

**UNITED
NATIONS**



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: 1 October 2015
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 1 October 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE'S MOTION TO ADMIT THE
EVIDENCE OF DRAGIŠA SERDAR
PURSUANT TO RULE 92 *BIS***

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 31 August 2015, the Defence filed a motion (“Motion”) pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) seeking provisional admission into evidence of the witness statement of Dragiša Serdar dated 21 July 2014.¹ It submits that the statement is relevant and of probative value, in particular as it relates to the crimes alleged in Kotor Varoš and contains relevant information concerning the historical, political, and military background about events in Grabovica and Serdari.² The Defence further submits that the statement is admissible under Rule 92 *bis* of the Rules because it does not pertain to the acts and conduct of the Accused.³ On 9 September 2015, the Prosecution filed its response, not opposing the Motion.⁴

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.⁵

III. DISCUSSION

A. Attestation and Declaration

3. The statement has no corresponding attestation or declaration as required by Rule 92 *bis* (B) of the Rules. Unattested witness statements have previously been conditionally admitted by this Chamber pending their formal attestation.⁶ In line with this practice, provided that all other admissibility requirements are met, the Chamber will conditionally admit the unattested witness statement pending the filing of the required attestation and declaration.

¹ Defense Motion to Admit the Evidence of Serdar Dragisa Pursuant to Rule 92 *bis*, 31 August 2015.

² Motion, paras 3, 14, 19-21.

³ Motion, para. 26.

⁴ Prosecution Response to Defence Motion to Admit the Evidence of Dragiša Serdar Pursuant to Rule 92 *bis*, 9 September 2015, para. 1.

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

⁶ Decision on Prosecution’s Third 92 *bis* Motion, para. 27 and references cited therein.

B. Admissibility pursuant to Rule 89 (C) of the Rules

4. The Chamber understands that the statement relates to the military situation and inter-ethnic tensions in Kotor Varoš Municipality in 1992, matters that are generally relevant to the crimes as charged under Counts 1-8 of the Indictment. It further finds the statement to be of probative value. The Chamber therefore concludes that it meets the requirements of Rule 89 (C) of the Rules.

C. Admissibility pursuant to Rule 92 bis of the Rules

5. The Chamber, having reviewed the statement, does not find, and the Prosecution does not argue, that it relates to the acts and conduct of the Accused. The Chamber considers that as it relates to the historical and military situation in Kotor Varoš Municipality in 1992, it is cumulative to the evidence of other witnesses who have already provided testimony in this case, for example Borislav Vasiljević and Vojin Ubiparip. The Chamber finds that this factor, which is relevant to Rule 92 bis (A) (i) of the Rules, weighs in favour of admission. There are no factors under Rule 92 bis (A) (ii) weighing against admission. For these reasons, the Chamber concludes that the statement is admissible pursuant to Rule 92 bis of the Rules.

IV. DISPOSITION

6. For the foregoing reasons, pursuant to Rule 92 bis of the Rules, the Chamber

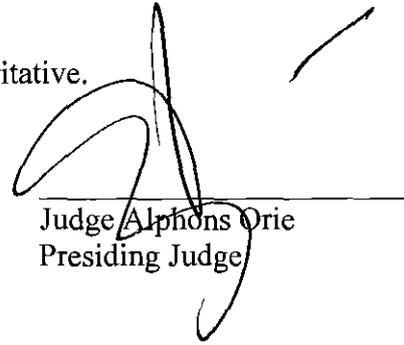
GRANTS the Motion;

CONDITIONALLY ADMITS into evidence, pending the filing of an attestation and declaration in compliance with Rule 92 bis of the Rules, the statement of Dragiša Serdar dated 21 July 2014, bearing Rule 65 ter number 1D01737;

INSTRUCTS the Defence to file the corresponding attestation and declaration to the statement of Dragiša Serdar within six weeks of the filing of this decision; and

REQUESTS the Registry to assign an exhibit number to the statement.

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



Judge Alphons Orie
Presiding Judge

Dated this first day of October 2015
At The Hague
The Netherlands

[Seal of the Tribunal]