

5-09-92-T
D 6746 - D 6742
28 August 2013

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**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: 28 August 2013
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 28 August 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO ADMIT UNITED
NATIONS RESOLUTIONS, REPORTS AND CODE CABLES
FROM THE BAR TABLE**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 26 June 2013, the Prosecution filed a motion requesting the admission through the bar table of a number of UN documents (“Motion”).¹ On 9 July 2013, the Defence requested that it have until 23 July 2013 to file its Response.² On 16 July 2013, the Chamber granted the Defence request.³ On 23 July 2013, the Defence filed its response (“Response”), objecting to the Motion in its entirety.⁴ On 30 July 2013, the Prosecution requested leave to reply to the Response, and attached its proposed reply (“Reply”) to the request.⁵

II. SUBMISSIONS OF THE PARTIES

2. The Prosecution requests admission of nine documents from the bar table, bearing Rule 65 *ter* numbers 3343, 3444, 3438, 3477, 3479, 3481, 3501, 9425, and 11360.⁶ In this respect, the Chamber notes that the Prosecution tendered Rule 65 *ter* number 4472 in its Motion as well, a UN report on the fall of Srebrenica authored by witness David Harland.⁷ After the Defence objection that this was contrary to the agreed procedure between the Parties, the Prosecution withdrew the tendering of this document.⁸ The Prosecution submits that the tendered documents (four UN Resolutions, two UN Reports and three code cables from Yasushi Akashi to Kofi Annan) provide evidence of knowledge on the part of the Accused and other named JCE members of crimes charged in the Indictment relating to the Sarajevo, Srebrenica, and Municipalities components of the case.⁹ In particular, the Prosecution argues that the documents provide evidence of: (1) the

¹ Prosecution Motion to Admit United Nations Resolutions, Reports and Code Cables from the Bar Table, 26 June 2013.

² Defence Motion for Enlargement of Time to Respond to “Prosecution Motion to Admit United Nations Resolutions, Reports and Code Cables from the Bar Table”, 9 July 2013.

³ T. 14506-14507.

⁴ Defence Response in Opposition to “Prosecution Motion to Admit United Nations Resolutions, Reports and Code Cables from the Bar Table”, 23 July 2013.

⁵ Prosecution Request for Leave to Reply to Defence Response to Prosecution Motion to Admit United Nations Resolutions, Reports and Code Cables from the Bar Table, 30 July 2013.

⁶ Prosecution Reply to Defence Response to Prosecution Motion to Admit United Nations Resolutions, Reports and Code Cables from the Bar Table, 30 July 2013, para. 8, Annex A.

⁷ Motion, para. 7, Annex A.

⁸ Reply, para. 1. With regard to the Defence objections *see* Response, paras 32-39 and sources cited therein. The Chamber further notes that the Prosecution initially sought to tender Rule 65 *ter* no. 3436, but has decided in its Reply to replace it with Rule 65 *ter* no. 3444, a copy of the same document as Rule 65 *ter* 3436 (a copy of a UN General Assembly Resolution), but with official UN letterhead; and has tendered a new version of document bearing Rule 65 *ter* no. 3343 (a copy of another UN General Assembly Resolution), also now with official UN letterhead, *see* Reply, para. 7. The Prosecution also refers to documents bearing Rule 65 *ter* nos 7569, 9424 and 11369 in footnotes 2, 4 and 6 of its Motion, but these three documents are neither listed nor described in the list of proposed exhibits annexed to either the Motion or Reply. As the Prosecution seeks the admission into evidence of the documents listed in the Annex to its Reply (Reply, para. 8), the Chamber considers that the Prosecution does not seek the admission of these three documents.

⁹ Motion, paras 1, 7-8.

conditions in Sarajevo, including restrictions of humanitarian aid and movement and the Accused's involvement in, and control over, those conditions; (2) the Accused's ordering of the 28-29 May 1992 shelling of Sarajevo (Scheduled Incident G1 of the Indictment); (3) the ethnic cleansing and forcible transfer of Muslims by Bosnian Serb Forces under the Accused's control; (4) the rape and sexual abuse of women and children by Serbian forces in the municipalities named in the Indictment; and (5) the conditions in the enclave of Srebrenica and the circumstances of its take-over.¹⁰ Lastly, the Prosecution submits that the admission will save court time and facilitate the presentation of its case.¹¹ The Prosecution states that in compliance with the Chamber's 10 November 2011 Guidance, an electronic copy of the table of the tendered documents and their description and relevance annexed to the Motion will be provided to the Defence.¹²

3. The Defence opposes the Motion in its entirety.¹³ First, it submits that two of the Documents, bearing 65 *ter* exhibit numbers 3343 and 3436¹⁴, are inappropriate for admission as they do not appear to be the officially published UN Resolutions.¹⁵ In addition, no. 3343 contains the incomplete text of another Resolution on its last page.¹⁶ Second, the Defence submits that documents bearing Rule 65 *ter* numbers 3343, 3436, 3438, 3477, 3479, 3481, and 9425, repeat or rely on hearsay reports containing legal conclusions.¹⁷ The Defence cites in support of its arguments a *Milutinović* Trial Decision ("*Milutinović* Decision") wherein, in its view, similar documents were excluded as the reliability of a hearsay statement was a necessary prerequisite for it to be deemed to have probative value under Rule 89 (C) of the Rules of Procedure and Evidence ("*Rules*").¹⁸ Third, the Defence contends that documents bearing Rule 65 *ter* numbers 3477, 3479, 3481, and 3436 are irrelevant to the case insofar as they pertain to matters going beyond the scope of the Indictment.¹⁹ Lastly, the Defence argues that documents bearing Rule 65 *ter* numbers 3438, 3501, 9425, and 11360 should be tendered through witnesses who can contextualize them in accordance with the Chamber's 10 November 2011 Guidance.²⁰

¹⁰ Motion, para. 7.

¹¹ Motion, para. 3.

¹² Motion, para. 4, citing T. 109-110.

¹³ See generally, Response; Reply, paras 1, 7.

¹⁴ As the Prosecution has replaced this with the document bearing Rule 65 *ter* no. 3444, the Chamber will consider the Defence objections with regard to Rule 65 *ter* no. 3436 in relation to the new document.

¹⁵ Response, paras 5-8.

¹⁶ Response, para. 9.

¹⁷ Response, paras 11-18.

¹⁸ Response, para. 18, citing *Prosecutor vs. Milutinović et al.*, Case No. IT-05-87, Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams, 1 September 2006, para. 9.

¹⁹ Response, paras 20-24.

²⁰ Response, paras 25-31, citing T. 109-110.

III. APPLICABLE LAW

The Chamber recalls and refers to the applicable law governing the admission of documents through the bar table as set out in a previous decision.²¹

IV. DISCUSSION

4. As a preliminary matter, the Chamber grants the Prosecution request for leave to reply.

5. The Chamber observes that through the Prosecution's Reply, documents bearing Rule 65 *ter* numbers 3444 and 3343 contain the official UN letterhead and are in the same format as the remaining tendered UN General Assembly Resolutions, and that document bearing Rule 65 *ter* number 3343 no longer includes an incomplete portion of another UN General Assembly Resolution. The Chamber therefore considers the Defence arguments in this respect moot.

6. As regards the Defence objection that documents bearing Rule 65 *ter* numbers 3477, 3479, 3481, and 3436 deal with matters falling outside the scope of the Indictment, the Chamber notes that Scheduled Incidents B.2.1, C.2.1 as well as D.1 all occurred in Bijeljina Municipality and are clearly covered by the Indictment. The Chamber further notes that document bearing Rule 65 *ter* number 3444 partly addresses locations outside Bosnia and, therefore, outside the geographical scope of the Indictment, but nevertheless considers that these parts provide contextual information which appear to be relevant to the Prosecution case. In light of this and taking the Prosecution's submissions regarding that matter into account, the Chamber finds that all nine tendered documents are relevant to the case.

7. With regard to the prerequisite for probative value under Rule 89 (C) of the Rules, the Chamber notes that all nine tendered documents originate from the United Nations, are on official UN letterhead and are publicly available. As to the *Milutinović* Decision, the Chamber notes that it discusses the admissibility of reports for which witnesses substantially involved in their creation appeared in court rather than the admissibility of official reports or resolutions.²² With regard to conclusions and opinions contained in the tendered documents, the Chamber recalls its position as set out in a previous decision that it remains within the Chamber's discretion whether to follow

²¹ Decision on Prosecution's Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 2 May 2013, paras 7-8.

²² *Milutinović* Decision, para. 10, fn. 23.

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such conclusions or opinions when assessing the evidence in its entirety.²³ The Chamber, therefore, finds that the tendered documents are of probative value under Rule 89 (C) of the Rules.

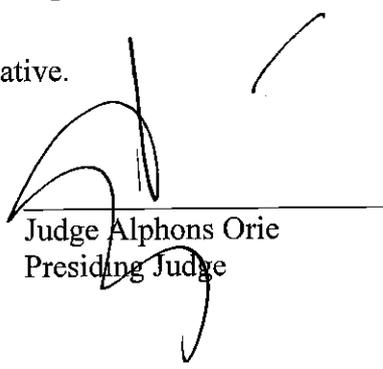
8. Lastly, the Chamber notes that the Prosecution's annexed list of proposed exhibits contains detailed descriptions of all nine documents and their relevance. The Chamber is satisfied that by doing so, the Prosecution has demonstrated, with sufficient clarity and specificity, where and how each document fits into its case.

V. DISPOSITION

9. For the foregoing reasons, pursuant to Rules 54, 89 and 126 *bis* of the Rules, the Chamber

- (i) **GRANTS** the Prosecution leave to reply to the Response;
- (ii) **ADMITS** into evidence the documents bearing Rule 65 *ter* numbers 3343, 3438, 3444, 3477, 3479, 3481, 3501, 9425, and 11360; and
- (iii) **REQUESTS** the Registry to assign exhibit numbers to the documents admitted 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 Orié
Presiding Judge

Dated this twenty-eighth day of August 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

²³ Decision with Regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.