

**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: 12 May 2014

THE PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DEFENCE MOTION PURSUANT TO RULE 92TER TO ADMIT THE WRITTEN
TESTIMONY OF SLOBODAN TUSEVLJAK**

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, respectfully submits the instant Motion pursuant to Rule 92ter of the Rules of Procedure and Evidence, and in support thereof states as follows:

I. INTRODUCTION

1. Pursuant to the Guidance previously expressed by the Trial Chamber, motions offering written statements under Rule 92ter of the Rules of Procedure and Evidence are to be filed at least 30 days before the anticipated testimony of a given witness. Witness Slobodan Tusevljak is currently scheduled to testify in June 2014 and thus the Defence hereby files the instant motion in compliance with the Chamber's guidance, and applying for the evidence of this witness to be heard pursuant to Rule 92ter. This Motion is filed publicly, as the witness does not require protective measures.

2. Herein this application is made to tender two written witness statements of the witness, with six associated exhibits. The first witness statement was given in relation to *Prosecutor v. Radovan Karadžić*, hereafter referred to as the 'Karadzic Statement'. The Karadzic Statement has been supplemented by an additional statement in preparation for the present proceedings, hereafter referred to as the 'Supplementary Statement'. At

this time the Defense estimates that the evidence-in-chief of this witness will last up to 1 hour. Both of the foregoing statements are set forth in **Public Annex A**, hereto.

3. The Defence does not otherwise seek to deviate from the Chamber's Guidelines in tendering this witness' evidence.

II. APPLICABLE LAW

4. Under Rule 92*ter* of the Rules of Procedure and Evidence (hereinafter "Rules") a Trial Chamber is permitted to admit the evidence in whole or in part in the form of a witness statement or transcripts of a proceeding before the Tribunal, under the following conditions: i) the witness is present in court; ii) the witness is available for cross-examination and any questioning by the Judges; and iii) the witness attests that the written statement or transcript accurately reflects the witness's declaration and what the witness would say if examined.¹

5. A party calling a witness pursuant to Rule 92*ter* may seek to admit into evidence documents that have been discussed by the witness in his or her witness statement of previous testimony.²

III. DISCUSSION OF ARGUMENTS

A)The Chamber Should Admit the Witness Statement

¹ Rule 92*ter* of the Rules of Procedure and Evidence.

² *Prosecutor v. Karadzic*, Case No. IT-95-5/18-T, "Decision on Prosecution's Submission regarding Additional Transcript Pages from Momcilo Mandic's Stanisic and Zupljanin Testimony for Admission into Evidence." 8 September 2010, para. 5

6. Witness Tusevljak's statement is relevant, reliable and probative, as set forth in greater detail herein below.

7. The witness will be present at trial, and thus will be able to attest to the evidence and will be available to be cross-examined by the Prosecution. Thereby the requirements of Rule 92*ter* will be fulfilled, and fairness to the Prosecution will be observed.

8. The Defence submits that due to the nature of the Witness's testimony 1 hour will be necessary in order to conduct a limited and focused direct examination of the witness to clarify, expand on, and contextualize aspects of his evidence directly relevant to the Defence case.

9. Witness Tusevljak was a Commander of the 1st Platoon in 1st Company of the 1st Sarajevo Mechanised Brigade in May 1992. Before this time he was not part of the military and had no personal weapons.

10. Witness Tusevljak's testimony is relevant to and probative of salient and material issues pertaining to the Indictment. The Defence is confident in that it will, among other things, establish the following:

- a. On 8 June 1992 the BiH forces attacked the SRK units with mortars and small arms. The Muslims set fire to 40 houses in the area using incendiary rifle grenades. A large number of women and children were killed in these attacks.³
- b. After 8 June 1992 the SRK unit only conducted defensive operations as the Muslim forces constantly attacked the SRK positions. These positions were important for protecting the Lukavica-Pale communications route.⁴

³ Karadzic Statement para. 8, 15

⁴ Karadzic Statement para. 11

- c. The area in Sarajevo under control of the SRK unit was mostly-Serb populated and no order was given to expel Muslims. Muslim civilians could move freely in the Sarajevo settlements where there was a predominately Serbian population.⁵
- d. The SRK received information that Muslim forces were making hand grenades in civilian facilities.⁶
- e. Muslim forces from the 1st Corps of the BiH army had positions in civilians areas. The SRK unit was careful not to target civilian objects in the zone of responsibility and never received any orders to attacks means of public transport.⁷
- f. The SRK unit received specific orders from the battalion commander that civilians in the part of the city under Muslim control could not become targets of attack.⁸
- g. The position of the SRK around Sarajevo meant that it was not possible for them to fire at civilians as this would have revealed their position.⁹

B)The Chamber Should Admit the Associated Exhibits

11. Each associated exhibit is directly relevant to the case, and is inseparable and indispensable to the witness's statement, and can be contextualized and explained most effectively through this witness. They constitute an essential component of the witness' evidence, and also are of importance to the Defence case, and therefore it is submitted that it is in the interests of justice that they be admitted.

12. There are a total of six Associated Exhibits to these 2 witness statements, as set out in the table that is attached at **Public Annex B**.

⁵ Supplementary Statement para. 6

⁶ Supplementary Statement para. 9

⁷ Karadzic Statement para. 18, 19, 20

⁸ Karadzic Statement para. 21

⁹ Supplementary Statement para. 12

13. The Associated Exhibits are maps on which the witness has indicated the various positions that Muslim forces and their commands were located and launched attacks.¹⁰

III. CONCLUSION

WHEREFORE, for the foregoing arguments, the Defence respectfully requests that the Chamber issue an order:

- a. Granting the Defence leave to call Slobodan Tusevljak as a witness pursuant to Rule 92*ter*.
- b. Granting the Defence leave to admit the proffered statements, (attached hereto as Annex A) under Rule 92*ter*.
- c. Granting the Defence leave to admit the list of associated exhibits, (attached hereto as Annex B) under Rule 92*ter*.

Word Count: 1005

RESPECTFULLY SUBMITTED BY:



Branko Lukić
Lead Counsel for Ratko Mladić



Miodrag Stojanović
Co-Counsel for Ratko Mladić

¹⁰ Karadzic Statement para. 8, 11, 12, 18, 25

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ANNEX A

**INTERNATIONAL CRIMINAL TRIBUNAL FOR THE PROSECUTION OF
PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF
INTERNATIONAL LAW COMMITTED IN THE TERRITORY OF THE
FORMER YUGOSLAVIA SINCE 1991**

WITNESS STATEMENT

WITNESS INFORMATION:

Last name: TU[EVLJAK

First name: Slobodan

Father's name:

Date of birth: 4 July 1964

Ethnicity: Serbian

Interview Date(s): 10 April 2013, 29 October 2013 and 23 December 2013

Interview(s) conducted by: Milenko DUNĐER, Saša LUKIĆ, Boris ZORKO,
Miodrag STOJANOVIĆ

Languages used in interview: Serbian

Signature of witness: _____

WITNESS STATEMENT

1. My name is Slobodan TU[EVLJAK. I was born on 4 July 1964 in Sarajevo, Centar municipality. I have given a statement to the ICTY for the purposes of the proceedings against Radovan KARADŽIĆ. I stand by everything that I said in that statement and I now wish to provide the following additional explanations in connection with specific questions of General MLADIĆ's defence and thus supplement my statement:
2. In paragraph 7 of the said statement, I note that my unit, i.e. the 1st Company, in which I was Platoon Commander, of the 1st Battalion of the 1st Smb /Sarajevo Mechanised Brigade/ was established in late May 1992. There was one sniper in my Platoon, and it was actually a sniper that belonged to the Battalion, according to the establishment. This also relates to paragraph 25 of the statement I have given for the purposes of the proceedings against Radovan KARADŽIĆ.
3. I note that during 1993 a soldier who handled the sniper was sent to my unit, and the Battalion and the Brigade sent him so that he would neutralise the Muslim snipers' fire. This is the sharpshooter I discuss in paragraphs 2 and 3 of the statement I have given for the purposes of the proceedings against Radovan KARADŽIĆ.
4. With regard to the incident **F4** from the Indictment against General MLADIĆ, I would like to specify the following: it was not possible to hit a tram from the *Metalka* building. A sniper as a type of weapon was not even needed in order to fire in this specific case, as it was possible to target this sector and fire at it with a regular automatic rifle.
5. With regard to paragraph 9, I hereby add the following: the casualties were mostly soldiers, members of the VRS /Army of Republika Srpska/, but I remember that there were also civilians among them. On one occasion a child was a casualty too.
6. With regard to paragraph 10, I specify the following: the settlements located in my unit's zone of responsibility were mostly Serb-populated. I am not aware that anyone expelled Muslims or that there was such a plan or order, but I know that they were leaving their homes on their own initiative. All this refers to entering the city of Sarajevo (it does not refer to those Muslims who were not allowed to leave the city due to the decisions of their leadership and the policy it pursued with regard to the Sarajevo civilians). I know that the Muslim civilians could move freely in the Sarajevo settlements with a predominantly Serbian population, whereas in those parts of the city that were under the Muslim soldiers' control the situation was quite different.
7. With regard to paragraph 11, I specify that the date in question was 12 June rather than 8 June.

8. With regard to paragraph 12, I wish to add that this was a train equipped with mortars, which moved along Vase Miskina Street and fired shells while moving, which happened occasionally.
9. From persons who had crossed over to our territory we received information that the Muslims were making hand grenades in civilian facilities – buildings.
10. I know that the veterans' organisation has a list of soldiers and civilians who were killed in Ozrenska Street in Sarajevo.
11. With regard to paragraph 18, I add that the unit of the BH Army 1st Corps that directly confronted us was billeted in the Hrasno Brdo local commune and that its commander was Enver ZORNIĆ.
12. It was simply impossible to fire at civilians because by such fire we would have revealed our positions. There was even a ban on smoking cigarettes at the positions, as any fire, including even the smallest one (such as a lighted cigarette) could jeopardise our positions, because the Muslim forces were so close to ours that my soldiers' lives would be in danger. In addition to that, the loop-holes we used were bevelled and there was no chance to score direct hits.
13. With regard to paragraph 23, I know that the central water reservoir, which supplied water to all Sarajevo settlements, was located on Mojmiro hill which was under the control of the BH Army forces during the conflict.

WITNESS ACKNOWLEDGEMENT

I have read this Statement consisting of _____ pages and it contains everything I have said and is true to the best of my knowledge and recollection. I have given this statement voluntarily and am aware that it may be used in legal proceedings before the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991, and that I may be called to give evidence in public before the Tribunal.

Signature: _____

Date: _____

**MEĐUNARODNI SUD ZA KRIVIČNO GONJENJE OSOBA ODGOVORNIH ZA TEŠKA
KRŠENJA MEĐUNARODNOG PRAVA NA TERITORIJI BIVŠE JUGOSLAVIJE OD 1991**

IZJAVA SVEDOKA

PODACI O SVEDOKU:

Prezime: TUŠEVLJAK

Ime: Slobodan

Ime oca:

Datum rođenja: 04.07.1964.

Nacionalnost: Srbin

Datum(i) razgovora: 10.04.2013., 29.10.2013. i 23.12.2013.

Razgovor (e) vodili: Milenko Dunder, Saša Lukić, Boris Zorko, Miodrag Stojanović

Jezici korišćeni u toku razgovora: srpski

Potpis svedoka: 

IZJAVA SVEDOKA

1. Zovem se Slobodan Tuševljak, rođen sam 04.07.1964. godine u Sarajevu, opština Centar. Pred MKTJ sam dao izjavu za potrebe postupka protiv Radovana Karadžića¹. Ostajem pri svemu što sam naveo u pomenutoj izjavi, i povodom iste želim da dodatno, po pojedinim pitanjima odbrane Gen. Mladića, dam sledeća pojašnjenja i dopunim svoju izjavu:
2. U paragrafu 7. pomenute izjave, napominjem da moja jedinica, odnosno 1. Bataljon 1. četa, u kojoj sam bio Komandir voda 1. Smbr je formirana krajem maja 1992. godine. U momvodu je postojao jedan snajper, i to je u stvari snajper koji je po formaciji pripadao Bataljonu. Ovo se odnosi i na paragraf 25. moje izjave koje sam dao za potrebe postupka u predmetu protiv Radovana Karadžića.
3. Navodim da je tokom 1993. godine, u moju jedinicu upućen jedan vojnik koji je rukovao snajperom, a razlog njegovog upućivanja od strane Bataljona i Brigade, je da neutrališe otvaranje vatre od strane Muslimanskih snajperista, i reč je o snajperisti o kome sam govorio u paragrafu 2. i 3. izjave date za potrebe postupka protiv R. Karadžića.
4. Povodom incidenta **F4** iz optužnice protiv Gen. Mladića, želim da preciziram sledeće: Sa „Metalke“ nije bilo moguće pogoditi tramvaj. Inače, snajper kao vid naoružanja, za otvaranje vatre u konkretnom slučaju, nije bio ni potreban, obzirom da je po tom rejonu bilo moguće gađati, odnosno otvarati vatru običnom automatskom puškom.
5. Povodom paragrafa 9. dodajem sledeće: Da su žrtve uglavnom bili borci, pripadnici VRS, ali se sjećam da je među žrtvama bilo i civila. Jednom prilikom došlo je i do stradanja jednog djeteta.
6. Preciziram u vezi paragrafa 10., da kada govorimo o naseljima koja se nalaze u zoni odgovornosti moje jedinice, su bila pretežno naseljena srpskim stanovništvom. Nemam saznanja da je bilo ko proterivao Muslimane, niti da je postojao takav plan ili nalog, već mi je poznato da su oni sami napuštali svoje domove. Ovo se sve odnosi na sam ulaz u grad Sarajevo (ne odnosi se na one Muslimane, koji nisu smijeli da napuste grad, usled odluka njihovog rukovodstva i politike koja je sprovedena u vezi civila u gradu Sarajevu). Poznato mi je da se Muslimanski civili mogli slobodno kretati u naseljima u gradu Sarajevo a u kojima je većinsko srpsko stanovništvo, dok je sasvim drugačija situacija bila u dijelovima grada koje su bile pod kontrolom Muslimanskih boraca.
7. Kod paragrafa 11. preciziram da se radi o 12. junu, a ne 8. junu.

¹ RM 65ter **1D02006**

8. Kod paragrafa 12. želim da dodam, da je u pitanju voz koji se kretao ulicom Vase Miskina, sa minobacačima, i koji je prilikom svog kretanja ispaljivao granate, što se dešavalo povremeno.
9. Od prebega smo dolazili do informacija, da Muslimani prave ručne bombe u civilnim objektima-zgradama.
10. Poznato mi je da u boračkoj organizaciji postoji spisak boraca i civila poginulih u Ozrenskoj ulici u Sarajevu.
11. Kod paragrafa 18. dodajem da je jedinica 1. Korpusa ABiH, koja je bila nama direktno suprotstavljena bila smještena u mjesnoj zajednici „Hrasno brdo“, i njen Komandant je bio Enver ZORNIĆ.
12. Otvaranje vatre po civilima je prosto bilo nemoguće, jer bi takvom vatrom otkrivali naše položaje, čak je postojala i zabrana da se na položajima puše cigarete, jer je svaka, pa i najmanja vatra (od cigarete), mogla ugroziti naše položaje jer su Muslimanske snage bile toliko blizu našim, da bi to ugrozilo živote mojih boraca. Pored toga, puškarnice koje smo mi koristili su bile zakošene, i nije bilo šanse za direktne pogotke.
13. Poznato mi je, u vezi paragrafa 23., da je centralni rezervoar vode, odakle su sva naselja u Sarajevu dobijala vodu, bio na brdu Mojnilo, koje je tokom sukoba bilo po kontrolom snaga ABiH.

POTVRDA SVEDOKA

Pročitao sam ovu izjavu od ____ strana i ona sadrži sve što sam rekao, po svom znanju i sećanju. Izjavu sam dao dobrovoljno i svestan sam da se može upotrebiti u sudskom postupku pred Međunarodnim sudom za krivično gonjenje osoba odgovornih za teška kršenja međunarodnog prava počinjena na teritoriji bivše Jugoslavije od 1991, kao i da mogu biti pozvan da javno svedočim pred Sudom.

Potpis: Tenja Delany

Datum: 10.5.2014

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ANNEX B

TUŠEVLJAK Slobodan			
Witness Statement to be admitted pursuant Rule 92ter			
Statement	Date	65ter Number	Closed Session/Under seal
Witness Statement of TUŠEVLJAK Slobodan	23 Dec 2013	RM 65ter 1D01627	-
Associated Exhibits wich the Defence seeks to tender pursuant to Rule 92ter			
Description	Paragraph Number/page in Statement	65ter Number	Doc ID (BCS/ENG)
Map of area around Zagorska Street, Sarajevo, with Serb and Muslim houses marked by witness TUŠEVLJAK, Slobodan	8/2 ⁱ	RM 65ter 1D02066 (Karadžić 65ter 1D08547)	1D08-0283
Line of disengagement after 8 June 1992, including area where Muslim forces fired mortars on 12 June 1992, marked by witness TUŠEVLJAK Slobodan	9/2 ⁱⁱ 11/2 12/2	RM 65ter 1D02066 (Karadžić 65ter 1D08548)	1D08-0284
Map of the location of the 1st Corps of the ABiH, with attack positions marked by witness TUŠEVLJAK, Slobodan	18/3 ⁱⁱⁱ	RM 65ter 1D02069 (Karadžić 65ter 1D08550)	
Map of incidents F-4 and F-10, with arrows drawn from positions of 1st platoon of the 4th company of the 2nd battalion of the 1st Sarajevo Mechanised Brigade to the scene of the alleged incidents. Markale	25/4 ^{iv}	RM 65ter 1D02068 (Karadžić 65ter 1D08549)	1D08-0285
Document containing the list of weapons of 1st Platoon of 4th Company	27/5 ^v	RM 65ter 1D02070 (Karadžić 65ter 1D06090)	1D08-0859
Document containing the list of names of soldiers of 4th Company	27/5 ^{vi}	RM 65ter 1D02071 (Karadžić 65ter 1D06091)	
Witness Statement of Slobodan TUŠEVLJAK		RM 65ter 1D02006 (Karadžić 65ter 1D05651)	1D08-0074 1D08-0080

ⁱ Statement taken in Karadzic Case IT-95-5/18-T (**RM 65ter 1D02065**)

ⁱⁱ Statement taken in Karadzic Case IT-95-5/18-T (**RM 65ter 1D02065**)

ⁱⁱⁱ Statement taken in Karadzic Case IT-95-5/18-T (**RM 65ter 1D02065**)

^{iv} Statement taken in Karadzic Case IT-95-5/18-T (**RM 65ter 1D02065**)

^v Statement taken in Karadzic Case IT-95-5/18-T (**RM 65ter 1D02065**)

^{vi} Statement taken in Karadzic Case IT-95-5/18-T (**RM 65ter 1D02065**)