



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: 23 May 2016
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 23 May 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE'S FOURTH 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 fourth bar table motion (“Motion”), tendering 62 documents into evidence.¹ On 1 March 2016, the Prosecution responded to the Motion (“Response”), opposing the admission of four documents, and conditionally opposing the admission of two documents unless additional documents contextualizing the material tendered by the Defence are also admitted.² On 9 March 2016, the Defence requested leave to reply to the Response, as well as authorisation to increase the word limit for the reply and filed a reply (“Reply”).³ The documents bearing Rule 65 *ter* numbers 1D00495, 1D04390, and 1D02185 were withdrawn by the Defence and the document bearing Rule 65 *ter* number 32236 was tendered twice.⁴ The Chamber will, therefore, proceed to consider the remaining 58 documents.

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the 58 documents tendered are relevant and have sufficient probative value to be admitted from the bar table pursuant to Rule 89 (C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).⁵ It submits that the proposed documents are relevant because they relate to exculpatory evidence challenging the allegations that the Accused is individually criminally responsible, as a member of joint criminal enterprises, for taking United Nations (“UN”) personnel hostage and permanently removing non-Serbs from Bosnian Serb-claimed territory in Srebrenica.⁶ In relation to the probative value of the tendered documents, the Defence provides information about the source of the documents and submits that they are *prima facie* reliable and authentic.⁷ The Defence also submits that since some of the documents were included on the Prosecution’s Rule 65 *ter* exhibit list and uploaded by the Prosecution into eCourt, the Prosecution must not be permitted to object on grounds of reliability as it was aware of their provenance and is, therefore, presumed to be satisfied in this regard.⁸

¹ Defence Fourth Motion to Admit Documents from the Bar – International Community, 18 January 2016. The Motion purported to tender 63 documents into evidence but only 62 were listed (Motion, Annex A).

² Prosecution Response to Defence Fourth Motion to Admit Documents from the Bar Table – International Community, 1 March 2016. 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).

³ Defence Request for Leave to Reply in Support of Fourth Motion to Admit Documents from the Bar – International Community, 9 March 2016.

⁴ Reply, paras 3-5. *See also* Motion, Annex A.

⁵ Motion, paras 2, 7-13; Reply, paras 1-7, 9-12.

⁶ Motion, paras 8-9. *See also* Motion, Annex A.

⁷ Motion, paras 10, 12. *See also* Motion, Annex A.

⁸ Motion, para. 11. *See also* Motion, Annex A.

3. The Prosecution contests the Defence's descriptions of 12 of the tendered documents' content and opposes the admission of four documents.⁹ The Prosecution objects to the admission of documents bearing Rule 65 *ter* numbers 1D01079, 1D07009, and 1D07023 on the basis that they are opinion pieces by political analysts that are not relevant to the facts of this case and have no probative value.¹⁰ The Prosecution opposes the admission of the document bearing Rule 65 *ter* number 1D04424, an excerpt of a book written by Mirko Šošić, on authenticity grounds, in that it appears to be pasted together from various sources.¹¹ The Prosecution does not oppose the admission of the documents bearing Rule 65 *ter* numbers 1D03050 and 01778 provided that two additional documents, bearing Rule 65 *ter* numbers 13758 and 05739 respectively, are also admitted into evidence to provide proper context.¹²

4. The Defence, in its Reply, provides additional submissions on the relevance and probative value of the four documents opposed by the Prosecution.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 The Defence also submits that, where the Prosecution has not opposed admission, its submissions on the content of 12 of the tendered documents is inappropriate and is "simply a backdoor way for the Prosecution to make its final arguments and influence the Chamber's views in advance (and outside the word count of) its final brief".¹⁵ As such, the Defence argues that the 54 documents to which the Prosecution does not object should be admitted into evidence unopposed.¹⁶

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.¹⁷ 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.¹⁸ The Chamber further recalls

⁹ Response, paras 1, 3-4, 10. *See also* Response, Annex A.

¹⁰ Response, paras 3-6.

¹¹ Response, para. 6.

¹² Response, paras 3, 7-8, 10.

¹³ Reply, paras 9-12.

¹⁴ Reply, paras 8, 13-19.

¹⁵ Reply, paras 20-33.

¹⁶ Reply, paras 7, 21. The Defence refers to 55 documents although the correct figure is 54; the document bearing Rule 65 *ter* number 32236 was tendered twice and is, therefore, only considered once.

¹⁷ Decision on Defence's Eighth Motion for the Admission of Documents from the Bar Table, 24 March 2016, paras 6-7.

¹⁸ 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

and refers to the applicable law governing protective measures, Rule 54 *bis* of the Rules, as set out in previous decisions.¹⁹

IV. DISCUSSION

A. Preliminary Considerations

6. Given that the Prosecution raises new issues and the detailed submissions in its Response, the Chamber finds that the Defence has shown good cause for its request to reply and will grant the requested leave with authorisation to increase the word limit for its Reply.

B. Documents Bearing Rule 65 *ter* Numbers 1D07009, 1D07023, and 1D01079

7. The documents bearing Rule 65 *ter* numbers 1D07009, 1D07023, and 1D01079 are articles commenting on events during the war in the former Yugoslavia.

8. The Defence submits that the document bearing Rule 65 *ter* number 1D07009 is relevant and probative because it contains evidence of bias by the international community and the UN against Serbs and goes to the reliability of Prosecution witnesses who testified that there was no such bias.²⁰ The Prosecution submits that the document is an opinion piece, written after the events in question, and citing secondary sources, which make it neither probative nor relevant.²¹ The Chamber notes that the document is a bare opinion piece. The Chamber also notes that the document was written long after the events in question and the source of knowledge is not clear. The Chamber finds that the document has insufficient *indicia* of reliability and, therefore, does not have probative value. The documents cited by the Defence, such as D07706 and P07695, as examples of ‘opinion pieces’ previously admitted by the Chamber are distinguished from the tendered document on the basis that those documents were tendered through witnesses who had the opportunity to comment on them. Accordingly, the Chamber will deny admission of the tendered document into evidence.

9. The Defence submits that the document bearing Rule 65 *ter* number 1D07023 is relevant as it corroborates Defence witness José Cutliero’s testimony that the UN exhibited bias against the

Documents from the Bar Table, 24 March 2016, paras 11-12; Decision on Defence’s Ninth Motion for the Admission of Documents from the Bar Table, 22 April 2016, para. 14.

¹⁹ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR108*bis*.2, Decision on Serbia and Montenegro’s Request for Review, 20 September 2005 (Confidential), paras 10-12. *See also* Decision on Republic of Serbia’s Motion for Protective Measures, 15 July 2014, para. 8.

²⁰ Motion, Annex A, (p. 29); Reply, para. 9.

²¹ Response, para. 5; Response, Annex A, (p. 6).

Serbs.²² It further submits that the author worked as an aide to Yasushi Akashi, former Special Representative of the Secretary-General for the former Yugoslavia.²³ The Prosecution submits that the article is an opinion piece, which has no probative value and is not relevant to the facts of this case as it opines on general international foreign policy matters.²⁴ The Chamber notes that the document is a bare opinion piece and that there is no date of publication. The Chamber also notes that the document relates to general international foreign policy issues. The Chamber finds that the document has insufficient *indicia* of reliability and, therefore, does not have probative value and is also irrelevant. Accordingly, the Chamber will deny admission of the tendered document into evidence.

10. The Defence submits that the document bearing Rule 65 *ter* number 1D01079 is relevant and probative as it demonstrates that the UN exhibited a bias against the Serbs from the perspective of Lieutenant Colonel John E. Sray, the Chief of the Intelligence Section for the UN Command in Sarajevo during the war.²⁵ The Prosecution submits that the document was written in a personal capacity and advocates an American policy position in the Bosnian conflict.²⁶ The document, in the Prosecution's view, also is an opinion piece with "blatant factual errors".²⁷ The Chamber finds that the document has sufficient *indicia* of reliability as it is dated, clearly sourced and deals with matters relating to his work for the US military. The document, therefore, has probative value. The document is relevant as it is closely contemporaneous with events that are the subject matter of the Indictment, including the Sarajevo component of the case. The Defence has set out with sufficient clarity and specificity how the document would fit into its case. The Prosecution's objections go to the weight ultimately to be assigned to the document and not its admissibility. Accordingly, the Chamber will admit the document into evidence.

C. Document Bearing Rule 65 *ter* Number 1D04424

11. The document bearing Rule 65 *ter* number 1D04424 is an excerpt of a book written by Mirko Šošić. The Defence submits that the book indicates how the Bosnian-Serb army ("VRS") extended good treatment to UN "prisoners of war" and why they were considered as prisoners of war by the Accused.²⁸ The Prosecution objects to its admission on the basis that the document could not possibly be authentic as it appears to have been cut and pasted together from various sources

²² Motion, Annex A, (p. 30); Reply, para. 10.

²³ Reply, para. 10.

²⁴ Response, para. 5; Response, Annex A, (p. 7).

²⁵ Motion, Annex A, (p. 33); Reply, para. 12.

²⁶ Response, para. 5; Response, Annex A, (p. 8).

²⁷ Response, para. 5.

²⁸ Motion, Annex A, (p. 31); Reply, para. 11.

and the original text of the book has not been provided.²⁹ The Chamber notes that the documents cited by the Defence, P7591 and P7593, as examples of excerpted material previously admitted by the Chamber are distinguished from the tendered document on the basis that the copy and paste elements there were: (a) clearly explained to have been parts of exhibits admitted into evidence but brought together in one document; (b) explained by the witnesses through whom they were tendered; and (c) for the purpose of comparing what the sources of evidence sought to establish. The Chamber finds that the tendered document has insufficient *indicia* of reliability or authenticity as it appears to be an amalgamation of various source materials and contains insufficient information about their provenance. The Chamber, therefore, will deny the admission of the document from the bar table.

D. The Remaining Documents Tendered by the Defence

12. The remaining 54 documents tendered by the Defence comprise, *inter alia*, VRS orders, reports, and other correspondence as well as cables and other communications with the UN Protection Force, the Army of Bosnia-Herzegovina ("ABiH"), and the Bosnia-Herzegovina Government, dated between April 1992 and January 1996, relating to the international community's interactions with the VRS and ABiH.³⁰ The Chamber finds that the documents are relevant to the allegations of the taking of hostages and/or the Srebrenica component of the case in relation to the alleged restrictions of humanitarian aid. The Chamber also finds that the documents, with the exception of the document bearing Rule 65 *ter* number 12990, bear sufficient *indicia* of reliability and authenticity as they contain dates, signatures, and/or stamps, or information about who authored, sent, or received the documents. They are, therefore, of probative value for the purpose of admission into evidence. The Defence has set out with sufficient clarity and specificity how the documents would fit into its case. For the reasons mentioned above, the Chamber will admit the documents into evidence from the bar table.³¹

13. The document bearing Rule 65 *ter* number 12990 appears to be a reproduction of a letter type-signed by Radovan Karadžić, bearing no official stamps or signatures, in a book extract that is neither sourced nor named. The document bears insufficient *indicia* of reliability and authenticity

²⁹ Response, para. 6.

³⁰ The documents bear Rule 65 *ter* numbers 1D03050, 1D00150, 1D03179, 01778, 1D03816, 18179, 23330, 23463, 01002, 17028, 1D05120, 1D02634, 1D02641, 1D03267, 1D03196, 1D03197, 1D02648, 09633, 10639, 10663, 17707, 00902, 10043, 32236, 1D03268, 1D02948, 1D02629, 1D01277, 19538, 06187, 24900, 14745, 16195, 16324, 16381, 09475, 1D03193, 1D03035, 1D04406, 1D04235, 06131, 1D02637, 1D02172, 1D00559, 1D05122, 01950, 1D00001, 1D04128, 04063, 1D04810, 1D07024, 1D03242, 1D02492, and 12990. The document bearing Rule 65 *ter* number 32236 was tendered twice and is, therefore, only considered once.

³¹ The Chamber notes that the documents bearing Rule 65 *ter* numbers 23463, and 01002 are governed by Rule 54 bis of the Rules. As such, the Chamber will admit these two documents provisionally under seal, pending a request from Serbia to keep these documents confidential.

and, therefore, has no probative value. The Chamber will deny admission into evidence without prejudice.

E. Documents Bearing Rule 65 *ter* Numbers 13758 and 05739

14. The Prosecution submits that the additional documents it tenders, bearing Rule 65 *ter* numbers 13758 and 05739, are closely related to, prevent “misleading characterizations” and provide “proper contextualization” of two documents tendered by the Defence (documents bearing Rule 65 *ter* numbers 1D03050 and 01778, respectively).³² The Chamber considers that the Prosecution has addressed why the documents are linked to the documents tendered by the Defence.³³ It has, however, not set out with sufficient specificity the reason why these two documents need to be admitted at this stage of the proceedings rather than at the rebuttal phase. The Chamber will, therefore, deny the admission into evidence of the documents, without prejudice.

V. DISPOSITION

15. For the foregoing reasons, pursuant to Rules 54 *bis*, and 89(C) of the Rules, the Chamber

GRANTS the Defence leave to reply;

GRANTS the Motion **IN PART**;

ADMITS into evidence, provisionally under seal, the documents bearing Rule 65 *ter* numbers 23463 and 01002 and **REQUESTS** the Registry to change the status of these documents to public 45 days after the filing date of this decision, unless the Republic of Serbia or the Prosecution file a request to keep the confidential status of these documents before that date;

ADMITS into evidence the documents bearing Rule 65 *ter* numbers 1D03050, 1D00150, 1D03179, 01778, 1D03816, 18179, 23330, 17028, 1D05120, 1D02634, 1D02641, 1D03267, 1D03196, 1D03197, 1D02648, 09633, 10639, 10663, 17707, 00902, 10043, 1D03268, 1D02948, 1D02629, 1D01277, 32236, 19538, 06187, 24900, 14745, 16195, 16324, 16381, 09475, 1D03193, 1D03035, 1D04406, 1D04235, 06131, 1D02637, 1D02172, 1D00559, 1D05122, 01950, 1D00001, 1D04128, 04063, 1D04810, 1D07024, 1D03242, 1D02492, and 1D01079;

DENIES admission of the documents bearing Rule 65 *ter* numbers 1D07009, 1D07023, 12990 and 1D04424 into evidence;

³² Response, paras 3, 7-8. *See also* Response, Annex A.

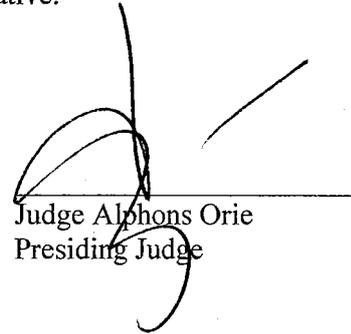
³³ Reasons for Decision on Prosecution Request to Tender Documents and Decision on Defence Motion for Certification to Appeal, 10 March 2016, para. 6.

DENIES admission of the documents bearing Rule 65 *ter* numbers 13758 and 05739 into evidence, without prejudice;

INSTRUCTS the Prosecution to inform the Republic of Serbia of the admission of the documents bearing Rule 65 *ter* numbers 23463 and 01002 and of the Chamber's instructions to the Registry with regard to the confidential status of these documents;

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 twenty-third day of May 2016
At The Hague
The Netherlands

[Seal of the Tribunal]