



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: 10 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: 10 May 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE'S SIXTH 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 sixth bar table motion (“Motion”), tendering 25 documents into evidence.¹ On 16 February 2016, the Prosecution responded to the Motion (“Response”), not opposing the admission of 23 of the 25 documents and not opposing the admission of the remaining two documents provided that four additional documents are admitted into evidence for context.² On 23 February 2016, the Defence requested leave to reply to the Response and filed a reply (“Request to Reply” and “Reply”, respectively) in which it withdrew three of the tendered documents.³

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the 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”).⁴ It further submits that the proposed documents are orders from the Accused concerning adherence to ceasefires and compliance with international humanitarian law; actions by or correspondence with the Accused; and relate to his alleged criminal responsibility for genocide, crimes against humanity, and violations of the laws or customs of war.⁵ The Defence also makes submissions about the source of the documents.⁶ The Defence submits that the documents are reliable as they bear sufficient indicia of authenticity.⁷ The Defence further submits that since a number of documents were part of the Prosecution’s exhibit list filed pursuant to Rule 65 *ter* of the Rules, the Prosecution is presumed to be satisfied with their reliability.⁸

3. The Prosecution contests the content of the tendered documents as set out by the Defence but does not oppose their admission, with the exception of the documents bearing Rule 65 *ter* numbers 10955 and 1D00344.⁹ With regard to these two documents, the Prosecution does not

¹ Defence Sixth Motion to Admit Documents from the Bar – Documents relating to Ratko Mladić, 18 January 2016. In para. 1 of the Motion the Defence states that it tenders 26 documents into evidence, however, one of the documents, bearing Rule 65 *ter* number 1D00344, is a duplicate.

² Prosecution Response to Defence Sixth Motion to Admit Documents from the Bar Table – Documents relating to Ratko Mladić, 16 February 2016.

³ Defence Request for Leave to Reply and Reply to Sixth Motion to Admit Documents from the Bar – Documents relating to Ratko Mladić, 23 February 2016. The Defence withdrew the documents bearing Rule 65 *ter* numbers 01112, 08575 and 1D00402 as these were already in evidence as exhibits D945 (and D946), D187, and D962, Reply, para. 3.

⁴ Motion, paras 2, 8-9, 11.

⁵ Motion, paras 2, 8-9. *See also* Motion, Annex A.

⁶ Motion, para. 9. *See also* Motion, Annex A.

⁷ Motion, paras 2, 10. *See also* Motion, Annex A.

⁸ Motion, Annex A, pp. 1-5, 7, 13.

⁹ Response, paras 1, 3, 6.

oppose their admission provided that the documents bearing Rule 65 *ter* numbers 02559s, 33645, 33646, and 33654, which relate to and contextualize the two documents, are also admitted into evidence.¹⁰

4. The Defence argues that, where the Prosecution has not opposed admission, its submissions about the content of the tendered documents amount to closing arguments on the merits of the documents and Defence arguments, and are inappropriate at the current juncture of the proceedings, and should be stricken from the Response.¹¹ The Defence further submits that the Prosecution's request to tender documents from the bar table for context during the Defence case is inappropriate and unsubstantiated, and refers to a request for certification to appeal a decision of the Chamber communicated to the Parties on 13 January 2016.¹²

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 ("Eighth Bar Table Decision").¹³

IV. DISCUSSION

A. Preliminary considerations

6. Given that the Prosecution raises a new issue in the Response, namely its request to tender documents from the bar table for context during the Defence case, the Chamber finds that the Defence has shown good cause in its Request to Reply and will grant the requested leave.

7. With respect to the Defence's objections to the Prosecution's characterizations of the tendered documents, the Chamber has analysed the documents' admissibility based on the content of the documents and not the Prosecution's descriptions of the content, and recalls its earlier ruling that it remains within the Chamber's discretion whether to consider such characterizations when assessing the evidence in its entirety and that it is open to the responding party to make submissions on the content of tendered documents as well as what conclusions might be drawn from them.¹⁴

¹⁰ Response, paras 3-6.

¹¹ Reply, para. 4.

¹² Reply, paras 2, 6-9.

¹³ Decision on Defence's Eighth Motion for the Admission of Documents from the Bar Table, 24 March 2016, paras 6-8.

¹⁴ Eighth Bar Table Decision, para. 10.

C. Documents bearing Rule 65 *ter* numbers 1D04310, 1D04312, and 1D04313

8. Documents bearing Rule 65 *ter* numbers 1D04310, 1D04312, and 1D04313 were also tendered through witness José Cutileiro and admitted as exhibits D1405, D1407, and D1408, respectively on 14 March 2016.¹⁵ The Chamber will therefore declare this part of the Motion moot.

D. Documents bearing Rule 65 *ter* numbers 14177, 00423, 01390, 1D03251, 00916, 1D04339, 23510, 00996, 00417, 10649, 00907, 01911, 02324, 1D00349, 00692, 1D02652 and 25447

9. Document bearing Rule 65 *ter* number 14177 is an Eastern Bosnia Corps order on the implementation of an agreement on complete cessation of hostilities with the Muslims dated 2 January 1995 and relates to the Accused's alleged control of VRS units. Document bearing Rule 65 *ter* number 00423 is a letter from Mladić addressed to the UNPROFOR command dated 13 February 1995. Document bearing Rule 65 *ter* number 01390 is an undated communiqué of the VRS Main Staff addressed to Radovan Karadžić concerning Mladić's support of peace initiatives and therefore relates to a contact between the Accused and an alleged member of the alleged joint criminal enterprise on peace talks. Document bearing Rule 65 *ter* number 1D03251 is a cable from UNPROFOR Zagreb to UN Headquarters in New York dated 22 July 1994 concerning *inter alia* Mladić's position on peace agreements. Document bearing Rule 65 *ter* number 00916 contains an order from Mladić forwarded by the Drina Corps command concerning the observance of ceasefire agreements dated 17 May 1993. The Chamber finds that the documents described above pertain to the Accused's and other members of the alleged first (overarching) joint criminal enterprise's involvement in ceasefire agreements.¹⁶ The Chamber therefore finds that the documents are relevant to the Accused's alleged criminal liability and the alleged first (overarching) joint criminal enterprise as charged in the Indictment.

10. Document bearing Rule 65 *ter* number 1D04339 is a 5 May 1994 letter signed by Karadžić and addressed to an association in Trieste expressing gratitude for its humanitarian work and for not discriminating on the basis of religion and national identity. The Chamber is satisfied that the document is relevant to the alleged first (overarching) joint criminal enterprise and its objective, as charged in the Indictment.

11. Document bearing Rule 65 *ter* number 23510 is an UNPROFOR report on the 19th Mixed Military Working Group Meeting held on 12 May 1993 at Sarajevo Airport where high-ranking

¹⁵ Decision on Admission of remaining documents associated with the Rule 92 *ter* statement of José Cutileiro, 14 March 2016.

¹⁶ The Chamber notes that documents bearing Rule 65 *ter* numbers 00996 and 10649 also relate to this topic but these two documents will be dealt with in paragraph 13.

VRS officers are reported as having been present. It describes, *inter alia*, a VRS proposal on the demilitarization of Sarajevo. The Chamber therefore finds that the document is relevant to the Accused's alleged criminal responsibility and the charges in the Indictment relating to the Sarajevo component of the case.

12. Documents bearing Rule 65 *ter* numbers 10649 and 00996, cables from Mladić to UNPROFOR Command dated 18 June 1992 and 3 July 1993, respectively, as well as 00417, an internal UNPROFOR memorandum dated 26 February 1995, relate to the Accused's involvement in the provision of humanitarian aid in Bosnia-Herzegovina between July 1992 and February 1995.¹⁷ The Chamber therefore finds that the documents are relevant to the Accused's alleged criminal responsibility for restrictions of humanitarian aid, as charged in the Indictment.

13. Documents bearing Rule 65 *ter* numbers 00907, an order from Mladić directed *inter alia* to the VRS corps commands regarding discipline within units dated 22 May 1993; and 01911, an order from Mladić to the Herzegovina Corps Command from March 1995 regarding the arrest and referral to the judicial authorities of perpetrators of theft, relate to the commission of crimes by armed forces and orders from the Accused to punish these crimes. The Chamber therefore finds that the documents are relevant to the Accused's alleged command responsibility, the alleged first (overarching) joint criminal enterprise and the charges in the Indictment relating to the municipalities component of the case.

14. Document bearing Rule 65 *ter* 02324, a VRS Main Staff information report from Mladić to the President of the Republika Srpska dated 20 October 1995, deals with the activities of paramilitaries, such as the *Tigrovi* Serbian volunteer guard and its commander Željko Ražnjatović in September and October 1995, in the municipalities of the Indictment.¹⁸ In this report, Mladić called for the prohibition of the *Tigrovi* on the territory of the Bosnian-Serb Republic and informed Karadžić that he had issued orders to VRS commands to remove from the units and zone of responsibility all paramilitary formations, groups, and individuals who refused to accept unity of command and control in the army. The Chamber therefore finds that the document is relevant to the Accused's alleged command responsibility and the charges in the Indictment relating to the municipalities component of the case.

¹⁷ Document bearing Rule 65 *ter* number 00417 also pertains to relations between politics and the military and the Accused's interest in taking part in a central joint commission called by UNPROFOR and document bearing Rule 65 *ter* number 10649 also pertains to the attacks on Sarajevo airport between 15 and 17 June 1992.

¹⁸ Document bearing Rule 65 *ter* number 00907 also deals with this issue and contains an order from the Accused prohibiting any organization or conduct along paramilitary lines. The order was sent to, *inter alios*, the President of the Assembly, the Prime Minister of the Bosnian-Serb Republic and the VRS commands.

15. Documents bearing Rule 65 *ter* numbers 1D00349, a letter from Mladić to UNPROFOR dated 30 August 1992, and 25447, an ABiH information report on a 19 July 1995 meeting between the VRS, UNPROFOR, and Muslim representatives from Žepa, relate to the exchange of prisoners of war and Muslim able-bodied men, in Rogatica Municipality in particular, and the Accused's and other members of the alleged first (overarching) joint criminal enterprise's involvement in their exchange. The Chamber therefore finds that the documents are relevant to the Accused's alleged criminal responsibility, the alleged first (overarching) joint criminal enterprise, and the charges in the Indictment relating to the municipalities component of the case.

16. Document bearing Rule 65 *ter* number 00692, a note from the 1st Krajina Corps dated 1 November 1992 concerning the departure of inhabitants of Večići in Kotor Varoš Municipality, refers to the alleged forcible transfer and deportation of non-Serbs in Kotor Varoš Municipality in November 1992, as well as the alleged role of the Accused and other members of the alleged first (overarching) joint criminal enterprise in this regard. The Chamber finds that the document is relevant to the Accused's alleged criminal responsibility, the alleged first (overarching) joint criminal enterprise, and the charges in the Indictment relating to the alleged forcible transfer and deportation of non-Serbs from Kotor Varoš Municipality.

17. Document bearing Rule 65 *ter* number 1D02652, a letter from the UN Secretary-General to the President of the Security Council dated 16 February 1994, relates to the alleged shelling of Markale Market in Sarajevo, and the Chamber therefore finds that it is relevant to Schedule G.8 of the Indictment.

18. All of the above-mentioned documents bear *indicia* of reliability, such as stamps, signatures, or information on the recipients and authors of the documents. The Chamber therefore considers that these documents have probative value for the purpose of admission into evidence pursuant to Rule 89 (C) of the Rules. It further considers that the Defence has set out with sufficient clarity and specificity how these documents fit into its case. Considering the above, the Chamber will admit these documents into evidence.

E. Documents bearing Rule 65 *ter* numbers 10955 and 1D00344

19. Document bearing Rule 65 *ter* number 10955 is an UNPROFOR cable forwarding a memorandum of a meeting between the UNPROFOR, the President of the Yugoslav Government, and Mladić on 26 March 1993 during which topics such as the VRS involvement in peace agreements, attacks on Srebrenica in 1993, the distribution of humanitarian aid in Srebrenica, and attacks on Sarajevo airport were discussed. The document therefore relates to the Accused's alleged

command responsibility and the Sarajevo component of the case. Document bearing Rule 65 *ter* number 1D00344 is a VRS Main Staff order to the Drina Corps command and the Rogatica Brigade dated 28 November 1992 in which Mladić orders the Drina Corps command to take measures to protect the Muslim population in the villages of Burati in Rogatica Municipality and Vrhbarje in Sokolac Municipality, because they expressed loyalty to the Republika Srpska. The document therefore relates to the Accused's alleged command responsibility, his alleged contribution to the alleged first (overarching) joint criminal enterprise as well as to the municipalities component of the case. The Prosecution does not object to the admission of these two documents provided that documents bearing Rule 65 *ter* numbers 33645, 33646, 02559s, and 33654 are also admitted for context. The Chamber will address these documents below.

20. Both Defence documents bear *indicia* of reliability, such as stamps, signatures and information on the recipients and authors of the documents.

21. Based on the foregoing, the Chamber finds that these documents are relevant to the Accused's alleged criminal liability, the alleged first (overarching) joint criminal enterprise, and the charges in the Indictment relating to the municipalities and Sarajevo components of the case. The Chamber considers that the documents bear sufficient *prima facie* *indicia* of reliability and therefore have probative value for the purpose of admission into evidence pursuant to Rule 89 (C) of the Rules. It further considers that the Defence has set out with sufficient clarity and specificity how these two documents would fit into its case. Considering the above, the Chamber will admit the two documents into evidence.

F. Documents bearing Rule 65 *ter* numbers 02559s, 33645, 33646, and 33654

22. 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.¹⁹

23. In relation to the Prosecution's request for admission of the documents bearing Rule 65 *ter* numbers 02559s, 33645, 33646, and 33654, the Prosecution argues that the documents are 'so closely related' to the documents bearing Rule 65 *ter* numbers 10955 and 1D00344, tendered by the Defence, that their admission in the context of the bar table, as opposed to rebuttal, is justified.²⁰ The Prosecution, however, has not set out why it should be allowed, at this stage of the proceedings, to tender the documents rather than at the rebuttal stage of the proceedings. In the

¹⁹ Reasons for Decision on Prosecution Request to Tender Documents and Decision on Defence Motion for Certification to Appeal, 10 March 2016. *See also* Eighth Bar Table Decision, paras 11-12.

²⁰ Response, paras 3, 5.

absence of such submissions, the Chamber will deny without prejudice the admission of the documents.

V. DISPOSITION

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

GRANTS the Defence leave to Reply;

GRANTS the Motion **IN PART**;

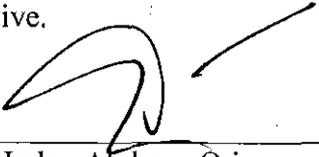
ADMITS into evidence the documents bearing Rule 65 *ter* numbers: 00996, 00907, 14177, 00423, 01911, 02324, 1D00349, 01390, 00417, 10649, 10955, 1D03251, 1D02652, 00916, 00692, 25447, 1D00344, 1D04339, and 23510;

DECLARES the Motion moot with regard to the documents bearing Rule 65 *ter* numbers 1D04310, 1D04312, and 1D04313;

DENIES without prejudice admission into evidence of the documents bearing Rule 65 *ter* numbers 02559s, 33645, 33646, and 33654;

REQUESTS the Registry to assign numbers to the exhibits admitted by this decision 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 Orie
Presiding Judge



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

[Seal of the Tribunal]