminate and random, without providing further explanation or source of knowledge. The witness also provides information about which types of weapons were used during the shelling. When questioned on this in the *Karadžić* trial, the witness's response revealed a very weak basis for her assertion on the matter. Therefore, the Chamber considers that the third, fourth, and fifth sentences of paragraph 6 of the witness statement and *Karadžić* transcript page 8755:19-25 should be redacted. The final sentence in paragraph 10 also provides an assertion without a clear source of knowledge and the Chamber considers that it should be redacted. With these reservations, the Chamber is satisfied that the requirements of Rule 89 (C) of the Rules have been met.

26. With regard to admissibility pursuant to Rule 92 *bis* of the Rules, the Defence has not argued, and the Chamber does not find, that Witness RM-144's evidence relates to the acts and conduct of the Accused. Further, the Chamber considers that Witness RM-144's evidence deals with the crime base part of the case and that a number of witnesses are anticipated to provide evidence on the same matter.<sup>43</sup> For these reasons, the Chamber finds that Witness RM-144's evidence may be admitted pursuant to Rule 92 *bis* of the Rules.

27. The witness statement of Witness RM-144 has no corresponding Attestation or Declaration as required by Rule 92 *bis* (B) of the Rules. Unattested witness statements have been provisionally admitted by this Tribunal pending their formal attestation pursuant to Rule 92 *bis* (B).<sup>44</sup> In line with this practice, the Chamber will provisionally admit the unattested witness statement of Witness RM-144, pending the submission of the required Attestation and Declaration.

<sup>41</sup> Indictment, Schedule G, Incident 2.

<sup>42</sup> Response, paras 26-28.

<sup>43</sup> See paras 16 and 24, above.

<sup>44</sup> *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Prosecution's Motions for the Admission of Written Evidence Pursuant to Rule 92 *bis* of the Rules, 16 January 2006, para. 11; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's Confidential Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*, 12 September 2006, paras 19-21; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Prosecution's Fourth Motion for Admission of Statements and Transcripts of Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* – Sarajevo Witnesses, 5 March 2010, paras 65-66.

28. In relation to the admission of transcript evidence under Rule 92 *bis*, the Chamber has reviewed the tendering of selected portions of Witness RM-144 transcript evidence in light of its Guidance. Considering in particular that the Prosecution wishes to tender a very limited portion of the transcripts from a previous case, which supplements the evidence in the witness statement, the Chamber accepts that the Prosecution has complied with the Guidance.

(e) Witness RM-160

29. With regard to admissibility pursuant to Rule 92 *bis* of the Rules, the Chamber considers that Witness RM-160 is a former VRS technician who will testify on the matter of modified air-bombs, which is referred to in numerous incidents described in Schedule G of the Indictment. Further, the Chamber recognizes that Witness RM-160 is the only VRS insider witness scheduled by the Prosecution available to appear before the Chamber in person on the issue of modified air-bombs.<sup>45</sup> Therefore, the Chamber considers that the evidence of Witness RM-160 is not suitable for admission under Rule 92 *bis* of the Rules and invites the Prosecution to present the witness *viva voce* or under Rule 92 *ter* of the Rules should it wish to do so.

30. In relation to the Prosecution's request to add a labelled drawing by Witness RM-160 of an air-bomb launcher to the Rule 65 *ter* exhibit list, the Chamber finds that it is in the interests of justice to do so, in particular considering the nature of the document and that its addition will create a very limited additional burden on the Defence.

(f) Witness RM-164

31. Witness RM-164's evidence describes injury to persons and damage to buildings during the 7 April 1995 shelling of Hrasnica, Ilidža municipality, covered by Scheduled Shelling Incident G.10 of the Indictment.<sup>46</sup> Therefore, the Chamber finds that Witness RM-164's evidence is relevant. With regard to probative value, the Defence objects to the inclusion of a reference in the witness statement to a prior statement, which the Prosecution is not tendering into evidence.<sup>47</sup> Referring in this respect to its reasoning in a previous decision dealing with this issue the Chamber denies the objection.<sup>48</sup> The Chamber is satisfied that the requirements of Rule 89 (C) of the Rules have been met.

<sup>45</sup> Witness RM-180, a former VRS soldier whose evidence also relates to modified air-bombs, is being presented by the Prosecution under Rule 92 *quater* (see Prosecution Witness List, pp. 243-244).

<sup>46</sup> Indictment, Schedule G, Incident 10.

<sup>47</sup> Response, paras 26-28.

<sup>48</sup> Decision With Regard to Prosecution Rule 92 *ter* Motions With Regard to Joseph Kingori, Eelco Koster, and Christine Schmitz, 9 July 2012, para. 8.

32. With regard to admissibility pursuant to Rule 92 *bis* of the Rules, the Defence has not argued, and the Chamber does not find, that Witness RM-164's evidence relates to the acts and conduct of the Accused. The Chamber considers further that Witness RM-164's evidence deals with the crime base-part of the case and that a number of witnesses are anticipated to provide evidence on the same matter, including Witness RM-159 and Witness RM-502 who are both currently scheduled to give evidence pursuant to Rule 92 *ter*.<sup>49</sup> For these reasons, the Chamber admits the evidence of Witness RM-164 under Rule 92 *bis* of the Rules.

33. Concerning the admission of associated exhibits, the Chamber is of the view that the two photographs and the correspondence chart are an inseparable and indispensable part of Witness RM-164's prior testimony; without said documents the transcript would be incomprehensible and therefore of lesser probative value. The two photographs contain text in BCS and the Prosecution has not provided any translation. The text should therefore be redacted. Alternatively, the Prosecution may provide a translation of the text. In light of this, the Chamber finds that the requirements for admission have been met with respect to these three associated exhibits.

34. In relation to the admission of transcript evidence under Rule 92 *bis*, the Chamber has reviewed the tendering of selected portions of Witness RM-164 transcript evidence in light of its Guidance. Considering in particular that the Prosecution wishes to tender a very limited portion of transcripts from a previous case, which supplements the evidence in the witness statement, the Chamber accepts that the Prosecution has complied with the Guidance.

## V. DISPOSITION

35. For the foregoing reasons and pursuant to Rules 73, 89, 92 *bis* of the Rules, the Chamber

**GRANTS** the Defence request to exceed the word limit for its Response;

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

**REQUESTS** the Prosecution, in relation to future Rule 92 *bis* motions, to provide the Chamber and the Defence with the standard text of Declarations in English;

With respect to

(i) *Witness RM-103*

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<sup>49</sup> Prosecution Witness List, pp. 65-66, 231-232.

**INSTRUCTS** the Prosecution to redact Witness RM-103's evidence in accordance with paragraph 15 above;

**ADMITS** into evidence

- a) the redacted version of the Statement of Witness RM-103 dated 31 October 2008, bearing ERNs 0675-5443-0675-5454; and
- b) the corresponding Attestation and Declaration, bearing ERNs 0675-5440-0675-5442;

**INSTRUCTS** the Prosecution to inform the Chamber whether it wishes to call Witness RM-103 to testify, within two weeks of the filing of this Decision.

*(ii) Witness RM-104*

**DECIDES** to add the pseudonym sheet for Witness RM-104 in Case No. IT-98-29/1, bearing ERN 0614-9943, to the Prosecution's Rule 65 *ter* Exhibit List;

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

- a) the Statement of Witness RM-104 dated 10 March 1997, bearing ERNs 0675-5520-0675-5527;
- b) the corresponding Attestation and Declaration, bearing ERNs 0675-5517-0675-5519;
- c) the addendum to statement dated 24 April 2010, bearing ERNs 0675-5528 and 0675-5528-BCST;
- d) the testimony of Witness RM-104 in Case No. IT-98-29/1, T. 4523:23-4525:18;
- e) the photograph marked by Witness RM-104 in Case No. IT-98-29/1, Rule 65 *ter* no. 10378;
- f) the pseudonym sheet for Witness RM-104 in Case No. IT-98-29/1, bearing ERN 0614-9943; and
- g) the comparison chart with corresponding RM 65 *ter* numbers of exhibits discussed in excerpts of RM-104's *Dragomir Milošević* testimony, Rule 65 *ter* no. 28332 (bearing ERN 0683-8572).

*(iii) Witness RM-121*

**ADMITS** into evidence

- a) the Statement of Witness RM-121 dated 30 October 2008, bearing ERNs 0675-5495-0675-5506; and
- b) the corresponding Attestation and Declaration, bearing ERNs 0675-5492-0675-5494.

*(iv) Witness RM-144*

**INSTRUCTS** the Prosecution to redact Witness RM-144's evidence in accordance with paragraph 25 above;

**PROVISIONALLY ADMITS** the redacted version of the Statement of Witness RM-144 dated 5 November 2008, bearing ERNs 0645-1930-0645-1935 and 0645-1930-0645-1935-BCSDT into evidence pending the filing of a corresponding Attestation and Declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

**INSTRUCTS** the Prosecution to file the corresponding Attestation and Declaration to the statement of Witness RM-144 within four weeks of the filing of this decision;

**ADMITS** into evidence the redacted version of the testimony of Witness RM-144 in Case No. IT-95-5/18/T, T. 8751:7-8752:8, 8754:24-8755:18.

*(v) Witness RM-160*

**DENIES** the admission of the proffered evidence of Witness RM-160 under Rule 92 *bis*;

**INVITES** the Prosecution to present Witness RM-160 as a *viva voce* witness or under Rule 92 *ter* of the Rules; and

**DECIDES** to add the drawing by Witness RM-160 of an air bomb launcher with an air bomb, bearing ERN 0359-7806, to the Prosecution's Rule 65 *ter* Exhibit List.

*(vi) Witness RM-164*

**INSTRUCTS** the Prosecution to redact the BCS text from the two photographs of a collapsed house with Rule 65 *ter* nos 10471 and 10472 respectively, in accordance with paragraph 33 above;

**ADMITS** into evidence

- a) the Statement of Witness RM-164 dated 21 November 1995, bearing ERNs 0675-5462-0675-5469;

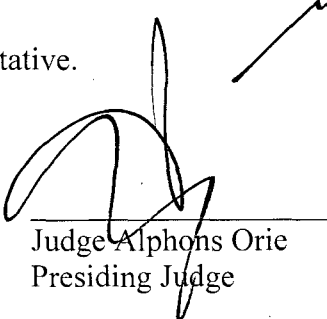
- b) the corresponding Attestation and Declaration, bearing ERNs 0675-5459-0675-5461;
- c) the testimony of Witness RM-164 in Case No. IT-98-29/1, T. 2772:8-2774:13;
- d) the redacted version of the two photographs of a collapsed house with Rule 65 *ter* nos 10471 and 10472 respectively; and
- e) the comparison chart with corresponding RM 65 *ter* numbers of exhibits discussed in excerpts of Witness RM-164's *Dragomir Milošević* testimony, Rule 65 *ter* no. 28334 (bearing ERN 0683-8573).

**INVITES** the Prosecution, should it wish to rely on the markings on the two photographs of a collapsed house with Rule 65 *ter* nos 10471 and 10472 respectively, to provide the Chamber with English translations of said markings and to request the Chamber to replace the redacted versions of the two photographs with the original BCS and English translated versions;

**INSTRUCTS** the Prosecution to upload into eCourt complete redacted versions of the Statements bearing ERNs 0675-5443-0675-5454, 0645-1930-0645-1935, and 0645-1930-0645-1935-BCSDT; the redacted version of the testimony of Witness RM-144 in Case No. IT-95-5/18/T, T. 8751:7-8752:8, 8754:24-8755:18; and the redacted version of the two photographs of a collapsed house with Rule 65 *ter* nos 10471 and 10472 respectively, within one week of the date of issue 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 Orié  
Presiding Judge

Dated this nineteenth day of October 2012  
At The Hague  
The Netherlands

[Seal of the Tribunal]