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D 25363

**CASE/AFFAIRE NO.** IT-95-5/18-PT (R. KARADŽIĆ) **DATE** 08 October 2009

**FROM/DE** RAM DORAISWAMY, COURT OFFICER

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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-95-5/18-PT

Date: 8 October 2009

Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge O-Gon Kwon, Presiding Judge  
Judge Howard Morrison  
Judge Melville Baird  
Judge Flavia Lattanzi, Reserve Judge

**Registrar:** Mr. John Hocking

**Order of:** 8 October 2009

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**ORDER ON THE PROCEDURE FOR THE CONDUCT OF TRIAL**

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**Office of the Prosecutor:**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**The Accused:**

Mr. Radovan Karadžić

**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”) issues the following “Order on the Procedure for the Conduct of Trial”:

1. It is the responsibility of the Trial Chamber to ensure that the trial is conducted in a fair and expeditious manner, in accordance with Article 20(1) of the Tribunal’s Statute, and the Rules of Procedure and Evidence (“Rules”), with full respect for the rights of the Accused and due regard to the protection of victims and witnesses.
2. At the Status Conference held on 8 September 2009, the Pre-trial Judge requested the parties to make submissions on the procedure to be followed during trial by 28 September 2009.<sup>1</sup> This was reiterated in the “Order Following Status Conference” filed on 9 September 2009.<sup>2</sup> On 28 September 2009, both parties filed their submissions pursuant to the Pre-trial Judge’s request.
3. On 14 September 2009, the Accused filed the “Motion Concerning Evidence Admitted under Rule 92 *ter*”, in which he made submissions regarding the presentation of evidence pursuant to Rule 92 *ter* of the Rules. The Office of the Prosecutor (“Prosecution”) filed its response to this motion on 25 September 2009.<sup>3</sup>
4. The parties made further submissions at the Pre-trial Conference held on 6 October 2009.<sup>4</sup>
5. With the Trial Chamber’s trial management duties, and the parties’ written and oral submissions, in mind, it is appropriate for the Trial Chamber to set out the manner in which it expects the trial proceedings to be conducted in the form of guidelines. These guidelines remain subject to future variation by the Trial Chamber as the trial progresses.

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<sup>1</sup> Status Conference, T. 463 (8 September 2009).

<sup>2</sup> Order Following Status Conference, 9 September 2009, p. 3.

<sup>3</sup> Prosecution Response to “Motion Concerning Evidence Admitted Under Rule 92 *ter*”, filed on 25 September 2009.

<sup>4</sup> Pre-trial Conference, T. 464 (6 October 2009).

6. Pursuant to Article 20(1) of the Statute, and Rules 54, 89 and 90 of the Rules, the Trial Chamber therefore **ADOPTS** the guidelines set out in Appendix A to govern the presentation of evidence and the conduct of the proceedings, and hereby **ORDERS** the parties to comply with these guidelines throughout the duration of the case, subject to any further orders by the Trial Chamber.

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



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Judge O-Gon Kwon  
Presiding

Dated this eighth day of October 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

## APPENDIX A

### I. Scheduling of witnesses

A. Where the Accused has expressed an intention to interview a Prosecution witness, and that witness consents to being interviewed by the Accused and the interview has not taken place before the witness travels to The Hague to give evidence, the Prosecution shall ensure that the witness is present in The Hague in sufficient time before his or her expected date of testimony to enable the Accused or one of his legal advisors to interview him or her.

B. During trial, every two months, the party whose case is being presented (“presenting party”) shall file a list of anticipated witnesses for the upcoming two months, listed in the order in which they will be called. By 4 p.m. on 20 October 2009, the Prosecution shall file its first list of witnesses for the remainder of October, and for November and December 2009. The Prosecution shall file its list for January and February 2010 by 4 p.m. on the first day of December 2009, and its list for March and April 2010 on the first day of February 2010. Thereafter, the lists shall be filed by 4 p.m. on the first working day of every second month.

C. During trial, by 4 p.m. on the twentieth day of each month, the presenting party shall file a list of all the witnesses it expects to call in the following calendar month. This list shall include the documents or material the presenting party intends to use with each proposed witness, and an estimated total time to be taken for examination-in-chief of each witness. Any document or material that has not already been uploaded into electronic court management system (“e-court”) shall be uploaded at this time. Within seven (7) days of the filing by the presenting party of the monthly list, the opposing party shall file a notice with an estimate of the time it expects to take cross-examining each witness included on the monthly list. The first monthly list for October should be filed immediately and the monthly list for November should be filed on 20 October 2009.

D. During trial, by 4 p.m. on Thursday of each week, the presenting party shall file a list of all the witnesses it expects to call the following week. The list shall confirm whether each witness on its weekly list who is subject to protective measures, after having being consulted by the Prosecution in the week preceding his or her oral testimony, considers those protective measures still to be necessary. By 4 p.m. on Friday of each week during trial, the opposing party shall file a notice with an estimate of the time it expects to take cross-examining each witness.

E. It is the duty of the presenting party to notify the Trial Chamber, the opposing party, and the Registry as soon as possible of any changes to the order of witnesses.

## **II. Disclosure of material to be used in examination-in-chief and cross-examination**

F. Notwithstanding the obligation, as set out in Guidelines C and D, on the presenting party to file lists of documents or material it intends to use during examination-in-chief of its witnesses, should the presenting party become aware of additional documents or material during its preparation of a witness for examination-in-chief, which it wishes to use during the examination-in-chief of that witness, the presenting party shall file a final list of the documents or material no later than 48 hours prior to the testimony of the witness. If any of the additional documents or material that the presenting party wishes to use during the examination-in-chief of the witness are not included on its Rule 65 *ter* exhibit list, it must apply for leave from the Trial Chamber to add that document or material to its Rule 65 *ter* exhibit list.

G. A list of documents or other material to be used by a party when cross-examining a witness must be disclosed to the Trial Chamber, the opposing party, and the Registry immediately after the completion of the examination-in-chief of that witness at the latest. At the same time, the cross-examining party must release to the opposing party, via e-court, any documents or other material not already in possession of the opposing party that form part of the list of documents or material for use during cross-examination. Should a party seek to use a document or material during cross-examination that was not so listed and disclosed, that party may be permitted to use it on showing good cause. The opposing party may then request a short adjournment in order to examine the material.

## **III. Variation or rescission of protective measures**

H. Should a witness inform the presenting party that he or she no longer requires some or all of the protective measures granted to him or her, the presenting party shall immediately file the appropriate application for variation or rescission of that witness's protective measures.

## **IV. Questioning of witnesses**

I. Cross-examination will be limited to relevant and material issues. The cross-examining party will use its best efforts to avoid unnecessary, irrelevant or repetitive questioning of the opposing party's witnesses. The Trial Chamber will not, at the present time, set a time limit on the cross-examining party for the cross-examination of the opposing party's witnesses.

J. Re-examination of a witness shall be limited to matters raised in cross-examination.

K. A prior witness statement may be used to refresh the memory of a witness, whether or not such a statement has been admitted into evidence. When presenting a witness with something that the witness has previously stated during testimony, or in a prior written statement, the parties should avoid paraphrasing what the witness said and should rather quote directly from the transcript or prior statement, giving the relevant page and line numbers.

#### V. Rule 92 *ter* procedure

L. For purposes of efficiency of the proceedings, clarity, and to avoid unnecessary repetition and the presentation of irrelevant information, where a witness will testify pursuant to Rule 92 *ter* of the Rules and the presenting party intends to tender more than one witness statement for that witness and/or transcript of that witness's testimony in prior proceedings, the presenting party shall prepare an amalgamated statement for the use in trial as the written statement of the evidence of that witness. The amalgamated statement does not constitute a new witness statement but rather a consolidation of the parts of the witness's previous evidence that the Prosecution wishes to rely upon in this case, from which repetitious and irrelevant portions have been removed. The amalgamated statement shall be prepared well in advance of the witness arriving in The Hague to testify. Prior to the witness testifying, he or she shall be shown and read the amalgamated statement. Any corrections to the amalgamated statement that result from it being shown to witness shall be incorporated into the statement. The amalgamated witness statement shall include a list of associated exhibits to be tendered through that witness during direct examination, being exhibits referenced in the amalgamated witness statement. The presenting party shall provide the Trial Chamber and the Accused with the final amalgamated witness statement at least 48 hours prior to the testimony of the witness.

M. Where a presenting party's witness is a Rule 92 *ter* witness, the presenting party will read out in court a summary of the witness's evidence, which, in general, should not take longer than 10 minutes. This summary shall not have any evidentiary value. The presenting party may conduct a limited examination-in-chief of the Rule 92 *ter* witness where such an examination is focused on clarifying or highlighting particular aspects of the witness's evidence.

N. The examination-in-chief of a partial Rule 92 *ter* witness, that is, a witness whose evidence will be partly submitted in writing and partly elicited orally during direct examination, is not limited to clarifying or highlighting particular aspects of that witness's evidence.

## **VI. Admission of evidence**

O. Proposed evidence submitted during the trial may be marked for identification. Such proposed evidence is not admitted until the Trial Chamber makes a ruling on admissibility, either orally or in writing, at which point it will be given an official exhibit number.

P. When an expert witness produces a report, that report, or part thereof, may be admitted into evidence, subject to the requirements of relevance and probative value. As a general rule, the Trial Chamber will only admit those parts of the report and further material that is put to the expert during his or her oral testimony. The sources used by an expert in compiling his or her report will not be admitted as a matter of course. Expert reports should, however, be fully referenced in order to facilitate the Trial Chamber's determination of their probative value and, ultimately, the weight to be ascribed to them.

Q. Untranslated documents used during the examination of a witness may either be marked for identification pending translation and further order of the Trial Chamber, or denied admission into evidence.

## **VII. Bar table motions**

R. The use by the parties of bar table motions shall be kept to a minimum. In any request for the admission of evidence from the bar table, the requesting party shall: (i) provide a short description of the document of which it seeks admission; (ii) clearly specify the relevance and probative value of each document; (iii) explain how it fits into the party's case, and (iv) provide the indicators of the document's authenticity.

## **VIII. Filing of motions and responses**

S. Where a party files a motion confidentially, it is presumed until it is demonstrated to the contrary that there is just cause for the confidential status, and the opposing party must respect that confidential status until the Trial Chamber issues an order altering that status. The Accused shall only share confidential information with his Defence team, as set out in the Trial Chamber's "Decision On Motions for Disclosure of Rule 68 Material and Reconsideration of Decision on Adequate Facilities", dated 10 March 2009.<sup>5</sup>

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<sup>5</sup> Decision on Motions for Disclosure of Rule 68 Material and Reconsideration of Decision on Adequate Facilities, 10 March 2009, paras. 25–26.

**IX. Accused's legal advisors and other Defence team members**

T. During trial, the Accused's legal advisor, Mr. Peter Robinson, is permitted to be present in the courtroom and will have a right of audience limited to addressing the Trial Chamber on legal issues that arise during the proceedings.

U. Mr. Robinson may only exercise this limited right of audience upon a specific request for such by the Accused being granted by the Trial Chamber.

V. In order to assist the Accused on other matters, his legal advisor, Mr. Marko Sladojević, and/or either of his assigned case managers may be in the courtroom during the proceedings without any right of audience.

W. Unless otherwise authorised by the Trial Chamber, the total number of legal advisors and case managers that may be present in the courtroom at any one time is limited to two.

**X. Recording of use of time**

X. A system for monitoring the use of time shall be established by the Registry, which will be responsible for recording time used during the evidence of each witness: (a) by the Prosecution for its examination-in-chief, noting in each case whether part of the witness's evidence was given in the form of a statement under Rule 92 *bis* or Rule 92 *ter*, and the length of their statement; (b) by the Accused for cross-examination; (c) by the Prosecution for re-examination; (d) by the Judges as result of putting questions to the witnesses; and (e) for all other matters, including procedural and administrative matters. Regular reports on the use of time shall be compiled by the Registry in conjunction with the Trial Chamber, which shall be provided periodically to the parties. The Chamber shall continually monitor the use of time, and may make further orders, as it considers necessary, concerning the time used by the Prosecution or the Accused.

**XI. E-court**

Y. This trial will be conducted using e-court. The general principle is that all documents shall be handled through this system. Hardcopies of a document may be used by a party only where the party has been unable, due to unforeseen circumstances, to upload a document into e-court. When the use of hard copies of a document is permitted, the tendering party is responsible for producing copies for the Trial Chamber, witness, opposing party, Registry, and the interpreters.