



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: 30 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: 30 May 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE'S FIFTH 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 fifth bar table motion (“Motion”), tendering 244 documents into evidence.¹ On 1 March 2016, the Prosecution responded to the Motion (“Response”), opposing the admission of 14 documents.² On 9 March 2016, the Defence requested leave to reply to the Response, as well as an additional seven days to file the reply, should leave be granted.³ On 14 March 2016, the Chamber granted both requests via email, which is hereby put on the record. On 16 March 2016, the Defence replied (“Reply”) withdrawing ten of the tendered documents.⁴ On 22 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 documents tendered are relevant and have sufficient probative value to be admitted from the bar pursuant to Rule 89 (C) of the Rules of Procedure and Evidence (“Rules”).⁶ It submits that the proposed documents are relevant because they relate to specific counts and charges in the Indictment and demonstrate, *inter alia*, the unlawful conduct engaged in by the Army of Bosnia-Herzegovina (“ABiH”), including the provocation of attacks by breaking ceasefire agreements, the use of civilians as human shields, the staging of incidents and falsely placing blame on the Serb side, and the misuse of safe areas.⁷ In relation to the probative value of the tendered documents, the Defence provides information about the source of the documents and

¹ Defence Fifth Motion to Admit Documents from the Bar – Enemy Actions, 18 January 2016. In the Motion, the Defence requests the admission of 251 documents. However, the Chamber notes that Annex A to the Motion contains only 248 documents, of which four are duplicates and will not therefore be considered twice.

² Prosecution Response to Defence Fifth Motion to Admit Documents from the Bar Table – Enemy Actions, 1 March 2016 (Public with Confidential Annex). On 27 January 2016, the Prosecution requested an extension of time for filing the Response, which was granted by the Chamber on 1 February 2016. *See* 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; T. 42913-42914.

³ Defence Request for Leave to Reply in Support of Fifth Motion to Admit Documents from the Bar, 9 March 2016 (Confidential).

⁴ Reply in Support of Defence 5th Motion to Admit Documents from the Bar – Enemy Actions, 16 March 2016 (Confidential), paras 7, 14. The Defence withdraws the documents bearing Rule 65 *ter* numbers 02689, 01214, 1D01255, and 25571, which were previously admitted as exhibits P7805, D150, D1357, and D292, respectively. It also withdraws the documents bearing Rule 65 *ter* numbers 1D01282 and 1D02034, which are duplicative and were previously admitted as exhibit D676. The documents bearing Rule 65 *ter* numbers 14546, 1D00143, and 00810, are duplicative - entirely or in part - of documents tendered elsewhere in the Defence’s third, fifth, and sixth bar table motions as 1D02609, 1D03975, and 10649, respectively. Finally, the Defence withdraws its request for admission of the document bearing Rule 65 *ter* number 1D00318 and requests that it be admitted through the Defence’s first bar table motion. The Chamber notes that the document bearing Rule 65 *ter* number 1D00318 is one of the documents to which the Prosecution opposed admission. *See* Response, Annex A (pp. 19, 23-24, 27, 31-32, 35).

⁵ Prosecution Request for Leave to Sur-Reply to Defence Reply in Support of Defence Fifth Motion to Admit Documents from the Bar – Enemy Actions, 22 March 2016.

⁶ Motion, paras 2, 7-12. *See also* Motion, Annex A; Reply, paras 11-23. The Chamber notes that the Motion contains two paragraphs numbered 11. This citation refers to the paragraph under the subheading ‘Conclusions’.

⁷ Motion, para. 9. *See also* Motion, Annex A.

submits that they bear sufficient indicia of authenticity and are *prima facie* reliable.⁸ 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 is aware of their provenance, presumed to be satisfied of their reliability, and therefore must not be permitted to oppose admission on these grounds.⁹

3. The Prosecution opposes the admission of 14 of the documents tendered by the Defence on account of missing or incomplete translations or a lack of relevance and/or probative value.¹⁰ The Prosecution also notes that for the remaining documents, the Motion contains several misstatements of relevance or content in support of their admission.¹¹ Furthermore, should the Chamber admit certain documents tendered by the Defence, the Prosecution seeks to tender 17 documents ("contextual documents") that it considers necessary to contextualise those tendered by the Defence and to avoid 'misleading impressions' from the Defence documents alone.¹²

4. The Defence submits that the Prosecution's request to tender documents from the bar table during the Defence case is inappropriate at this stage of the proceedings and refers to its request for certification to appeal a decision of the Chamber communicated to the parties on 13 January 2016.¹³ It also contends that if the Prosecution does not oppose the admission of specific documents, then submissions on their content and relevance are inappropriate at this stage of the proceedings.¹⁴ More specifically, it requests that such submissions be stricken from the record and disregarded.¹⁵

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.¹⁶

⁸ Motion, paras 2, 7-8, 10, 12. *See also* Motion, Annex A. The Chamber notes that the Motion contains two paragraphs numbered 12. This citation refers to the paragraph under the subheading 'Submissions'.

⁹ Motion, para. 11. *See also* Motion, Annex A.

¹⁰ Response, paras 1, 7. *See also* Response, Annex A (pp. 2, 17, 20-21, 23, 25-26, 28, 33). The Chamber notes that the Prosecution initially opposed the admission of the document bearing Rule 65 *ter* number 1D03049, on the basis that it was not uploaded in eCourt. This document has since been released and the Prosecution was put on notice of this on 16 March 2016, by means of the Reply. Accordingly, the Chamber considers that the Prosecution's objection in respect to this particular document is moot and will consider its admissibility accordingly, below. *See* Reply, para. 10.

¹¹ Response, para. 2. *See also* Response, Annex A.

¹² Response, para. 6. *See also* Response, Annex A (pp. 1-2, 5-7, 9, 11-12, 14-15, 22, 27, 32).

¹³ Reply, paras 2-3, 27. *See also* Defence Motion for Certification to Appeal the Bar Table Decision and Reasons, 17 March 2016.

¹⁴ Reply, paras 29-31.

¹⁵ Reply, para. 4.

¹⁶ Decision on Defence's Eighth Motion for the Admission of Documents from the Bar Table, 24 March 2016, paras 6-8.

6. The Chamber further recalls and refers to the applicable law governing protective measures, namely Rule 54 *bis* and Rule 70 of the Rules as set out in previous decisions.¹⁷

7. Also, 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 motion.¹⁸

IV. DISCUSSION

A. Preliminary Considerations

8. Given that 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.

9. The Defence tenders the documents bearing Rule 65 *ter* numbers 1D03964 and 1D03975. As these documents were previously admitted into evidence as exhibits D1415 and D1425, respectively, the Chamber will declare the request for their admission into evidence moot.¹⁹

10. In light of previous decisions on this matter, the Chamber will deny the Defence's request to strike from the record the Prosecution's submissions on documents to which no technical objections have been raised.²⁰

11. The Chamber will now consider the remaining 232 documents tendered.

B. Documents Opposed by the Prosecution

1. Documents bearing Rule 65 *ter* numbers 01363, 1D02005, 1D03126, and 1D03959

12. The document bearing Rule 65 *ter* number 01363 is a letter from the Commander of the 'Serbian Army for Goražde' regarding attacks on Serbian positions by Muslim extremists. The Prosecution submits that the document is undated and therefore cannot be used to support the

¹⁷ Decision on Republic of Serbia's Motion for Protective Measures, 15 July 2014, paras 4-8; Decision on Urgent Prosecution Motion for Protective Measures and Conditions for Witnesses RM-055, RM-120, RM-163, and RM-176 Pursuant to Rule 70, 30 November 2012, paras 4-6.

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 Documents from the Bar Table, 24 March 2016, paras 11-12.

¹⁹ *See* Decision on Defence Motion to Admit the Evidence of Richard Gray Pursuant to Rule 92 *quater*, 10 December 2015.

²⁰ Decision on Defence's Eighth Motion for the Admission of Documents from the Bar Table, 24 March 2016, para. 10. *See also* Decision on Prosecution Motion to Admit Evidence from the Bar Table: Foča Municipality, 14 November 2013, para. 17.

Defence assertion that the attacks described therein were in violation of the Safe Area agreement.²¹ The Chamber considers that the absence of a date does not detract from the document's *prima facie* reliability, evinced from indicia such as a stamp, signature, and information of the author and recipients of the document. In these circumstances, whether the document lacks a date is a matter that goes to the weight ultimately to be assigned to the document, as opposed to its admissibility. The Chamber also finds that the document is relevant to the Sarajevo component of the case. For these reasons, the Chamber is satisfied that the document is relevant and has probative value for the purpose of admission pursuant to Rule 89 (C) of the Rules. It further considers that the Defence has set out with sufficient clarity and specificity how the document would fit into its case. Considering the above, the Chamber will admit the document into evidence.

13. The document bearing Rule 65 *ter* number 1D02005 is a newspaper article from 2010 about the killing of a Serbian policeman in Sarajevo in April 1992. The Prosecution opposes its admission on the basis that the article is from an unknown author, based on unknown sources, and contains unsubstantiated information.²² In the Reply, the Defence identifies the author as Z. Žuža.²³ The Chamber finds that the document relates to the alleged actions of Bosnian-Muslim paramilitary formations in Sarajevo prior to the outbreak of hostilities and is therefore relevant to the Sarajevo component of the case, as well as the alleged liability of the Accused. The document indicates the date of the article and the name of the newspaper, as well as that of the author, and thus bears sufficient indicia of reliability and authenticity. The Chamber considers that under these circumstances the Prosecution's submissions regarding the absence of any clear source of knowledge goes to the weight ultimately to be ascribed to the document and not to its admissibility. For these reasons, the Chamber finds that the document is relevant and has probative value for the purpose of admission pursuant to Rule 89 (C) of the Rules. It further considers that the Defence has set out with sufficient clarity and specificity how the document would fit into its case. Based on the foregoing, the Chamber will admit the document into evidence.

14. The Defence submits that the document bearing Rule 65 *ter* number 1D03126 supports the assertion that many of the shelling and sniping incidents charged in the Indictment were staged and undertaken by ABiH forces to falsely place blame on the Bosnian Serbs.²⁴ The Prosecution opposes the admission of the document on the basis that the article, which it contends is from an unknown paper, is not relevant or of probative value.²⁵ The Defence submits that the document was published

²¹ Response, Annex A (p. 28).

²² Response, Annex A (p. 33).

²³ Reply, para. 16.

²⁴ Motion, Annex A (p. 151).

²⁵ Response, Annex A (p. 34).

by the newspaper *Dnevni Avaz* and that the information in the article is corroborated by Witness Edin Garaplija.²⁶ It further submits that the primary source document contained in the newspaper article was verified as authentic by a witness in court.²⁷ The Chamber notes that the document tendered is generally supported by the evidence provided by Witness Edin Garaplija and further attested to by another witness in court. The Chamber finds that the document is relevant to the Sarajevo component of the case and bears sufficient indicia of reliability and authenticity, such as the date of the article, the name of its author, and the newspaper in which it was published. The Chamber is further satisfied that the Defence has set out with sufficient clarity and specificity how the document would fit into its case. Accordingly, it will admit the document into evidence pursuant to Rule 89 (C) of the Rules.

15. The Defence submits that the document bearing Rule 65 *ter* number 1D03959, an interview with the former deputy commander of the MUP special unit of the Republic of Bosnia-Herzegovina on alleged crimes committed by members of a Muslim paramilitary unit led by Juka Prazina, demonstrates that many of the shelling and sniping incidents charged in the Indictment were staged and undertaken by ABiH forces to falsely place blame on the Bosnian Serbs.²⁸ The Prosecution opposes the admission of the document and submits that it is neither probative nor relevant.²⁹ The Chamber finds, however, that the document bears indicia of reliability and authenticity, such as the date of the article, the name of its author, and the newspaper in which it was published. It also finds that the interview, which relates to the alleged sniping and shelling activities staged by the Bosnian Muslim forces, relates to the Sarajevo component of the case, as well as to the alleged liability of the Accused. The Chamber is further satisfied that the Defence has set out with sufficient clarity and specificity how the document would fit into its case. Accordingly, it will admit the document into evidence pursuant to Rule 89 (C) of the Rules.

2. Document bearing Rule 65 *ter* number 16550

16. The document bearing Rule 65 *ter* number 16550 is an official note of the Ključ Public Security Station (“SJB”) following an interview with Esad Bender in June 1992. The Prosecution opposes its admission on the basis that the Chamber has previously received evidence that prisoners held at the Ključ SJB around this date were abused and, therefore, the document is inadmissible pursuant to Rule 95 of the Rules.³⁰ In this respect, the Prosecution refers to the evidence of Witness

²⁶ Reply, para. 17.

²⁷ See T.25755-25756.

²⁸ Motion, Annex A (p. 149); Reply, para. 18.

²⁹ Response, Annex A (p. 34).

³⁰ Response, Annex A (p. 20). The Prosecution cites exhibit P148 in its Response, which the Chamber understands to refer to exhibit P146, the statement of Witness RM-018. See also exhibit P146, paras 76-81.

RM-018, specifically.³¹ The Defence submits that there is no substantial link between this statement, in evidence as exhibit P146, and the document bearing Rule 65 *ter* number 16550.³²

17. The Defence has tendered a document which purports to be a record of a statement by Bender to the Ključ SJB in June 1992. The Chamber recalls that when a statement is tendered to prove the truth of its contents, the Chamber must be satisfied that it is reliable for that purpose, in the sense that it was given voluntarily and that it is truthful and trustworthy. In this respect, the Chamber may also consider the character of the evidence and the context in which it is given.³³ The absence of the opportunity to cross-examine Bender may also be relevant to assessing the *prima facie* probative value of his statement to the SJB.

18. The Chamber finds that the submissions of the Prosecution, which rely on the general atmosphere of abuse at the Ključ SJB around the time of Bender's interview, as opposed to any specific duress or other methods which may cast doubt on its admissibility imposed on him at the time, do not raise sufficient doubt as to the voluntariness and overall reliability of this specific document. The Chamber considers that the concerns of the Prosecution with regard to the alleged situation of abuse of individuals held at the Ključ SJB and the evidence contained in exhibit P146 may affect the weight ultimately to be assigned to the document tendered, but are insufficient to contest the probative value of the tendered document *per se*. The assessment to be made is therefore whether the Chamber is satisfied that the standard for admissibility set out in Rule 89 (C) of the Rules is met. In this regard, the Chamber finds that the document relates to, *inter alia*, the arming of Bosnian Muslims prior to the outbreak of hostilities and is thus relevant to the Municipalities component of the case, as well as to the alleged liability of the Accused in relation to the first (overarching) alleged joint criminal enterprise ("JCE") and his alleged superior responsibility for crimes charged in the Indictment. The document further contains indicia of authenticity, including information on its provenance, and is sufficiently similar to other reports emanating from of the Ministry of Interior ("MUP") and admitted into evidence. In light of the foregoing, the Chamber finds that the aforementioned document is relevant and has probative value for the purpose of admission pursuant to Rule 89 (C) of the Rules. The Chamber is further satisfied that the Defence has set out with sufficient clarity and specificity how the document would fit into its case and will thus admit it into evidence.

³¹ Ibid.

³² Reply, para. 13.

³³ See Decision on Defence's Eighth Motion for the Admission of Documents from the Bar Table, 24 March 2016, para. 19. See also *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

3. Document bearing Rule 65 ter number 1D03423

19. The document bearing Rule 65 ter number 1D03423 is a Yugoslav Daily Survey of 7 June 1993, published by the Federal Ministry of Foreign Affairs. The Prosecution opposes the admission of five pages of the document for lack of relevance.³⁴ The Chamber finds that these pages relate to the war in the former Yugoslavia during the Indictment period and are therefore relevant to the case. It further notes that the first page includes the date and information on who published the document. As such, the Chamber is satisfied that the document is relevant and has probative value for the purpose of admission pursuant to Rule 89 (C) of the Rules and that the Defence has set out with sufficient clarity and specificity how the document would fit into its case. The Chamber will thus admit the document into evidence.

4. Documents bearing Rule 65 ter numbers 1D07011 and 1D07014

20. The documents bearing Rule 65 ter numbers 1D07011 and 1D07014 are online articles commenting on events during the war in the former Yugoslavia.

21. The Defence submits that the document bearing Rule 65 ter numbers 1D07011 is relevant because it contains evidence of the planning, arming, and actions of Bosnian-Muslim forces, including the presence of mujahideen fighters within the ABiH, and discredits and rebuts Prosecution witnesses who denied the existence of such units or the threat they posed.³⁵ The Prosecution submits that the document is a "patently partisan political attack on the Clinton administration", citing selective media excerpts, that the ultimate underlying sources are unknown, and that at most two pages are relevant.³⁶ The Chamber finds that the document has sufficient indicia of reliability as it is dated and clearly sourced. The document, therefore, has probative value. The Chamber notes that the Prosecution's submissions regarding the underlying sources go to the weight ultimately to be ascribed to the document and not to its admissibility. The document is relevant as it relates to the activities of the ABiH during the Indictment period, including the alleged misrepresentation of sniping and shelling incidents in Sarajevo. 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.

22. The Defence submits that the document bearing Rule 65 ter numbers 1D07014 is relevant as it demonstrates the misrepresentation of events by the Bosnian-Muslim side and the alleged actions

³⁴ Response, Annex A (p. 33).

³⁵ Motion, Annex A (p. 103).

of the ABiH in and around Sarajevo, which support the Defence's position that many shelling and sniping incidents in the Indictment were staged and undertaken by ABiH forces to falsely place blame on the Bosnian Serbs.³⁷ The Prosecution opposes its admission on the basis that the document is an opinion piece, written in the author's personal capacity, and is largely unsourced.³⁸ The Chamber notes that the 22-page document is a bare opinion piece. The Chamber also notes that, in parts, the document is speculative and that the source of knowledge is often unclear, as the author comments on or refers to sources that are not presented or substantiated. The Chamber finds that the document has insufficient indicia of reliability and, therefore, does not have probative value for the purpose of admission. The documents cited by the Defence in the Reply as examples of similar documents 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.³⁹ Accordingly, the Chamber will deny admission of the tendered document into evidence.

5. Document bearing Rule 65 *ter* number 1D04682

23. The document bearing Rule 65 *ter* numbers 1D04682 is a Tanjug daily report of 9 February 1994. The Prosecution opposes the admission of the document on the grounds that the information therein is provided by an unnamed source and is uncorroborated.⁴⁰ The Chamber notes that since the source on which the Tanjug article relies is not named, the source of knowledge of the document is largely unknown. It further notes that the footage mentioned in the article, on which the source relies, is also unknown. The Chamber thus finds that the document has insufficient indicia of reliability or authenticity and, therefore, does not have probative value. Accordingly, it will deny its admission into evidence.

6. Document bearing Rule 65 *ter* number 1D00460

24. The document bearing Rule 65 *ter* number 1D00460 is an article that discusses the principle of proportionality, primarily in relation to the 2006 Israel-Lebanon war. The Defence submits that the document supports the evidence of witness Mitar Kovač, details the general issues of practical application for the principle of proportionality, and relates to the misuse of safe areas in Srebrenica and Žepa.⁴¹ The Prosecution opposes its admission on the premise that it addresses legal theory without discussing any specific facts or witnesses in this case, and was not discussed or cited by the

³⁶ Response, Annex A (p. 25).

³⁷ Motion, Annex A (p. 104).

³⁸ Response, Annex A (p. 25).

³⁹ See Reply, para. 21.

⁴⁰ Response, Annex A (p. 34).

witness in question.⁴² The article in question discusses a legal principle that falls within the Chamber's own expertise. Moreover, the document makes no reference to the events in the former Yugoslavia during the Indictment period. In this respect, the Chamber does not consider that it is assisted by the admission of this particular document and will therefore deny its admission into evidence.

7. Documents bearing Rule 65 *ter* numbers 1D02541 and 1D02644

25. The Prosecution opposes the tendering of partial translations or selected excerpts of the documents bearing Rule 65 *ter* numbers 1D02541 and 1D02644.⁴³ The Prosecution submits that the context of the information, as submitted by the Defence, is unclear based on the excerpts, and that the information does not support the broader conclusions drawn by the Defence. The Chamber notes that under these circumstances, with a partial translation or the translation of selected excerpts, the Chamber is unable to accurately assess the relevance or probative value of the aforementioned documents. It will therefore deny their admission into evidence without prejudice.

C. Document Bearing Rule 65 *ter* Number 1D03471

26. The document bearing Rule 65 *ter* number 1D03471 contains excerpts of information on paramilitary groups operating in Bosnia-Herzegovina and their alleged activities. The Defence submits that the document "appears to be an Annex to a UN Security Council document".⁴⁴ Under these circumstances, this led the Chamber, in this particular instance, to take steps to verify and substantiate this submission. Having compared the document to Annex III of the Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), which bears the reference number displayed on the document tendered, the Chamber notes that the two texts do not correspond entirely. Furthermore, the document is not of the usual format used in official UN documents and does not include portions of the text that might provide information on the publication date or other information pertinent to determining whether the document bears sufficient indicia of authenticity and reliability for the purpose of admission into evidence. For these reasons, the Chamber finds that the document has insufficient indicia of reliability and, therefore, does not have probative value. The Chamber will deny its admission into evidence without prejudice.

⁴¹ Motion, Annex A (p. 105); Reply, para. 15.

⁴² Response, Annex A (pp. 25-26).

⁴³ See Response, Annex A (pp. 17, 21); Reply, paras 8, 23.

⁴⁴ See Motion, Annex A (p. 82).

D. Documents Bearing Rule 65 ter Number 24678, 1D00501, 1D02597, 1D03284, and 1D02958

1. Document bearing Rule 65 ter number 24678

27. The document bearing Rule 65 ter number 24678 is a February 1995 protest letter from the Accused to United Nations Protection Force (“UNPROFOR”). The document relates to alleged breaches of the December 1994 ceasefire by Muslim forces and is relevant to the Sarajevo component of the case. The document further bears indicia of reliability and authenticity, including a stamp, signature, and information regarding the author and recipient. As such, the Chamber is satisfied that the document meets the standard of admission set out in Rule 89 (C) of the Rules. The Chamber is further satisfied that the Defence has set out with sufficient clarity and specificity how the document fits in the case and will thus admit it into evidence.

2. Document bearing Rule 65 ter number 1D00501

28. The document bearing Rule 65 ter number 1D00501 is a regular combat report from the Sarajevo Romanija Corps (“SRK”) to the Main Staff of the Bosnian-Serb Army (“VRS”), dated 1 June 1993. The document relates to the combat activities of the ABiH and the VRS in and around Sarajevo, including the alleged non-compliance by the Bosnian Muslim forces of the ceasefire, and is therefore relevant to the Sarajevo component of the case. The document bears indicia of authenticity and reliability, including stamps and a signature, as well as information on the author and recipient, and resembles similar VRS documents in evidence. For these reasons, the Chamber finds that the document is relevant and has probative value for the purpose of admission pursuant to Rule 89 (C) of the Rules and further considers that the Defence has set out with sufficient clarity and specificity how the documents fit into the case. Accordingly, the Chamber will admit the document into evidence. Noting the Prosecution’s conditional objection regarding the translation, the Chamber invites the Prosecution to request a revised translation from the Conference and Language Services Section (“CLSS”), accordingly.⁴⁵

3. Documents bearing Rule 65 ter numbers 1D02597, 1D03284 and 1D02958

29. The Prosecution does not oppose the admission of the documents bearing Rule 65 ter numbers 1D02597 and 1D03284, provided the Defence submits complete translations from CLSS.⁴⁶ The Chamber notes that in this instance, where the Prosecution conditionally opposes the admission of the documents on the provision of a complete translation, the Chamber is unable to accurately

⁴⁵ See Response, Annex A (p. 4).

assess the relevance or probative value of the partial translations that make up the aforementioned documents and will deny the admission of the two documents into evidence without prejudice. Similarly, the Prosecution does not oppose the admission of the document bearing Rule 65 *ter* number 1D02958 provided the Defence uploads the entire document, including the three missing pages.⁴⁷ In the absence of the complete report, the Chamber is unable to accurately assess the relevance or probative value of the aforementioned document and will therefore deny its admission into evidence without prejudice.

E. Document Bearing Rule 65 *ter* Number 1D03504

30. The document bearing Rule 65 *ter* number 1D03504 is an excerpt from an unknown book by an unknown author. The Defence submits that the document was used with Witness Dzvad Gusic.⁴⁸ The Chamber notes, however, that there is no witness by this name on record in the case against the Accused. As such the Chamber finds that this document lacks the necessary indicia of authenticity, as required by Rule 89 (C) of the Rules, and will deny its admission into evidence without prejudice.

F. Document Bearing Rule 65 *ter* Number 1D00967

31. The document bearing Rule 65 *ter* number 1D00967 is a series of excerpts from a book, which the Defence submits is entitled 'Chronicles of Our Graveyard'.⁴⁹ The Chamber notes that the English version of the document does not include portions of the book that might provide information on the author, publication date, or other information pertinent to determining whether the document bears sufficient indicia of authenticity and reliability for the purpose of admission into evidence. Furthermore, the Chamber finds that the document is poorly sourced and that portions of the documents are simply a list of the titles of chapters within the book or subheadings within them, including no further text. For these reasons, the Chamber will deny its admission into evidence without prejudice.

G. Document Bearing Rule 65 *ter* Number 1D00158

32. The document bearing Rule 65 *ter* number 1D00158 has no English translation uploaded in eCourt. As such, the Chamber cannot assess its relevance or probative value and will deny its admission into evidence without prejudice.

⁴⁶ Response, Annex A (pp. 4, 17, 29). *See also* Response, Annex A (pp. 17, 29); Reply, para. 8.

⁴⁷ Response, Annex A (p. 22).

⁴⁸ Motion, Annex A (p. 104).

⁴⁹ Motion, Annex A (p. 105).

H. Remaining Documents Tendered by the Defence

33. The Prosecution does not oppose the admission of the remaining 211 documents. Fifty-six of these remaining documents are regular combat reports from the SRK to the VRS Main Staff.⁵⁰ Twenty-eight documents are similar reports from other VRS units.⁵¹ The documents concern combat activities of the ABiH and the VRS during the Indictment period, which the Chamber finds relevant to, *inter alia*, the Sarajevo and Srebrenica components of the case.

34. Thirty-seven of the remaining documents are, *inter alia*, orders and reports, such as intelligence and security reports, situation reports, as well as reports on combat morale, issued by or addressed to the VRS Main Staff and several of its subordinate units, as well as orders and reports from Territorial Defence units and the ABiH.⁵² The documents relate to the activities of both sides of the conflict and are relevant to the Sarajevo and Srebrenica components of the case.

35. Thirty-one of the remaining documents relate to the planning, arming, and actions of Bosnian-Muslim forces and paramilitary formations, including, *inter alia*, the provocation of attacks and the alleged misuse of safe areas.⁵³ They comprise letters, reports, and other documents originating from or addressed to, *inter alia*, the Bosnian-Serb Ministry of Interior and its subordinate institutions, municipal crisis staffs, and other institutions, which the Chamber finds relevant to the Sarajevo, Srebrenica, and Municipalities components of the case, as well as to the alleged liability of the Accused in relation to the first (overarching), second, and third alleged JCEs, and to his alleged superior responsibility for crimes charged in the Indictment.

⁵⁰ The documents bearing Rule 65 *ter* numbers 00034, 11156, 12001, 12008, 12013, 12019, 12020, 12022, 12031, 12034, 12036, 12054, 12067, 12073, 12074, 12077, 12084, 16992, 19684, 31346, 1D00146, 1D00148, 1D00469, 1D00500, 1D02084, 1D02088, 1D02144, 1D02159, 1D02167, 1D02178, 1D02299, 1D02857, 1D02898, 1D02990, 1D03051, 1D04064, 1D04181, 1D04182, 1D04190, 1D04196, 1D04570, 1D04585, 1D04590, 1D04600, 1D04601, 1D04603, 1D04607, 1D04613, 1D04627, 1D04628, 1D04629, 1D04630, 1D04639, 1D04641, 1D04643, and 1D04648.

⁵¹ The documents bearing Rule 65 *ter* numbers 02700, 02746, 02843, 02945, 03029, 04210, 04295, 08326, 16500, 16513, 16525, 16539, 19958, 24011, 24035, 24299, 24482, 25279, 25350, 25351, 25356, 25357, 25359, 26004, 30813, 1D02140, 1D03524, and 1D05320.

⁵² The documents bearing Rule 65 *ter* numbers 00707, 00928, 00957, 04672, 08014, 08300, 08396, 08457, 08632, 08817, 10796, 10970, 11433, 14586, 14669, 15278, 15279, 15280, 15283, 16990, 18725, 19153, 23442, 23464, 25815, 25818, 25296, 26076, 31145, 31164, 1D02642, 1D04387, 1D04634, 1D04650, 1D04774, 1D04800, and 1D05114. In the Motion, the Defence erroneously listed the document bearing Rule 65 *ter* number 31145 as bearing Rule 65 *ter* number '18/1/2016'. Since the description of the document as stated in the Motion matches exactly that of the document bearing Rule 65 *ter* number 31145 as uploaded in eCourt, the Chamber considers that the Defence seeks admission into evidence of the document bearing Rule 65 *ter* number 31145. *See* Motion, Annex A (p. 32). *See also* Response, Annex A (p. 11).

⁵³ The documents bearing Rule 65 *ter* numbers 02581, 02618, 03020, 03607, 03664, 03666, 03676, 04069, 04415, 08039, 11516, 16974, 18099, 31703 1D00115, 1D00162, 1D02645, 1D02734, 1D02735, 1D02746, 1D02911, 1D03075, 1D03282, 1D03477, 1D03640, 1D04227, 1D04236, 1D04265, 1D05111, 1D05115, and 1D05225.

36. The Defence has also tendered radio reports and news articles from local and international agencies.⁵⁴ The Chamber is satisfied that these 14 documents are relevant to the case, as they relate to the alleged actions of the ABiH in hampering peace, including perceived threats to law and order and the alleged staging incidents to lay false blame on the Bosnian-Serb side between May 1992 and August 1995. The documents indicate the dates of the articles and the names of the online newspapers that published them or the radio station that broadcast them.

37. Thirty-two documents, which comprise, *inter alia*, letters, meeting minutes, cables, and other communications between the Bosnian-Serb Republic, the VRS, UNPROFOR, and other international and/or humanitarian organisations, relate to expressions of co-operation by the Bosnian-Serbs to resolve issues peacefully and abide by international humanitarian law, alleged violations of ceasefire agreements by of the ABiH, and alleged bias of the international community against the Bosnian-Serbs within the Indictment period.⁵⁵ The Chamber considers the foregoing documents relevant to the Sarajevo and Srebrenica components of the case, as well as the liability of the Accused in relation to the second and third alleged JCEs and to his alleged superior responsibility for crimes charged in the Indictment.

38. In relation to the final 13 documents, the Prosecution does not oppose admission on the condition that 17 additional documents are admitted for context.⁵⁶ As such, it provides no specific objections *per se*. The Chamber has reviewed the documents bearing Rule 65 *ter* numbers 00468, 09055, 12090, 12100, 19753, 27929, 1D02135, 1D02998, 1D03827, 1D04173, 1D04602, 1D04647, and 1D04670, which include reports relating to the combat activities and sniping incident in and around Sarajevo, and finds that these documents are relevant to the Sarajevo component of the case.

39. All of the aforementioned documents bear indicia of authenticity and reliability, such as stamps, signatures, official letterheads or coversheets, and information on the authors and recipients, or otherwise resemble similar documents in evidence. In light of the foregoing, the Chamber finds that these 211 documents are relevant and have probative value for the purpose of

⁵⁴ The documents bearing Rule 65 *ter* numbers 03031, 03060, 1D00568, 1D02586, 1D02587, 1D02728, 1D02816, 1D02846, 1D02848, 1D02852, 1D03235, 1D03236, 1D03509, and 1D04355. The Chamber further notes that in comparison to other documents from the Serbian Press Agency, the document bearing Rule 65 *ter* number 1D02816, dated 15 September 1992, is of a different format and does not contain, for example, an official stamp or letterheads. While the burden is on the Defence to show that a document is *prima facie* reliable for the purpose of admission, which may be done by reference to corroborative evidence, which the Defence has failed to do, the Chamber notes that Witness Abdel Razek provided evidence on a meeting with General Galić in Lukavica on the alleged misuse of UNPROFOR facilities within the relevant timeframe. Exceptionally, the Chamber thus finds that this document satisfies the admissibility criteria required by Rule 89 (C) of the Rules.

⁵⁵ The documents bearing Rule 65 *ter* numbers 00022, 00372, 03294, 03386, 03699, 06326, 07241, 11064, 11155, 11384, 16191, 19702, 31349, 1D02955, 1D02957, 1D02961, 1D02962, 1D03048, 1D03049, 1D03053, 1D03249, 1D03255, 1D03420, 1D03424, 1D03729, 1D03746, 1D03815, 1D03826, 1D03828, 1D04073, 1D04158, and 1D04656.

admission into evidence pursuant to Rule 89 (C) of the Rules. It is further satisfied that the Defence has set out with sufficient clarity and specificity how the documents would fit into its case. The Chamber will therefore admit these documents into evidence.

40. The Chamber notes, however, that the documents bearing Rule 65 *ter* numbers 00957, 08300, 08632, and 23464 are governed by Rule 54 *bis* of the Rules. As such, it will admit these four documents provisionally under seal, pending a request from Serbia to keep these documents confidential. The Chamber further notes that the document bearing Rule 65 *ter* number 1D03424 is governed by Rule 70 of the Rules, and as such, will admit this document under seal.⁵⁷

I. Contextual Documents

41. Since the Prosecution has not made submissions as to why it should be allowed to tender contextual documents at this stage of the proceedings, as opposed to during the rebuttal stage, the Chamber will deny the admission of the contextual documents bearing Rule 65 *ter* numbers 10505, 33655, 33656, 33657, 33658, 33659, 33660, 33661, 33662, 33663, 33664, 33667, 33669, 33670, 33671, 33672, and 33673 without prejudice.

V. DISPOSITION

42. For the foregoing reasons, pursuant to Rules 54 *bis*, 70, and 89 (C) of the Rules, the Chamber

GRANTS leave to file the Sur-Reply;

GRANTS the Motion **IN PART**;

ADMITS into evidence the documents bearing Rule 65 *ter* numbers 00022, 00034, 00372, 00468, 00707, 01363, 00928, 02581, 02618, 02700, 02746, 02843, 02945, 03020, 03029, 03031, 03060, 03294, 03386, 03607, 03664, 03666, 03676, 03699, 04069, 04210, 04295, 04415, 04672, 06326, 07241, 08014, 08039, 08326, 08396, 08457, 08817, 09055, 10796, 10970, 11064, 11155, 11156, 11384, 11433, 11516, 12001, 12008, 12013, 12019, 12020, 12022, 12031, 12034, 12036, 12054, 12067, 12073, 12074, 12077, 12084, 12090, 12100, 14586, 14669, 15278, 15279, 15280, 15283, 16191, 16500, 16513, 16525, 16539, 16550, 16974, 16990, 16992, 18099, 18725, 19153, 19684, 19702, 19753, 19958, 23442, 24011, 24035, 24299, 24482, 24678, 25279, 25350, 25351, 25356, 25357, 25359, 25815, 25818, 25296, 26004, 26076, 27929, 30813, 31145, 31164, 31346, 31349,

⁵⁶ Response, para. 6. *See also* Response, Annex A (pp. 1, 5-7, 9, 11-12, 14-15, 22, 27, 32).

⁵⁷ Response, Annex A (pp. 15-17, 31).

31703, 1D00115, 1D00146, 1D00148, 1D00162, 1D00469, 1D00500, 1D00501, 1D00568, 1D02005, 1D02084, 1D02088, 1D02135, 1D02140, 1D02144, 1D02159, 1D02167, 1D02178, 1D02299, 1D02586, 1D02587, 1D02642, 1D02645, 1D02728, 1D02734, 1D02735, 1D02746, 1D02816, 1D02846, 1D02848, 1D02852, 1D02857, 1D02898, 1D02911, 1D02955, 1D02957, 1D02961, 1D02962, 1D02990, 1D02998, 1D03048, 1D03049, 1D03051, 1D03053, 1D03075, 1D03126, 1D03235, 1D03236, 1D03249, 1D03255, 1D03282, 1D03420, 1D03423, 1D03477, 1D03509, 1D03524, 1D03640, 1D03729, 1D03746, 1D03815, 1D03826, 1D03827, 1D03828, 1D03959, 1D04064, 1D04073, 1D04158, 1D04173, 1D04181, 1D04182, 1D04190, 1D04196, 1D04227, 1D04236, 1D04265, 1D04355, 1D04387, 1D04570, 1D04585, 1D04590, 1D04600, 1D04601, 1D04602, 1D04603, 1D04607, 1D04613, 1D04627, 1D04628, 1D04629, 1D04630, 1D04634, 1D04639, 1D04641, 1D04643, 1D04647, 1D04648, 1D04650, 1D04656, 1D04670, 1D04774, 1D04800, 1D05111, 1D05114, 1D05115, 1D05225, 1D05320, and 1D07011;

ADMITS into evidence, **PROVISIONALLY UNDER SEAL**, the documents bearing Rule 65 *ter* numbers 08632, 23464, 08300, and 00957;

INSTRUCTS the Registry to change the status of the documents bearing Rule 65 *ter* numbers 08632, 23464, 08300, and 00957 to public, 45 days after the filing date of this decision unless the Republic of Serbia files a request for keeping these documents confidential before such time;

INSTRUCTS the Prosecution to inform the Republic of Serbia of the admission of the documents bearing Rule 65 *ter* numbers 08632, 23464, 08300, and 00957 and of the Chamber's instructions to the Registry with regard to these documents;

ADMITS into evidence, **UNDER SEAL**, the document bearing Rule 65 *ter* number 1D03424;

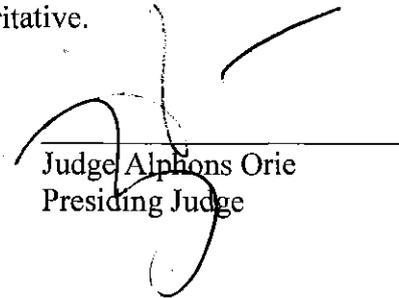
DENIES admission into evidence of the documents bearing Rule 65 *ter* numbers 10505, 33655, 33656, 33657, 33658, 33659, 33660, 33661, 33662, 33663, 33664, 33667, 33669, 33670, 33671, 33672, 33673, 1D00158, 1D00967, 1D02541, 1D02597, 1D02958, 1D02644, 1D03284, 1D03471, and 1D03504 without prejudice;

DENIES admission into evidence of the document bearing Rule 65 *ter* numbers 1D00460, 1D04682, and 1D07014;

DECLARES MOOT the tendering of the documents bearing Rule 65 *ter* numbers 1D03964 and 1D03975; and

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 thirtieth day of May 2016
At The Hague
The Netherlands

[Seal of the Tribunal]