

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. John Hocking

Date: 25 September 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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MOTION TO TREAT UNSWORN STATEMENT AS EVIDENCE

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The Office of the Prosecutor:

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully provides this memorandum in support of his position that the Trial Chamber should give his unsworn statement the same consideration in its deliberations as statements admitted pursuant to Rule 92 *quater*.

### **Background**

2. On 16 October 2012, prior to the commencement of his defence case, Dr. Karadzic made an unsworn statement pursuant to Rule 84 *bis*.

3. During his statement, Dr. Karadzic stated that he never had anything against Muslims and Croats. He described how he had lived among them in Sarajevo as friends and colleagues. He stated that a genocide against the Muslims was unthinkable.<sup>1</sup>

4. Dr. Karadzic described how he met Alija Izetbegovic and they formed an anti-communist coalition.<sup>2</sup> However, the Serbs did not get the posts they were promised after the elections and a period of mistrust began.<sup>3</sup> At some point, Izetbegovic proposed splitting Bosnia and somebody came up with an idea to exchange populations. The Serbs rejected these proposals, preferring that Bosnia remain in Yugoslavia. In the summer of 1991, he agreed to a Muslim-Serb Historic Agreement with Mr. Zulfikarpasic, but President Izetbegovic withdrew his support for that project.<sup>4</sup>

5. Dr. Karadzic stated that the Muslims started the war with the killing of the groom of a wedding party in Sarajevo in early March 1992, massacres in Bosanski Brod and Sijekovac in late March, and attacks by the Muslim Green Berets in Sarajevo on 4 April 1992. He denied being responsible for ordering the erection of barricades after the shooting at the wedding party, saying he was in Belgrade at the time.<sup>5</sup>

6. Dr. Karadzic stated that the first manifestation of war was the expulsion of Serbs from areas of Bosnia where Croats and Muslims were in the majority. By September 1992, there was not a single Serb settlement in Muslim or Croat territory that remained intact. Everything had been cleansed, killed, or set on fire.<sup>6</sup>

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<sup>1</sup> T28850

<sup>2</sup> T28853

<sup>3</sup> T28855

<sup>4</sup> T28857-58

<sup>5</sup> T28860

<sup>6</sup> T28861-62

7. Dr. Karadzic stated that Serbs sought to negotiate a peaceful division of municipalities such as in Bratunac and Vlasenica, but instead the Muslims started shooting on orders of extremists in the national leadership of the SDA party.<sup>7</sup>

8. Dr. Karadzic stated that he did not have means of communication with people in the Krajina when the Muslim extremists started the war there. Afterwards, the ARK leadership, such as Mr. Kupresanin, acted to help prisoners who were detained in camps there.<sup>8</sup>

9. Dr. Karadzic stated that he had no information about the prison conditions there but was informed by Srdo Srda of Prijedor that there was no barbed wire fence around Trnopolje camp.<sup>9</sup> He invited journalists like Penny Marshall to visit the camps and transported them in the government's aircraft. He invited them to visit anything they wanted to see as he had nothing to hide. However, the journalists abused this invitation and staged photographs of people standing next to barbed wire. It was more damaging to Republika Srpska than NATO bombs.<sup>10</sup>

10. Dr. Karadzic stated that after the war broke out he issued a platform on 22 April 1992 that nothing taken by force should be recognized.<sup>11</sup> Although a decision to establish the VRS was taken on 12 May 1992, nothing was organized until 15 June 1992. They made no efforts to take any more territory since they already controlled 60% and Dr. Karadzic knew that they would eventually have to return territory that they subsequently had taken.<sup>12</sup>

11. Dr. Karadzic stated that he did not have a clue what was going on in Zvornik or Foca when the war broke out in those areas and could not influence those events.<sup>13</sup>

12. Dr. Karadzic stated that the Muslims had staged the bread-queue massacre in May 1992 at Vase Miskina Street in Sarajevo while a peace conference was going on.<sup>14</sup> He was also at a peace conference in August 1992 when criminals committed the Koricanske Stijena massacre. He was shocked and angry when he heard about it and

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<sup>7</sup> T28862

<sup>8</sup> T28864

<sup>9</sup> T28864-65

<sup>10</sup> T28865

<sup>11</sup> T28865-66

<sup>12</sup> T28866

<sup>13</sup> T28867

<sup>14</sup> T28867-68

asked the Presidents of the two municipalities involved to investigate and take measures, and he shouted at one of them. Minister Subotic was dispatched to the area and everyone was engaged in the subsequent investigation.<sup>15</sup>

13. Dr. Karadzic stated that in the spring of 1993 there was an unprecedented campaign of false information claiming that Serbs had massacred civilians in Cerska. General Morillon investigated and determined that it was not true.<sup>16</sup> Dr. Karadzic stopped the VRS from taking Srebrenica in April 1993 and many people were angry that he did that. Dr. Karadzic stated that he frequently took the side of the internationals against the Army when they complained about something, only to learn later that what they had complained about was not true.<sup>17</sup>

14. Dr. Karadzic stated that he strove mightily to see that humanitarian convoys passed through to Muslim-held territories, even though the ABiH often took the humanitarian aid and received weapons, ammunition, and fuel along with that aid.<sup>18</sup>

15. Dr. Karadzic denied that the Serbs shelled Sarajevo for no reason and stated that "every shell that fell on Sarajevo hurt me personally." He stated that Sarajevo had over 2000 legitimate military targets and 50-70,000 ABiH troops inside. He stated that the Muslims created incidents, such as Markale I and II, in order to obtain international intervention on their side.<sup>19</sup> He stated that the VRS denied that it was responsible for firing the shells that landed on Markale.<sup>20</sup>

16. Dr. Karadzic denied that the Serbs cut off water, electricity, or gas to Sarajevo.<sup>21</sup> He stated that he was not aware that modified air bombs were used in urban areas and was not asked for his permission by the VRS.<sup>22</sup>

17. Dr. Karadzic stated that he stopped by the Drina Corps Command in Vlasenica on around 25 or 26 June 1995 and gave his approval for a small-scale operation to separate Srebrenica and Zepa due to ABiH smuggling of weapons into the

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<sup>15</sup> T28868

<sup>16</sup> T28869-70

<sup>17</sup> T28870

<sup>18</sup> T28871-72

<sup>19</sup> T28872

<sup>20</sup> T28873

<sup>21</sup> T28875

<sup>22</sup> T28876

safe areas, which they used to attack Serb civilians.<sup>23</sup> When the Serbs found the town of Srebrenica undefended on 9 July, he approved the VRS to enter the town. He ordered that the Muslims of Srebrenica be protected. It came as a complete surprise to him that the entire Muslim population wanted to be evacuated. He denied receiving information about mistreatment of civilians or murders in Srebrenica.<sup>24</sup>

18. Dr. Karadzic stated that when he heard rumors of murders after the fall of Srebrenica he discounted them because similar false allegations had been made after the fall of Cerska in 1993. He ordered an investigation of the Srebrenica events in March 1996. However, he left office five weeks later.<sup>25</sup>

19. Dr. Karadzic stated that he had done everything in his power to avoid the war and minimize the consequences and the damages.<sup>26</sup>

20. The prosecution filed its final brief on 29 August 2014. In that brief, it made the following references to Dr. Karadzic's unsworn statement:

- Para 861: The attack on the Srebrenica enclave implemented Directive 7 and was approved by Karadzic in late June 1995.<sup>27</sup>
- Fn. 3223: KARADZIC has conceded on the record that he gave approval to enter Srebrenica. Rule 84bis Statement:T.28877
- Para 1078: KARADZIC has claimed that he "did not receive any information about mistreatment of civilians" or "any information of even individual murders in Srebrenica".<sup>28</sup> He claims he only ever heard "rumours" about Srebrenica crimes which he did not trust or verify, and because he would have come into conflict with the army if he had accused it "for the umpteenth time".<sup>29</sup> These claims are both incredible and untrue.

<sup>23</sup> T22876-77

<sup>24</sup> T22877-78

<sup>25</sup> T22879

<sup>26</sup> T28881

<sup>27</sup> KARADZIC met KRSTIC at the DK Command in Vlasenica in late June. V.POPOVIC:D3993,para.7; P5087,p.2; Rule 84bis Statement:T.28876. POPOVIJ testified that either on the evening KARADZIC met with KRSTIC, or the day after, KRSTIC called his assistants and informed them about a military operation to separate the enclaves of Srebrenica and Zepa, and reduce them to their 1993 borders. V.POPOVIC D3993,para.9.

<sup>28</sup> Rule 84bis Statement:T.28877.

<sup>29</sup> Rule 84bis Statement:T.28878-28879

## The Law

21. Rule 84 *bis* provides that:

(A) After the opening statements of the parties or, if the defence elects to defer its opening statement pursuant to Rule 84, after the opening statement of the Prosecutor, if any, the accused may, if he or she so wishes, and the Trial Chamber so decides, make a statement under the control of the Trial Chamber. The accused shall not be compelled to make a solemn declaration and shall not be examined about the content of the statement.

(B) The Trial Chamber shall decide on the probative value, if any, of the statement.

22. The Appeals Chamber has held that the wording of Rule 84*bis* leaves to the discretion of the Trial Chamber the determination of the probative value of an unsworn statement.<sup>30</sup> Such a statement is generally given somewhat less weight than testimony given under oath, which is subject to cross-examination and inquiry from the Bench.<sup>31</sup>

23. In the *Popovic et al* case, the Trial Chamber considered statements under Rule 84 *bis* as submissions.<sup>32</sup> In the *Martic* case, the Trial Chamber considered the unsworn statement as without probative value.<sup>33</sup>

## Argument

24. Dr. Karadzic respectfully moves the Trial Chamber to treat his unsworn statement as evidence, similar to the treatment of Rule 92 *quater* statements.

25. His motion is based upon a number of factors.

26. First, the prosecution has treated it as evidence in its closing brief. Having opened the door to the consideration of some parts of the unsworn statement, it should not be allowed to benefit from other parts of the statement not being afforded the same status.

27. Second, the unsworn statement is similar in nature to the admission of Rule 92 *quater* evidence, which need not be made on oath, may go to the acts and conduct of the accused,<sup>34</sup> and which applies when a witness is unavailable. Dr. Karadzic agrees that like

<sup>30</sup> *Prosecutor v. Limaj et al.*, No. IT-03-66-A, *Judgement* (27 September 2007) at para. 78

<sup>31</sup> *Prosecutor v. Limaj et al.*, No. IT-03-66-A, *Judgement* (27 September 2007) at para. 75

<sup>32</sup> *Prosecutor v Popovic et al*, No. IT-05-88-T, *Judgement* (10 June 2010) at para. 25

<sup>33</sup> *Prosecutor v Martić*, No. IT-95-11-T, *Judgement* (12 June 2007) at para. 23

<sup>34</sup> *Decision on Prosecution Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits Pursuant to Rule 92 quater* (20 August 2009) at para. 4

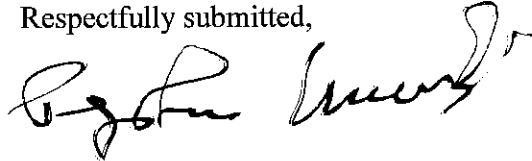
any untested evidence, his unsworn statement should be viewed with caution and not form the sole basis for a finding of fact.<sup>35</sup>

28. Third, unlike the statements in *Popovic*, which were treated as submissions, Dr. Karadzic's statement was detailed and is corroborated by a large number of defence witnesses. For example, his statement that he did not receive information about the Srebrenica-related murders is corroborated by the testimony of 28 witnesses.<sup>36</sup>

29. For all of these reasons, it is respectfully requested that the Trial Chamber treat Dr. Karadzic's unsworn statement as evidence.

Word count: 1957

Respectfully submitted,



Radovan Karadzic

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<sup>35</sup> *Decision on Prosecution's Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits Pursuant to Rule 92 quater* (30 November 2009) at para. 8

<sup>36</sup> N.Ristic, S. Ristic, Premovic, Trifkovic, Skrbic, Subotic, D.Katanic, Krajisnik, Djurdjevic, Kovac, Zametica, Bajagic, Kapetina, Professor Karadzic, Matovic, Battaile, Ninkovic, Lesic, Milinic, Dmicic, Kijac, Karisik, Tolimir, Zivanovic, Krstic, Salapura, Beara, KW554