



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: 5 October 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: 5 October 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

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

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 “Second Prosecution Bar Table Motion for the Admission of Bosnian Serb Assembly Records”, filed on 3 September 2010 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. During the trial proceedings on 8 July 2010, the Trial Chamber referred to a table that had been provided to it and the Accused by the Office of the Prosecutor (“Prosecution”), listing the transcripts, shorthand records, and minutes of Bosnian Serb Assembly records (“Assembly Session Records”), which the Prosecution claimed were referenced in reports prepared by expert witness Robert Donia, many of which had not been admitted into evidence at that time.¹

2. The Trial Chamber indicated that it understood that various parts of the Assembly Session Records would be put to different witnesses and that the Accused, as well as the Prosecution, wished to have these records admitted into evidence in their entirety. The Trial Chamber, therefore, requested the Prosecution to file a bar table motion, noting that the Accused then would have an opportunity to state his position on the admissibility of any or all of these records.

3. The Prosecution, following the Trial Chamber’s direction, filed a motion on 12 July 2010 (“First Motion”), seeking the admission of a number of Assembly Session Records.² The Trial Chamber subsequently granted the First Motion in part, admitting a number of the Assembly Session Records and denying the admission of the remainder without prejudice.³ The Chamber noted that some of these denied records, or their English translations, had not been uploaded into e-court, rendering the Trial Chamber unable to review them.⁴ These denied records were those assigned Rule 65 *ter* numbers 13826, 06319, 18024, 18025, 18200, and are now the subject of the Motion. In accordance with the First Decision, the Prosecution states that it has now uploaded these documents into e-court and requests their admission into evidence.⁵

¹ Hearing, T. 4975 (8 July 2010).

² Prosecution Bar Table Motion for the Admission of Bosnian Serb Assembly Records, 12 July 2010

³ Decision on Prosecution Bar Table Motion for the Admission of Bosnian Serb Assembly Records, 22 July 2010 (“First Decision”).

⁴ First Decision, para. 9.

⁵ The Motion, para. 3. 4.

4. On 6 September 2010, the Accused filed the “Joinder in Prosecution Second Bar Table Motion – Assembly Sessions”, in which he joins in the Motion and requests the admission into evidence of the documents subject to the Motion.

II. Applicable Law

5. Rule 89 of the Rules of Procedure and Evidence (“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.

6. The Trial Chamber recalls that the admission of evidence from the bar table is a practice established in the case-law of the Tribunal.⁶ 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,⁷ including by way of Rule 89(D), which provides that evidence may be excluded if its probative value is substantially outweighed by the need to ensure a fair trial.

7. The Trial Chamber also recalls its “Order on Procedure for Conduct of Trial” filed on 8 October 2009 (“Order”), wherein it stated regarding 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 each document; (iii) explain how it fits into the party’s case, and (iv) provide the indicators of the document’s authenticity.⁸

III. Discussion

8. The Trial Chamber is satisfied that the Assembly Session Records with Rule 65 *ter* numbers 13826, 06319, 18024, and 18025 are relevant and have probative value. The Assembly Session Records with Rule 65 *ter* numbers 13826 and 06319 are respectively a transcript of a Bosnian Serb Assembly Session held on 27 March 1992, and a record of the first extraordinary

⁶ See, for example, *Prosecutor v. Dorđević*, Case No. IT-05-87/1-T, Decision on Prosecution’s Motion to Re-Open the Case and Exceed the Word Limit and Second Motion to Admit Exhibits from the Bar Table, 7 December 2009; *Prosecutor v. Perišić*, Case No. IT-04-81-T, Confidential Decision on Prosecution’s First Bar Table Motion, 5 October 2009.

⁷ See *Prosecutor v. Milutinović et al.* Case No. IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 11; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on Admission of Evidence, 13 July 2006, p. 5; *Prosecutor v. Halilović*, Case No. IT-01-48-AR73.2, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table, 19 August 2005, para. 14.

⁸ Order, Appendix A, Part VII, para. R.

session of the Republika Srpska (“RS”) National Assembly held on 3 August 1994. The Assembly Session Records with Rule 65 *ter* numbers 18024 and 18025 are, respectively, the minutes and a transcript of the audio recording of the RS National Assembly 2nd Extraordinary Session held on 11 March 1995. The Trial Chamber notes that these records fall within the period of the Third Amended Indictment (“Indictment”). The issues addressed in the Assembly Session Record with Rule 65 *ter* number 13826 include the official promulgation of the first constitution of the Serbian Republic of Bosnia and Herzegovina, discussions of various draft laws such as a draft law on the territories of Serbian municipalities in Bosnia and Herzegovina and the establishment of the National Security Council. It also records a call from the Accused to establish Serbian crisis staffs in the newly-formed Serbian municipalities. The Assembly Session Record with Rule 65 *ter* number 06319 notes decisions made concerning the Contact Group peace plan. The Assembly Session Records with Rule 65 *ter* numbers 18024 and 18025 record events surrounding the resignation of Radoslav Brđanin, discussions of draft laws, comments made by deputies regarding the creation of a Serbian state, and reactions to Contact Group peace plan. The Trial Chamber finds that the probative value of these records is not substantially outweighed by the need to ensure a fair trial.

9. However, the Trial Chamber is not convinced that the Assembly Session Record with Rule 65 *ter* number 18200 is admissible, based on its review of this document and in the absence of any argument from the parties as to its specific relevance and how it fits within their respective cases. The Assembly Session Record with Rule 65 *ter* number 18200 is the transcript of an audio recording of the special National Assembly Session of the RS held on 18 May 1996, approximately six months after the end of the Indictment period. The Chamber recalls that in the First Decision, the admission of Assembly Session Records dating from 2 April 1996 to 12 September 1996 was denied without prejudice as it was not clear to the Chamber how these records are relevant to either the crimes alleged in the Indictment or the Accused’s alleged responsibility for those crimes, or how they have probative value.⁹ The same must be said for the Assembly Session Record with Rule 65 *ter* number 18200. The discussion concerns issues related to the implementation of the Dayton Agreement, including the forced resignation of the then-Prime Minister Rajko Kasagić and the appointment of Gojko Kličković in his place, and the latter’s programme of action. As such, the Record primarily addresses ongoing matters of governance of the RS. Therefore, the Chamber will deny the admission of the Assembly Session Record with Rule 65 *ter* number 18200 without prejudice to the Prosecution and/or the Accused specifying the relevance and probative value of this record, and explaining how it fits into their cases.

⁹ First Decision, para. 11.

IV. Disposition

10. For the reasons set out above, and pursuant to Rule 89 of the Rules, the Trial Chamber hereby **GRANTS** the Motion **IN PART**, and:

- a) **ADMITS** the Assembly Session Records with Rule 65 *ter* numbers 13826, 06319, 18024, and 18025;
- b) **REQUESTS** the Registry to assign exhibit numbers to the Assembly Session Records that have been admitted into evidence by this Decision; and

DENIES the Motion in all other respects.

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



Judge O-Gon Kwon
Presiding

Dated this fifth day of October 2010
At The Hague
The Netherlands

[Seal of the Tribunal]