UNITED
NATIONS

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: 2 April 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: **2 April 2014**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S BAR TABLE MOTION (KARADŽIĆ STATEMENTS)

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: Karadžić Statements", filed on 3 March 2014 ("Motion"), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused seeks the admission into evidence of 12 items from the bar table pursuant to Rule 89(C) of the Rules of the Procedure and Evidence of the Tribunal ("Rules").[1] The items consist of ten documents and two videos related to "relevant statements attributed" to the Accused.[2] For each of these items, the Accused makes submissions on their relevance, authenticity, and how they fit into his case.[3] The Accused submits that some of the items were not included on his Rule 65 *ter* exhibit list because he did not anticipate using them at the time the list was filed.[4] However, after deciding not to testify, he states that he was able to "make a more comprehensive review" of the documents and identified additional materials that he believes are relevant and necessary.[5] He thus requests that these documents be added to his Rule 65 *ter* exhibit list.[6]

2. On 17 March 2014, the Office of the Prosecutor ("Prosecution") filed the "Prosecution Response to Defence Bar Table Motion: Karadžić's Statements" ("Response") objecting to the admission of six of the items.[7] The Prosecution argues that the Accused is seeking to admit a "series of self-serving statements" made by him to the media.[8] It opposes the admission of five documents, namely 65 *ter* 01022, 06666, 11034, 13987, and 15094, on the ground that these are written media reports and as such, do not meet the reliability and probative value requirements for admission mandated by Rule 89 of the Rules.[9] Specifically, the Prosecution notes that (i) 65 *ter* 11034 is an interview with the Accused in the form of written questions and answers and (ii) it is unclear whether 65 *ter* 15094 is structured as questions and answers or is a

[1] Motion, para. 1, Annex A.
[2] Motion, para. 3.
[3] Motion, para. 2, Annex A.
[4] Motion, para. 5, Annex A, p. 5. The Chamber notes that only one document, 13616, was not on the original Rule 65 *ter* exhibit list.
[5] Motion, para. 5.
[6] Motion, para. 5.
[7] Response, para. 1 and Appendix A, opposing the admission of 65 *ter* 01022, 06666, 07679, 11034, 13987, and 15094.
[8] Response, para. 2.
[9] Response, para. 4, citing the Decision on Prosecution's Motion for the Admission of Documents from the Bar Table (Municipalities), 25 May 2012 ("Municipalities Bar Table Decision"), paras. 30–31 and Decision on Prosecution's First Bar Table Motion, 13 April 2010 ("First Bar Table Decision"), para. 12.

transcript of an interview.[10] The Prosecution objects to their admission on the basis that these two interviews may have been subject to journalistic analysis or interpretation, or manipulated in some other way.[11] Thus, the requirements for admission are not met as per the Chamber's clear jurisprudence on this issue.[12] The Prosecution objects to the admission of 65 *ter* 07679 on the ground that it has already been admitted into evidence as part of exhibit P4202, which is a compilation of videos related to the Srebrenica component of the case.[13]

3. The Prosecution does not object to the admission of 65 *ter* 1D00260, 1D02887, 1D65293, 13616, 24847, and 40528.[14] However, it does not accept their "interpretation as contended for by the Accused" or that they "advance the Defence case".[15] It also submits that the probative value of "self-serving public statements" by the Accused is "at best negligible".[16] The Prosecution argues that, to be consistent with the Chamber's previous decisions, it draws a distinction between written media reports and transcripts of television interviews in which the Accused participates.[17] Thus, it does not oppose the admission of 65 *ter* 24847 even in the absence of the video broadcast, as it is a transcript of a CNN interview which the Prosecution accepts as accurate and reliable.[18] It also does not object to the admission of 65 *ter* 40528 and 1D02887 on the basis that they are accompanied by video recordings.[19] However, with respect to 65 *ter* 1D02887 the Prosecution conditions its objection on the basis that the English transcript which has been uploaded into e-court accurately reflects the content of the video, which the Prosecution submits that it has been unable to view.[20] It requests that the Accused provide the details of the time at which the relevant clips appear on the two-hour video.[21] Finally, the Prosecution does not object to the admission of 65 *ter* 1D00260, 1D65293, and 13616 on the basis that these are verbatim press statements made by the Accused.[22]

[10] Response, para. 5.
[11] Response, para. 5.
[12] Response, para. 5, citing Municipalities Bar Table Decision, para. 31.
[13] Response, Appendix A, p. 3.
[14] Response, para. 6, Appendix A.
[15] Response, para. 7.
[16] Response, para. 7.
[17] Response, para. 8 citing to the Municipalities Bar Table Decision, para. 32 and Decision on Prosecution's Motion for the Admission of Evidence from the Bar Table (Srebrenica), 22 May 2012, para. 16.
[18] Response, para. 8, Appendix A, p. 4.
[19] Response paras. 6, 9, Appendix A, pp. 2–3, 5–6.
[20] Response, paras. 6, 9, Appendix A, pp. 5–6.
[21] Response, paras. 9, 10, Appendix A, p. 5.
[22] Response, Appendix A, pp. 2, 5.

4. The Prosecution does not oppose the Accused's request to add one document, namely 65 *ter* 13616, to his exhibit list.[23]

II. Applicable Law

5. 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.
>
> (E) A Chamber may request verification of the authenticity of evidence obtained out of court.

6. 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.[24] Evidence may be admitted from the bar table if it fulfils the requirements of Rule 89, 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.[25] 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.[26]

7. The Chamber also recalls its "Order on the Procedure for the 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.[27]

[23] Response, para. 1.
[24] First Bar Table Decision, paras. 5, 9.
[25] First Bar Table Decision, para. 5.
[26] First Bar Table Decision, paras. 9, 15.
[27] Order on the Procedure for the Conduct of Trial, 8 October 2009, Appendix A, Part VII, para. R.

III. Discussion

8. The Chamber recalls that in seeking the admission of evidence from the bar table it is incumbent upon the offering party to demonstrate, with sufficient clarity and specificity, where and how each of the documents fits into its case.[28] The Chamber notes that in the Annex to the Motion, the Accused has explained how each of these items fit into his case and the Chamber is satisfied that he has provided sufficient explanations in that regard.

9. With respect to the requirement that the evidence offered from the bar table bear sufficient indicia of authenticity, the Chamber notes that the Prosecution does not contest the authenticity of any of the items. The Chamber has reviewed the ten documents and two videos and is of the view that they 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.

10. Having reviewed 65 *ter* 01022, 06666, 11034, 13987, and 15094, the Chamber notes that these are written media reports. The Chamber has previously stated that *written* media reports are unlikely to be considered admissible from the bar table as they would not meet the reliability and probative value requirements without a witness to testify to the accuracy of the information contained therein.[29] 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 its concern that they may be subject to journalistic analysis or interpretation, or may have been manipulated in some other way.[30] The Chamber also recalls that the Accused objected to the admission into evidence of similar media reports, some of which were interviews he gave to various media outlets, when the Prosecution sought to tender them through the bar table.[31] Similarly, the Prosecution now objects to the admission of these items using this Chamber's jurisprudence.[32] Therefore, the Chamber will not admit into evidence 65 *ter* 01022, 06666, 11034, 13987, and 15094 as they do not meet the requirements of reliability and probative value under Rule 89 of the Rules.

11. Document with 65 *ter* 24847 is a transcript of an interview the Accused gave to CNN on 28 November 1995. Given the Prosecution's lack of objection and the fact that the Accused is a

[28] First Bar Table Decision, para. 6.

[29] Municipalities Bar Table Decision, para. 30; First Bar Table Decision, para. 12; Decision on Prosecution's Bar Table Motion for the Admission of Documents Related to the Sarajevo Component", 11 May 2012 ("Sarajevo Bar Table Decision"), para. 18; Srebrenica Bar Table Decision, para. 15.

[30] Municipalities Bar Table Decision, para. 31; Sarajevo Bar Table Decision, para. 19; Srebrenica Bar Table Decision, para. 16.

[31] Municipalities Bar Table Decision, para. 2.

[32] The Prosecution objects to documents with Rule 65 *ter* 01022, 06666, 11034, 13987, and 15094. Response, paras. 4–5, Appendix A.

participant in the interview, the Chamber considers that this document may be admitted into evidence.[33] Accordingly, the Chamber will admit 65 *ter* 24847 from the bar table.

12. Document with 65 *ter* 1D65293 is a United Nations Protection Force ("UNPROFOR") report to General Mackenzie forwarding the transcript of a press statement given by the Accused on 12 June 1992 at the International Press Centre in Belgrade. The Prosecution does not object to its admission as it "purports to set out verbatim" the Accused's statement.[34] The Chamber has examined the document and notes that it is a contemporaneous UNPROFOR report containing the Accused's official statement which was released by the International Press Centre and a verbatim transcript of the same. It relates to the Sarajevo component of the case, namely the Accused's announcement of a cease-fire in Sarajevo and the passage of humanitarian aid. The Chamber is therefore satisfied that it is relevant and has probative value and will admit it from the bar table.

13. Documents with 65 *ter* 1D00260 and 13616 are the Accused's official press statements released by the Serbian Press Agency on 8 June 1992 and the Tanjug News Agency on 26 June 1992, respectively. The Prosecution does not object to their admission.[35] The Chamber has reviewed both documents and finds that 65 *ter* 13616 contains the Accused's announcement of a cease-fire in Sarajevo and his position on the passage of humanitarian aid, while 65 *ter* 1D00260 contains the Accused's statements about the protection of civilians and the treatment of prisoners. As such, both are relevant and have probative value. Accordingly, the Chamber will admit both 65 *ter* 1D00260 and 13616 from the bar table.

14. Document with 65 *ter* 07679 is a transcript of a television interview with the Accused from a SRT Broadcast dated 12 July 1995. The Prosecution objects to its admission on the basis that it is already admitted into evidence as part of exhibit P4202.[36] The Chamber has examined both 65 *ter* 07679 and P4202 and finds that the former is a duplicate of the latter, specifically pages 261 through 265 in e-court. Accordingly, the Chamber will not admit 65 *ter* 07679 into evidence.

15. Turning next to the two videos, the Chamber has reviewed the video 65 *ter* 40528, which is a broadcast from the BBC television show, Newsnight, dated 22 August 1992, and contains an interview with the Accused. The Prosecution does not object to its admission on the ground that

[33] *See* Municipalities Bar Table Decision, para. 32.
[34] Response, Appendix A, p. 2.
[35] Response, Appendix, pp. 2, 5.
[36] Response, Appendix, pp. 2–3.

it is a transcript accompanied by a video.[37] The interview relates to the London Conference and international efforts at negotiating peace agreements between the parties. The Chamber is satisfied that it is relevant and has probative value, and accordingly will admit it into evidence.

16. Finally, the video 65 *ter* 1D02887 is an interview the Accused gave to the BBC.[38] The Prosecution did not object but requested that the Accused provide it with the "details of the time on the 2 hour video accompanying the relevant transcript at which the relevant clip appears".[39] The Chamber notes that the correct video was subsequently provided by the Accused's defence team and the video accurately contains the interview with the Accused as he submitted in his Motion. In the interview, the Accused makes statements about access to detention camps by the UN, prisoner exchanges, and co-operation with the international community for punishing crimes committed in the camps. The Chamber finds that these statements are relevant and have probative value, and accordingly will admit this video into evidence.

[37] Response, paras. 6, 9, Appendix A, pp. 2–3.
[38] The Chamber notes that there is no date for this video.
[39] Response, paras. 9–10, Appendix A, pp. 5–6.

IV. Disposition

17. Accordingly, the Chamber, pursuant to Rule 89(C) of the Rules, hereby

(A) **GRANTS** leave to the Accused to add one document, 65 *ter* 13616, to his Rule 65 *ter* exhibit list;

(B) **ADMITS** into evidence 65 *ter* 13616, 24847, 1D00260, and 1D65293;

(C) **INSTRUCTS** the Registry to assign the appropriate exhibit number to the documents referred to paragraph (B) above;

(D) **ADMITS** into evidence the video 65 *ter* 40528 and **ORDERS** the Accused to provide the Chamber with a revised video with only those portions which contain the interviews with the Accused;

(E) **ADMITS** into evidence the video 65 *ter* 1D02887;

(F) **INSTRUCTS** the Registry to assign the appropriate exhibit number to the videos referred to in paragraphs (D) and (E) above; and

(G) **DENIES** the remainder of the Motion.

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

Judge O-Gon Kwon
Presiding

Dated this second day of April 2014
At The Hague
The Netherlands

[Seal of the Tribunal]