



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: 7 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: 7 April 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S BAR TABLE MOTION (SARAJEVO COMPONENT
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: Sarajevo Component Documents”, filed on 3 March 2014 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Accused seeks, pursuant to Rule 89(C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the admission from the bar table of 107 documents which relate to the Sarajevo component of this case.¹ In Annex A to the Motion, the Accused makes submissions as to the relevance, authenticity, and value to his case of each of these documents.² The Accused also notes in the Motion that three of the documents are pending translation.³ He further submits that four of the documents were not included in his Rule 65 *ter* exhibit list as he was only now able to conduct a more comprehensive review of documents and identified additional material. Thus, he requests that they also be added to his Rule 65 *ter* exhibit list.⁴

2. On 14 March 2014, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Response to Bar Table Motion: Sarajevo Component Documents With Public Appendix A” (“Response”) in which it objects to the admission of 42 documents.⁵ The Prosecution opposes the Motion, in part, on the basis that, *inter alia*, some of the documents (i) are duplicates of evidence already admitted or proposed elsewhere in the Motion;⁶ (ii) lack “in relevance or probative value without additional contextualisation,” particularly in relation to certain locations;⁷ or (iii) lack a “showing of relevance or probative value,” particularly “due to their failure to support the propositions asserted in the Motion or the irrelevance of such propositions.”⁸ In addition, five of the 42 objections are made on the basis that the documents in question contain no English translation.⁹

¹ Motion, paras. 1, 3.

² Motion, para. 2, Annex A.

³ These were as follows: 1D03240, 1D26858, and 1D26926.

⁴ These documents are marked with an asterisk in Annex A of the Motion and bear the following Rule 65 *ter* numbers: 13726, 15611, 17058, and 21975. Motion, para. 5, Annex A.

⁵ Response, Appendix A.

⁶ Response, paras. 1, 3.

⁷ Response, paras. 1, 4–7.

⁸ Response, paras. 1, 8–10.

⁹ These documents are: 1D26858, 1D26926, 1D40483, 1D44043, and 1D55013. *See* Response, Appendix A, pp. 2, 17, 22–23, 30, 54.

3. With respect to (i), the Prosecution submits that seven documents are duplicates of exhibits which have already been admitted,¹⁰ while an additional document duplicates another document sought for admission in the Motion.¹¹ In addition, one document is an excerpt from a larger document already admitted as an exhibit, while another document is subsumed in its entirety by a document which has already been admitted.¹²

4. With respect to (ii), the Prosecution argues that many of the documents it objects to in this category are regular combat reports from the Sarajevo Romanija Corps (“SRK”) Command to the Main Staff of the Army of Republika Srpska (“VRS”) tendered as examples of provocations or ceasefire violations by members of the Army of Bosnia and Herzegovina (“ABiH”). However, in many cases, according to the Prosecution, they contain “vague geographical descriptions of the locations where the alleged provocations occurred, as well as some regions that are known to be well away from the encircled area of central Sarajevo” relevant to the Indictment.¹³ In addition, in relation to document bearing Rule 65 *ter* number 1D02745, the Prosecution also notes that the Accused has represented that the document comes from the Prosecution’s evidence collection. However, according to the Prosecution, that is not the case, which is why it requests that the Accused provide further information as to the provenance of the document, in particular how and through whom it was received.¹⁴

5. With respect to (iii), the Prosecution argues that documents objected to here have not been shown to be relevant primarily because they do not support the assertions made by the Accused in the Annex to the Motion as to why they should be admitted. In addition, according to the Prosecution, some of the Accused’s assertions, even if supported by the document in question, are irrelevant.¹⁵

¹⁰ Response, paras. 1, 3, footnote 3. The seven duplicates according to the Prosecution are as follows: 1D01222 (already admitted as P1006), 1D01881 (already admitted as D260), 1D03240 (already admitted as D1074), 1D07552 (already admitted as P6297), 1D55014 (already admitted as D193), 01089 (already admitted as D2975), and 21975 (already admitted as D229).

¹¹ According to the Prosecution, 1D01331 is the same as 1D04973 but appears in a press release format. *See* Response, paras. 1, 3, footnote 4.

¹² According to the Prosecution, 1D40470 is an excerpt from D774, while 13726 is subsumed in its entirety within D2844. *See* Response, para. 3, footnote 5. *See also* Appendix A, p. 56.

¹³ Response, paras. 4–7, footnotes 6 and 13. The Prosecution lists the following documents as examples: 1D01673, 1D01743, 1D01756, 1D01757, 1D01768, 1D01774, 1D01778, 1D01779, 1D01858, 1D02745, 1D07515, 1D08060, 1D40650 1D40653, and 1D40655. The Chamber notes that this appears to be a non-exhaustive list of examples, as both 1D01761 and 1D01767 are objected to on this basis according to page 47 of the Appendix A to the Response. The Chamber also notes that 1D01757 is not in fact listed in the Motion and that the Prosecution probably intended to refer to 1D01767 but then made a typographical error.

¹⁴ Response, para. 7, footnote 15. *See also* Appendix A to the Response, p. 40.

¹⁵ Response, para. 8, footnote 16. Examples of such documents given by the Prosecution bear the following Rule 65 *ter* numbers: 1D00490, 1D00504, 1D01102, 1D01874, and 1D03777. The Chamber notes that six additional documents have been objected to on the basis that they have not been shown to be relevant or probative, but for

6. On 2 April 2014, the Chamber requested, via email, that the Accused file a submission addressing the Prosecution's objection as to the provenance of 1D02745 by close of business on 4 April 2014. On 4 April, the Accused filed his "Submission on Document #1D02745" ("Submission") apologising for the fact that the copy of the document uploaded into e-court did not bear an ERN number and attaching a copy of the document bearing ERN number 00868948.¹⁶

II. Applicable Law

7. 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.

8. 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.¹⁷ 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.¹⁸ 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.¹⁹

9. 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:

reasons other than vague or irrelevant geographical locations. Those are: 1D01095, 1D01107, 1D01317, 1D07511, 1D26800, and 1D32311. *See* Response, Appendix, pp. 1, 4, 9, 20 55, 58.

¹⁶ Submission, paras. 2–3, Annex A.

¹⁷ Decision on Prosecution's First Bar Table Motion, 13 April 2010 ("First Bar Table Decision"), paras. 5, 9.

¹⁸ First Bar Table Decision, para. 5.

¹⁹ First Bar Table Decision, paras. 9, 15.

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.²⁰

III. Discussion

10. The Chamber has previously stated 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.²¹ The Chamber notes that, in the Motion, the Accused has by and large explained how most of the documents fit into his case.²² Thus, with the exception of a number of documents, which will be discussed further below,²³ the Chamber is generally satisfied with the Accused's explanations.

11. With respect to the requirement that the documents offered from the bar table bear sufficient indicia of authenticity, the Chamber first notes that the Prosecution contests the authenticity of some of the documents, as will be discussed further below.²⁴ For the remainder of the documents, the Chamber 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.

12. Having reviewed the 65 documents to which no objection is made, the Chamber considers that all are also relevant to the present case and have probative value as they go to one or more of the following: (i) ABiH positions and weaponry around Sarajevo; (ii) the Accused's meetings on and willingness to negotiate in relation to Sarajevo; (iii) supply of utilities to Sarajevo; (iv) passage of humanitarian aid to Sarajevo; (v) Sarajevo ceasefires; (vi) the issue of whether the SRK fire on Sarajevo was selective and proportionate; (vii) allegations of persecution in Sarajevo municipalities; (viii) events in Goražde; (ix) control of SRK units; and (x) internal organisation of the Serb Ministry of Interior. Accordingly, documents bearing the following Rule 65 *ter* numbers shall be admitted into evidence from the bar table: 1D00365, 1D00615, 1D01097, 1D01178, 1D01323, 1D01460, 1D01518, 1D01520, 1D01536, 1D01577, 1D01578, 1D01596, 1D01597, 1D01609, 1D01613, 1D01661, 1D01662, 1D01663, 1D01676, 1D01679, 1D01707, 1D01708, 1D01709, 1D01715, 1D01721, 1D01722, 1D01725, 1D01728, 1D01746, 1D01751, 1D01769, 1D01771, 1D01775, 1D01777, 1D01780, 1D01785, 1D01786, 1D01787, 1D01790, 1D02741, 1D02742, 1D03000, 1D03264, 1D03469, 1D04973, 1D07501, 1D07506, 1D07508, 1D07516, 1D07520, 1D07541, 1D07549, 1D07554, 1D20336, 1D20541,

²⁰ Order on the Procedure for the Conduct of Trial, 8 October 2009, Appendix A, Part VII, para. R.

²¹ First Bar Table Decision, para. 6.

²² Motion, Annex A.

²³ See *infra* paras. 18, 27.

1D25062, 1D29024, 1D29736, 1D40453, 1D65292, 1D65303, 1D70491, 1D71029, 15611, and 17058.

13. The Chamber further notes that the Accused seeks leave to add documents 15611 and 17058 to his Rule 65 *ter* exhibit list. The Chamber shall grant it, as requested.

14. The Chamber now turns to the documents objected to by the Prosecution.

A. Duplicates

15. As submitted by the Prosecution,²⁵ nine documents tendered through the Motion are already in evidence in this case. For that reason the Chamber will not admit the following documents: 1D01222 (already admitted as P1006), 1D01881 (already admitted as D260), 1D03240 (already admitted as D1074), 1D07552 (already admitted as P6297), 1D40470 (an excerpt from D774), 1D55014 (already admitted as D193), 01089 (already admitted as D2975), 13726 (entirely subsumed within D2844), and 21975 (already admitted as D229). The Chamber will also not admit 1D01331, a press report referring to and replicating a letter the Accused sent to Boutros Boutros Ghali on 11 July 1992, because it has already admitted the letter in question (1D04973) above in paragraph 12.

B. Lack of translations

16. The Chamber recalls that the Prosecution objects to the admission of five documents on the basis that they have not been translated.²⁶ However, by the time the Chamber started deliberating on the Motion, all translations had been uploaded into e-court. Accordingly, the Chamber will consider whether the five documents in question satisfy the requirements for admission into evidence from the bar table.

17. Having reviewed the said documents, the Chamber is satisfied that 1D26858, 1D40483, 1D44043, and 1D55013 are relevant and have probative value as they go to (i) VRS protests to the United Nations (“UN”) about the ABiH attacks in the Sarajevo area; (ii) the situation in Sarajevo and Ilidža in April 1992; (iii) the ability of the Accused’s office to exert control over the Ministry of Interior and special police units; and (iv) VRS complaints to the UN about the use of Sarajevo airport, respectively. Accordingly, the Chamber shall admit 1D26858, 1D40483, 1D44043, and 1D55013 into evidence from the bar table.

²⁴ See *infra* paras. 22–23.

²⁵ See *supra* para. 3.

²⁶ See *supra*, para. 2.

18. With respect to 1D26926, the Chamber notes that it is a short order from the Ilidža Department of the Ministry of Defence to the local commune of Nedžarići to designate a person from the war commission to lead the civilian protection. The Accused argues that this document is relevant because it shows his efforts to improve the living conditions of civilians regardless of their ethnicity.²⁷ The Chamber does not see how the Accused's assertion is supported by this document as it contains no reference to either the Accused or the ethnicity of the civilians. Accordingly, due to the Accused's failure to explain sufficiently how this document fits into his case or provide further context, the Chamber is unable to find that it is relevant and shall therefore not admit 1D26926 into evidence from the bar table.

C. Documents requiring additional contextualisation

19. Turning to the Prosecution's argument that a number of documents, mainly SRK combat reports, have not been sufficiently contextualised as they contain vague geographical references and/or concern regions well away from the area of central Sarajevo, the Chamber notes that it has reviewed the documents in question. Some of those do indeed contain a number of vague geographical references. However, many also refer to a number of well known locations that have featured prominently in this case, such as Dobrinja or Alipašino Polje for example. In addition, they provide contemporaneous information about the events in the SRK's zone of responsibility at the time relevant to the Indictment, and concern issues such as the SRK's compliance with ceasefire agreements, its respect for the total exclusion zone, actions of the ABiH in relation to the SRK zone of responsibility, proportionality of the SRK's response to ABiH fire and so on. As such, the Chamber considers that these documents are relevant to this case and have probative value. Accordingly, the Chamber shall admit 1D01673, 1D01743, 1D01756, 1D01761, 1D01767, 1D01768, 1D01774, 1D01778, 1D01779, 1D01858, 1D07515, 1D08060, 1D40650, 1D40653, and 1D40655 into evidence.

20. As noted above,²⁸ the Prosecution objects to the admission of 1D02745, an order issued by the Accused to the VRS Main Staff on 19 April 1994, on the basis, *inter alia*, that despite the Accused's representation that this document comes from the Prosecution's evidence collection, this is not the case. Having now received further information in the Submission, the Chamber is satisfied that the document in question bears an ERN number and therefore does come from the Prosecution's evidence collection as represented by the Accused. Second, the Prosecution argues that the document has not been sufficiently contextualised and should have been presented through a witness. The Prosecution then refers to a number of exhibits already

²⁷ Motion, Annex A.

²⁸ *See supra* para. 4.

admitted in this case, noting that they show the context in which the Accused's order was issued and disprove his assertions in relation thereto.²⁹ The Accused argues that the document indicates that he approved a passage of two UN platoons from Sarajevo to Pale and, as such, shows that he had no intention to inflict unreasonable restrictions on the UN and the delivery of humanitarian aid.³⁰ Having examined the document, the Chamber considers that it is relevant to the allegations of restrictions on UN movements and humanitarian aid and is therefore relevant to this case. The document also speaks for itself and, as noted by the Prosecution, is related to a number of other documents already in evidence. Thus, the Chamber does not find that it requires further contextualisation for the purpose of admission from the bar table. Finally, the Chamber has no concerns about the document's provenance as it bears sufficient indicia of authenticity, including a stamp and the Accused's signature. For all those reasons, the Chamber finds that 1D02745 is relevant and has probative value. It shall therefore admit it into evidence from the bar table.

D. Documents lacking relevance or probative value

21. The Chamber now turns to the Prosecution's objection to a number of documents on the basis that they have not been shown to be relevant or probative.

22. The Prosecution objects to the admission of 1D01095 from the bar table on the basis that it contains no information as to its source and does not on its face meet the criteria for the reliability and probative value.³¹ The Chamber agrees. The original version of the document, entitled "copy of official note", contains no indicia of authenticity, such as a stamp or a signature. While it does contain a typewritten reference to a "Press Centar", it is unclear to the Chamber which "Press Centar" this is referring to. In addition, while the document contains a typewritten surname at the end of the note, there is no indication as to who the person in question was and where he or she worked. Thus, 1D01095 shall not be admitted into evidence from the bar table.

23. Similarly, the Prosecution objects to the admission of 1D01102, on the basis of insufficient indicators as to reliability and probative value of the information contained therein, and states that it should have been used with a witness who could have provided information on the reliability of the source.³² The Chamber notes that the document bears the header of the Ilidža Public Security Station and appears to be a report on the Green Berets. However, it

²⁹ Response, para. 7, Appendix, pp. 40–41.

³⁰ Motion, Annex A.

³¹ Response, Appendix A, pp. 1–2.

³² Response, Appendix A, p. 4.

contains neither a stamp nor a name or a signature of its author, and it is unclear who in fact prepared the report and/or compiled the information contained therein. Accordingly, this document does not contain sufficient indicia of authenticity and, as such, is of little probative value. The Chamber shall not admit 1D01102 into evidence from the bar table.

24. With respect to 1D01317, a letter from the Accused to the International Committee of the Red Cross (“ICRC”) dated 28 May 1992, the Prosecution argues that it appears to be a draft letter, containing corrections, and thus giving no indication that it was ever sent to the ICRC. The Prosecution also disputes the date of the letter in light of some of the events that it describes.³³ The Chamber, having examined the letter, which is signed by the Accused, notes that it does indeed appear to contain handmade corrections. As a result, the Chamber is unable to determine whether the letter was ever sent to the ICRC in this or different form and/or whether the handmade corrections were made by the Accused or someone else. Accordingly, the probative value of this letter is low and the Chamber shall not admit it into evidence from the bar table.

25. The document bearing Rule 65 *ter* number 1D26800 is a letter from Biljana Plavšić to General Mackenzie dated 8 July 1992, informing Mackenzie of the ABiH’s breach of ceasefire in Sarajevo. The Prosecution objects to its admission on the basis that it shows no official letterhead or stamp indicating that it was ever sent. In addition, the Prosecution questions the authenticity of the letter as it is provided only in English.³⁴ The Chamber, having examined the letter, notes that it is relevant to the Indictment as it concerns events in Sarajevo in July 1992, particularly the issue of breach of ceasefire agreements and the Serb leadership’s protests in relation thereto. Furthermore, the letter is signed by Plavšić and bears an indication that it was faxed on 10 July 1992. As such, the Chamber considers that it is reasonable to assume that the letter was sent to Mackenzie on 10 July 1992. The Chamber also sees no issue with the authenticity of the letter, even though it was provided only in English, as it was intended for an English speaking recipient and as such may have been drafted in English. More importantly, Plavšić’s signature is clearly visible in the letter. Accordingly, the Chamber considers that 1D26800 also has probative value and shall therefore admit it into evidence.

26. The Prosecution objects to the admission of 1D32311 on the basis that it lacks probative value given the lack of information regarding “further prosecution and case disposition” and that it should have been put to witnesses who testified on the issue of investigation of crimes against

³³ Response, Appendix A, pp. 4–6.

³⁴ Response, Appendix A, pp. 9–10.

non-Serbs.³⁵ The Chamber first 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.³⁶ Having reviewed the document in question, namely a judgement of the RS Military Court in Sarajevo against four reserve VRS soldiers, the Chamber considers that it is relevant to the issue of investigation of crimes against non-Serbs. The Chamber is also satisfied that the document is clear on its face and bears sufficient indicia of authenticity. Accordingly, the Chamber considers that it has probative value and shall admit it from the bar table.

27. The Prosecution objects to the admission of 1D00490 on the basis that it is irrelevant as it relates to general criminal activities within the city of Sarajevo.³⁷ The Chamber agrees. This is a report of the Security Administration of the ABiH's Supreme Command Staff from August 1993. It briefly mentions that explosives were being brought into the city and activated with remote control and that affluent citizens were detained and had money extorted from them by a number of different individuals. The Accused claims that this shows that "ABiH extremists [were] expected to carry out subversive terrorist operations in Sarajevo".³⁸ However, no reference is made in the document to any specific incident or specific victims, nor has the Accused attempted to show how these "subversive terrorist operations" relate to any of the charges in the Indictment. The Chamber therefore considers that, on its face, there is no connection between this document and any of the issues relevant to this case, and that, without further contextualisation, its probative value is low to non-existent. Accordingly, the Chamber shall not admit 1D00490 into evidence.

28. With respect to 1D00504, the Prosecution argues that this document should not be admitted from the bar table due to insufficient indicators as to reliability and probative value of the information provided therein.³⁹ The Chamber notes that this is yet another report of the Security Administration of the ABiH's Supreme Command Staff, this time from October 1993. It provides that a Military Security Service found out "through a source" that former member of a famous Sarajevo band, Bijelo Dugme, had told a number of journalists in Holiday Inn that the

³⁵ Response, Appendix A, p. 20.

³⁶ Decision on Prosecution's Motion for the Admission of Evidence from the Bar Table (Srebrenica), 22 May 2012, para. 17; Decision on Prosecution's Motion for Admission of Evidence from the Bar Table (Hostages), 1 May 2012, para. 11; Decision on Prosecution's Bar Table Motion for the Admission of Documents Related to the Sarajevo Component, 11 May 2012, para. 12; Decision on Prosecution's Motion for the Admission of Documents from the Bar Table (Municipalities), 25 May 2012, paras. 11–12.

³⁷ Response, Appendix A, p. 26.

³⁸ Motion, Annex A.

³⁹ Response, Appendix A, p. 29.

legal government authorities were consciously reducing its own people to misery by withholding electricity, water, gas, and humanitarian aid. While the issue of supply of utilities to the citizens of Sarajevo is relevant to this case, the Chamber nevertheless considers that the information contained in this particular document, coming as it is from an anonymous source and being double hearsay, is of such low probative value that it cannot be admitted into evidence without accompanying witness testimony. Accordingly, the Chamber shall not admit 1D00504 into evidence from the bar table.

29. The Prosecution argues that 1D01874 should not be admitted into evidence from the bar table as it is irrelevant and does not support the assertions for which it is cited.⁴⁰ The Chamber notes that this is a regular SRK combat report to the VRS Main Staff dated 22 December 1993. The Accused argues that it is relevant to Count 3 (persecution) and the related allegations of discrimination against non-Serbs as it shows that there were Muslims serving in the VRS.⁴¹ However, as accurately pointed out by the Prosecution, the document makes no mention of Muslims serving in the VRS. Accordingly, the Chamber shall not admit 1D01874 into evidence from the bar table.

30. The Prosecution submits that 1D03777 should not be admitted into evidence as the Accused has failed to show its relevance to the case.⁴² The Chamber notes that the document is an urgent request for a response, sent by Gordan Milinić to the VRS Main Staff, seeking information on an incident involving VRS members opening fire at vehicles at an intersection in Pale. The Accused argues that it is relevant to Counts 9 (terror) and 10 (unlawful attacks) of the Indictment in that it shows that unauthorised and uncontrolled attacks were punished accordingly. However, the Chamber struggles to see how an incident that occurred in Pale and in relation to which scant information is available to the Chamber, is relevant to Counts 9 and 10 of the Indictment, particularly given that those Counts are concerned only with the alleged campaign of shelling and sniping of the Sarajevo city and its citizens. Accordingly, it shall not admit 1D03777 into evidence from the bar table.

31. With respect to 1D07511, an SRK Command's report on the military and political situation dated 18 August 1995, the Prosecution argues that because it addresses the issue of the Accused's effective control, this report should have been put to witnesses, such as Dragomir Milošević or others from the SRK, in order for it to be properly contextualised.⁴³ The Accused argues that the report is relevant to Counts 9 and 10 of the Indictment and his effective control

⁴⁰ Response, para. 10, Appendix A, pp. 32–33.

⁴¹ Motion, Annex A.

⁴² Response, para. 9, Appendix A, p. 53.

over the events in battlefield, particularly given the problems with false reporting.⁴⁴ The Chamber has examined the report and notes that it relates to the Accused's effective control over the SRK in the context of false reporting and also to the SRK efforts to prevent a "new offensive to lift the blockade of Sarajevo". It is therefore clearly of relevance to this case. While it could have been tendered through Dragomir Milošević, particularly given the length of his testimony, the Chamber also 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.⁴⁵ The Chamber further finds that the document is clear on its face and that the absence of more specific contextualisation by a witness is an issue that it will assess in attributing the appropriate weight to the document. The Chamber is therefore satisfied that 1D07511 is of relevance and has probative value and that its admission is not substantially outweighed by the need to ensure a fair trial. It shall therefore admit 1D07511 into evidence from the bar table.

32. The Prosecution objects to 1D01107, an "official note" from the Ilidža Serb police station dated 30 April 1992, on the basis that there are insufficient indicators as to reliability and probative value of the information contained therein and that it should have been tendered through Tomislav Kovač, a police commander in Ilidža at the time, or Srđan Šehovac, whose name appears to be handwritten in the note.⁴⁶ As noted in paragraph 26, a party's failure to tender a document through a witness does not, in and of itself, prevent it from being tendered and admitted from the bar table. However, as was the case with 1D01102,⁴⁷ this note, while bearing the header of the Ilidža Serb police station, is neither stamped nor signed. In addition, Šehovac's name has been handwritten into the note thus implying that he has prepared it. However, the Chamber has no information as to who made the handwritten additions and since the note is unsigned, it is unclear who prepared it and/or compiled the information contained therein. It is therefore also unclear whether this document is a finalised official note or simply a draft, and whether it was filed and/or forwarded on by the Ilidža police station. Accordingly, the Chamber shall not admit 1D01107 into evidence from the bar table.

⁴³ Response, Appendix A, p. 55.

⁴⁴ Motion, Annex A.

⁴⁵ *See supra* para. 26.

⁴⁶ Response, Appendix, pp. 58–59. The Prosecution also objected to this note on the basis that its translation was incomplete as it did not contain the translation of handwritten parts. However, it appears that in the meantime the Accused has uploaded a complete, revised translation of the note and this is no longer an issue.

⁴⁷ *See supra* para. 23.

IV. Disposition

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

- (a) **GRANTS** leave to the Accused to add documents bearing the following Rule 65 *ter* numbers to his Rule 65 *ter* exhibit list: 15611 and 17058;
- (b) **ADMITS** into evidence documents bearing the following Rule 65 *ter* numbers: 1D00365, 1D00615, 1D01097, 1D01178, 1D01323, 1D01460, 1D01518, 1D01520, 1D01536, 1D01577, 1D01578, 1D01596, 1D01597, 1D01609, 1D01613, 1D01661, 1D01662, 1D01663, 1D01673, 1D01676, 1D01679, 1D01707, 1D01708, 1D01709, 1D01715, 1D01721, 1D01722, 1D01725, 1D01728, 1D01743, 1D01746, 1D01751, 1D01756, 1D01761, 1D01767, 1D01768, 1D01769, 1D01771, 1D01774, 1D01775, 1D01777, 1D01778, 1D01779, 1D01780, 1D01785, 1D01786, 1D01787, 1D01790, 1D01858, 1D02741, 1D02742, 1D02745, 1D03000, 1D03264, 1D03469, 1D04973, 1D07501, 1D07506, 1D07508, 1D07511, 1D07515, 1D07516, 1D07520, 1D07541, 1D07549, 1D07554, 1D08060, 1D20336, 1D20541, 1D25062, 1D26800, 1D26858, 1D29024, 1D29736, 1D32311, 1D40453, 1D40483, 1D40650, 1D40653, 1D40655, 1D44043, 1D55013, 1D65292, 1D65303, 1D70491, 1D71029, 15611, and 17058;
- (c) **INSTRUCTS** the Registry to assign the appropriate exhibit numbers to the documents referred to in paragraph (b) above; 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 seventh day of April 2014
At The Hague
The Netherlands

[Seal of the Tribunal]