



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-02-54-T  
Date: 29 January 2004  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Richard May, Presiding  
Judge Patrick Robinson  
Judge O-Gon Kwon

**Registrar:** Mr. Hans Holthuis

**Order of:** 29 January 2004

**PROSECUTOR**

v.

**SLOBODAN MILOŠEVIĆ**

**DECISION ON PROSECUTION'S SECOND APPLICATION UNDER RULE 89 (F)  
TO RECEIVE THE EVIDENCE-IN-CHIEF OF WITNESS CARL BILDT  
IN WRITTEN FORM**

**The Office of the Prosecutor**

Mr. Geoffrey Nice  
Ms. Hildegard Uertz-Retzlaff  
Mr. Dermot Groome

**Amicus Curiae**

Mr. Steven Kay  
Mr. Branislav Tapušковиć  
Prof. Timothy L. H. McCormack

**The Accused**

Mr. Slobodan Milošević

**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 (“International Tribunal”),

**BEING SEISED** of “Prosecution’s Second Application Under Rule 89 (F) to Receive the Evidence-in-Chief of Witness Carl Bildt in Written Form”, filed by the Prosecution on 22 January 2004 (“Motion”), requesting, *inter alia*:

- (a) the admission of a statement of Carl Bildt (“witness”) pursuant to Rule 89 (F) which would cover three meetings during the period between 7 and 15 July 1995;
- (b) limitation of his evidence to that period between 7 and 15 July 1995, and in particular the meetings referred to;
- (c) limitation of cross-examination of the witness to the subject-matter of the Rule 89 (F) statement; and
- (d) an order that the evidence of the witness not take more than one court session,

**RECALLING** the Trial Chamber’s “Order on Prosecution’s Request Concerning the Testimony of B-1731”, issued on 16 January 2004, in which the Trial Chamber stated that if the Prosecution produce a statement of the witness pursuant to Rule 89 (F) then the Trial Chamber will consider any application concerning the proposed evidence,

**NOTING** that such a statement has now been produced with the Motion,

**NOTING** Rule 89 (F), which provides as follows: “A Chamber may receive the evidence of a witness orally or, where interests of justice allow, in written form”,

**NOTING** the decision of the Appeals Chamber, which held that Rule 89 (F) allows for the admission of a written witness statement when the witness:

- (a) is present in court;
- (b) is available for cross-examination and any questioning by the judges; and
- (c) attests that the statement accurately reflects his or her declaration and what he or she would say if examined,<sup>1</sup>

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<sup>1</sup> *Prosecutor v. Slobodan Milošević*, “Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements,” Case No. IT-02-54-AR73.4, 30 September 2003, p.11.

**CONSIDERING** that the determination of whether the interests of justice favour the admission of a written statement under Rule 89 (F) as evidence-in-chief is made by the Trial Chamber in relation to each individual witness, in light of not only the surrounding circumstances, but also the evidence to be given by the witness,<sup>2</sup>

**CONSIDERING** that the evidence contained in the statement is admissible pursuant to Rule 89 (F), save for those matters going to the Accused's knowledge of the alleged attack and massacres at Srebrenica (notably paragraphs 50 and 69 of the statement),

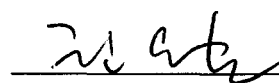
**CONSIDERING** that it is not appropriate for the cross-examination of the witness to be limited in scope, but that the time available for examination-in-chief and cross-examination may be limited,

**PURSUANT TO** Rules 89 (F) and 54 of the Rules of Procedure and Evidence of the International Tribunal,

**HEREBY ORDERS AS FOLLOWS:**

- (1) The statement of the witness<sup>3</sup> may be admitted pursuant to Rule 89 (F), subject to matters going to the Accused's knowledge of the alleged attack and massacres at Srebrenica (notably paragraphs 50 and 69 of the statement) being given as *viva voce* evidence;
- (2) The Prosecution may take 30 minutes for examination-in-chief of the witness;
- (3) The Accused may take 2 hours and 30 minutes for cross-examination of the witness; and
- (4) The cross-examination of the witness is not otherwise limited.

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



O-Gon Kwon  
Judge

Dated this twenty-ninth day of January 2004  
At The Hague  
The Netherlands

[Seal of the Tribunal]

<sup>2</sup> *Ibid.*, para. 21.

<sup>3</sup> Disclosed to the parties and provided to the Chamber at the time of the Motion, and as described in footnote 3 of the Motion.