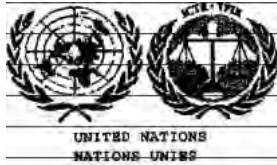


ICTR-98-41-
25-05-2006
(27716-27718)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 25 May 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA



Case No. ICTR-98-41-T

**DECISION ON REQUEST TO ADMIT UNITED NATIONS DOCUMENTS INTO
EVIDENCE UNDER RULE 89 (C)**

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence

Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershon Otachi Bw'omanwa

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED of the Ntabakuze “Motion to Deposit Certain United Nations Documents into Evidence for the Truth of Their Contents”, filed on 7 December 2005;

CONSIDERING the Prosecution Response, filed on 12 December 2005; the Defence Reply, filed on 3 January 2006; and the Prosecution Further Response, filed on 4 January 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Ntabakuze Defence seeks to admit twenty-three sets of documents into evidence. Lead Counsel for Ntabakuze explained that he personally procured these documents from the United Nations.¹ The documents consist of official United Nations correspondence arising from the UNAMIR peacekeeping mission in Rwanda in 1994. Each document is authored by one of three senior officials: Jacques-Roger Booh-Booh, former Special Representative of the Secretary-General to Rwanda; Kofi Annan, former Under-Secretary-General for Peacekeeping Operations; or Lieutenant-General Roméo Dallaire, former Force Commander of UNAMIR. With one exception, all of the documents are dated January through April 1994.

DELIBERATIONS

2. Rule 89 (C) of the Rules of Procedure and Evidence (“the Rules”) provides that a Chamber “may admit any relevant evidence which it deems to have probative value”. When offering a document for admission, the moving party must make a *prima facie* showing that the document is both relevant and has probative value.²

3. The Defence has discharged its *prima facie* burden of showing the relevance of the documents, which reflect the views of United Nations officials as to the political and military context of Rwanda in 1994. This context is relevant to the charges against the Accused and has been the object of extensive testimony called by both the Defence and the Prosecution.

¹ T. 22 November 2005 p. 58.

² *Bagosora et al.*, Decision on the Prosecutor’s Motion for the Admission of Certain Materials under Rule 89 (C) (TC), 14 October 2004, para. 22; *Bagosora et al.*, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004, para. 7; *Delalic and Delic*, Decision on Application of Defendant Zejnil Delalic for Leave to Appeal against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998, para. 17 (“At the stage of admission of evidence, the implicit requirement of reliability means no more than that there must be sufficient indicia of reliability to make out a *prima facie* case.”).

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4. Documents need not be recognized by a witness in order to have probative value.³ On the other hand, there must be some indication that the document is what the moving party says it is, and that its contents are reliable.⁴ The Rules impose no technical requirements for establishing the authenticity of a document, but a number of factors have been considered relevant:

- the extent to which the document's content is corroborated by other evidence;⁵
- the place where the it was obtained;⁶
- whether the it is an original or a copy;⁷
if it is a copy, whether it is registered or filed with an institutional authority;⁸
whether it is signed, sealed, stamped, or certified in any way.⁹

At the admissibility stage, the Chamber is not called upon to make a final determination whether the document is what the party says it is, much less whether its contents are truthful or accurate.¹⁰

6. In this case, the balance of probabilities favors a finding of probative value for all the documents that were produced contemporaneously with the events that occurred in Rwanda in 1994. The documents were obtained from the archives of United Nations Headquarters, confirming their apparent status as United Nations documents. Furthermore, the documents were created at the time of the events in question as part of

³ *Kvočka et al.*, Decision on Exhibits, 19 July 2001 ("It is not the practice in this case to insist on exhibits being tendered during the examination of witnesses."); *Blaskic*, Judgement (TC), 3 March 2000, para. 35 (holding that a bench composed of professional judges was able to assess documentary evidence and accord it the proper weight).

⁴ *Bagosora et al.*, Decision on Admissibility of Evidence of Witness DBQ (TC), 18 November 2003, para. 24 ("[E]vidence whose reliability cannot adequately be tested ... cannot have probative value."); *Musema*, Judgement and Sentence (TC), 27 January 2000, paras. 59-72 (discussing the assessment of credibility and linking it to the determination of whether evidence has probative value); *Kordić et al.*, Decision on Appeal Regarding Statement of a Deceased Witness (AC), 21 July 2000, para. 24 ("A piece of evidence may be so lacking in terms of the indicia of reliability that it is not 'probative' and is therefore inadmissible.").

⁵ *Bagosora et al.*, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004, para. 7; *Musema*, Judgement and Sentence (TC), 27 January 2000, para. 75. See also *Delalic and Delic*, Decision on Application of Defendant Zejnil Delalic for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998, para. 18(b) (affirming the admission of evidence that corresponded to previous witness testimony and other documentary evidence).

⁶ *Bagosora et al.*, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004, para. 8. See also *Delalic and Delic*, Decision on Application of Defendant Zejnil Delalic for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998, para. 18(a) (affirming the admission of evidence that was seized from a company linked to the defendant).

⁷ *Musema*, Judgement and Sentence (TC), 27 January 2000, para. 67.

⁸ *Id.*

⁹ *Bagosora et al.*, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004, para. 8; *Musema*, Judgement and Sentence (TC), 27 January 2000, para. 67.

¹⁰ *Musema*, Judgement and Sentence (TC), 27 January 2000, para. 56.

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the routine exchange of correspondence between top UNAMIR officials, or is directly linked to this correspondence. These characteristics endow the documents with sufficient reliability to be admissible.


8. The Prosecution contention that some of the documents have already been admitted is correct.¹¹ There is no need for these documents to be exhibited a second time.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Defence's request to admit Annexes A, C, F, H, I, K, L, N, P, Q, R, S, T, U, V and W into evidence;

DENIES the Defence's request to admit Annexes B, D, E, G, J, M, and O into evidence.

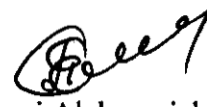
Arusha, 25 May 2006



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



¹¹ ~~Annexes B, D, E, G, J, M, and O~~ were previously admitted into evidence.