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D 52469 - D 52466
01 February 2013

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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 the
Former Yugoslavia since 1991

Case No. IT-09-92-T
Date: 1 February 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: 1 February 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION'S RULE 92 TER MOTION:
MIRZA SABLJICA**

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 28 December 2012, the Prosecution filed a motion in relation to Witness Sabljica tendering one statement and 21 associated documents pursuant to Rule 92 *ter* of the Tribunal's Rules of Procedure and Evidence ("Motion" and "Rules").¹ On 18 January 2013, the Defence objected to the presentation of Witness Sabljica under Rule 92 *ter*.² It submitted that the number of tendered associated documents is excessive ("First Objection") and that the witness's statement contained inappropriate expert testimony ("Second Objection").³ It further argued that the Prosecution had identified the witness as an expert, without complying with the requirements of Rule 94 *bis* of the Rules ("Third Objection").⁴

II. DISCUSSION

2. The Chamber will briefly discuss the merits of the Defence objections but will defer its decision on the Motion once all requirements of Rule 92 *ter* of the Rules have been met.

3. As a preliminary matter, the Chamber reminds the Prosecution of its prior guidance in relation to the format of witness statements.⁵ The parties should not tender a collection of transcripts pasted into a statement as this greatly reduces the evidence's comprehensibility. In relation to Witness Sabljica, the Chamber exceptionally accepts the format of the proffered evidence on this occasion.

4. With regard to the First Objection, the Chamber instructs the Prosecution to reduce the amount of tendered associated documents with Witness Sabljica, in accordance with the Chamber's guidance on this matter.

5. With regard to the Second Objection, the Chamber refers the Defence to its approach on this matter, as set out in a previous decision.⁶ The Chamber therefore denies the Second Objection.

¹ Prosecution 92 *ter* Motion: Mirza Sabljica (RM-157) and Request to add two Official Notes, 28 December 2012 (Confidential).

² Defence Motion to Bar and Response to Prosecution 92 *ter* Motion: Mirza Sabljica (RM-157) and Request to add two Official Notes, 18 January 2013 (Confidential) ("Response"), p. 7. The Defence had requested and was granted an extension of time to respond to the Motion, T. 6815.

³ Response, paras 4-12.

⁴ Response, paras 13-17.

⁵ T. 191-193.

⁶ Decision with regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.

6. With regard to the Third Objection, the Chamber notes that the Prosecution has used confusing terminology when referring to the witness's status. This notwithstanding, Witness Sabljica is proffered as a fact witness and not as an expert witness. The Chamber has previously held that it:

expects that proposed fact witnesses provide testimony describing their observations and factual knowledge of events. The Chamber further expects the parties to only elicit factual testimony from such witnesses. Nevertheless, proposed fact witnesses often also provide conclusions or opinions. This occurs when testifying in court as well as in written statements. In such situations, the Chamber expects the parties to explore such conclusions or opinions with a view to eliciting a clear basis for them, unless such a basis is already apparent from the written statement. If such conclusions or opinions are not further explored, or the witness is unable to provide a clear basis for them, they remain unsupported, un-sourced conclusions or opinions of a witness. As a result, absent any other corroborating evidence, the Chamber will not give any weight to such opinions or conclusions.⁷

7. More specifically, the Chamber stated, in a footnote to the paragraph referred to above, as follows:

In this context, the Chamber notes that for a number of proposed fact witnesses, the Prosecution has acknowledged that some of their opinions are based on expert knowledge (see p. 214 of the Prosecution's witness list of 10 February 2012 in relation to medical professionals who treated sniping and shelling victims). The Chamber expects that if the Prosecution seeks to elicit opinions based on witnesses' apparent expertise, the Defence will be given sufficient notice pursuant to Rule 94 *bis* of the Rules, in order to be able to challenge such opinions or conclusions. Furthermore, the parties should clearly announce in related motions or notifications that they intend to rely on expert conclusions of proposed fact witnesses.

8. In relation to Witness Sabljica, the Chamber notes that the Motion was filed on 28 December 2012 and that the witness is currently scheduled to testify on 5 February 2013, thus giving the Defence more than 30 days notice. In addition, the Chamber notes that the witness provides in his statement information about his professional education, training and experience.⁸ Furthermore, the Prosecution has submitted that some of the witness's opinions are based on his expert knowledge. Accordingly, the Chamber is satisfied that the Defence has had sufficient notice in order to be able to challenge such opinions.

9. The Chamber recalls that if the parties seek to elicit opinion evidence from fact witnesses they should also elicit the witnesses' bases for such opinions. This is particularly important and may require even more elaborate explanations, when an opinion is based on a fact witness's purported expert knowledge. Accordingly, the Chamber expects the Prosecution to elicit the factual bases for Witness Sabljica's opinions during examination-in-chief or through the tendering of the witness's statement. The Defence will then have the opportunity to test and challenge the witness's opinions,

⁷ Ibid.

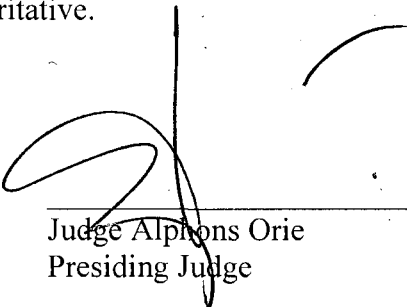
⁸ Motion, Annex B, Statement, pp. 2-10.

as well as their bases and the witness's purported expertise and methodology, during cross-examination.

III. DISPOSITION

10. For the foregoing reasons, the Chamber **DEFERS** its decision on the Motion.

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



Judge Alphons Orié
Presiding Judge

Dated this First of February 2013
At The Hague
The Netherlands

[Seal of the Tribunal]