

**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: 4 July 2014

THE PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DEFENCE MOTION PURSUANT TO RULE 92TER TO ADMIT THE WRITTEN
TESTIMONY OF BOŽIDAR KRNOJELAC**

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 Božidar Krnojelac is currently scheduled to testify approximately 30 days from the date of filing and thus the Defense 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 one written witness statement of the witness, without associated exhibits. At this time the Defense estimates that the evidence-in-chief of this witness will last up to 30 minutes.

3. The Defense 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

The Chamber Should Admit the Witness Statement

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

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.

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 92ter will be fulfilled, and fairness to the Prosecution will be observed. The witness is attached as Annex A and the 65ter # is set forth in Annex B.

8. The Defense submits that due to the nature of the Witness's testimony 30 minutes 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 Defense case.

9. The witness is the son of Milorad Krnojelac. Prior to the war, the witness Krnojelac was employed in the timber industry in Maglić. When conflict arose in Foča municipality the witness became engaged in the village guards and was initially attached to the unit of Vujičić, then Dragan Nikolic's intervention unit.

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

- a. The circumstances and events preceding the outbreak of conflict in Foča municipality; including the existence of ethnic divisions between the Muslim and Serb groups, the Muslim and Serb populations arming themselves, and the establishment of Crisis Staffs.³
- b. On 8 April 1992, fighting erupted between Muslim and Serbian forces.⁴
- c. The Serbian forces in Foča lacked a coherent command structure until 22 June 1992 when a brigade and tactical group was established and assumed command over the municipality.⁵

³ Statement, paras.3-6.

⁴ Statement, paras.6-7.

- d. There was no plan to expel Muslims from Foča; rather, Muslims left the municipality of their own accord.⁶
- e. There were attempts by some Serbs to remove Muslims from the KP Facility.⁷
- f. Individuals and armed groups not under the control or influence of anyone were operating in Foča.⁸

III. CONCLUSION

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

- a. Granting the Defense leave to call Božidar Krnojelac as a witness pursuant to Rule 92*ter*.
- b. Granting the Defense leave to admit the proffered statement, (attached hereto as Annex A) under Rule 92*ter*.

Word Count: 800

RESPECTFULLY SUBMITTED BY:



Branko Lukić
Lead Counsel for Ratko Mladić



Miodrag Stojanović
Co-Counsel for Ratko Mladić

⁵ Statement, paras.11-13.

⁶ Statement, para.15.

⁷ Statement, para.16.

⁸ Statement, paras.17-19.

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ANNEX A

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

WITNESS STATEMENT

WITNESS INFORMATION:

Last Name: KRNOJELAC

First Name: Božidar

Father's Name: Milorad

Date of Birth: 8 December 1967

Ethnicity: Serb

Date(s) of Interview: 8 March 2014

Interview(s) conducted by: Milenko DUNĐER, Boris ZORKO

Languages used during interview: Serbian

Witness signature: _____

WITNESS STATEMENT

1. My name is Božidar KRNOJELAC (son of Milorad) and I was born on 8 December 1967 in Foča. I am category 1 disabled war veteran. Before the war, I was employed in the timber industry in Maglić.
2. To date, I have testified in the case against my father before the ICTY.
3. With regard to events that preceded the war in the Municipality of Foča, I can say that the affair concerning the *Fočatrans* company was the introduction to inter-ethnic divisions and tensions that would ensue. The company was divided along ethnic lines and physical fights occurred, which is why the then leadership of BiH had to send a Special Forces unit of the BiH MUP from Sarajevo in order to lower the tensions. Nevertheless, the Muslim population was "given wings" to start establishing national parties in Foča, which aggravated the already tense relations between the Serbs and the Muslims.
4. The above described situation, and the echoes of the war that was starting in Croatia, led to the spontaneous arming of each of the two people in the area of Foča municipality and to their preparations for defence.
5. I know that both the Serbs and the Muslims had crisis staffs. For the Muslims, ŠAHIMPAŠIĆ was the financier, procurer of weapons and military equipment, and the most important figure in their politics, although someone else was formally the president of the SDA political party and their Crisis Staff. On the Serbian side, Miro STANIĆ was the president of the Crisis Staff.
6. Expecting that war was an option for the Muslim leadership, the Serb population in Foča started to organise themselves by forming village guards tasked with protecting the areas of Foča municipality which were predominantly inhabited by the Serb population. On 8 April 1992, the first serious and larger armed conflict took place, when the Muslims from the area of Foča municipality that had already been under their military control launched an armed attack using infantry weapons and modified artillery pieces. They opened fire at the parts of the town of Foča where the Serbs comprised a majority of the population. The Serbs responded to the attack and the fighting lasted several days.
7. Throughout the fighting described above, there was an open road to Goražde which the Muslims used to withdraw, still armed, together with the civilians. At this time several thousand Muslims abandoned Foča along this road, running away from the potential harm of the armed conflict.
8. Since our house had burned down during the fighting, my father, brothers and I went to my uncle's house and joined the village guard because my family was then in Čerezluk.
9. I can say that my brothers and I were involved in the village guards, while 10 days later the Crisis Staff appointed my father warden of the farm attached to the KP */Penal and Correctional/* Facility in Foča.

10. Initially I was in VUJIČIĆ's unit, and later we moved to Dragan NIKOLIĆ's detachment and were engaged as an intervention unit, in the most delicate situations, when the Serbian positions were penetrated, we would restore these lines on the left and right bank of the Drina. We were basically engaged in protecting Serb villages in Foča municipality, where we defended the Serb population against attacks by the Muslim forces.
11. What I do know is that until I was wounded in an operation, these Serbian forces' units of which I was part were essentially independent and that there was no single command over them and that each unit on its own defended a certain territory where there were Serbs and protected them against attacks by the Muslim forces.
12. The VRS /*Army of Republika Srpska*/ did not yet exist at that time, and the JNA /*Yugoslav People's Army*/ was still in the territory of BiH. It was only after I was wounded on 22 June 1992 during an operation at Košur, that a brigade and tactical group were formed and effectively assumed operational control over Foča and the town itself. I discovered this later when I returned from my rehabilitation and treatment.
13. I was wounded in the Tjentište area where the Muslim forces had laid a mine. The vehicle I was in was blown into the air and I was seriously wounded and left disabled. My brother was also wounded, eight members of this unit were killed, and seven were seriously wounded, missing body parts.
14. What I later discovered upon my return to Foča clearly convinces me that there was absolutely no plan to expel the Muslims from Foča, and rather that they left Foča of their own accord, as I have already explained. On several occasions the Muslims left Foča for reasons known to them and at their own request, wishing to go to the territory entirely governed by Muslim authorities.
15. With my father, who worked at the KP Facility in Foča, I only entered the perimeter where the office was and I did not enter the grounds where the prisoners were. This was because of some members of the Serbs people who, due to the anarchy in the town at this time, wanted revenge for the crimes the Muslims had committed against the Serbs. Through my involvement in Dragan NIKOLIĆ's detachment I had, in my opinion, sufficient authority to at least try to prevent individuals or armed groups that were under no one's control from realising their intentions.
16. I know that there were several groups of armed men, self-proclaimed intervention platoons in the town of Foča and that these were platoons under the command of Žaga, Gojko, Pero, Ćoso etc. The police had some kind of intervention platoon of their own and none of these were in any manner connected to the VRS, but rather functioned independently.
17. Since there was no command over all these units or groups, anyone who was "stronger" or "madder" at any point could have committed the acts which –defence attorneys previously explained to me – took place in Foča, related to the incidents of which General MLADIĆ stands accused.

WITNESS ACKNOWLEDGMENT

I have read this statement of _____ pages and it contains everything that I said, to the best of my knowledge and recollection. I have given this statement voluntarily and am aware that it may be used in court proceedings before the International 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 testify publicly 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: KRNOJELAC

Ime: Božidar

Ime oca: Milorad

Datum rođenja: 08.12.1967.

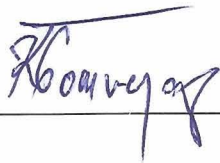
Nacionalnost: srpska

Datum(i) razgovora: 08.03.2014.

Razgovor (e) vodili: Milenko Dunder, Boris Zorko

Jezici korišćeni u toku razgovora: srpski

Potpis svedoka: _____



IZJAVA SVEDOKA

1. Zovem se Božidar (Milorada) Krnojelac, rođen sam 08.12.1967. god u Foči. Ja sam ratni vojni invalid I kategorije. Pre rata sam bio zaposlen u Magliću, u drvnoj industriji.
2. Do sada sam svedočio u predmetu koji je vođen pred MKTJ protiv mog oca.
3. Vezano za događaje koji su prethodili ratu na teritoriji opštine Foča mogu reći da je uvod u međunacionalne podjele i tenzije bila afera vezana za preduzeće "Fočatrans". Došlo je do međunacionalne podjele u preduzeću i fizičkih sukoba zbog čega je tadašnje rukovodstvo BiH bilo prinuđeno da uputi Specijalnu jedinicu MUP-a BiH iz Sarajeva koja bi smirila te tenzije. I pored toga, muslimansko stanovništvo "dobija krila" da pristupi osnivanju nacionalnih stranaka u Foči, što još više zaoštrava već napete odnose između Srba i Muslimana.
4. Uz prethodno pomenuto, kao i odjeci ratnih sukoba koji počinju u Hrvatskoj doveli su do spontanog naoružavanja oba naroda na području opštine Foča i priprema za odbranu.
5. Poznato mi je da su postojali Krizni štabovi i kod Srba i kod Muslimana. Kod Muslimana je ŠAHIMPAŠIĆ bio finansijer i nabavljač oružja i vojne opreme te ujedno i najvažnija ličnost u njihovom političkom životu iako je drugo lice bilo formalno predsednik političke stranke SDA i njihovog Kriznog štaba. Predsednik srpskog Kriznog štaba je bio Miro STANIĆ.
6. Očekujući ratnu opciju kod muslimanskog rukovodstva, srpsko stanovništvo u Foči se počelo samoorganizovati, tako što su formirali seoske straže sa zadatkom da štite prostor opštine Foča naseljen pretežno srpskim stanovništvom. Dana 8. Aprila 1992. godine dolazi do prvog ozbiljnijeg i većeg oružanog sukoba, kada su Muslimani sa prostora opštine Foča kojeg su već vojnički kontrolisali krenuli u oružani napad uz upotrebu pešadijskog oružja i modifikovanog artiljerijskog oruđa. Dejstvovali su po delovima grada Foče gde je bilo većinsko srpsko stanovništvo. Srbi su uzvratili na taj napad i borbe su trajale nekoliko dana.
7. Sve vreme trajanja ovih sukoba bila je otvorena putna komunikacija ka Goraždu, kojim putem su se povlačili Muslimani pod oružjem, zajedno sa civilima. Tada je Foču napustilo više hiljada civila Muslimana bežeći tim pravcem od mogućih posledica ratnih sukoba.
8. Kako je naša kuća tokom tih borbi izgorela, ja sam sa ocem i braćom otišao u kuću kod svog strica, i pristupio seoskoj straži, jer mi je porodica tada bila u Čerezluku.

9. Mogu da kažem da sam sa svojom braćom bio angažovan u seoskim stražama, a otac je posle 10-ak dana, od strane Kriznog štaba, postavljen za upravnika ekonomije pri KP Domu u Foči.

10. Ja sam u prvo vreme bio u jedinici kod VUJČIĆA, a kasnije smo svi prešli u odred Dragana NIKOLIĆA, i mi smo kao interventna jedinica bili angažovani, da kao u najdelikatnijim slučajevima, kada su bili probijeni srpski položaji, ponovo uspostavljamo te linije, i sa leve, i desne strane Drine. Mi smo faktički bili angažovani na zaštiti srpskih mesta na teritoriji opštine Foča, gde smo branili srpsko stanovništvo od napada muslimanskih snaga.

11. Ono što je meni poznato, dok nisam bio ranjen u jednoj akciji, je da su te jedinice srpskih snaga u kojoj sam i ja bio, bile faktički nezavisne, da nije postojala nikakva jedinstvena komanda nad njima, i da je svaka jedinica za sebe, branila određenu teritoriju gde se nalazilo srpsko stanovništvo i štitili ga od napada muslimanskih snaga.

12. U to vreme nije ni postojala VRS, nego je još uvek na prostoru BiH bila JNA. Tek posle mog ranjavanja 22.06.1992. godine prilikom neke operacije na Košuru, formira se Brigada i taktička grupa koja je faktički preuzela operativnu kontrolu nad Fočom i samim gradom, što sam saznao tek kada sam se vratio sa svoje rehabilitacije i lečenja.

13. Ranjen sam na prostorima Tjentišta, gde je bila postavljena mina od strane muslimanskih snaga, a vozilo u kome sam ja bio, je odletelo u vazduh. Tom prilikom sam bio teško ranjen, od kada sam invalid. I moj brat je bio ranjen, a osam pripadnika te jedinice je poginulo, sedam teško ranjeno, ostavši bez delova tela.

14. Ono što sam kasnije saznao, po mom povratku u Foču, jasno mi pokazuje da nije bilo nikakvog plana, da se Muslimani proteraju iz Foče, nego su oni samoinicijativno, kako sam već objasnio, napustili Foču. Lično mi je poznato da su u više navrata Muslimani napuštali Foču iz razloga koji su njima bili poznati, i na njihovo traženje želeći da idu na teritoriju gde je postojala isključiva muslimanska vlast.


15. Sa svojim ocem koji je tada radio u KP domu Foča ulazio sam u krug gde je bila kancelarija, a nisam ulazio u deo gde su bili zatvorenici. Ovo sam činio zbog pojedinih pripadnika srpskog naroda i anarhije koja je tada vladala u gradu. Ta lica su imala želju za osvetom zbog zločina koje su Muslimani vršili nad Srbima. Zbog svog učešća u odredu Dragana NIKOLIĆA, imao sam po mom mišljenju dovoljno autoriteta da barem pokušam da sprečim pojedince ili naoružane grupe koji nisu bili ni pod čijom kontrolom da ih sprečim u njihovim namjerama.

16. Znam da je postojalo više naoružanih grupa, samozvanih interventnih vodova u gradu Foči, i to su bili vodovi pod komandom ŽAGE, GOJKA, PERA, ĆOSA itd. Policija je imala nekakav svoj interventni vod i nisu imali nikakve veze sa VRS, nego su samostalno funkcionisali.

17. Kako nije bilo komande nad svim tim jedinicama ili grupama, svako je mogao u bilo kom trenutku, ukoliko bi bio „jači“ ili „luđi“, da poćini dela koja su meni advokati odbrane prethodno objasnili da su se desili u Foći, a vezano za incidente koji se stavljaju na teret Gen. Mladiću.

POTVRDA SVEDOKA

Pročitao sam ovu izjavu od 5 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: 

Datum: 04.06.2014

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FOR THE FORMER YUGOSLAVIA**

Case No. IT-09-92-T

THE PROSECUTOR

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ANNEX B

KRNOJELAC Božidar GRM141			
Witness Statement to be admitted pursuant Rule 92ter			
Statement	Date	65ter Number	Closed Session/Under seal
Witness Statement of KRNOJELAC Božidar	4 June 2014	RM 65ter 1D01653	/
NO Associated Exhibits wich the Defence seeks to tender pursuant to Rule 92ter			
Description	Paragraph Number in Statement	65ter Number	Doc ID (BCS/ENG)