



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: 31 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: 31 March 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

FIRST DEFENCE CASE OMNIBUS DECISION

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

1. The Chamber is seised of several administrative and evidentiary matters. With a view to disposing of these matters before the close of the Defence case, the Chamber considers it appropriate to issue the following omnibus decision.

Tendering of documents related to witnesses who already testified

2. The Chamber set various deadlines for the Defence to file its bar table submissions.¹ While the Defence filed its bar table motions on time, it recently also filed a number of evidentiary motions tendering documents related to witnesses who previously testified.² To the extent there are still any documents left which have not yet been tendered and which are procedurally related to witnesses who already testified, the Chamber **INSTRUCTS** the Defence to tender any such documents no later than 15 April 2016.

Conditionally admitted document

3. On 17 December 2015, the Chamber admitted the witness statement of Dragan Gajić dated 14 July 2015, bearing Rule 65 *ter* number 1D05816, on the condition that the Defence file the corresponding attestation and declaration to the statement within six weeks of the filing of the decision.³ On 17 February 2016, the Defence filed the corresponding attestation and declaration and requested admission of the witness's Rule 92 *bis* package, comprised of the statement, the attestation, and the declaration.⁴ On 4 March 2016, the Registry assigned exhibit number D1439 to the witness's Rule 92 *bis* package.⁵ The Chamber **CONFIRMS** admission of the witness's evidence and **ADMITS** D1439 into evidence.

Clarification on decision granting access to confidential materials to Radovan Karadžić

4. On 18 October 2011, the Chamber granted in part Radovan Karadžić's motion for access to confidential material in this case.⁶ This decision clearly indicates which material should be given to Karadžić and which type of material can be withheld. In March 2016, Chamber's staff was copied

¹ T. 37909, 39449.

² Joint Submission of the Defence and the Prosecution for the Admission of Exhibits Tendered Through Expert Witnesses Zorica Subotić and Mile Poparić, 26 February 2016; Defence Submissions and Motion to Admit Associated Exhibits of Expert Witnesses Subotić and Poparić, as to Documents not Agreed upon by Both Parties, 26 February 2016; Submission of the Defence for the Admission of Exhibits Tendered Through Expert Witness Dušan Pavlović, 16 March 2016.

³ Decision on Defence Motion to Admit the Evidence of Dragan Gajić Pursuant to Rule 92 *bis*, 17 December 2015, para. 9.

⁴ Notice of Filing Witness Statements, with Attestation and Declaration, Pursuant to Rule 92 *bis*: Dragan Gajić, 17 February 2016.

⁵ Internal Memorandum, 4 March 2016.

⁶ Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the Mladić case, 18 October 2011.

on an e-mail exchange between the Defence and the Registry, wherein the Defence *inter alia* indicated that certain confidential filings were subject to Rule 54 *bis* protection and should therefore not be given to Karadžić. The Chamber **REMINDS** the parties that Rule 54 *bis* related filings or exhibits do not fall within the categories of documents that can be excluded from access and that these documents should therefore be given to Karadžić.

Individual documents

5. *P5273*. On 25 November 2015, a typed BCS version of exhibit P5273, an excerpt of a handwritten notebook, was used in court with witness Kovač.⁷ The typed BCS version did not form part of the exhibit. On the same day, the Chamber expressed the view that this version should be made part of the exhibit.⁸ Accordingly, the Chamber **INSTRUCTS** the Registry to add the document uploaded under Rule 65 *ter* number 19193b to exhibit P5273.
6. *P1147 and P1148*. On 5 November 2015, the Prosecution informed the Defence and the Chamber of certain corrections that needed to be made to exhibits P1147 and P1148.⁹ The Prosecution then tendered a correction sheet, bearing Rule 65 *ter* number 28781a, into evidence and the Defence did not object.¹⁰ The Chamber **ADMITS** the correction sheet into evidence and **REQUESTS** the Registry to assign an exhibit number to it and inform the Chamber and the parties of the number assigned.
7. *P7518 and P7519*. On 26 and 27 August 2015, respectively, P7518 and P7519 were marked for identification pending an agreement between the parties as to the excerpts to be tendered into evidence.¹¹ On 11 February and 7 March 2016, respectively, the Prosecution informed the Chamber and the Defence, *via* e-mail, that the proposed excerpts had been uploaded into eCourt. The Chamber **INSTRUCTS** the Registry to assign P7518 to document bearing Rule 65 *ter* number 33022a and P7519 to document bearing Rule 65 *ter* number 33595 and **ADMITS** them into evidence. The Defence has one week to revisit these matters, if necessary.
8. *D1356 and D1365*. On 16 and 25 November 2015, respectively, D1356 and D1365 were marked for identification, pending the provision of translations.¹² On 1 March 2016, the Defence advised, *via* e-mail, that the translations had been uploaded into eCourt. On 3 March, the

⁷ T. 41885-41888.

⁸ T. 41887.

⁹ T. 40957-40958.

¹⁰ T. 40958.

¹¹ T. 38379-38382, 38402-38403.

¹² T. 41375, 41930-41932.

Prosecution advised that it did not object to the translations. The Chamber **INSTRUCTS** the Registry to attach Doc ID 1D28-1931 to D1356 and to replace the existing translation of D1365 with the one uploaded under Doc ID 1D29-0613 and **ADMITS** them into evidence.

9. *P7756 and P7758.* On 7 December 2015, P7756 and P7758 were reserved for documents bearing Rule 65 *ter* numbers 33545 and 02384, respectively.¹³ With respect to P7758, eCourt erroneously shows its status as having been admitted into evidence. On 5 February 2016, the Prosecution informed the Chamber and the Defence, *via* e-mail, that it had uploaded excerpts under Rule 65 *ter* numbers 33545a and 02384a, respectively, and requested their admission into evidence. The Chamber **INSTRUCTS** the Registry to assign exhibit numbers P7756 and P7758 to the respective newly uploaded excerpts, and **ADMITS** both documents, with exhibit P7756 staying under seal. The Defence has one week to revisit the matter, if necessary.

10. *P7757.* On 7 December 2015, the Prosecution informed the Chamber and the Defence that it sought to add additional excerpts to exhibit P7757.¹⁴ On 5 February 2016, the Prosecution informed the Chamber and the Defence, *via* e-mail, that it had uploaded a revised consolidated excerpt under Rule 65 *ter* number 33531b. The Chamber **INSTRUCTS** the Registry to assign exhibit P7757 to the newly uploaded excerpt. The Defence has one week to revisit the matter, if necessary.

11. *P7761 and P7762.* In December 2015, exhibits P7761 and P7762 were admitted into evidence.¹⁵ On 5 February, the Prosecution informed the Chamber and the Defence, *via* e-mail, that it had uploaded a document of reduced length for exhibit P7762 under Rule 65 *ter* number 02390a. That same day, the Prosecution also informed the Chamber and the Defence, *via* e-mail, that exhibit P7761 should be vacated as other excerpts of this document had already been admitted as P4927, and that a consolidated version of this document should be assigned to exhibit P4927. The Chamber **INSTRUCTS** the Registry to assign exhibit number P7762 to document bearing Rule 65 *ter* number 02390a, reassign exhibit number P4927 to document bearing Rule 65 *ter* number 07704b, and vacate P7761. The Defence has one week to revisit the matter, if necessary.

12. *P7359.* On 29 April 2015, exhibit P7359 was admitted into evidence. On 8 December 2015, during the testimony of Milorad Dodik, additional pages of this document were shown to the witness. On 5 February 2016, the Prosecution informed the Chamber and the Defence, *via* e-mail, that it had uploaded a revised version of the document, including the additional portions, under

¹³ See T. 42251, 42270.

¹⁴ T. 42256.

¹⁵ See T. 42285, 42289.

Rule 65 *ter* number 02380b. The Chamber **INSTRUCTS** the Registry to assign P7359 to the newly uploaded excerpt. The Defence has one week to revisit the matter if necessary.

13. *D1391*. On 16 December 2015, during the testimony of Dušan Pavlović, D1391 was marked for identification, pending the provision of an English translation.¹⁶ On 1 March 2016, the Defence informed the Chamber and the Prosecution, *via* e-mail, that the relevant translation had been uploaded into eCourt under Doc ID 1D30-0017. The Prosecution replied on the same day, not objecting to the translation. The Chamber **INSTRUCTS** the Registry to attach the translation to D1391, and **ADMITS** it into evidence.

14. *D1389*. On 15 December 2015, D1389 was marked for identification pending the provision of a corrected English translation.¹⁷ On 7 March 2016, the Defence advised the Chamber and the Prosecution *via* e-mail, that the corrected translation had been uploaded into eCourt under Doc ID 1D30-0071. The Chamber **INSTRUCTS** the Registry to attach the corrected translation to D1389 and **ADMITS** it into evidence, under seal. The Prosecution has one week to revisit the matter if necessary.

15. *D1217*. On 1 September 2015, D1217 was marked for identification pending the uploading of an excerpt of a larger document and provision of an English translation.¹⁸ On 1 March 2016, the Defence advised the Chamber and the Prosecution, *via* e-mail, that the excerpt had been uploaded into eCourt under Rule 65 *ter* number 1D06181. On 3 March, the Prosecution e-mailed the Defence and the Chamber, suggesting that a slightly longer excerpt, including the page selected by the Defence, be admitted. On 7 March, the Defence responded that it had no objection. The Chamber **INSTRUCTS** the Registry to assign D1217 to document bearing Rule 65 *ter* number 32993a, and **ADMITS** it into evidence.

16. *P7769*. During the testimony of José Cutileiro on 9 December 2015, P7769 was reserved for an excerpt of document bearing Rule 65 *ter* number 02391.¹⁹ On 1 March 2016, the Prosecution advised the Defence and the Chamber, *via* e-mail, that the excerpt had been added to the existing excerpt of the same document admitted under exhibit D639 and uploaded into eCourt under Rule 65 *ter* number 02391c. The Chamber **INSTRUCTS** the Registry to assign D639 to the newly uploaded excerpt and **VACATES** P7769. The Defence has one week to revisit the matter, if necessary.

¹⁶ See T. 42788.

¹⁷ T. 42720.

¹⁸ T. 38628-38629.

¹⁹ T. 42417.

17. *P3076*. On 8 December 2015, the Prosecution used excerpts of document bearing Rule 65 *ter* number 2388 with witness Milorad Dodik. An excerpt of this document was already in evidence as exhibit P3076. The Chamber allowed the Prosecution to add the additional excerpts used with witness Dodik to the exhibit. The Prosecution uploaded a new version of the document which included those excerpts under Rule 65 *ter* number 2388b. On 9 December, the Chamber allowed additional excerpts, used with witness Cutileiro, to also be added to the exhibit. All excerpts used were uploaded under Rule 65 *ter* number 2388c. The Chamber **INSTRUCTS** the Registry to assign P3076 to the newly uploaded excerpt. The Defence has one week to revisit the matter, if necessary.

18. *D1353*. During the testimony of Dragan Kijac on 12 November 2015, D1353 was marked for identification pending the provision of a translation.²⁰ On 3 March 2016, the Defence informed the Chamber and the Prosecution *via* e-mail that a revised translation had been uploaded into eCourt under Doc ID 1D33-0183. On the same day, the Prosecution responded that it did not object to this revised translation. The Chamber **INSTRUCTS** the Registry to attach the translation to D1353 and **ADMITS** it into evidence.

19. *D1358*. On 16 November 2015, D1358 was marked for identification pending the provision of a BCS translation and an agreement between the parties as to the extract to be tendered.²¹ On 1 and 8 March 2016, the Defence informed the Chamber and the Prosecution, *via* e-mail, that the proposed excerpt and its BCS translation had been uploaded into eCourt under Rule 65 *ter* number 1D00456b and Doc ID 1D30-0237, respectively. On 14 March, the Prosecution advised, *via* e-mail, that it had no objection. The Chamber **INSTRUCTS** the Registry to assign D1358 to document bearing Rule 65 *ter* number 1D00456b and to attach the above-mentioned translation and **ADMITS** it into evidence.

20. *D1366*. On 25 November 2015, D1366, an extract from the ICRC customary international humanitarian law database regarding state practice with respect to the presence of civilians within or near military objectives, was marked for identification pending the provision of a BCS translation and further submissions from the parties on the necessity of having the document admitted into evidence.²² The Prosecution objected to the admission of the document due to lack of relevance.²³ On 1 March 2016, the Defence informed the Chamber and the Prosecution, *via* e-mail, that the BCS translation had been uploaded into eCourt under Doc ID 1D29-0615. The Chamber considers that matters of law fall within its own expertise and thus summaries of the state of law are

²⁰ T. 41286.

²¹ T. 41381-41383.

²² T. 41932-41935.

of no probative value. The parties may cite legal authorities and commentaries without tendering such documents for admission.²⁴ Under these circumstances, the Chamber finds that the document does not meet the test for admission in accordance with Rule 89 (C) of the Rules. The Chamber therefore **DENIES** the admission into evidence of the document marked for identification as D1366.

21. *P6921*. On 17 November 2014, P6921 was reserved for a document still to be uploaded into eCourt.²⁵ On 4 November 2015, the Prosecution informed the Chamber and the Defence, *via* e-mail, that it had uploaded the excerpt to be tendered under Rule 65 *ter* number 02366b. On 17 November 2015, this selection was admitted into evidence as exhibit number P6921. During the testimony of witness Cutileiro on 9 December, the Prosecution informed the Chamber that it sought to add additional pages used with the witness to exhibit P6921. On 20 January 2016, the Prosecution informed the Chamber and the Defence, *via* e-mail, that it had uploaded a revised version of the exhibit under Rule 65 *ter* number 02366d. The Chamber **INSTRUCTS** the Registry to assign exhibit number P6921 to the newly uploaded excerpt. The Defence has one week to revisit the matter, if necessary.

22. *P41, P2930, P3794, P997, P6754, and D306*. In January and February 2016, the Prosecution e-mailed the Chamber and the Defence, advising that revised translations for a number of exhibits had been uploaded into eCourt. The Chamber **INSTRUCTS** the Registry to replace the existing translations of the following exhibits with the revised ones: P41 with the document uploaded into eCourt under Doc ID RI11-3217-1 BCS; P2930 with the document uploaded into eCourt under Doc ID 0057-2419-1 ET; P3794 with the document uploaded into eCourt under Doc ID 0220-1005-2 ET; P997 with the document uploaded into eCourt under Doc ID R008-6174-1 BCS; and D306 with the document uploaded into eCourt under Doc ID 0066-3716-ET-2. In relation to P6754, the Prosecution advised of corrections to both the original and the translation. Consequently, the Chamber **INSTRUCTS** the Registry to assign P6754 to the document bearing Rule 65 *ter* number 03800a. The Defence has one week to revisit these matters, if necessary.

23. *P4584*. On 23 January 2014, exhibit P4584, an excerpt of a speech by Radovan Karadžić, was admitted into evidence. On 9 December 2015, during his examination-in-chief, José Cutileiro

²³ T. 41933-41934.

²⁴ See *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on the Admissibility of the Expert Report and Proposed Expert Testimony of Professor Schabas, 1 July 1008, para. 7, referring to *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Appeals Judgment, 28 November 2007, paras 292-294.

²⁵ T. 28392.

was asked about other portions of this speech.²⁶ On 20 January 2016, the Prosecution e-mailed the Chamber and the Defence to advise that the additional pages used with witness Cutileiro had been added to the admitted excerpt and uploaded into eCourt under document bearing Rule 65 *ter* 02418b. The Chamber **INSTRUCTS** the Registry to replace exhibit P4584 with document bearing Rule 65 *ter* 02418b. The Defence has one week to revisit the matter, if necessary.

24. *P7782*. On 12 December 2015, certain pages of document bearing Rule 65 *ter* number 33441 were used during the testimony of witness Moroz.²⁷ P7782 was reserved for this document.²⁸ On 2 February 2016, the Prosecution e-mailed the Chamber and the Defence advising that the relevant excerpt had been uploaded under document bearing Rule 65 *ter* number 33441a. The Chamber **INSTRUCTS** the Registry to assign P7782 to document bearing Rule 65 *ter* number 33441a and **ADMITS** it into evidence. The Defence has one week to revisit the matter if necessary.

25. *P2490*. The Prosecution e-mailed the Chamber and the Defence on 12 February 2016, advising that parts of exhibit P2490 contained private session transcript excerpts from another case. The Chamber **INSTRUCTS** the Registry to place Exhibit P2490 under seal.

26. *D918*. During the testimony of Goran Kremar, D918 was marked for identification pending receipt of the English translation.²⁹ On 15 April 2015, the Defence e-mailed the Chamber and the Prosecution, advising that CLSS believed that the original document was actually in English, suggesting that the Defence contact ICMP for the original English version. The Chamber understood that the Defence expected to receive the document in May 2015. The Chamber e-mailed the Defence on 21 August and 11 September 2015 and then addressed the matter in court on 8 October 2015 and set a deadline of one week for the Defence to provide an update.³⁰ As of the date of this decision, the Defence has not provided the Chamber with an update. The Chamber therefore **DENIES** the admission into evidence of D918 without prejudice.

27. *D1362-1364*. On 23 and 24 November 2015, during the testimony of witness Yasushi Akashi, D1362 to D1364 were admitted into evidence.³¹ On 29 February and 7 March, respectively, the Defence e-mailed the Chamber and the Prosecution, providing BCS translations for each of these exhibits. In the absence of any objections from the Prosecution, the Chamber **INSTRUCTS**

²⁶ T. 42460-42462.

²⁷ T. 42512-42516, 42521-42526, 42534-42540.

²⁸ T. 42540.

²⁹ T. 32381.

³⁰ T. 39952.

³¹ T. 41700, 41709, 41818.

the Registry to attach Doc IDs 1D29-0582, 1D30-0061, and 1D30-0064 to exhibits D1362, D1363, and D1364, respectively.

28. *P2104*. On 16 February 2016, the Prosecution notified the Chamber and the Defence *via* e-mail that it had uploaded a redacted version of P2104 into eCourt. The Chamber **INSTRUCTS** the Registry to replace P2104 with the document uploaded under Rule 65 *ter* number 04387b.

Joint submission on agreed facts

29. On 4 March 2016, the parties filed a joint submission on agreed facts, correcting site coordinates for the Godinjske Bare location, and requested admission of these facts.³² The Chamber recalls its guidance at transcript page 101, where it advised the parties that agreed facts should be put on the record by submitting a joint filing, without applying for judicial notice. It is similarly unnecessary to admit agreed facts into evidence. For these reasons, the Chamber **ACKNOWLEDGES** receipt of the joint submission, **CLARIFIES** that these facts are on record by virtue of them having been filed, and **DENIES** the request for formal admission.

Remaining Defence witnesses

30. On 8 March 2016, the Defence e-mailed the Chamber and the Prosecution its schedule concerning the testimony of five of its remaining eight witnesses. The Defence assessed that these five witnesses would testify in the last two weeks of April 2016. In a subsequent e-mail, the Defence confirmed that it had dropped one of the additional three prospective witnesses. In relation to the other two prospective witnesses, the Chamber instructed the Defence on 17 March to advise by 1 April 2016 whether or not it would call these two witnesses, and if so, to schedule them for the first week of May 2016. This is hereby placed on the record.

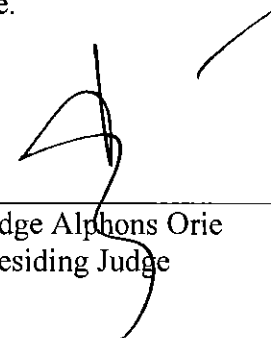
Defence's Rule 54 *bis* motions: Belgium and NATO

31. On 29 January 2016, the Defence filed two motions pursuant to Rule 54 *bis*, requesting the Chamber's intervention *vis-à-vis* the Kingdom of Belgium and NATO in relation to an interview with a prospective Defence witness.³³ On 1 February 2016, the Chamber scheduled a hearing with Belgium and NATO for 16 February. After having received information from the Defence that there were ongoing discussions between Belgium, NATO, and the Defence, the Chamber cancelled

³² Joint Submission on Agreed Facts (Correction to Site Coordinates for Godinjske Bare), 4 March 2016.

the scheduled hearing on 12 February 2016. Thereafter, the Defence informed the Chamber and the Prosecution, *via* e-mail, that there were no further obstacles with regard to Belgium and NATO, and withdrew the motions. This is hereby placed on the record.

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



Judge Alphons Orié
Presiding Judge

Dated this Thirty-first day of March 2016
At The Hague
The Netherlands

[Seal of the Tribunal]

³³ Urgent Defence Third Rule 54BIS Motion as to The Kingdom of Belgium, 29 January 2016; Urgent Defence Motion under Rule 54BIS as to the North Atlantic Treaty Organisation, for a Binding Order to Enjoin their Obstruction in the Interview of Mr. Jan Segers, 29 January 2016.