

**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: 18 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: 18 May 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE'S FIRST MOTION TO ADMIT
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 first bar table motion ("Motion"), tendering 39 documents into evidence.¹ On 1 February 2016, the Prosecution responded to the Motion ("Response").² On 9 February 2016, the Defence requested leave to reply to the Response, annexing its reply to the request ("Reply").³

II. SUBMISSIONS OF THE PARTIES

2. As a preliminary matter, the Prosecution points out that the documents bearing Rule 65 *ter* numbers 1D02119, 1D04518, and 1D04519 have been listed twice in the Annex to the Motion, and that document bearing Rule 65 *ter* number 09471 has already been admitted into evidence as Exhibit P7706.⁴ The Defence requests the Chamber to disregard the duplicates of documents bearing Rule 65 *ter* numbers 1D02119, 1D04518 and 1D04519, and withdraws its request to admit document bearing Rule 65 *ter* number 09471.⁵

3. The Defence submits that the tendered documents 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").⁶ In particular, the Defence asserts that the documents relate to specific counts and charges of the Indictment and are relevant on the ground that they, *inter alia*, prove that the Accused did not participate in the alleged joint criminal enterprise against the civilian population of Sarajevo.⁷ The Defence submits that the exhibits are probative because they provide evidence about the misuse of the safe area of Sarajevo by the Army of Bosnia-Herzegovina ("ABiH"), the response of the Army of the Bosnian-Serb Republic ("VRS") to crimes against Serb civilians committed in Sarajevo by the ABiH, and the Serb side's efforts to repair utilities.⁸ The Defence further submits that the documents offer indicia of authenticity and are reliable.⁹

¹ Defence First Motion to Admit Documents from the Bar - Sarajevo, 18 January 2016.

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

³ Defence Request for Leave to Reply in Support of First Motion to Admit Documents from the Bar - Sarajevo, 9 February 2016.

⁴ Response, para. 4, fn. 4.

⁵ Reply, paras 3, 4.

⁶ Motion, paras 1, 8-13. The Chamber notes that some of the paragraphs under the heading entitled 'Conclusion' are not numbered sequentially.

⁷ Motion, para. 8.

⁸ Motion, para. 9; Motion, Annex.

⁹ Motion, para. 10.

4. The Prosecution opposes the admission of four of the documents tendered by the Defence, namely documents bearing Rule 65 *ter* numbers 1D00318, 1D04518, 1D04519 and 1D03094.¹⁰ The Prosecution opposes the first three on relevance grounds.¹¹ The Prosecution submits that the document bearing Rule 65 *ter* number 1D03094, a statement of a Muslim detainee, should be ruled inadmissible pursuant to Rule 95 of the Rules since the Defence has not met its burden of proving that the statement was provided voluntarily, in light of evidence which raises a *prima facie* indication to the contrary.¹² With regard to the remainder of the documents, the Prosecution contests their characterisations as set out by the Defence but does not oppose their admission.¹³ The Prosecution tenders four additional documents bearing Rule 65 *ter* numbers 08852, 1D00602, 16364, and 33621, arguing that they directly relate to same events or specific information contained in certain documents tendered by the Defence, and requests that document bearing Rule 65 *ter* number 10041 be replaced by document bearing Rule 65 *ter* number 10041a.¹⁴

5. In its Reply, the Defence opposes the admission of the four additional documents tendered by the Prosecution, arguing that the Prosecution may not call rebuttal evidence at this stage of the proceedings merely because its case has been challenged by conflicting evidence, nor where it should have anticipated an issue and presented the evidence in its own case-in-chief.¹⁵ The Defence opposes the Prosecution's request to have document bearing Rule 65 *ter* number 10041 replaced with 10041a, stating that the Prosecution uploaded the original document itself, and that the latter document was never disclosed to it in a meaningful way.¹⁶

III. APPLICABLE LAW

6. The Chamber recalls and refers to the applicable law governing the admission into evidence of documents tendered from the bar table, as set out in a previous decision.¹⁷ The Chamber also recalls and refers to its previous decision regarding the phase at which the Prosecution may tender contextual documents in its response to the Defence's bar table motions.¹⁸

IV. DISCUSSION

¹⁰ Response, paras 5-9, 13 a).

¹¹ Response, paras 6, 9; *see also* Response, Annex, pp. 8-9, 13.

¹² Response, paras 7, 8; *see also* Response, Annex, pp. 11-13.

¹³ Response, para. 1; *see also* Response, Annex.

¹⁴ Response, paras 10, 13 b); Response, Annex, p. 5.

¹⁵ Reply, para. 19.

¹⁶ Reply, paras 24-26.

¹⁷ Decision on Defence's Eighth Motion for the Admission of Documents from the Bar Table, 24 March 2016, paras 6-7.

A. Preliminary Considerations

7. In relation to the Defence's request for leave to reply, given that the Prosecution raises new issues in its Response, the Chamber finds that the Defence has shown good cause for its request and will grant the requested leave.

8. In its Motion, the Defence tenders the documents bearing Rule 65 *ter* numbers 1D03968 and 1D03976. Given that they have already been admitted into evidence as exhibits D1418 and D1426 respectively on 10 December 2015 through witness Richard Gray, the Chamber considers this request moot. The Chamber will assess the admissibility of the remaining documents.

B. Documents Bearing Rule 65 *ter* Numbers 1D04518 and 1D04519

9. The documents bearing Rule 65 *ter* numbers 1D04518 and 1D04519 are reports demonstrating the estimated and measured amounts of electricity provided to Federal Sarajevo between 1992 and 1995. The document bearing Rule 65 *ter* number 1D04518 is a note indicating these amounts, signed and stamped by the Acting General Director of the company Elektroprenos Bosnia and Herzegovina in Banja Luka, and dated 18 March 2013 ("Report"). The document bearing Rule 65 *ter* number 1D04519 is an unsigned and undated table providing similar information ("Schedule"). The Prosecution opposes the admission of the documents on the basis of absence of relevance and argues that the information presented in the document is of technical nature and unreliable.¹⁹

10. The Chamber finds that both documents are relevant to the charges in the Indictment that relate to the Sarajevo component of the case. Furthermore, the Defence has set out with sufficient clarity and specificity how the documents would fit into its case. With regard to the probative value of the documents, the Report bears indicia of authenticity, such as stamp, signature and information on the author of the document, whereas the Schedule does not bear any such indicia. However, the Schedule provides corroborating evidence to the information presented in the Report indicating measures and estimates of delivery of electricity. The Chamber finds that in light of such information, both the Report and the Schedule are of probative value for the purpose of admission into evidence pursuant to Rule 89 (C) of the Rules. Considering the above, the Chamber will admit both documents into evidence from the bar table.

¹⁸ 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; T. 43993-43994.

¹⁹ Response, para. 6; Response, Annex, pp. 8-9.

C. Document Bearing Rule 65 ter Number 1D03094

11. Document bearing Rule 65 *ter* number 1D03094 is a statement given to the Ministry of Interior of the Bosnian-Serb Republic ("RS MUP") by Mirsad Sulejmanović, a Muslim prisoner of war. The Prosecution submits that, based on a later statement given by Sulejmanović to the Tribunal and uploaded into eCourt bearing Rule 65 *ter* number 33622, there are *prima facie* indicia that the statement was a product of oppressive conduct.²⁰

12. 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.²¹

13. The Prosecution refers to a document signed by Sulejmanović which, on its face, raises serious concerns regarding the voluntariness and overall reliability of the statement recorded by the RS MUP. The Chamber notes that the Defence has not addressed this concern in its Reply. The Defence merely submits that the Prosecution has not identified any specific contradictions between the statements and that the information provided in the previous statement is corroborated by other evidence presented in the case.²² These two considerations, however, do not dispel the Chamber's primary concern, namely, that the statement may have been given to the RS MUP under duress. In fact, Sulejmanović stated on pages five to six of the subsequent statement, that he had no recollection of signing the statement and that he believed it to be among the statements he was forced to sign through continued beatings while detained in Zvornik.²³ For these reasons, the Chamber is not satisfied that the statement the Defence tenders 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.

D. Document Bearing Rule 65 ter Number 1D00318

14. Document bearing Rule 65 *ter* number 1D00318 is a statement given by a detainee to the RS MUP demonstrating crimes committed against the Serbs. The Prosecution challenges the admission of the document on the basis of lack of relevance and limited probative value.²⁴ The Chamber finds that the document is relevant to the Sarajevo component of the case and the liability of the Accused,

²⁰ Response, Annex, pp. 11-13.

²¹ 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.

²² Reply, paras 12-13.

²³ See also Response, Annex, pp. 11-13.

²⁴ Response, Annex, pp. 13-14.

and that it bears sufficient indicia of authenticity, such as a signature and is 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 document would fit into its case. Considering the above, the Chamber will admit the document into evidence.

E. Documents Bearing Rule 65 *ter* Numbers 10041 and 10041a

15. The document bearing Rule 65 *ter* number 10041 is a United Nations Protection Force (“UNPROFOR”) report concerning a meeting held on 2 October 1994, signed by Major D. Frazer. The Prosecution does not oppose the admission of the document provided that it is admitted with two additional pages that were attached to it, and which describe the chronology of events relating to the incident discussed in the meeting.²⁵ The Prosecution has uploaded the original document including the additional pages under Rule 65 *ter* number 10041a.²⁶ Given that the additional pages in the document bearing Rule 65 *ter* number 10041 are clearly referred to in the second paragraph of the document itself as being the “chronology of the events”, the Chamber finds that these additional pages should be admitted for the document to represent a complete and accurate account of the events.

16. The Chamber finds that the tendered document including additional pages is relevant to the charges in the Indictment that relate to the Sarajevo component of the case. It also bears sufficient indicia of authenticity and is thus of probative value for the purpose of admission into evidence pursuant to Rule 89 (C) of the Rules. The Defence has also set out with sufficient clarity and specificity how the original document would fit into its case. Considering the above, the Chamber will admit the document bearing Rule 65 *ter* number 10041a into evidence from the bar table and deny the admission into evidence of document bearing Rule 65 *ter* number 10041.

F. The Remaining Documents Tendered by the Defence

17. The Defence further tenders 28 other documents not opposed by the Prosecution. The documents bearing Rule 65 *ter* numbers 08166, 09539, 1D02114, 1D02475, 1D03143, 1D03252, 1D03294, 1D04361, 1D04655, 16385 and 30745 comprise of, *inter alia*, VRS command orders, company reports, UNPROFOR reports and letters from VRS command and Government of the Federal Republic of Yugoslavia. They relate to the compliance of the Serbian side with different agreements, their efforts to repair utilities in, and ensure delivery of electricity, food and water to Sarajevo, and acts of the Bosnian side hindering these efforts. The documents bearing Rule 65 *ter*

²⁵ Response, Annex, p. 5.

²⁶ Response, para. 10; Response, Annex, p. 5.

numbers 03248, 07242, 09335, 1D00142, 1D02119, 1D02606, 1D02618, 1D02823, 1D04239, 1D04521, 10042, 10044, 10045, 10181, 10631, 10825 and 15748 comprise of, *inter alia*, UN and UNPROFOR reports and memos, and messages and reports from Serb command. They relate to positions of the ABiH in Sarajevo, the alleged crimes committed by the Bosnian side and alleged non-compliance of the ABiH regarding the de-militarized zones.

18. The Chamber finds that all the above mentioned documents are relevant to the Sarajevo component of the case and the liability of the Accused. The documents also bear sufficient indicia of authenticity, such as stamps, signatures, letterheads and information on the author or recipient of the document and are thus of probative value for the purpose of admission into evidence pursuant to Rule 89 (C) of the Rules. Furthermore, the Defence has set out with sufficient clarity and specificity how the documents would fit into its case. For the reasons mentioned above, the Chamber will admit the documents into evidence from the bar table.

G. Documents Bearing Rule 65 *ter* Numbers 08852, 1D00602, 16364 and 33621

19. In its Response, the Prosecution tenders four additional documents bearing Rule 65 *ter* numbers 08852, 1D00602, 16364 and 33621. The Prosecution submits that these documents relate directly to the documents tendered by the Defence bearing Rule 65 *ter* numbers 10825, 15748, 08166 and 1D03976 respectively.²⁷ The Prosecution submits that the additional documents it tenders are closely related to, and prevent misapprehensions about, the four documents tendered by the Defence.²⁸ However, the Prosecution has not set out the reasons why it is tendering these four documents at this particular stage rather than at the rebuttal stage of the proceedings. The Chamber will therefore deny admission into evidence of the documents tendered by the Prosecution without prejudice.

V. DISPOSITION

20. 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 03248, 07242, 08166, 09335, 09539, 1D00142, 1D00318, 1D02114, 1D02119, 1D02475, 1D02606, 1D02618, 1D02823,

²⁷ Response, para. 10.

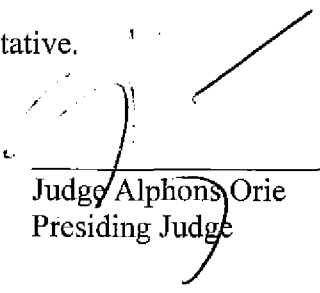
1D03143, 1D03252, 1D03294, 1D04239, 1D04361, 1D04518, 1D04519, 1D04521, 1D04655, 10041a, 10042, 10044, 10045, 10181, 10631, 10825, 15748, 16385 and 30745;

DENIES admission into evidence of the documents bearing Rule 65 *ter* numbers 08852, 1D00602, 16364, and 33621 without prejudice, and admission of the documents bearing Rule 65 *ter* numbers 1D03094 and 10041;

DECLARES the request for admitting documents 1D03968 and 1D03976 into evidence moot; 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 eighteenth day of May 2016
 At The Hague
 The Netherlands

[Seal of the Tribunal]

²⁸ Response, paras 4, 10-12.