

**UNITED
NATIONS**



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: 2 June 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: 2 June 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

SECOND DEFENCE CASE OMNIBUS DECISION

Office of the Prosecutor

Mr Peter McCloskey

Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić

Mr Miodrag Stojanović

1. The Chamber is seized of several administrative and evidentiary matters. With a view to disposing of these matters before the close of the Defence case, the Chamber considers it appropriate to issue the following omnibus decision.

Submissions of the Defence and the Prosecution for the Admission of Exhibits Tendered through Zorica Subotić and Mile Poparić

2. On 26 February 2016, the parties tendered 79 documents into evidence through expert witnesses Zorica Subotić and Mile Poparić pursuant to a joint submission.¹ The Chamber considers that it does not need to make a determination in relation five of these 79 documents.² In relation to the admission of the remaining 74 documents,³ pursuant to Rule 89(C) of the Tribunal's Rules of Procedure and Evidence ("Rules"), the Chamber may admit any relevant evidence which it deems to have probative value. The Chamber observes that 71 of the documents tendered concern alleged sniping and shelling incidents in Sarajevo as charged in the Indictment and that these documents bear sufficient indicia of reliability such as stamps, signatures, or information on the recipients and authors of the documents. Furthermore, having heard the testimonies of Subotić and Poparić relating to the incidents in respect of which these documents are referenced, the Chamber finds that the documents bear sufficient probative value for their admission into evidence. Based on the foregoing, the Chamber finds these 71 documents admissible pursuant to Rule 89 (C) of the Rules. In relation to the remaining three documents, 1D01293 (marked for identification as D1278) does not have the required English translation; 1D05576 does not have a video and has an incorrect surrogate sheet; and 1D05915a does not have a video. The Chamber hereby: **ADMITS** 68 of the aforementioned 71 documents into evidence and **INSTRUCTS** the Registry to assign exhibit numbers to them and to inform the parties and the Chamber of the numbers so assigned;⁴ from the

¹ Joint Submission of the Defence and the Prosecution for the Admission of Exhibits tendered through Expert Witnesses Zorica Subotic and Mile Poparic, 26 February 2016.

² The document bearing Rule 65 *ter* number 1D05755 was tendered twice. The document bearing Rule 65 *ter* number 22457 was subsequently withdrawn. The documents bearing Rule 65 *ter* numbers 1D05935, 1D05911a, and 09939c were already admitted into evidence as exhibits D1327, D1340, and D1443, respectively. A previous version of Rule 65 *ter* number 09939c had been admitted as P644. The Chamber, consequently, instructs the Registry to mark P644 as not admitted.

³ The Chamber notes that 17 of the 74 documents bear newly allocated Rule 65 *ter* numbers as a result of the parties addressing various administrative issues identified by the Chamber with the originally tendered documents. The Chamber only makes reference to the new Rule 65 *ter* numbers. Some of the previously tendered documents had already been attached to exhibit numbers. Consequently, the Chamber instructs the Registry to mark D1244, D1266, and D1265 as not admitted.

⁴ This concerns the 68 documents bearing Rule 65 *ter* numbers: 1D00768, 1D01428, 1D05503, 1D05538, 1D05546, 1D05548, 1D05569, 1D05578, 1D05706, 1D05709, 09821, 09963, 09978, 14298, 19457, 19771, 33372, 33250, 19301, 1D00693, 33513, 1D00694, 1D05701, 1D00701 (marked for identification as D1250), 33106a, 1D00746, 1D05627, 08282, 10968, 18648, 26209, 1D05755, 1D05754, 09948, 1D05625, 1D05626, 1D05634, 33230, 10257a, 10020, 10021, 33373, 33377, 10065, 33394, 33150, 1D05529, 10061, 1D05641, 33393, 1D05666, 1D00691 (marked for identification as D1336), 1D05913a, 1D05914a, 1D05917a, 1D01227b, 1D05923a, 1D05918a, 1D05919a, 1D05921a, 1D05924a, 1D05922a, 1D05925a, 1D05928a, 22460b, 22452f, 1D05931a, and 22452g. The Chamber reminds the Registry that for the documents bearing Rule 65 *ter* numbers 10020, 10021,

aforementioned 71 documents **ADMITS** the remaining three documents bearing Rule 65 *ter* numbers 1D05916a, 1D05716a, and 15704 into evidence and **INSTRUCTS** the Registry to replace the document attached to exhibit number D1267 with the document bearing Rule 65 *ter* number 1D05916a, replace the document attached to exhibit number P7549 with the document bearing Rule 65 *ter* number 1D05716a, and replace the document attached to exhibit number P7614 with the document bearing Rule 65 *ter* number 15704; **DENIES** the admission of the documents bearing Rule 65 *ter* numbers 1D01293 (marked for identification as D1278), 1D05576, and 1D05915a without prejudice; **INSTRUCTS** the Defence to upload a surrogate sheet of the tendered video extract (Doc ID V000-2822) under Rule 65 *ter* number 1D05931a;⁵ **INSTRUCTS** the Registry to replace the existing translation of 1D00691 (marked for identification as D1336) with the one uploaded under Doc ID 1D33-0262,⁶ and **INSTRUCTS** the Registry to ensure that the document bearing Rule 65 *ter* number 33106a is assigned to D1270.⁷

Remaining Issues from the Testimonies of Zorica Subotić and Mile Poparić

3. *P7564*. On 7 October 2015, P7564 was marked for identification pending the provision of a complete English translation.⁸ On 13 May 2016, the Prosecution informed the Chamber and the Defence, by email, that it had uploaded the translation into eCourt under Doc ID 0631-5718-A-ET. On 1 June, the Defence responded advising that it did not object to the translation. The Chamber **INSTRUCTS** the Registry to replace the existing translation of P7564 with the one uploaded under Doc ID 0631-5718-A-ET and **ADMITS** P7564 into evidence.

4. *P7567*. On 8 October 2015, P7567 was marked for identification pending the provision of a complete English translation.⁹ On 13 May 2016, the Prosecution informed the Chamber and the Defence, by email, that it had uploaded a translation into eCourt under Doc ID 0216-7085-ET. On 1 June, the Defence responded advising that it did not object to the translation. The Chamber

33373, 33377, 10065, 22452g, 33394, 22452f, 33150, and 1D05755, the parties request that Prosecution exhibit numbers be assigned. The Chamber notes that 1D05931a is an updated version of exhibit D1335 and therefore instructs the Registry to mark exhibit D1335 not admitted.

⁵ The Registry is instructed to make the necessary replacements in eCourt.

⁶ On 29 October 2015, exhibit D1336 was marked for identification pending verification of the English translation (T. 40538). On 5 May 2016, the Defence informed the Chamber and the Prosecution, by email, that the new translation had been uploaded into eCourt under the Doc ID 1D33-0262.

⁷ On 30 September 2015, the document bearing Rule 65 *ter* number 33106 was marked for identification as D1270 (T. 39515). On 8 December, the Defence informed the Chamber and the Prosecution, by email, that it opposed the admission of this document, as it had intended to tender the document bearing Rule 65 *ter* 1D05545 as D1270. On 1 March 2016, the Chamber instructed the Registry to ensure that the document bearing Rule 65 *ter* number 1D05545 was assigned to D1270 (T. 43233). The Defence noted that, on 26 February, the parties filed a joint submission tendering a number of documents, including the document bearing Rule 65 *ter* number 33106a (T. 43234-43235). The Chamber understands that the parties have tendered the document bearing Rule 65 *ter* number 33106a *in lieu* of the documents bearing Rule 65 *ter* numbers 33106 and 1D05545 and that they no longer seek the admission of either of those documents.

⁸ T. 39827.

INSTRUCTS the Registry to replace the existing translation of P7567 with the one uploaded under Doc ID 0216-7085-ET and **ADMITS** P7567 into evidence.

5. *D1273*. On 30 September 2015, D1273 was marked for identification pending the provision of a more legible version of the BCS original.¹⁰ CLSS subsequently provided the Chamber with an alternative version, which the Chamber then provided to the parties, by email, on 18 December. On 19 February 2016, the Prosecution confirmed, by email, that the document provided by CLSS is a clearer copy of the original. On 29 February, the Defence informed the Chamber and the Prosecution, by email, that it had uploaded the document provided by CLSS into eCourt under Rule 65 *ter* number 1D00747a. The Chamber **INSTRUCTS** the Registry to replace the original of D1273 with the document uploaded under Rule 65 *ter* number 1D00747a and **ADMITS** it into evidence.

Remaining Issue from the Testimony of Sergey Moroz

6. *Exhibit P7782*. On 10 December 2015, during the testimony of Sergey Moroz, P7782 was reserved for the document bearing Rule 65 *ter* number 33441, pending the uploading of an excerpt of the document into eCourt.¹¹ On 2 February 2016, the Prosecution emailed the Chamber and the Defence, advising that the 14-page excerpt had been uploaded into eCourt under Rule 65 *ter* number 33441a. On 31 March, the Chamber admitted the excerpt into evidence as exhibit P7782 and gave the Defence one week to revisit the matter.¹² On 7 April, the Defence filed submissions, arguing that the admission of the document was premature because the Chamber did not rule on the Defence's objection in relation to its authenticity.¹³ On 21 April, the Prosecution responded, arguing that the Defence's submissions misstated the trial record and omitted to mention that the Defence clarified in court that it did not object to the tendering of excerpts of the document.¹⁴ The Chamber notes that (i) the Defence argued in its submissions that the Chamber issued an instruction to the Prosecution regarding the provision of information on authenticity when, in fact, the Chamber merely invited the Prosecution to provide the information in question;¹⁵ (ii) contrary to the claim advanced by the Defence, the document does in fact contain *indicia* of authenticity;¹⁶ (iii) contrary to the claim advanced by the Defence, an examination of the transcript of 10 December 2015 does not show that the document should have been limited to three to four pages in

⁹ T. 39932-39934. *See also* T. 42197.

¹⁰ T. 39526-39527. *See also* T. 42195.

¹¹ T. 42534-42540.

¹² First Defence Case Omnibus Decision, 31 March 2016, para. 24.

¹³ Defence Submissions Pursuant to First Defence Case Omnibus Decision, 7 April 2016.

¹⁴ Prosecution Response to Defence Submissions Pursuant to First Defence Case Omnibus Decision, 21 April 2016.

¹⁵ T. 42536.

¹⁶ P7782, pp. 5-6.

length; (iv) after initially objecting to the admission of a document from which the tendered document was derived, the Defence agreed with the Chamber's suggestion to instead admit an excerpt which the Chamber understood dealt with the Defence's concerns about the authenticity of the document;¹⁷ and (v) although only six pages of the document were used with the witness in court,¹⁸ the English translation of exhibit P7782 is 14 pages long as a result of the Chamber's invitation to the Prosecution to include additional pages for the purpose of authenticating the document and giving it some cohesion and structure.¹⁹ For the foregoing reasons, the Chamber **DISMISSES** the Defence's submissions of 7 April 2016.

Remaining Issues from the Testimony of Zoran Stanković

7. *D1448*. On 18 April 2016, D1448, an expert report entitled "Forensic Analysis of Reports on the Exhumations of Mass Graves in the Area of Srebrenica and Eastern Bosnia" authored by the Dušan Dunjić, was marked for identification as D1448.²⁰ The Chamber notes that D1448 forms the basis of Stanković's expert report which was admitted into evidence as exhibit D1449.²¹ The Chamber therefore finds that D1448 is relevant and probative for the purposes of admission into evidence pursuant to Rule 89 (C) of the Rules. Based on the foregoing, the Chamber **ADMITS** D1448 into evidence.

8. *P7820 and P7821*. On 25 April 2016, P7820 and P7821 were marked for identification pending the provision of BCS translations.²² On 13 May, the Prosecution informed the Chamber and the Defence, by email, that the translations had been uploaded into eCourt. The Chamber **INSTRUCTS** the Registry to attach Doc ID Y041-6831-BCST and Doc ID X000-2915-BCST to P7820 and P7821, respectively, and **ADMITS** P7820 and P7821 into evidence. The Defence has one week to revisit the matter, if necessary.

Remaining Issue from the Testimony of Jan Segers

9. *D360 and D1466*. On 10 December 2013, D360, an UNPROFOR memo containing an article authored by Jan Segers, was denied admission without prejudice.²³ On 28 April 2016, it was

¹⁷ T. 42535-42539.

¹⁸ P7782, pp. 8-12, 14; T. 42513-42514, 42521-42524.

¹⁹ T. 42535.

²⁰ T. 43265. On the same day, the witness discussed some handwritten markings which he had apparently made on the report. On 9 and 17 May, the Chamber emailed the Defence asking whether it intended to upload a new version of the document containing the witness's annotations together with an English translation, but did not receive a response. The Chamber therefore considers that the Defence is not tendering the version of the report with the handwritten annotations.

²¹ T. 36362-36363, 43273.

²² T. 43591-43592.

²³ T. 20634.

marked for identification.²⁴ That same day, D1466, the same article, in its original publication form, was also marked for identification.²⁵ The Chamber notes that D360 forms part of D1466.²⁶ On 31 May, the Defence informed the Chamber and the Prosecution, by email, that it had uploaded a BCS translation of D1466 into eCourt under Doc ID 1D13-1426. On 1 June, the Prosecution responded advising that it did not object to the translation. The Chamber therefore **INSTRUCTS** the Registry to mark D360 not admitted, to attach the BCS translation to D1466, and **ADMITS** D1466 into evidence.

Remaining Issue from the Testimony Goran Kremer

10. *D918*. On 31 March 2016, D918 was denied admission into evidence without prejudice.²⁷ On 13 May 2016, the Defence emailed the Chamber and the Prosecution advising that it had received the original English version from the ICMP and that it had been uploaded into eCourt under Doc ID 1D31-0420. On 20 May, the Prosecution responded confirming that it did not object to the English version. The Chamber **INSTRUCTS** the Registry to attach the newly uploaded English version to D918 and **ADMITS** D918 into evidence.

Remaining issues relating to testimony of Svetlana Radovanović

11. *P7826*. On 2 May 2016, P7826 was marked for identification pending the provision of a BCS translation.²⁸ On 24 May, the Prosecution emailed the Chamber and the Defence advising that the translation had been uploaded into eCourt under Doc ID X010-8360-BCST. The Chamber **INSTRUCTS** the Registry to attach the translation to P7826 and **ADMITS** P7826 into evidence **UNDER SEAL**. The Defence has one week to revisit the matter, if necessary.

12. *P7514*. On 26 August 2015, exhibit P7514 was admitted into evidence.²⁹ On 26 May 2016, the Prosecution emailed the Chamber and the Defence advising that a full English translation had been uploaded into eCourt under DocID 0562-0301-ET. On 30 May, the Defence responded advising that it did not object to the translation. The Chamber **INSTRUCTS** the Registry to attach the translation to P7514 and **ADMITS** P7514 into evidence.

13. *P7515*. On 26 August 2015, exhibit P7515 was admitted into evidence.³⁰ On 6 May 2016, the Prosecution emailed the Chamber and the Defence, advising that a revised BCS translation,

²⁴ T. 43743-43744.

²⁵ T. 43764-43765.

²⁶ T. 43764-43765.

²⁷ First Defence Case Omnibus Decision, 31 March 2016, para. 26.

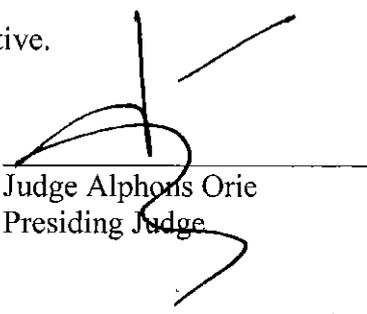
²⁸ T. 43910-43911.

²⁹ T. 38343.

³⁰ T. 38343.

which contains the same number of pages as the original, had been uploaded into eCourt under DocID 0562-0294-BCS. The Chamber **INSTRUCTS** the Registry to replace the translation with the corrected version. The Defence has one week to revisit the matter, if necessary.

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



Judge Alphons Orie
Presiding Judge

Dated this second day of June 2016
At The Hague
The Netherlands

[Seal of the Tribunal]