



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: 30 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: 30 May 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON THE ADMISSION OF MITAR KOVAČ'S
EXPERT REPORT AND ITS ANNEX**

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 17 February 2015, pursuant to Rule 94 *bis* (A) of the Tribunal's Rules of Procedure and Evidence ("Rules"), the Defence filed a notice of disclosure of an expert report authored by Major General Dr Mitar Kovač entitled "Report on the Command Authority of General Ratko Mladić in the War in Bosnia and Herzegovina (1992-1995)", dated 2013.¹ On 19 March 2015, the Prosecution responded, submitting that while it did not challenge the relevance of the report, it wished to cross-examine the witness, as it did not accept the conclusions of the expert report.² On 16 July 2015, the Chamber decided that Kovač qualifies as a military expert pursuant to Rule 94 *bis* of the Rules, but deferred its decision on the admission of his expert report until the conclusion of the witness's testimony.³

2. Kovač testified on 12, 16 through 19, and 25 November 2015, and the Prosecution cross-examined the witness on 17 through 19, and 25 November 2015.⁴ On 16 and 19 November 2015, it was put on the record that some of the attachments to the report were too large to be uploaded into eCourt and that there were some problems with the English translation of the report.⁵ In an email exchange which took place in April 2016, the Defence informed the Chamber and the Prosecution that the verified translation of Kovač's report had been uploaded into eCourt under Doc ID number 1D34-0648 and that the Defence tendered into evidence the report in its entirety, including an annex uploaded into eCourt under Rule 65 *ter* number 1D05359. The document bearing Rule 65 *ter* number 1D05359 comprises a list of 19 documents, 16 of which are attached to the list. The remaining three documents, listed as numbers 5, 11, and 18, were provided to the Chamber in hard copy and in electronic format on 1 March and 25 May 2016. On 22 April 2016, the Prosecution informed the Chamber and the Defence by email that it does not object to the admission into evidence of the report. Given that the annex forms part of the expert report, the Chamber understands that the Prosecution does also not object to its admission. On 26 April and 10 May, the Chamber emailed the Defence requesting, *inter alia*, that it provide translations of the BCS text appearing on some of the maps forming part of the annex, if it intended to rely on such text. In the absence of a response, the Chamber understands that the Defence does not intend to rely on such text.

¹ Defense Notice of Disclosure of Expert Reports by Mitar Kovac Pursuant to Rule 94*bis*, 17 February 2015.

² Prosecution Response to Defence Notice of Disclosure of Expert Report by Mitar Kovač Pursuant to Rule 94*bis*, 19 March 2015.

³ T. 37478-37480.

⁴ T. 41292-41403, 41462-41491, 41534-41584, 41589-41674, 41842-41938.

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law on the admission of expert evidence as set out in a previous decision.⁶

III. DISCUSSION

A. Document Bearing Rule 65 ter Number 1D05358

4. The Chamber considers that Kovač's expert report, bearing Rule 65 *ter* number 1D05358, which focuses on, *inter alia*, the command and control system in the VRS, the operational positions of the warring parties on the Sarajevo battlefield, the Accused's alleged responsibility for events on the Sarajevo battlefield, and basic features of Operation Krivaja 95, generally falls within the scope of the witness's recognized expertise in military affairs. As the report relates to the charges set out in the Sarajevo and Srebrenica components of the Indictment and the Accused's alleged responsibility for the crimes charged therein, the Chamber finds that it is relevant pursuant to Rule 89 (C) of the Rules. Furthermore, as the report was authored by a recognized expert who testified about its methodology and conclusions and its sources are cited throughout, the Chamber finds that the report has sufficient probative value for the purpose of admission. Accordingly, the Chamber will admit Kovač's expert report into evidence.

B. Document Bearing Rule 65 ter Number 1D05359

5. The document bearing Rule 65 *ter* number 1D05359 is an annex to Kovač's expert report and forms part of the report.⁷ The annex is relevant for establishing, *inter alia*, the organisation of the VRS and its subordinate units and the disposition of forces on the Sarajevo front, as well as during Operation Krivaja 95. In light of the foregoing, the Chamber finds that the document meets the standard for admission set out in Rule 89 (C) of the Rules and will admit it into evidence.

⁵ T. 41636.

⁶ Decision on Defence Request to Disqualify Richard Butler as an Expert and Bar the Prosecution from Presenting His Reports, 19 October 2012, paras 4-9.

⁷ Rule 65 *ter* no. 1D05358, p. 13.

IV. DISPOSITION

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

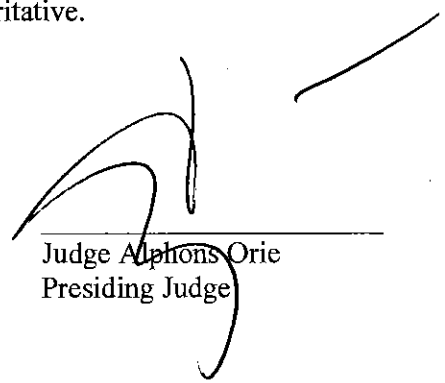
ADMITS into evidence the documents bearing Rule 65 *ter* numbers 1D05358 and 1D05359;

INSTRUCTS the Defence to upload a new version of the document bearing Rule 65 *ter* number 1D05359 with surrogate sheets in place of the documents that are not uploaded in eCourt but were provided to the Chamber in hard copy and in electronic format;

INSTRUCTS the Registry to replace the existing translation of the document bearing Rule 65 *ter* number 1D05358 with the one uploaded under Doc ID number 1D34-0648; and to replace the document bearing Rule 65 *ter* number 1D05359 with the one to be uploaded by the Defence; and

REQUESTS the Registry to assign exhibit numbers to the exhibits and to inform the parties and the Chamber of the numbers assigned.

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



Judge Alphons Orie
Presiding Judge

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

[Seal of the Tribunal]