



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: 27 February 2014

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 27 February 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR ADMISSION OF DOCUMENTS
FROM BAR TABLE: GENERAL MILETIĆ DOCUMENTS**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the Accused’s “Bar Table Motion: General Miletić Documents”, filed on 19 February 2014 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Accused moves, pursuant to Rule 89(C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), for an order admitting into evidence seven documents from the bar table bearing 65 *ter* 03980, 18954, 1D5375, 1D9713, 1D9717, 1D9719, and 1D9724 (“Documents”).¹ In Annex A of the Motion, the Accused sets out a brief description of each document as well as of its relevance and how it fits into his case.² According to the Motion, the Office of the Prosecutor (“Prosecution”) has indicated that it has no objection to their admission into evidence.³

2. The Accused submits that the Documents were included in the “Supplemental Rule 65 *ter* Summary and List of Exhibits for General Radivoje Miletić”, filed on 18 June 2013.⁴ He further argues that since the Chamber decided to withdraw the subpoena for General Miletić, the Documents are now tendered for admission from the bar table.⁵

3. On 21 February 2014, the Prosecution filed the “Prosecution Response to Defence Bar Table Motion: General Miletić Documents” (“Response”). The Prosecution submits that while it does not oppose the Motion, it does not accept the interpretation the Accused makes of the Documents or that they advance his case in any way.⁶

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.

¹ Motion, para. 1; Annex A.

² Motion, para. 2; Annex A.

³ Motion, para. 2; Annex A.

⁴ Motion, para. 3.

⁵ Motion, para. 3.

⁶ Response, paras. 1–2.

- (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, the admission of evidence from the bar table is a practice established in the case-law of the Tribunal.⁷ Evidence may be admitted from the bar table if it is considered to fulfil the requirements of Rule 89, namely that it is relevant, of probative value, and bears sufficient indicia of authenticity.⁸ 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.⁹ Admission 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.¹⁰

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.¹¹

III. Discussion

7. At the outset, the Chamber notes that Rule 65 *ter* 1D99724 has already been admitted through witness Milenko Živanović on 13 October 2013, and thus the Accused’s request in relation to this document is moot.

8. Furthermore, two of the remaining six documents, Rule 65 *ter* 03980 and 18954, are not on the Accused’s exhibit list filed pursuant to Rule 65 *ter* (“Exhibit List”).¹² In the Motion, the Accused fails to seek leave to add these documents to his Exhibit List. The Prosecution makes no arguments in this regard. While the Chamber notes that by this stage of the case, the Accused

⁷ Decision on the Prosecution’s First Bar Table Motion, 13 April 2010 (“First Bar Table Decision”), para. 5; Decision on Prosecution Bar Table Motion for the Admission of Bosnian Serb Assembly Session Records, 22 July 2010 (“Second Bar Table Decision”), para. 4; Decision on Prosecution’s Motion for Admission of Evidence from the Bar Table (Hostages), 1 May 2012 (“Hostages Bar Table Decision”), para. 4.

⁸ Rule 89(C), (E).

⁹ Hostages Bar Table Decision, para. 4, citing First Bar Table Decision, para. 5. *See also*, 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. 5.

¹⁰ Hostages Bar Table Decision, para. 4, citing First Bar Table Decision, paras. 9, 15.

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

¹² *See* Defence Supplemental Submission Pursuant to Rule 65 *ter*, Confidential Annex I, 18 October 2013.

should know he needs to request the late addition of documents to his Exhibit List, the Chamber takes no issue with Rule 65 *ter* 03980 and 18954 being added to the Accused's Exhibit List.

9. Turning now to the admission of the six documents from the bar table, the Chamber first recalls that the Prosecution has not objected to their admission from the bar table. Having reviewed the contents of these documents, all authored by members of the Bosnian Serb Forces, including the Accused in 1994 and 1995,¹³ the Chamber is of the view that they are relevant to the issues in this case, in particular to the alleged joint criminal enterprise to eliminate the Bosnian Muslims in Srebrenica, and have probative value. The Chamber is therefore satisfied that the requirements of Rule 89 are met and considers that the Accused has sufficiently demonstrated how these documents fit into his case. These six documents will, therefore, be admitted into evidence.

IV. Disposition

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

- a) **ADMITS** into evidence Rule 65 *ter* 03980, 18954, 1D5375, 1D9713, 1D9717, and 1D9719; and
- b) **INSTRUCTS** the Registry to assign exhibit numbers to each of these documents.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-seventh day of February 2014
At The Hague
The Netherlands

[Seal of the Tribunal]

¹³ Rule 65 *ter* 03980 is a Rogatica Brigade order signed by Rajko Kusić and dated 27 May 1995; Rule 65 *ter* 18954 is an order signed by the Accused and dated 16 January 1994; Rule 65 *ter* 1D5375 is a VRS Main Staff order signed by Manojlo Milovanović and dated 28 February 1995; Rule 65 *ter* 1D9713 is a Drina Corps report signed by Milenko Živanović and dated 3 December 1994; Rule 65 *ter* 1D9717 is a Drina Corps report signed by Živanović and dated 27 February 1995; and Rule 65 *ter* 1D9719 is a Drina Corps order signed by Radislav Krstić and dated 4 June 1995.