

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-09-92-T

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Date Filed: 25 June 2013

THE PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DEFENCE RESPONSE TO PROSECUTION RULE 92TER MOTION:
DEAN MANNING (RM295)**

The Office of the Prosecutor:

Mr. Dermot Groome
Mr. Peter McCloskey

Counsel for the Accused:

Mr. Branko Lukić
Mr. Miodrag Stojanović

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The Accused, **RATKO MLADIĆ**, by and through his counsel of record, hereby files the instant Response Brief and states as follows:

I. INTRODUCTION

1. On 11 June 2013 the Prosecution filed their “**PROSECUTION RULE 92TER MOTION: DEAN MANNING (RM295)**” seeking the admission of: a) *Annex A* - excerpts of Manning’s *Karadzic* testimony (“Karadzic transcript”) and excerpts of Manning *Popovic et al.* testimony (“Popovic transcript”) as well as b) 8 associated Exhibits (*Annex B*), pursuant to Rule 92ter (hereinafter “Prosecution Motion”)

2. The instant Response will address the Prosecution Motion, and is brought timely within the time period specified by the appropriate Rules and Practice Direction. It is filed in Public, as the Prosecution Motion was likewise filed.

3. For the reasons enumerated herein the Defence gives notice that it objects to the Prosecution Motion, and the same should be denied in its entirety. Insofar as portions of the offered testimony are inappropriate expert in nature and should be barred. Further portions of the evidence are of such significance to the case against Mr. Mladic it should be led *viva voce*. The Defence reserves the right to raise additional objections during the examination of this Witness in Direct that may arise from similar issues.

II. SUBMISSION

A. Preference of the Chamber to Receive Written Statements

4. The Trial Chamber in the instant case has stated a preference for receiving Rule 92ter testimony in the form of traditional ICTY statements, and indeed issued a guidance to this effect.

5. The Prosecution, of late in a majority of their filings, while acknowledging the guidance issued by the Chamber, nonetheless insists on seeking transcripts instead of ICTY statements to be introduced under Rule 92ter.

6. Again we have a situation where the Chamber has issued a “guidance” that is not binding upon the Prosecution, and thus the protections that were envisioned of the Defence right to a fair trial under the “guidance” are nullified.

7. The Defence submits that dealing with lengthy transcript selections and associated exhibits prevents the Defence from focusing its cross-examination and rebutting the entirety of the evidence of a particular Prosecution Rule 92ter witness. This is all the more true given that the Chamber imposes limitations on the cross-examination time that is available to the Defence.

8. The Defence stresses that if the Prosecution is permitted to include this lengthy statement and the 8 exhibits, it will expand the amount of evidence that will be presented via this witness. In that case the Defence would be disadvantaged in that it would have the same amount of time for cross-examination of more items. Accordingly, in the event that the Chamber is persuaded by the Prosecution argument for tendering transcripts with exhibits without presenting them to the witness, the Defence will accordingly require significant additional time for cross-examination. At this time the Defence cannot fully estimate the same, but it is reasonable to expect that an additional 8-10 hours of cross-examination would be required to fairly allow the Defence to address all relevant points contained in the statement and challenge the 8 exhibits the Prosecution seeks to have admitted.

B. Number of Associated Exhibits

9. The Prosecution presents *Annex B* that attaches a chart summarizing Manning’s Rule 92ter Evidence. There are eight associated exhibits being tendered. This is

not in conformity with the Trial Chamber Guidance establishing seven exhibits as being the maximum number of exhibits possibly tendered by the Prosecution. More exhibits make it difficult for the Defense to adequately challenge the witness in cross-examination.

C. The Witness is Presented as an Inappropriate Pseudo Expert

10. Some of the Associated exhibits listed are inappropriate in that they purport to provide summaries second hand of what other experts concluded, drawing conclusions therefrom. This is an inappropriate method of evidence presentation that runs afoul of Rule 94bis. Those exhibits covered by this objection include all of the associated exhibits.

11. Furthermore, the proposed testimony of the witness contain significant portions that are clearly the witness purporting to draw expert conclusions without having been qualified as an expert witness. Examples of items that are subject to this objection include, but are not limited to:

- a. T.25805/19-25829/6
- b. T.25830/11-25831/5
- c. T.25835/17-20
- d. T.25836/4-9, 15-18
- e. T.18985/10-24
- f. T.18987/10-18988/2
- g. T.19001/20-19002/21
- h. T.19006/19-19007/22
- i. T.19008/1-19010/18

12. Where a party chooses to call an individual as a factual rather than an expert witness, it implicitly makes a choice to limit the witness' testimony to matters that he personally saw, heard, or experienced.¹ In the present case the witness statement goes far beyond what the witness himself factually observed, and attempts to impart highly specialized information, including resulting opinions there from, without the scrutiny that would be required under Rule 94bis. The Defense must continue to raise this objection and stresses that this particular Statement has a significant portion of the same that is subject to this objection, which is substantive in form.

¹ *Prosecutor v. Karemera, et al.* ICTR-98-44-T, Decision on the Prosecutor's Motion Opposing the Testimony of Witness DE4-30 as a Factual Witness, 16May 2007, para. 9

13. Due to the significant amounts of the proffered Tule 92ter transcript that are replete with these inappropriate pseudo-expert and second-hand expert opinions, the transcript is wholly inappropriate for submission, and should be stricken in its entirety.

III. CONCLUSION

WHEREFORE, for the foregoing arguments, the Defence respectfully **OBJECTS** to the Prosecution Motion and requests that the Chamber **DENY** the same. The Defence reserves the right to fully challenge the remaining topics through a full and proper cross-examination without limitation.

Word Count:1039

RESPECTFULLY SUBMITTED BY:



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Lead Counsel for Ratko Mladić



Miodrag Stojanović
Co-Counsel for Ratko Mladić

Dated this 25 JUNE 2013