



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: 11 February 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: 11 February 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

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

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 30 August 2013, the Prosecution filed a motion requesting the admission of documents from the bar table (“Motion”).¹ On 13 September 2013, the Defence requested additional time to file its response, which the Chamber granted on 18 September 2013, setting the new deadline of 18 November 2013.² On 24 September the Prosecution informed the Chamber and the Parties that it would provide an updated annex to the Motion, which it sent by informal communication on 27 September 2013. The Defence responded to the Motion on 18 November 2013 (“Response”).³ On 25 November 2013, the Prosecution requested leave to reply, which the Chamber granted the next day, setting the deadline for a reply at 10 December 2013.⁴ The Prosecution filed its reply on 10 December 2013, requesting that the Chamber take judicial notice of the authenticity of a number of documents and providing further details and developments in relation to a number of the documents (“Reply”).⁵

2. The Prosecution requests the admission of 634 documents from the bar table.⁶ Excluding those documents that have been admitted since the filing of the Motion, the Chamber notes that the Defence objects to the admission of a total number of 225 of the documents.⁷

¹ Prosecution Motion to Admit Evidence from the Bar Table: Municipalities Component, 30 August 2013.

² Defence Motion to Enlarge Time to Respond to the Prosecution’s Motion to Admit Evidence from the Bar Table: Military Justice & Municipalities Component, 13 September 2013; T. 17022.

³ Defence Response to Prosecution Motion to Admit Evidence from the Bar Table: Municipalities Component, 18 November 2013.

⁴ T.19809-19810, 19878.

⁵ Prosecution Reply to Defence Response to Prosecution Motion to Admit Evidence from the Bar Table: Municipalities Component, 10 December 2013.

⁶ Annex A to the Motion lists a total of 637 documents. In relation to three documents, however, the Prosecution acknowledged it had made duplicate requests for their admission. These documents bear Rule 65 *ter* numbers 3086 (Reply, Annex A, rows 385 and 398), 10843 (Reply, Annex A, rows 448 and 467), and 16587 (Reply, Annex A, rows 181 and 201).

⁷ The Defence objects to the documents bearing Rule 65 *ter* numbers 809, 2441, 2442, 2443, 2562, 2577, 2580, 2589, 2591, 2594, 2598, 2607, 2611, 2652, 2654, 2663, 2684, 2694, 2755, 2763, 2766, 2788, 2829, 2849, 2851, 2869, 2871, 2933, 2936, 2940, 2942, 2994, 3018, 3021, 3030, 3038, 3046, 3053, 3055, 3068, 3076, 3078, 3087, 3098, 3101, 3103, 3104, 3113, 3114, 3194, 3196, 3220, 3223, 3240, 3252, 3257, 3268, 3271, 3306, 3322, 3391, 3423, 3655, 3686, 3698, 3724, 3729, 3746, 3756, 3849, 3274 (the Prosecution and Defence erroneously listed this document as the document bearing Rule 65 *ter* number 3284, see para. 9 of this decision), 5984, 6006, 6401, 6407, 6409, 6412, 6453, 6479, 6536, 6539, 6547, 6555, 6557, 6568, 6573, 6592, 6596, 6605, 6609, 6635, 6646, 6649, 6651, 6685, 6849, 6855, 6873, 6883, 6896, 6898, 6909, 6919, 6926, 6927, 6930, 6941, 6990, 6996, 7033, 7070, 7118, 7146, 7163, 7929, 7999, 8515, 8597, 8617, 8723, 8762, 8777, 8783, 8857, 8990, 9009, 9221, 9441, 9879, 10696, 10746, 10755, 10841, 10843, 10856, 10947, 11108, 11110, 11111, 11112, 11120, 11146, 11285, 11308, 11330, 11331, 11636, 13379, 13407, 13508, 13515, 13733, 14318, 14455, 14569, 14787, 15029, 15169, 15990, 15996, 16010, 16014, 16127, 16139, 16298, 16543, 16548, 16562, 16629, 16681, 17385, 17427, 17469, 18191, 18286, 18691, 18694, 19195, 19614, 19820, 19966, 20193, 20291, 20360, 20504, 20510, 20521, 20572, 20583, 20606, 20629, 20695, 20733, 20737, 20747, 20754, 20780, 20791, 20810, 20888, 21329, 21714, 22346, 22365, 22455 (the Chamber notes that this document was originally listed in Annex A to the Motion as “22445”, but that the Prosecution corrected this in its Reply at para. 11), 22507, 22586, 22592, 22726, 22792, 22805a, 22832, 22875, 25959, 27573, 27908, 27928, 28056, 28060, 28090, 28391, 28392, 28411, 28801, and 28811. The Chamber

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing the admission of documents from the bar table as set out in a previous decisions.⁸

III. DISCUSSION

A. Preliminary observations

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 each document included in the Motion but reverted to providing general submissions accompanied by examples.⁹ As a consequence, the Chamber can and will, in general, only address these submissions and examples listed by the Defence. The Chamber further notes that the Defence did not raise any objections to the relevance of the documents. For these reasons, while having considered the relevance of each document, the Chamber does not provide elaborate findings in this decision on the Chamber's considerations in relation to the relevance of individual documents.

5. In its Reply the Prosecution requests that the Chamber, pursuant to Rule 94 (B) of the Rules of Procedure and Evidence ("Rules"), takes judicial notice of the authenticity of a number of documents, which the Prosecution submits have been admitted in previous cases before the Tribunal.¹⁰ The Prosecution has not provided the Chamber with relevant details 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 Prosecution's request in this respect.

observes that the Defence erroneously listed the following Rule 65 *ter* number twice in paragraph 13 of its Response: 2594, 3030, 3046, 3306, 3423, 6573, 6605, 8515, 8617, 9879, 22875.

⁸ Decision on Prosecution's Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 2 May 2013, paras 7-8.

⁹ T. 109-110; See Decision on Prosecution Motion for Admission of Documents from the Bar Table, 19 July 2013, para. 10.

¹⁰ See Reply, para. 6; Reply, Annex A, in relation to the documents bearing Rule 65 *ter* numbers 2994 (row 382), 3021 (row 537), 3046 (row 62), 3078 (row 393), 3114 (row 620), 3194 (row 375), 3257 (row 213), 3318 (row 216), 6407 (row 530), 6409 (row 529), 6412 (row 531), 6536 (row 352), 6568 (row 518), 6651 (row 615), 6927 (row 293), 8597 (row 507), 9009 (row 373), 9685 (row 114), 10755 (row 214), 10843 (row 448), 11146 (row 386), 16681 (row 217), 18691 (row 390), 22792 (row 131), 2763 (row 421), 28411 (row 521),

B. Documents that have been admitted since the filing of the Motion

6. The Chamber notes that the following documents have been admitted into evidence since the filing of the Motion, either through witnesses in court or through various decisions on evidentiary Prosecution Motions. These documents bear Rule 65 *ter* numbers 640, 678, 709, 789, 790, 793, 1027, 1028, 1088, 2459, 2617, 2721, 2798, 2836, 2837, 2838, 2839, 2840, 2864, 2923, 2939, 3019, 3024, 3084, 3089, 3280, 3318, 3326, 3613, 3680, 3688, 3723, 3762, 3778, 3921, 4021, 5807, 5900, 5978, 5981, 6370, 6493, 6572, 6586, 6587, 6588, 6595, 6614, 6615, 6630, 6802, 6841, 6846, 6854, 6860, 6864, 6881, 6901, 6922, 6966, 6972, 6982, 6986, 7027, 7042, 7043, 7087, 7125, 7131, 7132, 7150, 7152, 7153, 7154, 7159, 8294, 8392, 8424, 8929, 8934, 9011, 9014, 9049,¹¹ 9096, 9134, 9316, 9685, 9807, 10670, 10791, 10851, 14015, 14025, 15051, 15863, 16495, 16582, 16627, 16633, 16935, 16995, 19144, 20872, 21752, 22210, 22233, 22883b, 28034, 28039, 28040, 28042, 28393, 28398, 28410, and 28739. The Chamber notes that document bearing Rule 65 *ter* number 22291¹² is the same as document bearing Rule 65 *ter* number 22291a, which has been admitted as exhibit P184. The Chamber notes that on 18 November 2013, the Prosecution withdrew its request for admission of the documents bearing Rule 65 *ter* numbers 7051,¹³ 8215,¹⁴ 13506,¹⁵ 14955,¹⁶ and 21353.¹⁷ Lastly, the Chamber notes that it denied admission of the document bearing Rule 65 *ter* number 26215.¹⁸ The Chamber therefore declares the Motion moot in respect of the aforementioned 122 documents.

C. Open source documents

7. The Defence objects to a number of documents on the basis that they originate from an “open source”.¹⁹ These documents, the Defence argues, lack probative value as either the author is unknown – rendering the Defence unable to challenge him or her on the content of the material – or

¹¹ The Chamber notes that the Defence erroneously listed the document bearing Rule 65 *ter* number 9059 twice in paragraph 13 of its Response.

¹² See Annex A, row 349.

¹³ See Reply, Annex A, row 271.

¹⁴ See Reply, Annex A, row 381.

¹⁵ See Reply, Annex A, row 456. The Chamber notes that the Defence erroneously listed the document bearing Rule 65 *ter* number 13506 three times in paragraph 13 of its Response.

¹⁶ See Reply, Annex A, row 311.

¹⁷ See Reply, Annex A, row 32.

¹⁸ Decision on Prosecution Motion to Admit the Evidence Pursuant to Rule 92 *quater*: Predrag Radulović, 20 December 2013 (confidential), para. 7. The Chamber notes that the Prosecution has requested reconsideration of the Chamber’s decision denying admission of the document bearing Rule 65 *ter* number 26215; the Chamber will therefore not deal with it in this decision. See Prosecution Motion for Partial Reconsideration of the Chamber’s Decision on the Prosecution Motion to admit Evidence pursuant to Rule 92 *quater* (RM096) and Motion to Supplement, (confidential with Confidential Annexes A and B), 23 January 2014.

¹⁹ Response, paras 4-8.

it is unclear whether the source heard the information from others.²⁰ The Defence argues that these documents lack sufficient indicia of reliability and should have been tendered through witnesses.²¹ The Defence submits that the aforementioned arguments represent its position on the documents bearing Rule 65 *ter* numbers 2869, 2936, 3038, 3076, 3101, 3103, 3104, 3220, 3223, 3252, 6006, 6479, 6909, 6996, 7070, 7146, 7163, 8762, 8990, 10841, 10856, 11636, 13508, 13515, 14318, 18286, 22365, 22507, 22586, 22592, 28056, 28060, and 28801.

8. The documents in this category mostly consist of news articles from local and international agencies, as well as contemporaneous local and international radio and television news reports. The Chamber finds that the general Defence submissions in relation to the origin of these documents are insufficient to successfully challenge their probative value, or preclude admission pursuant to Rule 89 (D) of the Rules. It further recalls that, while the Chamber encouraged the Prosecution to tender documents through witnesses, this does not mean that documents which could have been tendered through witnesses may not be tendered from the bar table at a later stage.²² Having considered the documents in this category, the Chamber is satisfied that the Prosecution has shown with sufficient clarity and specificity the relevance and probative value of each of these documents, and how they fit into its case.

D. Documents for which the source is unclear

9. The Defence objects to a number of documents for which it argues that the origin of the document is an unknown or “unverified” source.²³ It argues that these documents therefore lack sufficient indicia of “reliability or authenticity”.²⁴ As examples of the aforementioned, the Defence refers to the documents bearing Rule 65 *ter* numbers 6841, 6846, 6847, 6854, 6864, 8929, 18191, 20291, and 22792. In relation to the document bearing Rule 65 *ter* number 17469, the Defence indicates that the source of the document is “probably [...] prosecutor [*sic*] investigators, which could be considered as an interested party in [*sic*] proceeding [*sic*], at least as someone deprived of

²⁰ Response, paras 5-7.

²¹ Response, paras 6-7.

²² Decision on Prosecution Motion for Admission of Documents from the Bar Table (Sarajevo Documents and Documents of General Relevance), 28 January 2014, para. 12.

²³ Response, para. 9. The Defence lists examples such as the stated origin being “Defence collection”, a “sensitive source” or what it considers an “unknown” or “unverified source”, such as in relation to the document bearing Rule 65 *ter* number 20291. The Chamber further notes that the Defence listed the document bearing Rule 65 *ter* number 6847 as an example of a document in this category. It observes, however, that this does not correspond with a document tendered through the Motion, and that this document does not appear in the final list of documents contested by the Defence. See Response, para. 9, 13, and part VI.

²⁴ *Ibid.*

any objectivity and therefore unreliable as a source”.²⁵ The footnote to this submission merely states “Stefanie FREASE”.²⁶ Regarding certain sources, the Defence claims that they “are not origin [*sic*] of documents at all (like BiH Embassy), and are already disputed so far in current case [*sic*] which could not be held as reliable source, like AID, or Mrs. Vidović”.²⁷ In relation to Mrs Vidović, the Defence argues that “documents originated [*sic*] from her, according to the testimony of witness RM507 called by the Prosecution, had to be authenticated. Therefore such documents are void of authenticity”.²⁸ The Defence proceeds to list the documents that all fall within this category of objections, namely the documents bearing Rule 65 *ter* numbers 2441, 2442, 2443, 2562, 2577, 2580, 2589, 2591, 2594, 2607, 2611, 2652, 2654, 2663, 2684, 2694, 2763, 2788, 2829, 2849, 2851, 2940, 2942, 2994, 3018, 3021, 3030, 3046, 3053, 3055, 3068, 3078, 3087, 3098, 3113, 3114, 3194, 3196, 3240, 3257, 3268, 3271, 3274,²⁹ 3306, 3322, 3391, 3423, 3655, 3686, 3698, 3724, 3729, 3746, 3756, 3849, 5984, 6401, 6407, 6409, 6412, 6453, 6536, 6539, 6547, 6555, 6557, 6568, 6573, 6592, 6596, 6605, 6609, 6635, 6646, 6649, 6651, 6685, 6849, 6855, 6873, 6883, 6898, 6919, 6927, 6926, 6930, 6941, 7033, 7118, 7929, 7999, 8515, 8597, 8617, 8777, 8783, 8857, 9009, 9221, 9441, 9879, 10696, 10746, 10755, 10843, 10947, 11108, 11110, 11111, 11112, 11120, 11146, 11285, 11308, 11330, 13379, 14455, 14787, 15029, 15169, 15990, 15996, 16010, 16014, 16127, 16139, 16298, 16543, 16548, 16629, 16681, 17385, 17427, 17469, 18191, 18691, 18694, 19614, 19820, 19966, 20193, 20291, 20360, 20504, 20510, 20521, 20572, 20583, 20606, 20629, 20695, 20733, 20737, 20747, 20754, 20780, 20791, 20810, 20888, 21329, 21714, 22346, 22455,³⁰ 22726, 22792, 22805a,³¹ 22832, 22875, 25959, 27573, 27908, 27928, 28090, 28391, 28392, 28411, and 28811.³²

10. First, the Chamber notes that for some of the documents (intercepts) in this category, the ERN numbers stated in Annex A to the Motion did not correspond to the ERN numbers in eCourt.

²⁵ Response, para. 10.

²⁶ Response, footnote 9.

²⁷ Response, para. 12.

²⁸ *Ibid.* Emphasis omitted.

²⁹ In relation to the document bearing Rule 65 *ter* number 3274, the Chamber notes that both the Prosecution and Defence erroneously listed this document as the document bearing Rule 65 *ter* number 3284. See Prosecution Motion, Annex A, row 60; Defence Response, para. 13. As the description of this document as well as the ERN numbers described in the Motion correspond to the document bearing Rule 65 *ter* number 3274, the Chamber has considered the admission of the document bearing Rule 65 *ter* number 3274.

³⁰ This document was erroneously listed as 22455 by the Prosecution in its Motion, and by the Defence in its Reply. See Motion, Annex A, row 31; Response, para. 13. The Prosecution corrected the Rule 65 *ter* number in its Reply, see Reply, Annex A, row 31.

³¹ The Chamber notes that the document tendered in the Motion is “22805”. Through an informal communication of 3 February 2014, the Prosecution informed the Chamber and the Defence that it had uploaded the transcripts to this video under the Rule 65 *ter* number 22805a. The Chamber will therefore decide on admission of the latter Rule 65 *ter* document.

³² The Chamber observes that the Defence erroneously listed the following Rule 65 *ter* number twice in paragraph 13 of its Response: 2594, 3030, 3046, 3306, 3423, 6573, 6605, 8515, 8617, 9879, and 22875.

However, in those instances the document and their description matched entirely with the document found in eCourt. Therefore, it did not prevent the Chamber from considering them.³³

11. The Chamber first observes that, other than stating that sources “like AID, or Mrs Vidović” are not reliable, the Defence provides no information why these sources would not be reliable, or more importantly, how their unreliability is reflected in each individual document. The Chamber finds that the general challenge raised by the Defence to a source in the abstract is insufficient to challenge the probative value of these documents. In relation to the documents provided by Mrs Vidović, the Chamber further notes that witness RM-507 was cross-examined by the Defence regarding this source in court, and observes that the Defence did not seek to challenge or test the witness any further on the answers the witness had given on the position of Mrs Vidović (either in a personal capacity or her official capacity as a Judge), her access to the materials and the role she had played in the handing over of the materials to the Prosecution.³⁴ The Defence also did not put to Witness RM-507 that the witness’s answers in this respect contradicted the Defence case. The Chamber now turns to the Defence’s general challenge that the embassy of Bosnia and Herzegovina (in The Hague or in Brussels), as well as Defence counsel that previously appeared before the Tribunal “are not origin [*sic*] of documents at all”. The Chamber finds this submission to be insufficient to challenge the probative value of any of the documents provided by these sources. While the Defence is correct in pointing out that these sources will have obtained these documents from others, it provides no information why it considers that the documents in question are not reliable, or how their inherent unreliability is subsequently reflected in each individual document.³⁵ Nonetheless, the Chamber stresses that it may take the fact into consideration that the original source of a document is unspecified when ultimately assessing its weight during the final stages of the trial. The Chamber also observes that, since the filing of the Motion, many of the tendered documents that originate from these sources have already been admitted through prior evidentiary decisions.³⁶ Having considered each document from these sources, as well as the Prosecution’s

³³ See e.g. documents bearing Rule 65 *ter* numbers 20193, 20629, 20695, 20780, and 20791.

³⁴ T. 18625-18626.

³⁵ It concerns the documents bearing Rule 65 *ter* numbers 3056, 6919, 7118, 10667, and 10755. For certain documents where the stated source is the BH embassy (either in Brussels or The Hague), the Prosecution additionally provided that the original source was Mrs. Vidović, see e.g. the documents bearing Rule 65 *ter* numbers 3306, 6926, 9879, and 13506.

³⁶ See list of documents admitted through prior decisions, listed in para. 6 of this decision. For the AID, see the (admitted) documents bearing Rule 65 *ter* numbers 2864, 3019, 3084, 3089, 3280, 5981, 6572, 6587, 6614, 6615, 6630, 6922, 9011, 9049, and 28739. For the “sensitive source” documents, see e.g. the (admitted) documents bearing Rule 65 *ter* numbers 6841, 6846, 6854, 6864, and 8929.

additional comments in its Reply regarding the authenticity and reliability of these documents,³⁷ the Chamber is satisfied regarding their *prima facie* authenticity for the purpose of admission into evidence from the bar table pursuant to Rule 89 (C).

12. In an earlier decision, the Chamber deferred its admission of the documents bearing Rule 65 *ter* numbers 6849 and 18191, and in relation to 20521, it denied its admission into evidence without prejudice.³⁸ For all three documents, the Chamber's decision was premised on the status of these documents as associated exhibits to Milan Tupajić's witness statement, (finding that they did not form an inseparable and indispensable part of the latter).³⁹ The Chamber understands these documents were provided by the same source that provided the documents already admitted by the Chamber as forming an inseparable and indispensable part of Tupajić's statement,⁴⁰ and notes that witness Milan Tupajić gave evidence regarding the accuracy of the contents of the tendered documents.⁴¹ The Chamber finds that the Prosecution has shown, with sufficient clarity, the relevance and probative value of these documents, and how they fit into its case.

13. The Chamber notes that the document bearing Rule 65 *ter* number 6926 had been denied admission as an associated exhibit to the statement of RM-093. It observes it is a publication in the Official Gazette of decisions adopted at meetings of the Autonomous Region of the Krajina ("ARK") in the period May to the beginning of June 1992. The Chamber is satisfied that the Prosecution has shown, with sufficient clarity, the relevance and probative value of this document, and how it fits into its case.⁴²

14. The Chamber observes that for the documents bearing Rule 65 *ter* numbers 7929 and 20747, which are both lengthy and complex, the Prosecution provided relatively concise descriptions of their relevance.⁴³ Nonetheless, the Chamber also considered that, since the start of its case, the Prosecution provided the Chamber and the Defence with detailed written submissions on how these

³⁷ See Annex A, Reply, column entitled "Subsequent Developments", in relation to e.g. the documents bearing Rule 65 *ter* numbers 3698 (row 186), 3724 (row 570), 3729 (row 571), 8857 (row 125), 11108 (row 127), 11110 (row 572), 11111 (row 573), and 11112 (row 574) (as documents originating from "Defence collection"). See also Reply, p. 172.

³⁸ Decision on Prosecution 30th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 18 December 2013.

³⁹ *Ibid*, para. 7.

⁴⁰ See e.g. the documents bearing Rule 65 *ter* numbers 6841, 6846, 6854, 6864, and 8929; Decision on Prosecution 30th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 18 December 2013.

⁴¹ P3170 (Witness Milan Tupajić, *Krajišnik* transcript, 28-29 June 2005), pp. 15229-15330 (for 6849), 15363-15364 (for 18149), 15350, 15360, 15482-15485 (for 20521).

⁴² The Chamber notes that the Prosecution, already since the start of its case, referred to this document in support of its case regarding crimes committed in the Prosecution Pre-Trial Brief, 24 February 2012, paras 149 and 316 (referencing the documents bearing Rule 65 *ter* number 6526 in footnotes 355 and 776, respectively).

⁴³ Reply, Annex A, rows 24 and 376.

documents specifically fit into its case.⁴⁴ The Chamber therefore concludes that the Prosecution has shown, with sufficient clarity and specificity, the relevance and probative value of these documents, and how they fit into its case.

15. In relation to the document bearing Rule 65 *ter* number 17469, the Chamber notes the Prosecution's submission that it obtained this document from former Prosecution investigator Stefanie Frease. The Chamber is not satisfied that the Defence's general submissions that this source is "deprived of any objectivity" and is "therefore unreliable" is sufficient to challenge the authenticity of the documents provided by it. The role of this particular investigator as a source of certain documents was in fact discussed – or was the subject of examination of witnesses – in court several times, in 2012 and 2013, at which point the Defence did not seek to challenge the witnesses on their evidence regarding Ms. Frease's role, her access to the materials and the role she had played in the handing over of materials.⁴⁵ The Chamber further recalls that Stefanie Frease gave a statement, which was admitted into evidence by the Chamber on 20 December 2013 together with a number of associated exhibits.⁴⁶ Having considered the document bearing Rule 65 *ter* number 17469, the Chamber is satisfied that the Prosecution has shown, with sufficient clarity and specificity, its relevance and probative value, and how it fits into its case.

16. In relation to the remaining documents in this category, the Chamber is satisfied that the Prosecution has shown with sufficient clarity and specificity the relevance and probative value of these documents, and how they fit into its case.

E. Documents from various collections lacking sufficient indicia of authenticity

17. The Defence argues that the admission should be denied "of those documents which do not bear stamp, signature, for which it could not be concluded that they were actually sent to their recipients, doesn't [*sic*] have a date or otherwise have deficiency in terms of its authenticity".⁴⁷ It then states that the aforementioned argument concerns the documents bearing Rule 65 *ter* numbers 809, 2598, 2755, 2766, 2871, 2933, 6896, 6990, 8723, 11331, 13407, 13733, 14569, 16562, and

⁴⁴ See e.g. Prosecution Pre-Trial Brief, 24 February 2012, paras 18 and 350 (referencing both documents in footnotes 26 and 449, respectively).

⁴⁵ See e.g. T. 286 (26 March 2012), 13341-13343, 16666-16667.

⁴⁶ Decision on Prosecution Twenty-Fifth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 20 December 2013. The Chamber further observes that in its Response to the Prosecution Motion requesting the admission of Stefanie Frease's statement, the Defence stated that "[t]he witness is a prosecution investigator, who purports to identify the provenance of certain documents, among other things. The Defence does not object to this portion of the witness' testimony", Defence Response to Prosecution 25th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 16 July 2013, para. 14.

⁴⁷ Response, para. 14.

19195. Additionally, the Defence submits in relation to these documents that “comments given by the Prosecution contain arbitrary conclusions, inappropriate for evaluation of relevance for their case”.⁴⁸ Regarding the latter statement, the Chamber recalls that its considerations as to the admissibility of the tendered documents are based on the content of the documents and not the Prosecution’s descriptions of the content, which do not constitute evidence, and that it remains within the Chamber’s discretion whether to follow such characterisations when assessing the evidence in its entirety.⁴⁹ Furthermore, it is open to the Defence to state what the correct description of the content should be, and what conclusions should be drawn from such content.⁵⁰

18. The Chamber considered the *prima facie* indicia of authenticity in relation to each of these documents, which all originate from either the Banja Luka Collection, the 1st Krajina Corps Collection, the Sarajevo Collection, the Drina Corps Collection or the Prijedor Collection, and was guided by the additional comments provided by the Prosecution in its Reply.⁵¹ Most of these documents bore a signature, a stamp, or both. A large majority of them originate from collections the authenticity of which the Defence raised no objections against.⁵² The Chamber is not convinced by the Defence’s general challenge regarding their authenticity. Having considered these documents, the Chamber is satisfied that they are relevant, that they each bear sufficient *indicia* of probative value, and that the Prosecution has shown with sufficient clarity and specificity how they fit into its case.

19. Two of the documents in this category, documents bearing Rule 65 *ter* number 2598 and 13407 (an official Banja Luka CSB note and a Banja Luka Radio news report, respectively), bear no signature or stamp. The Chamber notes the Prosecution’s submission that these documents originate from the Banja Luka Collection,⁵³ and observes that the Prosecution has tendered a large number of documents from this collection in the past, as well as through the Motion.⁵⁴ The

⁴⁸ Response, para. 14.

⁴⁹ Decision on Prosecution Motion to Admit Evidence from the Bar Table: Foča Municipality, 14 November 2013, para. 17, referring to *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Fourth Decision on Stanišić Defence Bar Table Motion of 17 February 2012, 24 May 2012, para. 8: “[t]he tendering party’s characterisation of the evidence and the final conclusions, if any, to be drawn from that evidence are not determinative of the test for admission set out in Rule 89 (C).”

⁵⁰ *Ibid.*

⁵¹ See Annex A, Reply, column entitled “Subsequent Developments”. See e.g. the comments in relation to the documents bearing Rule 65 *ter* numbers 809 (row 285), 2755 (row 76), 2871 (row 48), 2933 (row 81), 6896 (row 111), 6990 (row 113), 8723 (row 107), 11331 (row 44), 13733 (row 43), 14569 (row 116), 16562 (row 10), and 19195 (row 47).

⁵² See documents in paragraph 24.

⁵³ See Motion, Annex A, rows 28 and 82.

⁵⁴ See e.g. Motion, Annex A regarding the documents bearing Rule 65 *ter* number 684 (row 290), 2616 (row 436), 6601 (row 622), 6687 (row 605), 8035 (row 64), 16582 (row 54), 16635 (row 128), 16636 (row 129), 17064 (123),

Chamber further notes that it is not uncommon for these types of documents to be accompanied by neither stamp nor signature. Absent any specific guidance from the Defence as to why these documents, or the source from which they had been obtained, are inherently unreliable, and considering that the prejudice to the Defence is not such that the probative value of these two documents would outweigh the need to ensure a fair trial pursuant to Rule 89 (D) of the Rules, the Chamber will allow their admission into evidence, and will consider the Defence's comments regarding their probative value when assessing their weight against the final trial record. In sum, the Chamber is satisfied that the Prosecution has shown with sufficient clarity and specificity the relevance and probative value of these two documents, and how they fit into its case.

F. Documents subject of an agreement between the Parties

20. The Chamber notes that regarding the documents bearing Rule 65 *ter* numbers 2647, 2662, 3743, 6633, 6773, 7004, 10665, and 11628, an agreement was reached between the Parties that they could be admitted into evidence from the bar table.⁵⁵ The Chamber notes that, accordingly, the Defence made no objections in relation to these documents in its Response. Having considered these documents, the Chamber is satisfied that the Prosecution has shown, with sufficient clarity and specificity, their relevance and probative value, and how they fit into its case.

G. Remaining documents to which no specific challenge has been raised

21. Concerning the following 279 documents, the Defence did not raise any challenge in its Response.⁵⁶ These documents bear Rule 65 *ter* numbers 1, 209, 246, 579, 605, 611, 612, 617, 620, 642, 643, 644, 684, 711, 796, 806, 807, 811, 814, 816, 821, 824, 829, 830, 849, 867, 873, 881, 927, 1047, 1116, 1570, 1737C, 1737D, 2568, 2573, 2574, 2656, 2601, 2616, 2640, 2644, 2669, 2706, 2707, 2712, 2725, 2737, 2787, 2806, 2808, 2825, 2847, 2863, 2872, 2891, 2954, 3035, 3043, 3086, 3110, 3115, 3116, 3193, 3197, 3214, 3226, 3250, 3256, 3260, 3362, 3379, 3426, 3608, 3610, 3701, 3734, 3759, 3788, 3811, 3821, 3836a, 3987, 4371, 5583, 5846, 5983, 5985, 5990, 5991, 5994, 5996, 5998, 6002, 6004, 6010, 6490, 6494, 6510, 6601, 6602, 6687, 6782, 6783, 6788, 6915, 6917, 6918, 6934, 6962, 6977, 6992, 7018, 7028, 7032, 7037, 7041, 7058, 7059, 7127, 7130, 7137, 7138, 7145, 7151, 7160, 7245, 8030, 8035, 8208, 8209, 8296, 8309, 8329, 8370, 8555, 8564, 8655, 8775,

and 28409 (row 461), each originating from the Banja Luka collection. The Chamber notes the Defence did not formulate an objection in its Response regarding any of these documents. See also the documents bearing Rule 65 *ter* numbers 2923 (row 427), 6370 (row 481), and 6595 (row 621), which had already been admitted into evidence by the Chamber through prior evidentiary decisions (see *supra*, para. 6) and regarding which the Defence equally did not raise objections in its Response regarding their admission into evidence.

⁵⁵ See Reply, Annex A, rows 34, 72, 192, 296, 333, 360, 442, and 553.

8833, 8889, 8945, 8960, 8961, 8979, 8995, 9000, 9022, 9111, 9152, 9448, 9593, 9634, 9660, 9698, 9717, 9722, 9833, 9846, 9852, 9876, 9877, 10120, 10667, 10704, 10747, 10757, 10846, 10847, 10849, 10862, 10874, 10922, 10935, 10951, 11126, 11149, 11162, 11282, 11323, 11333, 11494, 11519, 11800, 12809, 12818, 12824, 12861, 12862, 13053, 13718, 13735, 13999, 14116, 14119, 14196, 14532, 14571, 14898, 15008, 15190, 15191, 16000, 16015, 16016, 16017, 16277, 16279, 16280, 16281, 16479, 16482, 16484, 16486, 16518, 16519, 16524, 16528, 16530, 16535, 16541, 16558, 16560, 16561, 16564, 16573, 16576, 16579, 16587, 16600, 16593, 16613, 16630, 16634, 16635, 16636, 16917, 16987, 17044, 17064, 17246, 17377, 17396, 17402, 17434, 17436, 17437, 18260, 18291, 18873, 19031, 19108, 19150, 19178, 19194, 19215, 19272, 19653, 19655, 19656, 19901, 19902, 19904, 19915, 19952, 19977, 20361, 20835, 22482a, 22596, 22724, 23831, 25226, 26116, 26245, 27909, 27913, 27919, and 28409.

22. The Prosecution erroneously listed the document bearing Rule 65 *ter* number 2656 in the Motion as bearing Rule 65 *ter* number "2596".⁵⁷ As both the English and B/C/S ERN numbers as well as the description of this document as stated in the Motion exactly match those of the document bearing Rule 65 *ter* number 2656 as uploaded in eCourt, the Chamber considered the admission into evidence of the document bearing Rule 65 *ter* number 2656. In relation to this document, the Chamber is satisfied that the Prosecution has shown, with sufficient clarity and specificity, its relevance and probative value, and how it fits into its case.

23. The Chamber notes that the documents bearing Rule 65 *ter* numbers 3759, 6601, 7137, and 16600 were initially tendered through witness Witness RM-093, but were denied admission as associated exhibits to the witnesses' statement as they did not form an inseparable and indispensable part of the latter.⁵⁸ The Chamber reiterates that the Prosecution's request for their admission from the bar table – i.e. through the Motion – does not entail a request for reconsideration of an earlier decision. Therefore, the Chamber applies the standard test for the admission of evidence from the bar table.⁵⁹ In doing so, the Chamber concludes that the Prosecution has shown with sufficient clarity and specificity their relevance and probative value, and how they fit into its case.

⁵⁶ See also Response, para. 2 and pp. 8-9.

⁵⁷ See Annex A to both the Motion and Reply, at row 418.

⁵⁸ Decision on Prosecution Motion to Admit the Evidence Pursuant to Rule 92 *quater*: Predrag Radulović, 20 December 2013 (confidential), para. 9 (in relation to the document bearing Rule 65 *ter* number 6601); Decision on Prosecution's 36th Motion to Admit the Evidence of RM093 Pursuant to Rule 92 *bis*, 12 December 2013, para. 15 (in relation to the documents bearing Rule 65 *ter* numbers 3759, 7137, and 16600).

⁵⁹ Decision on Prosecution Motion for Admission of Documents from the Bar Table (Sarajevo Documents and Documents of General Relevance), 28 January 2014, para. 5.

24. The Chamber notes that the documents bearing Rule 65 *ter* numbers 6602 and 9852, which are both relatively voluminous and complex, are cited in Witness Ewan Brown's expert report, and observes that the Prosecution in its Pre-Trial Brief already cited the document bearing Rule 65 *ter* number 9852 in support of its submissions regarding crimes committed in the municipality of Prijedor. Based on these factors as well as the Prosecution's submissions regarding their relevance and probative value in Annex A to the Motion, the Chamber is satisfied that the Prosecution has shown with sufficient clarity and specificity their relevance and probative value, and how they fit into its case.

25. In relation to the remaining documents, the Chamber is satisfied that the Prosecution has shown with sufficient clarity and specificity the relevance and probative value of these documents, and how they fit into its case.

H. Confidentiality of documents

26. The Chamber notes that the Prosecution has not indicated whether any of the documents subject to the Motion should be confidential. Out of an abundance of caution, the Chamber instructs the Prosecution to review whether any of the documents admitted per this decision should have their status changed to confidential.

IV. DISPOSITION

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

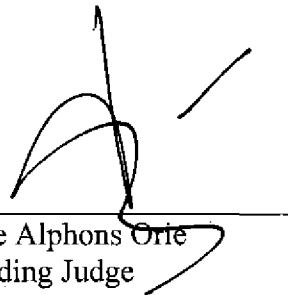
- (i) **GRANTS** the Motion **IN PART**;
- (ii) **ADMITS** into evidence the following documents: Rule 65 *ter* numbers 1, 209, 246, 579, 605, 611, 612, 617, 620, 642, 643, 644, 684, 711, 796, 806, 807, 809, 811, 814, 816, 821, 824, 829, 830, 849, 867, 873, 881, 927, 1047, 1116, 1570, 1737C, 1737D, 2441, 2442, 2443, 2562, 2568, 2573, 2574, 2577, 2580, 2589, 2591, 2594, 2598, 2601, 2607, 2611, 2616, 2640, 2644, 2647, 2652, 2654, 2656, 2662, 2663, 2669, 2684, 2694, 2706, 2707, 2712, 2725, 2737, 2755, 2763, 2766, 2787, 2788, 2806, 2808, 2825, 2829, 2847, 2849, 2851, 2863, 2869, 2871, 2872, 2891, 2933, 2936, 2940, 2942, 2954, 2994, 3018, 3021, 3030, 3035, 3038, 3043, 3046, 3053, 3055, 3068, 3076, 3078, 3086, 3087, 3098, 3101, 3103, 3104, 3110, 3113, 3114, 3115, 3116, 3193, 3194, 3196, 3197, 3214, 3220, 3223, 3226, 3240,

3250, 3252, 3256, 3257, 3260, 3268, 3271, 3274, 3306, 3322, 3362, 3379, 3391,
3423, 3426, 3608, 3610, 3655, 3686, 3698, 3701, 3724, 3729, 3734, 3743, 3746,
3756, 3759, 3788, 3811, 3821, 3836a, 3849, 3987, 4371, 5583, 5846, 5983,
5984, 5985, 5990, 5991, 5994, 5996, 5998, 6002, 6004, 6006, 6010, 6401, 6407,
6409, 6412, 6453, 6479, 6490, 6494, 6510, 6536, 6539, 6547, 6555, 6557, 6568,
6573, 6592, 6596, 6601, 6602, 6605, 6609, 6633, 6635, 6646, 6649, 6651, 6685,
6687, 6773, 6782, 6783, 6788, 6849, 6855, 6873, 6883, 6896, 6898, 6909, 6915,
6917, 6918, 6919, 6926, 6927, 6930, 6934, 6941, 6962, 6977, 6990, 6992, 6996,
7004, 7018, 7028, 7032, 7033, 7037, 7041, 7058, 7059, 7070, 7118, 7127, 7130,
7137, 7138, 7145, 7146, 7151, 7160, 7163, 7245, 7929, 7999, 8030, 8035, 8208,
8209, 8296, 8309, 8329, 8370, 8515, 8555, 8564, 8597, 8617, 8655, 8723, 8762,
8775, 8777, 8783, 8833, 8857, 8889, 8945, 8960, 8961, 8979, 8990, 8995, 9000,
9009, 9022, 9111, 9152, 9221, 9441, 9448, 9593, 9634, 9660, 9698, 9717, 9722,
9833, 9846, 9852, 9876, 9877, 9879, 10120, 10665, 10667, 10696, 10704,
10746, 10747, 10755, 10757, 10841, 10843, 10846, 10847, 10849, 10856,
10862, 10874, 10922, 10935, 10947, 10951, 11108, 11110, 11111, 11112,
11120, 11126, 11146, 11149, 11162, 11282, 11285, 11308, 11323, 11330,
11331, 11333, 11494, 11519, 11628, 11636, 11800, 12809, 12818, 12824,
12861, 12862, 13053, 13379, 13407, 13508, 13515, 13718, 13733, 13735,
13999, 14116, 14119, 14196, 14318, 14455, 14532, 14569, 14571, 14787,
14898, 15008, 15029, 15169, 15190, 15191, 15990, 15996, 16000, 16010,
16014, 16015, 16016, 16017, 16127, 16139, 16277, 16279, 16280, 16281,
16298, 16479, 16482, 16484, 16486, 16518, 16519, 16524, 16528, 16530,
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16576, 16579, 16587, 16593, 16600, 16613, 16629, 16630, 16634, 16635,
16636, 16681, 16917, 16987, 17044, 17064, 17246, 17377, 17385, 17396,
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18691, 18694, 18873, 19031, 19108, 19150, 19178, 19194, 19195, 19215,
19272, 19614, 19653, 19655, 19656, 19820, 19901, 19902, 19904, 19915,
19952, 19966, 19977, 20193, 20291, 20360, 20361, 20504, 20510, 20521,
20583, 20572, 20606, 20629, 20695, 20733, 20737, 20747, 20754, 20780,
20791, 20810, 20835, 20888, 21329, 21714, 22346, 22365, 22455, 22482a,
22507, 22586, 22592, 22596, 22724, 22726, 22792, 22805a, 22832, 22875,

23831, 25226, 25959, 26116, 26245, 27573, 27908, 27909, 27913, 27919, 27928, 28056, 28060, 28090, 28391, 28392, 28409, 28411, 28801, and 28811;

- (iii) **DECLARES** the Motion **MOOT** in relation to the following documents: Rule 65 *ter* numbers 640, 678, 709, 789, 790, 793, 1027, 1028, 1088, 2459, 2617, 2721, 2798, 2836, 2837, 2838, 2839, 2840, 2864, 2923, 2939, 3019, 3024, 3084, 3089, 3280, 3318, 3326, 3613, 3680, 3688, 3723, 3762, 3778, 3921, 4021, 5807, 5900, 5978, 5981, 6370, 6493, 6572, 6586, 6587, 6588, 6595, 6614, 6615, 6630, 6802, 6841, 6846, 6854, 6860, 6864, 6881, 6901, 6922, 6966, 6972, 6982, 6986, 7027, 7042, 7043, 7051, 7087, 7125, 7131, 7132, 7150, 7152, 7153, 7154, 7159, 8215, 8294, 8392, 8424, 8929, 8934, 9011, 9014, 9049, 9096, 9134, 9316, 9685, 9807, 10670, 10791, 10851, 13506, 14015, 14025, 14955, 15051, 15863, 16495, 16627, 16582, 16633, 16935, 16995, 19144, 20872, 21353, 21752, 22210, 22233, 22291, 22883b, 26215, 28034, 28039, 28040, 28042, 28393, 28398, 28410, and 28739;
- (iv) **INSTRUCTS** the Prosecution to review the public status of the documents admitted; and
- (v) **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 eleventh day of February 2014
At The Hague
The Netherlands

[Seal of the Tribunal]