



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: 18 July 2011

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: 18 July 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION BAR TABLE MOTION FOR THE ADMISSION OF
RECORDS OF BOSNIAN SERB ORGANS**

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 “Prosecution Motion for the Admission of Records of Bosnian Serb Organs”, filed on 7 June 2011 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Office of the Prosecutor (“Prosecution”) seeks the admission of 110 documents (“Documents”) from the bar table pursuant to Rule 89(C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) on the basis that they are similar in nature to the records of the Bosnian Serb Assembly already admitted by the Chamber from the bar table, that the Chamber has stated that the most efficient method for admission of this type of contemporaneous, documentary evidence was by way of a bar table motion, particularly where the Accused has agreed to their admission, that the relevance of the Documents is undisputed by the parties, and that their admission at this stage of proceedings will facilitate the expeditious conduct of the trial as they will be referred to by numerous witnesses.¹ The Prosecution states that the Documents are records of the following high-level Bosnian Serb bodies: (1) the Presidency of the Serbian Republic of Bosnia and Herzegovina (“SeRBiH”) and the Republika Srpska (“RS”); (2) the Ministerial Council of the Assembly of the Serbian People of Bosnia-Herzegovina; (3) the National Security Council and Government of the SeRBiH (joint meetings); (4) the Government of the SeRBiH and of the RS; (5) the Serbian Democratic Party (“SDS”) Deputies’ Club; and (6) the Supreme Command of the VRS.²

2. The Prosecution states that the Accused informally indicated his agreement to the admission of the Documents by way of electronic correspondence on 23 May 2011.³

II. Applicable Law

3. 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.

¹ Motion, paras. 3–5.

² Motion, para. 1.

³ Motion, para. 4.

4. The Chamber recalls that the admission of evidence from the bar table is a practice established in the case-law of the Tribunal.⁴ Evidence may be admitted from the bar table if it is considered to fulfil the requirements of Rule 89 that it be relevant, of probative value, and bear sufficient indicia of authenticity.⁵ Once these requirements are satisfied, the Chamber maintains discretionary power over the admission of the evidence, including by way of Rule 89(D).⁶

5. The Chamber also recalls its “Order on Procedure for Conduct of Trial” filed on 8 October 2009 (“Order”), which states with regard to any request for the admission of evidence from the bar table that:

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 each document; (iii) explain how it fits into the party’s case, and (iv) provide the indicators of the document’s authenticity.⁷

III. Discussion

6. The Chamber recalls its First Bar Table Decision, where it held that:

While evidence does not need to be introduced through a witness in every circumstance, and there may be instances where it is appropriately admitted from the bar table, it is the Chamber’s view that the most appropriate method for the admission of a document or other item of evidence is through a witness who can speak to it and answer questions in relation to it. The bar table should not generally be the first port of call for the admission of evidence. It is, rather, a supplementary method of introducing evidence, which should be used sparingly to assist the requesting party to fill specific gaps in its case at a later stage in the proceedings.⁸

7. This remains the view of the Chamber and continues to be the general practice in this case. However, the Chamber also recalls its Second Bar Table Decision, where it acknowledged that in relation to documents such as records of the Bosnian Serb Assembly, “the most efficient method by which this type of contemporaneous, documentary evidence could be considered for admission was by way of the bar table”.⁹ The Chamber further noted that:

[I]t is expected that various portions of these documents will be used multiple times throughout this trial and with different witnesses. Moreover, the early admission of the Assembly Session Records will ensure greater clarity and time-saving for both the parties and the Chamber. For these reasons, the Chamber considers that the admission of the

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

⁵ Rule 89(C), (E).

⁶ First Bar Table Decision, para. 5.

⁷ Order, Appendix A, Part VII, para. R.

⁸ First Bar Table Decision, para. 9.

⁹ Second Bar Table Decision, para. 7.

Assembly Session Records is an appropriate use of the bar table as a supplementary, exceptional method for introducing evidence.¹⁰

8. The Chamber considers that this argument applies similarly to the Documents, and is therefore of the view that their admission from the bar table is an appropriate exception to the general practice of the Chamber outlined above. As noted in the Second Bar Table Decision, it remains for the Chamber to assess whether the Documents fulfil the requirements of Rule 89(C).¹¹ The Chamber has therefore reviewed the Documents in order to satisfy itself as to their relevance and probative value.

9. The Chamber firstly notes that the documents with Rule 65 *ter* numbers 00153, 00159, 00170, 01472, and 06079 have previously been admitted with exhibit numbers P2627, P2625, P2908, P2581, and P2586, respectively. The Motion in relation to these documents is therefore moot.

10. The Chamber also notes that no English translation for the document with Rule 65 *ter* number 13738 has been uploaded into e-court. As such, the Chamber cannot assess the relevance, probative value, or authenticity of this record, or whether it may be admitted

11. The Chamber notes that the document with Rule 65 *ter* number 00217 was marked for identification as MFI P1082 on 1 July 2010.¹² In line with the Chamber's position with respect to contemporaneous records outlined above, the Chamber is of the view that this document should now be admitted.

12. The Chamber is satisfied that 94 of the remaining documents, listed below, are relevant and have probative value. It is further satisfied that they bear sufficient indicia of authenticity for the purposes of admission pursuant to Rule 89(C). The Chamber notes that, with the exception of Rule 65 *ter* number 17318, all the documents fall within the period covered by the Third Amended Indictment ("Indictment"), and that they record discussions in various Bosnian Serb organs relating to, *inter alia*: (1) the conflict in Bosnia and Herzegovina ("BiH"); (2) Bosnian Serb military strategy; (3) non-discipline and behaviour in the VRS; (4) financial and logistical support for the VRS; (5) parallel Bosnian Serb institutions established by the SDS in BiH; (6) the structure and functions of various organs of RS; (7) detention and prisoner exchange; (8) paramilitary groups; (9) humanitarian issues including refugees, aid, convoys, and humanitarian organisations; (10) crimes committed by and against Serbs; (11) import of weapons by the Muslim and Croat sides; (12) border controls and checkpoints in the RS; (13)

¹⁰ Second Bar Table Decision, para. 7.

¹¹ Second Bar Table Decision, para. 8.

¹² Hearing, T. 4470 (1 July 2010).

international negotiations; (14) military courts; and (15) NATO and UNPROFOR. With regard to the document with Rule 65 *ter* number 17318 which falls outside the Indictment period, the Chamber considers that it is relevant and probative as it records discussion of the Dayton Peace Agreement, including its implementation.¹³ The documents with the following Rule 65 *ter* numbers will, therefore, be admitted into evidence:

00038, 00111, 00112, 00113, 00116, 00117, 00118, 00119, 00120, 00131, 00132A, 00133, 00134, 00136, 00138, 00139, 00142, 00143, 00145, 00147, 00149, 00150, 00155, 00157, 00158, 00160, 00161, 00163, 00164, 00166, 00169, 00174, 00175, 00179, 00180, 00181, 00182, 00183, 00188, 00190, 00192, 00195, 00197, 00198, 00203, 00206, 00207, 00208, 00209, 00210, 00211, 00213, 00214, 00215, 00216, 00218, 05984, 05986, 05988, 05996, 06076, 06077, 06080, 06584, 06659, 11453, 13508, 13687, 13752, 17306, 17317, 17318, 17319, 18010, 18052, 18053, 18054, 18055, 18056, 18057, 18058, 18061, 18063, 18064, 18065, 18066, 18067, 18069, 18070, 18074, 18078, 18079, 18164, and 22806.

13. The Chamber is not satisfied of the relevance of the remaining nine documents, and as such their admission is denied at this stage. This finding does not preclude the Prosecution from seeking the admission of these documents at a later stage, in line with the general practice of the Chamber. The documents with the following Rule 65 *ter* numbers will therefore not be admitted into evidence at this stage:

00123, 00126, 00128, 00130, 00137, 00140, 00141, 00154, and 00199.

IV. Disposition

14. Accordingly, the Trial Chamber, pursuant to Rule 89 of the Rules, hereby **GRANTS** the Motion **IN PART** and:

1) **ADMITS** into evidence the documents with Rule 65 *ter* numbers:

00038, 00111, 00112, 00113, 00116, 00117, 00118, 00119, 00120, 00131, 00132A, 00133, 00134, 00136, 00138, 00139, 00142, 00143, 00145, 00147, 00149, 00150, 00155, 00157, 00158, 00160, 00161, 00163, 00164, 00166, 00169, 00174, 00175, 00179, 00180, 00181, 00182, 00183, 00188, 00190, 00192, 00195, 00197, 00198, 00203, 00206, 00207, 00208, 00209, 00210, 00211, 00213, 00214, 00215, 00216, 00218, 05984, 05986, 05988, 05996, 06076, 06077, 06080, 06584,

¹³ See Second Bar Table Decision, para. 10.

06659, 11453, 13508, 13687, 13752, 17306, 17317, 17318, 17319, 18010, 18052, 18053, 18054, 18055, 18056, 18057, 18058, 18061, 18063, 18064, 18065, 18066, 18067, 18069, 18070, 18074, 18078, 18079, 18164, and 22806.

- 2) **INSTRUCTS** the Registry to mark as admitted the document marked for identification as MFI P1082.
- 3) **DECLARES** the Motion moot in relation to the documents with Rule 65 *ter* numbers 00153, 00159, 00170, 01472, and 06079.
- 4) **DENIES** the remainder of the Motion.
- 5) **REQUESTS** the Registry to assign exhibit numbers to each of the documents admitted into evidence by this decision.

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



Judge O-Gon Kwon
Presiding

Dated this eighteenth day of July 2011
At The Hague
The Netherlands

[Seal of the Tribunal]