



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: 14 July 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: 14 July 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO ADMIT THE
WRITTEN TESTIMONY AND ASSOCIATED EXHIBITS OF
WITNESS GRM-246**

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 11 June 2014, the Defence filed a motion (“First Motion”) offering into evidence two written statements of Witness GRM-246 along with 46 associated exhibits.¹ On 25 June 2014, the Prosecution filed a response (“First Response”), opposing the First Motion on several grounds.² After the witness testified on 17 to 19 September 2014, during which one statement and several associated exhibits were admitted into evidence, the Defence filed a second motion (“Second Motion”) in relation to the remaining statement and 38 associated exhibits.³ On 7 October 2014, the Prosecution filed a second response (“Second Response”), stating its position for each of the remaining 38 associated exhibits.⁴

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits, *inter alia*, that the remaining witness statement, which has since been marked for identification as exhibit D646,⁵ is relevant, reliable, and probative.⁶ The Defence also submits that each of the 38 associated exhibits is directly relevant to its case and forms an inseparable and indispensable part of D646.⁷ The Defence makes several submissions concerning the Chamber’s guidance on the number of associated exhibits tendered, and why the Defence is justified in departing from that guidance.⁸ The Defence also submits that the Chamber has incorrectly described its tendering of associated exhibits as flooding the Chamber with documents, and strongly objects to such characterisation.⁹ Lastly, the Defence invites the Chamber to advise it of “what Rule or Ruling acts to set a limit for documentary evidence in the case, and which would limit the Defence from having at least equal footing with the Prosecution in the quantity of

¹ Defence Motion Pursuant to Rule 92*ter* to Admit the Written Testimony of [...] (GRM246), 11 June 2014 (Confidential), pp. 2, 7, Annex A. Although the body of the First Motion refers to “45 total associated exhibits,” there are 47 documents listed as associated exhibits in Annex A of the Motion, one of which is a statement of the witness and not an exhibit associated with that statement, thus leaving 46 associated exhibits tendered into evidence.

² Prosecution Response to Defence Motion Pursuant to Rule 92*ter* to Admit the Evidence of [...] (GRM246), 25 June 2014 (Confidential), paras 2-14.

³ Defence Submission as to Associated Exhibits for GRM246, 23 September 2014 (Confidential), paras 1-3, 16.

⁴ Prosecution Response to Defence Motion Seeking to Admit Associated Exhibits for GRM-246, 7 October 2014 (Confidential), paras 1, 3-4, Annex A.

⁵ T. 25803.

⁶ First Motion, paras 6, 9-10. *See also* Second Motion, para. 2. Although the Defence refers in the Second Motion to the remaining witness statement as “D645MFI”, and the Prosecution makes the same reference to “D645” in Annex A of the Second Response, the Chamber finds these references to be typographical errors considering that “D645” is the exhibit number assigned to the witness’s first statement dated 10 August 2014.

⁷ First Motion, para. 11; Second Motion, paras 10, 13.

⁸ Second Motion, paras 4-15.

⁹ Second Motion, para. 14.

documentary evidence, as we are unfamiliar with the same”, or in the alternative, the Defence submits that it would “expect the Chamber to correct its mis-statement on the record”.¹⁰

3. The Prosecution opposes the admission of D646 because the exhibits associated with the statement have either not been properly noticed or disclosed.¹¹ The Prosecution also opposes the admission into evidence of associated exhibits bearing Rule 65 *ter* numbers 1D04221, 1D04224, and 1D04255 due to their lack of relevance and probative value.¹² The Prosecution does not oppose the admission into evidence of 9 of the associated exhibits,¹³ and takes no position with respect to the admission of the remaining 26 associated exhibits.¹⁴

III. APPLICABLE LAW

4. Rule 92 *ter* of the Rules of Procedure and Evidence (“Rules”) provides in relevant part that a Trial Chamber may admit the evidence of a witness in the form of a written statement under the following conditions: (i) the witness is present in court; (ii) the witness is available for cross-examination and any questioning by the Judges; and (iii) the witness attests that the written statement accurately reflects the witness’s declaration and what the witness would say if examined. The Chamber recalls and refers to the applicable law governing the admission into evidence of associated exhibits, as set out in a previous decision.¹⁵

IV. DISCUSSION

A. Defence Submissions on Chamber’s Guidance

5. As a preliminary matter, the Chamber again notes with serious concern the unsupported, inaccurate, and at times incomprehensible submissions of the Defence in relation to the Chamber’s guidance on associated exhibits. In particular, the Chamber does not understand the strenuous objection to its guidance concerning the associated exhibits tendered with GRM-246, which makes no mention of the Chamber being flooded with documents, but rather notes that the number of associated exhibits is higher than what the Chamber prefers and “invites the Defence to consider reducing the number of associated exhibits by, for example, tendering some of these documents

¹⁰ Second Motion, para. 15.

¹¹ First Response, paras 2, 5-6, 11-12, 14.

¹² Second Response, Annex A, items 3, 6, 38.

¹³ Second Response, Annex A, items 2, 12-15, 23, 33-34, 36-37.

¹⁴ Second Response, Annex A, items 1, 4-5, 7-11, 16-22, 24-32, 35.

¹⁵ See T. 5601-5602; Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 pursuant to Rule 92 *quater*, 23 July 2012, paras 12-13.

with the witness during examination-in-chief".¹⁶ The Chamber also draws the Defence's attention to the fact that the guidance complained of is entirely consistent with the standard guidance of the Chamber concerning associated exhibits and was explicitly addressed to both parties.¹⁷ This guidance, subject to minor amendments, has been in place since the beginning of the trial and the Chamber has applied the same standards with respect to the presentation and admission of associated exhibits during the Defence and Prosecution cases.¹⁸

6. To the extent that the Second Motion contains a serious request for the Chamber to advise the Defence of what rule sets a limit for documentary evidence, the Chamber again reminds the Defence that its preference for the adduction of live evidence does not limit the number of exhibits tendered or admitted.¹⁹ The Chamber's guidance relates only to the mode of presenting associated exhibits, a function well within the Chamber's discretionary trial-management responsibilities, and does not concern the overall quantity of exhibits for either party. However, should the Chamber actually decide to set a limit for documentary evidence associated with Rule 92 *ter* statements, Rule 90 (F) would give it the authority to do so. For all of these reasons, the Chamber dismisses as baseless the Defence submissions concerning the Chamber's guidance on associated exhibits.

B. Admission of Witness Statement D646

7. With regard to the Prosecution's opposition to the admission of D646 due to notice and disclosure issues, the Chamber recalls its subsequent discussion of the matter on 27 August 2014, and its invitation to the parties to resolve any remaining issues and inform the Chamber if any disclosure matters remained unresolved.²⁰ Considering that the Chamber did not receive any subsequent reports about ongoing disclosure issues, and considering that the Prosecution did not make reference to such issues in its Second Response, the Chamber considers these notice and disclosure issues to be resolved and the original objection to the admission of D646 to be withdrawn. The Chamber notes that D646 concerns, in part, the situation in Sarajevo within the temporal scope of the Indictment, and that the witness attested to the statement. For these reasons, the Chamber finds that D646 is relevant and of probative value for the purposes of admission into evidence. The Chamber notes that the criteria for the admission into evidence of D646 pursuant to Rule 92 *ter* were met during the witness's testimony on 18 and 19 September 2014.²¹

¹⁶ T. 25647.

¹⁷ T. 25771-25772.

¹⁸ Compare, for example, T. 108, 319-320, and 530-532 (guidance delivered at the beginning of the Prosecution's case) with T. 25771-25772 (guidance delivered during the Defence case).

¹⁹ See, e.g., T. 319-320.

²⁰ T. 24843-24844.

²¹ T. 25776-25939.

C. Admission of Associated Exhibits

8. The Prosecution opposes the admission of the documents bearing Rule 65 *ter* numbers 1D04221 and 1D04224 because, *inter alia*, they are not relevant to and do not support the witness's claims in the corresponding paragraph of the statement. The Chamber notes, however, that the relevant section of the witness's statement discusses the manufacturing and use of ammunition and weapons in and *around* Sarajevo, which could include large calibre weapons fired from an area around Visoko as stated in the document bearing Rule 65 *ter* number 1D04221, or the transportation of mortar ammunition to and from Mt. Igman or Visoko as stated in the document bearing Rule 65 *ter* number 1D04224. The Prosecution also opposes the admission of document bearing Rule 65 *ter* number 1D04255 because, *inter alia*, it contains the unsourced opinions of the witness. The Chamber considers this objection to relate primarily to the reliability of the information contained in the document and finds that the objection goes to any weight to be assigned by the Chamber rather than to the document's admissibility. The document, however, does not meet the requirements for admission as an associated exhibit, as discussed below.

9. The Chamber has reviewed the statement against the background of the test for admission of associated exhibits and finds that each of the following 17 document forms an inseparable and indispensable part of the statement to the extent that the statement would be incomprehensible or of lesser probative value without them: 1D04219, 1D04220, 1D04221, 1D04222, 1D04223, 1D04224, 1D04232, 1D04240, 1D04241, 1D04242, 1D04243, 1D04244, 1D04245, 1D04246, 1D02803, 1D04249, 1D04250. The Chamber therefore will admit these documents into evidence.

10. With regard to the remaining 21 associated exhibits, the Chamber finds that without these documents in evidence the statement would not be incomprehensible or of lesser probative value and therefore denies their admission into evidence.

V. DISPOSITION

11. For the foregoing reasons, pursuant to Rules 89 (C) and 92 *ter* of the Rules, the Chamber

DECLARES the First Motion moot;

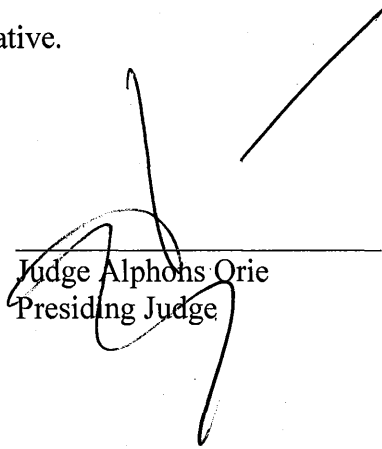
GRANTS the Second Motion **IN PART**;

ADMITS into evidence exhibit D646 (under seal) and the documents bearing Rule 65 *ter* numbers 1D04219, 1D04220, 1D04221, 1D04222, 1D04223, 1D04224, 1D04232, 1D04240, 1D04241, 1D04242, 1D04243, 1D04244, 1D04245, 1D04246, 1D02803, 1D04249, and 1D04250;

DENIES the Second Motion in all other respects; and

REQUESTS the Registry to assign exhibit numbers to the admitted documents 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 fourteenth day of July 2015
At The Hague
The Netherlands

[Seal of the Tribunal]