

IT-09-92-T
D 76302 - D 76299
20 November 2013

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**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: 20 November 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: 20 November 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

DECISION ON EXHIBIT D357 MFI

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 29 August 2013, during the testimony of Emir Turkušić, a map of Sarajevo with a sketch related to the direction of fire of the alleged shelling of the Simon Bolivar elementary school was used.¹ At the Prosecution's request, the Defence explained the markings on the sketch added by the Defence's experts.² The witness testified about whether the sketch was correctly placed on the map.³ On 30 August 2013, the Prosecution objected to the admission of the exhibit on the grounds that the witness had not been able to testify about it and that the Defence counsel had provided expert testimony in relation to it.⁴ According to the Prosecution, the exhibit should be tendered through the Defence expert who created it.⁵ The Defence argued that the witness had testified about the exhibit and had confirmed the angle of fire represented in it.⁶ The document was marked for identification as D357.⁷

2. In an informal communication dated 28 October 2013, the Defence argued that the witness testified about D357 on transcript pages 15810 to 15821. This was put on the record on 29 October 2013.⁸ The same day, the Prosecution maintained its objection, adding that the pages identified by the Defence in its informal communication related to another exhibit and that the only question put to the witness in relation to D357 was at transcript page 15845.⁹ The Defence submitted on the same day that the witness gave evidence about the azimuth depicted in D357 in paragraphs 24 to 27 of his statement, as well as during his testimony at transcript pages 15829 to 15830 where he commented on a sketch contained in exhibit P2017.¹⁰ According to the Defence, it is therefore necessary to admit D357 into evidence to understand the witness's testimony.¹¹ Following the additional Defence submission, the Prosecution maintained its objection to admission.¹²

¹ T. 15843-15849.

² T. 15843.

³ T. 15844.

⁴ T. 15943-15944.

⁵ T. 15943.

⁶ T. 15944.

⁷ T. 15945.

⁸ T. 18472.

⁹ T. 18498-18499.

¹⁰ T. 18523; the witness's statement is exhibit P2009; P2017 is the report on the Simon Bolivar elementary school shelling incident and the sketch the defence refers to is at page 7 of the BCS version.

¹¹ T. 18523.

¹² T. 18524.

II. APPLICABLE LAW

3. Rule 89 (C) of the Tribunal's Rules of Procedure and Evidence ("Rules") states that a Chamber may admit any relevant evidence which it deems to have probative value.

III. DISCUSSION

4. D357 concerns the direction of fire of a shell that allegedly landed on the Simon Bolivar elementary school on 18 June 1995 and is therefore relevant to allegations contained in the Indictment, including, but not limited to, Counts 9 and 10.

5. With regard to probative value, the Chamber notes that one question was put to the witness in relation to D357: "Do you agree that this sketch is correctly laid on the map of Sarajevo?", to which the witness answered: "Yes, it is. But I think that the input is arbitrary because, after so much time, and given the fact that the wall was renovated, nobody can tell that the angle of descent was really 63 degrees. What kind of measurement could have produced such a result?".¹³ The Chamber further notes that D357 contains the content of two documents already in evidence: the map of Sarajevo on which a 207 degree direction of origin of fire is plotted admitted as exhibit D347, and the underlying sketch admitted as part of exhibit P2043 which is a report on the alleged shelling incident.¹⁴ The document further contains additional markings made by the Defence expert.¹⁵ The transcript references provided by the Defence in its informal communication of 28 October 2013 relate to D347. The transcript pages referred to in the Defence submission of 29 October 2013 and the named paragraphs of the witness's statement relate to a different map contained in P2017, on which the direction of origin of fire of the same shell that allegedly fell on the Simon Bolivar elementary school is plotted.¹⁶ Therefore, the Chamber considers that the sources identified by the Defence do not relate to the document directly, but to other maps with related content.

6. Considering the above and especially that the Witness could not comment on the different components of the document and that the Defence counsel was not able to provide the Chamber with further information about its creation, the Chamber finds that the document lacks probative value and denies admission thereof without prejudice.

¹³ T. 15845.

¹⁴ See BCS version of P2043, p. 16.

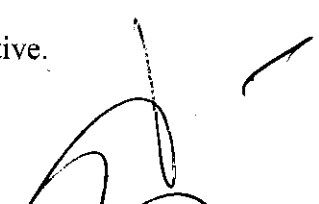
¹⁵ T. 15843-15844.

¹⁶ P2017 is identical to pages 5-7 and 9-12 of P2043.

IV. DISPOSITION

7. For the foregoing reasons, pursuant to Rules 54 and 89 (C) of the Rules, the Chamber **DENIES ADMISSION** of D357 without prejudice.

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



Judge Alphons Orie
Presiding Judge

Dated this twentieth day of November 2013
At The Hague
The Netherlands

[Seal of the Tribunal]