



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-95-5/18-T

Date: 17 December 2010

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 17 December 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON SECOND MOTION FOR ADMISSION OF EVIDENCE FROM BAR
TABLE: GENERAL MICHAEL ROSE**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS 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 Accused’s “Second Motion For Admission of Evidence From Bar Table: General Michael Rose”, filed on 1 November 2010 (“Second Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. On 28 October 2010, the Chamber issued the “Decision on the Admission of Evidence From Bar Table: General Michael Rose” (“First Bar Table Decision – General Rose Documents”), wherein, pursuant to Rule 89 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), and considering the Chamber’s “Order on Procedure for Conduct of Trial” filed on 8 October 2009 (“Order”), it denied the Accused’s “Motion for Admission of Evidence From Bar Table: General Michael Rose” (“First Motion”) without prejudice, as the Accused had failed to explain how each of the 17 documents tendered for admission into evidence from the bar table (“Documents”) fit into his case, rendering the Chamber unable to properly assess the Documents’ probative value.

2. On 1 November 2010, the Accused filed the Second Motion, again requesting the admission into evidence of the Documents from the bar table.¹ As with the First Motion, in the Second Motion the Accused sets out the Rule 65 *ter* number, date, brief description, and relevance of each document, as well as a brief description of how each Document fits into his case. The Accused also responds to a challenge to the admissibility of Documents 12 and 14, made by the Office of the Prosecutor (“Prosecution”) in the “Response to Karadžić’s Motion for Admission from the Bar Table: General Michael Rose”, filed on 21 October 2010 (“First Response”), on the basis that it could not verify the authenticity of the two documents, as the original documents were not uploaded into ecourt.² The Accused submits that Documents 12 and 14 were previously admitted in the case of *Prosecutor v. Galić*, and, therefore, they bear sufficient indicia of authenticity to be admitted in his trial.³ He further notes that he requested the original B/C/S versions of the documents from the Tribunal’s Court Management and Support Services Section, but it was unable to locate them.⁴

¹ The Documents have Rule 65 *ter* numbers: 10352, 1D2449, 1D2452, 1D2454, 1D2456, 1D2469, 1D2470, 1D2473, 1D2477, 1D2480, 1D2488, 1D2510, 1D2513, 1D2516, 1D2526, 1D2530, 1D2551.

² First Response, para. 5. The relevant Rule 65 *ter* numbers are 1D2510 and 1D2551, respectively.

³ Second Motion, fn. 3.

⁴ Second Motion, fn. 3.

3. On 15 November 2010, the Prosecution filed its “Second Response to Karadžić’s Motion for Admission from the Bar Table: General Michael Rose with Appendix A” (“Second Response”). The Prosecution states that it does not object to the admission of Documents 1-4, 6, 7, 9, 11, 14-16, and 18-20.⁵ However, it asserts that Documents 5, 8, 10, 12, 13, and 17 should not be admitted because they lack relevance and probative value.⁶ The Prosecution also submits that the Accused’s argument that the authenticity of Documents 12 and 14 is established as a result of them being admitted in the *Galić* case is implicitly made pursuant to Rule 94(B) of the Rules. On this basis, the Prosecution withdraws its previous objection regarding the authenticity of these two documents.⁷ It submits that Rule 94(B) is satisfied with respect to Document 14, and thus this document may be admitted. However, it argues that Document 12 should not be admitted because it is not relevant and thus fails to satisfy the second prong of the test under the Rule.⁸

II. Applicable Law

4. Rule 89 of the Rules provides, in relevant part:

- (C) A Chamber may admit any relevant evidence which it deems to have probative value.
- (D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

5. The Trial Chamber recalls, as it has in earlier decisions on requests for admission of evidence from the bar table, that the admission of evidence from the bar table is a practice established in the case-law of the Tribunal.⁹ Evidence may be admitted from the bar table if it is considered to fulfil the above requirements of Rule 89. Once the requirements of the Rule are satisfied, the Chamber maintains discretionary power over the admission of the evidence, including by way of Rule 89(D).¹⁰

6. The Trial Chamber also recalls its Order, which stated with regard to any request for the admission of evidence from the bar table:

the requesting party shall: (i) provide a short description of the document of which it seeks admission; (ii) clearly specify the relevance and probative value of

⁵ Second Response, para. 1.

⁶ Second Response, paras. 3-9.

⁷ Second Response, paras. 10-11.

⁸ Second Response, para. 12.

⁹ Decision on the Prosecution’s First Bar Table Motion, 13 April 2010 (“First Bar Table Decision”), para. 5 (citations omitted); Decision on Prosecution Bar Table Motion for the Admission of Bosnian Serb Assembly Session Records, 22 July 2010, para. 4; First Bar Table Decision – General Rose Documents, para. 5.

¹⁰ First Bar Table Decision, para. 5 (citations omitted).

each document; (iii) explain how it fits into the party's case, and (iv) provide the indicators of the document's authenticity.¹¹

III. Discussion

7. The Chamber has reviewed the Documents along with the information provided by the Accused in the Second Motion. It is satisfied that the requirements of Rule 89 are met in respect of the following documents and considers that the Accused has sufficiently demonstrated how these documents fit into his case: Documents 1-9, 11-16, and 18-20. These documents will, therefore, be admitted into evidence. The Chamber notes that Document 3 (Rule 65 *ter* number 1D2452) has already been admitted through witness Adrianus Van Baal on 28 October 2010, and thus the Accused's request in relation to this document is moot.

8. However, the Chamber is not satisfied as to the relevance and probative value of Documents 10 and 17, or that the Accused has adequately demonstrated how these documents fit into his case. The bases upon which the Chamber has reached its conclusions with regard to these documents are set out below.

9. Document 10 (Rule 65 *ter* number 1D2480) is a letter of protest sent by General Mladić to General de la Presle, dated 24 December 1994. This letter concerns attacks against Serb civilians and their property in the Republika Srpska by the Croatian Army in conjunction with the Army of Bosnia and Herzegovina ("ABiH"). The Accused asserts that this document "tends to support the defence that actions of the VRS, including shelling and sniping, was often in response to actions of the ABiH and not a part of a campaign of ethnic cleansing."¹² The focus of the document is on the actions of the Croatian Army and, in this regard, the Chamber is of the view that it cannot support a submission that VRS actions were in response to those of the ABiH. Furthermore, insofar as the document includes mention of the involvement of the ABiH in offensive actions, the locations mentioned are outside the geographical scope of the Indictment. As such, it is unclear how this document could be used to address VRS acts as alleged in the Indictment. Therefore, the Chamber is not satisfied that there is a sufficient connection between the information contained in the document and the Indictment such that it could be said to be relevant and have probative value to the case.

10. Document 17 (Rule 65 *ter* number 1D2551) is a *Reuters* article dated 28 June 1994, which discusses the collapse in north-central Bosnia and Herzegovina of a one-month ceasefire. The article quotes General Rose as saying that the ABiH has been "the most hostile in the peace

¹¹ Order, Appendix A, Part VII, para. R.

¹² Second Motion, p. 6.

process and constantly breaching the ceasefire [*sic*].” The Accused asserts that the document is relevant both because of this quote, and his accusation, also reported, that the ABiH provoked most of the ceasefire violations in “recent weeks”. He submits that the document “tends to support the defence that the actions of the VRS, including shelling and sniping, was often in response to military actions of the ABiH.”¹³ The Chamber notes that Accused had considerable time for his cross-examination of General Rose and, despite this, the witness was not given the opportunity to comment on what he was recorded as saying in the document. Moreover, the Chamber recalls that it has previously indicated that media reports are unlikely to be considered admissible from the bar table. In its Decision on the First Bar Table Motion, the Chamber stated:

There are certain Proposed Exhibits which the Chamber would be unlikely to consider admissible from the bar table. First, the written media reports would not meet the reliability and probative value requirements without a witness to testify to the accuracy of the information contained therein.¹⁴

Thus, the Chamber considers that Document 17 is not appropriate for admission from the bar table.

IV. Disposition

11. Accordingly, for the reasons set out above, pursuant to Rule 89 of the Rules, the Chamber hereby **GRANTS** the Second Motion **IN PART**, and:

- a) **ADMITS** into evidence Documents 1-9, 11-16, and 18-20; and
- b) **REQUESTS** the Registry (i) to assign exhibit numbers to the documents that have been admitted into evidence by this Decision and (ii) to mark as not admitted the documents with Rule 65 *ter* numbers 1D2480 and 1D2551.

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



Judge O-Gon Kwon
Presiding

Dated this seventeenth day of December 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

¹³ Second Motion, pp. 8-9.

¹⁴ Decision on the First Bar Table Motion, 13 April 2010, para. 12.