



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: 24 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: 24 March 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE'S EIGHTH MOTION FOR THE
ADMISSION OF DOCUMENTS FROM THE BAR TABLE**

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 18 January 2016, the Defence filed its eighth bar table motion ("Motion"), tendering five documents into evidence.¹ On 1 February, the Prosecution responded to the Motion ("Response"), opposing the admission of one document.² On 8 February 2016, the Defence requested leave to reply to the Response and filed a reply ("Reply").³ On 11 February 2016, the Defence filed a corrigendum to the Reply.⁴

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the five documents tendered are relevant and have sufficient probative value to be admitted from the bar table pursuant to Rule 89 (C) of the Rules of Procedure and Evidence ("Rules").⁵ It submits that the proposed documents relate to specific counts and charges in the Indictment, such as the alleged murders and extermination in Srebrenica.⁶ The Defence further submits that the documents relate to the legitimacy of attacks against specific targets or groups, the sufficiency of specific Prosecution evidence, and the Accused's alleged knowledge of the commission of crimes in Srebrenica.⁷

3. In relation to the probative value of the tendered documents, the Defence lists information about the source of the documents in Annex A to the Motion.⁸ The Defence submits that the documents are reliable and authentic and argues that since a number of documents were part of the Prosecution's exhibit list filed pursuant to Rule 65 *ter* of the Rules, and uploaded by the Prosecution in eCourt, the Prosecution is aware of their provenance. The Defence therefore submits that the Prosecution is therefore presumed to be satisfied with their reliability and should not be permitted to object on these grounds.⁹

4. The Prosecution contests the content of the tendered documents as set out by the Defence, but does not oppose their admission with the exception of the document bearing Rule 65 *ter* number

¹ Defence Eighth Motion to Admit Documents from the Bar – Documents Addressing Specific Indictment Counts, 18 January 2016.

² Prosecution Response to Defence Eighth Motion to Admit Documents from the Bar Table, 1 February 2016.

³ Defence Request for Leave to Reply to Eighth Motion to Admit Documents from the Bar – Documents Addressing Specific Indictment Counts, 8 February 2016.

⁴ Corrigendum to: Defence Request for Leave to Reply to Defence Eighth Motion to Admit Documents from the Bar – Documents Addressing Specific Indictment Counts, 11 February 2016. Through the corrigendum, the Defence withdraws paragraph 7 of the Reply (concerning disclosure).

⁵ Motion, paras 2, 8-14. The Chamber notes that some of the paragraphs under the heading entitled 'Conclusion' are not numbered sequentially.

⁶ Motion, para. 8. As none of the documents that form part of the Motion concern the events of 1995 in Srebrenica, the Chamber understands the Defence's submission to relate the municipalities component of the case.

⁷ Motion, para. 9.

⁸ Motion, paras 10-11 (part of chapter III. Submissions). *See also* Motion, Annex A.

1D4896, an RS MUP official note of an interview with a Muslim detainee in March 1993.¹⁰ The Prosecution submits that a few months after the RS MUP interview, the same person gave a statement to the BiH MUP which shows that at the time of the interview, he was tortured and forced to give false statements to the RS media.¹¹ The Prosecution submits that the proposed document is therefore inadmissible pursuant to Rule 95 of the Rules.¹² It argues that if there are *prima facie* indicia that a statement was the product of oppressive conduct, the burden is on the tendering party to prove that the statement was made voluntarily.¹³ Should the Chamber nonetheless admit the RS MUP official note, the Prosecution tenders the BiH MUP interview from the bar table and submits its admission into evidence is essential to the Chamber's assessment of the RS MUP official note.¹⁴

5. In its Reply, the Defence argues that, where the Prosecution has not opposed admission, its submissions about the content of the tendered documents "amount to closing arguments on the merits of the documents and Defence arguments, and are inappropriate at this current juncture and should be stricken from the Prosecution Response".¹⁵ The Defence submits that the Prosecution's request to tender documents from the bar table during the Defence case is inappropriate, and refers to a request for certification to appeal a decision of the Trial Chamber communicated to the Parties on 13 January 2016.

III. APPLICABLE LAW

6. Rule 89 of the Rules provides, in relevant part:

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

7. The Chamber recalls that a party tendering documents for admission from the bar table pursuant to Rule 89 (C) of the Rules must show that the tendered documents are relevant and probative and demonstrate, with clarity and specificity, where and how each document fits into its case.¹⁶

⁹ Motion, para. 12 (part of chapter III. Submissions).

¹⁰ Response, paras 4-8.

¹¹ Response, para. 4.

¹² Response, para. 5.

¹³ Response, para. 5.

¹⁴ Response, paras 4-6.

¹⁵ Reply, paras 4, 9-13.

¹⁶ 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. 12.

8. Rule 95 of the Rules provides that evidence is inadmissible if it was obtained by methods which cast substantial doubt on its reliability, or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.

IV. DISCUSSION

A. Preliminary considerations

9. On 8 February 2016, the Defence sought leave to file a reply to the Response. Given that the Prosecution raises a new issue in its Response, the Chamber finds that the Defence has shown good cause for its request and will grant the requested leave.

10. With respect to the Defence's objections to the Prosecution's characterizations, the Chamber has analysed the documents' admissibility based on the content of the documents and not the Prosecution's descriptions of the content, and recalls its earlier ruling that it remains within the Chamber's discretion whether to consider such characterisations when assessing the evidence in its entirety.¹⁷ It further recalls that it is open to the responding party to make submissions on the content of tendered documents as well as what conclusions might be drawn from them.¹⁸

B. Contextual material

11. With respect to submissions by the parties regarding the phase at which the Prosecution may tender contextual documents in response to the Defence's bar table motions, the Chamber notes that it has communicated its decision on this issue to the parties on 13 January 2016 and that it has recently issued its reasons for this decision in a separate filing.¹⁹ In its 13 January 2016 decision, the Chamber emphasized that the Prosecution should address why its contextual documents should be admitted at this stage of the proceedings rather than at the rebuttal stage, observing that the circumstances for tendering such documents would be exceptional.²⁰ Should the Chamber find that the Prosecution has done so, it will proceed to examine the document's admissibility.

12. The Chamber observes that its decision of 13 January 2016 may have been misinterpreted by the parties. The Defence seemingly considered that by its 13 January 2016 decision, the Chamber granted a Prosecution request to tender an unlimited amount of documents from the bar table during the Defence case. In turn, contrary to the procedure set out in the 13 January 2016

¹⁷ See also Decision on Prosecution Motion to Admit Evidence from the Bar Table: Foča Municipality, 14 November 2013, para. 17.

¹⁸ *Ibid.*

¹⁹ Reasons for Decision on Prosecution Request to Tender Documents and Decision on Defence Motion for Certification to Appeal, 10 March 2016.

decision, the Prosecution filed the contextual material from the bar table without first making specific submissions as to why it should be allowed to tender that material at this stage of the proceedings. Where appropriate, the Chamber will address this matter in its decisions on the Defence's bar table motions.

C. Document bearing Rule 65 *ter* number 1D663

13. Document bearing Rule 65 *ter* number 1D663, entitled 'Investigation report regarding mortar shelling Dobrinja, Sarajevo on 1 June 1993', is 85 pages long and the Defence only appears to rely on a few pages of this document. A large portion of this document is already in evidence,²¹ and the document as uploaded in eCourt contains a large number of duplicate pages.²² In its Response, the Prosecution indicates that it has uploaded a version of the document under Rule 65 *ter* number 9939c that excludes these duplicate pages.²³ The Prosecution joins the Defence request for admission into evidence of the document.²⁴

14. The Chamber reiterates that it is generally not assisted by the tendering of documents of considerable length, especially when the tendering party does not rely on major parts of the document. This creates an unnecessary burden on the parties and the Chamber to review material which ultimately may have no bearing on the case. The parties are therefore encouraged to tender extracts from documents when possible, provided that such extracts do not present a misleading picture of the overall document.²⁵

15. The Chamber observes that the tendered document concerns scheduled incident G.4 and was drafted and signed by members of the Canadian Forces military police and was prepared for the United Nations Commission on War Crimes in July 1993. It has considered the tendered document in light of the evidence provided by Defence experts Zorica Subotić and Mile Poparić on scheduled incident G.4, as well as other evidence tendered in relation to incident G.4. The Chamber finds that the tendered document is relevant to the Sarajevo component of the case and that it has probative value for the purpose of its admission into evidence pursuant to Rule 89 (C) of the Rules. Lastly,

²⁰ *Ibid*, para. 12.

²¹ See exhibit P644 (admitted through Witness RM-176 on 16 July 2013).

²² This concerns pages 67 to 85 of document bearing Rule 65 *ter* no. 1D663.

²³ Response, para. 7.

²⁴ *Ibid*. The Trial Chamber notes that the Prosecution refers to Rule 65 *ter* no. "9939", and that there are currently several versions of the document uploaded under this number (namely, 9939, 9939a, 9939b and 9939c). The document bearing Rule 65 *ter* number 9939c is, however, the only version of the document that includes the complete document and BCS translation, and excludes the duplicate pages. The Chamber therefore understands the Prosecution's submission to relate to Rule 65 *ter* no. 9939c.

²⁵ Decision on Prosecution Motion for Admission of Documents from the Bar Table, 19 July 2013, para. 8.

the Chamber is satisfied that the Defence has set out with sufficient clarity and specificity how the document would fit into its case.

16. Considering the above, the Chamber will admit the document, provided the duplicate pages 67 to 85 in the version submitted by the Defence are removed. The Chamber will therefore admit the version uploaded under Rule 65 *ter* number 9939c.²⁶

D. Documents bearing Rule 65 *ter* numbers 1D2019 and 1D2246

17. Documents bearing Rule 65 *ter* numbers 1D2019 and 1D2246 relate to the alleged plunder and looting in the municipality of Bijeljina in June 1992, as well as the situation in and around Sarajevo during the same period. Both documents are criminal reports from the RS MUP from the period June and July 1992 and bear *indicia* of authenticity such as stamps, signatures, or information on the recipients and authors of the document. The Chamber finds that the documents are relevant to the charges in the Indictment that relate to the Municipalities component of the case, and that they are of probative value for the purpose of admission into evidence pursuant to Rule 89 (C) of the Rules. It further considers that the Defence has set out with sufficient clarity and specificity how the documents would fit into its case. Considering the above, the Chamber will admit the documents into evidence from the bar table.

E. Document bearing Rule 65 *ter* number 1D4896 and Prosecution's tendering of Rule 65 *ter* number 33632

18. The Defence submits that the document bearing Rule 65 *ter* number 1D4896, an official note of an interview held with Hamdija Bešliagić at the RS MUP in March 1993, is authentic and has probative value. It submits that the note is relevant to scheduled incident A.6.1, shows that there was legitimate combat in the area, and demonstrates planning and arming by Bosnian Muslims before the outbreak of hostilities in Bosnia and Herzegovina. The Prosecution submits that a later statement given by Bešliagić to the BiH MUP in late 1993, uploaded in eCourt under Rule 65 *ter* number 33632, shows that Bešliagić was tortured during the time that he gave the interview recorded in the note.²⁷ The Prosecution submits that the interview note is therefore inadmissible

²⁶ The Chamber notes that as a result of its admission of the tendered document, there will be duplication between exhibit P644 and the tendered document. In light of the parties' apparent intentions to have an integral copy of the document in evidence, the Chamber considers it will not be necessary to order the redaction of the overlapping pages from the document.

²⁷ Response, para. 4.

pursuant to Rule 95 of the Rules.²⁸ Alternatively, the Prosecution submits Bešliagić's subsequent statement should also be admitted.²⁹

19. The Defence has tendered a document which purports to be a record of a statement by Bešliagić to the RS MUP in March 1993. Since the statement is tendered to prove the truth of its contents, the Chamber must be satisfied that it is reliable for that purpose, in the sense that it was given voluntarily and that it is truthful and trustworthy, as appropriate; in this respect, the Chamber may also consider the character of the evidence and the context in which it was given.³⁰ Lastly, the Chamber observes that the absence of the opportunity to cross-examine Bešliagić may also be relevant to assessing the *prima facie* probative value of Bešliagić's statement to the RS MUP.³¹

20. In the present instance, the Prosecution has presented a document signed by Bešliagić which, on its face, raises a serious concern regarding the voluntariness and overall reliability of the statement of Bešliagić recorded by the RS MUP. The Chamber considers that the Defence has not sufficiently addressed this concern in its reply³² and finds that the lack of specificity by Bešliagić in naming the persons who mistreated him or forced him to give false statements at the Banja Luka prison does not dispel the Chamber's primary concern, namely, that the statement may have been given under duress. The Chamber further notes that Bešliagić has not been called to testify as a witness, and that there will be no opportunity to question him on the contents of the official note. For these reasons, the Chamber is not satisfied that the document has sufficient probative value to be admitted into evidence from the bar table and will, pursuant to Rule 89 (C) of the Rules, deny its admission into evidence from the bar table. As a result, it will not be necessary to consider the Prosecution's request made in the alternative, namely, admission of the document bearing Rule 65 *ter* number 33632.

F. Document bearing Rule 65 *ter* number 1D2544

21. Document bearing Rule 65 *ter* number 1D2544 has no English translation uploaded in eCourt.³³ Therefore, the Chamber cannot assess its relevance or probative value and denies its admission into evidence without prejudice.³⁴

²⁸ Response, para. 5.

²⁹ Response, para. 6.

³⁰ See *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

³¹ See *ibid.*

³² In para. 8 of its Reply, the Defence submits that 'None of the allegations from the "Second Statement" relate to the persons that took the statement 1D04896 from the individual. No mis-conduct is alleged as to them, nor as to the taking of this statement (1D04896).'

³³ See also Response, para. 7; Reply, para. 3.

V. DISPOSITION

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

GRANTS leave to file the Reply;

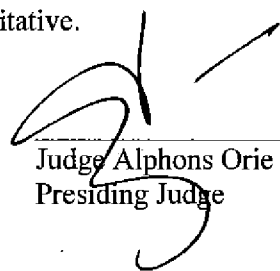
GRANTS the Motion **IN PART**;

ADMITS into evidence the documents bearing Rule 65 *ter* numbers: 9939c, 1D2019, and 1D2246;

DENIES admission into evidence of the document bearing Rule 65 *ter* number 1D2544, without prejudice, and admission of the documents bearing Rule 65 *ter* numbers 1D663 and 1D4896; 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-fourth day of March 2016
 At The Hague
 The Netherlands

[Seal of the Tribunal]

³⁴ See also Decision on Prosecution Motion for Admission of Documents from the Bar Table, 17 December 2003, para. 17.