

**UNITED
NATIONS**



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-04-81-T

Date: 1 December 2010

Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Pedro David
Judge Michèle Picard

Registrar: Mr. John Hocking

Decision of: 1 December 2010

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR THE
ADMISSION OF EVIDENCE FROM THE BAR TABLE**

The Office of the Prosecutor

Mr. Mark Harmon

Counsel for the Accused

Mr. Novak Lukić
Mr. Gregor Guy-Smith

TRIAL CHAMBER I (“Trial Chamber”) of the 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 (“Tribunal”) is seised of the “Defence Motion for the Admission of Evidence from the Bar Table”, filed publicly with public Annexes A, C, D and confidential Annex B on 5 November 2010 (“Motion”), and hereby renders its Decision.

I. SUBMISSIONS

1. In its Motion the Defence requests that the Trial Chamber admit into evidence various documents (“Proposed Documents”) from the bar table.¹ The Defence submits that the Proposed Documents are relevant and of probative value.²

2. On 19 November 2010, the “Prosecution Response to Defence Bar Table Motion dated 4 November 2010 and Defence Motion to Amend 65ter List and Second Bar Table Motion dated 8 November 2010” was filed publicly (“Response”), wherein the Prosecution objects to the admission of six Proposed Documents and took issue with Defence’s characterisation of the content of one Proposed Document.³

II. APPLICABLE LAW

3. The law on admission of the documents from the bar table has been set by the Trial Chamber in its previous decisions.⁴

III. DISCUSSION

4. The Trial Chamber notes that the Prosecution does not oppose admission of the following Proposed Exhibits in relation to which the Trial Chamber is satisfied that the Defence has shown sufficient relevance and probative value: 65 *ter* numbers 00460, 01993, 04966, 05153, 00002D, 00003D, 00008D, 00009D, 00015D, 00017D, 00018D, 01121D, 01127D, 00026D, 00044D, 00051D, 00071D, 00080D, 00320D, 00391D, 00397D, 00425D, 00434D, 00449D, 00508D, 00512D, 00514D, 00528D, 00531D, 00553D, 00604D, 00614D, 00637D, 00705D, 00707D, 00709D, 00712D, 00714D, 00724D, 00725D, 00733D, 00746D, 00753D, 00757D, 00775D, 00776D, 00839D, 00853D, 00854D, 00863D, 00865D, 00893D, 00894D, 00895D, 00899D, 00901D, 00902D, 00903D, 00904D, 00905D, 00906D, 00907D, 00908D, 00909D, 00910D, 00911D, 00912D, 00913D, 00914D, 00915D, 00916D, 00917D, 00918D, 00919D, 00920D,

¹ Motion, paras 1, 6.

² Motion, para. 5, Annexes A-D.

³ Response, paras 2, 8-13.

00979D, 00980D, 00985D, 00986D, 00988D, 00989D, 00990D, 00991D, 00992D, 00994D, 00995D, 00996D, 01005D, 01008D, 01012D, 01014D, 01040D, 01071D, 01079D, 01103D, 01163D, 01199D, 01173D, 01174D, 01179D, 01180D, 01185D, 01260D, 02034D, 02039D, 02043D, 02059D, 02060D, 02062D, 02063D, 02065D, 02066D, 02120D, 02150D, 02151D, 02163D, 03048, 05001D, 05002D, 05003D, 05004D, 05005D, 01408.1D, 01408.1D, 01408.3D, 01408.4D, 01408.5D, 01408.6D, 05006D, 03373D, 05007D, 05008D, 05009D, 05010D, 00287D, 00288D, 05013D, 05014D, 05016D, 05017D, 05018D, 05019D, 05020D, 00189D, 01400D, 01400.1D, 05021D, 05022D, 01400.3D, 01400.4D, 01400.5D, 05023D, 05025D, 05026D, 05027D, 05028D, 05029D, 00120D, 05030D, 05031D, 00117D, 05034D, 05035D, 00316D, 05036D, 05037D, 05039D, 05040D, 05041D, 05042D, 00121D, 00123D, 00128D, 00311D, 00362D, 00363D, 00604D, 00599D, 00569D, 00567D, 00565D, 05044D, 01401.2D, 00566D, 00124D, 00122D, 00179D, 00160D, 04940, 02001, 02071, 06022, 06023, 06025, 06047, 06050, 06059, 06063, 06064, 06190, 06200, 06289, 06306, 06434, 06435, 06442, 06443, 06465, 06574, 06630, 06631, 06641, 06648, 06660, 06661, 06700, 06701, 06706, 06719, 06720, 06730, 06731, 07905, 07906, 07908, 07909, 01150D, 01151D, 01146D as well as MFIs D125, D126 and D180.

5. The Trial Chamber notes that the B/C/S copies of the following Proposed Exhibits as uploaded into e-court are illegible: 65 *ter* numbers 01104D, 00523D, 05012D and 05015D. Therefore, the Trial Chamber defers its ruling on their admissibility until legible copies of the documents are received. In relation to 65 *ter* number 00286D, the Trial Chamber notes that the B/C/S copy is illegible and the corresponding English translation reflects this condition - containing mostly clause "illegible" instead of the information the Defence claims it contains. The Trial Chamber finds that in the present state, the document falls short of the requirement of Rule 89. In relation to 65 *ter* number 00993D, while the Trial Chamber finds it is relevant and of probative value and admits it into evidence, it orders the Defence to upload into e-court a better copy of its original.

6. The Trial Chamber notes that 65 *ter* number 00554 appears to be incorrectly translated. 65 *ter* numbers 07907 and 01261D do not have their English translations. The Trial Chamber therefore defers its ruling on their admissibility until a correct/complete translation is provided.

7. The Trial Chamber notes that 65 *ter* number 00499D, in its original B/C/S, is not properly uploaded in e-court, whereas 06001D, 06002D and 06003D are not uploaded at all. Additionally, 65 *ter* numbers 02013D and 06464 have only their English translation uploaded into e-court with no

⁴ See e.g. Decision on Prosecution's First Bar Table Motion, 5 October 2009 (confidential), paras 17-20.

original B/C/S version available. The Trial Chamber defers its ruling on their admissibility until these documents are properly uploaded in e-court.

8. The Trial Chamber notes that 65 *ter* number 00011D has been redacted. Therefore, the Trial Chamber defers its ruling on the admissibility of this document until an unredacted version is uploaded in e-court.

9. The Trial Chamber notes that the following Proposed Exhibits from open sources were reproduced in an unreliable format as printouts from a news database: 65 *ter* numbers 02004D, 02038D and 02141D. Therefore, the Trial Chamber defers its ruling on their admissibility until the versions that are reliable copies of the original news sources are uploaded.

10. The Trial Chamber finds that 65 *ter* numbers 00530, 00019D, 00097D, 00356D, 00783D, 00864D, 00896D, 00987D, 01075D, 01082D, 01168D, 01171D, 01184D, 01188D, 02058D and 00103D lack *prima facie* reliability (e.g. unreliable format or lack of identifying features, stamps and/or signatures, which can lead to the reasonable conclusion that the said documents were nothing but drafts or/and were not sent to their purported recipients) and therefore are not admissible pursuant to Rule 89.

11. The Prosecution opposes the admission of 65 *ter* number 02082D, a map of Sarajevo showing confrontation lines, arguing that it bears no indicia as to the author of the document or the time period to which the marked confrontation lines relate.⁵ The Trial Chamber notes that this map appears to be admitted as Exhibit P1518. The Defence request for the admission of this map is therefore moot.

12. The Prosecution opposes admission of 65 *ter* number 02172D arguing that on its face it appears to be a 1990 publication reproducing a declaration made by President Izetbegović in 1970.⁶ As a consequence, it takes issue with the Defence's submission that the declaration was made immediately prior to the conflict.⁷ The Prosecution further argues that there is nothing to indicate that the document is an official government publication or that in any way it represents the views of either President Izetbegović or the Bosnian Government in 1990.⁸ The Defence argues the declaration is important to show the position of the leaders of the Bosnian government and

⁵ Response, para. 8.

⁶ Response, para. 10.

⁷ *Ibid.* See Motion, Annex A, p. 25.

⁸ Response, para.10.

contradicts witness Muhamed Sacirbey's contention that the Bosnian government was committed to preserving a multi-cultural, multi-ethnic state.⁹

13. The Trial Chamber notes a discrepancy in the English and B/C/S versions of the document. In the English translation, on the title page, the name of the author Izetbegović is preceded by the mentioning of his function as "President of the Presidency of Bosnia and Herzegovina." The original version of the declaration only contains Izetbegović's name, without the additional information regarding his title. Noting that the original declaration was written in 1970 when Izetbegović was not the president of Bosnia and Herzegovina, as a consequence of the discrepancy in the English translation, the Trial Chamber finds that this declaration cannot be treated as a document issued by the Bosnian authorities in their official capacity. Therefore, considering there is no indication that this republished 1970 declaration reflects the views of the 1990 Bosnian government, the Trial Chamber does not find this document sufficiently relevant and of probative value to fulfil the test of Rule 89. Thus, the Trial Chamber rejects admission of 65 *ter* 2172D.

14. The Prosecution objects to the admission of 65 *ter* numbers 2187D-2190D arguing that these photographs do not form part of the official court record of the site visit.¹⁰ The Trial Chamber shares the Prosecution's concerns and finds that in the present form the photographs are not admissible under Rule 89. The Trial Chamber anticipates that a decision will be issued before the end of the trial admitting into evidence the official court record of the site visit.

15. Although the Prosecution does not object to the admission of 65 *ter* number 02103D, it disputes the Defence's characterization of its content.¹¹ The Trial Chamber notes the Prosecution's argument. Nevertheless, it stresses that it is not bound by the Defence's characterization of the factual content of this document and will make its own determination on this matter. The Trial Chamber finds the document sufficiently relevant and of probative value to be admissible under Rule 89.

⁹ See Motion, Annex A, p. 25.

¹⁰ Response, para. 11.

¹¹ Response, para. 12.

IV. DISPOSITION

16. For the reasons set out above, and pursuant to Rule 89(C) of the Rules, the Trial Chamber hereby

GRANTS the Motion in part;

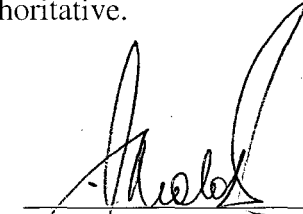
ADMITS into evidence the following Proposed Exhibits: 65ter numbers 00460, 01993, 04966, 05153, 00002D, 00003D, 00008D, 00009D, 00015D, 00017D, 00018D, 01121D, 01127D, 00026D, 00044D, 00051D, 00071D, 00080D, 00320D, 00391D, 00397D, 00425D, 00434D, 00449D, 00508D, 00512D, 00514D, 00528D, 00531D, 00553D, 00604D, 00614D, 00637D, 00705D, 00707D, 00709D, 00712D, 00714D, 00724D, 00725D, 00733D, 00746D, 00753D, 00757D, 00775D, 00776D, 00839D, 00853D, 00854D, 00863D, 00865D, 00893D, 00894D, 00895D, 00899D, 00901D, 00902D, 00903D, 00904D, 00905D, 00906D, 00907D, 00908D, 00909D, 00910D, 00911D, 00912D, 00913D, 00914D, 00915D, 00916D, 00917D, 00918D, 00919D, 00920D, 00979D, 00980D, 00985D, 00986D, 00988D, 00989D, 00990D, 00991D, 00992D, 00993D, 00994D, 00995D, 00996D, 01005D, 01008D, 01012D, 01014D, 01040D, 01071D, 01079D, 01103D, 01163D, 01199D, 01173D, 01174D, 01179D, 01180D, 01185D, 01260D, 02034D, 02039D, 02043D, 02059D, 02060D, 02062D, 02063D, 02103D, 02065D, 02066D, 02120D, 02150D, 02151D, 02163D, 03048, 05001D, 05002D, 05003D, 05004D, 05005D, 01408.1D, 01408.1D, 01408.3D, 01408.4D, 01408.5D, 01408.6D, 05006D, 03373D, 05007D, 05008D, 05009D, 05010D, 00287D, 00288D, 05013D, 05014D, 05016D, 05017D, 05018D, 05019D, 05020D, 00189D, 01400D, 01400.1D, 05021D, 05022D, 01400.3D, 01400.4D, 01400.5D, 05023D, 05025D, 05026D, 05027D, 05028D, 05029D, 00120D, 05030D, 05031D, 00117D, 05034D, 05035D, 00316D, 05036D, 05037D, 05039D, 05040D, 05041D, 05042D, 00121D, 00123D, 00128D, 00311D, 00362D, 00363D, 00604D, 00599D, 00569D, 00567D, 00565D, 05044D, 01401.2D, 00566D, 00124D, 00122D, 00179D, 00160D, 04940, 02001, 02071, 06022, 06023, 06025, 06047, 06050, 06059, 06063, 06064, 06190, 06200, 06289, 06306, 06434, 06435, 06442, 06443, 06465, 06574, 06630, 06631, 06641, 06648, 06660, 06661, 06700, 06701, 06706, 06719, 06720, 06730, 06731, 07905, 07906, 07908, 07909, 01150D, 01151D, 01146D as well as MFIs D125, D126 and D180;

DEFERS its ruling as to admissibility of 65ter numbers 00011D, 00499D, 00523D, 00554, 01104D, 02004D, 02013D, 02038D, 02141D, 05012D, 05015D, 06001D, 06002D, 06003D, 01261D, 06464, and 07907;

DENIES the remainder of the Motion;

REQUESTS the Registry to assign exhibit numbers to the Proposed Exhibits admitted into evidence.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this first day of December 2010

At The Hague

The Netherlands

[Seal of the Tribunal]