



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: 16 June 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: 16 June 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR THE ADMISSION OF 68
SARAJEVO ROMANIJA CORPS DOCUMENTS FROM THE BAR TABLE**

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 “Prosecution’s Motion for the Admission of 68 Sarajevo Romanija Corps Documents from the Bar Table with Appendix A”, filed by the Office of the Prosecutor (“Prosecution”) on 27 April 2011 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Prosecution seeks the admission of 68 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 relevant, probative and authentic and have been sufficiently contextualised by evidence already received by the Trial Chamber”.¹ The Prosecution states that the Documents are “orders, reports and other official documentation” of the Army of Republika Srpska (“VRS”) and relate to the activities of the Sarajevo-Romanija Corps (“SRK”) during the period of the Third Amended Indictment (“Indictment”).² Specifically, the Prosecution states that the Documents relate to: 1) the functioning chain of command and reporting in the SRK; 2) the “notice provided to the Accused and other member[s] of the Joint Criminal Enterprise” (“JCE”) alleged in the Indictment about attacks on civilians by SRK personnel; 3) the Accused’s authority with respect to the VRS and the SRK; 4) the use of modified air bombs by the SRK; 5) the use of snipers by the SRK; 6) the ability of JCE members to investigate and discipline SRK personnel; 7) the criminal intention of the Accused and JCE members; 8) “unlawful detention”; and 9) the military superiority of the VRS.³

2. The Prosecution argues that it seeks admission of the Documents at this stage because the Chamber has now heard “the evidence of Mr Barry Hogan concerning the seizure of VRS documents in 2007, which is relevant to establishing the authenticity of a considerable number of the[...] [D]ocuments”, as well as “the vast majority of Prosecution witnesses relating to the Sarajevo component” of the case and is, therefore, in a position to assess the evidentiary value of the Documents.⁴ With respect to the authenticity of the Documents, the Prosecution argues that

¹ Motion, para. 1, Appendix A, pp. 1–33 (Rule 65 *ter* numbers 01538, 04465, 07328, 07408, 07506, 07788, 07930, 08072, 08240, 08353, 08408, 08983, 08986, 08988, 09026, 09051, 09080, 09103, 09154, 09171, 09256, 09271, 09332, 10794, 10924, 11115, 11409, 11410, 11713, 11714, 11814, 13350, 13356, 13361, 13393, 13396, 13397, 13491, 13786, 14940, 15336, 15441, 15475, 15573, 15646, 15647, 15713, 15758, 15806, 18959, 20819, 20822, 20825, 20826, 20827, 20829, 20832, 20835, 20836, 20837, 20839, 20847, 20848, 20849, 20851, 21998, 22936, and 23103).

² Motion, paras. 2, 4.

³ Motion, para. 5.

⁴ Motion, para. 4.

59 of them were part of the collection seized from the Kozara Barracks, as discussed by witness Barry Hogan, while the other nine documents were either seized by the Prosecution from other archives or disclosed by other defence teams.⁵ In addition, the Prosecution states that 27 of the Documents have been admitted in prior proceedings and should therefore be presumed authentic pursuant to Rule 94(B) of the Rules.

3. The Prosecution finally explains that, in conformity with the understanding reached between the parties regarding bar table submissions, the Accused was provided with an opportunity to comment on the Documents and does so in the Motion.⁶ The Chamber notes that the Accused has objected to the admission of 15 of the Documents.⁷

II. Applicable Law

4. 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.

5. The 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.⁸ 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.⁹ 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).¹⁰

6. 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;

⁵ Motion, para. 6.

⁶ Motion, para. 3.

⁷ Motion, Appendix A (Rule 65 *ter* numbers 07408, 09051, 09103, 11115, 11410, 11714, 11814, 13393, 13396, 13397, 14940, 15713, 20825, 20827, and 20839).

⁸ 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.

⁹ Rule 89(C), (E).

¹⁰ First Bar Table Decision, para. 5 (citations omitted).

(iii) explain how it fits into the party's case, and (iv) provide the indicators of the document's authenticity.¹¹

III. Discussion

7. The Chamber has carefully examined the relevance, probative value, and authenticity of each of the Documents for which admission from the bar table is sought, and whether the Prosecution has satisfactorily explained how they fit into its case, along with the comments of the Accused, as set forth in Appendix A to the Motion.

8. The Chamber notes the Prosecution's assertion that 27 of the Documents have been admitted in prior proceedings, and that they should, consequently, "be presumed authentic pursuant to Rule 94(B)".¹² 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 the *prima facie* authenticity of the 27 documents, for the purposes of admission pursuant to Rule 89(C), can be readily established from the other indicia of authenticity identified in the Motion. Consequently, the Chamber will not take into consideration the prior admission in other cases of the 27 documents.

9. The Accused has not objected to the admission of 53 of the Documents. Having reviewed these, the Chamber is of the view that they are relevant to one or more of the following: 1) the Accused's authority in respect of, and knowledge of the activities of, the VRS, the SRK, and other Republika Srpska ("RS") organs;¹³ 2) the centralised command and control of both the VRS and the SRK;¹⁴ 3) the failure to punish the criminal behaviour of subordinates on behalf of the Accused, the VRS, and the SRK, including their knowledge of such criminal behaviour;¹⁵ 4) the relationship between the civil and military authorities;¹⁶ 5) the relationship between the VRS and the Yugoslav Army;¹⁷ 6) the actions of the VRS with respect to UN agreements;¹⁸ 7) the Accused's superior-subordinate relationship with Ratko Mladić;¹⁹ 8) the

¹¹ Order, Appendix A, Part VII, para. R.

¹² Motion, para. 6.

¹³ Rule 65 *ter* numbers 01538, 07506, 07788, 08986, 09026, 09080, 09154, 09171, 09332, 10924, 13350, 13356, 13361, 13491, 13786, 15475, 15806, 18959, and 21998.

¹⁴ Rule 65 *ter* numbers 07328, 07930, 08240, 08353, 08408, 08983, 08986, 08988, 09256, 09332, 10794, 10924, 11409, 11713, 15441, 15573, 15646, 15647, 15758, 15806, 20822, 20826, 20829, 20837, and 22936.

¹⁵ Rule 65 *ter* numbers 04465, 07506, 07788, 08988, 09080, 09271, 13350, 13356, 13361, 13491, 20819, 20832, 20835, 20836, 20847, 20848, 20849, and 20851.

¹⁶ Rule 65 *ter* numbers 07328, and 15336.

¹⁷ Rule 65 *ter* number 07328.

¹⁸ Rule 65 *ter* number 22936.

¹⁹ Rule 65 *ter* number 18959.

use of modified air bombs by the SRK;²⁰ 9) the shelling of civilians by SRK forces;²¹ 10) the centralised command and control over sniping, and sniping generally, within the SRK;²² and 11) the role of the VRS, its military superiority, and its strategic objectives.²³

10. Thus, the Chamber finds these 53 documents to be relevant and to have probative value. Having analysed their content, the Chamber is also satisfied that they bear sufficient indicia of authenticity. The Chamber is also of the view that the Prosecution, in the Motion, has adequately explained how the documents fit into their case.²⁴ Consequently, the Chamber is satisfied that the requirements of Rule 89 of the Rules are met, and as such these documents should be admitted.²⁵

11. The Chamber now moves to the analysis of the 15 documents objected to by the Accused. The majority of the Accused's objections relate to the fact that a number of the documents only purport to show the general control enjoyed by the Accused, the VRS, or the SRK, which according to him, is not sufficient for those documents to pass the relevance test of Rule 89(C), as at this stage of the case numerous other documents admitted into evidence speak to the same issues.²⁶ As a preliminary matter, the Chamber notes that a similar argument could have been made in respect of a number of other documents in the Motion.²⁷ The Chamber is of the view that documents showing the control enjoyed by the Accused, the VRS, or the SRK, are relevant to the Prosecution's case and have probative value, and deems that the relevance of such documents is not affected by the fact that multiple other documents also in evidence speak to the same issue. The Chamber, when assessing material against the requirements of Rule 89(C), does not take into account the fact that other admitted 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.

12. The Chamber will now address the specific objections of the Accused in more detail. The Prosecution states that the documents bearing Rule 65 *ter* numbers 11115, 11714, 13393, 13396, 13397, and 15713 are relevant to the issue of the Accused's position of authority and control over the VRS, the SRK, the Ministry of the Interior, the municipal assemblies of the RS,

²⁰ Rule 65 *ter* numbers 07930, 08072, 08240, 10924, 15441, and 15646.

²¹ Rule 65 *ter* numbers 08983, and 10794.

²² Rule 65 *ter* number 15758.

²³ Rule 65 *ter* numbers 10794, and 23103.

²⁴ Motion, Appendix A.

²⁵ In relation to Rule 65 *ter* numbers 01538, 08353, 08408, 09154, 11409, 13786, 15475, 20822, and 20829, *see* para. 11 below in relation to the relevance of these documents.

²⁶ Motion, Appendix A, pp. 1, 9, 12–14, 18–20, 22–24, 27, 36–37 (Rule 65 *ter* numbers 07408, 09051, 09103, 11115, 11714, 11814, 13393, 13396, 13397, 15713, 20825, 20827, and 20839).

²⁷ *See* Rule 65 *ter* numbers 01538, 08353, 08408, 09154, 11409, 13786, 15475, 20822, and 20829.

and the RS Government.²⁸ The Accused objects to this assertion stating that these documents speak only to control. He contends that at this stage in the case when numerous similar documents which speak to the issue of control are already in evidence, merely showing control is not sufficient for a document to pass the relevance test of Rule 89(C).²⁹ As stated in the preceding paragraph, the Chamber finds that the relevance of these documents is not affected by the fact that multiple other documents already in evidence speak to the same issue. With this in mind, the Chamber finds these documents to be relevant and to have probative value in relation to the scope, extent, and nature of the control and authority enjoyed by the Accused, over the various RS organs. Further, as these documents bear sufficient indicia of authenticity for admission under Rule 89(C) of the Rules, the Chamber is satisfied that they should be admitted.

13. The Prosecution states that the documents with Rule 65 *ter* numbers 07408, 09051, 11410, 20825, 20827, and 20839 are relevant to, among other things, the issue of the centralised command and control that existed within the SRK.³⁰ The Accused objects to the admission of the documents bearing Rule 65 *ter* numbers 07408, 20825, and 20827, again on the basis that they speak only to control within the SRK which, he contends, given the other documents already in evidence, is not sufficient at this stage in the case to pass the relevance test of Rule 89(C).³¹ Again, the Chamber finds such documents to be relevant and to have probative value in relation to the scope, extent, and nature of the centralised command and control of the SRK. These documents, in the view of the Chamber, also bear sufficient indicia of authenticity for admission under Rule 89(C) of the Rules, and as such should be admitted. The Accused has more specific objections in relation to three of these documents, as follows:

- (i) The document with Rule 65 *ter* number 09051 is an order of the SRK Commander, Stanislav Galić, dated 27 October 1992, to all SRK units pursuant to a decision of the RS Presidency and the VRS Main Staff, ordering the carrying out of combat operations against Croatian forces within the territory of Bosnia and Herzegovina, followed by the implementation of a ceasefire. The Accused objects to its admission on the basis that it concerns the war against the Croats. The Chamber is of the view that this document is relevant and has probative value in demonstrating the centralised command and control of the SRK within the period of the Indictment; the fact that it concerns the war with Croatia is immaterial to this.

²⁸ Motion, Appendix A, pp. 9, 20–22. The document with Rule 65 *ter* number 11714 is also relevant to the centralised command and control of the VRS and the SR

²⁹ Motion, Appendix A, pp. 9, 20–22.

³⁰ Motion, Appendix A, pp. 1, 13, 17–18, 24.

³¹ Motion, Appendix A, pp. 13, 17–18.

Additionally, this document bears sufficient indicia of authenticity for admission under Rule 89(C) of the Rules, and as such should be admitted.

- (ii) The document with Rule 65 *ter* number 11410 is an SRK Command order issued to all SRK brigades, regiments, and battalions, dated 6 July 1994, regarding the use of “weapons with silencers and telescopic sights”. The Accused objects to the admission of this document based on the fact that it only speaks to the possession of sniping equipment within the SRK, rather than the targeting of civilians. The Chamber is of the view that this document demonstrates the centralised command and control of the SRK and is thus relevant irrespective of the merit of the Accused’s objection. Moreover, the Chamber is also of the view that this document is relevant and has probative value in relation to the issue of sniping, both in terms of the possession of sniping equipment within the SRK, but also in terms of the centralised control, specifically over sniping, enjoyed by the SRK. Additionally, this document bears sufficient indicia of authenticity for admission under Rule 89(C) of the Rules, and as such should be admitted.
- (iii) The Accused objects to the admission of the document with Rule 65 *ter* number 20839 on the basis that it lacks relevance. This document is an order from the SRK Commander, Dragomir Milošević, dated 16 April 1995, reducing the prison sentence of a SRK soldier from 60 to 30 days. The Chamber notes that the document with Rule 65 *ter* number 20835—also included in the Motion—is the original order sentencing the same soldier to 60 days imprisonment for desertion. Thus, the Accused argues that the document indicating the initial punishment is sufficient, and that the reduction of the sentence is irrelevant.³² The Chamber finds that this document is relevant and has probative value in relation to the extent and scope of the SRK command’s capacity to punish its soldiers, alongside the extent of its practice of so doing. Additionally, this document bears sufficient indicia of authenticity for admission under Rule 89(C) of the Rules, and as such should be admitted.

14. The document with Rule 65 *ter* number 11814 is a VRS Main Staff order sent to the SRK and the Drina Corps, among others, which relates to the transport of equipment. The document with Rule 65 *ter* number 09103 is an order of the VRS Main Staff relating to the provision of equipment to the SRK Command by the 1st Krajina Corps which was sent to, among others, the SRK. The Prosecution states that these two documents are relevant to the

issue of the command and control of the VRS over the SRK.³³ The Accused objects to the admission of both documents on grounds of lack of relevance.³⁴ In relation to the document with Rule 65 *ter* number 11814, the Accused specifically objects to its admission on the basis that it is concerned with transportation of equipment to Brčko, stating that neither the transport of an aerial bomb launcher to Brčko, nor the occurrence of shelling there, are relevant to any issue in the Indictment.³⁵ Having analysed their content, the Chamber finds both documents relevant to the VRS's centralised command and control. The Chamber considers that whatever merit there is in the argument of the Accused in respect of the document with Rule 65 *ter* number 11814, it is immaterial to the question of the relevance of the document. The Chamber holds that the document is relevant and has probative value in relation to the issue of centralised command and control of the VRS over the SRK generally, and specifically to the SRK's possession and use of aerial bombs. As these documents also bear sufficient indicia of authenticity for admission under Rule 89(C) of the Rules, they should be admitted.

15. The document bearing Rule 65 *ter* number 14940 is an order of the VRS Main Staff to the intelligence section of the SRK relating to the exchange of prisoners. The Accused objects to the authenticity of the document.³⁶ The Prosecution has identified a number of telexes previously admitted by the Chamber with a similar type-set to this document as an indicator of its authenticity.³⁷ The Chamber notes that the telex does not bear a stamp or signature, while the majority of the exhibits referred to by the Prosecution do.³⁸ Nevertheless, the Chamber deems this document to meet the requirements of *prima facie* authenticity necessary for admission pursuant to Rule 89(C). The Chamber has already admitted similar telexes from the VRS Main Staff, bearing neither a stamp nor a signature,³⁹ the admission of which was not opposed by the Accused.⁴⁰ The Chamber further finds that the order is relevant, and has probative value, both in relation to the issue of the detention of civilians and to the implementation of political agreements by the VRS. As such it should be admitted.

IV. Disposition

³² Motion, Appendix A, p. 24.

³³ Motion, Appendix A, pp. 12, 33.

³⁴ Motion, Appendix A, pp. 12, 33.

³⁵ Motion, Appendix A, p. 12.

³⁶ Motion, Appendix A, p. 15.

³⁷ Motion, Appendix A, p. 15 (Exhibits P854, P848, P1316, P1657, P1684, D689, and D777).

³⁸ Motion, Appendix A, p. 15 (Exhibits P854, P848, P1316, D689, and D777).

³⁹ See P1657 and P1684.

⁴⁰ Hearing, T. 7286 (5 October 2010), Hearing, T. 7597 (8 October 2010).

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

- 1) **ADMITS** into evidence the documents with Rule 65 *ter* numbers:
01538, 04465, 07328, 07408, 07506, 07788, 07930, 08072, 08240, 08353, 08408, 08983, 08986, 08988, 09026, 09051, 09080, 09103, 09154, 09171, 09256, 09271, 09332, 10794, 10924, 11115, 11409, 11410, 11713, 11714, 11814, 13350, 13356, 13361, 13393, 13396, 13397, 13491, 13786, 14940, 15336, 15441, 15475, 15573, 15646, 15647, 15713, 15758, 15806, 18959, 20819, 20822, 20825, 20826, 20827, 20829, 20832, 20835, 20836, 20837, 20839, 20847, 20848, 20849, 20851, 21998, 22936, and 23103; and
- 2) **REQUESTS** the Registry to assign exhibit numbers for each of these documents.

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



Judge O-Gon Kwon
Presiding

Dated this sixteenth day of June 2011
At The Hague
The Netherlands

[Seal of the Tribunal]