

IT-09-92-T
D 7620T - D 76201
14 November 2013

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**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: 14 November 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 14 November 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION SECOND MOTION TO ADMIT
UNITED NATIONS RESOLUTIONS, REPORTS, AND CODE
CABLES FROM THE BAR TABLE**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 28 August 2013, the Prosecution filed its second motion to admit United Nations resolutions, reports, and code cables from the bar table ("Motion"), seeking admission of ten documents into evidence.¹ On 10 September 2013, the Defence filed a request for an extension to respond to the Motion. On 13 September 2013, the Chamber granted a 30-day extension, setting the new response deadline as 13 October 2013.² On 11 October 2013, the Defence filed its response to the Motion ("Response"), objecting to the admission of all ten documents.³

II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law governing the admission of documents from the bar table as set out in a previous decision.⁴

III. DISCUSSION

3. As a preliminary matter, the Chamber notes that the document bearing Rule 65 *ter* number 17697 was admitted into evidence on 17 September 2013 as P2196, and will therefore not further consider this document in this decision.

4. With regard to the document bearing Rule 65 *ter* number 8419a, a report submitted to the United Nations General Assembly and Security Council, and the document bearing Rule 65 *ter* number 11369, a report submitted to the United Nations Security Council, the Chamber considers that the documents contain information relating to the Prosecution's allegations of a campaign of sniping and shelling in Sarajevo, forcible transfer, detention, and ethnic cleansing. In relation to the Defence's objection that the document bearing Rule 65 *ter* number 11369 is dated before the Accused was with the VRS, the Chamber considers that the document contains contextual information relevant to allegations contained in the Indictment.⁵ In relation to the Defence's objection that neither the document bearing Rule 65 *ter* number 8419a nor the document bearing Rule 65 *ter* number 11369 sufficiently identifies the forces or perpetrators involved in the activities

¹ Prosecution Second Motion to Admit United Nations Resolutions, Reports and Code Cables from the Bar Table, 28 August 2013. The Chamber refers to the Prosecution's filing for its submissions.

² Defence Motion for Enlargement of Time to Respond to Prosecution Second Motion to Admit United Nations Resolutions, Reports and Code Cables from the Bar Table, 10 September 2013; T. 16748.

³ Defence Response to Prosecution Second Motion to Admit United Nations Resolutions, Reports and Code Cables from the Bar Table, 11 October 2013. The Chamber refers to the Defence's filing for its submissions.

⁴ Decision on Prosecution's Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 2 May 2013, paras 7-8.

referred to in the documents, the Chamber considers that this is a matter that goes to the weight to be given to the documents and not to their admissibility.⁶ The Chamber is satisfied that both documents are relevant to allegations contained in the Indictment, including counts 7-10, and schedules C, F, and G. With regard to probative value, the Chamber notes the Prosecution's submission that the documents were retrieved from the United Nations and the European Community Monitor Mission, and that each document contains indicia of authenticity including a UN letterhead, dates, and sequential numbering.⁷

5. In relation to the documents bearing Rule 65 *ter* numbers 705 and 15919, United Nations Protection Force ("UNPROFOR") Code Cables from General Nambiar to UN Headquarters, the Chamber considers that the documents contain information relating to, *inter alia*, the Prosecution's allegations with regard to command and control, the persecution of Muslim populations, the restriction of humanitarian aid in Sarajevo, and a campaign of sniping and shelling in Sarajevo. The Chamber is therefore satisfied that the documents are relevant to allegations contained in the Indictment, including counts 3, 9, and 10 and schedules F and G. With regard to probative value, the Chamber notes that the documents appear to originate from the UN Department of Peacekeeping Operations and each contains indicia of authenticity including a date and signature.

6. With regard to the documents bearing Rule 65 *ter* numbers 3520, 3825, and 16430, UNPROFOR Code Cables from Yasushi Akashi to Kofi Annan, the Chamber considers that the documents contain information relating to, *inter alia*, the Prosecution's allegations with regard to command and control, the restriction of humanitarian aid, and the taking of UN personnel as hostages. With regard to the Defence's objection that the document bearing Rule 65 *ter* number 16430 relates to an alleged statement of Radovan Karadžić, and not the Accused,⁸ the Chamber considers that the document contains contextual information relevant to allegations contained in the Indictment, including information on the political and military climate in Sarajevo during the Indictment period.⁹ The Chamber is satisfied that the documents bearing Rule 65 *ter* numbers 3520, 3825, and 16430 are relevant to allegations contained in the Indictment, including counts 3 and 11. With regard to probative value, the Chamber notes that the documents appear to originate from UNPROFOR, and that each contains indicia of authenticity including dates, stamps, and signatures.

⁵ Response, para. 9.

⁶ Response, paras 9 and 10.

⁷ In this respect, the Chamber recalls the Appeals Chamber's finding in *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 22, that "[p]rima facie proof of reliability on the basis of sufficient indicia is enough at the admissibility stage".

⁸ See Response, para. 12.

⁹ For example see Rule 65 *ter* number 16430, p. 8.

7. With reference to the documents bearing Rule 65 *ter* numbers 3417 and 11317a, reports on the human rights situation in Yugoslavia written by Tadeusz Mazowiecki, the Chamber considers that the documents contain information relating to, *inter alia*, the Prosecution's allegations of forcible transfer, detention, and persecution of Muslim populations during the Indictment period. In relation to the Defence's objection that the documents use broad terms and insufficiently identify the participants or perpetrators in the activities described in the documents, the Chamber considers that this is a matter that goes to the weight to be given to the documents and not to their admissibility.¹⁰ The Chamber is satisfied that the documents are relevant to allegations contained in the Indictment, including counts 3, 7, and 8 and schedule C. With regard to probative value, the Chamber notes that the documents are United Nations documents, published by what was then the Economic and Social Council Commission on Human Rights, and each contains indicia of authenticity including UN letterheads and dates. Further, in relation to the Defence's objection *vis-à-vis* the reliability of the document bearing Rule 65 *ter* number 3417, that the corroborative sources alluded to by the Prosecution have not yet been admitted into evidence, the Chamber notes that corroboration is not a requirement for the admission of documents pursuant to Rule 89 (C) of the Tribunal's Rules of Procedure and Evidence ("Rules").¹¹

8. The Defence also objects on the grounds that the Prosecution misstates the content of every document tendered.¹² The Chamber clarifies that it has analysed the documents' admissibility based on the content of the documents and not the Prosecution's descriptions of the content.

9. In relation to the Defence objection that the documents bearing Rule 65 *ter* numbers 705, 3520, 3825, 15919, 16430, and 17697 should be considered as hearsay evidence,¹³ the Chamber recalls that hearsay evidence is, in principle, admissible before the Tribunal and that the weight to be attributed to such evidence will be assessed in light of all the evidence before the Chamber.

10. The Chamber does not share the Defence's concerns that the documents tendered contain information that is impossible to verify or challenge,¹⁴ and notes that the Defence has not made specific submissions in this respect.

11. The authenticity of the documents is not challenged by the Defence, and the Chamber finds, having considered the content of the documents, that all ten documents have *prima facie* probative

¹⁰ Response, paras 17-18.

¹¹ See Motion, Annex A; Response, para. 18.

¹² Response, paras 9-18.

¹³ Response, paras 11-16.

¹⁴ Response, paras 9-18.

value. Further, for the reasons above, the Chamber is also satisfied as to the relevance of the documents, and finds them admissible pursuant to Rule 89 (C) of the Rules.

12. With regard to the admission of the documents from the Bar Table, the Chamber notes that the Prosecution's annexed list of proposed exhibits contains detailed descriptions of all ten documents and their relevance.¹⁵ Therefore, the Chamber is satisfied that the Prosecution has explained, with sufficient clarity and specificity, where and how each document fits into its case.

IV. DISPOSITION

13. For the foregoing reasons, pursuant to Rules 54 and 89 of the Rules, the Chamber

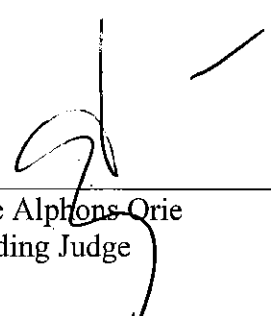
GRANTS the Motion in part;

DECLARES the Prosecution's request with regard to the document bearing Rule 65 *ter* number 17697 moot;

ADMITS into evidence the documents bearing Rule 65 *ter* numbers 705, 3520, 3825, 8419a, 03417, 11317a, 11369, 15919, 16430; 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 fourteenth day of November 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁵ *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Fourth Decision on Stanišić Defence Bar Table Motion of 17 February 2012, 24 May 2012, para. 8: "[t]he tendering party's characterisation of the evidence and the final conclusions, if any, to be drawn from that evidence are not determinative of the test for admission set out in Rule 89 (C)." *See also* Decision with Regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 8.