



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: 14 March 2016
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 14 March 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON ADMISSION OF REMAINING DOCUMENTS
ASSOCIATED WITH THE RULE 92 *TER* STATEMENT OF
JOSÉ CUTILEIRO**

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSION OF THE PARTIES

1. On 18 August 2015, the Defence filed a motion (“Motion”) seeking the admission into evidence of the written statement of José Cutileiro along with 19 associated exhibits, pursuant to Rule 92 *ter* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ On 1 September 2015, the Prosecution filed its response (“Response”), not opposing the Motion.² The Prosecution submits, *inter alia*, that the associated exhibit bearing Rule 65 *ter* number 07862, the Diary of Missions of Cyrus Vance to former Yugoslavia, No. 7 (14-18 April 1992), is 83 pages long and, in its entirety, not an inseparable and indispensable part of the statement and therefore an appropriate selection should be made.³

2. On 9 December 2015, during the testimony of Cutileiro, the witness statement was admitted into evidence as D1371, together with four of the 19 associated exhibits.⁴ The Defence withdrew the two tendered documents bearing Rule 65 *ter* numbers 1D04316 and 1D04309.⁵ Three of the associated exhibits had already been admitted into evidence as P99, P775, and P3106 prior to the testimony of Cutileiro. The Registry reserved exhibit numbers D1403-D1412 for the ten remaining documents associated with the witness’s statement. The Chamber will now deliver its decision in relation to those remaining associated exhibits.

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing the admission into evidence of associated exhibits with written statements, as set out in previous decisions.⁶

¹ Defence Motion Pursuant to Rule 92*ter* to Admit the Written Testimony of José Cutileiro, 18 August 2015 (Confidential with Confidential Annexes), para. 2, Annexes A and B.

² Prosecution Response to Defence Motion Pursuant to Rule 92*ter* to Admit the Written Statement of José Cutileiro, 1 September 2015 (Confidential), para. 4.

³ Response, para. 2.

⁴ D1372 and P7771 to P7773. *See* T. 42465-42466, 42448.

⁵ T. 42467.

⁶ Decision on Prosecution Motion to Admit the Evidence of Witness RM-266 Pursuant to Rule 92 *quater*, 23 July 2012, paras 12-13. *See also* Decision on Prosecution’s Motion for Reconsideration, Granting Admission from the Bar Table or Certification in Relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 8; T. 530-531, 5601-5603.

III. DISCUSSION

4. The Chamber has reviewed D1371 against the background of the test for admission of associated exhibits and finds that each of the following eight documents forms an inseparable and indispensable part of the witness statement to the extent that it would be incomprehensible or of lesser probative value without them: D1403 to D1408, D1411 and D1412. The Chamber will therefore admit these documents into evidence.

5. With regard to document D1410, the Diary of Missions of Cyrus Vance to former Yugoslavia, the Chamber finds that only a limited portion of the entire document relates to paragraphs 21 to 22 of D1371, namely pages 54 and 58. The Chamber finds that the witness statement would be incomprehensible or of lesser probative value without these pages and consequently will instruct the Defence to upload a new version of the document into eCourt.

6. With regard to document D1409,⁷ the remaining associated exhibit, the Chamber finds that it was not discussed by Cutileiro to such an extent that it forms an inseparable and indispensable part of his statement, nor does the denial of its admission result in the statement having lesser probative value. The Chamber will therefore deny its admission into evidence.

IV. DISPOSITION

7. For the foregoing reasons, pursuant to Rules 89 (C) and 92 *ter* of the Rules, the Chamber

GRANTS the Motion **IN PART**;

INSTRUCTS the Defence to upload pages 54 and 58 from the current version of D1410 into eCourt, and to inform the Registry and the Chamber upon completion thereof;

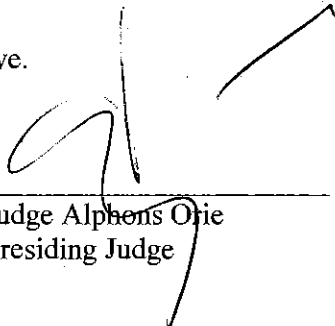
ADMITS into evidence exhibits D1403 up to and including D1408, D1411, D1412, as well as the reduced version of D1410;

⁷ The Chamber notes in this regard that this document is not a letter from Karadžić to Cutileiro, but *vica versa*.

DENIES the admission into evidence of D1409; and

INSTRUCTS the Registry to replace D1410 with the revised version once available.

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



Judge Alphens Orié
Presiding Judge

Dated this fourteenth day of March 2016
At The Hague
The Netherlands

[Seal of the Tribunal]