



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: 29 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: 29 October 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON 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 “Motion For Admission of Evidence From Bar Table: General Michael Rose”, filed on 11 October 2010 (“Motion”), and hereby issues its decision thereon.

1. During the trial proceedings on 8 October 2010, the Accused’s legal associate, Mr. Peter Robinson, alerted the Trial Chamber to the Accused’s intention to move to admit from the bar table a number of documents which the Accused was unable, for time reasons, to tender during his cross-examination of General Michael Rose.¹

2. On 11 October 2010, the Accused filed the Motion, requesting the admission of 17 documents from the bar table (“Documents”).² In the Motion, the Accused reiterates that due to the inadequacy of the time available for his cross-examination of General Rose, he was unable to lay the foundation for the admission of the Documents through that witness.³ The Rule 65 *ter* number, date, brief description, and relevance of each document, as well as copies of the Documents, are provided in the Motion.

3. On 21 October 2010, the Office of the Prosecutor (“Prosecution”) filed its “Response to Karadžić’s Motion for Admission from the Bar Table: General Michael Rose” (“Response”), stating that the Motion fails to conform to the Trial Chamber’s guidelines on submission of documents from the bar table.⁴ The Prosecution also states that it cannot verify the authenticity of documents 12 and 14 as the original documents have not been uploaded into ecourt.⁵

4. On 26 October 2010, the Accused filed his “Request for Leave to Reply: Motion for Admission of Evidence from the Bar Table: General Michael Rose” (“Request”). The Chamber considers that the requested reply is unnecessary for its determination of the motion. Leave to reply is therefore denied.

¹ Hearing, T. 7593 (8 October 2010).

² The Documents have Rule 65 *ter* numbers: 10352, 1D02449, 1D02452, 1D2454, 1D2456, 1D2469, 1D2470, 1D2473, 1D2477, 1D2480, 1D2488, 1D2510, 1D2513, 1D2516, 1D2526, 1D2530, 1D02551.

³ Motion, para. 1.

⁴ Response, para. 1.

⁵ Response, para. 5. The relevant Rule 65 *ter* numbers are 1D2510 and 1D02551, respectively.

5. Rule 89 of the Tribunal's 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.

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.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, including by way of Rule 89(D).⁷

6. The Trial Chamber also recalls its "Order on Procedure for Conduct of Trial" filed on 8 October 2009 ("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 each document; (iii) explain how it fits into the party's case, and (iv) provide the indicators of the document's authenticity.⁸

7. As a preliminary matter, the Trial Chamber notes that it assessed the time needed for the Accused's cross-examination of General Rose to be 10 hours, and the Prosecution anticipated needing three hours for its direct examination. Ultimately, the time available to the Accused for cross-examination was extended and he used over 12 hours.⁹ The Chamber is in no doubt that this time was ample for a full cross-examination of General Rose.

8. This being said, should the Accused choose to tender items for admission into evidence from the bar table, the Trial Chamber will consider whether he has followed the guidelines set out above, and whether the requirements for admission under Rule 89 have been met. In this regard, while the Accused has specified the broad relevance of each of the Documents, he has failed to explain how each fits into his case, rendering the Chamber unable to properly assess the documents' probative value.

⁶ 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.

⁷ First Bar Table Decision, para. 5 (citations omitted).

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

9. The Chamber reminds the parties that the bar table should not be used as a means of tendering evidence of marginal relevance or probative value, inundating the record with material which is not absolutely necessary to prove or refute the charges in the Indictment. As the Chamber has previously stated, while there may be a perception that the admission of evidence from the bar table saves some in-court time, it can in fact lengthen the proceedings due to the sheer volume of evidence thus admitted, particularly if the parties do not make absolutely clear in their submissions how each individual item of evidence assists in proving or refuting those charges.

10. Accordingly, the Trial Chamber, pursuant to Rule 89 of the Rules, hereby **DENIES** the Motion without prejudice.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-ninth day of October 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

⁹ Hearing, T. 7288-7319 (5 October 2010); Hearing, T. 7320-7410 (6 October 2010); Hearing, T. 7411-7505 (7 October 2010); Hearing, T. 7506-7590 (8 October 2010).