



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: 25 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: 25 May 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

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

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 Related to the Municipalities Component with Public Appendices A and B, and Confidential Appendix C”, 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 245 documents related to the municipalities component of the case (“Documents”) from the bar table pursuant to Rule 89(C) of the Rules of the Procedure and Evidence of the Tribunal (“Rules”).¹ The Prosecution submits that it has identified how each item is relevant, probative, and fits into its case in Appendix A and confidential Appendix C to the Motion.² The Prosecution also notes that the Accused was provided with an opportunity to comment on each of the Documents and that his position is reflected in a separate column in Appendix A and confidential Appendix C.³ The Prosecution notes that the Accused has not contested the authenticity of any of the Documents.⁴

2. The Accused specifically objects to the admission of:

- a) 26 of the Documents on the basis that they should have been discussed with witnesses or included in a witness statement;⁵
- b) three of the Documents on the basis that they contain serious allegations or controversial issues which should have been put to witnesses during their testimony;⁶
- c) 18 of the Documents on the basis that they are news reports and, as such, inadmissible from the bar table (“Media Reports”);⁷

¹ Motion, para. 1, Appendix A, confidential Appendix C. While the Motion refers to 247 documents, the Chamber notes that 65 *ter* number 00721 appears to have been erroneously listed in Appendix A even though the Prosecution has indicated at para. 7 that it has agreed not to tender this and 18 other documents. In addition 65 *ter* number 17808 is referred to twice in Appendix A to the Motion. Therefore the Prosecution is only tendering 245 documents.

² Motion, para. 3, Appendix A, confidential Appendix C.

³ Motion, para. 3, Appendix A, confidential Appendix C.

⁴ Motion, para. 6.

⁵ Motion, para. 8, Appendix A, referring to 65 *ter* numbers 01110, 01582, 02559, 05364, 05367, 05372, 05374, 05377, 05545, 05557, 05558, 05570, 05588, 05645, 05669, 05670, 05777, 11229, 17808, 17868, 18374, 18528, 18946, 21603, 21839, and 22938.

⁶ Motion, paras. 10–11, Appendix A, referring to 65 *ter* numbers 00283, 00851, and 00981. The Chamber notes that the Prosecution erroneously refers to 65 *ter* number 00891 in para. 10 of the Motion when Appendix A refers to the correct 65 *ter* number 00981.

- d) five of the Documents on the basis that the Prosecution had declined to provide Rule 66(B) disclosure for this category of Crisis Staff related material (“Rule 66(B) Material”);⁸
- e) two of the Documents which are sourced from the ICRC (“ICRC Documents”) on the basis that the Prosecution should not be allowed to tender such documents which were not accessible to him;⁹
- f) nine of the Documents (“Municipalities Documents”) on the basis that they relate to events in municipalities which are not charged in, or have been dropped from, the Third Amended Indictment (“Indictment”);¹⁰
- g) nine of the Documents on the basis that they are cumulative,¹¹ 27 of the Documents on the basis that they are irrelevant to the crimes charged in the Indictment¹² and to a further 12 of the Documents on the basis that they are irrelevant and/or cumulative;¹³ and
- h) seven specific documents, which will be examined in more detail below.¹⁴

⁷ Motion, para. 13, Appendix A, referring to 65 *ter* numbers 00699, 01126, 01218A, 05793, 11863, 12073, 13310, 15073, 40136A, 40382, 40403A, 45019, 45054, 45099A, 45099B, 45238A, 45366, and 45367.

⁸ Motion, para. 26, referring to 65 *ter* numbers 07789, 10841, 11315, 14925, and 14934.

⁹ Motion, para. 30, referring to 65 *ter* numbers 05670, and 07414.

¹⁰ Motion, paras. 12 and 31, Appendix A, referring to 65 *ter* numbers 00332, 00351, 01014, 01080, 06692, 01865, 22916, 22918, and 22919. The Chamber notes that the Accused’s objection to 65 *ter* 01014 is only referred to in para. 12 of the Motion, and is not repeated in Appendix A. Given para. 12, however, the Chamber considers that the lack of reference in Appendix A is an oversight and thus shall consider 65 *ter* 01014 as falling within the category of Municipalities Documents to which the Accused objects.

¹¹ Motion, para. 33, Appendix A referring to 65 *ter* numbers 00814, 00830, 13360, 01500, 06481, 11169, 02555, 02556, and 11539. The Chamber notes that the Prosecution erroneously refers to 65 *ter* 01336 in para. 33 of the Motion when the document described in Appendix A is 65 *ter* 13360. The Chamber further notes that while the Prosecution refers to six documents in this category, para. 33 of the Motion fails to note 65 *ter* numbers 02555, 02556, and 11539 which are also objected to by the Accused on this basis in Appendix A. Therefore, a total of nine of the Documents fall into this category.

¹² Motion, para. 34, Appendix A, referring to 65 *ter* numbers 05070B, 05084, 05298, 05432, 05435, 05589, 07092, 09236, 09433, 09465, 10830, 10938, 10942, 13154, 14633, 15273, 17820, 20421, 21598, 21601, 21606, 21637, 21676, 21690, 22871, 22874, and 05928. The Chamber notes that while the Prosecution, at para. 7 and footnote 31 of the Motion, refers to 28 documents in this category, it also indicates that it will not be tendering two of those, namely 65 *ter* numbers 10826 and 23484. The Chamber further notes that para. 34 of the Motion fails to note 65 *ter* number 05928 which is also objected to by the Accused on this basis. Therefore a total of 27 of the Documents fall into this category.

¹³ Motion, para. 34, Appendix A, referring to 65 *ter* numbers 00611, 04033, 05262, 07982, 09073, 10712, 10831, 11220, 13351, 17257, 17976, and 18434. The Chamber notes that while the Prosecution refers to 28 documents in this category, at para. 7 of the Motion it indicates that it will not be tendering one of them, namely 65 *ter* number 01661. The Chamber observes that 65 *ter* number 01661 was tendered and admitted in the “Decision on Prosecution’s Bar Table Motion for the Admission of Documents Related to the Sarajevo Component”, 11 May 2012 (“Sarajevo Bar Table Decision”). The Chamber further notes that para. 33 of the Motion fails to refer to 65 *ter* number 17976 which is also objected to by the Accused on this basis. In addition in para. 34 of the Motion the Prosecution refers to a further 16 documents, namely, 65 *ter* numbers 01901, 13417, 13438, 11364, 13555, 03847, 16207, 04070, 16558, 21538, 22825, 22826, 22830, 21990, 22805, and 22809, but there is no other reference to these documents in the Motion, including the Appendices. Accordingly, the Chamber shall not consider these 16 documents. Therefore, a total of 12 of the Documents fall into this category.

The Prosecution's position with respect to each of these objections will be outlined in the Discussion section below.

3. Having been instructed by the Chamber, via email of 7 May 2012, to respond to the Motion by 14 May 2012, the Accused filed his "Response to Prosecution Municipalities Bar Table Motion" on 9 May 2012 ("Response"), wherein he renews the objections already included in Appendix A and confidential Appendix C to the Motion, and the objections made in relation to other bar table motions filed by the Prosecution.¹⁵ Contrary to the tables found in Appendix A and confidential Appendix C to the Motion, which suggest that the Accused had no objection to the admission of some of the Documents, the Response indicates that the Accused also makes a general objection to the admission of all of the Documents on the basis that they should have been used or tendered in connection with the testimony of expert witnesses.¹⁶ According to the Accused, the topics raised in the Documents "are the same topics" which were covered by the testimony of Dorothea Hanson (with respect to Crisis Staffs), Ewan Brown (with respect to the Army of Republika Srpska ("VRS") and, more specifically, the 1st Krajina Corps), and Reynaud Theunens (with respect to the VRS command and control), and should have thus been used with these witnesses to allow for proper contextualisation and to preserve his right to cross-examine them by reference to the Documents.¹⁷ The Accused also cites to the Chamber's position that source documents used by expert witnesses should not be admitted through the bar table.¹⁸ In the Accused's submission, the failure by the Prosecution to include the Documents during their examination of the expert witnesses requires that the Motion be dismissed in its entirety.¹⁹

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.

¹⁴ Motion, paras. 37–43, Appendix A, referring to 65 *ter* numbers 00258, 00435, 04427, 00582, 09195, 10937A, and 11511.

¹⁵ Response paras. 5–6 referring to 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.

¹⁶ Response, para. 2.

¹⁷ Response, paras. 2–3.

¹⁸ Response, para. 4, citing Decision on the Prosecution's Bar Table Motion Relating to Witness Dorothea Hanson, 27 June 2011 ("Hanson Bar Table Decision"), para. 15.

¹⁹ Response, para. 4.

- (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.²⁰ 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.²¹ 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.²²

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.²³

III. Discussion

7. As a preliminary matter and having conducted a review of the Documents and the submissions in that regard, including the fact that the Accused 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.

8. The Chamber notes that 65 *ter* numbers 00596, 04232, 06110, 08972, 09236, 11220, and 45054 have already been tendered by the Prosecution in the “Prosecution’s Bar Table Motion for the Admission of Documents (Srebrenica)” filed on 4 May 2012 and admitted in the Chamber’s “Decision on Prosecution’s Motion for the Admission of Evidence from the Bar

²⁰ Decision on Prosecution’s First Bar Table Motion, 13 April 2010 (“First Bar Table Decision”), para. 5.

²¹ First Bar Table Decision, para. 5.

²² First Bar Table Decision, paras. 9, 15.

²³ Order on Procedure, Appendix A, Part VII, para. R.

Table (Srebrenica)” filed on 22 May 2012 (“Srebrenica Bar Table Decision”). The Chamber will therefore not address the admission of these documents in this decision.

9. The Chamber also notes that document bearing Rule 65 *ter* number 07707 is a duplicate of 65 *ter* number 01218A, which has also been tendered in the Motion, and thus shall deny the admission of 65 *ter* number 07707.

10. The Chamber will now examine each of the Accused’s objections in turn.

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

11. The Chamber will first address the Accused’s general objection that all of the Documents should have been used in connection with the testimony of expert witnesses and secondly will address the Accused’s objection with respect to specific documents which in his submission should have been tendered through particular witnesses. The Prosecution submits that the Chamber has previously rejected this argument on the basis that there is no general rule against admitting documents from the bar table which could have been shown to witnesses, provided that the requirements of Rule 89(C) and (D) are met.²⁴

12. 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.²⁵ 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.²⁶ 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 would be substantially outweighed by the need to ensure a fair trial.²⁷

13. The Chamber does not see any merit to the Accused’s general objection that each of the Documents should have been used in connection with the testimony of expert witnesses. In broad terms the subject matter of some of the Documents could have fallen within the purview of the reports prepared by and the testimony of experts who have been called as witnesses in this

²⁴ Motion, para. 9.

²⁵ See Decision on Prosecution’s Motion for Admission of Evidence from the Bar Table (Hostages), 1 May 2012, para. 11; Sarajevo Bar Table Decision, para. 12.

²⁶ Sarajevo Bar Table Decision, 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.

case. However, the testimony of these experts and the content of their expert reports did not purport to be and cannot be expected to reflect each document which is relevant to the subject matter covered by their evidence.²⁸ The Chamber notes in this regard that the context which an expert can provide to a document is very different to the context which the author or recipient of a document can provide. In that regard, the Chamber does not find that the probative value of all the Documents as a whole would be substantially outweighed by the need to ensure a fair trial by virtue of the Accused's inability to cross-examine the expert witnesses on their content. Therefore, the Chamber rejects the Accused's general objection to the admission of all of the Documents due to the failure to use them with expert witnesses and will proceed to analyse the specific objections raised with respect to particular documents.

14. The Chamber recalls the Accused's general objection that source documents which are referred to in an expert witness's report should not be tendered through the bar table. As the Chamber has previously held:

Bar table motions should be kept to a minimum and not used as a means of tendering into evidence documents used as source materials. Accordingly, if the Prosecution wants to tender into evidence a source document for its substantive content, it should present this document to the expert while that expert is on the stand.²⁹

While this does reflect the position of the Chamber³⁰, the Accused has failed to point to specific documents which have indeed been used as source documents in the reports of the expert witnesses and has therefore failed to show which particular documents should be denied admission on that basis. Under these circumstances, the Chamber also sees no merit in the Accused's argument that the Motion should be dismissed in its entirety on these grounds.

15. There are six documents which the Accused contends should have been put to Milan Tupajić, who was prosecuted and convicted of contempt of the Tribunal for failure to comply with two subpoenas to appear before the Chamber as a witness.³¹ The Chamber observes that four of the six documents, namely 65 *ter* numbers 01110, 05364, 05367, and 05372 were

²⁷ Sarajevo Bar Table Decision, para. 12.

²⁸ For example the Chamber observes that in Ewan Brown's expert report (P3914) at p. 4 and his testimony on 22 November 2011 (T. 21499–21500), he notes that the report has "limited scope" based on a selection of documentary material and "is not an exhaustive analysis of all aspects of events in the Bosanska Krajina area between 1991-1992". Similarly in Dorothea Hanson's expert report (P2589) at p. 4 she notes that in her report "individual documents and references were selected" and that the "selections also endeavoured to balance evidence from the most significant municipalities".

²⁹ Hanson Bar Table Decision, para. 15.

³⁰ Hanson Bar Table Decision, paras. 13, 15.

³¹ Case No. IT-95-5/18-R77.2, In the Contempt Case of Milan Tupajić, Public Redacted Version of "Judgement on Allegations of Contempt" issued on 24 February 2012, 24 February 2012.

tendered by the Prosecution in the “Prosecution Motion for Admission of Milan Tupajić’s Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*” which was filed on 11 May 2012. Three of these, namely 65 *ter* numbers 05364, 05367, and 05372, have been admitted into evidence under Rule 92 *bis*.³² However, the Chamber has denied the admission of 65 *ter* number 01110.³³ Thus, with respect to the remaining three Tupajić-related documents, namely 65 *ter* numbers 01110, 05374, and 05377, the Chamber finds that they are relevant and have probative value as they go to issues such as the Accused’s involvement in the events in Sokolac. However, given the significance of the content of these documents to the events in Sokolac and the Accused’s involvement therein and in light of the fact that no witness will now speak directly to these issues, the Chamber does not consider it appropriate for them to be tendered from the bar table without the Accused having an opportunity to cross-examine a witness as to their contents. The Chamber therefore finds that their probative value would be substantially outweighed by the need to ensure a fair trial if admitted from the bar table. Accordingly, the Chamber will also not admit 65 *ter* numbers 01110, 05374, and 05377.

16. There are three documents which the Accused contends should have been introduced during the testimony of Sulejman Crnčalo.³⁴ The Chamber considers that these documents are relevant and have probative value, as they go to the removal of Bosnian Muslims from Pale. The documents are clear on their face and do not require any further contextualisation particularly in light of the fact that other documents which relate to similar issues were discussed during Crnčalo’s testimony and the fact that the three documents in question here are not personally connected to Crnčalo or his experiences. Having determined that the documents satisfy the requirements of Rule 89(C) of the Rules, and finding no reason to deny their admission pursuant to Rule 89(D) the Chamber will admit 65 *ter* numbers 01576, 01582, and 11229 from the bar table.

17. The Accused objects to the admission of 12 documents on the basis that they should have been introduced during the testimony of KDZ163.³⁵ The Chamber considers that the documents are relevant and have probative value, as they go to issues including the existence and operation of the Manjača detention camp in Banja Luka. The documents are clear on their face and do not require any further contextualisation particularly in light of the documents which were already discussed during KDZ163’s testimony which relate to similar issues.³⁶ In addition,

³² Decision on Prosecution Motion for Admission of Milan Tupajić’s Evidence in Lieu of *viva voce* Testimony pursuant to Rule 92 *bis*, 24 May 2012 (“Tupajić Decision”), para. 27.

³³ Tupajić Decision, para. 25.

³⁴ 65 *ter* numbers 01576, 01582, and 11229

³⁵ 65 *ter* numbers 05545, 05557, 05558, 05570, 05588, 05645, 05669, 05670, 05777, 17808, 17868, and 21839.

³⁶ See P3741 (under seal), P3744 (under seal), P3748 (1st Krajina Corps request, 27 July 1992).

while the Accused states that these 12 documents should have been put to KDZ163, the Chamber does not consider that this is in fact the case for any of them as they are not personally connected to KDZ163 and it is doubtful whether he would have been able to comment on them at all. In that regard, while the Chamber observes that KDZ163 testified about events in the Manjača detention camp, that does not mean that every document which is related to that camp should have been tendered during his testimony. Having determined that the documents satisfy the requirements of Rule 89(C) of the Rules, and finding no reason to deny their admission pursuant to Rule 89(D) the Chamber will admit 65 *ter* numbers 05545, 05557, 05558, 05570, 05588, 05645, 05669, 05777, 17808, 17868, and 21839. With respect to 65 *ter* number 05670, the Chamber observes that the Accused also objected to its admission on the basis that it is one of the ICRC Documents. Its admission will be addressed below in the section dealing with the ICRC Documents.

18. The Chamber finds that 65 *ter* numbers 18374 and 21603 are relevant and probative as they pertain to the role of the Bosnian Serb leadership in the dissemination of propaganda and the general mobilisation of the Bosnian Serb population. The Chamber observes that these documents were signed by Branko Đerić and that the Accused claims that they should have been put to him during his testimony. The Chamber finds that 65 *ter* number 21603 is clear on its face and does not require any further contextualisation. Having determined that this document satisfies the requirements of Rule 89(C) of the Rules, and finding no reason to deny its admission pursuant to Rule 89(D) the Chamber will admit 65 *ter* number 21603.

19. However, with respect to 65 *ter* number 18374, which is an order signed by Đerić pursuant to a Decision of the Presidency of the Serbian Republic of Bosnia and Herzegovina regarding the mobilisation of the population, the Prosecution submits that it was used as a pretext for the detention and mistreatment of non-Bosnian Serb men.³⁷ The Chamber observes that this is not a conclusion which is obvious on the face of the document. Accordingly, Đerić should have been asked about that interpretation of the document during his testimony and similarly the Accused should have been given an opportunity to cross-examine Đerić on this interpretation. Under these circumstances, the Chamber will not admit 65 *ter* number 18374 on the basis that its probative value would be substantially outweighed by the need to ensure a fair trial if the Accused was not given an opportunity to challenge this interpretation through Đerić's testimony.

³⁷ Motion, Appendix A, p. 134.

20. The Prosecution is tendering two documents which the Accused contends should have been put to Momčilo Mandić.³⁸ The Chamber is satisfied that 65 *ter* number 22938 is relevant and probative as it relates to the dismissal of Bosnian Muslim judges in Bijeljina. However, given that the Prosecution is tendering the document in part to contradict Mandić's evidence on the reason why Bosnian Muslim judges left their positions, the Chamber finds that this should have been put to him during his testimony to hear his explanation and to allow the Accused to cross-examine him on this issue. The failure to confront Mandić with this document during his testimony means that its probative value would be substantially outweighed by the need to ensure a fair trial if admitted from the bar table. Accordingly the Chamber will not admit 65 *ter* number 22938 from the bar table. With respect to 65 *ter* number 18258 the Chamber finds that it is relevant and probative as it pertains to the beginning of the conflict and the Bosnian Serb Crisis Staff position in relation to the deteriorating situation and surrounding negotiations. The Chamber finds that the document is clear on its face and does not require any further contextualisation from Mandić. Having determined that the document satisfies the requirements of Rule 89(C) of the Rules, and finding no reason to deny its admission pursuant to Rule 89(D) the Chamber will admit 65 *ter* number 18258.

21. With respect to document bearing Rule 65 *ter* number 18946, the Chamber finds that it is relevant to the case as it pertains to the Accused's control over the VRS and over the detention facilities in Bosnia and Herzegovina ("BiH") as it provides that the Accused allowed the ICRC access to these facilities. The Chamber observes that the document was signed by Manojlo Milovanović and that the Accused claims this document should have been put to him during his testimony. The Chamber finds that 65 *ter* number 18946 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, and finding no reason to deny its admission pursuant to Rule 89(D) the Chamber will admit 65 *ter* number 18946.

22. The Accused contends that 65 *ter* number 05193 should have been used with Ewa Tabeau, a demographic expert, and that it is cumulative. The document provides an overview of the changes in the ethnic structure and populations in several municipalities and is therefore of relevance and probative value. As the Chamber has noted above the testimony of experts such as Tabeau cannot be expected to reflect each document which is relevant to the subject matter covered by their evidence. Having reviewed 65 *ter* number 05193 the Chamber considers that the document is clear on its face and does not require any further contextualisation. In that regard, the Chamber does not find that the probative value of the document would be

³⁸ 65 *ter* numbers 18258 and 22938.

substantially outweighed by the need to ensure a fair trial by virtue of the Accused's inability to cross-examine Tabeau on its contents. Accordingly, the Chamber will admit 65 *ter* number 05193 from the bar table.

23. While 65 *ter* number 02559 is being tendered to show the involvement of the JNA in the conflict in Zvornik as part of the Bosnian Serb forces, it is also closely connected to a protected witness who testified in this case and who would have been able to shed more light on it. The Chamber notes that the Prosecution in its submissions³⁹ is seeking to draw a conclusion which is not clear on the face of the document and therefore finds that this issue should have been discussed with this witness who would have been able to comment on and contextualise this specific document.⁴⁰ The failure to confront the said protected witness with this document during his testimony and thus give the Accused an opportunity to cross-examine on the issues discussed therein means that its probative value would be substantially outweighed by the need to ensure a fair trial if admitted from the bar table. Accordingly the Chamber will not admit 65 *ter* number 02559 from the bar table.

b) Accused's challenge to admission from the bar table of documents which contain serious allegations or controversial issues

24. The Accused also objects to the admission of three documents on the basis that they contain serious allegations or controversial issues which should have been put to witnesses during their testimony.⁴¹ The Prosecution submits that one of these documents was in fact discussed by Dorothea Hanson in her expert report⁴² and that the issues raised in the other two documents had already been discussed with witnesses who have testified in this case.⁴³

25. Having reviewed 65 *ter* numbers 00283 and 00851, the Chamber finds that they do contain serious allegations including, (1) that Bosnian Serb authorities had knowledge of and/or involvement in crimes committed by Bosnian Serb forces in municipalities including Prijedor, Sanski Most, and Ključ; and (2) the dismissal of Bosnian Muslims from official positions and their expulsion from municipalities.

26. The Chamber finds that just because a document contains a serious allegation does not, in and of itself, prevent its admission from the bar table. Instead, the guiding principle for the

³⁹ Motion, confidential Appendix C, p. 1.

⁴⁰ The name of the protected witness is referred to in the Motion, confidential Appendix C.

⁴¹ Motion, paras. 10–11, Appendix A, referring to 65 *ter* numbers 00283, 00851, and 00981.

⁴² Motion, para. 10, referring to 65 *ter* number 00981. *See also* P2589, fn. 29.

⁴³ Motion, para. 11. The Prosecution submits that the issues raised in 65 *ter* number 00283 were discussed with witnesses Nenad Krejić (*see* T. 20856–20857, 3 November 2011) and Milan Komljenović (*see* P3768, page 15).

Chamber is whether the probative value of such documents containing serious allegations is substantially outweighed by the need to ensure a fair trial. The Chamber is satisfied that the meaning and context of the documents with 65 *ter* numbers 00283 and 00851 are clear and therefore it cannot be said that further contextualisation through a witness would have been necessary in order to ensure a fair trial. In addition, the Chamber has also taken into account that the Accused had an opportunity to canvass or challenge the issues raised in 65 *ter* number 00283 and 65 *ter* number 00851 during the testimony of Nenad Krejić,⁴⁴ Milan Komljenović,⁴⁵ Asim Egrlić,⁴⁶ and Dorothea Hanson⁴⁷ who all covered similar issues. Dealing more specifically with the two documents, 65 *ter* number 00283 is an official note signed by “Miloš” which provides that Bosnian Serb authorities and officials were seeking to shift the blame for crimes which occurred in municipalities including Prijedor, Ključ, and Sanski Most. The document also records information that the Security Services Centre in Banja Luka had received information regarding the responsibility of individuals for specific crimes committed in these municipalities and the fact that statements of refugees were being used to document “Serbian crimes”.

27. As for 65 *ter* number 00851, it contains the summaries of two meetings of the War Presidency of Ključ and indicates that the War Presidency decided to relieve named Bosnian Muslim officials from their positions in Banja Luka and to establish a commission for the resettlement and exchange of homes. The Chamber observes that, while these two documents contain serious allegations, they do not directly implicate the Accused or suggest his knowledge of the underlying events or actions. Under these circumstances the Chamber concludes that the probative value of these documents would not be substantially outweighed by the need to ensure a fair trial if tendered through the bar table without giving the Accused the opportunity to cross-examine their contents. Accordingly, the Chamber will admit from the bar table 65 *ter* numbers 00283 and 00851.

28. While 65 *ter* number 00981 is relevant to the receipt, distribution, and implementation of Variant A and B Instructions, the Prosecution itself has observed that this is source document.⁴⁸ As discussed above, the Chamber has previously held that bar table motions should be kept to a minimum and not used as a means of tendering into evidence documents used as source

⁴⁴ Hearing, T. 20837–20902 (3 November 2011).

⁴⁵ Hearing, T. 20906–20987 (3 and 4 November 2011).

⁴⁶ Hearing, T. 19914–20024 (5 and 6 October 2011) and more specifically T. 19924–19925.

⁴⁷ Hearing, T. 14640–14643 (14 June 2011), T. 14871–14885 (17 June 2011).

⁴⁸ *See* Motion, para. 10, where the Prosecution stated that 65 *ter* number 00981 was discussed in Dorothea Hanson’s expert report, referring to P2589, fn. 29.

materials.⁴⁹ The Chamber also instructed the Prosecution that if it wanted to tender a source document for its substantive content, it should present this document to the expert while that expert is on the stand.⁵⁰ In light of this clear instruction and the Prosecution's own observation that 65 *ter* number 00981 is a source document, the Chamber will not admit 65 *ter* number 00981 from the bar table.

c) Accused's challenge to admission from the bar table of the Media Reports

29. The Prosecution tenders 20 media or news reports from the bar table and the Accused objects to the admission of 18 of those.⁵¹ The admission of 65 *ter* number 45054 has already been addressed in paragraph 8 above and will not be addressed again. The Prosecution submits that there is no blanket rule precluding the admission of written media reports and that the question is whether there is *prima facie* indicia of reliability.⁵² More specifically the Prosecution notes that ten of the Media Reports are video recordings ("Video Material") and that the Chamber's previous comments on the admission of written media reports from the bar table did not apply to video recordings where the reliability is self-evident.⁵³ Of the remaining Media Reports, the Prosecution argues that two are sourced from publications controlled by the Bosnian Serb leadership and would be akin to the admission of "official RS military or government documents" which are considered to be reliable.⁵⁴ In addition, the Prosecution observes that seven of the Media Reports contain statements of the Accused and are thus also relevant to the propaganda allegations in the Indictment.⁵⁵ The Prosecution notes that five of the Media Reports consist of question and answer sessions with the Accused containing minimal journalistic intervention.⁵⁶ The Prosecution's final submission with respect to these documents is that the content of the Media Reports "are largely corroborated by similar statements of the Accused in other formats such as Assembly session transcripts, videos, or intercepts" which supports their *prima facie* reliability.⁵⁷

⁴⁹ Hanson Bar Table Decision, para. 15.

⁵⁰ Hanson Bar Table Decision, para. 15.

⁵¹ The Accused objects to the admission of 65 *ter* numbers 00699, 01126, 01218A, 05793, 11863, 12073, 13310, 15073, 40136A, 40382, 40403A, 45019, 45054, 45099A, 45099B, 45238A, 45366, and 45367. The Accused does not object to the admission of 65 *ter* number 13983.

⁵² Motion, paras. 14–17.

⁵³ Motion, para. 18, referring to 65 *ter* numbers 40136A, 40382, 40403A, 45019, 45054, 45099A, 45099B, 45238A, 45366, and 45367.

⁵⁴ Motion, para. 20, referring to 65 *ter* numbers 01218A and 13310.

⁵⁵ Motion, paras. 16, 21, referring to 65 *ter* numbers 00699, 01126, 05793, 12073, and 15073,

⁵⁶ Motion, para. 21 and Appendix A, referring to 65 *ter* numbers 00699, 01126, 01218A, 05793, 11863, 12073, and 15073.

⁵⁷ Motion, paras. 22–25.

30. With respect to the Media Reports the Chamber recalls that it has previously indicated that *written* media reports are unlikely to be considered admissible from the bar table, stating that “[t]here 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”.⁵⁸

31. As the Chamber has recently held, this ruling is a clear indication that “no written media reports are likely to be admitted through the bar table”.⁵⁹ The Chamber reiterates that just because such written media reports may be interviews 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.⁶⁰ Similarly the Chamber is not convinced by the Prosecution’s submission that the existence of other corroborating material is sufficient to support the *prima facie* reliability of this category of written media reports for the purposes of admission from the bar table. As such, the Chamber will not admit into evidence the 65 *ter* numbers 00699, 01126, 01218A, 05793, 11863, 12073, 13310, and 15073.

32. The Chamber notes that the Accused does not object to the admission of 65 *ter* number 13983, which is an excerpt of an interview with the Accused for which the Chamber does not possess the actual video recording. Given the Accused’s lack of objection and the fact that he participates himself in the interview, the Chamber considers that this document may be admitted from the bar table despite the absence of a video broadcast.

33. In contrast, given that the Video Material is accompanied by video recordings, the Chamber finds that it does not require independent verification of the accuracy of the information contained therein. The concerns regarding the reliability and probative value of media reports are in this case alleviated given that the Chamber has access to the underlying video recordings. The Chamber finds that the Video Material is relevant and probative as it relates to a number of issues including: (1) the Accused’s knowledge of and statements regarding the events leading up to the takeover of the municipalities charged in the Indictment; (2) the territorial objectives of the Bosnian Serb leadership and their involvement in international negotiations; (3) the Accused’s relationship with Ratko Mladić; and (4) the involvement of paramilitaries such as Arkan in events surrounding the alleged takeover of

⁵⁸ First Bar Table Decision, para. 12.

⁵⁹ Sarajevo Bar Table Decision, para. 19; Srebrenica Bar Table Decision, para. 16.

⁶⁰ *See also* Sarajevo Bar Table Decision, para. 19; Srebrenica Bar Table Decision, para. 16.

Bijeljina and their relationship with the Bosnian Serb leadership. Having determined that the Video Material satisfies the requirements of Rule 89(C) of the Rules, and finding no reason to deny its admission pursuant to Rule 89(D), the Chamber will admit into evidence the videos which bear 65 *ter* numbers 13983, 40136A, 40382, 40403A, 45019, 45099A, 45099B, 45238A, 45366, and 45367.

d) Accused's challenge to admission from the bar table of Rule 66(B) Material

34. The Prosecution contends that there is no merit to this objection given that the Rule 66(B) Material was on its Rule 65 *ter* list of exhibits which was disclosed to the Accused on 25 May 2009.⁶¹ The Chamber agrees and finds that since the Rule 66(B) Material was on the Prosecution Rule 65 *ter* list and would have been disclosed to the Accused accordingly, his objection to the admission of these documents has no basis. Having reviewed the Rule 66(B) Material the Chamber finds that it is relevant and probative as the documents therein go to issues including the structure and hierarchy within the SDS and to events surrounding the alleged takeover of the municipality of Foča. The Chamber finds that the requirements of Rule 89(C) of the Rules have been met and finding no reason to deny their admission pursuant to Rule 89(D) the Chamber will admit from the bar table 65 *ter* numbers 07789, 10841, 11315, 14925, and 14934.

e) Accused's challenge to admission from the bar table of ICRC Documents

35. The Accused objects to the admission of the two ICRC Documents on the basis that the Prosecution should not be allowed to tender documents which were not accessible to him.⁶² The Prosecution contends that there is no merit to this objection given that the ICRC Documents are public press releases which are available to the Accused and that in any event non-public ICRC material is not accessible by either the Prosecution or the Defence.⁶³ Given that the ICRC Documents are publicly available press releases, the Chamber finds that there is no basis to the Accused's objection that they should not be admitted as he had no access to them. The Chamber finds that the ICRC Documents are relevant to the forcible transfer of Bosnian Muslims from Bijeljina and to the existence and operation of the Manjača camp in Banja Luka. The Chamber also finds that the ICRC Documents have probative value. The Chamber has already dismissed an additional objection to the admission 65 *ter* number 05670 in paragraph 17 above. Satisfied that the requirements of Rule 89(C) of the Rules have been met with respect to the ICRC

⁶¹ Motion, para. 27.

⁶² 65 *ter* numbers 05670 and 07414.

⁶³ Motion, para. 30.

Documents and finding no reason to deny their admission pursuant to Rule 89(D) the Chamber will admit from the bar table 65 *ter* numbers 05670 and 07414.

f) Accused's challenge to admission from the bar table of documents relating to events in Municipalities not charged in the Indictment

36. The Accused objects to the admission of nine of the Documents on the basis that they relate to events in municipalities which are not charged in, or have been dropped from the Indictment.⁶⁴ The Prosecution contends that it is permitted to present evidence from dropped or uncharged municipalities if the evidence is relevant to “the objective and methods of the alleged JCEs; the degree of co-ordination and co-operation of individuals and institutions that are allegedly part of the JCEs; the widespread or systematic nature of the alleged crimes and pattern; and the Accused’s role, intent, knowledge or notice”.⁶⁵ With respect to the Municipalities Documents, the Chamber finds that while they relate to events in municipalities which are not charged or have been dropped from the Indictment they are relevant to issues charged in the Indictment including *inter alia* to (1) the Accused’s authority in the SDS hierarchy; (2) the control and awareness of the Bosnian Serb leadership over events in municipalities including the actions of the Crisis Staffs; and (3) co-operation and co-ordination between the VJ and the VRS.

37. However, given that the bar table mechanism is intended to be used in exceptional circumstances and to fill in specific gaps in the tendering party’s case⁶⁶, the Chamber finds that those gaps should not be filled by material which relates to non-charged municipalities or municipalities which have been dropped from the Indictment. The Chamber is of the view that if the Prosecution wanted to lead evidence on non-charged municipalities or municipalities which have been dropped from the Indictment in order to strengthen its case pertaining to the alleged Joint Criminal Enterprises (“JCEs”), this evidence should have been presented through witnesses. To admit such material from the bar table, without giving the Accused an opportunity to cross-examine that evidence would result in the probative value of these documents being substantially outweighed by the need to ensure a fair trial. As such, the Chamber will not admit into evidence 65 *ter* numbers 00332, 00351, 01014, 01080, 01865, 06692, 22916, 22918, and 22919.

⁶⁴ 65 *ter* numbers 00332, 00351, 01014, 01080, 06692, 01865, 22916, 22918, and 22919.

⁶⁵ Motion, para. 32.

⁶⁶ First Bar Table Decision on Intercepts, para. 16.

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

38. The Accused objects to the admission of 48 of the Documents on the basis that they are either irrelevant to the crimes charged in the Indictment and/or cumulative to other evidence in this case.⁶⁷ The admission of two of the 48 documents has been denied in other sections of this decision and will not be repeated here.⁶⁸ Having reviewed the remaining 46 documents the Chamber is satisfied that, with the exception of 65 *ter* number 22871, they are all relevant and probative to this case as they go to one or more of the following issues which arise from the Indictment: (1) events leading up to and during the takeover of municipalities as charged in the Indictment including events in Banja Luka, Foča, Prijedor, Sanski Most, Vlasenica, and Zvornik; (2) the structure of the SDS and the Accused's position in that structure; (3) the establishment and existence of scheduled detention facilities; (4) the role of the Crisis Staffs and their co-ordination with the JNA; (5) the presence and role of paramilitary formations in municipalities charged in the Indictment; (6) the structure and chain of command and communication within the VRS; (7) the Accused's contact with and authority over civilian and military structures; (8) the level of co-operation between police and military organs; (9) the territorial objectives of the Bosnian Serb leadership and their involvement in international negotiations; (10) the military support and co-operation between the VJ, JNA, and Bosnian Serb forces; (11) the approach taken by Bosnian Serb authorities to property seized during operations as "war booty"; (12) the implementation of the strategic objectives and Variant A and B Instructions; (13) the level of communication between republican and regional bodies; and (14) the role of the Bosnian Serb leadership in the dissemination of propaganda.

39. 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.⁶⁹ On the contrary, the Chamber assesses each item in light of Rule 89(C) of the Rules on a case-by-case basis.⁷⁰ 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

⁶⁷ 65 *ter* numbers 00814, 00830, 01500, 02555, 02556, 06481, 11169, 11539, and 13360, (as being cumulative); 65 *ter* numbers 05070B, 05084, 05298, 05432, 05435, 05589, 05928, 07092, 09236, 09433, 09465, 10830, 10938, 10942, 13154, 14633, 15273, 17820, 20421, 21598, 21601, 21606, 21637, 21676, 21690, 22871, and 22874 (as being irrelevant), and 65 *ter* numbers 00611, 04033, 05262, 07982, 09073, 10712, 10831, 11220, 13351, 17257, 17976, and 18434 (as being irrelevant and/or cumulative).

⁶⁸ 65 *ter* numbers 09236 and 11220

⁶⁹ Decision on Prosecution's Motion for the Admission of 68 Sarajevo Romanija Corps Documents from the Bar Table, 16 June 2011 ("Sarajevo Romanija Corps Decision"), para. 11.

⁷⁰ See Sarajevo Romanija Corps Decision, para. 11; see also First Bar Table Decision on Intercepts, para. 11.

similar issues. Having reviewed these documents and noting that the Accused does not particularise how these documents are cumulative, the Chamber does not consider that they are plainly unnecessary.

40. With respect to 65 *ter* number 22871, the Chamber is satisfied that it may be relevant to the Bosnian Serb leadership's awareness of detention facilities which are charged in the Indictment. However, the Accused also objects on the basis that the document is unreliable. Having reviewed the document, the Chamber observes that it appears to be a rough draft of a coded fax message, which contains handwritten corrections and additions, various grammatical and spelling mistakes, and seems to be addressed to the person who is in fact sending it. Under these circumstances the Chamber has concerns regarding its reliability and on that basis will not admit into evidence 65 *ter* number 22871.

41. In light of this conclusion and satisfied that the requirements of Rule 89(C) of the Rules have been met and finding no reason to deny their admission pursuant to Rule 89(D), the Chamber will admit⁷¹ from the bar table 65 *ter* numbers 00611, 00814, 00830, 01500, 02555, 02556, 04033, 05070B, 05084, 05262, 05298, 05432, 05435, 05589, 05928, 06481, 07092, 07982, 09073, 09433, 09465, 10712, 10830, 10831, 10938, 10942, 11169, 11539, 13154, 13351, 13360, 14633, 15273, 17257, 17820, 17976, 18434, 20421, 21598, 21601, 21606, 21637, 21676, 21690, and 22874.

h) Accused's challenge to specific documents

42. The Chamber will now turn to the last set of the Accused's objections which concern individual documents.

43. With respect to 65 *ter* number 10937A, the Chamber finds that contrary to the Accused's suggestion it is not vague. It is a document which records the minutes of a meeting of the SDS municipal board in Prijedor in February 1992 and refers to a meeting of the SDS Main Board in Sarajevo at which the Accused discussed SDS policies. The Chamber is also satisfied that this document is relevant and of probative value.

44. The Accused has objected to the admission of 65 *ter* number 09195, which is a Republika Srpska ("RS") MUP document that shows the integration of Arkan's unit in the RS MUP structures in October 1995, on the grounds that its contents are irrelevant to the crimes

⁷¹ The Chamber notes that for documents which the Accused has raised more specific objections in addition to the objection that the documents are irrelevant and/ or cumulative, they will be dealt with in another section of the Decision.

charged for 1995.⁷² Having reviewed the document in light of the Prosecution's submissions, the Chamber finds that it shows that Arkan, who is a member of the alleged JCEs as charged in the Indictment, and his paramilitary unit, remained subordinated to official structures until at least October 1995. Thus, it is relevant to this case and is of probative value.

45. While the Accused objects to the admission of 65 *ter* number 00582 on the basis that it is not relevant to "crimes against the civilian population", the Chamber finds that it is relevant and probative as it refers to operations which are relevant to the events charged in and around Bijeljina, Brčko, Sokolac, Vlasenica and Zvornik. Similarly, while the Accused objects to the admission of 65 *ter* number 00435 on the basis that it is irrelevant as it refers to "combat against combatants", the Chamber finds that it is relevant and probative as it refers to operations which are relevant to the events charged in and around Prijedor.

46. With respect to 65 *ter* number 00258, the Chamber finds that contrary to the Accused's submission the Prosecution has sufficiently contextualised the document. In addition, the Chamber finds that 65 *ter* number 00258 has probative value and is relevant to the co-ordination between the VRS, the RS MUP, and volunteers for specific operations.

47. With respect to 65 *ter* number 04427 the Accused objects to its admission on the basis that the Prosecution failed to show how it fits into its case.⁷³ While the document is dated 13 March 2002, the Chamber finds that it is relevant and probative to events which fall within the temporal scope of the Indictment in connection with the Batković camp.

48. Document bearing Rule 65 *ter* number 11511 is a report authored by the Special Rapporteur of the Commission on Human Rights in October 1992 and includes conclusions regarding the human rights violations which were occurring in BiH and the objectives of the conflict, including ethnic cleansing. The Accused's objected to its admission on the basis that second hand reports are unreliable and their admission from the bar table would violate the spirit of Rule 92 *bis*. While the information contained in the report is clearly relevant to a number of issues in this case, the Chamber does not consider that it is appropriate for such a report and the conclusions contained therein to be tendered and admitted from the bar table. To do so without giving the Accused an opportunity to challenge the conclusions reached in the report or to challenge the basis for those conclusions would be unfair.⁷⁴ The Chamber finds that tendering this document from the bar table would result in the probative value of this documents being

⁷² Motion, para. 38.

⁷³ Motion, para. 41, Appendix A.

⁷⁴ Decision on Prosecution's Motion for Admission of Evidence from the Bar Table and for Leave to add Exhibits to the Rule 65 *ter* Exhibit List, 21 February 2012, para. 10.

substantially outweighed by the need to ensure a fair trial. As such, the Chamber will not admit into evidence 65 *ter* number 11511.

49. Having fulfilled the requirements of Rule 89(C), and finding no reason to deny their admission pursuant to Rule 89(D), 65 *ter* numbers 00258, 00435, 00582, 04427, 09195, and 10937A will be admitted into evidence from the bar table.

j) Assessment of Remaining Documents

50. 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).

51. While the Chamber observes that the document bearing 65 *ter* number 15413 is undated, it appears to be relevant to the propaganda objectives of the VRS, the Chamber. However, the Prosecution offers no contextualisation of when this plan was developed and/or implemented and the Chamber is unable to determine this from the contents of the document alone. Given the lack of contextualisation, the Chamber denies the admission of 65 *ter* number 15413 from the bar table.

52. The Prosecution is tendering 65 *ter* number 21883 on the basis that it is relevant to the Accused’s command and control over events in municipalities. The Chamber observes that the document is dated October 1995 and relates to the work of the Zvornik Municipality War Presidency. It also includes a reference to an order from the Accused. However, given that the document post-dates the alleged takeover of the Zvornik municipality and the crimes alleged to have occurred in the municipality by over three years, the Chamber finds that without further contextualisation it is of marginal relevance and will not admit it from the bar table.

53. Having reviewed the Remaining Documents and the Prosecution’s submissions in that regard, the Chamber finds that with the exception of 65 *ter* numbers 15413 and 21883 discussed above, they are relevant to a number of issues arising from the Indictment including: (1) the events leading up to and during the takeover of municipalities as charged in the Indictment including events in Prijedor, Bosanski Novi, Sanski Most, Ključ, Banja Luka, Bijeljina, Zvornik, Vlasenica, Brčko, Bratunac, Pale, Foča, Novo Sarajevo, and Vogošća; (2) the existence and role of paramilitary formations and their relationship with Bosnian Serb official bodies and the VRS; (3) the Accused’s knowledge of events occurring in municipalities; (4) the Accused’s involvement in international negotiations; (5) information or protests sent to the Accused regarding actions by Bosnian Serb forces; (6) the involvement of the JNA in the distribution of weapons to Bosnian Serbs and its relationship with the Bosnian Serb leadership; (7) the chain of

command and communication within the VRS; (8) the structure of the SDS and its role in the lead-up to the takeover of municipalities; (9) the stated territorial objectives of the Bosnian Serb leadership; (10) the Accused's command and control and authority over the VRS, the RS MUP, and regional bodies; (11) the implementation of Directive 4; (12) the willingness and ability of Bosnian Serb authorities to investigate and prosecute certain crimes; and (13) the relationship between the VJ and VRS. The Chamber also finds that, with the exception of 65 *ter* numbers 15413 and 21883, the Remaining Documents have probative value.

54. 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.

55. Accordingly the documents bearing the following 65 *ter* numbers shall be admitted into evidence from the bar table: 00252, 00547, 00561, 00649, 00650, 00659, 00797, 00805, 00828, 00861, 00993, 01028, 01030, 01047, 01050, 01112, 01172, 01149, 01229, 01277, 01295, 01298, 01445, 01486, 01575, 01630, 01711, 01713, 01797, 04213, 04217, 04266, 04926, 05096, 05105, 05142, 05143, 05146, 05417, 05475, 05509, 05528⁷⁵, 05556, 05583, 05795, 05879, 07011, 07063, 07064, 07068, 07095, 07917, 07936, 08023, 08200, 08230, 08396, 08440, 09048, 09106, 09147, 09212, 09215, 09242, 09389, 09452, 09455, 10531, 10533⁷⁶, 10556, 10758, 10765, 10767, 10940, 10944, 11046, 11227, 11228, 11276, 11316, 11432⁷⁷, 11526, 13317, 13373, 13457, 13818, 13975, 13983, 14221, 15660, 16057, 16259, 16260, 17621, 18225, 18244, 18268, 18455, 18683, 18700A, 18835, 18921, 18923, 18924, 18963, 21288⁷⁸, 21309, 21778, 21810, 21866, 21901, 21906, 21995, 22913, 22920, and 45409.

⁷⁵ The Prosecution only refers to and offers context to extracts from this document. Accordingly only pages 43-44 of the English translation and page 16 of the BCS version will be admitted.

⁷⁶ For 65 *ter* numbers 10531 and 10533, while the underlying crimes committed against Bosnian Serbs is not relevant *per se*, the documents are relevant to show that the Bosnian Serb authorities had the willingness and ability to investigate and prosecute those crimes.

⁷⁷ While Judge Baird agrees with the majority that document with 65 *ter* number 11432 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 11432 may not be admitted from the bar table. *See also* Srebrenica Bar Table Decision, para. 31.

⁷⁸ The Chamber notes that the last two pages of the uploaded BCS version of this document appear to be unrelated to 65 *ter* number 21288. Accordingly only the first two pages of the BCS version and the corresponding English translations of 65 *ter* number 21288 will be admitted.

IV. Disposition

56. 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:

00283, 00258, 00252, 00435, 00547, 00561, 00582, 00611, 00649, 00650, 00659, 00797, 00805, 00814, 00828, 00830, 00851, 00861, 00993, 01028, 01030, 01047, 01050, 01112, 01149, 01172, 01229, 01277, 01295, 01298, 01445, 01486, 01500, 01575, 01576, 01582, 01630, 01711, 01713, 01797, 02555, 02556, 04033, 04213, 04217, 04266, 04427, 04926, 05070B, 05084, 05096, 05105, 05142, 05143, 05146, 05193, 05262, 05298, 05417, 05432, 05435, 05475, 05509, 05528⁷⁹, 05545, 05556, 05557, 05558, 05570, 05583, 05588, 05589, 05645, 05669, 05670, 05759, 05760, 05774, 05777, 05795, 05879, 05928, 06481, 07011, 07063, 07064, 07068, 07092, 07095, 07414, 07789, 07917, 07936, 07982, 08023, 08200, 08230, 08396, 08440, 09048, 09073, 09106, 09147, 09195, 09212, 09215, 09242, 09389, 09433, 09452, 09455, 09465, 10531, 10533⁸⁰, 10556, 10712, 10758, 10765, 10767, 10830, 10831, 10841, 10937A, 10938, 10940, 10942, 10944, 11046, 11169, 11227, 11228, 11229, 11276, 11315, 11316, 11526, 11539, 13317, 13154, 13351, 13360, 13373, 13457, 13818, 13975, 14221, 14633, 14925, 14934, 15273, 15660, 16057, 16259, 16260, 17257, 17621, 17808, 17820, 17868, 17976, 18225, 18244, 18258, 18268, 18434, 18455, 18683, 18700A, 18835, 18921, 18923, 18924, 18946, 18963, 20421, 21288⁸¹, 21309, 21598, 21601, 21603, 21606, 21637, 21676, 21690, 21778, 21810, 21839, 21866, 21901, 21906, 21995, 22874, 22913, 22920, 40136A, 40382, 40403A, 45019, 45099A, 45099B, 45238A, 45366, 45367, and 45409;

- (b) By majority, Judge Baird dissenting, **ADMITS** into evidence document bearing 65 *ter* number 11432;

⁷⁹ The Prosecution only refers to and offers context to extracts from this document. Accordingly only pages 43-44 of the English translation and page 16 of the BCS version will be admitted.

⁸⁰ For 65 *ter* numbers 10531 and 10533, while the underlying crimes committed against Bosnian Serbs is not relevant *per se*, the documents are relevant to show that the Bosnian Serb authorities had the willingness and ability to investigate and prosecute those crimes.

⁸¹ The Chamber notes that the last two pages of the uploaded BCS version of this document appear to be unrelated to 65 *ter* number 21288. Accordingly only the first two pages of the BCS version and the corresponding English translations of 65 *ter* number 21288 will be admitted.

- (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 twenty-fifth day of May 2012
At The Hague
The Netherlands

[Seal of the Tribunal]