



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: 22 May 2012

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: 22 May 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR THE ADMISSION OF EVIDENCE
FROM THE BAR TABLE (SREBRENICA)**

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’s Bar Table Motion for the Admission of Documents (Srebrenica) with Public Appendices A and B, and Confidential Appendices C and D”, filed on 4 May 2012 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Office of the Prosecutor (“Prosecution”) seeks the admission of 175 items related to the Srebrenica component of the case (“Items”) from the bar table pursuant to Rule 89(C) of the Rules of the Procedure and Evidence of the Tribunal (“Rules”).¹ The majority of the Items originate from civilian and military authorities of the Republika Srpska (“RS”) and from various agencies of the United Nations (“UN”).² The Prosecution submits that it has identified how each item is relevant, probative, and fits into its case in Appendix B and confidential Appendix D to the Motion.³ The Prosecution also notes that the Accused was provided with an opportunity to comment on each of the Items and that his position is reflected in a separate column in Appendix B and confidential Appendix D.⁴

2. The Accused objects to the admission of 41 of the Items. More specifically, he objects to the admission of 12 of the Items on the basis that they should have been discussed with witnesses or included in a witness statement.⁵ The Accused also objects to the admission of three of the Items on the basis that they are irrelevant to the crimes charged in the Third Amended Indictment (“Indictment”).⁶ In relation to 17 of the Items, the Accused objects to their admission on the basis that they are “irrelevant/and or cumulative”.⁷ The Accused further objects to the admission of six of the Items on the basis that they are news reports and, as such,

¹ The Chamber notes that the Prosecution erroneously indicates that it seeks the admission of 177 Items when only 175 are in fact sought for admission, excluding document with Rule 65 *ter* number 10902 which has now been admitted as P5018.

² Some of the Items emanate from newspapers and media agencies, *see* documents with Rule 65 *ter* numbers 11030, 13613.

³ Motion, para. 2, Appendix B, confidential Appendix D.

⁴ Motion, para. 2, Appendix B, confidential Appendix D.

⁵ Motion, para. 11, Appendix B, referring to documents with 65 *ter* numbers 04402, 07261, 09219, 09364, 13886, 18970, 21972, 22807, 22808, and 22812 in relation to Manojlo Milovanović; 03989 in relation to Christine Schmitz; and 06506 in relation to Anthony Banbury

⁶ Motion, para. 12, Appendix B, referring to documents with 65 *ter* numbers 22802, 22803, and 22804.

⁷ Motion, para. 13, Appendix B referring to documents with 65 *ter* numbers 01901, 03847, 04070, 11220, 11364, 13417, 13438, 13555, 16207, 16558, 21538, 21990, 22805, 22809, 22825, 22826, and 22830.

inadmissible from the bar table.⁸ Finally, the Accused objects to the admission of three specific documents, which will be examined in more detail below.⁹

3. Having been instructed by the Chamber, via email of 4 May 2012, to respond to the Motion by 11 May 2012, the Accused filed his “Response to Prosecution Srebrenica Bar Table Motion” on 7 May 2012 (“Response”), wherein he renews the objections already included in Appendix B to the Motion and confidential Appendix D, and made in relation to other bar table motions filed by the Prosecution.¹⁰

II. Applicable Law

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

- (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.
- (E) A Chamber may request verification of the authenticity of evidence obtained out of court.

5. The Chamber recalls that while the most appropriate method for the admission of a document is through a witness who can speak to it and answer questions in relation thereto, admission of evidence from the bar table is a practice established in the case-law of the Tribunal.¹¹ Evidence may be admitted from the bar table if it fulfils the requirements of Rule 89, namely that it is relevant, of probative value, and bears sufficient indicia of authenticity. Once these requirements are satisfied, the Chamber maintains discretionary power over the admission of the evidence, including by way of Rule 89(D), which provides that it may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.¹²

⁸ Motion, para. 15, Appendix B, referring to documents with 65 *ter* numbers 01375, 01393, 02308, 11030, 13613, and 13729.

⁹ Motion, paras. 19–21, Appendix B, referring to documents with 65 *ter* numbers 02372, 03999, and 35025.

¹⁰ These are Response to First Bar Table Motion for Admission of Intercepts, 23 April 2012, paras. 5–17; Response to Sarajevo Bar Table Motion, 7 May 2012, paras. 2–3; Response to Prosecution Third Bar Table Motion for the Admission of Intercepts, 7 May 2012, paras. 2–3; Response to Prosecution’s Sarajevo Bar Table Motion, 7 May 2012, para. 5.

¹¹ Decision on Prosecution’s First Bar Table Motion, 13 April 2010 (“First Bar Table Decision”), para. 5.

¹² First Bar Table Decision, para. 5.

Admission from the bar table is a mechanism to be used on an exceptional basis since it does not necessarily allow for the proper contextualisation of the evidence in question.¹³

6. The Chamber also recalls its “Order on Procedure for Conduct of Trial”, issued on 8 October 2009 (“Order on Procedure”), 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.¹⁴

7. Rule 94(B) of the Rules allows the Chamber to take judicial notice of the authenticity of documentary evidence. To take such judicial notice, the Chamber shall assess whether the documentary evidence in question was sufficiently authenticated and admitted into evidence in a previous trial.¹⁵

III. Discussion

8. The Chamber recalls that in seeking the admission of evidence from the bar table it is incumbent upon the offering party to demonstrate, with sufficient clarity and specificity, where and how each of the documents fits into its case.¹⁶ The Chamber is satisfied with the explanations provided by the Prosecution as to how each of the Items fits into its case.¹⁷

9. With respect to the requirement that the evidence offered from the bar table bear sufficient indicia of authenticity, the Chamber first notes that the Accused does not contest the authenticity of any of the Items.¹⁸ The Chamber also notes the Prosecution’s assertion that the “majority” of the Items have been admitted in prior proceedings, and that they should, consequently, “be presumed authentic pursuant to Rule 94(B)”.¹⁹ The Chamber recalls that the Motion is one for the admission of evidence from the bar table pursuant to Rule 89(C), and not one for judicial notice of the authenticity of documentary evidence pursuant to Rule 94(B). The Chamber considers that, with the exception of document with 65 *ter* number 35025, the *prima facie* authenticity of the Items, for the purposes of admission pursuant to Rule 89(C), can be

¹³ First Bar Table Decision, paras. 9, 15.

¹⁴ Order on Procedure, Appendix A, Part VII, para. R.

¹⁵ Decision on the Prosecution’s First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component, 31 March 2010 (“Judicial Notice Decision”), para. 16; Decision on the Prosecution’s motion for Judicial Notice of Intercepts Related to the Sarajevo Component and Request for Leave to Add One Document to the Rule 65 *ter* Exhibit List, 4 February 2011, paras. 12–17.

¹⁶ First Bar Table Decision, para. 6.

¹⁷ Motion, paras. 4–7, Appendix B and confidential Appendix D.

¹⁸ Motion, para. 7, Appendix B and confidential Appendix D.

¹⁹ Motion, para. 10.

readily established from the other indicia of authenticity identified in the Motion and on the Items themselves. Consequently, with the exception of document with 65 *ter* number 35025, the Chamber will not take into consideration the prior admission of the Items in other cases. The Chamber, having itself analysed the Items with the exception of document with 65 *ter* number 35025, is of the view that they do bear sufficient indicia of authenticity, such that they may be admitted into evidence from the bar table, if the remaining requirements of Rule 89(C) are met.²⁰

10. Document with 65 *ter* number 35025 is the transcript of an intercepted conversation dated 14 July 1995. The Chamber recalls that it “considers intercepts to be a special category of evidence given that they bear no indicia or authenticity or reliability on their face. [...] [T]he authenticity and reliability of intercepts is established by further evidence, such as hearing from the relevant intercept operators or the participants in the intercepted conversation themselves.”²¹ The substance of this document was discussed with a witness in this case who spoke to its contents,²² but its authenticity has not been established through a participant or an operator. The Chamber therefore has to examine whether it can take judicial notice of its authenticity pursuant to Rule 94(B). For the purpose of taking judicial notice of documentary evidence under Rule 94(B), the Chamber must be satisfied that the documentary evidence in question was sufficiently authenticated and admitted into evidence in a previous trial.²³ In Appendix B to the Motion, the Prosecution indicates the cases in which it alleges document with 65 *ter* number 35025 was previously admitted, and also refers to the date of admission and the exhibit number in that case.²⁴ However, the Prosecution does not provide the Chamber with any transcript references or with the title and date of a written decision through which this document may have been admitted. The Chamber is therefore unable to satisfy itself that 65 *ter* number 35025 was sufficiently authenticated and admitted in previous cases. It will thus not take judicial notice of its authenticity and will not admit it from the bar table. Furthermore, the Chamber will not entertain any additional submission on this issue due to the Prosecution’s failure to satisfy, at the time it filed the Motion, one of the basic requirements for seeking judicial notice of the authenticity of this document.

²⁰ See fn. 57 for a reference to Judge Baird’s dissent as to the admission of this document.

²¹ Judicial Notice Decision, para. 9.

²² KDZ122, T. 26170–26174 (13 March 1995) (closed session), wherein Rule 65 *ter* number 35025 was marked for identification as MFIP4581.

²³ See para. 7 *supra*.

²⁴ Motion, Appendix B, p. 74.

11. Having reviewed the Items to which no objection is made,²⁵ the Chamber notes that, with the exception of documents with Rule 65 *ter* numbers 08390 and 10886, all are relevant to the present case and have probative value as they go to one or more of the following: (i) the implementation of Directive 4; (ii) the chain of command in the Army of Republika Srpska (“VRS”); (iii) the co-operation between civilian, police, and military authorities in the RS before and after the Srebrenica events of July 1995; (iv) the communication lines at all levels in the RS, including to and from the Accused; (v) the chronology of events in the Srebrenica area in July 1995; (vi) the restriction of the access to Srebrenica after July 1995; and (vii) the exchange of prisoners after July 1995. Accordingly, the documents bearing the following 65 *ter* numbers shall be admitted into evidence from the bar table: 00596, 01355, 01893, 01923, 01936, 01944, 01946, 01949, 01950, 01955, 01956, 01960, 01961, 01963, 01966, 01985, 01999, 02014, 02015, 02022, 02047, 02048, 02049, 02057, 02076, 02083, 02095, 02097, 02103, 02104, 02109, 02117, 02134, 02156, 02283, 03290, 03508, 03560, 03639, 03649, 03920, 03921, 03922, 03963, 03968, 03970, 03975, 03986, 04058, 04060, 04063, 04064, 04066, 04068, 04086, 04316, 04332, 04400, 04401, 04673, 04674, 04676, 04677, 04725, 06110, 07175, 07587, 07616, 08171, 08428, 08970, 08972, 09036, 09205, 09236, 09261, 09305, 09397, 10884, 10889, 10893, 10901, 11365, 11581, 13304, 13525, 13593, 13700, 13746, 14333, 14376, 14431, 14729, 15299, 15371, 16561, 16559, 16563, 16854, 18173, 19001, 21058, 21115, 21116, 21117, 21118, 21748, 21979, 22025, 22027, 22800, 22810, 22811, 22813, 22817, 22819, 22822, 22823, 22829, 23196, 23673, 23688, 23692, 23693, 23694, 23700, 40219, 40246B,²⁶ and 45054.

12. In relation to 65 *ter* number 08390, the Chamber notes that it emanates from the command of the Herzegovina Corps and quotes an order from the Accused. The Prosecution contends that this document illustrates that the Accused took active steps with regard to command and control of VRS units.²⁷ Similarly, document with 65 *ter* number 10886 emanates from the Eastern Bosnia Corps and recounts the Accused’s visit to Bijeljina on 23 March 1995. The Prosecution asserts that this document illustrates the Accused’s active involvement in and concern with activities of the VRS at the Corps level.²⁸ While this may be the case, for both of these documents the Chamber is of the view that what is of relevance to these proceedings is the Accused’s authority over the units relevant to the crimes charged in the Indictment and at the

²⁵ The Chamber will examine documents with 65 *ter* numbers 02606 and 04232 in paragraph 16 below together with the other media reports.

²⁶ The Chamber notes that the Prosecution erroneously refers to document with 65 *ter* number 40246 when it should be 40246B.

²⁷ Motion, Appendix B, pp. 15–16.

²⁸ Motion, Appendix B, p. 25.

time relevant thereto.²⁹ In this respect, the Herzegovina Corps is not relevant to any of the allegations in the Indictment and while the East Bosnia Corps's area of competence covered Bijeljina, the Indictment charges the Accused with crimes alleged to have occurred in Bijeljina in 1992 only. The Chamber therefore considers that documents with Rule 65 *ter* numbers 08390 and 10886 are not relevant and will thus not be admitted from the bar table.

13. The Chamber will now turn to the 41 documents the admission of which the Accused challenges.

Accused's challenge to admission from the bar table of media reports

14. With respect to documents with 65 *ter* numbers 01375, 01393, 02308, 11030, 11866, 13613, and 13729, the Accused claims they should not be admitted from the bar table as they are news media reports which the Chamber has already ruled would not be admitted from the bar table.³⁰ The Prosecution submits that because documents with 65 *ter* numbers 01375, 01393, 11030, 11866, 13613, and 13729 are interviews with the Accused and Ratko Mladić which “do not contain any information other than the questions asked and answers provided” and “do not include journalistic interpretation”, they are distinguishable from “media items concerning which the accuracy of the provided information may need additional verification.”³¹ The Prosecution further submits that document with 65 *ter* number 02308 is a compilation of news reports tendered to illustrate notice to the Accused of crimes committed after the fall of Srebrenica and that, as such, the Chamber's position as to the exclusion of media reports, should not apply with regard to this document.³²

15. The Chamber recalls that it has previously indicated that *written* media reports are unlikely to be considered admissible from the bar table, stating:

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.³³

16. The Chamber considers this ruling to be clear so that no written media reports are likely to be admitted through the bar table. The fact that such written media reports may be interviews

²⁹ See oral decision on Accused's oral motion to exclude portions of Ewan Brown's expert report, T. 21495 (17 November 2011).

³⁰ Motion, para. 15, Appendix B; Response, para. 2.

³¹ Motion, para. 16.

³² Motion, para. 17.

³³ First Bar Table Decision, para. 12.

with the Accused or other relevant persons and thus consist of questions and answers does not alleviate the Chamber's concern that they may be subject to journalistic analysis or interpretation or may have been manipulated in some other way.³⁴ In relation to document with Rule 65 *ter* number 02308, the Chamber is further of the view that the purpose for which the media report is tendered—namely to illustrate notice to the Accused of crimes committed after the fall of Srebrenica—does not alleviate the Chamber's concern as to these types of documents. As such, the Chamber will not admit into evidence 65 *ter* numbers 01375, 01393, 02308, 11030, 11866, 13613, and 13729. The Chamber notes that the Accused does not object to the admission of documents with Rule 65 *ter* numbers 02606 and 04232, which are excerpts of the transcript of TV interviews with the Accused for which the Chamber does not possess the actual video recordings. Given the Accused's lack of objection and the fact that he is participates himself in the interview, the Chamber considers that these documents may be admitted from the bar table despite the absence of a video broadcast.

Accused's challenge to admission from the bar table of documents which should have been put to witnesses

17. The Accused objects to the admission of 12 of the Items on the basis that they should have been shown to witnesses.³⁵ The Prosecution argues on the contrary that the Chamber has already rejected this argument and that the relevance and probative value of these 12 documents are not outweighed by the need to ensure a fair trial on the sole basis that the Accused has not had an opportunity to cross-examine a witness on these documents.³⁶ The Chamber recalls its earlier finding that a party's failure to tender a document through a witness does not in and of itself prevent it from being tendered from the bar table and that such a document may be admitted where its probative value is not substantially outweighed by the need to ensure a fair trial.³⁷ The Chamber still remains of that view. However, while the Chamber may on an exceptional basis allow for the admission from the bar table of isolated documents which could have been tendered through a witness, this should not be the default position.³⁸ Furthermore, a failure to tender a substantial number of documents through a single witness in order to save time may in fact lead the Chamber to conclude that the probative value of these documents

³⁴ See also Decision on Prosecution's Bar Table Motion for the Admission of Documents Related to the Sarajevo Component, 11 May 2012 ("Bar Table Decision on Sarajevo Documents"), para. 19.

³⁵ Motion, para. 11, Appendix B, referring to documents with 65 *ter* numbers 04402, 07261, 09219, 09364, 13886, 18970, 21972, 22807, 22808, and 22812 (in relation to Manojlo Milovanović); 03989 (in relation to Christine Schmitz); and 06506 (in relation to Anthony Banbury).

³⁶ Motion, para. 11.

³⁷ See Decision on Prosecution's Motion for Admission of Evidence from the Bar Table (Hostages), 1 May 2012, para. 11.

³⁸ Bar Table Decision on Sarajevo Documents, para. 12; Decision on Prosecution's First Bar Table Motion for the Admission of Intercepts, 14 May 2012 ("First Bar Table Decision on Intercepts"), para. 16.

would be substantially outweighed by the need to ensure a fair trial. Bearing this in mind, the Chamber will analyse the 12 documents which are objected to by the Accused on the basis that they should have been put to a witness.

18. There are 10 documents which the Accused contends should have been put to Milovanović or included in his witness statement. Document with Rule 65 *ter* number 07261 is a report dated 1 January 1993 on the situation in the 1st Zvornik Light Infantry Brigade which is signed by Milovanović and addressed, *inter alia*, to the Accused. The Chamber considers that the document is relevant and has probative value, as it goes to the Accused's notice of the military situation down to the brigade level. The document is clear on its face and does not require any further contextualisation. Having determined that the document satisfies the requirements of Rule 89(C) of the Rules, the Chamber does not consider that it should be rejected for admission on the basis that its probative value is substantially outweighed by the need to ensure a fair trial. Accordingly, the Chamber will admit document with Rule 65 *ter* 07261 from the bar table.

19. Documents with Rule 65 *ter* number 09219 and 09364 are combat orders dated 22 January 1993 and 15 February 1993, respectively, which are signed by Milovanović and addressed to the Drina Corps Command (65 *ter* number 09219) and to various units (65 *ter* number 09364). Document with Rule 65 *ter* number 13886 is a document of the VRS Main Staff dated 30 May 1993 entitled "Conclusions from the assessment of the situation". The Chamber considers that these documents are relevant and have probative value, as they go to the implementation of Directive 4. However, the Chamber notes the Prosecution's submission that document with 65 *ter* number 09219 illustrates the objective of the Bosnian Serbs to remove Bosnian Muslims from the Cerska and Žepa regions,³⁹ and that documents with 65 *ter* 09364 and 13886 demonstrate the military operations undertaken to implement the objective of Directive 4.⁴⁰ The scope of Directive 4 was discussed at length during Milovanović's testimony with Milovanović challenging that it contains an order that the Bosnian Muslim population be expelled.⁴¹ Therefore, admitting from the bar table these documents for the purpose of establishing that the objective of the Bosnian Serbs was to remove the Bosnian Muslim population without confronting Milovanović with that interpretation or without giving the Accused an opportunity to cross-examine him on these documents is in the Chamber's view unfair to the Accused. Accordingly, the Chamber considers that the probative value of these

³⁹ Motion, Appendix B, p. 4.

⁴⁰ Motion, Appendix B, pp. 6, 10–11.

⁴¹ Manojlo Milovanović T. 25518–25525 (28 February 2012).

documents is substantially outweighed by the need to ensure a fair trial and will therefore not admit them into evidence from the bar table.

20. Document bearing Rule 65 *ter* number 04402 is a report dated 21 June 1993 emanating from Tactical Group 1 of the VRS and addressed personally to the Drina Corps Commander and to Milovanović. The Chamber considers that this document is relevant and probative as it indicates examples of misinformation by the Bosnian Serbs with regard to combat activities in the Srebrenica area as well as a functioning chain of command in the VRS. Having determined that the document satisfies the requirements of Rule 89(C) of the Rules, the Chamber does not consider that it should be rejected for admission on the basis that its probative value is substantially outweighed by the need to ensure a fair trial. In this respect, the Chamber notes that document with 65 *ter* number 04402 is sufficiently clear on its face and is also contextualised by other documents on the same topic, two of which are not objected to by the Accused and have been dealt with in paragraph 11 above.⁴² Accordingly, the Chamber will admit document with Rule 65 *ter* 04402 from the bar table.

21. Document with Rule 65 *ter* number 18970 is a slip confirming receipt of Directive 7 signed by Živanović and dated 18 March 1995. The Chamber finds that the document is relevant and probative as it indicates that the Drina Corps received Directive 7 on 18 March 1995 and confirmed its receipt back to the VRS Main Staff. During his testimony, Milovanović was questioned extensively about the dissemination of Directive 7 and testified that he only sent it to the 1st Krajina Corps.⁴³ Admitting document with Rule 65 *ter* number 18970 from the bar table for the purpose of establishing that Milovanović disseminated Directive 7 to the Command of the Drina Corps without confronting him with that document or without giving an opportunity to the Accused to cross-examine him on this document is in the Chamber's view unfair to the Accused. Accordingly, the Chamber considers that the probative value of this document is substantially outweighed by the need to ensure a fair trial and will therefore not admit it into evidence from the bar table.

22. Document with Rule 65 *ter* number 22807 is a request dated 6 April 1995 for the permission of departure of persons from the territory of the RS which is signed by Milovanović. Document with Rule 65 *ter* 22808 is a correspondence dated 7 April 1995 signed by Milovanović on this same issue. The Chamber considers that these documents are relevant and probative as they pertain to the discussions on freedom of movement within the Bosnian Serb

⁴² These are documents with 65 *ter* numbers 04400 and 04401.

⁴³ Manojlo Milovanović, T. 25497–25515 (29 February 2012).

civilian authorities, a topic that was discussed extensively during Milovanović's testimony.⁴⁴ Accordingly, the Accused had an opportunity to cross-examine the witness in relation thereto. Having determined that the documents satisfy the requirements of Rule 89(C) of the Rules, the Chamber does not consider that they should be rejected for admission on the basis that their probative value is substantially outweighed by the need to ensure a fair trial. Accordingly, the Chamber will admit documents with Rule 65 *ter* numbers 22807 and 22808 from the bar table.

23. Document with Rule 65 *ter* number 22812 is an order dated 21 May 1995 which is type-signed by Milovanović and addressed to the Command of the 65th Motorised Protection Regiment of the VRS. The Chamber considers that this document is relevant and probative as it relates to the lead-up to the Krivaja 95 order. Having determined that the document satisfies the requirements of Rule 89(C) of the Rules, the Chamber does not consider that it should be rejected for admission on the basis that its probative value is substantially outweighed by the need to ensure a fair trial. In this respect, the Chamber notes that the Accused does not object to the admission of document with 65 *ter* number 22811 on the same issue and that he had the opportunity to cross-examine Richard Butler in relation thereto.⁴⁵ Accordingly, the Chamber will admit document with Rule 65 *ter* number 22812 from the bar table.

24. Finally, document with Rule 65 *ter* number 21972 is an order dated 11 October 1995 related to blocking the enemy offensive on the western RS front signed by Milovanović for Ratko Mladić and addressed to a number of VRS units. The Prosecution contends that this document is relevant to the implementation of Directive 7.⁴⁶ Without further contextualisation, the Chamber is not in a position to ascertain the relevance of this document. The Chamber will therefore not admit it into evidence from the bar table.

25. The Accused also objects to the admission of document with Rule 65 *ter* 03989 on the basis that it should have been used with Christine Schmitz or included in her written statement. The Prosecution contends that this document is relevant to Schmitz's testimony "who provided evidence on the negotiations with VRS and Bosnian Serb civilian representatives regarding the issue of evacuation of local staff together with international organisations in Srebrenica".⁴⁷ The Chamber notes that Schmitz testified extensively on the local staff working with her and their evacuation.⁴⁸ Having reviewed her testimony and this document, the Chamber is not satisfied that tendering this document from the bar table is a sparing use of bar table motions and that this

⁴⁴ Manojlo Milovanović, T. 25525–25537 (29 February 2012).

⁴⁵ Richard Butler, T. 27890–27891 (23 April 2012).

⁴⁶ Motion, Appendix B, p. 120.

⁴⁷ Motion, Appendix B, p. 87.

⁴⁸ Christine Schmitz, T. 26816–26829, 26830–26832, 26838–26843,

document serves to fill any gap in the Prosecution's case. Accordingly, the Chamber will not admit it into evidence from the bar table.

26. The Accused objects to the admission of document with Rule 65 *ter* 06506 on the basis that it should have been put to Anthony Banbury. This document is a fax addressed to Anthony Banbury which attaches a press release from the Accused broadcast on the Bosnian Serb radio on 4 August 1995. The Chamber is of the view that this document is relevant and probative as it pertains to the authority of the Accused and his relationship with Mladić after the then recent events in Srebrenica. Due to the nature of the document which is a press release from the Accused himself and the fact that the Accused does not object to its authenticity, the Chamber does not consider that it should be rejected for admission on the basis that its probative value is substantially outweighed by the need to ensure a fair trial. Accordingly, the Chamber will admit document with Rule 65 *ter* number 06506 from the bar table.

Accused's challenge to admission from the bar table of irrelevant or cumulative documents

27. Next, the Accused objects to the admission of 20 of the Items on the basis that they are irrelevant to the crimes charged in the Indictment for the first three and "irrelevant and/or cumulative" for the remaining 17.⁴⁹ The Prosecution argues that documents with Rule 65 *ter* numbers 22802, 22803, and 22804 are relevant to the Accused's overall command and control position.⁵⁰ In relation to the remaining 17 documents, the Prosecution contends that to the extent that some of them may be "cumulative" in addition to being "corroborative", this is no bar to their admission.⁵¹ Turning first to documents with Rule 65 *ter* numbers 22802, 22803, and 22804, the Chamber notes that they are orders from the Accused ordering the shelling of Dubrava airport in Tuzla in March 1995. The Prosecution argues that these documents demonstrate that orders issued by the Accused followed the proper chain of command within the VRS.⁵² The Chamber is of the view that the Accused's authority and the functioning chain of command within the VRS should be, as much as possible, demonstrated through evidence which relates to the geographical and temporal scope of the Indictment. The Chamber is therefore not satisfied of the relevance of documents with Rule 65 *ter* 22802, 22803, 22804, and will not admit them from the bar table.

⁴⁹ Motion, para. 12 (referring to documents with Rule 65 *ter* number 22802, 22803, and 22804 as being "irrelevant to the crimes charged in the Indictment"), para. 13 (referring to documents with Rule 65 *ter* number 01901, 03847, 04070, 11220, 11364, 13417, 13438, 13555, 16207, 16558, 21538, 21990, 22805, 22809, 22825, 22826, and 22830 as being "irrelevant and/or cumulative").

⁵⁰ Motion, para. 12.

⁵¹ Motion, para. 14.

⁵² Motion, Appendix B, pp. 20–21.

28. Turning now to the 17 documents which the Accused contends are “irrelevant and/or cumulative”, the Chamber has reviewed them and is satisfied that they are all relevant and probative⁵³ to this case as they go to one or more of the following: (i) the Accused’s knowledge of VRS activities in 1994 and early 1995; (ii) the Accused’s relationship with municipal organs; (iii) the presence of VRS units in the Srebrenica area before and during July 1995; (iv) the lead-up to the attack on Srebrenica and the conditions there in July 1995; (v) the presence of Scorpions in Trnovo at the end of July 1995; and (vi) the aftermath of the Srebrenica attack, including the covering up of crimes and the Accused’s knowledge of ongoing terrain searches.

29. As for the Accused’s argument regarding the cumulative and/or repetitive nature of these documents, the Chamber recalls its earlier decision that, when assessing material against the requirements of Rule 89(C), it does not take into account the fact that other exhibits may speak to the same or similar issues as the material before it. On the contrary, the Chamber assesses each item in light of Rule 89(C) of the Rules on a case-by-case basis.⁵⁴ However, this does not mean that the Prosecution can at the end of its case use bar table motions to tender documents which are plainly unnecessary given the extremely voluminous amount of other evidence on similar issues. Having reviewed these documents, the Chamber does not consider that they are plainly unnecessary.

30. Accordingly, the Chamber will admit from the bar table documents with 65 *ter* numbers 01901, 03847, 04070, 11364, 13417, 13438, 13555, 16207, 16558, 21538, 21990, 22805, 22809, 22825, 22826, and 22830.

31. Rule 65 *ter* number 11220 is entitled “Analysis of the execution of combat operations in the operation encoded *Udar/Strike*”. The Prosecution argues that this document “confirms that the scope of the military operations conducted in accordance with Directive 4 was gaining control of ‘Serbian territories’ and forcing out Muslim forces and civilian population”.⁵⁵ Having reviewed the document, the Chamber is satisfied that this document is relevant as it pertains to the implementation of Directive 4. The Chamber, by majority with Judge Baird dissenting as to the document’s authenticity,⁵⁶ is also satisfied that the document is probative. Consequently, the

⁵³ The Chamber refers to paragraph 32 below for a more detailed analysis of document with Rule 65 *ter* number 11220 and refers to Judge Baird’s dissent on this document.

⁵⁴ See Decision on Prosecution’s Motion for the Admission of 68 Sarajevo Romanija Corps Documents from the Bar Table, 16 June 2011, para. 11; see also First Bar Table Decision on Intercepts, para. 11.

⁵⁵ Motion, Appendix B, p. 123.

⁵⁶ While Judge Baird agrees with the majority that document with 65 *ter* number 11220 is relevant to the proceedings, in the absence of any indication as to the date, the source, or the provenance of the document, he disagrees that this document presents sufficient indicia of authenticity to warrant its admission from the bar table. Judge Baird therefore considers that document with 65 *ter* number 11220 may not be admitted from the bar table.

Chamber, by majority with Judge Baird dissenting, will admit document with Rule 65 *ter* number 11220 from the bar table.

Accused's challenge to specific documents

32. Turning now to the last set of the Accused's objections which concern individual documents, the Chamber first notes that it has already dealt with the issue related to the authenticity of document with 65 *ter* number 35025 in paragraph 10 above and will therefore not examine the Accused's objection related to the lack of identification of the speakers.

33. In relation to document with 65 *ter* number 03999, the Chamber notes that it is a working paper from the International Committee of the Red Cross ("ICRC") dated 2 August 1995 and related to the ICRC visit of the Rogatica war admission camp. The Accused objects to the admission of the document on the basis that "ICRC does not agree to make its material available to the defence" and therefore the Prosecution should not be allowed to use ICRC material.⁵⁷ The Prosecution argues that this argument is moot as the document was obtained from the RS Ministry of Interior as part of the Drina Corps Collection.⁵⁸ The Chamber is satisfied that the document is probative and relevant as it demonstrates the concerns of the RS authorities in the wake of the Srebrenica events of July 1995. The Chamber also notes the Prosecution's information as to the chain of custody of the document and is satisfied that, having fulfilled the requirements of Rule 89(C), it may be admitted into evidence from the bar table.

34. Finally, the Accused objects to the admission of document with Rule 65 *ter* number 02372 on the basis that "it should have been the subject of testimony if the prosecution wanted to establish this essential element of Article 7(3)".⁵⁹ This document is a monthly report of the military prosecutor in Bijeljina dated 3 August 1995. The Prosecution argues that it shows that no serious investigation was undertaken in relation to crimes committed in Srebrenica⁶⁰ and that there is no basis for the Accused's challenge that evidence related to certain mode of responsibility may not be admitted from the bar table but that in any event, this document is corroborated by other evidence.⁶¹ The Chamber considers that the document is relevant and probative value as it reflects the number and types of crimes reported in the jurisdiction of the Bijeljina military prosecutor's office in July 1995. The Chamber notes that this document does corroborate other evidence on this topic and that the Accused has had an opportunity to cross-

⁵⁷ Motion, Appendix B, p. 101.

⁵⁸ Motion, para. 20.

⁵⁹ Motion, Appendix B, pp. 103–104.

⁶⁰ Motion, Appendix B, pp. 103–104.

⁶¹ Motion, para. 21.

examine a witness on this issue.⁶² The Chamber therefore considers that the probative value of this document is not substantially outweighed by the need to ensure a fair trial and will admit 65 *ter* number 02372 into evidence from the bar table.

IV. Disposition

35. Accordingly, the Chamber, pursuant to Rule 89(C) of the Rules, hereby **GRANTS** the Motion in part and:

- (a) Unanimously **ADMITS** into evidence documents bearing the following 65 *ter* numbers: 00596, 01355, 01893, 01901, 01923, 01936, 01944, 01946, 01949, 01950, 01955, 01956, 01960, 01961, 01963, 01966, 01985, 01999, 02014, 02015, 02022, 02047, 02048, 02049, 02057, 02076, 02083, 02095, 02097, 02103, 02104, 02109, 02117, 02134, 02156, 02283, 02372, 02606, 03290, 03508, 03560, 03639, 03649, 03847, 03920, 03921, 03922, 03963, 03968, 03970, 03975, 03986, 03999, 04058, 04060, 04063, 04064, 04066, 04068, 04070, 04086, 04232, 04316, 04332, 04400, 04401, 04402, 04673, 04674, 04676, 04677, 04725, 06110, 06506, 07175, 07261, 07587, 07616, 08171, 08428, 08970, 08972, 09036, 09205, 09236, 09261, 09305, 09397, 10884, 10889, 10893, 10901, 11364, 11365, 11581, 13304, 13417, 13438, 13525, 13555, 13593, 13700, 13746, 14333, 14376, 14431, 14729, 15299, 15371, 16207, 16558, 16561, 16559, 16563, 16854, 18173, 19001, 21058, 21115, 21116, 21117, 21118, 21538, 21748, 21979, 21990, 22025, 22027, 22800, 22805, 22807, 22808, 22809, 22810, 22811, 22812, 22813, 22817, 22819, 22822, 22823, 22825, 22826, 22829, 22830, 23196, 23673, 23688, 23692, 23693, 23694, 23700, 40219, 40246B,⁶³ and 45054;
- (b) By majority, Judge Baird dissenting, **ADMITS** into evidence document bearing 65 *ter* number 11220;
- (c) **INSTRUCTS** the Registry to assign exhibit numbers for each of these documents;

⁶² Predrag Drinić, P374 (Transcripts from Prosecutor v. Blagojević, Case No. IT-02-60), T. 10879; P2929 (Witness statement of KDZ531 dated 25 June 2011) (under seal), p. 13; KDZ531, T. 15859–15860 (1 July 2011)(closed session.)

⁶³ The Chamber notes that the Prosecution erroneously refers to document with 65 *ter* number 40246 when it should be 40246B.

(d) **DENIES** the remainder of the Motion and **INSTRUCTS** the Registry to mark MFI P4581 as not admitted.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-second day of May 2012
At The Hague
The Netherlands

[Seal of the Tribunal]