



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: 15 August 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: 15 August 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE RENEWED REQUEST FOR
ADMISSION OF THE DOCUMENT BEARING RULE 65 TER
NUMBER 1D04841**

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 second bar table motion (“Original Motion”), tendering, *inter alia*, the documents bearing Rule 65 *ter* number 1D04841 and 1D03701.¹ On 23 May 2016, the Trial Chamber denied the admission into evidence of the document bearing Rule 65 *ter* number 1D04841 without prejudice; it also denied admission of the document bearing Rule 65 *ter* number 1D03701.² On 4 July 2016, the Defence filed a renewed request seeking admission into evidence of the document bearing Rule 65 *ter* number 1D04841 from the bar table (“Motion”).³ On 18 July 2016, the Prosecution responded (“Response”), opposing the Motion.⁴ On 20 July 2016, the Defence requested leave to reply and replied (“Reply”).⁵

II. SUBMISSIONS OF THE PARTIES

2. The Defence has uploaded a new version of the document under the same Rule 65 *ter* number, and it submits that this new version of the document addresses the Chamber’s initial concerns. Specifically, the new version of the document includes the cover note of the book from which it originates, author information, the publication date, and an additional page of the book to which a footnote refers. Further, the English translation of the new version no longer contains underlining that is not contained in the BCS version of the document.⁶ In addition, the Defence has added an extract from the same book to the newly uploaded document so as to provide extra contextual information. The Chamber previously denied admission of the reproduced version of the extract tendered as the document bearing Rule 65 *ter* number 1D03701.⁷ In sum, the Defence submits that the new version of the document is sufficiently probative and relevant for admission into evidence from the bar table.⁸

3. The Prosecution submits that the Motion is not a renewed submission of the document bearing Rule 65 *ter* number 1D04841, but rather the tendering of entirely new material under the

¹ Defence Second Motion to Admit Documents from the Bar – Srebrenica, 18 January 2016, pp. 6-7, Annex A (p. 27, 40).

² Decision on Defence’s Second Motion for the Admission of Documents from the Bar Table, 23 May 2016 (“Second Bar Table Decision”), paras 17, 18, 30.

³ Defence Renewed Bar Table Submission as to 65*ter* 1D04841, 4 July 2016 (Confidential).

⁴ Prosecution Response to the Defence Renewed Bar Table Submission as to 65*ter* 1D04841, 18 July 2016 (Confidential).

⁵ Defence Request for Leave to Reply in Support of Motion for Renewed Bar Table Submission as to 65*ter* 1D04841, 21 July 2016 (Confidential) (“Request”).

⁶ Motion, paras 6, 7; Second Bar Table Decision, para. 17.

⁷ Motion, para. 9; Second Bar Table Decision para. 18, 30.

⁸ Motion, paras 3, 4, 10, Annex A.

same Rule 65 *ter* number.⁹ It argues that the new version of the document contains two new excerpts totaling nine pages, the substance of which is completely different from the three pages that the Defence had originally tendered in the Original Motion.¹⁰ It also contends that one of the excerpts included in the new version of the document contains substantially the same information that the Defence had tendered in the Original Motion as the document bearing Rule 65 *ter* number 1D03701 which was already denied admission by the Chamber.¹¹

4. The Defence requests leave to file a reply to address certain arguments raised in the Response.¹² In its Reply, the Defence submits that it inadvertently failed to include the three pages of the originally tendered document in the new version of the document and that it has remedied this error.¹³ The Defence further argues that it has included the excerpt which was previously tendered in the document bearing Rule 65 *ter* number 1D03701 with the material contained under Rule 65 *ter* number 1D04841 for purposes of cohesion and judicial economy, as they are both extracts from the same book.¹⁴

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.¹⁵

IV. DISCUSSION

6. The Prosecution has argued that the Motion contains entirely a new material different from the originally tendered document. As the Response raises a new issue, the Chamber considers that the Defence has shown good cause for its request for leave to reply and will grant the requested leave.

7. The Chamber recalls that in denying the admission into evidence of the document bearing Rule 65 *ter* 1D04841, it noted:

⁹ Response, para. 1.

¹⁰ Response, para. 4.

¹¹ Response, para. 4; *see* Second Bar Table Decision, paras 18, 30.

¹² Request, para. 2.

¹³ Reply, para. 1.

¹⁴ Reply, para. 3.

¹⁵ Decision on Defence's Eighth Motion for the Admission of Documents from the Bar Table, 24 March 2016, paras 6-7.

[T]he English version contains underlining which does not appear on the original and does not include portions of the book that might provide information as to its author, publication date, and other information pertinent to determining whether the document bears sufficient indicia of reliability for the purpose of admission into evidence. Furthermore, the second page of the English version contains a footnote which appears to direct the reader to a document which can be found at page 204 of the book, but page 204 does not form part of the English version.¹⁶

8. As a preliminary observation, the Chamber notes that the Defence has removed the version of the document that was denied admission without prejudice from eCourt, and has uploaded a new document under the same the Rule 65 *ter* number. The Chamber understands from the Reply that the Defence has since uploaded a third version of the document. As only the most recently uploaded version of the document is available on eCourt, it is impossible for the Chamber to compare the different versions of the document.¹⁷ The Chamber further observes that the Prosecution did not object to the admission of the documents bearing Rule 65 *ter* numbers 1D04841 and 1D03701 when they were initially tendered.¹⁸

9. The Chamber observes that the newly uploaded version of the document bearing Rule 65 *ter* 1D04841 contains information regarding the author, the publication date and other information relevant to assessing its probative value. The Defence has also added a page of the book to which a footnote on the eleventh page of the English translation refers. The Chamber notes that the document still contains some underlining in the English version that is not contained in the BCS version of the document.¹⁹ It also notes that the English version includes a comment that text in the BCS original is illegible.²⁰ However, a new original version alleged to be legible has been uploaded replacing the illegible version. The Chamber will therefore request the Conference and Language Service Section (CLSS) to verify pages 10 to 12 of the English translation of the document.

10. The Chamber considers that the Defence has sufficiently remedied the Chamber's reliability concerns regarding the document initially tendered under Rule 65 *ter* numbers 1D04841. It further considers that the new version of the document contains the document originally tendered under Rule 65 *ter* number 1D03701 and that the Defence has provided information relevant to assessing

¹⁶ Second Bar Table Decision, para. 17.

¹⁷ The Chamber understands that the English version of the originally tendered document is three pages. The document initially submitted through the Motion is comprised of new nine pages and misses the originally tendered three pages. The corrected last version contains the originally tendered three pages and new twelve pages including new nine pages of the book excerpt, two cover pages and a page of the footnote referred to.

¹⁸ Prosecution Response to Defence Second Motion to Admit Documents from the Bar – Srebrenica, 1 February 2016, (Confidential), paras 1-3.

¹⁹ The Chamber also notes that the original version of the document contains text on page 16 which is not included in the English translation (corresponding to page 108 of the book). The Chamber considers that, as a result, this text is not part of the document submitted by the Defence for admission into evidence.

²⁰ See the document bearing Rule 65 *ter* number 1D04841 at p. 11.

the probative value of this portion of the document.²¹ The Chamber notes, however, that the Defence has also added material to the document bearing Rule 65 *ter* number 1D04841 that was not previously tendered as part of the Original Motion. Given the advanced stage of the proceedings and the limited nature of the additional extracts tendered as well as the fact that all of the tendered extracts are from the same book, the Chamber will exceptionally allow the Defence to tender this material as part of the newly tendered document bearing Rule 65 *ter* 1D04841. The Chamber further finds that it is in the interest of judicial economy to allow the Defence to tender the material previously contained in document bearing Rule 65 *ter* number 1D03701 as part of the new version of the document bearing Rule 65 *ter* number 1D04841, particularly in light of the fact that the extracts are from the same book – for which sufficient *indicia* of reliability have now been provided.

11. The Chamber considers that the document is relevant to, *inter alia*, a shelling incident in Sarajevo during the relevant time period charged in the Indictment. It finds that the newly uploaded document bearing Rule 65 *ter* number 1D04841 bears sufficient *indicia* of relevance and probative value for the purpose of admission from the bar table. It further finds that the Defence has set out in the bar table motion how the document would fit into its case with sufficient clarity and specificity. For these reasons, the Chamber will admit the document into evidence.

V. DISPOSITION

12. For the foregoing reasons, pursuant to Rule 89 (C) of the Tribunal's Rules of Procedure and Evidence, the Chamber

GRANTS leave to Reply;

GRANTS the Motion;

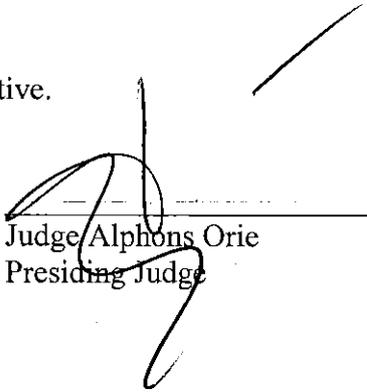
ADMITS into evidence the document bearing Rule 65 *ter* number 1D04841;

²¹ Second Bar Table Decision, para. 18.

REQUESTS the Registry to assign a number to the exhibit admitted by this decision and inform the parties and the Chamber of the number so assigned; and

REQUESTS CLSS to verify pages 10 to 12 of the English translation of the admitted document.

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



Judge Alphons Orie
Presiding Judge

Dated this fifteenth day of August 2016
At The Hague
The Netherlands

[Seal of the Tribunal]