

IT-09-92-T
D74959-D74956
13 December 2013

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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-09-92-T
Date: 13 December 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 13 December 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION'S 43RD MOTION
TO ADMIT EVIDENCE PURSUANT TO RULE 92 *BIS*:
WITNESSES RM-183 AND RM-184**

Office of the Prosecutor
Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSION OF THE PARTIES

1. On 3 October 2013, the Prosecution filed a motion (“Motion”) pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) requesting the admission into evidence of the witness statements of Witnesses RM-183 and RM-184.¹ The Defence has not responded to this Motion.

II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules, as set out in a previous decision.²

III. DISCUSSION

3. As a preliminary matter, the Chamber notes that the statements of Witnesses RM-183 and RM-184 have no corresponding attestations and declarations as required by Rule 92 *bis* (B) of the Rules. The Prosecution requests that the statements of the witnesses be admitted on a provisional basis, subject to the attestations being provided. Unattested witness statements have been conditionally admitted by this Chamber pending their formal attestation pursuant to Rule 92 *bis* (B) of the Rules.³ In line with this practice, the Chamber will conditionally admit the unattested witness statements of the witnesses, pending the filing of the required attestations and declarations, provided that all other admissibility requirements are met.

4. The Chamber considers that the proffered evidence of the witnesses concerns the alleged shelling of Sarajevo, and is therefore relevant in particular to Counts 9 and 10 of the Indictment. With regard to probative value, the Chamber notes that the witness statements have been signed by the witnesses with accompanying acknowledgements that they are true to the best of the witnesses’ recollection. The Chamber also notes that the Defence has not objected to the Motion. The

¹ Prosecution 43rd Motion to Admit Evidence Pursuant to Rule 92*bis*: RM183 and RM184, 3 October 2013 (Confidential). For further details, see Motion.

² Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses (“Decision on Third 92 *bis* Motion”), 19 October 2012, paras 5-7.

³ See Decision on Third 92 *bis* Motion, para. 27.

Chamber finds that the proffered evidence has probative value. The requirements set out in Rule 89 (C) of the Rules have therefore been met.

5. With regard to admissibility pursuant to Rule 92 *bis* of the Rules, the Chamber does not find that the proffered evidence relates to the acts and conduct of the Accused. Considering that the proffered evidence concerns the crime base of the case and again noting that the Defence has not opposed its admission, the Chamber decides to admit it pursuant to Rule 92 *bis* of the Rules.

6. The Chamber notes that the protective measures granted in the previous cases in which the witnesses testified continue to apply in this case pursuant to Rule 75 (F) (i).

IV. DISPOSITION

7. For the foregoing reasons, pursuant to Rules 54, 89, and 92 *bis* of the Rules, the Chamber **GRANTS** the Motion and with respect to

(i) *Witness RM-183*

CONDITIONALLY ADMITS into evidence, **UNDER SEAL** the ICTY witness statement of 30 July 2004 and the supplemental information report of 15 February 2009, as indicated in Annex A of the Motion, pending the filing of a corresponding attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

(ii) *Witness RM-184*

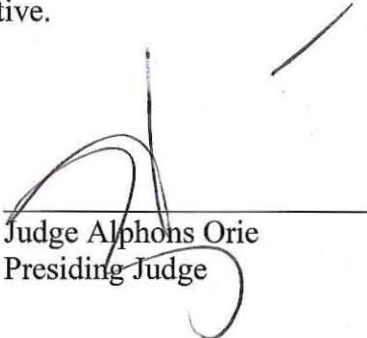
CONDITIONALLY ADMITS into evidence, **UNDER SEAL** the ICTY witness statement of 2 December 2001, as indicated in Annex C of the Motion, pending the filing of a corresponding attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules;

INSTRUCTS the Prosecution to file the corresponding attestations and declarations to the statements of Witnesses RM-183 and RM-184 within four weeks of the filing of this decision;

INSTRUCTS the Prosecution within five weeks of the date of the filing of this decision to upload into eCourt all of the above admitted materials, to the extent this is not done already; and

REQUESTS the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned.

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



Judge Alphons Orie
Presiding Judge

Dated this thirteenth day of December 2013
At The Hague
The Netherlands

[Seal of the Tribunal]