



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: 19 March 2014

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: 19 March 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S BAR TABLE MOTION: DISCLOSURE VIOLATION
DOCUMENTS**

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 seized of the Accused’s public redacted “Bar Table Motion: Disclosure Violation Documents” (“Motion”), filed on 6 March 2014¹ and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Accused seeks the admission of 19 documents² (“Documents”) from the bar table pursuant to Rule 89(C) of the Rules of the Procedure and Evidence of the Tribunal (“Rules”).³ In the Accused’s submission, the Chamber has previously found that the Office of the Prosecutor (“Prosecution”) violated its disclosure obligations under the Rules with respect to the Documents.⁴ The Accused submits that he has identified how each Document is relevant, probative, and fits into his case in Annex A to the Motion.⁵

2. The Prosecution filed the “Prosecution Response to Bar Table Motion: Disclosure Violation Documents” with public and confidential appendices on 13 March 2014 (“Response”). The Prosecution objects to the admission of three of the Documents.⁶ In addition, it notes that one of the Documents has already been admitted as an exhibit in this case⁷ and two others have no English translations and should not be admitted at this point in time.⁸ The Prosecution does not object to the admission of the remainder of the Documents.⁹

3. The Prosecution objects to the admission of 1D3809 on the basis that it is a media report which is of questionable reliability and that such media reports are unlikely to be admitted through the bar table.¹⁰ In any event, the Prosecution contends that this document relates to

¹ This is a public redacted version of the Bar Table Motion: Disclosure Violation Documents, which had been filed on 3 March 2014 and reclassified on 6 March 2014 as confidential: Request to Reclassify Bar Table Motion: Disclosure Violation Documents, confidential, 6 March 2014 (“Request”).

² The Accused originally tendered 20 documents but noted that 65 *ter* 1D27088 had been included in error and withdrew this document: Request, para. 4.

³ Motion, para. 1, Annex A.

⁴ Motion, para. 3.

⁵ Motion, para. 2, Annex A.

⁶ Response, para. 2 referring to 1D3809, 1D9966, 1D9968.

⁷ Response, para. 3 referring to 1D70200 which has been admitted as D1152.

⁸ Response, para. 3 referring to 1D3863 and 1D9963.

⁹ Response, para. 3.

¹⁰ Response, para. 4 referring to Decision on Prosecution’s Motion for the Admission of Evidence from the Bar Table (Srebrenica), 22 May 2012 (“Srebrenica Bar Table Decision”), para. 16.

alleged smuggling of weapons by a UN battalion in an area un-related to the case and is thus of no or of marginal relevance.¹¹

4. The Prosecution objects to the admission of 1D9966, because it contends that the document is at best of marginal relevance.¹² The Prosecution argues that contrary to the Accused's submission this document does not rebut allegations about the permanent removal of Bosnian Muslims and Bosnian Croats from territories claimed by Bosnian Serbs.¹³ The Prosecution further notes that the Chamber has already held that while the document may suggest that there may have been a military justification for the 1993 Bosnian Serb offensive in Srebrenica, it did not suggest that the same justification existed with respect to the alleged takeover of the Srebrenica enclave in 1995.¹⁴

5. The Prosecution objects to the admission of 1D9968 on the basis that it deals with a central issue in this case, the Accused's command and control, and thus requires contextualisation by a witness who could speak about the document's contents.¹⁵ The Prosecution argues that the Accused should have tendered this document during the testimony of John Wilson who authored the document and this would have given the Prosecution an opportunity to address the document in re-direct.¹⁶ It notes that the Accused's legal adviser made a submission with respect to the relevant portion of the document before Wilson's testimony, and the Accused's failed to use the document despite having had the opportunity to do so.¹⁷ In the Prosecution's submission, tendering such a document does not represent a sparing or reasonable use of the bar table.¹⁸

6. Furthermore, while the Prosecution does not object to the remainder of the Documents it notes that it does not accept the Accused's interpretation of how these Documents advance his case.¹⁹ With respect to two of the Documents, the Prosecution has no objection to their admission subject to the proviso that the Rule 70 provider's conditions are adhered to.²⁰ The Rule 70 provider required that these documents be maintained under seal.²¹

¹¹ Response, paras. 5–6.

¹² Response, para. 7.

¹³ Response, para. 7.

¹⁴ Response, para. 8 referring to Decision on Accused's Thirty-Second, Thirty-Third, Thirty-Fifth and Thirty-Sixth Disclosure Violation Motions, 24 February 2011, para. 18.

¹⁵ Response, para. 9.

¹⁶ Response, para. 10.

¹⁷ Response, paras. 10–11 referring to Hearing, T. 3905 (21 June 2010).

¹⁸ Response, para. 11.

¹⁹ Response, para. 12.

²⁰ Response, confidential Appendix B referring to 1D3832, 1D9958.

²¹ Request, para. 2.

II. Applicable Law

7. 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.

8. 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.²² Evidence may be admitted from the bar table if it fulfils the requirements of Rule 89 of the Rules, 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.²³ Admission of evidence 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.²⁴

9. 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.²⁵

²² Decision on Prosecution’s First Bar Table Motion, 13 April 2010 (“First Bar Table Decision”), para. 5.

²³ First Bar Table Decision, para. 5.

²⁴ First Bar Table Decision, paras. 9, 15.

²⁵ Order on Procedure, Appendix A, Part VII, para. R.

III. Discussion

10. The Chamber notes that for some of the Documents, contrary to the Accused's submission, the Chamber did not find that there had been a disclosure violation by the Prosecution.²⁶ In any event, the Chamber will still consider whether the standard for admission of these documents from the bar table has been met. The Chamber notes that, in ruling that the Accused was not prejudiced by the late disclosure of some of the Documents, it left open the possibility of the Accused tendering this material "through an appropriate witness in court during his defence case or in a future bar table motion which clearly addresses the specific requirements for the admission of evidence from the bar table."²⁷

11. As a preliminary matter, having conducted a review of the Documents and noted that the Prosecution does not contest their authenticity, the Chamber finds that the Documents 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.

12. The Chamber also notes that 1D70200 was already admitted as D1152 on 16 March 2011 and thus will not examine the Accused's request with respect to this document any further.

13. With respect to 1D9963, the Chamber notes that an English translation of the document has now been uploaded. Having reviewed the document, the Chamber is satisfied that it is relevant and of probative value as it relates to the extent to which the Srebrenica and Žepa enclaves were demilitarised. The Chamber finds that the requirements of Rule 89(C) of the Rules have been met with respect to 1D9963 and will admit it into evidence from the bar table.

14. In the absence of an English translation for 1D3863 the Chamber was unable to assess the relevance and probative value of this document, and therefore denies its admission from the bar table. Considering the 17 March 2014 deadline for submissions on all exhibit-related matters,²⁸ the Chamber finds that the translation for this document should have been uploaded by this date. Since no translation has been uploaded, the Chamber will not entertain a further request for its admission if a translation is eventually uploaded.

²⁶ See Response, Appendix A and confidential Appendix B. The Chamber did not find a violation with respect to 65 *ter* numbers 22959, 1D9951, 1D9958, 1D9963, 1D9964, 1D9966, 1D70249, and 1D70367.

²⁷ Decision on Accused's Forty-Third to Forty-Fifth Disclosure Violation Motions, 8 April 2011, para. 30; Decision on Accused's Thirty-Seventh to Forty-Second Disclosure Violation Motions with Partially Dissenting Opinion of Judge Kwon, 29 March 2011, para. 27; Decision on Accused's Twenty-Second, Twenty-Fourth and Twenty-Sixth Disclosure Violation Motions, 11 November 2010, para. 34.

²⁸ Order Regarding the Close of the Defence Case, 20 February 2014, p. 3.

15. The Chamber will now examine each of the Documents to which the Prosecution raised specific objections.

16. With respect to 1D3809 the Chamber recalls that it has previously indicated that written media reports are unlikely to be considered admissible from the bar table, on the basis that “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”.²⁹ In relation to 1D3809, the Chamber has not received any other evidence corroborating the content of the document to alleviate the Chamber’s concern about the reliability of this category of documents for the purposes of admission from the bar table.³⁰ In any event the Chamber is not convinced that the content of 1D3809 is relevant given that it refers to the smuggling of weapons by a UN battalion in a geographical area completely unrelated to the case against the Accused. As such the Chamber will not admit into evidence 1D3809.

17. The Prosecution has objected to the admission of 1D9966 on the basis that it is of marginal relevance. While it is a Srebrenica related document dating back to 1993, the Chamber has admitted a number of documents from this period which provide background to the lead up to the events in Srebrenica in 1995. The Chamber is satisfied that the document provides a context for the Bosnian Serb military operations in Srebrenica in 1993, which is relevant background for the purposes of this case.³¹ The Chamber is therefore satisfied that 1D9966 is of relevance and has probative value and shall be admitted into evidence from the bar table.

18. The content of 1D9968 relates to the Accused’s command and control over Mladić and is thus clearly of relevance to this case. The Chamber is of the view that 1D9968 could have been tendered through John Wilson who authored this document particularly given that the Accused was specifically granted additional time to review this document before continuing his cross-examination.³² However, 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.³³ The Chamber finds that the document is clear on its face and that the absence of specific contextualisation by Wilson about

²⁹ Srebrenica Bar Table Decision, paras. 15–16; Decision on Prosecution’s Motion for the Admission of Documents from the Bar Table (Municipalities), 25 May 2012 (“Municipalities Bar Table Decision”), paras. 30–31

³⁰ See Municipalities Bar Table Decision, paras. 30–31.

³¹ See for example Prosecution’s Final Pre-Trial Brief, 18 May 2009, para. 200.

³² Hearing, T. 4022–4023 (22 June 2010).

³³ Srebrenica Bar Table Decision, para. 17; Decision on Prosecution’s Motion for Admission of Evidence from the Bar Table (Hostages), 1 May 2012, para. 11; Decision on Prosecution’s Bar Table Motion for the Admission of

his comment that “There is also the issue that Mladić does not always follow political directions”, is an issue the Chamber will assess in attributing the appropriate weight to the document, but does not preclude its admission. The Chamber is therefore satisfied that 1D9968 is of relevance and has probative value and will admit it into evidence from the bar table.

19. It remains for the Chamber to assess whether the documents not discussed in the preceding paragraphs (“Remaining Documents”) fulfil the requirements of Rule 89(C).

20. Having reviewed the Remaining Documents and the submissions of the Accused and the Prosecution in that regard, the Chamber finds that they are relevant and have probative value as they go to a number of issues arising from the Third Amended Indictment including: (1) responsibility for and investigation of specific scheduled shelling incidents in Sarajevo; (2) international negotiations and the Accused’s involvement in seeking a negotiated outcome to the conflict; (3) the Accused’s response to concerns expressed about scheduled detention facilities, conditions in Sarajevo and the treatment of Bosnian Muslims and Bosnian Croats; (4) disruption of access to electricity, gas and water services in Sarajevo; (5) the role of UNPROFOR in Sarajevo and its relationship with the Bosnian Serb leadership; (6) the investigation and arrest of perpetrators of crimes committed by Bosnian Serbs; (7) the extent to which the enclave of Srebrenica was demilitarised; (8) violations of cease-fire agreements in Sarajevo; and (9) facilitating humanitarian aid.

21. Consequently the Chamber finds that the requirements of Rule 89(C) of the Rules have been met with respect to the Remaining Documents, which are relevant, have probative value, and bear sufficient indicia of authenticity for the purposes of admission. The Chamber is also satisfied that pursuant to Rule 89(D) the probative value of the Remaining Documents is not substantially outweighed by the need to ensure a fair trial and that therefore they all may be admitted into evidence.

IV. Disposition

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

- (a) **ADMITS** into evidence documents bearing the following 65 *ter* numbers: 22959, 1D9951, 1D9953, 1D9954, 1D9955, 1D9956, 1D9963, 1D9964, 1D9966, 1D9967, 1D9968, 1D65335, 1D70249, and 1D70367;

Documents Related to the Sarajevo Component, 11 May 2012, para. 12; Municipalities Bar Table Decision, paras. 11–12.

- (b) **ADMITS** into evidence documents bearing the following *65 ter* numbers under seal: 1D3832 and 1D9958;
- (c) **INSTRUCTS** the Registry to assign exhibit numbers for each of these documents; and
- (d) **DENIES** the remainder of the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this nineteenth day of March 2014
At The Hague
The Netherlands

[Seal of the Tribunal]