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11 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: 11 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: 11 December 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION'S 41ST MOTION
TO ADMIT EVIDENCE PURSUANT TO RULE 92 *BIS*:
WITNESS RM-379**

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 30 September 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 Witness RM-379's statement of 26 August 2013, and a correction to this statement.¹ On 28 October 2013, after having been granted an extension of time to respond to the Motion, the Defence filed its response, requesting that the Chamber dismiss the Motion in its entirety.²

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.³

III. DISCUSSION

3. The Chamber notes that the witness statement of Witness RM-379 was submitted with the corresponding attestation and declaration in accordance with Rule 92 *bis* of the Rules.

4. The proffered evidence of Witness RM-379 relates to the alleged murder incident at the Kravica warehouse on 13 July 1995 and the Chamber therefore considers that it is relevant to Counts 2 through 8 of the Indictment, and in particular to Schedule E.3.1 and the understanding of exhibit P1477. With regard to probative value, the Chamber notes that the witness has signed the statement and correction, and that the statement is accompanied by an acknowledgement that it is true to the best of the witness's knowledge and recollection. Therefore, having reviewed it together with exhibit P1477, the Chamber finds that the proffered evidence has probative value. The requirements for admission into evidence as 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 Defence has not argued and the Chamber does not find that the proffered evidence relates to the acts and conduct of the Accused. With regard to factors weighing in favour of admitting evidence in the form of a

¹ Prosecution 41st Motion to Admit Evidence Pursuant to Rule 92*bis*: RM379, 30 September 2013 (Confidential). For further details, see the Motion.

² Defence Motion to Enlarge Time to Respond to Prosecution 41st Motion to Admit Evidence Pursuant to Rule 92*bis*, 14 October 2013; T. 18017-18021; Defence Response to Prosecution 41st Motion to Admit Evidence Pursuant to Rule 92*bis*, 28 October 2013 ("Response"). For further details, see the Response.

³ Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-7.

written statement, the Chamber considers that the proffered evidence concerns the alleged crime base of the case and that Witness RM-306 give evidence related to the same scheduled incident,⁴ and that the proffered evidence therefore is cumulative to the oral evidence received from another witness. Based on the foregoing, the Chamber decides to admit the proffered evidence pursuant to Rule 92 *bis* of the Rules.

6. Out of an abundance of caution, the Chamber refers in this decision to Witness RM-379 by using the witness's pseudonym. Unless the Prosecution files a request for protective measures, the Chamber will in future filings refer to the witness by the witness's name and admit the proffered evidence publicly.

IV. DISPOSITION

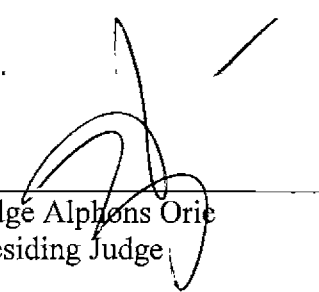
7. For the foregoing reasons, pursuant to Rules 54, 89, and 92 *bis* of the Rules, the Chamber **GRANTS** the Motion and **ADMITS** into evidence, **UNDER SEAL**, the Rule 92 *bis* package for Witness RM-379, as contained in Confidential Annex B of the Motion;

INSTRUCTS the Prosecution within two weeks 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.

INSTRUCTS the Registry to make Witness RM-379's evidence public within three weeks of the date of this decision unless the Prosecution files a request for protective measures within that period.

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



Judge Alphons Orie
Presiding Judge

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

[Seal of the Tribunal]

⁴ The Defence's objection is limited to one of the Prosecution's submissions: that Witness RM-379's evidence is corroborated by witness Blaszczyk (see Response, paras 9-15).