



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: 21 April 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: 21 April 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE'S NINTH MOTION FOR THE
ADMISSION OF 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 ninth bar table motion (“Motion”), tendering 11 documents into evidence.¹ On 22 February 2016, the Defence filed a corrigendum to the Motion.² On 1 March 2016, the Prosecution responded (“Response”).³ On 9 March 2016, the Defence requested leave to reply and replied (“Reply”).⁴ On 11 March 2016, the Prosecution requested leave to sur-reply and sur-replied (“Sur-Reply”).⁵

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the 11 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 It submits that the documents are relevant to specific counts and charges in the Indictment and are important to establish the Defence case and to rebut the Prosecution case. Specifically, the Defence submits that the documents establish the legality of attacks on various locations, justify the Bosnian Serbs’ control of humanitarian convoys, establish that that the VRS tested certain weapons, discredit the Prosecution’s argument that those weapons were imprecise, and discredit Prosecution witnesses.⁷ The Defence details the sources of the documents and submits that they are reliable and authentic.⁸

3. The Prosecution opposes the admission of eight documents: six due to the absence of English translations, one for lack of probative value, and one for lack of relevance.⁹ It takes no position on the admission of one document and does not oppose the admission of two documents.¹⁰ As English translations have been uploaded into eCourt for four documents since the filing of the

¹ Defense Ninth Motion to Admit Documents from the Bar – New Documents, 18 January 2016; Defence Request for Reclassification of Filings, 3 March 2016, requesting to re-classify the Motion and its Annex as confidential.

² Corrigendum to: Defense Ninth Motion to Admit Documents from the Bar – New Documents, 22 February 2016. Through the corrigendum, the Defence notes that both paragraph 8 (i) and Annex A of the Motion erroneously describe document bearing Rule 65 *ter* no. 1D06354, which is in fact ‘the 1995 temporary firing tables’.

³ Prosecution Response to Defence Ninth Motion to Admit Documents from the Bar Table – New Documents, 1 March 2016 (Confidential). On 27 January 2016, the Prosecution requested an extension of time for the filing of the Response (Prosecution Omnibus Request for an Extension of Time to File Responses to Six Defence Bar Table Motions Distributed on 19 January 2016, 27 January 2016), which the Chamber granted on 1 February 2016 (T. 42913-42914).

⁴ Defence Request for Leave to Reply in Support of Defence 9th Motion to Admit Documents from the Bar – New Documents, 9 March 2016 (Confidential).

⁵ Prosecution Request for Leave to Sur-Reply to Defence Reply to Defence Ninth Motion to Admit Documents from the Bar Table, 11 March 2016 (Confidential).

⁶ Motion, paras 2, 8, 11-14, Annex A.

⁷ Motion, paras 8, 13, Annex A.

⁸ Motion, paras 2, 8, 11-12, Annex A. The Chamber notes that the Motion contains two paragraphs numbered 12. This citation refers to the paragraph under the heading ‘Submissions’.

⁹ Response, paras 1, 4-5, 8-9, 11.

¹⁰ Response, paras 1, 4, 6-7, 10.

Motion, the Defence submits that the Prosecution's opposition to the admission of those documents is moot.¹¹ The Prosecution submits that it cannot assess inter-related documents until English translations of all such documents have been uploaded into eCourt.¹²

4. Should the Chamber admit certain documents tendered by the Defence, the Prosecution seeks to tender two documents that it submits are necessary to contextualize those tendered by the Defence.¹³ The Defence submits that the Prosecution's request to tender documents from the bar table during the Defence case is inappropriate and refers to its request for certification to appeal a decision of the Chamber communicated to the parties on 13 January 2016.¹⁴

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, as set out in a previous decision.¹⁵

IV. DISCUSSION

A. Preliminary considerations

6. Given that the Prosecution raises new issues in the Response, the Chamber finds that the Defence has shown good cause for its request for leave to reply and will grant the requested leave. Similarly, as the Defence raises new issues in the Reply, the Chamber finds that the Prosecution has shown good cause for its request for leave to sur-reply and will grant the requested leave.

7. The Chamber recalls and refers to its previous decision regarding the phase at which the Prosecution may tender contextual documents in response to the Defence's bar table motions.¹⁶

¹¹ Reply, para. 4.

¹² Sur-Reply, paras 2, 4.

¹³ Response, paras 1, 4, 6, 10.

¹⁴ Reply, paras 2, 10-13, 15. The Chamber notes that there are two paragraphs in the Reply numbered 2. This citation refers to the first of those two paragraphs. The Chamber also notes a lack of clarity in the Reply with respect to document bearing Rule 65 *ter* no. 33653. The Defence first submits that it 'does not oppose the tendering' of the document; the Defence then submits that 'the Prosecution's proposed procedure to introduce these documents is inappropriate and should be dismissed' (Reply, para. 10). Finally, the Chamber notes that while the Defence refers to 'the specific reasons outlined below', no such reasons follow (*see* Reply, para. 10).

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

¹⁶ 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.

B. Documents bearing Rule 65 ter numbers 1D06350-1D06355

8. English translations of documents bearing Rule 65 ter numbers 1D06350 and 1D06354 have not been uploaded into eCourt, so the Chamber cannot fully assess their relevance and probative value. Documents bearing Rule 65 ter numbers 1D06351-1D06353 are supplements to the aforementioned documents, and document bearing Rule 65 ter number 1D06355 concerns the provision of those documents to the Defence. As such, the Chamber cannot fully assess the relevance and probative value of documents bearing Rule 65 ter numbers 1D06351-1D06353 and 1D06355. Considering the above, the Chamber will deny without prejudice the admission of documents bearing Rule 65 ter numbers 1D06350-1D06355 into evidence.

C. Document bearing Rule 65 ter number 1D06356

9. Document bearing Rule 65 ter number 1D06356 is an excerpt from the International Committee of the Red Cross's *Customary International Law, Volume I: Rules* that summarizes the state of the law regarding the prohibition on directing an attack against a non-defended locality. The Defence submits that the Chamber has admitted similar documents into evidence, namely D1357 and P4893.¹⁷ The Chamber finds that these documents, which are government-issued military manuals, are not analogous to a legal treatise. The Chamber recalls that matters of law fall within its expertise, that summaries of the state of the law are of no probative value, and that the parties may cite legal authorities and commentaries without tendering such documents for admission.¹⁸ Considering the above, the Chamber will deny the admission of document bearing Rule 65 ter number 1D06356 into evidence.

D. Documents bearing Rule 65 ter numbers 1D06357, 1D06359, and 1D06360

10. Document bearing Rule 65 ter number 1D06357 is a portion of a November 1994 *New York Times* article regarding the provision of arms to Bosnia-Herzegovina. Document bearing Rule 65 ter number 1D06359 is a May 1994 US National Intelligence Council memorandum regarding the potential lifting of the arms embargo against Bosnia-Herzegovina. Document bearing Rule 65 ter number 1D06360 is a May 1995 communication from the US embassy in Sarajevo to the US Secretary of State regarding, *inter alia*, discussions in which the Vice President of Bosnia-Herzegovina agreed to the course of action proposed by US officials.

11. The Chamber is satisfied that the documents are relevant to the alleged bias of the international community against the Serbs and thus to the Defence's argument that such bias

¹⁷ Reply, para. 8.

justified the Bosnian Serbs' control of convoys of humanitarian aid in order to prevent the smuggling of arms and other contraband to their adversaries, including in Srebrenica. As the documents are an article published in a newspaper and US government documents, the Chamber is satisfied that they bear sufficient *indicia* of reliability for admission into evidence. The Chamber is thus satisfied that the documents meet the standard for admission set out in Rule 89 (C) of the Rules. It further considers that the Defence has set out with sufficient clarity and specificity how the documents would fit into its case. Considering the above, the Chamber will admit documents bearing Rule 65 *ter* numbers 1D06357, 1D06359, and 1D06360 into evidence.

E. Document bearing Rule 65 *ter* number 1D06358

12. Document bearing Rule 65 *ter* number 1D06358 is a letter from the Bosnia-Herzegovina Ministry of Defence regarding the military records, or lack thereof, of various individuals, including Witness RM-275. The BCS version of the document uploaded in eCourt consists of both a five-page BCS letter and a two-page partial draft English translation, while the English version of the document uploaded in eCourt is a complete translation of the five-page BCS letter. The Chamber notes that the English version of the document uploaded in eCourt should be a complete and accurate translation of the BCS version of the document as tendered.

13. The Chamber is satisfied that the document is relevant to assessing the credibility of Witness RM-275.¹⁹ As the document contains stamps and a signature from the Bosnia-Herzegovina Ministry of Defence, the Chamber is satisfied that it bears sufficient *indicia* of reliability for admission into evidence. The Chamber is thus satisfied that the document meets the standard for admission set out in Rule 89 (C) of the Rules. It further considers that the Defence has set out with sufficient clarity and specificity how the documents would fit into its case. The Chamber notes that the document contains identifying information concerning a protected witness. Considering the above, the Chamber will admit document bearing Rule 65 *ter* number 1D06358 into evidence under seal.

F. Documents bearing Rule 65 *ter* numbers 30547 and 33653

14. The Prosecution seeks to tender documents bearing Rule 65 *ter* numbers 30547 and 33653, which it submits provide context for documents bearing Rule 65 *ter* numbers 1D06359 and

¹⁸ See First Defence Case Omnibus Decision, 31 March 2016, para. 20.

¹⁹ The Defence submits that document bearing Rule 65 *ter* no. 1D06358 is also relevant to assessing the credibility of Witness RM-309 (*see* Motion, para. 8 (iv), Annex A (p. 3)). However, the Chamber notes that Witness RM-309 has not given evidence.

1D06358, respectively.²⁰ The Prosecution has not specifically set out why it should be allowed to tender these documents during the Defence case rather than at the rebuttal stage of the proceedings. In the absence of such submissions, the Chamber will deny without prejudice the admission of documents bearing Rule 65 *ter* numbers 30547 and 33653 into evidence. Given that the parties may have misinterpreted the Chamber's decision of 13 January 2016, the Chamber will allow the Prosecution to make submissions as to why the tendering of the documents at this stage of the proceedings is appropriate, if the Prosecution so wishes.

V. DISPOSITION

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

GRANTS leave to Reply and to Sur-Reply;

GRANTS the Motion **IN PART**;

ADMITS into evidence documents bearing Rule 65 *ter* numbers 1D06357, 1D06359, and 1D06360;

ADMITS into evidence, under seal, document bearing Rule 65 *ter* number 1D06358;

DENIES without prejudice admission into evidence of documents bearing Rule 65 *ter* numbers 1D06350-1D06355, 30547, and 33653;

DENIES admission into evidence of document bearing Rule 65 *ter* number 1D06356;

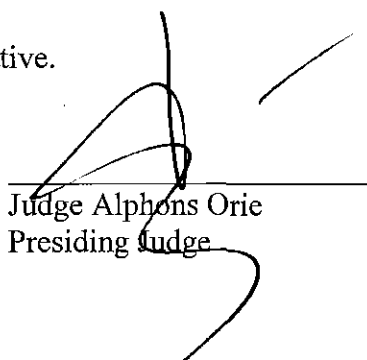
REQUESTS the Registry to assign numbers to the exhibits admitted by this decision and to inform the parties and the Chamber of the numbers so assigned;

INSTRUCTS the Defence to upload document bearing Rule 65 *ter* number 1D06358 in such a way that the BCS and English versions completely and accurately correspond to each other; and

²⁰ Response, paras 6, 10. The Chamber notes that while the Prosecution submits that document bearing Rule 65 *ter* no. 1D06358 requires contextualization to address the 'inaccurate suggestion' that Witnesses RM-279 and RM-309 did not hold the positions they testified to holding (Response, para. 10), the Defence submits that this document discredits the testimony of Witnesses RM-275 and RM-309, not that of Witness RM-279 (Motion, para. 8 (iv)).

REQUESTS the Registry to replace document bearing Rule 65 *ter* number 1D06358 with the document to be uploaded by the Defence.

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



Judge Alphons Orié
Presiding Judge

Dated this Twenty-first day of April 2016
At The Hague
The Netherlands

[Seal of the Tribunal]