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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 MOTION TO ADMIT
EVIDENCE FROM THE BAR TABLE: FOČA MUNICIPALITY**

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 15 July 2013, the Prosecution filed a motion to admit 44 documents into evidence from the bar table in relation to Foča Municipality, and requesting the Chamber to take Judicial Notice of the authenticity of certain documents (“Motion”).¹ The Defence filed a request for an extension to respond to the Motion on 26 July 2013,² which was granted on 1 August 2013 and communicated to the parties through an informal communication. The Defence filed its response to the Motion on 26 August 2013 (“Response”).³ On 3 September 2013, the Prosecution filed a request for leave to reply to the Response, annexing its reply (“Reply”).⁴

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.⁵

III. DISCUSSION

3. As a preliminary matter, the Chamber considers that it is assisted by further submissions from the Prosecution on the matters outlined in the request for leave to reply and hereby grants this request.

4. Firstly the chamber considers the proposed documents, which concern the events in Foča during the Indictment period May 1992 to November 1995, or provide context to them, relate to, *inter alia*: the military and political climate in the Foča Municipality,⁶ the chain of command and reporting lines between the VRS main staff and units that operated in the Foča Municipality,⁷ the relationship between the military and civilian authorities in Foča,⁸ the activities of alleged members of the Joint Criminal Enterprise in relation to Foča,⁹ and the detention and transfer of persons in

¹ Prosecution Motion to Admit Evidence from the Bar table: Foča Municipality, 15 July 2013. The Chamber notes that the Prosecution tendered 44 documents for admission into evidence, but that four documents are excerpts from the same video. These are documents bearing Rule 65 *ter* 27978e, 27978f, 27978g, and 27978h.

² Defence Motion to Enlarge Time to Respond to Prosecution Motion to Admit Evidence From the Bar Table: Foča Municipality, 26 July 2013.

³ Defence Response to Prosecution Motion to Admit Evidence from the Bar table: Foča Municipality, 26 August 2013.

⁴ Prosecution Request for Leave to Reply to Defence Response to Prosecution Motion to Admit Evidence from the Bar table: Foča Municipality, 3 September 2013. The Chamber refers to the Parties’ filings for their submissions.

⁵ Decision on Prosecution’s Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 2 May 2013, paras 7-8.

⁶ See e.g. Rule 65 *ter* numbers 3656, 27978i.

⁷ See e.g. Rule 65 *ter* numbers 28735, 28767, 602, 819.

⁸ See e.g. Rule 65 *ter* number 14184, 14192.

⁹ See e.g. Rule 65 *ter* number 20548.

Foča Municipality.¹⁰ The proposed documents relate to the specific allegations in the Indictment including, but not limited to Counts 1, 3-8, and scheduled incidents A(2), B(5), C(6) and D(5).

A. Judicial Notice pursuant to Rule 94 (B)

5. The Prosecution has requested the Chamber to take judicial notice of the authenticity of the documents bearing Rule 65 *ter* numbers 8444, 8461, 9878, 14184, 14192, 14200, 20548 and 22318a, pursuant to Rule 94 (B).¹¹ Rule 94 (B) gives the Chamber discretion to take judicial notice of the authenticity of documentary evidence from other proceedings, relating to matters at issue in the current proceedings, provided the documents were admitted into evidence in a previous proceeding, and their authenticity was explicitly discussed in that trial, prior to admission.¹² The Chamber considers the documents to relate, *inter alia*, to strategy and actions of alleged members of the alleged overarching joint criminal enterprise, the chain of command, and military operations within the Foča municipality during the indictment period, and is satisfied, noting the Prosecution's submissions, that each of the documents was admitted into evidence in a previous trial. However, the Prosecution has not provided the Chamber with the relevant detail or transcript references from previous trials to enable the Chamber to consider whether, or to what extent the authenticity of each document was discussed in those previous proceedings.¹³ Accordingly, the Chamber declines to take judicial notice of the authenticity of the documents pursuant to Rule 94 (B), and notes that the authenticity of the documents will be considered in the discussion on admissibility.

B. Admissibility of Documents pursuant to Rule 89 (C)

6. Regarding the document bearing Rule 65 *ter* number 8313, the Chamber notes the Defence objection that it lacks relevance and probative value and is dated before the Accused joined the VRS.¹⁴ The Chamber considers the document relates, *inter alia*, to the reason provided by Serbian officials within the Foča municipality for establishing a JNA garrison in Foča, and considers that the document provides context to the allegations regarding the events in Foča. The Defence makes no objection to authenticity, and noting the representations made by the Prosecution, the Chamber is satisfied as to the authenticity and overall probative value of the document and finds it admissible pursuant to Rule 89 (C).¹⁵

¹⁰ See e.g. Rule 65 *ter* numbers 14184, 14192, 28779.

¹¹ Motion, para. 25 (i).

¹² See Decision on Prosecution First Motion to Admit Evidence from the Bar Table Mladić Notebooks, 25 September 2012, para. 5.

¹³ Motion, Annex A.

¹⁴ Response, para. 7 (b).

¹⁵ 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

7. With regard to the document bearing Rule 65 *ter* number 3656, the Chamber notes the Defence objection that the original document is in English, is redacted, and does not relate to a criminal plan or purpose.¹⁶ The Chamber considers that the document provides, *inter alia*, context regarding the military and political climate within Foča in April 1992 and purports to show the cooperation between the civilian and military authorities in Foča. The Chamber is satisfied that the document is relevant to the allegations relating to the events in Foča. In relation to the authenticity of the document, the Chamber notes that the Prosecution – following an objection by the Defence – has uploaded an unredacted version of the document in eCourt.¹⁷ The Chamber is satisfied regarding the relevance and probative value of the document, and finds it admissible pursuant to Rule 89 (C).

8. In relation to the document bearing Rule 65 *ter* number 9878, the Chamber notes the Defence objection that, *inter alia*, it lacks relevance and probative value as it is dated before Mladić came to the VRS, does not relate to the VRS, and does not mention the term ‘mop up’ as stated by the Prosecution.¹⁸ The Chamber considers these documents to be relevant, *inter alia*, to Serbian military activities within the Foča municipality during the indictment period. It notes that while the English version of the document states “clean up” instead of “mop up”, this does not affect its findings regarding the admissibility of this document.¹⁹ The Defence made no objection to authenticity, and noting the representations made by the Prosecution, the Chamber is satisfied regarding the relevance and probative value of the document, and finds it admissible pursuant to Rule 89 (C).

9. With reference to the document bearing Rule 65 *ter* number 20548, an intercept received from the agency for investigation and documentation (AID) in Sarajevo, the Defence objects to the relevance and probative value of the document, and submits that it does not deal with any crimes that would be relevant to the present proceedings.²⁰ The Chamber considers this document, which reflects a conversation between alleged JCE member Karadžić and Miroslav Stanišić, relates to the alleged joint criminal enterprise in relation to the events in Foča. To this end, the Chamber is satisfied regarding the relevance of the document. The Chamber notes that no objection or submissions were made by the Defence in relation to the authenticity or reliability of the intercept, however, given the nature of the evidence, the Chamber still considered whether its probative value

Expert Witness of 30 January 2008, para. 22, that “[p]rima facie proof of reliability on the basis of sufficient indicia is enough at the admissibility stage”.

¹⁶ Response, para. 7 (c). The Chamber notes that the Defence listed its objections to the document bearing Rule 65 *ter* 3556 under the Rule 65 *ter* number 3565.

¹⁷ Motion, Annex A, item 3; Response, para. 7 (c); Reply, para. 2.

¹⁸ Response, paras 7 (a) and 7 (d).

¹⁹ Motion, Annex A, item 4.

is outweighed by the need to ensure a fair trial pursuant to Rule 89 (D). In this regard, the Chamber notes that the Prosecution tendered the audio recordings, a BCS transcript, and a corresponding English translation, hence is satisfied of the document's probative value and finds it admissible on this basis.

10. With regard to the document bearing Rule 65 *ter* number 2391, the Chamber notes that this is a 285 page document, which the Prosecution seeks to rely on generally. The Defence objects to its admission based on its length and tenuous relevance.²¹ While the Chamber notes the Prosecution submission that the document contains relevant statements, it emphasises that it is generally not assisted by the tendering of documents of considerable length, when the tendering Party does not rely on the majority of the document to argue its case. The Parties are encouraged to tender extracts from documents where possible, provided that the extract does not present a false or misleading picture of the overall document.²² The Chamber considers that the Prosecution has not provided the Chamber with sufficient clarity and specificity regarding (i) the relevance and probative value of the document, and (ii) how it would fit into its case. Accordingly, the Chamber denies its admission into evidence without prejudice.

11. With respect to the document bearing Rule 65 *ter* number 27978i, the Chamber notes that the Defence objects to the authenticity of the document, and in particular that there is no explanation of the provenance of the document, and that it does not relate to the acts of Mladić or of the VRS.²³ The Chamber considers the document to be relevant to allegations in the Indictment and notes that the Prosecution indicated that the video is open-source material. The Chamber is satisfied regarding the authenticity of the document, and is satisfied that the criteria of Rule 89 (C) for admission of this document have been met.

12. Regarding the documents bearing Rule 65 *ter* numbers 14184 and 22847a, the Chamber notes that the Defence objects to their authenticity, submitting that there is no information on the provenance of the document bearing Rule 65 *ter* number 14184, and questioning the timing at which the BBC video was recorded.²⁴ The Chamber considers the document to be relevant to allegations in the Indictment, and notes the Prosecution's submission that these documents originate from the Prosecutor's Office in BiH and the BBC (open source) respectively.²⁵ The Chamber notes that the BBC video excerpt does not include a date, and will consider this issue when determining

²⁰ Response, para. 7 (b).

²¹ Response, para. 7 (dd).

²² Decision on Prosecution Motion for Admission of Documents from the Bar Table, 19 July 2013.

²³ Response, para. 7 (g). The Chamber notes the Defence listed their objection to this document under the Rule 65 *ter* number 27987i.

²⁴ Response, paras 7 (f) and (k) respectively.

the weight given to the document in view of the trial record. The Chamber is satisfied regarding the relevance and probative value of these documents, and finds them admissible pursuant to Rule 89 (C).

13. The Chamber notes that in relation to the document bearing Rule 65 *ter* number 14192, the Defence objects to both its authenticity and probative value.²⁶ The Chamber considers that the document relates to the processing of detainees within the Foča Municipality and provides context to allegations in the Indictment regarding events in the Foča Municipality. The Chamber notes the Prosecution's submission that the document originates from the Prosecutor's Office in BiH and further notes that the document bears sufficient indicia of authenticity, including both dating and stamping.²⁷ Accordingly, the Chamber is satisfied regarding the relevance and probative value of the document, and finds it admissible pursuant to Rule 89 (C).

14. The Defence objects to the authenticity of the documents bearing Rule 65 *ter* numbers 28779 and 8444 and submits that the Prosecution does not explain the origin or provenance of the documents.²⁸ The Chamber considers the documents to be relevant to allegations in the Indictment, however, it observes that the Prosecution does not provide information regarding the origin of the documents other than that they were tendered by the Defence in the *Krnojelac* trial.²⁹ The Chamber considers that both documents contain sufficient indicia of authenticity, including, stamping, signature and dating. The Chamber is satisfied regarding the relevance and probative value of these documents, and finds them admissible pursuant to Rule 89 (C).

15. In relation to the document bearing Rule 65 *ter* number 812, the Chamber notes that neither the description nor the ERN number of this document as referred to in the Motion matches the document bearing Rule 65 *ter* number 812 as uploaded in eCourt, but instead correspond to the document bearing Rule 65 *ter* number 821.³⁰ The Chamber further notes that the translation of the document bearing Rule 65 *ter* number 821 was in eCourt on 8 April 2013. In its Response, however, the Defence noted the fact that no English translation of the document had been uploaded into eCourt, to which the Prosecution replied that it had requested a translation from CLSS.³¹ The

²⁵ Motion, Annex A, items 6 and 11 respectively.

²⁶ Response, para. 7 (e).

²⁷ The Chamber notes that the Prosecution, at Motion, Annex A, item 5 ascribed an erroneous date to the document bearing Rule 65 *ter* no. 14192, a discharge letter dated 7 May 1992. Instead, the Prosecution noted that the document is dated 21 May 1991 – similar to the discharge letter bearing Rule 65 *ter* no. 14182, which bears that same date. The Chamber also notes, however, that the Prosecution's description of this document in Annex A, the description and date of this document in eCourt, and the ERN numbers listed in Annex A to the Motion correspond to the document bearing Rule 65 *ter* no. 14192 as uploaded in eCourt.

²⁸ Response, para. 7 (cc).

²⁹ Motion, Annex A, items 38 and 12 respectively.

³⁰ Motion, Annex A, item 19.

³¹ Response, para. 7 (p); Reply, para. 2

Chamber notes that subsequently, a translation of the document bearing Rule 65 *ter* number 812 was uploaded in eCourt on 18 September 2013. The Chamber further observes that the submissions in the Response and Reply focus on the authenticity of the document bearing Rule 65 *ter* number 812 (e.g. regarding the identity of the person signing the document and the presence of Mladić's signature stamp) not on the document bearing Rule 65 *ter* number 821 (a type-signed document which bears neither signature nor signature stamp).³² This leaves the Chamber in doubt as to which document the Prosecution seeks to admit into evidence.³³ The Chamber will therefore deny the admission into evidence of the document bearing Rule 65 *ter* number 812, without prejudice.

16. Concerning the document bearing Rule 65 *ter* number 11642, the Chamber notes the Defence submission that the document, *inter alia*, is written hearsay.³⁴ 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. In the present case, the Chamber notes that the Prosecution seeks to rely on a news article which contains statements made by an un-named Serb Commander to a journalist who is not a witness in this case. The Chamber considers that the article contains very general information, and reports broadly on the circumstances in a wide variety of locations and Municipalities. To this end, it lacks detail specifically relating to the Foča Municipality. Accordingly the Chamber does not find it suitable for admission from the bar table in this instance. For these reasons the Chamber will deny its admission, without prejudice.

17. Regarding the documents bearing Rule 65 *ter* numbers 28735, 28771, 28767, 14200, 602, 28776, 12986, 22318a, 14506a, 819, 28768, 28769, 28778, 28770, 869, 14509, 8429a, and 28773, the Defence states that it does not contest the authenticity of these documents, but submits that the translations uploaded into eCourt are in draft form, and that, *inter alia*, the Prosecution has misstated the contents of each document, and/or has drawn incorrect or irrelevant conclusions from the documents.³⁵ At the outset, the Chamber considers the documents to be relevant to allegations in the Indictment. In relation to the Defence objections, the Chamber observes that the Parties often provide it with draft translations prior to requesting their admission into evidence; this in itself does not affect their admissibility. The Chamber notes that the Defence has not alluded to any specific objections or mistakes in the translations that would raise doubt regarding the reliability of their content. Absent any specific arguments on this issue, the Chamber is not persuaded that the draft

³² The Chamber notes that the document bearing Rule 65 *ter* number 821 bears the 2010 stamp of the archives from which this document was released.

³³ Motion, Annex A, item 19; Response para. 7 (p); Reply, para. 2.

³⁴ Response, para. 7 (v).

³⁵ Response, Paras 7 (m), (n), (o), (w), (x), (z), (aa), (bb), (ee), (q), (r), (s), (t), (u), (h), (i), (j) and (y) respectively.

form of the translations contain any mistakes. Furthermore, in relation to the Defence argument that the Prosecution's descriptions of the documents contain inaccuracies regarding the content of, or conclusions to be drawn from the documents, the Chamber notes that it has analysed the documents' admissibility based on the content of the documents and not the Prosecution's descriptions of the content, and recalls that it remains within the Chamber's discretion whether to follow such characterisations when assessing the evidence in its entirety.³⁶ Furthermore, it is open to the Defence to state what the correct content should be, and what conclusions should be drawn from such content. In conclusion, the Chamber is satisfied regarding the relevance and probative value of the documents, and finds them admissible pursuant to Rule 89 (C). In relation to the document bearing Rule 65 *ter* number 8429a, the Chamber notes the Defence submission that the translation contains text which is not in the original document.³⁷ The Chamber further notes the Prosecution's undertaking to upload a redacted English translation of this document into eCourt, wherein the first two paragraphs are redacted.³⁸ Currently only the first paragraph of page one, of the translation in eCourt is redacted, and the second paragraph, which appears to refer to an article which has not been tendered, has not yet been redacted. Accordingly, the Chamber will admit the document into evidence pending the uploading into eCourt of the redacted and revised translation.

18. With reference to the documents bearing Rule 65 *ter* numbers 28732, 28772, 8461, 19957, 28733, 28734, 28774, 28775, 28777, and 27978 (e), (f), (g), and (h),³⁹ the Chamber notes that there is no Defence objection to the admission of these documents into evidence. The Chamber is satisfied regarding the relevance and probative value of these documents, and finds them admissible pursuant to Rule 89 (C).

19. The Defence objects that the amount of documents tendered by the Prosecution is beyond the guidance of the Chamber.⁴⁰ While the Chamber has instructed the parties to limit the amount of documents to be tendered from the bar table, it has not issued guidance restricting the amount of documents which can be tendered by a party in a bar table motion. The Chamber considers the tendering of the proposed 44 documents from the bar table acceptable.

20. Lastly, other than where the contrary is indicated above, the Chamber notes that the Prosecution's list of proposed exhibits, annexed to the Motion, contains detailed descriptions of

³⁶ See e.g. *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.

³⁷ Response, para. 7j.

³⁸ Reply, para. 3.

³⁹ The Response listed this as "65ter27987 (e,f,g,h)".

their relevance to the case. The Chamber is satisfied that the Prosecution has demonstrated, with sufficient clarity and specificity, where and how each document fits into its case.

IV. DISPOSITION

21. For the foregoing reasons, pursuant to Rules 54, 94 (B), and 89 (C) the Chamber

GRANTS the Request to Reply;

GRANTS the Motion **IN PART**;

ADMITS into evidence the documents bearing Rule 65 *ter* numbers; 602, 819, 869, 3656, 8313, 8444, 8461, 9878, 12986, 14184, 14192, 14200, 14506a, 14509, 19957, 20548, 22318a, 22847a, 28732, 28733, 28734, 28735, 28767, 28768, 28769, 28770, 28771, 28772, 28773, 28774, 28775, 28776, 28777, 28778, 27978 (e), (f), (g) (h), and i, 28779;

INSTRUCTS the Prosecution to upload the revised and redacted English translation of the document bearing Rule 65 *ter* number 8429a into eCourt in accordance with the instructions in Paragraph 17;

ADMITS the document bearing Rule 65 *ter* number 8429a into evidence once the Prosecution has uploaded the revised and redacted English translation of the document into eCourt;

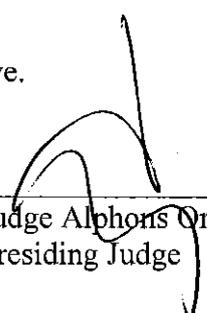
⁴⁰ Response, para. 4.

DENIES admission into evidence of the documents bearing Rule 65 *ter* numbers 812, 2391 and 11642 without prejudice;

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; and

DENIES the remainder of the Motion

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]