

**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-04-75-T  
Date: 4 February 2015  
Original: English

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**IN THE TRIAL CHAMBER**

**Before:** Judge Guy Delvoie, Presiding  
Judge Burton Hall  
Judge Antoine Kesia-Mbe Mindua

**Registrar:** Mr. John Hocking

**Decision:** 4 February 2015

**PROSECUTOR**

v.

**GORAN HADŽIĆ**

**PUBLIC**

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**DECISION ON DEFENCE OMNIBUS MOTION FOR ADMISSION OF  
EVIDENCE PURSUANT TO RULE 92 *BIS***

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**The Office of the Prosecutor:**

Mr. Douglas Stringer

**Counsel for Goran Hadžić:**

Mr. Zoran Živanović

Mr. Christopher Gosnell

1. **THIS 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”) is seised of the “Defence Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *bis*”, filed on 13 May 2014 with a confidential annex (“Motion”). On 4 June 2014, the Prosecution filed its confidential “Prosecution Response to Defence Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *bis*” (“Response”). On 11 June 2014, the Defence filed its confidential “Reply to Prosecution Response to Defence Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *bis*” (“Reply”).

#### A. Submissions

2. In the Motion, the Defence requests the admission of evidence of nine witnesses pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).<sup>1</sup> In relation to seven witnesses, the Defence notes that it has not yet obtained the attestations required under Rule 92 *bis* (B) and therefore requests that the Trial Chamber provisionally admit the evidence relating to these witnesses.<sup>2</sup>

3. The Defence submits that the tendered material does not go to the acts and conduct of the accused as charged in the Indictment.<sup>3</sup> It argues that the statements of DGH-002 and DGH-004 constitute character evidence and are admissible under Rule 92 *bis* (A)(i)(e).<sup>4</sup> The Defence further argues that the material being tendered through the remaining witnesses, pursuant to Rule 92 *bis*, makes no significant reference to Hadžić’s acts and conduct.<sup>5</sup> The Defence also argues that the tendered evidence is appropriate for admission without cross-examination because the evidence: (a) is substantially corroborated;<sup>6</sup> (b) does not relate to any “critical element of the case”;<sup>7</sup> (c) in some cases includes cross-examination by the Prosecution in a previous case or consists of statements prepared by the Prosecution;<sup>8</sup> (d) primarily constitutes crime-base evidence;<sup>9</sup> or (e) constitutes contextual evidence which will be corroborated.<sup>10</sup> The Defence submits that the evidence proposed for admission is relevant to the charges in the Indictment and generally concerns character evidence or evidence heard during the Prosecution’s case, which “*prima facie* establishes its relevance”.<sup>11</sup>

<sup>1</sup> Motion, paras 1, 22.

<sup>2</sup> Motion, paras 7, 22(c), referring to DGH-002, DGH-004, DGH-062, DGH-079, DGH-090, DGH-096, and DGH-097.

<sup>3</sup> Motion, paras 1, 8, 9.

<sup>4</sup> Motion, paras 10, 17.

<sup>5</sup> Motion, para. 11.

<sup>6</sup> Motion, paras 12-13.

<sup>7</sup> Motion, para. 12.

<sup>8</sup> Motion, para. 14.

<sup>9</sup> Motion, para. 15.

<sup>10</sup> Motion, para. 16.

<sup>11</sup> Motion, para. 18.

4. The Defence submits that all of the exhibits associated with the testimony of the proposed witnesses are necessary for the understanding of the tendered statements and are relevant to the current proceedings.<sup>12</sup> The Defence argues that, in some instances, it was necessary for a full understanding of the evidence to tender prior statements as associated exhibits. In the alternative, the Defence argues that these prior statements can be evaluated, not as associated exhibits, but independently, pursuant to the criteria of Rule 92 *bis*.<sup>13</sup> The Defence argues that the multiple statements being tendered through DGH-097 are of import in assessing the witness's credibility.<sup>14</sup> Finally, the Defence submits that it is the interests of justice and judicial economy to admit the proposed evidence pursuant to Rule 92 *bis* in order to allow for "focus on the evidence of greatest importance."<sup>15</sup>

5. In its Response, the Prosecution opposes the admission of the written statements or transcripts of DGH-002, DGH-004, DGH-058, DGH-062, DGH-079, DGH-090, and DGH-097 on the grounds that the Defence has failed to meet the requirements of Rule 92 *bis* with respect to those witnesses.<sup>16</sup> In particular, the Prosecution argues that parts of the proposed Rule 92 *bis* evidence go beyond character evidence and concern Hadžić's acts and conduct as charged in the Indictment and are therefore expressly prohibited under Rule 92 *bis*.<sup>17</sup> The Prosecution further argues that some of the proposed Rule 92 *bis* evidence: (a) comprises *tu quoque* assertions;<sup>18</sup> (b) is irrelevant;<sup>19</sup> (c) is not corroborated by any other witnesses as contended by the Defence;<sup>20</sup> (d) omits relevant associated exhibits;<sup>21</sup> (e) tenders associated exhibits that are unnecessary for the understanding of a witness's testimony;<sup>22</sup> or (f) seeks admission of associated exhibits that were not introduced through previous testimony.<sup>23</sup> The Prosecution additionally argues that the credibility of some of the proposed witnesses is potentially at issue and therefore requires cross-examination.<sup>24</sup> The Prosecution does not object to the admission of the statements of DGH-096 and DGH-103 pursuant to Rule 92 *bis*.<sup>25</sup> The Prosecution requests leave to exceed the prescribed word limit given the number of issues and witnesses involved.<sup>26</sup>

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<sup>12</sup> Motion, para. 19.

<sup>13</sup> Motion, para. 19.

<sup>14</sup> Motion, para. 20.

<sup>15</sup> Motion, para. 21.

<sup>16</sup> Response, para. 1.

<sup>17</sup> Response, paras 7, 9, 11 and 23.

<sup>18</sup> Response, paras 11, 13, 16, and 22.

<sup>19</sup> Response, paras 11 and 14.

<sup>20</sup> Response, paras 17 and 19.

<sup>21</sup> Response, para. 12.

<sup>22</sup> Response, para. 24.

<sup>23</sup> Response, para. 24.

<sup>24</sup> Response, paras 18 and 23.

<sup>25</sup> Response, para. 26.

<sup>26</sup> Response, para. 2.

6. In the Reply, the Defence submits that the principle enunciated by the Prosecution that evidence of good character must be excluded as inadmissible if the conduct in question “pertains to facts and events falling within the temporal and geographic scope of the indictment”, is too broad and is derived from a confidential filing, to which the Defence does not have access.<sup>27</sup> The Defence argues that the Prosecution has referred to confidential filings on five previous occasions in this case and that this practice is unfair because the Defence is “deprived of the opportunity to prospectively apprise itself of the law and formulate its motions accordingly.”<sup>28</sup> In relation to the Prosecution’s specific objections, the Defence argues that: (a) the evidence it seeks to admit pursuant to Rule 92 *bis* does not go to the acts and conduct of the accused;<sup>29</sup> (b) none of the evidence is presented for the purpose of establishing a *tu quoque* argument;<sup>30</sup> (c) the proposed Rule 92 *bis* evidence is relevant, but any parts deemed irrelevant can be excluded at the discretion of the Trial Chamber;<sup>31</sup> (d) the evidence is corroborated by various Prosecution and Defence witnesses;<sup>32</sup> and (e) the additional exhibits proposed by the Prosecution can be admitted at the Trial Chamber’s discretion.<sup>33</sup> The Defence requests leave to exceed the prescribed word limit given the volume of material being tendered and the issues arising from the Response.<sup>34</sup>

## **B. Applicable Law**

7. Rule 92 *bis* governs admissibility of written witness statements and transcripts from previous proceedings in lieu of *viva voce* testimony. Any evidence admitted pursuant to Rule 92 *bis* must satisfy the fundamental requirements for the admission of evidence, as set out in Rule 89 (C) and (D), namely, the evidence must be relevant and have probative value, and its probative value must not be substantially outweighed by the need to ensure a fair trial.<sup>35</sup> Therefore, the Trial Chamber must find that the evidence contained in the proposed transcripts or statements are relevant to the charges in the Indictment. It is for the tendering party to demonstrate the relevance and probative value of the evidence of which it seeks admission.<sup>36</sup>

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<sup>27</sup> Reply, paras 2-3.

<sup>28</sup> Reply, paras 3-4.

<sup>29</sup> Reply, paras 5-8, 15, and 30.

<sup>30</sup> Reply, paras 14, 17, and 28.

<sup>31</sup> Reply, para. 20.

<sup>32</sup> Reply, paras 20, 22, and 23.

<sup>33</sup> Reply, para. 16.

<sup>34</sup> Reply, para. 1.

<sup>35</sup> *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on Prosecution’s Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Sarajevo Municipality), 15 October 2009 (“*Karadžić* Decision”), para. 4; *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis*(C), 7 June 2002 (“*Galić* Appeal Decision”), para. 12; *Prosecutor v. S. Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s Request to Have Written Statements Admitted under Rule 92 *bis*, 21 March 2002 (“*S. Milošević* Decision”), para. 6.

<sup>36</sup> *Karadžić* Decision, para. 4; *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 22 August 2008 (“*Lukić and Lukić* Decision”), para. 15.

8. For written evidence to be admissible pursuant to Rule 92 *bis*, it must not relate to the acts and conduct of the accused as charged in the Indictment. Furthermore, a clear distinction must be drawn between: (a) the acts and conduct of others who commit the crimes for which the accused is alleged to be responsible and (b) the acts and conduct of the accused as charged in the Indictment, which establish his or her responsibility for the acts and conduct of others.<sup>37</sup> Evidence pertaining to the latter is inadmissible under Rule 92 *bis* and includes evidence that seeks to establish that the accused:

- (a) committed (that is, that he or she personally physically perpetrated) any of the crimes charged;
- (b) planned, instigated, or ordered the crimes charged;
- (c) otherwise aided and abetted those who actually did commit the crimes in the planning, preparation, or execution of those crimes;
- (d) was a superior to those who actually committed the crimes;
- (e) knew or had reason to know that those crimes were about to be or had been committed by his or her subordinates; or
- (f) failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.<sup>38</sup>

9. Even if a written statement or the transcript of prior testimony is admissible pursuant to Rule 92 *bis*, it is for the Trial Chamber to determine whether to exercise its discretion and admit the evidence in written form.<sup>39</sup> Pursuant to Rule 92 *bis* (A)(i), factors in favour of admission include whether the evidence: (a) is of a cumulative nature; (b) relates to relevant historical, political, or military background; (c) consists of general or statistical analysis of the ethnic composition of the population; (d) concerns the impact of crimes upon victims; (e) relates to issues of the character of the accused; or (f) relates to factors to be taken into account in determining sentence. By contrast, pursuant to Rule 92 *bis* (A)(ii), factors against admission include whether: (a) there is an overriding public interest in the evidence in question being presented orally; (b) a party objecting demonstrates that its nature and source renders it unreliable or that its prejudicial effect outweighs its probative

<sup>37</sup> *Karadžić* Decision, para. 5; *Galić* Appeal Decision, para. 9.

<sup>38</sup> *Karadžić* Decision, para. 5; *Galić* Appeal Decision, para. 10.

<sup>39</sup> *Karadžić* Decision, para. 7; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecution's Rule 92 *bis* Motion, 4 July 2006, para. 7.

value; or (c) there are any other factors that make it appropriate for the witness to attend for cross-examination.

10. The fact that the written statement goes to proof of the acts and conduct of a subordinate of the accused or of some other person for whose acts and conduct the accused is charged with responsibility is relevant to the exercise of the Trial Chamber's discretion in deciding whether the evidence be admitted in written form. Where the evidence is pivotal to the case, or where the person whose acts and conduct the written statement describes is too proximate to the accused, the Trial Chamber may find that it would not be fair to the accused to permit the evidence to be given in written form.<sup>40</sup>

11. When the evidence sought to be admitted pursuant to Rule 92 *bis* consists of a written statement, the formal requirements set out in Rule 92 *bis* (B) must be fulfilled. However, various Chambers have taken the approach that, in order to expedite the proceedings, it is permissible for a party to propose written statements for provisional admission pending their certification under Rule 92 *bis* (B).<sup>41</sup>

12. Should the Trial Chamber consider that the written evidence is admissible, the Trial Chamber may order the witness to be brought for cross-examination pursuant to Rule 92 *bis* (C) and under the conditions set out in Rule 92 *ter*. In making this determination, the Trial Chamber should always take into consideration its obligation to ensure a fair trial under Articles 20 and 21 of the Statute of the Tribunal.<sup>42</sup> Furthermore, there are a number of criteria established in the case-law of the Tribunal, which should be taken into account when making such a determination, including: (a) the cumulative nature of the evidence;<sup>43</sup> (b) whether the evidence is "crime-base" evidence;<sup>44</sup> (c) whether the evidence touches upon a "live and important issue between the parties, as opposed to a peripheral or marginally relevant issue";<sup>45</sup> and (d) whether the evidence describes the acts and conduct of a person for whose acts and conduct the accused is charged with responsibility (*i.e.*, subordinate, co-perpetrator) and how proximate the acts and conduct of this person are to the accused.<sup>46</sup> Moreover, a general factor to be taken into consideration in relation to written evidence in the form of a transcript of previous testimony is whether the witness was extensively cross-

<sup>40</sup> *Karadžić* Decision, para. 8; *Galić* Appeal Decision, para. 13.

<sup>41</sup> *Karadžić* Decision, para. 9; *Prosecutor v. 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. Martić*, Case No. IT-95-11-T, Decision on Prosecution's Motion for the Admission of Written Evidence Pursuant to Rule 92 *bis* of the Rules, 16 January 2006, para. 11.

<sup>42</sup> *Karadžić* Decision, para. 10; *Lukić and Lukić* Decision, para. 20.

<sup>43</sup> *Karadžić* Decision, para. 10; *Lukić and Lukić* Decision, para. 20.

<sup>44</sup> *Karadžić* Decision, para. 10; *Lukić and Lukić* Decision, para. 20.

<sup>45</sup> *Karadžić* Decision, para. 10; *Lukić and Lukić* Decision, para. 20, citing *S. Milošević* Decision, para. 24.

<sup>46</sup> *Karadžić* Decision, para. 10; *Galić* Appeal Decision, para. 13.

examined and whether there is a “common interest” between the party cross-examining in the previous case and the non-tendering party in the present case.<sup>47</sup>

13. In addition to the admission of a witness’s written evidence, documents accompanying the written statement or transcript which “form an inseparable and indispensable part of the testimony” can also be admitted pursuant to Rule 92 *bis*.<sup>48</sup> Not every document referred to in a witness’s written statement or transcript from a prior proceeding automatically forms an “inseparable and indispensable part” of the witness’s testimony. Rather, a document falls into this category if the witness discusses the document in his or her written statement or transcript and if that written evidence would become incomprehensible or have lesser probative value without admission of the document.<sup>49</sup>

### C. Discussion

#### 1. Preliminary matters

14. In accordance with paragraphs (C)(5) and (7) of the Practice Direction on the Length of Briefs and Motions (“Practice Direction”), the Trial Chamber will grant the Prosecution leave to file a response to the Motion that exceeds the applicable word limit due to the volume of material being tendered and the number of witnesses identified in the Motion. In addition, the Trial Chamber will grant the Defence leave to file a reply to the Response that exceeds the applicable word limit due to the number of issues raised by the Prosecution in the Response.

15. The Trial Chamber notes that the Prosecution has referred to a confidential filing not available to the Defence in support of its contention that character evidence that also references the acts and conduct of the accused as charged in the indictment is inadmissible under Rule 92 *bis* (A)(i)(e) and (f).<sup>50</sup> The Trial Chamber will not rely on this confidential filing in the present decision and notes that the Defence has had ample opportunity to file further submissions on this matter as it obtained access to a public redacted version of the confidential filing on 3

<sup>47</sup> *Karadžić* Decision, para. 10; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 27.

<sup>48</sup> *Karadžić* Decision, para. 11; *Lukić and Lukić* Decision, para. 21; *Prosecutor v. D. Milošević*, Case No. IT-98-29/1-T, Decision on Admission of Written Statements, Transcripts and Associated Exhibits Pursuant to Rule 92 *ter*, 22 February 2007, p. 3.

<sup>49</sup> *Karadžić* Decision, para. 11; *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses Pursuant to Rule 92 *ter*, 9 July 2008, para. 15.

<sup>50</sup> *See* Response, fns. 5-6.

September 2014.<sup>51</sup> The Trial Chamber therefore finds that, in the present circumstances, the Defence has not been prejudiced by the Prosecution's reference to the confidential filing.

16. In relation to some witnesses, the Defence has not yet obtained the attestations required under Rule 92 *bis* (B).<sup>52</sup> Should the Trial Chamber find it appropriate to admit the evidence of these witnesses under Rule 92 *bis*, the Trial Chamber will set a deadline for obtaining attestations that meet the requirements of Rule 92 *bis* (B), which states, *inter alia*, that the person making the statement must confirm that the contents of the written statement are "true and correct to the best of the person's knowledge and belief", and provisionally admit the statements and associated exhibits relating to these witnesses until such attestations are provided.

## 2. Individual witnesses

17. DGH-002: The Defence submits that DGH-002's statement is tendered as character evidence, a purpose specifically foreseen under Rule 92 *bis* (A)(i)(c).<sup>53</sup>

18. The Prosecution submits that DGH-002's statement concerns the acts and conduct of the accused as charged in the Indictment as, in its view, the Defence's own submission indicates that the proposed evidence goes to Hadžić's "non-discriminatory attitude" towards non-Serbs.<sup>54</sup> The Prosecution also raises concerns over DGH-002's reliability considering that Hadžić was DGH-002's ultimate superior.<sup>55</sup> The Prosecution submits that DGH-002's evidence is not appropriate for admission without cross-examination.<sup>56</sup>

19. In the Reply, the Defence argues that "*mens rea* is the state of mind with which the *actus reus* of a crime is performed"<sup>57</sup> and evidence of an accused's non-discriminatory attitude has in previous cases "been categorised as relating to character, rather than *mens rea*, even where they appear to have been displayed during the Indictment period, as long as they do not pertain directly to the purpose with which an *actus reus* is performed."<sup>58</sup> The Defence submits that the statements attributed to Hadžić by DGH-002 are not closely linked to any specific "crime-event" charged in

<sup>51</sup> *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-A, Decision on Prosecution Motion Requesting Public Redacted Version of the Trial Chamber's Decision of 21 July 2011, 3 September 2014.

<sup>52</sup> Motion, para. 22(c), referring to DGH-002, DGH-004, DGH-062, DGH-079, DGH-090, DGH-096, and DGH-097. The Trial Chamber notes that DGH-096 seems to have the proper attestation. See Rule 65 *ter* number 1D03235.

<sup>53</sup> Motion, para. 10.

<sup>54</sup> Response, para. 7.

<sup>55</sup> Response, para. 8, citing Rule 65 *ter* number 1D03026 (confidential), p. 2.

<sup>56</sup> Response, para. 8.

<sup>57</sup> Reply, para. 6, referring to *Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 313; *Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Judgement, 27 November 2007, para. 266.

<sup>58</sup> Reply, para. 6, referring to *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-T, Judgement, Vol. II, paras 944-945. 952.



the Indictment.<sup>59</sup> The Defence argues that the general comments made by DGH-002 no more relate to the acts of Hadžić than the evidence of Prosecution Rule 92 *bis* witnesses GH-035, GH-092, GH-096, or GH-139.<sup>60</sup>

20. The Trial Chamber finds that DGH-002's proposed written evidence, Rule 65 *ter* number 1D03026, relates to the acts and conduct of the accused as charged in the Indictment. In particular, the evidence relates to the treatment of non-Serbs in the SBWS and Hadžić's attitude toward non-Serbs during the Indictment period. Due to the nature of the witness's evidence, the witness should appear for cross-examination. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, has probative value, and is therefore appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

21. DGH-004: The Defence submits that the statement of DGH-004 is relied upon as character evidence, a purpose specifically foreseen under Rule 92 *bis* (A)(i)(e).<sup>61</sup>

22. The Prosecution submits that the evidence concerns the acts and conduct of the accused as charged in the Indictment, and is not purely character evidence.<sup>62</sup> The Prosecution asserts that the evidence of DGH-004 relates to "live and important issues" in the case regarding the maltreatment of non-Serbs in the SBWS, as well as Hadžić's knowledge and intent regarding the crimes alleged in the Indictment, in particular whether Hadžić publicly warned against the harming of Croats. The Prosecution submits that DGH-004's evidence should not be admitted without cross-examination.<sup>63</sup>

23. The Defence replies that a "contested issue", even one falling within the "temporal and geographic scope of the Indictment", is not a factor militating against the admission of evidence pursuant to Rule 92 *bis*.<sup>64</sup> The Defence argues that "maltreatment of non-Serbs in the SBWS" is an issue indistinguishable from "crime-base" evidence, which is a well-recognised factor in favour of the admission of evidence pursuant to Rule 92 *bis*.<sup>65</sup> In relation to Hadžić's "knowledge" of any crime alleged in the Indictment, the Defence disputes the presence of such evidence in DGH-004's statement and asserts that the Prosecution wishes to cross-examine the witness, not to challenge the

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<sup>59</sup> Reply, para. 7.

<sup>60</sup> Reply, para. 8, *referring to* Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *bis* and Prosecution Motion to Admit GH-139's Evidence Pursuant to Rule 92 *bis*, 24 January 2013, paras 32-33, 61-62, 63-64, and 69-70 ("Decision on Prosecution Omnibus 92 *bis* Motion").

<sup>61</sup> Motion, para. 10.

<sup>62</sup> Response, para. 9.

<sup>63</sup> Response, para. 10, *referring to* Decision on Prosecution Omnibus 92 *bis* Motion, para. 20.

<sup>64</sup> Reply, para. 10.

<sup>65</sup> Reply, para. 11, *referring to* Decision on Prosecution Omnibus 92 *bis* Motion, paras 39, 45, 47, 49, 53, 55, and 59.

reliability of the witness's statement, but rather to elicit further information that it hopes will be incriminating.<sup>66</sup>

24. The Trial Chambers finds that DGH-004's proposed written evidence, Rule 65 *ter* number 1D03028, relates to the acts and conduct of the accused as charged in the Indictment and the issue of the treatment of non-Serbs in the SBWS and Hadžić's attitude toward non-Serbs during the Indictment period. Due to the nature of the witness's evidence, the witness should appear for cross-examination. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, has probative value, and is therefore appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

25. DGH-058: The Defence submits that DGH-058 was cross-examined by the Prosecution in a previous case and the witness's evidence is sufficiently reliable to forego cross-examination in the present proceedings.<sup>67</sup> The Defence tenders the totality of DGH-058's testimony, along with all associated exhibits which are necessary for the understanding of the witness's prior testimony.<sup>68</sup>

26. The Prosecution submits that some of the proposed Rule 92 *bis* evidence of DGH-058 concerns the acts and conduct of Hadžić as leader of the Serbian National Council (SNC) while large portions consist of *tu quoque* evidence and other irrelevant topics, such as the voting system in the Croatian parliament.<sup>69</sup> The Prosecution asserts that the Defence has omitted several associated exhibits admitted during DGH-058's prior testimony, which are inseparable and indispensable parts of the witness's evidence.<sup>70</sup> The Prosecution submits that the tendered testimony and statements of DGH-058 are not admissible pursuant to 92 *bis* without cross-examination.<sup>71</sup>

27. In the Reply, the Defence argues that DGH-058's proposed Rule 92 *bis* evidence addresses relevant background and contextual issues, which will be subject to cross-examination through other Defence witnesses.<sup>72</sup> The Defence further submits that the evidence is not adduced as *tu quoque* evidence, but is instead proffered to provide "a fuller picture of the nature of the political crisis that forms the backdrop of many statements by Serb political leaders, including Mr. Hadžić."<sup>73</sup> The Defence asserts that, regarding the evidence relating to the SNC, the allegedly subordinate persons, or group, are no more proximate to Hadžić than the actions of those described

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<sup>66</sup> Reply, para. 12.

<sup>67</sup> Motion, para. 14.

<sup>68</sup> Motion, para. 19.

<sup>69</sup> Response, para. 11, *referring to* Rule 65 *ter* number 1D02956, T.2166-2167.

<sup>70</sup> Response, para. 12, *referring to* Rule 65 *ter* numbers 01939.02-01939.08.

<sup>71</sup> Response, para. 11.

<sup>72</sup> Reply, para. 13, *in. 17, referring to* DGH-009, DGH-016, DGH-097, and DGH-102.

<sup>73</sup> Reply, para. 14.

in statements admitted pursuant to Rule 92 *bis* during the Prosecution case.<sup>74</sup> The Defence does not object to the admission of the exhibits it inadvertently omitted from the list of DGH-058's associated exhibits in the Motion.<sup>75</sup>

28. The Trial Chamber finds that DGH-058's proposed evidence goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. DGH-058's prior testimony in the *Dokmanović* case, Rule 65 *ter* numbers 1D02956 and 1D02953, relates to relevant political and historical background, including the relationship between the Croatian Democratic Union (HDZ) and the Social Democratic Party of Croatia (SDP), and also the role of the SNC. The Trial Chamber notes that, while DGH-058 states that the SNC was a moderate group, he does not refer to or make any assessment of Hadžić in this regard and therefore does not give evidence in relation to Hadžić's acts and conduct as charged in the Indictment.<sup>76</sup> In addition, DGH-058 was cross-examined extensively by the Prosecution in the *Dokmanović* case regarding the nature and goals of the SNC.<sup>77</sup> The Trial Chamber will therefore not require DGH-058's appearance for cross-examination. The Trial Chamber finds that the tendered associated exhibits, Rule 65 *ter* numbers 1D02955,<sup>78</sup> 1D02954,<sup>79</sup> and 01939.02 through 01939.08<sup>80</sup> form an inseparable and indispensable part of DGH-058's prior testimony. The Trial Chamber notes that Rule 65 *ter* number 01930.04 is already admitted into evidence as P3214. The Trial Chamber finds that Rule 65 *ter* numbers 1D02953, 1D02954, 1D02955, 1D02956, 01939.02, 01939.03, 01939.05, 01939.06, 01939.07, and 01939.08 have sufficient indicia of reliability, are relevant, have probative value, and are therefore appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

29. DGH-062: The Defence submits that DGH-062's statement was recorded by the Prosecution and offers "contextual evidence of general relevance to the case, which will be corroborated (to the extent that it is contested) by significant in-court testimony."<sup>81</sup>

30. The Prosecution opposes the admission of DGH-062's evidence pursuant to Rule 92 *bis* or "any other Rule".<sup>82</sup> It submits that the material almost exclusively consists of *tu quoque* claims and that the Defence has failed to show how the tendered material refutes a specific allegation falling within the scope of the Indictment.<sup>83</sup> The Prosecution further argues that parts of the proposed

<sup>74</sup> Reply, para. 15, referring to the evidence of GH-035, GH-092, GH-096, and GH-139.

<sup>75</sup> Reply, para. 16.

<sup>76</sup> See Rule 65 *ter* number 1D02953, T. 2266.

<sup>77</sup> See Rule 65 *ter* number 1D02953, T. 2264-2282.

<sup>78</sup> See *Prosecutor v. Dokmanović*, Case No. IT-95-13a-T, 23 April 1998, T. 2154-2155.

<sup>79</sup> See *Prosecutor v. Dokmanović*, Case No. IT-95-13a-T, 24 April 1998, T. 2264.

<sup>80</sup> See *Prosecutor v. Dokmanović*, Case No. IT-95-13a-T, 24 April 1998, T. 2266-2283, 2286-2287.

<sup>81</sup> Motion, paras 14, 16.

<sup>82</sup> Response, para. 13.

<sup>83</sup> Response, paras 13, 16.

evidence are incomplete,<sup>84</sup> based on what the witness saw on television,<sup>85</sup> entirely irrelevant,<sup>86</sup> or motivated by antipathy towards Franjo Tudman.<sup>87</sup> The Prosecution states that the extremely lengthy material attached to DGH-062's statement, consisting of statistical analysis and population surveys, is not appropriate for introduction through a fact witness, with no evidence of expertise on the part of DGH-062.<sup>88</sup>

31. In the Reply, the Defence submits that DGH-062's proposed Rule 92 *bis* evidence is not presented for the purpose of establishing *tu quoque* arguments.<sup>89</sup> The Defence argues that the witness offers relevant contextual information, which is useful in understanding, *inter alia*: (i) the meaning of the term "Ustasha"; (ii) the fears amongst Serbs; (iii) the difficulty of reaching political compromise; (iv) the extent and nature of forcible displacement of Serbs within Croatia and the attitude of those displaced; and (v) the inferences to be drawn from a reluctance on the Serb side to disarm in the face of ceasefire violations, territorial aggression, and massacres.<sup>90</sup> The Defence submits that, although DGH-062's proposed Rule 92 *bis* evidence is relevant to the fears that prevailed from 1991-1993, the Trial Chamber has the discretion to redact or excise any portions it deems irrelevant.<sup>91</sup> The Defence further submits that the associated exhibits drafted by DGH-062 are an integral part of the witness's statement and provide important historical context.<sup>92</sup> DGH-062's expertise is based on his experience as a sociology professor and an independent writer and researcher.<sup>93</sup> The Defence submits that Rule 65 *ter* numbers 1D02880, 1D02881, 1D02877, and 1D02878 are documents that rebut Prosecution allegations that Serbs were repatriated into the RSK as a matter of discriminatory policy, and will be corroborated by DGH-117, DGH-016, and DGH-044.<sup>94</sup>

32. The Trial Chamber finds that DGH-062's proposed written evidence goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. However, the Trial Chamber does not consider the vast majority of this proposed evidence to be relevant or probative of any allegations charged in the Indictment. The Defence is reminded to present its evidence in a specific and concentrated manner.<sup>95</sup> To the extent that the Defence submits that DGH-062's proposed written evidence rebuts Prosecution allegations that Serbs were repatriated into the

<sup>84</sup> Response, para. 14, *referring to* Rule 65 *ter* number 1D02874, para. 13.

<sup>85</sup> Response, para. 14, *referring to* Rule 65 *ter* number 1D02874, para. 11.

<sup>86</sup> Response, para. 14, *referring to* Rule 65 *ter* number 1D02874, paras 24-31.

<sup>87</sup> Response, para. 14, *referring to* Rule 65 *ter* number 1D02874, paras 3-4, 7-9.

<sup>88</sup> Response, para. 15, *referring to* Rule 65 *ter* number 1D02874, para. 32.

<sup>89</sup> Reply, para. 17.

<sup>90</sup> Reply, para. 18.

<sup>91</sup> Reply, para. 20.

<sup>92</sup> Reply, para. 21.

<sup>93</sup> Reply, para. 21, *referring to* Rule 65 *ter* number 1D02874, paras 3-4.

<sup>94</sup> Reply, para. 22.

<sup>95</sup> Order on Guidelines for Procedure for Conduct of Trial, 4 October 2012, Annex, para. 6.

RSK as a matter of discriminatory policy, such evidence cannot be excised in a precise manner from the voluminous and vague material contained in Rule 65 *ter* numbers 1D02877, 1D02878, 1D02880, and 1D02881, largely dealing with matters outside the scope of the Indictment and presented without any reasoning regarding its relevance to charges in the Indictment. Considering that evidence rebutting allegations that Serbs were repatriated into the RSK as part of a discriminatory policy will also be brought by DGH-117, DGH-016, and DGH-044, the Trial Chamber finds that no prejudice will be incurred by the Defence if such evidence is not brought through DGH-062 pursuant to Rule 92 *bis*. The Trial Chamber finds that the tendered evidence is not appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

33. DGH-079: The Defence submits that the proposed Rule 92 *bis* evidence of DGH-079 offers “contextual evidence of general relevance to the case which will be corroborated (to the extent that it is contested) by significant in-court testimony.”<sup>96</sup>

34. The Prosecution submits that none of the Rule 92 *bis* (A)(i) factors support admission of DGH-079’s statement pursuant to Rule 92 *bis*.<sup>97</sup> The Prosecution argues that the core issue in the statement—the detention and treatment of non-Serb detainees at the Beli Manastir prison—is not corroborated by the evidence of other Defence witnesses, as contended by the Defence.<sup>98</sup> The Prosecution further argues that the manner in which DGH-079 was removed from his employment and his conviction *in absentia* of an unspecified crime, raise issues as to his credibility as a witness and consequently should be made available for cross-examination.<sup>99</sup> The Prosecution asserts that DGH-079’s proposed Rule 92 *bis* statement contains a number of generalisations and ambiguities which further exemplify the need for cross-examination.<sup>100</sup>

35. In the Reply, the Defence submits that the general issue addressed by the witness’s testimony is the functioning of the criminal justice system in SBWS, in particular in Beli Manastir, and that this testimony can be corroborated in many material respects by DGH-016, DGH-019, and DGH-085.<sup>101</sup> The Defence argues that DGH-079’s proposed Rule 92 *bis* statement is not ambiguous and, in any event, any ambiguity goes to the weight and not the admissibility of the evidence.<sup>102</sup> In relation to the credibility of DGH-079, the Defence argues that many Serbs were fired from their Croatian government positions in 1990 and early 1991 and that this does not constitute a basis for undermining the reliability of such individuals. The Defence further argues that, regarding the *in*

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<sup>96</sup> Motion, para. 16.

<sup>97</sup> Response, para. 17.

<sup>98</sup> Response, para. 17.

<sup>99</sup> Response, para. 18.

<sup>100</sup> Response, para. 18.

<sup>101</sup> Reply, para. 23.

<sup>102</sup> Reply, para. 24.

*absentia* criminal proceedings, these proceedings were reopened and a decision was made not to prosecute.<sup>103</sup>

36. The Trial Chamber finds that DGH-079's proposed written evidence, Rule 65 *ter* number 1D02400, goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. DGH-079 states that he did not know Hadžić or have any dealings with him. The Trial Chamber considers that the witness's proposed evidence pertains to the functioning of the SBWS judicial system. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value. The Trial Chamber considers, however, that the witness should appear for cross-examination pursuant to Rule 92 *bis* (C). During cross-examination, any issues regarding the witness's credibility can be addressed. Further, DGH-079's knowledge of the functioning of the SBWS judicial system, a live issue in this case, can be explored in greater detail. The Trial Chamber finds that the tendered evidence is appropriate for admission pursuant to Rules 89(C), 92 *bis* (C), and 92 *ter*.

37. DGH-090: The Defence submits that the proposed Rule 92 *bis* evidence of DGH-090 offers "contextual evidence of general relevance to the case which will be corroborated (to the extent that it is contested) by significant in-court testimony."<sup>104</sup>

38. The Prosecution submits that the majority of the information contained in the Defence's Rule 65 *ter* witness summary is absent from DGH-090's proposed Rule 92 *bis* statement and that the associated exhibits should also be excluded. The Prosecution argues that Rule 65 *ter* numbers 1D02197 and 1D02463 are not referenced in the proposed statement and have no discernible connection to DGH-090. The Prosecution further argues that the information contained in the proposed Rule 92 *bis* statement is uncorroborated by the expected testimony of the Defence's other witnesses.<sup>105</sup> The Prosecution asserts that admission of DGH-090's evidence without cross-examination would be prejudicial to the Prosecution because DGH-090 is likely to have significant evidence about live and important issues in the case, in particular, events in Vukovar and the relationship between the SAO SBWS Government, the Territorial Defence (TO), and the Yugoslav People's Army (JNA), evidence which is not cumulative or peripheral.<sup>106</sup>

39. In the Reply, the Defence clarifies that it in fact wishes to tender DGH-090's prior testimony in the *Dokmanović* case, Rule 65 *ter* number 1D03124, as the witness's proposed Rule 92 *bis* evidence. The Defence requests admission of DGH-090's statement, Rule 65 *ter* number

<sup>103</sup> Reply, para. 25, referring to Rule 65 *ter* number 1D02400, p. 2.

<sup>104</sup> Motion, para 16.

<sup>105</sup> Response, para. 19.

<sup>106</sup> Response, paras 20-21.

1D03123, as an associated exhibit, and withdraws its request to tender Rule 65 *ter* numbers 1D02197 and 1D02463.<sup>107</sup> In relation to the substance of DGH-090's evidence, the Defence argues that the witness previously testified that he was "not acquainted with the set up" of the SAO SBWS Government ministries. The Defence asserts that the Prosecution is merely speculating that DGH-090 may possess other incriminating evidence and argues that this speculation is unfounded and not a factor in determining the admission of evidence pursuant to Rule 92 *bis*.<sup>108</sup>

40. The Trial Chamber finds that DGH-090's prior testimony, Rule 65 *ter* number 1D03124, goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The proposed evidence is relevant as it relates to the functioning of the JNA, the TO, and civilian authorities in the Vukovar area during the Indictment period. The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, and has probative value. The Trial Chamber determines that the tendered associated exhibit, namely DGH-090's witness statement exhibited in the *Dokmanović* case, Rule 65 *ter* number 1D03123, forms an inseparable and indispensable part of the testimony.<sup>109</sup> The Trial Chamber considers, however, that due to the fact that the witness's evidence concerns live and important issues in this case such as the activities of the Petrova Gora detachment and the nature of its relationship with the SBWS Government and the JNA, the witness should appear for cross-examination pursuant to Rule 92 *bis* (C). The Trial Chamber finds that the tendered evidence is appropriate for admission pursuant to Rules 89(C), 92 *bis* (C), and 92 *ter*.

41. DGH-096: The Defence submits that DGH-096's previous testimony and statement constitute primarily "crime-base evidence", which favours its admission pursuant to Rule 92 *bis* without cross-examination.<sup>110</sup>

42. The Prosecution does not object to the admission of DGH-096's evidence pursuant to Rule 92 *bis*.<sup>111</sup>

43. The Trial Chamber finds that DGH-096's prior testimony in the *Dokmanović* case, Rule 65 *ter* number 1D03363, is relevant to the charges in the Indictment, in particular, events in Vukovar in November 1991, and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The witness's evidence is cumulative in nature<sup>112</sup> and is crime-based. The Trial Chamber determines that DGH-096's witness statement, tendered as an associated

<sup>107</sup> Reply, para. 26

<sup>108</sup> Reply, para. 27, referring to Rule 65 *ter* number 1D03124, T. 2379-2380.

<sup>109</sup> See *Prosecutor v. Dokmanović*, Case No. IT-95-13a-T, 27 April 1998, T. 2352.

<sup>110</sup> Motion, para. 15.

<sup>111</sup> Response, para. 26.

exhibit, Rule 65 *ter* number 1D03235, forms an inseparable and indispensable part of DGH-096's prior testimony in the *Dokmanović* case.<sup>113</sup> The Trial Chamber will order the Defence to provide the BCS original of Rule 65 *ter* number 1D03235 bearing the witness's signature, or if unavailable, a new, signed attestation meeting the requirements of Rule 92 *bis* (B). The Trial Chamber finds that the tendered evidence has sufficient indicia of reliability, is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *bis*.

44. *DGH-097*: The Defence submits that the proposed Rule 92 *bis* evidence of DGH-097 offers "contextual evidence of general relevance to the case which will be corroborated (to the extent that it is contested) by significant in-court testimony."<sup>114</sup>

45. The Prosecution submits that the majority of DGH-097's previous testimony in the *Dokmanović* case, Rule 65 *ter* number 1D03139, is *tu quoque* falling outside the scope of the Indictment and should therefore be denied admission under Rule 92 *bis*.<sup>115</sup> The Prosecution further submits that the Defence's tendering of three written statements of DGH-097 as proposed associated exhibits deviates from the Trial Chamber's rule on tendering a single Rule 92 *bis* statement.<sup>116</sup> The Prosecution also argues that Rule 65 *ter* number 1D03138 does not contain any additional information than what is already contained in Rule 65 *ter* number 1D03139 and is therefore unnecessary for the understanding of the Rule 92 *bis* statement. The Prosecution also opposes the admission of Rule 65 *ter* number 1D03140, which was not introduced during DGH-097's prior testimony in the *Dokmanović* case.<sup>117</sup> The Prosecution asserts that there is a reference to Hadžić in Rule 65 *ter* number 1D03401,<sup>118</sup> which may relate to his acts and conduct and consequently warrants cross-examination.<sup>119</sup> In addition, reference to "false reports" against DGH-097 in Rule 65 *ter* 1D03401 raises issues of the witness's credibility, which further warrants cross-examination.<sup>120</sup>

46. In the Reply, the Defence argues that the DGH-097's evidence is not produced to prove the false defence of *tu quoque* and instead provides relevant contextual information explaining, *inter alia*, how and why violence erupted in Eastern Slovenia in 1991; the reason why village guards were set up; the existence of a military administration in Vukovar; and the reasons for the political

<sup>112</sup> See e.g., evidence of Emil Čakalić.

<sup>113</sup> See *Prosecutor v. Dokmanović*, Case No. IT-95-13a-T, 25 May 1998, T. 2995.

<sup>114</sup> Motion, para 16.

<sup>115</sup> Response, para. 22.

<sup>116</sup> Response, para. 23, referring to Rule 65 *ter* Conference, 14 December 2011, T.18.

<sup>117</sup> Response, para. 24.

<sup>118</sup> The Trial Chamber notes that the signed BCS original of this document and its English translation are found under Rule 65 *ter* number 1D03401.1. The Trial Chamber will hereafter only refer to 1D03401.1.

<sup>119</sup> Response, para. 23, referring to Rule 65 *ter* number 1D03401, paras 6-7.

<sup>120</sup> Response, para. 23, referring to Rule 65 *ter* number 1D03401, para. 8.



rhetoric of the time.<sup>121</sup> The Defence argues that multiple statements are necessary as the Defence has no capacity to “amalgamate” a new statement and wishes to preserve the verbatim record of DGH-097’s prior testimony. The Defence requests, at the very least, that the Trial Chamber admit DGH-097’s prior testimony and his 2014 statement. The Defence submits that Rule 65 *ter* number 1D03138 could be admitted as an associated exhibit to DGH-097’s prior testimony.<sup>122</sup> In relation to any possible evidence going to the acts and conduct of the accused, the Defence submits that the witness makes clear that his only interactions with Hadžić occurred after the Indictment period.<sup>123</sup>

47. The Trial Chamber finds that DGH-097’s prior testimony in the *Dokmanović* case, Rule 65 *ter* number 1D03139, goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The proposed evidence relates to relevant historical and political events in Vukovar during the Indictment period. The Trial Chamber finds that the witness statement exhibited in the *Dokmanović* case, Rule 65 *ter* number 1D03138<sup>124</sup> forms an inseparable and indispensable part of the testimony. The Trial Chamber will not, however, admit DGH-097’s witness statement of May 1996, Rule 65 *ter* number 1D03140, as it is not an exhibit associated with the witness’s prior testimony in the *Dokmanović* case and does not provide any additional or new information. Rule 65 *ter* number 1D03401.1 is a new statement created in 2014 that reiterates information found in DGH-097’s prior testimony in the *Dokmanović* case and contains some additional information at paragraph seven, which is specific to the present proceedings. In paragraph seven, DGH-097 notes his “official contacts” with Hadžić during the Indictment period. Considering DGH-097 does not provide any further details regarding these “official contacts”, the Trial Chamber finds that this paragraph does not amount to evidence of the acts and conduct of the accused as charged in the Indictment. Rule 65 *ter* number 1D03401.1 is accordingly appropriate for admission pursuant to Rule 92 *bis*. However, DGH-097’s reference to “false reports” made against him to the State Prosecutor’s Office of Republic of Croatia raises the spectre of credibility issues that would benefit from exploration during cross-examination. The Trial Chamber accordingly finds that Rule 65 *ter* numbers 1D03138, 1D03139, and 1D03401.1 have sufficient indicia of reliability, are relevant, have probative value, and are therefore appropriate for admission pursuant to Rules 89(C), 92 *bis* (C), and 92 *ter*.

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<sup>121</sup> Reply, para. 28.

<sup>122</sup> Reply, para. 29.

<sup>123</sup> Reply, para. 30, referring to Rule 65 *ter* number 1D03401.1, para. 7.

<sup>124</sup> See *Prosecutor v. Dokmanović*, Case No. IT-95-13a-T, 25 May 1998, T. 3002.

48. DGH-103: The Defence submits that DGH-103's previous testimony, Rule 65 *ter* number 1D02703, and statements constitute primarily "crime-base evidence", which favours its admission pursuant to Rule 92 *bis* without cross-examination.<sup>125</sup>

49. The Prosecution does not object to the admission of DGH-103's evidence pursuant to Rule 92 *bis*.<sup>126</sup>

50. The Trial Chamber finds that DGH-103's evidence is relevant to the charges in the Indictment, in particular, events in Vukovar in November 1991, and goes to proof of matters other than the acts and conduct of the accused as charged in the Indictment. The witness's evidence is also crime-based. In relation to Rule 65 *ter* numbers 1D02700, 1D02701, and 1D02702, the Trial Chamber finds that they form an inseparable and indispensable part of DGH-103's prior testimony.<sup>127</sup> The Trial Chamber notes that Rule 65 *ter* number 1D02702 is a redacted version of Rule 65 *ter* number 1D02701. The Trial Chamber finds that the Rule 65 *ter* numbers 1D02700, 1D02701, 1D02702, and 1D02703, have sufficient indicia of reliability, are relevant, have probative value, and are appropriate for admission pursuant to Rules 89(C) and 92 *bis*. The Trial Chamber notes that 1D02700 does not have an attestation meeting the requirements of Rule 92 *bis* (B); the Trial Chamber will therefore order that such an attestation be obtained before admission of the statement pursuant to Rule 92 *bis*.

#### **D. Disposition**

51. Accordingly, the Trial Chamber, pursuant to Rules 54, 92 *bis*, 92 *ter*, and 126 *bis* of the Rules and paragraphs (C)(5) and (7) of the Practice Direction hereby:

- (a) **GRANTS** the Prosecution leave to file a response to the Motion that exceeds the applicable word limit;
- (b) **GRANTS** the Defence leave to file the Reply and exceed the applicable word limit;
- (c) **GRANTS** the Motion, in part;
- (d) **ADMITS** the following into evidence pursuant to Rule 92 *bis*:
  - (i) *DGH-058*: Rule 65 *ter* numbers 1D02953, 1D02954, 1D02955, 1D02956, 01939.02, 01939.03, 01939.05, 01939.06, 01939.07, and 01939.08;

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<sup>125</sup> Motion, para. 15.

<sup>126</sup> Response, para. 26.

<sup>127</sup> See *Prosecutor v. Dokmanović*, Case No. IT-95-13a-T, 25 May 1998, T. 2969, 2972.

(e) **DECIDES** that the following evidence is appropriate for admission pursuant to Rule 92 *bis* once attestations meeting the requirements of Rule 92 *bis* (B) are provided:

(i) *DGH-096*: Rule 65 *ter* numbers 1D03235 and 1D03363;

(ii) *DGH-103*: Rule 65 *ter* numbers 1D02700, 1D02701, 1D02702, and 1D02703;

(f) **DECIDES** that the following evidence is appropriate for admission, if the provisions set forth under Rule 92 *ter* have been fulfilled when the witnesses give evidence in these proceedings:

(i) *DGH-002*: Rule 65 *ter* number 1D03026 (under seal);

(ii) *DGH-004*: Rule 65 *ter* number 1D03028 (under seal);

(iii) *DGH-079*: Rule 65 *ter* number 1D02400 (under seal);

(iv) *DGH-090*: Rule 65 *ter* numbers 1D03123 and 1D03124;

(v) *DGH-097*: Rule 65 *ter* numbers 1D03138 (under seal), 1D03139 (under seal), and 1D03401.1 (under seal);

(g) **DENIES** admission of the tendered written evidence of *DGH-062*;

(h) **ORDERS** the Defence—by no later than 4 March 2015—to upload to eCourt the original signature copy of Rule 65 *ter* number 1D03235, or obtain a new, signed attestation, in accordance with the requirements of Rule 92 *bis* (B), and to file a notice on the official record of the proceedings when it has done so;


(i) **ORDERS** the Defence—by no later than 4 March 2015—to obtain a new, signed attestation, in accordance with the requirements of Rule 92 *bis* (B), for Rule 65 *ter* number 1D02700 and to file a notice on the official record of the proceedings when it has done so;

(j) **ORDERS** the Prosecution—by no later than 4 March 2015—to upload to and release in eCourt a public redacted version of each of the under seal written statements or transcripts admitted, or found appropriate for admission, in this decision and to file a notice on the official record of the proceedings when it has done so, after which the public redacted versions shall be deemed admitted into evidence; and

(k) **INSTRUCTS** the Registry to take all necessary measures to implement this decision.

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

Done this fourth day of February 2015,  
At The Hague,  
The Netherlands.



Judge Guy Delvoic  
Presiding

**[Seal of the Tribunal]**