



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: 1 August 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: 1 August 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR THE
ADMISSION OF THE DOCUMENTS BEARING
RULE 65 TER NUMBERS 17192 AND 1D05975**

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 8 June 2016, the Chamber issued a decision denying without prejudice the admission into evidence of the document bearing Rule 65 *ter* number 1D03530 and page 18 of the document bearing Rule 65 *ter* number 17192.¹ The Chamber admitted into evidence the remainder of the document bearing Rule 65 *ter* number 17192.² On 1 July 2016, the Defence filed a motion (“Motion”) seeking the admission of the document bearing Rule 65 *ter* number 1D05975 and of page 18 of the document bearing Rule 65 *ter* number 17192 pursuant to Rule 89 (C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).³ On 13 July 2016, the Prosecution responded.⁴

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the document bearing Rule 65 *ter* number 1D05975 is relevant, supports the Defence case that Serb commanders ordered their troops to comply with and abide by international humanitarian law, and has sufficient probative value.⁵ The Defence posits that the document is receipt-stamped, dated, and identical to the document bearing Rule 65 *ter* number 1D03530, which was previously denied admission without prejudice.⁶

3. The Defence submits that the tendered page of the document bearing Rule 65 *ter* number 17192 is relevant, demonstrates that the Bosnian-Serb political leadership instructed the VRS to abide by international humanitarian law, and is of sufficient probative value for the purpose of admission into evidence.⁷ In particular, it submits that the date of the tendered page is discernable from the document bearing Rule 65 *ter* number 1D05975, that a rough date of the tendered page can be deduced from the surrounding pages of the document bearing Rule 65 *ter* number 17192, that other documents admitted into evidence corroborate the date and accuracy of the tendered page,

¹ Decision on Defence’s Third Motion for the Admission of Documents from the Bar Table, 8 June 2016 (“Decision on Defence’s Third Bar Table Motion”), paras 25, 27, 36. The Chamber notes that it refers to page 18 of the English version of the document, which corresponds to page 12 of the BCS version.

² Decision on Defence’s Third Bar Table Motion, paras 27, 34, 36.

³ Renewed Bar Table Submission as to 65ter #17192 and Bar Table Submission as to 65ter #1D05975 in Place of 65ter #1D03530, 30 June 2016 (Public with Confidential Annex A), paras 5, 8, 23. The Chamber notes that the Motion contains two paragraphs numbered 6. The Chamber further notes that in paragraph 8, the Defence ‘seeks admission of the English page 18 (BCS page 12) of the document bearing Rule 65ter #17192’, while in paragraph 5, the Defence ‘requests the renewed submission of the full 65ter #17192’. As the Chamber has already admitted into evidence the remainder of the document bearing Rule 65 *ter* number 17192, it considers that the Defence tenders page 18 of the document only.

⁴ Prosecution Response to Renewed Bar Table Submission as to 65 *ter* #17192 and Bar Table Submission as to 65 *ter* #1D05975 in Place of 65 *ter* #1D03530, 13 July 2016 (“Response”).

⁵ Motion, para. 20, Annex A.

⁶ Motion, para. 19.

⁷ Motion, paras 10, 22, Annex A.

that the tendered page contains reliable indicia for the assessment of its provenance and authenticity, and that the Chamber has previously admitted into evidence documents not containing a date.⁸ Finally, the Defence posits that both the BCS and English versions of the tendered page are original orders distributed by the Republika Srpska Presidency, and that an inconsistency regarding the addressees of the order is due to a translation error that occurred at the time of drafting and distribution.⁹

4. The Prosecution does not oppose the admission of the documents, but notes that it is not indicating agreement with the arguments made in the Motion.¹⁰

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.¹¹

IV. DISCUSSION

A. Preliminary Considerations

6. The contents of the tendered page of the document bearing Rule 65 *ter* number 17192 and of the documents bearing Rule 65 *ter* numbers 1D03530 and 1D05975 are nearly identical. Each is an instruction from Radovan Karadžić concerning the free and safe travel of delegates of the International Committee of the Red Cross (“ICRC”) within the territory of Bosnia-Herzegovina. The documents bearing Rule 65 *ter* numbers 1D03530 and 1D05975 also state that 26 ICRC delegates received a copy of this instruction.

7. The Chamber previously denied without prejudice the admission into evidence of the document bearing Rule 65 *ter* number 1D03530 for lack of sufficient probative value, noting its lack of a date or any other indicia of reliability apart from a type-written signature.¹² Similarly, the Chamber did not consider the tendered page of the document bearing Rule 65 *ter* number 17192 for admission into evidence, finding that it was difficult to assess its provenance and authenticity due to the lack of a date and because the content of the tendered page strongly resembled that of the

⁸ Motion, paras 10-16.

⁹ Motion, para. 9. The BCS version is addressed ‘*Svim lokalnim civilnim i policijskim vlastima*’, which the Defence asserts should be translated as ‘To all local civilian and police authorities’. The English version is addressed ‘To all combatants of the Serbian forces of Bosnia-Herzegovina’. The Chamber understands the Defence’s clarification to indicate that the order was intended for all local civilian and police authorities.

¹⁰ Response, para. 1.

¹¹ Decision on Defence’s Eighth Motion for the Admission of Documents from the Bar Table, 24 March 2016, paras 6-7.

document bearing Rule 65 *ter* number 1D03530, which the Chamber had found lacking in probative value.¹³

B. The Document Bearing Rule 65 *ter* Number 1D05975

8. The Chamber notes that the Defence has not previously tendered the document bearing Rule 65 *ter* number 1D05975. The Chamber set a deadline of 18 January 2016 for the Defence's final bar table motions¹⁴ and has, since that date, considered only documents previously denied admission without prejudice. However, considering that the content of document bearing Rule 65 *ter* number 1D05975 is identical to that of the document bearing Rule 65 *ter* number 1D03530, save for the additional stamp and date, and considering that the Chamber previously denied without prejudice the admission into evidence of the latter document, the Chamber will exceptionally consider the Motion with respect to the document bearing Rule 65 *ter* number 1D05975.

9. The Chamber finds that the document bearing Rule 65 *ter* number 1D05975 is relevant to the Defence argument that Serb commanders ordered their troops to comply with and abide by international humanitarian law. It bears sufficient indicia of reliability, including a date, stamp of receipt, and a type-written signature. Furthermore, the Defence has set out with sufficient clarity and specificity how the document fits into its case.¹⁵ Therefore, the Chamber is satisfied that the document is relevant and has probative value pursuant to Rule 89 (C) of the Rules. Based on the foregoing, the Chamber will admit the document bearing Rule 65 *ter* 1D05975 into evidence.

C. The Tendered Page of the Document Bearing Rule 65 *ter* Number 17192

10. The Chamber finds unconvincing the Defence's argument that the date of the tendered page of the document bearing Rule 65 *ter* number 17192 can be discerned from the document bearing Rule 65 *ter* number 1D05975.¹⁶ While the documents are nearly identical in terms of content, this does not necessarily imply that they were produced or distributed in the same time period. This is particularly the case considering that the documents differ in format. Most strikingly, the BCS original of the document bearing Rule 65 *ter* number 1D05975 uses Cyrillic characters, while the BCS original of the tendered page of the document bearing Rule 65 *ter* number 17192 uses Latin characters.

¹² Decision on Defence's Third Bar Table Motion, para. 25.

¹³ Decision on Defence's Third Bar Table Motion, para. 27.

¹⁴ T. 39448.

¹⁵ See Motion, Annex A.

¹⁶ See Motion, paras 10-11.

11. With regard to the Defence's further arguments regarding the authenticity and reliability of the tendered page,¹⁷ the Chamber notes that all of this information was before it when it issued the Decision on Defence's Third Bar Table Motion. The Chamber will not further consider these arguments.

12. As a final matter, with respect to the similarity between the document bearing Rule 65 *ter* number 1D05975 and the tendered page of the document bearing Rule 65 *ter* number 17192, the Chamber notes that it is generally not assisted by the tendering of nearly identical evidentiary material. This creates an unnecessary burden on the Chamber to review material that would ultimately have the same bearing on the case.

13. For the above reasons, the Chamber will deny the admission into evidence of the tendered page of the document bearing Rule 65 *ter* number 17192.

V. DISPOSITION

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

GRANTS the Motion **IN PART**;

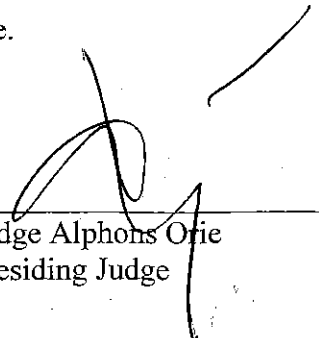
ADMITS into evidence the document bearing Rule 65 *ter* number 1D05975;

DENIES the admission into evidence of the tendered page of the document bearing Rule 65 *ter* number 17192; and

¹⁷ See Motion, paras 10, 12-16.

REQUESTS the Registry to assign a number to the exhibit admitted by this decision and to inform the parties and the Chamber of the number so assigned.

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



Judge Alphons Orie
Presiding Judge

Dated this first day of August 2016
At The Hague
The Netherlands

[Seal of the Tribunal]