

**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: 9 May 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: 9 May 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE'S SEVENTH 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 seventh bar table motion (“Motion”), seeking the admission of 26 documents into evidence.¹ On 16 February 2016, the Prosecution responded to the Motion (“Response”).² On 23 February 2016, the Defence requested leave to reply, annexing its reply to that request (“Reply”).³

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the documents tendered from the bar table are relevant and have sufficient probative value for admission under Rule 89 (C) of the Rules of Procedure and Evidence (“Rules”).⁴ It contends that the documents demonstrate, *inter alia*, the following themes of the Defence case: the independence of local authorities, who acted contrary to the Army of the Bosnian-Serb Republic (“VRS”); non-Serb forces wearing Serb uniforms; and efforts of the VRS and other Serb actors to preserve peace.⁵

3. The Prosecution does not oppose the admission of 22 of the 26 documents, but submits that in relation to some documents, the Defence misstates their relevance and content.⁶ While the Prosecution concedes that the remaining four documents meet the test for admission, it requests the admission of two additional documents for necessary context.⁷

4. The Defence opposes the Prosecution’s tendering of the contextual documents.⁸ The Defence also contends that if the Prosecution does not oppose the admission of documents, then the Prosecution’s submissions on their content and relevance are inappropriate at this stage of the proceedings and should be struck from the Response.⁹

¹ Initially, the Defence tendered 29 documents, but withdrew three documents in its Reply. *See* Defense Seventh Motion to Admit Documents from the Bar – Documents of General Importance to Defense, 18 January 2016, para. 1; Defence Request for Leave to Reply to Defence 7th Motion to Admit Documents from the Bar – Documents of General Importance to the Defence, 23 February 2016, Annex A (p. 3).

² Prosecution Response to Defence Seventh Motion to Admit Documents from the Bar – Documents of General Importance to Defence, 16 February 2016 (Confidential). On 1 February 2016, the Chamber granted the Prosecution an extension to the filing deadline.

³ Defence Request for Leave to Reply to Defence 7th Motion to Admit Documents from the Bar – Documents of General Importance to the Defence, 23 February 2016.

⁴ Motion, paras 2, 8-12, Annex A.

⁵ Motion, para. 8.

⁶ Response, paras 1, 3-4, 10.

⁷ These four documents bear Rule 65 *ter* numbers ID02763, ID02765, ID02766 and ID03139. *See* Response, paras 1, 3-10, Annex A (p. 5).

⁸ Motion, para. 4; Reply, para. 6.

⁹ Reply, para. 4.

III. APPLICABLE LAW

5. The Chamber recalls and refers to the applicable law governing the admission into evidence of documents tendered from the bar table.¹⁰ It also recalls and refers to its previous decision regarding the phase at which the Prosecution may tender contextual documents in response to the Defence's bar table motions.¹¹

IV. DISCUSSION

A. Preliminary Considerations

6. Although the Defence anticipated that the Prosecution would seek to tender contextual documents, it could not have reasonably anticipated that the Prosecution would seek to tender the two specific contextual documents at the time it filed the Motion.¹² Accordingly, the Chamber will grant the Defence's request for leave to reply. Further, in light of previous decisions on this matter, the Chamber will deny the Defence request to strike from the Response the Prosecution's submissions on each tendered document.¹³

7. The Chamber also notes that the BCS version of the document bearing Rule 65 *ter* number 1D03324 contains the complete *Law on All-People's Defence of the Socialist Republic of Bosnia and Herzegovina* whereas the English translation is limited to Articles 68, 69, 71, and 72. The Defence, however, makes submissions on Articles 68 to 71.¹⁴ Given these discrepancies, the Chamber is uncertain which part of the document the Defence tenders. The Chamber will, therefore, deny admission of the document without prejudice.

B. Contextual Documents

8. Since the Prosecution makes no submissions on why it should be allowed to tender contextual documents at this stage of the proceedings, the Chamber will deny without prejudice the admission of the contextual documents bearing Rule 65 *ter* numbers 07003a and 10937.

¹⁰ Decision on Defence's Eighth Motion for the Admission of Documents from the Bar Table, 24 March 2016, paras 6-7.

¹¹ Reasons for Decision on Prosecution Request to Tender Documents and Decision on Defence Motion for Certification to Appeal, 10 March 2016. *See also* Decision on Defence's Eighth Motion for the Admission of Documents from the Bar Table, 24 March 2016, paras 11-12.

¹² Motion, para. 4.

¹³ Decision on Defence's Eighth Motion for the Admission of Documents from the Bar Table, 24 March 2016, para. 10; *See also* Decision on Prosecution Motion to Admit Evidence from the Bar Table: Foča Municipality, 14 November 2013, para. 17.

¹⁴ Motion, Annex A (p. 13); Response, Annex A (p. 4).

C. Documents Bearing Rule 65 ter Numbers 10118, 11541, 13203, 19288, 1D02211, 1D04152, 1D00168, 02790, 02974, 1D02593, 09894, 11358, 12078, 1D04721, 32435, 1D03517, and 03330

9. The documents bearing Rule 65 *ter* numbers 10118, 11541, 13203, 19288, 1D02211, and 1D04152 concern expressions of a co-operative attitude to peacefully resolve issues between different actors, including the United Nations Protection Force. The document bearing Rule 65 *ter* number 1D00168 discusses an attack by the Green Berets on a convoy of the Yugoslav People's Army; the document bearing Rule 65 *ter* number 02790 indicates tension in Kotor Varoš Municipality following the independence referendum in Bosnia-Herzegovina; the document bearing Rule 65 *ter* number 02974 is an agreement between the Party for Democratic Action and the Serb Democratic Party to divide Bratunac Municipality; and the document bearing Rule 65 *ter* number 1D02593 is a judgement in which a number of co-defendants, including Alija Izetbegović, are convicted for crimes such as, *inter alia*, hostile propaganda in relation to an alleged intention to create an Islamic Republic. While the judgement is of considerable length, the Chamber considers that admission of extracts may present a misleading picture and will therefore consider admission of the document in its entirety. Other documents, bearing Rule 65 *ter* numbers 09894, 11358, 12078, and 1D04721 concern municipal authorities that acted autonomously, abusing their power and refusing to follow orders, and the securing of wages for certain members of the VRS from municipal budgets. The document bearing Rule 65 *ter* number 32435 indicates that VRS enemies wore VRS uniforms; the document bearing Rule 65 *ter* number 1D03517 concerns efforts by the Ministry of Interior ("MUP") to take measures against unlawful appropriation; and the document bearing Rule 65 *ter* number 03330 is about the Bosnian-Serb Republic commissioning a report on detention facilities.

10. The Chamber considers the aforementioned documents relevant to determining the liability of the Accused, both in relation to the alleged joint criminal enterprises and his alleged superior responsibility. Further, each document is *prima facie* reliable, containing dates, stamps, signatures, and/or the identity of the authors. The document bearing Rule 65 *ter* numbers 1D04721 was also published in an official gazette. Moreover, the Chamber considers that the Defence has set out with sufficient clarity and specificity how the documents would fit into its case.

11. For these reasons, the Chamber finds that these documents are relevant and have probative value pursuant to Rule 89 (C) of the Rules and will admit them into evidence.

D. Document Bearing Rule 65 ter Number 05882

12. The document bearing Rule 65 *ter* number 05882 concerns orders from the Zvornik MUP to establish checkpoints and assemble a police force of men from Srebrenica. It is, therefore, relevant to the Srebrenica component of the case. The Chamber also considers the document to have probative value since it includes a date and is in the form of other MUP orders admitted by the Chamber. Further, the Defence's explanation of how each document fits into its case provides sufficient clarity and specificity in accordance with the applicable law.¹⁵

13. Accordingly, the Chamber will admit the document into evidence pursuant to Rule 89 (C) of the Rules.

E. Documents Bearing Rule 65 ter Numbers 06675, 1D04687, 1D03139, and 1D03639

14. The document bearing Rule 65 *ter* number 06675 concerns efforts to regulate the movement of people in and out of Sanski Most Municipality. Similarly, the document bearing Rule 65 *ter* number 1D04687 is a media report that states that Bosnian Croats remained in Banja Luka Municipality because of the positive attitude of the Bosnian-Serb Republic. Other documents, bearing Rule 65 *ter* numbers 1D03139 and 1D03639, concern the Manjača detention facility. The former is about the amnesty of prisoners-of-war while the latter is about interviewing prisoners-of-war regarding an attack on a convoy.

15. Each document is relevant to the Municipalities component of the case. Further, each document, apart from the document bearing Rule 65 *ter* number 1D03139, contains a date, seal, signature, and/or the identity of the author, hence *prima facie* reliable. Since the document bearing Rule 65 *ter* number 1D03139 is sufficiently similar to other reports from Manjača admitted into evidence, the Chamber also finds this document to be *prima facie* reliable. Accordingly, the Chamber considers each document to have probative value. Moreover, the Defence has set out with sufficient clarity and specificity how the documents would fit into its case.

16. Therefore, the Chamber will admit these documents into evidence pursuant to Rule 89 (C) of the Rules.

F. Documents Bearing Rule 65 ter Numbers 1D02763, 1D02765, and 1D02766

17. The documents bearing Rule 65 *ter* numbers 1D02763, 1D02765, and 1D02766 are official gazettes recording judicial appointments of the Bosnian-Serb Republic, which according to the

¹⁵ Motion, Annex A.

Defence, include non-Serbs. The BCS version of each document contains more material than its English translation. In light of the narrow submissions of the Defence, the Chamber understands that the Defence only tenders material contained in the English translation.¹⁶

18. An additional issue is that the English translations of the documents bearing Rule 65 *ter* numbers 1D02763 and 1D02765 refer to handwritten annotations 'M' and 'Croat', which are of unspecified provenance. These handwritten annotations are contained in the BCS version of the document bearing Rule 65 *ter* number 1D02763 and are, accordingly, reflected in the English translation. The English translation of the document bearing Rule 65 *ter* number 1D02765 refers, however, to handwritten annotations that do not appear in the BCS version. Moreover, the English translations of each document contain a number of duplicated appointment decisions: the documents bearing Rule 65 *ter* numbers 1D02763 and 1D02765 both contain appointment decisions 313, 314, and 393; all three documents contain appointment decision 391. The Chamber notes that the document bearing Rule 65 *ter* number 1D02763 includes all the appointment decisions contained in the other two documents. Its English translation also accurately reflects all the handwritten annotations contained in the BCS version. In effect, the documents bearing Rule 65 *ter* numbers 1D02765 and 1D02766 are partial duplicates of the document bearing Rule 65 *ter* number 1D02763. Accordingly, the Chamber will deny their admission into evidence.

19. The Chamber is satisfied that the document bearing Rule 65 *ter* number 1D02763 is relevant to determining the Accused's liability. Since it was published in an official gazette, it is *prima facie* reliable and, therefore, has probative value. Further, the Defence has set out with sufficient clarity and specificity how it would fit into its case. The Chamber will consider the weight attributable to the handwritten annotations at the conclusion of the proceedings and in light of all the evidence.¹⁷ Therefore, the Chamber will admit this document into evidence pursuant to Rule 89 (C) of the Rules. It will also instruct the Defence to upload a new BCS version into eCourt that matches the English translation.

V. DISPOSITION

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

GRANTS leave to the Defence to file the Reply;

GRANTS the Motion **IN PART**;

¹⁶ Motion, Annex A (p. 14); *See also* Response, Annex A (p. 5).

¹⁷ *See* Response, para. 5; Reply, para. 8.

ADMITS into evidence the documents bearing Rule 65 *ter* numbers 02790, 02974, 03330, 05882, 06675, 09894, 10118, 11358, 12078, 13203, 11541, 19288, 32435, 1D00168, 1D02211, 1D02593, 1D02763, 1D03139, 1D03517, 1D03639, 1D04152, 1D04687, and 1D04721;

INSTRUCTS the Defence to upload a BCS version of the document bearing Rule 65 *ter* number 1D02763 into eCourt that matches the English translation;

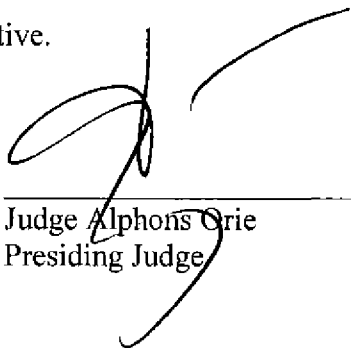
INSTRUCTS the Registry to make the necessary replacement once the version is uploaded;

DENIES admission of the documents bearing Rule 65 *ter* numbers 07003a, 10937, and 1D03324 without prejudice;

DENIES admission of the documents bearing Rule 65 *ter* numbers 1D02765, and 1D02766; 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 Alphonse Orie
Presiding Judge

Dated this ninth day of May 2016
At The Hague
The Netherlands

[Seal of the Tribunal]