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 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: **2 August 2016**

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

FOURTH 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 seised 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.

Decision on Defence Motion in Relation to Timing of Final Briefs and Closing Arguments

2. On 23 June 2016, the Defence filed a motion requesting an extension of time to file the final trial briefs in this case ("Extension Motion").[1] On 29 June, the Prosecution responded, opposing the Extension Motion.[2] The Chamber recalls that, due to several uncertainties in relation to pending evidentiary matters, it has not set a fixed deadline for the final trial briefs. On 12 April 2016, the Chamber informed the parties that they should expect to file their final trial briefs by 1 September 2016. On 8 July 2016, the Chamber informed the parties that the new *provisional* deadline for the final trial briefs was 3 October 2016.[3] The Chamber will take the arguments of the Defence into consideration when setting the fixed deadline for the final trial briefs and closing arguments. Setting such dates at this stage is premature because the Defence case has yet to be closed.

Decision on Defence Motion in Response to Registry Obstruction

3. In the Extension Motion, the Defence announced its intention to submit a separate filing detailing the information technology ("IT") problems it has encountered during its final trial brief preparations.[4] On 23 June, the Defence submitted the announced supplemental filing to the Registry as a joint motion signed by Defence counsel and the head of the Tribunal's IT Support Section ("Supplemental Motion"). The Registry rejected the filing as it had been submitted jointly with a non-party to the proceedings. On 26 June, the Defence submitted a public filing to the Registry requesting the Chamber order the Registry to file the Supplemental Motion ("Intervention Motion"). The Registry rejected this filing on the basis that its public dissemination could expose the Tribunal's IT system to further risk. On 28 June, the Defence requested the Chamber to (i) make a determination as to whether the Intervention Motion can be filed publicly; (ii) make a determination as to whether the Registry's actions with regard to the Defence's filings were appropriate; and (iii) in the alternative to both of the above, declare a mistrial ("Obstruction

1 Defence Motion Requesting 7 December 2016 for the Final Brief and 12 January 2017 for Closing Arguments, 23 June 2016. The Extension Motion also contained a request to exceed the word limit. Given the subject matter of the motion, the Chamber grants the request to exceed the word limit in the Extension Motion. On 23 and 27 June, the Registry filed submissions in relation to the Extension Motion.

2 Prosecution Response to Defence Motion Requesting 7 December 2016 for the Final Brief and 12 January 2017 for Closing Arguments, 29 June 2016.

3 T. 44217.

4 Extension Motion, para. 37.

Motion").[5] On the same day, the Registry filed submissions in relation to the Supplemental Motion and the Obstruction Motion.[6] On 29 June, in a separate filing, the Defence requested that the Chamber issue an order making "all filings related to this matter" public.[7]

4. Having considered the submissions of the Defence and the Registry on the matter, the Chamber finds that the Registry acted appropriately. The Registry can make submissions pursuant to Rule 33 (B) of the Rules. However units within the Registry do not have standing to make a joint submission with a party to the proceedings. Therefore it was correct of the Registry to reject the Supplemental Motion. The Defence could have rectified that situation, for example by filing a submission on its own and attaching a declaration by the head of the Tribunal's IT Support Section. In relation to the status of the Intervention Motion, the Chamber clarifies that while the right to a fair trial includes the right to a public trial, this does not mean that every filing must be public. The Chamber is in control of the proceedings and decides what information can be made public and what information must remain confidential. The Chamber will refrain from analysing whether the Registry correctly followed its internal guidelines in advising the Defence on whether its filings complied with all regulations. The most important issue is whether the Intervention Motion can be filed publicly. Although the Chamber considers that the public nature of the proceedings to be of great importance, the Chamber finds that the publication of the detailed IT information contained in the Intervention Motion may put the Tribunal's IT system at risk. Under these circumstances, the Chamber finds that the Intervention Motion cannot be filed publicly and that the Registry acted appropriately in these circumstances.[8] In relation to the Defence's request for "all filings related to this matter" to be public, the Chamber **INSTRUCTS** the Defence to clarify exactly which filings it is referring to and make specific submissions in this regard.

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5 The Chamber clarifies that it is neither seised of the Supplemental Motion nor of the Intervention Motion, as these motions were never filed before the Chamber through the formal channels.

6 Registrar's Submission Concerning Proposed Defence Filings and Reasons for Confidentiality of Tribunal Network Information, 28 June 2016 (Confidential).

7 Defence Response to Registry Filing of 27 June 2016, 29 June 2016 (Confidential), para. 16.

8 With regard to the request for a mistrial, the Chamber notes that the Defence only makes this request in the alternative to its other requests. In other words, only if the Chamber were to refuse to make a determination as to whether the Intervention Motion can be filed publicly and to make a determination as to whether the Registry's actions with regard to the Defence's filings were appropriate, is a finding of a mistrial requested. As the Chamber has made such determinations, it finds that the alternative request is moot.

Decision on Defence Renewed Bar Table Motion for the Admission of the Document Bearing Rule 65 *ter* 1D00169

5. On 18 January 2016, the Defence filed its third bar table motion tendering into evidence, *inter alia*, the document bearing Rule 65 *ter* number 1D00169, a Ministry of Interior report which provides information about the Army of Bosnia-Herzegovina having units and weapons in the TV building.[9] On 16 February, the Prosecution responded, not taking a position on its admission.[10] On 8 June, the Chamber issued its decision admitting the document into evidence but instructing the Defence to reduce the original to match the excerpt uploaded as the translation.[11] The Registry subsequently assigned exhibit number D2015 to this document. On 17 June, the Defence filed a renewed bar table motion re-tendering the document with a complete translation.[12] On 21 June the Prosecution responded not opposing its admission. The Chamber **GRANTS** the Defence motion and **INSTRUCTS** the Registry to replace the current translation of exhibit D2015 with the document uploaded into eCourt under Doc ID 1D31-1015.

Decision on Defence Renewed Bar Table Motion for the Admission of the Document Bearing Rule 65 *ter* 1D03284

6. On 18 January 2016, the Defence filed its fifth bar table motion tendering into evidence, *inter alia*, the document bearing Rule 65 *ter* number 1D03284, a letter signed by Nedeljko Prstojević which provides information about Bosnian-Muslim paramilitary forces from Sarajevo attacking Serb civilians.[13] On 1 March, the Prosecution responded, not opposing its admission, subject to the Defence submitting a complete CLSS English translation.[14] On 30 May, the Chamber issued its decision denying without prejudice the admission of this document because, in the absence of a complete translation, it was unable to assess its relevance or probative value.[15] On 10 June, the Defence filed a renewed bar table motion re-tendering this document with a complete

9 Defense Third Motion to Admit Documents from the Bar - Military Power and Structure, 18 January 2016, Annex A, p. 39.
10 Prosecution Response to Defence Third Motion to Admit Documents from the Bar Table - Military Power and Structure, 16 February 2016 (Confidential Annex A), Annex A, p. 13.
11 Decision on Defence's Third Motion for the Admission of Documents from the Bar Table, 8 June 2016, paras 17, 36.
12 Renewed Bar Table Submission as to 65ter #1D00169 (with Confidential Annex), 17 June 2016.
13 Defense Fifth Motion to Admit Documents from the Bar - Enemy Actions, 18 January 2016, Annex A, p. 122.
14 Prosecution Response to Defence Fifth Motion to Admit Document from the Bar Table - Enemy Actions (with Confidential Annex), 1 March 2016, Annex A, p. 29.

translation.[16] On 16 June, the Prosecution confirmed on the record that it did not oppose the document's admission into evidence.[17] The Chamber finds that the document is relevant to the Sarajevo component of the case, observes that it is stamped, and considers that it bears sufficient indicia of reliability and authenticity for the purpose of admission. The Chamber also considers that the Defence has set out with sufficient clarity and specificity how the document would fit into its case. Pursuant to Rule 89 (C) of the Tribunal's Rules of Procedure and Evidence ("Rules"), the Chamber **GRANTS** the Defence motion, **ADMITS** the document into evidence, and **INSTRUCTS** the Registry to assign an exhibit number to the document.

Decision on Defence Motion for Admission of Evidence: Rule 65 *ter* 07157

7. On 1 July 2016, the Defence filed a motion tendering into evidence the document bearing Rule 65 *ter* number 07157, a logistics base report dated 16 September 1992.[18] The Defence submits that it inadvertently did not tender the document into evidence during re-direct examination of Branko Berić and that it only realized the absence of the document during its final trial brief preparation.[19] On 11 July, the Prosecution responded, not opposing admission of the document.[20] The Chamber recalls that in its decision of 31 March 2016, it set a date deadline of 15 April 2016 for the tendering of any documents related to witnesses who previously testified.[21] On an exceptional basis, the Chamber will consider this motion.

8. The Chamber recalls that if the content of a document used during a witness's examination is sufficiently linked to the content of that witness's testimony, the document may be admitted through that witness, even if the witness is unfamiliar with the specific document.[22] The Chamber further recalls that the Defence referred to the document when conducting re-direct examination of Berić and that Berić was questioned about his knowledge of the relevant logistics base.[23] Therefore the Chamber finds that the document is sufficiently linked to Berić's testimony. The Chamber finds that the document relates to the municipalities component of the case, observes that it is signed, and considers that it bears sufficient indicia of reliability for the purpose of admission. Pursuant to Rule

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15 Decision on Defence's Fifth Motion for the Admission of Documents from the Bar Table, 30 May 2016, paras 29, 42.
16 Renewed Bar Table Submission as to 65ter 1D03284 (with Confidential Annex), 10 June 2016.
17 T. 44214-44215.
18 Motion for Admission of Evidence: 65 *ter* Document 07157, 1 July 2016.
19 Motion for Admission of Evidence: 65 *ter* Document 07157, 1 July 2016, paras 8-9.
20 Prosecution Response to Defence Motion for Admission of Evidence: 65 *ter* Document 07157, 11 July 2016, para. 1.
21 First Defence Case Omnibus Decision, 31 March 2016, para. 2.
22 *See* T. 4132-4135.
23 T. 32884-32885.

89 (C) of the Rules, the Chamber **GRANTS** the Defence motion, **ADMITS** the document into evidence, and **INSTRUCTS** the Registry to assign an exhibit number to the document.

Individual Documents

9. *D1278.* On 2 June 2016, the Chamber denied without prejudice the admission into evidence of the document that had previously been marked for identification as D1278, firing tables for light mortars tendered by the parties pursuant to a joint submission, because the parties did not provide the required English translation.[24] On 16 June, the Defence emailed the Chamber and the Prosecution, advising that a complete translation had been uploaded into eCourt under Doc ID 1D31-1279. The Chamber considers the Defence email of 16 June to be a re-tendering of D1278. The Chamber observes that the document relates to the Sarajevo component of the case and bears sufficient indicia of reliability for the purposes of admission. The Chamber **INSTRUCTS** the Registry to replace the current translation with the complete version and, pursuant to Rule 89 (C) of the Rules, **ADMITS** it into evidence. The Prosecution has one week to revisit the matter, if necessary.

10. *P4454.* On 17 December 2013, the Chamber admitted exhibit P4454 into evidence.[25] On 18 July 2016, the Prosecution emailed the Chamber and the Defence advising that a corrected English translation had been uploaded into eCourt under Doc ID Y000-0689-1 ET. The Chamber **INSTRUCTS** the Registry to replace the current translation with the corrected version. The Defence has one week to revisit the matter, if necessary.

11. *P5077.* On 13 February 2014, the Chamber admitted exhibit P5077 into evidence.[26] On 25 July 2016, the Prosecution emailed the Chamber and the Defence advising that a corrected English translation had been uploaded into eCourt under Doc ID 0425-5919-1 ET. On 26 July, the Defence responded by email that it did not object to the corrected translation replacing the current translation. The Chamber **INSTRUCTS** the Registry to replace the current translation with the corrected version.

12. *P4258.* On 11 February 2014, the Chamber admitted exhibit P4258 into evidence. On 27 July 2016, the Prosecution emailed the Chamber and the Defence advising that a corrected BCS

[24] Second Defence Case Omnibus Decision, 2 June 2016, para. 1.
[25] Decision on Prosecution Motion for Admission of Documents from the Bar Table (Sarajevo Documents), 17 December 2013, para. 20.
[26] Decision on Prosecution Motion for Admission of Documents from the Bar Table (Military and Residual Documents), 13 February 2014, para. 26.

version and a final CLSS English translation had been uploaded into eCourt under Rule 65 *ter* number 00729a. The Chamber **INSTRUCTS** the Registry to replace the current exhibit with the document bearing Rule *ter* number 00729a and gives the Defence 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 August 2016
At The Hague
The Netherlands

[Seal of the Tribunal]