

**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: 3 November 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: 3 November 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO ADMIT THE
WRITTEN TESTIMONY AND ASSOCIATED EXHIBITS OF
WITNESS DRAGIŠA MASAL PURSUANT TO RULE 92 *TER***

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 13 November 2014, the Defence filed a motion seeking admission into evidence, pursuant to Rule 92 *ter* of the Tribunal's Rules of Procedure and Evidence ("Rules"), the written statement of Dragiša Masal, dated 28 July 2014, together with 17 associated exhibits ("Motion").¹ It submits that the witness's statement is relevant, reliable, and probative.² The Defence further submits that the 17 associated exhibits should be admitted into evidence because they are directly relevant to the case, form an inseparable and indispensable part of the witness's statement, and are important to the Defence case.³ On 27 November 2014, the Prosecution filed its response, not opposing the Motion except for the admission of the documents bearing Rule 65 *ter* numbers 1D03015 and 1D03016, for which translations were still pending.⁴

2. On 18 March 2015, during Masal's testimony, his witness statement was marked for identification as D942, pending a corrected English translation.⁵ On the same day, the Defence noted on the record that three of the tendered associated exhibits were already in evidence.⁶ Furthermore, the associated exhibit bearing Rule 65 *ter* number 8977 was admitted into evidence during his testimony.⁷ The Registry assigned exhibit numbers D943-953 and D955-D956 to the remaining 13 associated exhibits.⁸ By 1 October 2015, the pending translations of D942, 1D03015, now D951, and 1D03016, now D952, were uploaded into e-Court. The translations of D951 and D952 were also attached to the corresponding documents.

II. APPLICABLE LAW

3. Rule 92 *ter* of the Rules provides in its 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 that witness's declaration and what the witness would say if examined. With regard to the associated

¹ Defence Motion Pursuant to Rule 92*ter* to Admit the Written Testimony of Dragiša Masal, 13 November 2014, paras 2, 13, Annex A, Annex B.

² Motion, paras 7, 11.

³ Motion, para. 12.

⁴ Prosecution Response to Defence Rule 92 *ter* Motion for Dragiša Masal, 27 November 2014 ("Response"), para. 1. The Response contains two paragraphs numbered '1'. The Chamber here refers to the second of these paragraphs.

⁵ T. 33322-33334, 33460-33462.

⁶ T. 33334-33336.

⁷ T. 33334-33336.

⁸ T. 33336.

exhibits, the Chamber recalls and refers to the applicable law governing the admission into evidence of such exhibits, as set out in previous decisions.⁹

III. DISCUSSION

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

4. The witness's statement relates to circumstances in Srebrenica, Žepa, and Goražde during the war, in particular the creation of safe areas, cease-fires, attempts of demilitarisation, and the role of the Accused in these processes. It also discusses the strained relations between UNPROFOR and the VRS due to UNPROFOR support of Bosnian Muslims. Furthermore, the Chamber notes that the statement was signed by the witness and the witness acknowledged its truthfulness.¹⁰ Based on the foregoing, the Chamber concludes that the witness's statement is relevant and probative pursuant to Rule 89 (C) of the Rules.

B. Admissibility Pursuant to Rule 92 *ter* of the Rules

5. Witness Masal testified in court on 18, 19, and 23 March 2015. He was available for cross-examination and questioning by the Judges, and attested on the first day of his testimony that his statement accurately reflects his declaration and what he would say if examined.¹¹ Therefore, the Chamber finds that the requirements of Rule 92 *ter* of the Rules have been satisfied.

C. Associated Exhibits

6. The witness extensively discusses the 13 associated exhibits in paragraphs 3, 9-10, 13-15, 17, 19-22, and 28 of his statement. The Chamber finds that without these documents it would not be able to comprehend the statement and, for this reason, finds that they form an inseparable and indispensable part thereof. The Chamber will therefore admit the 13 associated exhibits into evidence.

⁹ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, paras 12-13. *See also* Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 pursuant to Rule 92 *quater*, 23 July 2012, para. 13; Decision on Prosecution's Motion for Reconsideration, Granting Admission from the Bar Table or Certification in Relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 8.

¹⁰ D942 (Dragiša Masal, witness statement, 28 July 2014), p. 14.

¹¹ T. 33333.

IV. DISPOSITION

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

GRANTS the Motion **IN PART**;

INSTRUCTS the Registry to replace the English translation of D942 with the document bearing Document ID 1D26-1525;

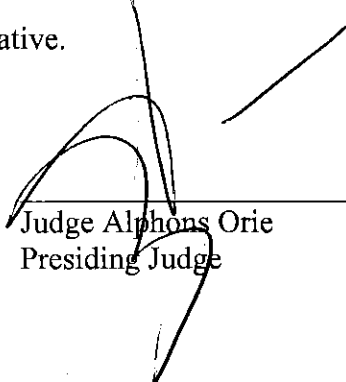
ADMITS into evidence

1) the witness statement of Dragiša Masal, dated 28 July 2014, marked for identification as D942; and

2) the documents marked for identification as D943 up to and including D953; D955; and D956; and

DISMISSES the remainder of the Motion as moot.

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



Judge Alphons Orie
Presiding Judge

Dated this third day of November 2015
At The Hague
The Netherlands

[Seal of the Tribunal]