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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: 17 December 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: 17 December 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION
OF DOCUMENTS FROM THE BAR TABLE
(SARAJEVO DOCUMENTS)**

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 31 July 2013, the Prosecution filed a motion requesting the admission of documents from the bar table (“Motion”).¹ On 12 August 2013, the Defence requested additional time to file its response, which the Chamber granted on 19 August 2013.² The Defence filed a response on 13 September 2013 objecting to the Motion in its entirety (“Response”).³

2. The Prosecution requests the admission of 245 documents (“Documents”) from the bar table.⁴ It further requests the Chamber to take judicial notice of the authenticity of three of these documents,⁵ and to add eleven of these documents to its Rule 65 *ter* exhibit list.⁶ Lastly, the Prosecution requests the admission into evidence of 13 additional documents related to the testimony of a protected witness.⁷

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing the admission of documents from the bar table and the taking of judicial notice as set out in a previous decision.⁸ The Chamber further recalls and refers to the applicable law governing amendments to the Rule 65 *ter* exhibit list as set out in a previous decision.⁹

¹ Prosecution Motion to Admit Evidence from the Bar Table: SRK and VRS Materials Related to Siege of Sarajevo and Motion to Add and Admit Additional Documents (with Confidential Annexes A-C), 31 July 2013.

² Defence Motion for Enlargement of Time to Respond to “Prosecution Motion to Admit Evidence from the Bar Table: SRK and VRS Materials Related to Siege of Sarajevo and Motion to Add and Admit Additional Documents”, 12 August 2013; T. 15305.

³ Defence Response to Prosecution Motion to Admit Evidence from the Bar Table: SRK and VRS Materials Related to the Siege of Sarajevo and Motion to Add and Admit Additional Documents, 13 September 2013 (Confidential).

⁴ Motion, paras 1-2, 8-15, and 22 (c). The Chamber notes that the Prosecution tenders document bearing Rule 65 *ter* no. 8229 twice. See Motion, Confidential Annex A, p. 92, item nos 239 and 241. However, it further notes that document bearing Rule 65 *ter* no. 16989 was counted in Confidential Annex A to the Motion as one document, whereas this document was split up as documents bearing Rule 65 *ter* nos 16989a and 16989b. See Motion, Confidential Annex A, p. 12, item no. 30.

⁵ Motion, paras 2, 14, 22 (b) and Confidential Annex A, pp. 6, 51 and 68. The request concerns the documents bearing Rule 65 *ter* nos 2677, 25252, and 29133.

⁶ Motion, paras 3, 16-20, 22 (a), 22 (c) and Confidential Annexes A and B to the Motion.

⁷ Motion, paras 4, 21, 22 (c) and Confidential Annex C to the Motion.

⁸ Decision on Prosecution’s Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 2 May 2013, paras 7-10; Decision on Prosecution First Motion to Admit Evidence from the Bar Table Mladić Notebooks, 25 September 2012, para. 5.

⁹ Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

III. DISCUSSION

4. At the outset, the Chamber notes that, in spite of the Chamber's guidance of 10 November 2011, the Defence did not make specific submissions regarding individual documents included in the Motion but reverted to providing general submissions accompanied by a few examples.¹⁰ As a consequence, the Chamber will, in general, only address these submissions and limited examples listed by the Defence in determining whether the standard for admission of the Documents from the bar table has been met.

A. Judicial Notice pursuant to Rule 94 (B)

5. Pursuant to Rule 94 (B), the Prosecution requests the Chamber to take judicial notice of the authenticity of documents bearing Rule 65 *ter* numbers 2677, 29133, and 25252, which the Defence submits should be rejected.¹¹ The Chamber recalls that, before taking judicial notice of the authenticity of documentary evidence pursuant to Rule 94 (B), the Chamber must be satisfied that the documents were admitted into evidence in prior proceedings and that their authenticity was explicitly discussed prior to admission.¹² The Prosecution has not provided the Chamber with relevant detail or transcript references from previous trials to enable the Chamber to consider whether or to what extent the authenticity of each document was discussed in those previous proceedings. In the absence of the aforementioned information, the Chamber denies the Motion in this respect.

B. Addition to Rule 65 *ter* exhibit list

6. The Prosecution requests the Chamber's leave to add eleven documents to its Rule 65 *ter* exhibit list. The Prosecution acknowledges that it cannot show good cause for their late addition to the list, but gives a detailed analysis of why it is in the interests of justice to nonetheless allow the request for their addition.¹³ The Defence does not provide specific submissions in this regard. The Chamber firstly notes that the proposed exhibits relate to the supply of ammunition to the VRS, including the SRK,¹⁴ command and control of Serb forces during the transformational period from

¹⁰ T. 109-110; See Decision on Prosecution Motion for Admission of Documents from the Bar Table, 19 July 2013, para. 10.

¹¹ Motion, para. 22 (b) and Confidential Annex A, pp. 6, 51 and 68; Response paras 21-22.

¹² Decision on Prosecution First Motion to Admit Evidence from the Bar Table Mladić Notebooks, 25 September 2012, paras 5, 7.

¹³ Motion, paras 16-20.

¹⁴ Rule 65 *ter* nos 29110, 29116, 29117, 29118, 29119, 29121, 29122, 29123, and 29134.

JNA to VRS,¹⁵ and the ballistics of specific types of mortars.¹⁶ The Chamber is thus satisfied of the *prima facie* probative value and relevance of these documents to issues charged in the Indictment.

7. The Prosecution further submits that the majority¹⁷ of the proposed exhibits are overview documents related to ammunition and projectile supply to the VRS and their addition (and admission) would allow the Prosecution to reduce the volume and amount of materials tendered from its exhibit list.¹⁸ The Chamber finds merit in the Prosecution's submission that it is preferable for it to tender the proposed overview documents rather than individual ammunition delivery forms from various military production facilities. In the absence of specific objections from the Defence against their addition to the Rule 65 *ter* exhibit list, having found the proposed exhibits to be *prima facie* relevant and probative, and considering that ten of the eleven proposed exhibits were disclosed to the Defence in 2011, the Chamber is satisfied that it is in the interest of justice to allow the Prosecution's request in this respect.¹⁹ Accordingly, it will allow the addition to Prosecution Rule 65 *ter* exhibit list of the documents bearing Rule 65 *ter* numbers 29108, 29110, 29116-29119, 29121-29123, and 29133-29134.²⁰

C. Admissibility of Documents pursuant to Rule 89 (C)

8. As a general observation, the Chamber notes that some documents are somewhat lengthy (between 20 and 30 pages), while the description provided of their relevance and probative value is very concise.²¹ The Chamber considers, however, that the content of these documents is of a very technical nature (such as tables listing troops or ammunition), and that their relevance has been made sufficiently clear. The Chamber therefore does not consider the length of these documents to prevent their admission into evidence from the bar table.

¹⁵ Rule 65 *ter* no. 29108.

¹⁶ Rule 65 *ter* no. 29133.

¹⁷ It concerns documents bearing Rule 65 *ter* nos 29110, 29116 to 29119, 29122, and 29123, see Motion, para. 19, footnote 20.

¹⁸ Motion, paras 17-18.

¹⁹ The document that was not disclosed to the Defence in 2011 is the document bearing Rule 65 *ter* no. 29134. This (one page) letter was disclosed to the Defence on 26 July 2013, See Motion, para. 20 and Confidential Annex A, pp. 84-85 (item no. 217).

²⁰ Motion, Confidential Annex B.

²¹ See e.g. documents bearing Rule 65 *ter* nos 29108, 8766 and 10651. The Chamber notes that the document bearing Rule 65 *ter* no. 8766, both the original and the English translation, contains attachment number four twice. See original at pp. 8-9 and English translation at pp. 13-16.

9. The Chamber notes the Defence's objection that a number of documents pertain to a time-frame outside the Indictment period, prior to 12 May 1992, and should thus be rejected.²² The Chamber understands this objection to refer to documents bearing Rule 65 *ter* numbers 18733, 3648, 8495, 29108, 8878, and 8780.²³ In the absence of specific objections, the Chamber has considered the Defence's general objection regarding dates of these documents when assessing their relevance to the charges in the Indictment as well as their probative value, below.

10. The Defence submits that a "[s]eries of proffered documents relates to entities from FRY which were not identified trough [sic] the Indictment as specific participants of JCE, such as *Krusik* factory in Serbia, or FRY Ministry of Defence, or *Nikinci*".²⁴ The Chamber understands this objection to cover, *inter alia*, the tendering of documents bearing Rule 65 *ter* numbers 8926, 29117, 14930, 8854, 14924, 14931, 14907, 14914, 14865, 29133, 8737, 14932, 9116, and 14925. The Defence additionally argues that "[n]o nexus between scheduled incidents and particular arrangement has been established", which the Chamber understands to refer to the Defence argument that "[p]lenty of documents relates [sic] to either ammunition or material, but without any specific link to relevant charges. Procurement of [...] 'ammunition used during the attacks on the civilian population of Sarajevo' and time overlap of specific procurement with alleged attacks on civilians, does not constitute sufficient indicia on relevance of those documents nor its content".²⁵ In relation to this argument, the Chamber additionally considered the documents bearing Rule 65 *ter* numbers 14929, 855, 823, 9548, 9733, 29122, 11247, 451, 14568, 18605, 25253, 19700, 2236, 1903, and 11475.

11. With regard to these objections, the Chamber observes that a large number of these documents was tendered for the purpose of showing that various production facilities in Serbia supplied participants in the alleged JCE with heavy weapons and ammunitions, and that some of these ammunitions were used by those participants in the perpetration of the alleged crimes relating to the siege of Sarajevo.²⁶ Additionally, some documents purport to show the direct and indirect military-technical cooperation between various members of the alleged JCE.²⁷ Observing that the

²² Response, para. 19. The Defence stated that "[n]umber of documents pertains to time-frame out of the Idictment [sic] period prior to 12 of May 2013 and therefore is out of the scope of Indictment period, and thus, as such should be rejected." The Trial Chamber interpreted this to refer to documents that were dated prior to 12 May 1992.

²³ Motion, Confidential Annex A, pp. 2-5.

²⁴ Response, para. 16.

²⁵ Response, paras 17-18.

²⁶ See e.g. Motion, Confidential Annex A, p. 34, regarding the document bearing Rule 65 *ter* no. 14931 (item no. 82), and referring to evidence led in court at T. 8401-8402 that "numbers on fragments of mortars from Krušik were recovered from the locations of impacts".

²⁷ See e.g. Motion, Confidential Annex A, p. 33 regarding the document bearing Rule 65 *ter* no. 14924 (item no. 78).

documents referred to above in paragraph 10 are relevant to the charges relating to the Sarajevo siege and are dated within the time frame of the Indictment,²⁸ the Chamber is satisfied that the Prosecution has shown with sufficient clarity and specificity (i) the relevance and probative value of these documents, and (ii) how they would fit into its case.

12. In relation to document bearing Rule 65 *ter* number 18733, the Defence argues it “contain[s] no stamp, no log number, signature [...] it cannot be seen whether it has been sent, or received [sic]”, and that it should be “summarily rejected and not taken into consideration”.²⁹ The Chamber notes that the Defence cites this document as an example and appears to suggest that there are other documents in the Confidential Annexes to the Motion which the Defence considers lack indicia of authenticity. The Chamber considers that it is not up to it to search through each of the Documents and speculate in relation to which documents the Defence would or would not object regarding their authenticity. The Chamber has therefore only considered this argument in relation to the document listed by the Defence. The Prosecution submits that the document bearing Rule 65 *ter* number 18733 was recovered from the RS Parliament archives on 22 September 1995.³⁰ The Chamber notes that the Motion does not contain other documents from this archive. It further notes that, while nearly all archives are mentioned in the “Origin Glossary for Exhibits Referenced in Confidential Annex A”, the Prosecution did not include the RS Parliament archive in its glossary.³¹ The Prosecution submits that, based on the contents of this document, it was drafted between 10 January and 20 February 1992.³² The Chamber finds some merit in the Defence objections in that it is difficult to assess the probative value of this document, which bears no stamp, date or signature, and for which the Prosecution did not provide further information as to how the document was obtained. The Chamber will therefore deny its admission into evidence without prejudice.

13. With regard to documents bearing Rule 65 *ter* numbers 3648 and 11909, referenced by the Defence as examples of documents without indicia of being sent or received,³³ and document bearing Rule 65 *ter* number 8780, for which the Defence submits that “[t]his document shows a

²⁸ The Chamber notes, in this respect, that the document bearing Rule 65 *ter* no. 14929 appears in section one of Confidential Annex of the Motion (at p. 5) which consists of documents from the year 1992. It observes, however, that the document is dated 29 April 1993. The error appears to originate from the English translation of this document, which states at the top that it is from “29 April 1992” (although it is dated 29 April 1993 at the bottom of the same page). The Chamber notes that the original B/C/S version of this document lists the correct date at the top of this document “29.04.1993”, and has considered the document as such.

²⁹ Response, para. 11.

³⁰ Motion, Confidential Annex A, p. 2 (item no. 1).

³¹ Motion, Confidential Annex A, pp. 95-96.

³² Motion, Confidential Annex A, p. 2 (item no. 1).

³³ Response, paras 12, 15.

request, but Prosecution offers no indicia that it has been received by 2nd MD Command, nor positively responded to”,³⁴ the Chamber will consider the Defence objections when weighing the documents against the final trial record. The Chamber is not persuaded, however, that this precludes their admission into evidence and further notes that the Defence did not contest the authenticity of these documents. The Chamber finds that the Prosecution has shown with sufficient clarity and specificity (i) the relevance and probative value of these documents, and (ii) how they would fit into its case.

14. With regard to the general Defence objection that the Prosecution did not provide with sufficient clarity and specificity how the proffered documents fit into its case, and provided instead general, misleading and inaccurate comments,³⁵ the Chamber recalls that it remains within the Chamber’s discretion whether to follow the Prosecution’s submissions and conclusions when assessing the evidence in its entirety. With regard to the documents referred to by the Defence in this respect, bearing the Rule 65 *ter* numbers 8495 and 29108, the Chamber notes that the Prosecution has included for each document an explanation of how the document fits into its case, and is satisfied that the Prosecution has shown with sufficient clarity and specificity the relevance and probative value of these documents.

15. The Chamber notes that on 28 February 2013, it denied admission into evidence of P767 and P768 as associated exhibits to Witness Roses’ statement, without prejudice.³⁶ The Chamber is satisfied that the Prosecution has shown with sufficient clarity and specificity (i) the relevance and probative value of these documents, and (ii) how they would fit into its case.

16. In relation to documents bearing Rule 65 *ter* numbers 9017a and 9017, the Chamber notes that the Prosecution, on the one hand, only seeks admission into evidence of pages 1-2 and 19-26 of this 26-page report, and on the other hand it tenders and relies on large parts of the rest of the whole report.³⁷ In relation to this specific report, which is technical in nature, the Chamber does not consider that it is assisted by having limited portions from various parts of the report in evidence, and will consider admission of the document as a whole instead (bearing Rule 65 *ter* number 9017). In relation to the report as a whole, the Chamber is satisfied that the Prosecution has shown with

³⁴ Response, para. 15.

³⁵ Response, paras 13-14. The Chamber understands the Defence objection to relate to the “entirety of documents” in the Motion, in addition to documents bearing Rule 65 *ter* nos 8495 and 29108.

³⁶ T. 9411. These documents bear Rule 65 *ter* nos 08152 (P767) and 08153 (P768). See Motion, Confidential Annex A, pp. 59-60 (items 146 and 147); The Chamber notes that the Prosecution has not indicated in Confidential Annex A the exhibit number P768 assigned to the document bearing Rule 65 *ter* no. 8153.

³⁷ See Motion, Confidential Annex A, pp. 66 and 71, item nos 164 and 173.

sufficient clarity and specificity (i) the relevance and probative value of this document, and (ii) how it would fit into its case. As a result, the Chamber declares the Prosecution's request for the admission into evidence of Rule 65 *ter* number 9017a moot.

17. The Chamber notes that for the document bearing Rule 65 *ter* no. 24514, no English translation has been uploaded in eCourt. Therefore, the Chamber cannot assess its relevance or probative value, and denies its admission into evidence without prejudice.

18. The Chamber notes that the Prosecution twice listed the document bearing Rule 65 *ter* no 8229 in Annex A to the Motion.³⁸ The Chamber was guided by both descriptions of this document in Annex A to when determining the document's probative value and relevance. The Chamber further notes that documents bearing Rule 65 *ter* numbers 50, 792, 793, 1986, 2677, 2887, 8869,³⁹ 9119, 9189, 9714, 9900, and 14607 have been admitted; it therefore declares the Motion moot in this respect.

19. The Chamber finds that the Prosecution, in relation to the remaining documents, has shown with sufficient clarity and specificity (i) the relevance and probative value of these documents, and (ii) how they would fit into its case. The Chamber is further satisfied that the Prosecution, in relation to the remaining documents related to a protected witness, has shown with sufficient clarity and specificity (i) the relevance and probative value of these documents, and (ii) how they would fit into its case. Those documents bear Rule 65 *ter* numbers 28538, 11090, 11471, 11464, 9682, 8356, 11349, 11419, 9875, 9893, 11427, and 11416.⁴⁰

³⁸ See Motion, Confidential Annex A, p. 92, listed under nos 239 and 241.

³⁹ The Chamber observes that the ERN numbers and substance of the document uploaded in eCourt as Rule 65 *ter* 8869 was erroneously listed in the Prosecution Motion as the document bearing Rule 65 *ter* no. 9057. For the purposes of this decision the Chamber has therefore considered the Prosecution's request for admission of the document bearing Rule 65 *ter* no. 8869 instead of 9057.

⁴⁰ The Chamber notes that the document bearing Rule 65 *ter* no. 11475 was tendered in relation to the same protected witness, but that the Chamber considered its admission in light of the Defence objections specified in paras 17 and 18 of the Reply, see *supra* at paragraph 10.

IV. DISPOSITION

20. For the foregoing reasons, pursuant to Rule 89 of the Rules, the Chamber

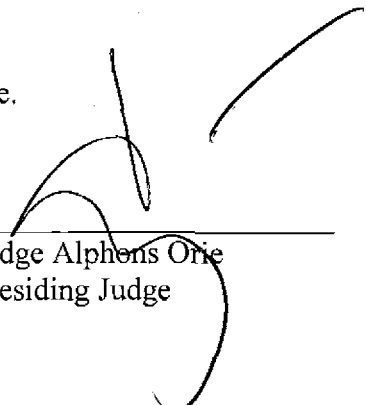
- (i) **GRANTS** the Motion **IN PART**;
- (ii) **ALLOWS** the Prosecution to add the following documents to its exhibit list: Rule 65 *ter* numbers 29108, 29110, 29116, 29117, 29118, 29119, 29121, 29122, 29123, 29133, and 29134;
- (iii) **ADMITS** into evidence the following documents: Rule 65 *ter* numbers 8, 11, 14, 72, 74, 150, 333, 355, 365, 451, 480, 588, 630, 646, 808, 823, 833, 854, 855, 948, 952, 1015, 1120, 1139, 1809, 1891, 1906, 1977, 2010, 2020, 2194, 3648, 3678, 3690, 3692, 3702, 3742, 3990, 4652, 6173, 6806, 7978, 8179, 8205, 8223, 8228, 8256, 8356, 8427, 8449, 8456, 8473, 8493, 8495, 8498, 8523, 8561, 8565, 8657, 8683, 8712, 8737, 8766, 8780, 8781, 8784, 8785, 8837, 8854, 8863, 8878, 8926, 8931, 9010, 9017, 9022, 9083, 9116, 9224, 9230, 9231, 9258, 9316, 9545, 9548, 9583, 9617, 9657, 9662, 9682, 9732, 9733, 9735, 9744, 9752, 9829, 9857, 9875, 9893, 10651, 10724, 10831, 10838, 11090, 11153, 11157, 11247, 11349, 11416, 11419, 11427, 11464, 11471, 11472, 11473, 11475, 11547, 11898, 11901, 11902, 11906, 11907, 11908, 11909, 11925, 11934, 12075, 13839, 14026, 14456, 14519, 14568, 14590, 14595, 14606, 14626, 14710, 14739, 14762, 14763, 14780, 14812, 14819, 14849, 14862, 14864, 14865, 14907, 14914, 14924, 14925, 14929, 14930, 14931, 14932, 14934, 15272, 16542, 16989a, 16989b, 17669, 17673, 18597, 18601, 18602, 18605, 18606, 18610, 18611, 18612, 18613, 18614, 18619, 18620, 18621, 18622, 18624, 19275, 19276, 19279, 19699, 19700, 19701, 19808, 25240, 25252,⁴¹ 25253, 25254, 27935, 27942, 28492, 28493, 28494, 28495, 28496, 28497, 28498, 28499, 28505, 28538 (under seal), 29108, 29110, 29116, 29117, 29118, 29119, 29121, 29122, 29123, 29133, 29134, P767, and P768;
- (iv) **ADMITS** into evidence the following documents provisionally under seal, pending a possible request from Serbia for protective measures in relation to them: Rule 65 *ter*

⁴¹ The Chamber notes that while document bearing Rule 65 *ter* nos 8785 and 25252 are nearly identical in content, it considered that one is a letter (8785) and the other a telex of the same letter (25252) by which the Prosecution purports to show that the letter was indeed sent to the organ to which the letter was addressed.

numbers 93, 1779, 1811, 1903, 1922, 1994, 2030, 2036, 2236, 2237,⁴² 2248, 2249, 2251, 2252, 2309, 2314, 8229, 8234, 8248, 8298, 8560, 8628, 8988, 8998, 9159, 9265, 9292, 14503, 14587, and 25227;

- (v) **DENIES** admission into evidence of the documents bearing Rule 65 *ter* numbers 18733 and 24514, without prejudice;
- (vi) **DECLARES** the Motion moot in relation to the request for the admission of the documents bearing Rule 65 *ter* numbers 50, 792, 793, 1986, 2677, 2887, 8869, 9017a, 9119, 9189, 9714, 9900, and 14607;
- (vii) **REQUESTS** the Registry to assign numbers to the exhibits admitted by this decision and inform the parties and the Chamber of the numbers so assigned; and
- (viii) **DENIES** the remainder of the Motion.

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



Judge Alphens Orié
Presiding Judge

Dated this seventeenth day of December 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴² The Chamber notes that Confidential Annex A to the Motion did not specifically indicate in relation to the document bearing Rule 65 *ter* no. 2237 that Serbia would possibly request protective measures, but notes that it was obtained through the same RFA as all other documents for which the Prosecution did provide this information.