



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: 14 February 2014  
Original: English

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**IN TRIAL CHAMBER I**

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

**Registrar:** **Mr John Hocking**

**Decision of:** **14 February 2014**

**PROSECUTOR**

v.

**RATKO MLADIĆ**

**PUBLIC**

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**FIRST OMNIBUS DECISION**

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**Office of the Prosecutor**  
Mr Dermot Groome  
Mr Peter McCloskey

**Counsel for Ratko Mladić**  
Mr Branko Lukić  
Mr Miodrag Stojanović

1. The Chamber notes that it is seised of several administrative and evidentiary matters in relation to its previous decisions as well as issues that have remained pending before the Chamber and the parties for some time. With a view to disposing of these matters before the close of the Prosecution's case, the Chamber considers it appropriate to issue the following omnibus decision.

#### **A. Decisions Related to Military Justice Bar Table Motion**

##### **1. Status of Decision**

2. On 13 January 2014, the Chamber filed a public decision related to military justice documents tendered by the Prosecution.<sup>1</sup> On the same day, the Prosecution requested through informal communication the reclassification of this decision as confidential because it relied, in part, on the testimonies of two protected witnesses. Pursuant to the Chamber's request, the Registry withheld the decision from the public, pending the Chamber's decision on the reclassification request. Out of abundance of caution for the protective measures awarded to the relevant witnesses, the Chamber, pursuant to Rule 75 of the Rules of Procedure and Evidence ("Rules"), **GRANTS** the request for reclassification, and **INSTRUCTS** the Registry to change the status of the decision to confidential within two weeks of the date of this decision.

##### **2. English Translations of Rule 65 *ter* numbers 7100 and 11500**

3. In the same decision of 13 January 2014, the Chamber instructed the Prosecution to upload revised English translations of the documents bearing Rule 65 *ter* numbers 7100 and 11500.<sup>2</sup> On 14 January 2014, the Prosecution requested through informal communication permission to provide the Chamber with the original English translations in a spreadsheet format on CD-ROMs. On 15 January 2014, the Chamber instructed through informal communication the Prosecution to provide the Chamber with the English translations on CD-ROMs, and to upload into eCourt surrogate sheets for these translations. The Chamber, pursuant to Rule 89 (C) of the Rules, puts on the record that it **GRANTED** the Prosecution's request to provide the translations on CD-ROMs, and **INSTRUCTS** the Registry to replace the English translations of the admitted documents bearing Rule 65 *ter* numbers 7100 and 11500, which are still to be assigned exhibit numbers, with the surrogate sheets uploaded into eCourt under Document ID numbers 0123-9169-ET and 0212-7523-EDT, respectively.

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<sup>1</sup> Decision on Prosecution Motion to Admit Evidence from the Bar Table: Military Justice and Decision on the Admission of P1060, 13 January 2014 (confidential) ("Decision on Military Justice Bar Table").

<sup>2</sup> Decision on Military Justice Bar Table, para. 33 (vi).

## **B. Decisions on Admission of Exhibits Related to Ewan Brown: D416, D423, and D431**

### **1. Submissions with Regard to Exhibits D416, D423, and D431**

4. On 21 November 2013, during the testimony of Ewan Brown, exhibits D416, D423, and D431 were marked for identification, awaiting further submissions from the Defence.<sup>3</sup> With regard to D416, the Chamber expressed that it was interested in the provenance of the document and whether it should be tendered from the bar table; for D423, there was an issue with the document's translation that the Defence would see to; and for D431, there was no original document available, and the Defence stated that it would look into this matter.<sup>4</sup>

5. On 6 December 2013, through informal communication, the parties were asked by the Chamber to provide further submissions on these documents by 9 December 2013. On 9 December 2013, the Prosecution provided though informal communication additional information on the provenance of exhibit D416, stating that the exhibit was one of the underlying materials for an expert report in the *Delić* case, but that the Prosecution's records did not indicate that the expert in question had testified in any proceedings before the Tribunal. On 10 December 2013, the Chamber reminded the Defence that it was awaiting further submissions on the documents, and the Defence stated that it would try to provide additional information in the future.<sup>5</sup> Through informal communication on 15 January 2014, the Chamber requested that the Defence provide an update by 21 January 2014, to which the Defence has not responded with regard to D416 or D431.

### **2. Decision on Admission of Exhibit D423**

6. On 28 January 2014, the Chamber received by informal communication notice from the Defence that a new translation was available for exhibit D423. The Chamber therefore, pursuant to Rule 89 (C) of the Rules, **ADmits** exhibit D423 into evidence and **INSTRUCTS** the Registry to replace within two weeks from the date of this decision the existing English translation for exhibit D423 with the corrected English translation uploaded under Document ID number 1D06-5167.

### **3. Decision on Admission of Exhibits D416 and D431**

7. Considering that the Defence has not provided additional information on the provenance of exhibit D416 or information with regard to the original of exhibit D431, the Chamber, pursuant to Rule 89 (C) of the Rules, **DENIES**, without prejudice, the admission into evidence of exhibits D416 and D431.

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<sup>3</sup> T. 19610-19611, 19665.

### **C. Decisions Related to 25th 92 bis Motion**

8. On 20 December 2013, the Chamber issued its decision on the Prosecution's 25th motion to admit evidence pursuant to Rule 92 *bis* of the Rules ("Decision on 25th 92 *bis* Motion").<sup>6</sup> The Chamber wishes to clarify three things in relation to this decision. First, reference was made to Witness RM-504 in the decision. There are no protective measures for this witness and the Chamber clarifies that it will therefore refer by name to this witness in the future.

9. Second, the Chamber denied admission of the lengthy appointment diary of Mira Mihajlović, bearing Rule 65 *ter* number 6344, and instructed the Prosecution to select the pages of the diary discussed by the witness in her statement and upload this selection into eCourt.<sup>7</sup> The Prosecution subsequently uploaded this selection into eCourt under Rule 65 *ter* number 6344a and tendered the document into evidence as an associated exhibit to Mira Mihajlović's evidence. Having reviewed the document and considering its discussion in the Decision on 25th 92 *bis* Motion, the Chamber, pursuant to Rule 92 *bis* of the Rules, **ADmits** the document bearing Rule 65 *ter* number 6344a into evidence and **INSTRUCTS** the Registry to assign an exhibit number to the document and inform the Chamber and the parties of the number so assigned within two weeks of the date of this decision.

10. Third, in relation to the document bearing Rule 65 *ter* number 5138, subsequently assigned exhibit number P3342, the Chamber notes that the B/C/S and English versions do not match in length. The Chamber **INSTRUCTS** the Prosecution to upload into eCourt a B/C/S version of the document that matches the current English translation of exhibit P3342 and **INSTRUCTS** the Registry to replace the current B/C/S version with the newly uploaded one within two weeks of the date of this decision.

### **D. Decision on Admission of Expert Report of Witness Reynaud Theunens: P3029**

11. Exhibit P3029 is the expert report of witness Reynaud Theunens and was originally tendered and marked for identification on 3 December 2013.<sup>8</sup> In its decision of 25 September 2013, the Chamber concluded that Mr Theunens is a military expert who could assist the Chamber on

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<sup>4</sup> T. 19606-19611, 19661-19665.

<sup>5</sup> T. 20543-20544, 20594-20595.

<sup>6</sup> Decision on Prosecution Twenty-Fifth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 20 December 2013.

<sup>7</sup> Decision on 25th 92 *bis* Motion, para. 17.

<sup>8</sup> T. 20239-20240.

matters related to the VRS, and deferred its decision on the admission of the report.<sup>9</sup> During his testimony, Mr Theunens was extensively examined on the content and methodology of his report.

12. With regard to Part I of the report, on 18 October 2013, the Chamber instructed the Prosecution to elicit relevant matters during the examination of Mr Theunens rather than tendering Part I into evidence, and to inform the Chamber how much additional time it would need for this purpose.<sup>10</sup> In an informal communication dated 28 October 2013, the Prosecution informed the Chamber and the Defence that it would require 8 hours of examination-in-chief, compared to its original estimate of 1,5 hours.<sup>11</sup>

13. On 12 December 2013, the Prosecution tendered a redacted version of the report under Rule 65 *ter* number 28612a, which redacts some portions of Part I.<sup>12</sup> The Chamber authorised that the redacted version replace the document that was marked as exhibit P3029, but deferred its decision on admission.<sup>13</sup> The Chamber notes with concern that the Prosecution decided not to adhere to the Chamber's instructions with regard to Part I, even after having requested further time for examination-in-chief for this purpose and after having been reminded about it during the examination of Mr Theunens.<sup>14</sup> However, based on the way in which the examination on Part I was conducted, the Chamber considers that substantial portions need to be in evidence in order to fully appreciate Mr Theunens's evidence. Also considering that the Defence does not oppose the redacted version,<sup>15</sup> the Chamber **VACATES** its original instructions with regard to Part I of the report, confirms its acceptance of the redactions made by the Prosecution, and again **INSTRUCTS** the Registry to replace the current exhibit P3029 with the document bearing Rule 65 *ter* number 28612a within two weeks of the date of this decision.

14. With regard to admission of the report, the Defence argues that Mr Theunens is not an expert and that the report should therefore not be admitted into evidence.<sup>16</sup> The Chamber again notes that in its decision of 25 September 2013 it concluded that Mr Theunens is an expert,<sup>17</sup> and it finds no reason to reconsider this decision based on the Defence's arguments. The Chamber therefore, pursuant to Rule 89 (C) of the Rules, **ADmits** exhibit P3029 into evidence.

<sup>9</sup> T. 17437-17440.

<sup>10</sup> T. 18160-18161. *See also* T. 17437-17440 and 17607-17609. During the examination of Mr Theunens, the Chamber reminded the Prosecution to adjust the examination to its previous guidance (T. 20257-20259).

<sup>11</sup> *See* Prosecution witness list, 10 February 2012, p. 38.

<sup>12</sup> T. 20641-20642.

<sup>13</sup> T. 20644.

<sup>14</sup> *See* T. 20257-20259.

<sup>15</sup> T. 20642.

<sup>16</sup> T. 20642-20643.

<sup>17</sup> T. 17437-17440.

## **E. Decisions on Admission of Exhibits Related to Witness Barry Hogan**

### **1. Decision on Admission of Exhibit D381 and the Previous Testimony of Ramiza Kundo**

15. On 1 October 2013, a video bearing Rule 65 *ter* number 1D1310, which is an excerpt of the video bearing Rule 65 *ter* number 22311F, was shown to witness Barry Hogan in which he interviewed Ramiza Kundo about scheduled sniping incident F5.<sup>18</sup> The video was tendered by the Defence, and exhibit number D381 was reserved, with admission into evidence pending an agreement by the parties on the length of the video to be ultimately tendered.<sup>19</sup> In relation to this video, the Prosecution indicated that it would also tender, pursuant to Rule 92 *bis* of the Rules, an excerpt of Mrs Kundo's testimony from the *Galić* case.<sup>20</sup>

16. On 14 November 2013, the Chamber reminded the parties of its invitation to agree on which portions of the video and any related testimonial material from a previous case would be tendered into evidence.<sup>21</sup> On 27 November 2013, during the continuation of Barry Hogan's testimony, the parties made additional submissions on the relevance of certain portions of witness Kundo's previous testimony from the *Galić* case, with the Prosecution submitting that only certain portions of the excerpt were relevant, and the Defence submitting that the entire excerpt should be admitted.<sup>22</sup> The parties also informed the Chamber of their agreement that the exhibits referred to in this previous testimony relate to exhibit numbers D381 and P1920 in the present case.<sup>23</sup> The Chamber then asked the parties, and in particular the Prosecution, to provide the Chamber with additional information with regard to exhibit D381 and its relation, if any, to the videos bearing Rule 65 *ter* numbers 22311F and 1D1310.<sup>24</sup> On 12 December 2013, the Chamber reminded the Prosecution of this request, setting a deadline for the following day.<sup>25</sup>

17. The Chamber notes that there have been no additional submissions by either party with regard to what was to be ultimately tendered as exhibit D381. The Chamber notes that the video bearing Rule 65 *ter* number 1D1310 is an excerpt of the video bearing Rule 65 *ter* number 22311F, and considers that it is preferable to have the more complete video in evidence. The Chamber therefore, pursuant to Rule 89 (C) of the Rules, ADMITS the video bearing Rule 65 *ter* number 22311F as exhibit number D381.

<sup>18</sup> T. 17742-17748, T. 19319, T. 20009.

<sup>19</sup> T. 17742-17748.

<sup>20</sup> T. 17774.

<sup>21</sup> T. 19319.

<sup>22</sup> T. 20007-20008, 20017.

<sup>23</sup> T. 20008-20009. The Chamber notes that exhibit P1920 was admitted on 19 June 2013.

<sup>24</sup> T. 20009-20010.

<sup>25</sup> T. 20706-20707.

18. With regard to the previous testimony of witness Kundo, the Chamber notes that it was informed by the Prosecution via informal communication that the full excerpt from the *Galić* case was uploaded into eCourt under Rule 65 *ter* number 30600. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules.<sup>26</sup> The Chamber notes that the tendered excerpt of witness Kundo's previous testimony concerns alleged scheduled sniping incident F5. The Chamber finds, therefore, that the evidence is relevant and of probative value for the purposes of admission. The Chamber also considers that the tendered evidence is cumulative with the evidence of witness Barry Hogan. The Chamber notes, however, that portions of witness Kundo's previous testimony from the *Galić* case, including some of the pages tendered under Rule 65 *ter* number 30600, have already been admitted into evidence as exhibit number P1917. For these reasons, the Chamber, pursuant to Rules 89 (C) and 92 *bis* of the Rules, **ADmits** the additional transcript pages uploaded under Rule 65 *ter* number 30600, but **INSTRUCTS** the Prosecution to consolidate the admitted previous testimony of this witness, remove any duplicate pages, upload the newly consolidated excerpt under a new Rule 65 *ter* number, and inform the Registry of the new Rule 65 *ter* number within one week of the date of this decision. The Chamber **INSTRUCTS** the Registry to replace exhibit P1917 with this newly consolidated exhibit within two weeks of the date of this decision.

## 2. Decision on Admission of Exhibit D384

19. On 1 October 2013, a portion of the video bearing Rule 65 *ter* number 1D1312a was shown to witness Barry Hogan and tendered by the Defence, for which exhibit number D384 was reserved, with admission into evidence pending agreement by the parties on the length of the video to be ultimately tendered.<sup>27</sup> On 14 November 2013, the Chamber reminded the parties of its invitation to agree on which portions of the video would be tendered into evidence.<sup>28</sup> On 27 November 2013, the parties made additional submissions on exhibit D384, informing the Chamber of their agreement about which portions of the video should be in evidence.<sup>29</sup> The Chamber instructed the Defence to provide the Chamber with the relevant portion of the video.<sup>30</sup> The Chamber notes that neither it nor the Registry have received the relevant portion of the video from the Defence and, for this reason, **INSTRUCTS** the Registry to vacate exhibit number D384.

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<sup>26</sup> Decision on Prosecution Third Motion to Admit Evidence pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-8.

<sup>27</sup> T. 17759-17760.

<sup>28</sup> T. 19319.

<sup>29</sup> T. 20010-20011.

<sup>30</sup> T. 20011.

### 3. Reminder Related to Exhibit P2382

20. On 1 October 2013, during the testimony of witness Barry Hogan, several photographs were used with the witness and the Chamber invited the parties to agree on a selection of these photographs which were to be added to exhibit P2382.<sup>31</sup> On 27 November, the parties requested that additional photographs be added to exhibit P2382. The Chamber invited the parties to clarify in writing which photographs should be added to the exhibit.<sup>32</sup> The Chamber notes that it has not received this information to date and reminds the parties that exhibit P2382 has not been supplemented with the additional photographs as agreed by the parties.

### **F. Decision on Prosecution Motion for Admission of Two Associated Exhibits**

21. On 2 December 2013, the Chamber denied, pursuant to Rule 92 *bis* of the Rules, the admission of two photographs tendered by the Prosecution as exhibits associated with the admitted testimony of Witness RM-274.<sup>33</sup> On 19 December 2013, the Prosecution filed a motion (“Motion”) explaining that it had mistakenly tendered the wrong exhibits in its first motion and that it is now tendering what it submits to be the correct photographs.<sup>34</sup> The Defence has not responded to the Motion.

22. The Chamber recalls and refers to the applicable law governing the admission of evidence pursuant to Rule 92 *bis* of the Rules as set out in a previous decision.<sup>35</sup> With regard to the applicable law related to the admission of associated exhibits, the Chamber also recalls and refers to one of its previous decisions dealing with this matter.<sup>36</sup>

23. The tendered excerpts of Witness RM-274’s prior testimony in the *Popović et al.* case were admitted by the Chamber in its prior decision, but the Chamber denied admission of two photographs, bearing Rule 65 *ter* numbers 13606 and 13611, because it was not satisfied that they were the photographs referred to in the previous testimony.<sup>37</sup> The Prosecution submits that the two photographs which it now tenders are the correct exhibits associated with Witness RM-274’s

<sup>31</sup> T. 17775-17776.

<sup>32</sup> T. 20014-20015.

<sup>33</sup> Prosecution 34th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 27 August 2013 (Confidential); Decision on Prosecution’s 34th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 2 December 2013 (“Decision on 34th 92 *bis* Motion”), paras 14, 16.

<sup>34</sup> Prosecution Motion for the Admission of Two Associated Exhibits Pursuant to Rule 92 *bis*, 19 December 2013 (Confidential).

<sup>35</sup> Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-7.

<sup>36</sup> Decision on Prosecution Third Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 19 October 2012, paras 5-8 and sources cited therein. See also T. 5601-5604; Decision on Prosecution’s Motion for Reconsideration, Granting Admission from the Bar Table, or Certification in relation to Decision Regarding Associated Exhibits of Witness Tucker, 7 February 2013, para. 8.

admitted testimony, and that they comprise an inseparable and indispensable part of that testimony.<sup>38</sup>

24. The Chamber is satisfied that the two tendered exhibits are the same as those discussed and marked by Witness RM-274 during the previous testimony.<sup>39</sup> The Chamber considers that the admitted testimony would be of lesser probative value without these exhibits. Accordingly, the two associated exhibits form an inseparable and indispensable part of Witness RM-274's admitted testimony and are, therefore, admitted into evidence. For the foregoing reasons, pursuant to Rules 89 and 92 *bis* of the Rules, the Chamber **GRANTS** the Motion; and **ADMITS** into evidence the associated exhibits bearing Rule 65 *ter* numbers 13606 and 13611; and **INSTRUCTS** the Registry to assign exhibit numbers to the documents admitted through this decision and to inform the parties and the Chamber of the numbers so assigned within two weeks of the date of this decision.

#### **G. Decision on Redactions to the Statement of Patrick Rechner**

25. On 19 November 2013, the Prosecution indicated to the Chamber that one of its witnesses, Mr Rechner, was concerned that his statement, exhibit P2554, had been made public by the Tribunal.<sup>40</sup> The witness's statement had been attached to the Prosecution's public Rule 92 *ter* motion of 6 August 2013 and had been tendered and admitted publicly as exhibit P2554.<sup>41</sup> Despite the fact that Mr Rechner had given his testimony publicly, the Prosecution indicated that Mr Rechner had security concerns, such as identity theft, as his statement contained private details such as his date of birth, place of birth, and biographical details regarding his childhood as well as his initials and signature.<sup>42</sup> Subsequently, the Chamber provisionally allowed the Prosecution's request to place exhibit P2554 as well as the Annex to its Rule 92 *ter* Motion under seal, pending a final decision from the Chamber on this matter.<sup>43</sup> On 12 December, the Chamber requested that the Prosecution contact Mr Rechner and inquire with him which specific details he wished to have redacted from his statement.<sup>44</sup> On 18 December 2013, the Prosecution filed a Motion requesting redactions to the statement of Mr Rechner.<sup>45</sup>

<sup>37</sup> Decision on 34th 92 *bis* Motion, paras 3-9, 16; See P3098.

<sup>38</sup> Motion, paras 1, 4-5.

<sup>39</sup> P3098, T. 7002, 7004, and 7008 regarding document bearing Rule 65 *ter* number 13606, and T. 6987-6988, 6997, 7001, and 7002 regarding document bearing Rule 65 *ter* number 13611.

<sup>40</sup> T. 19497-19498.

<sup>41</sup> Prosecution 92*ter* Motion: Patrick Rechner (RM411), 6 August 2013; T. 18452.

<sup>42</sup> T. 19497-19498.

<sup>43</sup> T. 19498-19500.

<sup>44</sup> T. 20688.

<sup>45</sup> Prosecution Submissions Regarding Redactions to the Witness Statement of Patrick Rechner (RM-411), 18 December 2013 (confidential).

26. The Chamber observes that the redactions to exhibit P2554 as requested by the Prosecution are extremely limited in nature. Essentially, they concern the witness's date and place of birth, as well as his initial and signature. The Chamber observes that the Defence did not object to the redactions sought,<sup>46</sup> and considers that the requested redactions to exhibit P2554 do not affect the Accused's right to a public trial. Under these circumstances, and in line with the Chamber's previous guidance on such matters,<sup>47</sup> the Chamber finds that it is in the interests of justice to allow the Prosecution's request for the limited redactions to the witness's statement, but finds that this is more appropriately reflected in the case record as opposed to the evidentiary record, and accordingly, **GRANTS** the request **IN PART**, and **ORDERS** that the Prosecution's 6 August 2013 Rule 92 *ter* Motion concerning Mr Rechner remain confidential, and **INSTRUCTS** the Prosecution to file a public redacted version of this motion, which shall include a public redacted version of exhibit P2554 attached as an annex to the motion, within one week of the date of this decision. The Chamber further **INSTRUCTS** the Registry that exhibit P2554 shall remain confidential.

#### **H. Further Instructions on Decision on Motion for Admission of Srebrenica Intercepts**

27. On 23 January 2014, the Chamber issued its decision on the Prosecution's second bar table motion for the admission of intercepts, wherein it instructed the Prosecution to upload a new version of the document bearing Rule 65 *ter* number 22241A, and instructed the Registry to replace exhibits P1237 and P1239 with the newly uploaded document.<sup>48</sup> On 5 February 2014, the Prosecution informed the Chamber and the Registry that new versions of exhibits P1237 and P1239 had been uploaded under Document ID numbers 0077-8873-0 (BCS) and 0077-8873-0-ET (ENG), including the content of the document bearing Rule 65 *ter* number 22241A.<sup>49</sup> The Prosecution requests that the eCourt descriptions attached to exhibits P1237 and P1239 be retained.<sup>50</sup> The Chamber, therefore, amends its instruction to the Registry, and **INSTRUCTS** the Registry to (1) mark exhibits numbered P1237 and P1239 as not admitted; and, (2) assign within two weeks from the date of this decision a new exhibit number to the version of the document which was newly uploaded under the Document ID numbers 0077-8873-0 (BCS) and 0077-8873-0-ET (ENG).

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<sup>46</sup> T. 19498. The Chamber notes that the Defence, subsequent to its submission in court that it does not object to the requested redactions to P2554, did not file a response to the Prosecution's request of 18 December 2013.

<sup>47</sup> T. 1285.

<sup>48</sup> Decision on Prosecution Second Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 23 January 2014, para. 18 and corresponding paragraph in Disposition.

<sup>49</sup> Prosecution Submission in Response to the Trial Chamber's Decision on the Second Bar Table Motion for the Admission of Intercepts: Srebrenica Segment (with Annexes A-C), 5 February 2014, ("Submission").

<sup>50</sup> Submission, Annex C, para. 6.

28. In the same decision of 23 January 2014, the Chamber instructed the Prosecution to identify admitted intercepts that may be made public and make a request to that effect within 14 days from the filing of the decision. On 5 February 2014, the Prosecution requested that all exhibits admitted in the decision retain their confidential status, except for the documents bearing Rule 65 *ter* number 21250A and exhibit P1236, for which it requests that they retain their public status.<sup>51</sup> With regard to exhibit P1236, the Chamber notes that the Prosecution has, pursuant to the Chamber's instructions, uploaded a new version of the exhibit containing the admitted content of the document bearing Rule 65 *ter* number 22238A.<sup>52</sup> The Chamber, therefore, **GRANTS** the Prosecution's request and **INSTRUCTS** the Registry to (1) reclassify as public the document bearing Rule 65 *ter* number 21250A and the newly uploaded version of exhibit P1236 under Document ID numbers 0077-9683-0 (BCS) and 0077-8683-0-ET (ENG); and, (2) retain under seal the remaining exhibits admitted in the decision.

### **I. Decisions on Admission Pending Missing Attestations**

#### **1. Exhibits P3122 and P3123**

29. On 2 December 2013, the Chamber admitted two documents into evidence on the condition that the Prosecution provide a missing Rule 92 *bis* (B) attestation.<sup>53</sup> The attestation has been provided and, having reviewed it, the Chamber, pursuant to Rule 92 *bis* of the Rules, **CONFIRMS** admission of the two documents, which, in the meantime were assigned exhibit numbers P3122 and P3123. In the same decision, the Chamber admitted the documents bearing Rule 65 *ter* numbers 18393 and 28918.<sup>54</sup> The Chamber clarifies that these two documents had been withdrawn prior to the decision and accordingly **VACATES** its admission decision in this respect.<sup>55</sup>

#### **2. P3300-3308, P3224-3228, P3233-3234, P3241, P3271, P3277-3279, and P3293-3298**

30. On 2, 13, and 17 December 2013, the Chamber admitted several documents into evidence on the condition that the Prosecution provide missing Rule 92 *bis* (B) attestations.<sup>56</sup> The attestations have been provided and, having reviewed them, the Chamber, pursuant to Rule 92 *bis* of the Rules,

<sup>51</sup> Submission, Annex C, para. 8.

<sup>52</sup> Submission, Annex C, para. 3. See Decision on Prosecution Second Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 23 January 2014, paras 16-17.

<sup>53</sup> Decision on Prosecution's Twenty-Eighth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 2 December 2013 ("Decision on 28th Motion"), para. 21 (iv).

<sup>54</sup> Decision on 28th Motion, para. 21 (iii).

<sup>55</sup> See also, Registry's internal memorandum assigning exhibit numbers filed on 18 December 2013, nn. 3-4.

<sup>56</sup> Decision on Prosecution 29th Motion to Admit Evidence Pursuant to Rule 92 *bis*, 2 December 2013; Decision on Prosecution's 43rd Motion to Admit Evidence Pursuant to Rule 92 *bis*: Witnesses RM-183 and RM-184, 13 December 2013; Decision on Prosecution 39th Motion to Admit Evidence Pursuant to Rule 92 *bis* – Witness RM-378, 17 December 2013.

**CONFIRMS** the admission into evidence of the following exhibits: P3300-3308, P3224-3228, P3233-3234, P3241, P3271, P3277-3279, and P3293-3298.

3. P3357-3358, P3360-3366, P3370, P3374-3375, and P3377-3378

31. On 18 July 2013, the Chamber admitted several documents into evidence on the condition that the Prosecution provide missing Rule 92 *bis* (B) attestations.<sup>57</sup> The attestations have been provided and, having reviewed them, the Chamber, pursuant to Rule 92 *bis* of the Rules, **CONFIRMS** admission of the following documents: P3357-3358, P3360-3366, P3370, P3374-3375, and P3377-3378.

**J. Miscellaneous**

1. Status of Exhibit P810

32. On 29 January 2013, the Prosecution tendered exhibit P810 into evidence, under seal.<sup>58</sup> The Chamber admitted the document into evidence but inadvertently omitted an instruction that the exhibit be made confidential.<sup>59</sup> The Chamber, pursuant to Rule 54 of the Rules, **ORDERS** that the status of P810 shall remain confidential.

2. Decision on Admission of Exhibit P2099

33. On 3 September 2013, the Prosecution tendered exhibit P2099 into evidence.<sup>60</sup> The Defence objected to the document's authenticity and the Chamber marked it for identification pending the receipt of additional information.<sup>61</sup> On 17 December 2013, the Prosecution provided additional information about the document's provenance and authenticity.<sup>62</sup> The Defence did not respond to these submissions. Having considered the Prosecution's submissions, the Chamber is satisfied as to the document's authenticity and considers that the Defence's objections go to the document's weight rather than its admissibility. The Chamber therefore, pursuant to Rule 89 (C) of the Rules, **ADmits** exhibit P2099 into evidence.

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<sup>57</sup> Decision on Prosecution Eighth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Srebrenica Survivors, 18 July 2013.

<sup>58</sup> T. 7597.

<sup>59</sup> T. 7598.

<sup>60</sup> T. 16172.

<sup>61</sup> T. 16172-16173, 20629.

<sup>62</sup> Prosecution Submissions Supporting the Admission of the 410th Intelligence Centre Report No. 18-209/1 (Exhibit No. P2099 MFI), 17 December 2013 (confidential).

### 3. Decision on Admission of Exhibit D356

34. On 30 August 2013, the Defence tendered into evidence excerpts of an 82-millimetre mortar manual.<sup>63</sup> The Prosecution requested time to add other portions of this manual for contextualisation and the Chamber marked the document for identification as exhibit D356.<sup>64</sup> On 22 January 2014, the Prosecution informed the Chamber and the Defence through an informal communication that it had uploaded into eCourt a revised version of the manual, combining the portions tendered by the Defence and the Prosecution. Having found the document to be relevant and of probative value, the Chamber, pursuant to Rule 89 (C) of the Rules, **ADmits** exhibit D356 into evidence and **INSTRUCTS** the Registry to replace what is currently exhibit D356 with the document bearing Rule 65 *ter* number 26011a within two weeks of the date of this decision.

### 4. Decision on Admission of Document Bearing Rule 65 *ter* 30261A

35. In an informal communication of 22 January 2014, the Prosecution tendered an excerpt of a 120-millimetre mortar manual, bearing Rule 65 *ter* number 30261a, which had been used by the Prosecution and the Defence during the examination of witness Richard Higgs. The Defence did not respond to this request. Having found the document to be relevant and of probative value, the Chamber, pursuant to Rule 89 (C) of the Rules, **ADmits** the document bearing Rule 65 *ter* number 30261a into evidence and **INSTRUCTS** the Registry to assign a number to the document and inform the Chamber and the parties of the assigned number within two weeks of the date of this decision.

### 5. Decision on Status of 30 Documents Admitted in 17 December 2013 Decision

36. On 17 December 2013, the Chamber admitted 30 documents provisionally under seal, pending a possible request from the Republic of Serbia (“Serbia”) to have the documents made confidential.<sup>65</sup> The Chamber has not received such a request from Serbia. The Chamber therefore, pursuant to Rule 54 of the Rules, **INSTRUCTS** the Prosecution to inform Serbia of the admission of the 30 documents and **INSTRUCTS** the Registry to change the status of the 30 documents to public after the lapse of a period of 45 days from the date of this decision, unless Serbia files within this period a request pursuant to Rule 54 *bis* of the Rules to have the documents remain confidential.

<sup>63</sup> T. 15943.

<sup>64</sup> T. 15943, 15996-15997, 19037.

<sup>65</sup> Decision on Prosecution Motion for Admission of Documents from the Bar Table (Sarajevo Documents), 17 December 2013, para. 20 (iv).

**6. Instruction with Regard to Exhibit P184**

37. The Chamber notes that exhibit P184 contains a technical error when opened in eCourt. The Chamber, pursuant to Rule 54 of the Rules, **INSTRUCTS** the Registry to detach the second page of both language versions from the exhibit within two weeks from the date of this decision.

**7. Decision on Status of Exhibit P2126**

38. On 31 January 2014, the Prosecution requested that the Chamber change the status of exhibit P2126 (an intercept dated 15 July 1995) from public to confidential. In line with its previous approach with regard to intercepts, pursuant to Rule 54 of the Rules, the Chamber **INSTRUCTS** the Registry to change the status of exhibit P2126 to confidential.

**8. Decision on Admission of Exhibit P3054**

39. P3054 is a newspaper article containing a letter from Goran Milinović to the US Helsinki Watch Committee, and it was tendered from the bar table on 5 December 2013 in connection with the testimony of Reynaud Theunens.<sup>66</sup> The Defence objected to the newspaper article being admitted into evidence, but not to the letter.<sup>67</sup> The Prosecution committed itself to upload a version only containing the letter.<sup>68</sup> On 13 December 2013, through an informal communication, the Prosecution informed the Chamber and the Defence that it had uploaded into eCourt a redacted version of exhibit P3054, under Rule 65 *ter* number 17316a, and requested that this should replace the current version of exhibit P3054. The Defence has not objected to this. The Chamber therefore **INSTRUCTS** the Registry to replace the document currently marked as exhibit P3054 with the document bearing Rule 65 *ter* number 17316a within two weeks from the date of this decision, and pursuant to Rule 89 (C) of the Rules, **ADmits** the new version of P3054 into evidence.

**9. Decision on Admission of Exhibit P2784**

40. On 6 February 2014, the Chamber issued its Decision on the Admission of Intercepts and Authentication Charts whereby it admitted into evidence intercepts which had been tendered by the Prosecution from the bar table. In its decision, the Chamber intended to admit one additional bar table intercept, namely P2784, which was inadvertently omitted from the disposition. The Chamber, pursuant to Rule 89 (C) of the Rules, therefore **ADmits** exhibit P2784 into evidence, under seal.

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<sup>66</sup> T. 20336-20340.

<sup>67</sup> T. 20340-20341.

<sup>68</sup> T. 20341, 20712-20713.

#### 10. Decision on Admission of Document Bearing Rule 65 *ter* Number 26547

41. On 31 January 2014, the Chamber deferred its decision on admission of document bearing Rule 65 *ter* number 26547 due to a missing English translation.<sup>69</sup> On 6 February 2014, the Prosecution, through an informal communication, informed the Chamber and the Defence that the missing translation has been uploaded into eCourt. After having reviewed the document and in light of its findings in the 31 January 2014 decision, the Chamber, pursuant to Rule 89 (C) of the Rules, **ADmits** the document into evidence.

#### 11. Decision Related to Withdrawal of Witness RM-300

42. On 6 September 2013, the Chamber conditionally admitted into evidence a statement of Witness RM-300, pending the filing of a corresponding attestation and declaration in compliance with the requirements of Rule 92 *bis* (B) of the Rules.<sup>70</sup> On 6 February 2014, the Prosecution, through an informal communication, informed the Chamber and the Defence that it withdraws the evidence of Witness RM-300. Accordingly, the Chamber **VACATES** its conditional admission decision in relation to the statement of Witness RM-300.

#### 12. Decision on Requests Related to Jeremy Bowen and BBC Committee

43. On 18 October 2013, the Defence cross-examined witness Jeremy Bowen about a finding from the Editorial Standards Committee of the BBC.<sup>71</sup> The Chamber asked the parties to provide contextual information about the number of relevant cases brought before the BBC committee.<sup>72</sup> On 28 November 2013, the Defence filed its submission, requesting that the Chamber consider the findings of the Editorial Standards Committee in relation to the witness's credibility.<sup>73</sup> The Prosecution filed its submission on 2 December 2013.<sup>74</sup> The Defence subsequently filed a request for leave to reply to the Prosecution's submission, attaching its reply as an annex.<sup>75</sup> As a preliminary matter, although the Chamber notes that the Defence's request for leave to reply was filed two days late, the Chamber **GRANTS** the request for leave to reply. Having noted the submissions from both parties concerning the findings of the Editorial Standards Committee and

<sup>69</sup> Decision on Prosecution Bar Table Submission of Proof of Death Documents in Connection with Witness Ewa Tabęcka, 31 January 2014, paras 3, 7.

<sup>70</sup> Decision on Prosecution Eleventh Motion to Admit Evidence Pursuant to Rule 92 *bis*, 6 September 2013, para. 23.

<sup>71</sup> T. 18147-18153

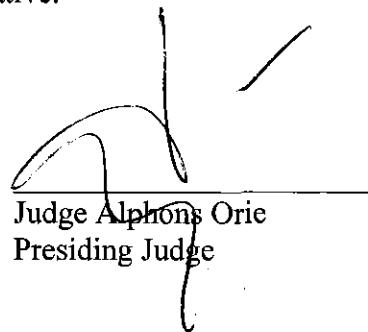
<sup>72</sup> T. 18153-18154.

<sup>73</sup> Defence Submissions on the Findings of the Editorial Standards Committee of the BBC Trust, 28 November 2013, para. 16; Corrected Defence Submission on the Findings of the Editorial Standards Committee of the BBC Trust, 28 November 2013, para. 16.

<sup>74</sup> Prosecution Submissions on "Defence Submission on the Findings of the Editorial Standards Committee of the BBC Trust", 2 December 2013.

their potential impact on the credibility of witness Bowen, the Chamber emphasizes that it will continue to carefully assess the credibility of every witness before it in light of all the evidence presented in the case.

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



Judge Alphons Orie  
Presiding Judge

Dated this fourteenth day of February 2014  
At The Hague  
The Netherlands

[Seal of the Tribunal]

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<sup>75</sup> Defence Request to File Reply to Prosecution Submissions on Prosecution Submissions on "Defence Submissions on the Findings of the Editorial Standards Committee of the BBC Trust", 11 December 2013.