

**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: 10 September 2015
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 10 September 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO ADMIT THE
EVIDENCE OF DRAGAN MALINOVIĆ PURSUANT TO
RULE 92BIS**

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 OF THE PARTIES

1. On 20 July 2015, the Defence filed a motion (“Motion”) seeking to provisionally admit into evidence, pursuant to Rule 92 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the written statement of Dragan Malinović.¹ The Defence submits that the statement is relevant and of probative value, in particular as it relates to Counts 9 to 11 of the Indictment.² It further argues that the statement is admissible under Rule 92 *bis* of the Rules as it contains supporting evidence about acts charged in the Indictment; the historical, political or military context; and the impact of crimes upon victims.³ Moreover, according to the Defence, the evidence does not go to proof of the acts and conduct of the Accused.⁴

2. On 3 August 2015, the Prosecution filed its response (“Response”), not opposing the provisional admission of the statement pending the attachment of a declaration from the witness in compliance with Rule 92 *bis* (B).⁵ On 4 July 2014 the Prosecution stated that it would not need to cross-examine witness Malinović.⁶

II. APPLICABLE LAW

3. 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.⁷

III. DISCUSSION

A. Attestation and Declaration

4. 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.⁸ In line with this practice, provided that all other

¹ Defense Motion to Admit the Evidence of Dragan Malinović pursuant to Rule 92*bis*, 20 July 2015, paras 1, 3, 32(i)(ii), 33 (made confidential by the Defence on 31 August 2015).

² Motion, paras 2, 14.

³ Motion, paras 18, 21.

⁴ Motion, paras 18, 22, 24-28.

⁵ Prosecution Response to Motion to Admit Testimony of Dragan Malinović pursuant to Rule 92*bis*, 3 August 2015, para. 1.

⁶ T. 23490-23492.

⁷ 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.

⁸ Decision on Third 92*bis* Motion, para. 27 and references cited therein.

admissibility requirements are met, the Chamber will conditionally admit the unattested statement pending the filing of the required attestation and declaration.

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

5. The proposed evidence relates to Counts 9 and 10 of the Indictment, in particular the military and political situation in Nedžarići during the relevant period of the Indictment. Specifically, it concerns fire attacks allegedly carried out by Muslim forces causing the Bosnian-Serb army to deploy an armoured personnel carrier for the safe evacuation of wounded and transportation of supplies in Sarajevo in 1993.

6. In relation to any opinions or conclusions expressed by Malinović in his statement, the Chamber recalls the approach it has taken in relation to opinions or conclusions found in the evidence of fact witnesses.⁹ Considering also that the Prosecution did not object to admission, the Chamber finds that the proposed evidence meets the requirements of Rule 89 (C) of the Rules.

C. Admissibility Pursuant to Rule 92 *bis* of the Rules

7. The Prosecution has not argued and the Chamber does not find that the statement relates to the acts and conduct of the Accused. With regard to factors weighing in favour of admitting evidence in the form of a written statement, the Chamber considers that the statement concerns the crime base and relates to the relevant political and military background. In this respect, the evidence is also cumulative to that of other witnesses who have already provided testimonies in this case.¹⁰ The Chamber finds these factors, which are relevant pursuant to Rule 92 *bis* (A)(i) of the Rules, to weigh in favour of admission.

8. As the Prosecution previously stated that it would not need to cross-examine witness Malinović, the Chamber does not consider the evidence to be of such nature as to weigh in favor of calling him to provide oral testimony. There are no other factors under Rule 92 *bis* (A)(ii) weighing against admitting the evidence in written form. For these reasons, the Chamber is satisfied that the tendered material is admissible under Rule 92 *bis* of the Rules.

⁹ Decision with regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.

¹⁰ For instance, Malinović's evidence is cumulative to the oral evidence of Svetozar Guzina (T. 22511) and Goran Šehovac (T. 24696).

IV. DISPOSITION

9. For the foregoing reasons, pursuant to Rules 89 and 92 *bis* of the Rules, the Chamber

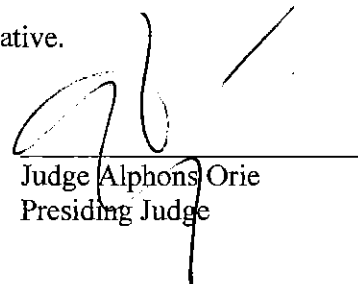
GRANTS the Motion;

CONDITIONALLY ADMITS into evidence, pending the filing of an attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules, the witness statement of Dragan Malinović dated 28 May 2014, bearing Rule 65 *ter* number 1D01635;

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

INSTRUCTS the Registry to assign an exhibit number to the document admitted into evidence 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 tenth day of September 2015
At The Hague
The Netherlands

[Seal of the Tribunal]