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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: 23 January 2014
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 23 January 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT
EVIDENCE FROM THE BAR TABLE: EVIDENCE RELATED
TO THE ASSEMBLY OF REPUBLIKA SRPSKA**

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 October 2013, the Prosecution filed a motion seeking the admission into evidence from the bar table of eight documents (“Documents”) related to sessions of the Assembly of Republika Srpska (“Assembly Sessions”) (“Motion”).¹ On 14 November 2013, the Defence requested additional time to respond to the Motion, which the Chamber granted on 18 November 2013, setting the new deadline of 16 December 2013.² On 16 December 2013, the Defence filed its response objecting to the Motion in its entirety (“Response”).³

II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law governing the admission of documents from the bar table as set out in a previous decision.⁴

III. DISCUSSION

3. The Chamber notes that the evidence tendered from the document bearing Rule 65 *ter* number 2388, a speech by the Accused at the 37th Assembly Session, is contained in its entirety in P3076, which was admitted into evidence on 10 December 2013.⁵ The Chamber therefore declares the Prosecution’s request in this respect moot.

4. Turning to the remaining seven documents, the Chamber notes at the outset that three of them are complete transcripts of Assembly Sessions, comprising over 500 pages altogether. The Defence argues that the Prosecution fails to demonstrate with sufficient specificity how the Documents fit into the Prosecution’s case.⁶ While the Prosecution has included for each document in the Annex a general description of its relevance and how it would fit into its case, it reverts to making only limited specific references to particularly relevant portions of the voluminous documents.⁷ Specifically, while arguing that the Documents are “directly relevant to many aspects of this case”, the Prosecution fails to point the Chamber to the portions of the Documents pertaining

¹ Prosecution Motion to Admit Evidence from the Bar Table: Evidence Related to the Assembly of Republika Srpska (with Annex A), 31 October 2013. The Chamber refers to the Prosecution’s filing for its submissions.

² Defence Motion for Enlargement of Time to Respond to “Prosecution Motion to Admit Evidence from the Bar Table: Evidence Related to the Assembly of Republika Srpska”, 14 November 2013; T. 19441-19442.

³ Defence Response in Opposition to “Prosecution Motion to Admit Evidence from the Bar Table: Evidence Related to the Assembly of Republika Srpska”, 16 December 2013. The Chamber refers to the Defence’s filing for its submissions.

⁴ Decision on Prosecution First Motion to Admit Evidence from the Bar Table: Mladić Notebooks, 25 September 2012, paras 4, 12.

⁵ T. 20600-20601.

⁶ Response, para. 10. The Defence argues furthermore that the Prosecution fails to show how the documents fit together with other evidence presented at trial. The Chamber notes in this regard that such a showing is not a condition for admission pursuant to Rule 89 of the Rules.

to the listed aspects.⁸ Acknowledging the Prosecution's submission that the Documents represent a selection of the most relevant excerpts,⁹ the Chamber takes this opportunity to stress that a party tendering voluminous evidence from the bar table must make absolutely clear in its submissions how each individual item of evidence fits into the wider case. Failing to do this, the tendering party runs the risk that, in the absence of any context provided by witnesses, the Chamber may not be able to correctly assess the proffered evidence.¹⁰ Bearing in mind this caveat, the Chamber first notes that the Prosecution tenders only three complete transcripts, one of which is significantly shorter, comprising 49 pages. Further, the Chamber notes the Prosecution's submission that the 11th and the 17th Assembly Sessions pertain to particularly critical times in relation to the Indictment, the former taking place two months prior to the commencement of the alleged overarching JCE and the latter immediately following the "initial implementation of the Strategic Objectives". The third complete transcript, on the other hand, is exceptional, as it focuses almost exclusively on the Accused. Finally, in addition to the general description of relevance and the limited specific references, the Prosecution has included in its submissions an explanation for tendering the complete transcripts. For the foregoing reasons, bearing in mind the caveat explained above, the Chamber is satisfied that the Prosecution has shown with sufficient clarity and specificity how the Documents fit into its case.

5. The Defence argues that the admission of the Documents from the bar table is inappropriate because the Prosecution chose not to use the opportunity to put the documents to witnesses who appeared in court.¹¹ The Chamber notes in this regard that portions of the same Assembly Sessions also subject of the Documents are included in witness Robert Donia's expert report and the witness commented on some of the Assembly Sessions during his testimony.¹² Absent any challenge to the authenticity or reliability of these official records of the Assembly Sessions, the Chamber does not find it inappropriate for the Prosecution to seek their admission from the bar table, in order to present a factual account of the content of the discussions during these sessions, which the Prosecution deems relevant. The Chamber therefore considers the Defence's objection in this regard to be without merit.

6. In relation to the objection addressed in the previous paragraph, the Defence argues more specifically that it is unclear whether the Documents arise from the testimony of witness Robert

⁷ See T. 110:11-13.

⁸ See Motion, para. 8.

⁹ Motion, para. 2.

¹⁰ See *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, First Decision on Stanišić Defence Bar Table Motion of 17 February 2012, 23 May 2012, paras 13, 19.

¹¹ Response, para. 7. See also Response, para. 15.

¹² See *infra* paras 8-15.

Donia, and if so, the Prosecution fails to identify portions of his testimony dealing with the Documents.¹³ The Prosecution submits that it relies heavily on the excerpts provided in Robert Donia's expert report, but that admission of certain Assembly Sessions is necessary for meeting its burden of proof.¹⁴ The Chamber therefore understands that the Documents are proffered in order to supplement the testimony and expert report of witness Robert Donia, and to provide additional context to the excerpted statements contained in the report. Noting that the Prosecution has not included specific references to portions of witness Robert Donia's testimony and expert report, the Chamber considers that the Defence fails to explain why the absence of these references should amount to a bar to admission, and therefore finds the Defence's objection in this regard to be without merit.

7. Turning to the admissibility of the Documents pursuant to Rule 89 (C) of the Rules, the Chamber notes, as a general observation pertaining to relevance, that the Documents are complete or excerpted transcripts from the Assembly Sessions, which took place between March 1992 and December 1995, and contain speeches by high-ranking Bosnian Serb political and military leaders, including the Accused and the alleged JCE members Radovan Karadžić, Nikola Koljević, Biljana Plavšić, and Momčilo Krajišnik. Their speeches touch upon issues related to, *inter alia*, the six strategic objectives and their implementation.

8. Turning to the relevance of individual documents, the Chamber notes that the document bearing Rule 65 *ter* number 2348 is a stenograph of the 11th Assembly Session, dated 18 March 1992, and it contains discussions concerning solutions to the crisis in Bosnia and Herzegovina, the political situation, and the position of the Bosnian Serbs in the negotiations, including the division of Bosnia and Herzegovina based on the "ethnic principle".¹⁵ The discussions also touch upon the Bosnian Serb Army.¹⁶ Moreover, portions of the document are contained in witness Robert Donia's expert report and contextualised in his testimony.¹⁷ For the foregoing reasons, recalling its considerations set out in paragraph 4 above, the Chamber considers the document to be relevant to the alleged overarching JCE to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory, as charged in the Indictment.

9. The document bearing Rule 65 *ter* number 2355 is a complete transcript of the 17th Assembly Session, held between 24 and 26 July 1992, and it contains discussions concerning, *inter alia*, the six strategic objectives, the situation in the municipalities, and the functioning and

¹³ Response, para. 6.

¹⁴ Motion, para. 7.

¹⁵ For the "ethnic principle", see e.g. pp. 5, 10, 13, 21, and 46.

¹⁶ See e.g. pp. 7-8, 38.

organisation of the organs of the RS. The Prosecution submits that the document is relevant in its entirety because it shows “the interrelated nature of the work of the JCE members and their tools in achieving their objectives.”¹⁸ Nevertheless, the Prosecution makes only three specific references to the 104-page-long document, which, the Chamber notes, contains lengthy portions that appear to be of marginal relevance to the alleged intent, knowledge, objective or coordination among the alleged JCE members.¹⁹ Moreover, while the Prosecution appears to suggest that the manner in which “Momčilo Krajišnik steers the deputies in their decisions” is of particular relevance to the implementation of the objective of the alleged JCE, it omits to refer the Chamber to these particularly relevant portions. However, recalling its considerations in paragraph 4 above, the Chamber considers these shortcomings to go to the weight rather than the admissibility of the document. Noting in addition that portions of the document are also contained in the expert report of witness Robert Donia,²⁰ the Chamber finds the document to be relevant to the alleged overarching JCE to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory, as charged in the Indictment.

10. The document bearing Rule 65 *ter* number 2374A (P2427 MFI) is an extract from the 30th Assembly Session,²¹ held on 5-6 May 1993, and it contains a statement related to Foča by Petko Čančar to the effect that, at that time, there was “not a single Muslim in the area of the largest municipality”.²² The Chamber is therefore satisfied that the document is relevant to the alleged overarching JCE to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory, as charged in the Indictment.

11. The document bearing Rule 65 *ter* number 2397 is a complete transcript of the 42nd Assembly Session, dated 18-19 July 1994, but the Prosecution tenders only a speech by Radovan Karadžić contained in BCS ERN 0215-2881-0215-2885.²³ The proffered speech relates to the position of the Bosnian Serbs in the peace negotiation process and their policy *vis-à-vis* the Contact Group. In his speech, Karadžić refers to getting “rid of the enemies in our house, the Croats and Muslims” as the primary strategic aim.²⁴ Noting that the same passage is included in witness Robert

¹⁷ P2001, pp. 9-10, 14-15, 63; T. 15505-15506, 15671-15672.

¹⁸ See Motion, Annex A.

¹⁹ See e.g. pp. 21-28 concerning justifications for government expenditure, pp. 89-96 concerning naming and organization of ministries, and pp. 98-103 concerning voting on motions.

²⁰ P2001, pp. 14-15, 27, 36, 66, 78-79, 128-129.

²¹ Portions of the 30th Assembly Sessions are contained and contextualized in Robert Donia’s report. See P2001, pp. 38-39, 85, 130.

²² For dating of the proffered document that is an excerpt from an Assembly Sessions, containing no date, the Chamber has relied on witness Robert Donia’s expert report. The Chamber notes the Prosecution’s informal communication of 6 January 2014 confirming the uploading of a corrected English translation to the document, and requesting the replacement of the currently attached translation with the newly uploaded version.

²³ See English translation on eCourt pp. 76-84.

²⁴ See English translation on eCourt p. 76.

Donia's expert report,²⁵ the Chamber considers the document to be relevant to the alleged overarching JCE to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory, as charged in the Indictment. The Chamber notes that the English translation of the document repeats the second paragraph in the proffered speech, and instructs the Prosecution to upload a revised translation that fully corresponds to the BCS original.

12. The document bearing Rule 65 *ter* number 2412 is a complete transcript of the 50th Assembly Session, dated 15-16 April 1995, including an extensive briefing by the Accused on an agenda item dealing with the military-political situation in the RS. The briefing contains items dealing with, *inter alia*, the battlefield situation, the upcoming tasks of the army, and the material support for the VRS including the role of the FRY in it. The briefing is followed by a lengthy discussion, including addresses by Radovan Karadžić, Nikola Koljević, Biljana Plavšić, and Generals Tolimir, Milovanović, and Gvero. The document therefore relates, *inter alia*, to the interactions between the political and military leaders of the Bosnian Serbs, the formulation of their objectives, and the mental state of the Accused.²⁶ Portions of the document are also contained in witness Robert Donia's expert report and testimony.²⁷ For the foregoing reasons, recalling its position set out in paragraph 4 above, the Chamber finds the document to be relevant to, *inter alia*, the alleged overarching JCE to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory, as charged in the Indictment.

13. The document bearing Rule 65 *ter* number 2418 is a complete transcript of the 53rd Assembly Session, dated 28 August 1995, but the Prosecution tenders only a speech by Radovan Karadžić contained in BCS ERN 0215-4379-0215-4386.²⁸ The speech includes a reference to "towns that we've grabbed for ourselves, and there were only 30 % of us." Karadžić goes on to specify: "Don't let this get around, but remember how many of us there were in Bratunac, [...] Srebrenica, [...] Višegrad, [...] Rogatica, [...] Vlasenica, in Zvornik etc. Due to strategic importance they had to become ours, and no one is practically questioning it any more." Portions of Karadžić's speech are also contained in witness Robert Donia's expert report.²⁹ For the foregoing reasons, the Chamber finds the speech to be relevant to, *inter alia*, the alleged overarching JCE to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory, and the alleged JCE pertaining to Srebrenica, as charged in the Indictment. The Chamber admits

²⁵ See P2001, p. 21. For further cumulativeness, see also P2001, pp. 31, 45-46.

²⁶ With regard to the Defence's objection in Response, paras 13-14, the Chamber refers to its finding in *supra* para. 5.

²⁷ See P2001, pp. 21-22, 50, 71-72, 94, 117-121, 133-135; T. 15675-15678.

²⁸ See English translation on eCourt, pp. 64-69.

²⁹ See P2001, pp. 53-54, 104.

into evidence the complete speech in order to retain an appropriate context for the relevant passages.

14. The document bearing Rule 65 *ter* number 2424 is a complete transcript of the 56th Assembly Session, dated 17 December 1995, but the Prosecution tenders only one speech by Radovan Karadžić and one speech by Momčilo Krajišnik, contained in BCS ERNs 0215-4822-0215-4833 and 0215-4842-0215-4844, respectively.³⁰ The former speech reflects upon the political objectives of the RS, and contains a portion where Karadžić, in reference to “our brothers from Yugoslavia”, states that the RS or the Serbian Republic of Krajina would not have dared to start the political and armed fight “had they known that they would be left alone”. He also states: “Together with the whole Serbian people, at that time, strongly led by President Milošević, we stood up for an idea, for an idea of preservation of Yugoslavia as our state”. For the foregoing reasons, the Chamber is satisfied that the tendered speech by Radovan Karadžić is relevant to the overarching JCE to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory, as charged in the Indictment.

15. The tendered speech by Momčilo Krajišnik contains a passage where he states, *inter alia*, that “the first strategic goal is that we separate from Muslims and Croats and no one has the right to base the strategy of Srpsko Sarajevo on the remaining in a joint country. Therefore, any danger or wish for connection and solution of Sarajevo in which we will stay with Muslims and Croats is out of question.” This passage and the passage referred to by the Prosecution are contained in their entirety in the expert report of witness Robert Donia, which also contains additional portions of the speech.³¹ The Chamber considers, however, that the entire speech gives the passages, already contained in the expert report, their proper context, which will assist the Chamber in its consideration of the evidence in question.³² For the foregoing reasons, the Chamber finds the tendered speech by Momčilo Krajišnik to be relevant to the overarching JCE to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory, as charged in the Indictment.

16. Turning to the probative value of the Documents, the Chamber, recalling its finding in paragraph 5 above, notes that the Documents are cumulative with either the expert report of witness Robert Donia or his testimony.³³ Moreover, five of the seven documents still at issue appear to originate from the RS Minister of Justice, while the remaining two documents appear to originate

³⁰ See English translation on eCourt pp. 80-93 and 103-106, respectively.
³¹ See P2001, pp. 23-24.
³² The Chamber notes in this regard the testimony of Robert Donia at T. 15515.
³³ See *supra* paras 8-15.

from the Agency for Investigation and Documentation in Sarajevo. For these reasons, the Chamber finds the Documents to be of probative value to the alleged overarching JCE to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory, as charged in the Indictment.

IV. DISPOSITION

17. For the foregoing reasons, pursuant to Rule 89 (C) of the Rules, the Chamber

GRANTS the Motion **IN PART**;

DECLARES the Motion moot in relation to the document bearing Rule 65 *ter* number 2388;

ADMITS into evidence the documents bearing Rule 65 *ter* numbers 2348, 2355, and 2412;

ADMITS into evidence the document bearing Rule 65 *ter* number 2374A (P2427), and **INSTRUCTS** the Registry to replace the currently attached English translation with the newly uploaded translation under Document ID 0215-0151 ET;

ADMITS into evidence the portion of the document bearing Rule 65 *ter* number 2397 consisting of BCS ERN 0215-2881-0215-2885, and **INSTRUCTS** the Prosecution to upload a revised English translation in accordance with paragraph 11 above;

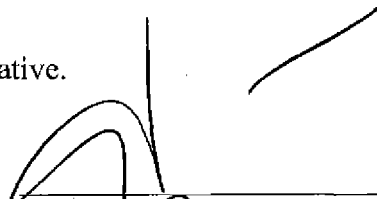
ADMITS into evidence the portion of the document bearing Rule 65 *ter* number 2418 consisting of BCS ERN 0215-4379-0215-4386 in accordance with paragraph 13 above;

ADMITS into evidence the portions of the document bearing Rule 65 *ter* number 2424 consisting of BCS ERNs 0215-4822-0215-4833 and 0215-4842-0215-4844 in accordance with paragraph 14 above;

INSTRUCTS the Prosecution to upload into eCourt, under separate Rule 65 *ter* numbers, to the extent that it has not done so already, the portions of the documents admitted in this decision within 14 days from the filing of this decision and to notify the Registry and the Chamber once it has done so; and

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.

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



Judge Alphons Orie
Presiding Judge

Dated this Twenty-Third day of January 2014
At The Hague
The Netherlands

[Seal of the Tribunal]