



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-05-88/2-T

Date: 17 February 2012

Original: English

IN TRIAL CHAMBER II

Before: Judge Christoph Flügge, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Prisca Matimba Nyambe

Registrar: Mr. John Hocking

Decision of: 17 February 2012

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON SECOND MOTION BY THE ACCUSED FOR ADMISSION
OF DOCUMENTS FROM THE BAR TABLE**

Office of the Prosecutor

Mr. Peter McCloskey

The Accused

Zdravko Tolimir

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 “Second Request by the Defence for Admission of Documents from the Bar Table” submitted in BCS on 30 November 2011 and filed in English on 7 December 2011 (“Motion”).

I. SUBMISSIONS OF THE PARTIES

1. In the Motion Zdravko Tolimir (“Accused”) seeks pursuant to Rule 73 and 89(C) of the Rules of Procedure and Evidence (“Rules”) the admission of:

(a) the document with Rule 65 *ter* number 1D00743 which is the transcript of an interview conducted by the Prosecution with witness Petar Salapura (“Proposed Transcript”); and

(b) intelligence reports bearing the Accused’s typed signature (“Proposed Documents”).¹

2. With regard to the Proposed Transcript the Accused submits that Salapura stood by what he had stated when he was interviewed by the Prosecution and that he had used this interview several times during his cross-examination.²

3. During Salapura’s testimony the Accused said that he would request the admission of the Proposed Documents.³ In the submission of the Accused, they are relevant and have probative value.⁴ According to the Accused, the Proposed Documents, viewed in their totality, demonstrate the Accused’s focus of interest and activity during the war⁵ and they reveal the focus of the Accused’s interest which related to the entire theatre of war as well as monitoring “the émigré community, NATO, the political and military leaderships of various countries and their involvement in the war in Bosnia and Herzegovina”.⁶ The Accused further submits that this information shows what information the Accused and the Main Staff of the Army of Republika Srpska (“VRS”) had at their disposal and it could help the Chamber “to see the context of events within which the issue or problem of the eastern enclaves of Srebrenica and Žepa should be considered.”⁷ In his submission, the Proposed Documents can be considered to be very reliable.⁸

¹ Motion, paras. 1, 18. The Rule 65 *ter* numbers of the Proposed Documents are listed in paragraph 18 of the Motion.

² Motion, para. 3.

³ *Ibid.*, para. 4.

⁴ *Ibid.*, para. 7.

⁵ *Ibid.*, para. 8.

⁶ *Ibid.*, para. 12.

⁷ *Ibid.*, para. 13.

⁸ *Ibid.*, para. 17.

4. On 21 December 2011 the Prosecution filed the “Prosecution’s Consolidated Response to the Accused’s First and Second Bar Table Motions with Appendices A-C” (“Response”).

5. The Prosecution does not object to the admission of the Proposed Transcript, provided that the diagram prepared by Salapura during the interview is admitted as an integral part of it.⁹ The Prosecution further notes that the English version currently in eCourt contains errors, which may require revision or correction.¹⁰

6. The Prosecution states that the authenticity and reliability of the Proposed Documents is not in dispute and the Prosecution takes no position on their admissibility in either scope or number.¹¹

The Prosecution observes that:

(a) the documents with Rule 65 *ter* numbers 03986 and 03803 have already been admitted as Exhibit numbers P02425 and P02601 respectively; and

(b) the documents with Rule 65 *ter* number 03763, 04038 and 05880 are not Intelligence and Security Sector reports.¹²

The Prosecution disagrees with any suggestion that the Proposed Documents represent more than a selective or partial account of the Accused’s work, activities and/or knowledge on the grounds that they clearly do not reflect all the information in his possession or at his disposal and they do not provide a comprehensive account of the Accused’s activities during the Indictment period.¹³

7. In conclusion, the Prosecution conditionally does not oppose the admission of the Proposed Transcript and takes no position in respect of the Proposed Documents other than those that it has indicated have already been admitted and those which it says are not Intelligence and Security Sector reports.¹⁴

8. On 8 February 2012 the Accused filed confidentially the “Supplement to the Second Defence Bar Table Motion” (“Supplement”).

9. In the Supplement the Accused requested that

(a) the Proposed Documents with the following Rule 65 *ter* numbers be admitted as public exhibits: 03647, 03682, 03714, 03893, 03897, 03901, 03907, 03908, 03910, 03911–

⁹ Response, para. 10. The diagram is attached as Appendix C to the Response.

¹⁰ Response, para. 10.

¹¹ *Ibid.*, para. 11.

¹² *Ibid.*, para. 11.

¹³ *Ibid.*, para. 13.

¹⁴ *Ibid.*, para. 14.

03914, 03918, 03919, 03926, 03947, 03961, 03969, 03987, 03991, 03994, 03995, 03997–04000, 04005, 04007–04010, 04011, 04013, 04015, 04017, 04024, 04027, 04061, 04064, 04067, 04079, 04080, 04873, 05663, 05673, 05674, 05677, 05685, 05690, 05694–05696, 05706, 05708, 05860, and 05880;¹⁵ and

(b) the Proposed Documents with the following Rule 65 *ter* numbers be admitted as confidential (under seal) exhibits: 03530, 03531–03534, 03536–03541, 03544–03547, 03549–03553, 03556, 03566, 03567–03570, 03572–03607, 03610–03612, 03614–03639, 03641–03644, 03649, 03651, 03653–03657, 03659, 03663–03669, 03695–03713, 03716, 03719–03725, 03727–03752, 03754–03762, 03764–03784, 03786–03802, 03804–03808, 03810–03832, 03834–03839, 03841–03871, 03873–03881, 03883, 03885–03888, 03902, 03904, 03941, and 03948.¹⁶

10. The Accused notes that the request regarding Proposed Documents with Rule 65 *ter* numbers 03986 and 03803 is moot because they have already been admitted¹⁷ and that the request regarding the Proposed Document with Rule 65 *ter* number 04038 is also moot because it has been admitted under a different Rule 65 *ter* number namely 02209a as Exhibit D00085.¹⁸

11. The Accused submits that while he did not sign the Proposed Document with the Rule 65 *ter* number 05880, it nonetheless contains relevant intelligence information¹⁹ and that on the upper right corner it has an handwritten note from General Mladić to him and his initials are above this note.²⁰ In the submission of the Accused, the Proposed Document is relevant to the military situation in the Žepa enclave and his knowledge of it.²¹

12. Finally in the Supplement the Accused withdraws his request for the admission of the Proposed Document with Rule 65 *ter* number 03763, because it was erroneously included in the Motion.²²

II. DISCUSSION

13. The relevant law is presented in paragraphs 3 and 4 of the “Decision on First Motion for Admission of Documents from the Bar Table”, which was filed on 7 February 2012.

¹⁵ Supplement, para. 3.

¹⁶ *Ibid.*, para. 4.

¹⁷ *Ibid.*, para. 5.

¹⁸ *Ibid.*, para. 6.

¹⁹ *Ibid.*, para. 7.

²⁰ *Ibid.*, para. 8.

²¹ *Ibid.*, para. 9.

²² *Ibid.*, para. 11.

14. The Chamber recalls its “Order Concerning Guidelines on the Presentation of Evidence and Conduct of Parties during Trial”, filed on 24 February 2010, wherein it stated that the “preferred method for tendering evidence is for the evidence to be tendered through a witness while the witness is on the stand”.²³ Nevertheless, as held in two of its previous Decisions, the Chamber considers that the admission of evidence through the bar table is an efficient method by which contemporaneous, documentary evidence can be considered for admission if all requirements for admission are satisfied.²⁴

A. Proposed transcript

15. The Proposed Transcript was referred to several times in the course of Salapura’s testimony and, as such, it gives a context to some of his answers. The Chamber further finds that the diagram referred to by Salapura during the interview²⁵ is an integral part of the Proposed Transcript. Therefore with the addition of the diagram, which is attached to the Response as Appendix C, the Proposed Transcript would meet the requirements for admission.²⁶

B. Proposed Documents

16. There are no English translations in eCourt for the Proposed Documents assigned the following Rule 65 *ter* numbers: 03533–03537, 03546, 03549–03552, 03556, 03566–03570, 03572, 03574–03577, 03579–03581, 03583–03593, 03596, 03598, 03602–03607, 03610–03612, 03614–03619, 03621, 03624, 03625, 03628–03635, 03637–03639, 03641–03644, 03647, 03649, 03651, 03653–03657, 03659, 03663, 03665–03669, 03671–03681, 03683–03693, 03695–03699, 03704, 03706, 03707, 03709, 03714, 03721, 03724, 03727, 03731, 03736, 03744, 03749, 03751, 03752, 03767, 03768, 03770, 03771, 03773, 03775, 03776, 03779, 03786–03789, 03791, 03794, 03800, 03802, 03807, 03818, 03823, 03829, 03834, 03835, 03843–03850, 03853, 03857, 03859–03862, 03866, 03867, 03870, 03874, 03876, 03878–03881, 03885, 03887, 03888, 03893, 03912–03914, 03918, 03919, 03926, 03961, 03969, 03987, 03995, 03998–04000, 04005, 04007, 04017, 05663, 05690, 05695, and 05706. Their relevance and probative value cannot be assessed and they therefore cannot be admitted. The Proposed Documents assigned Rule 65 *ter* numbers 03540, 03682, 03713, 03716, 03883, 03902, 03904, 03907, 03941, 03947, 03948, and 03991 have not been

²³ Order Concerning Guidelines on the Presentation of Evidence and Conduct of Parties during Trial, 24 February 2010, para. 20.

²⁴ Decision on Prosecution’s Motion for Admission of 28 Intercepts from the Bar Table, 20 January 2012, para. 11; Decision on First Motion by the Accused for the Admission of Documents from the Bar Table, 7 February 2012, para. 5.

²⁵ Document assigned Rule 65 *ter* number 1D00743, p. 11.

²⁶ If the Prosecution wishes to challenge the admission of this document on the grounds that it contains errors, it should identify those errors and make submissions accordingly.

uploaded into eCourt. Their relevance and probative value cannot be assessed and they therefore cannot be admitted.

17. The Proposed Documents assigned Rule 65 *ter* numbers 03803, 03986 and 04038 have already been admitted.

18. The Chamber is unable to assess the relevance or probative value of the Proposed Document with Rule 65 *ter* number 03530 because it is incomplete. It will therefore not be admitted.

19. With regard to the Proposed Documents other than those referred to in paragraphs 16–18 above (“Remaining Documents”), the Chamber finds that they are relevant to the activities and knowledge of the Accused during the armed conflict referred to in the Indictment. The Proposed Document with Rule 65 *ter* number 05880, which the Prosecution submits is not an Intelligence and Security Sector report,²⁷ nevertheless has a content of an intelligence nature and is relevant to the situation in Srebrenica and Žepa during the period covered by the Indictment.

20. Both parties accept the authenticity of the Remaining Documents.²⁸ Moreover they themselves share characteristics with other purported documents issued by the Main Staff of the VRS which have been admitted into evidence and such shared characteristics weigh in favour of their authenticity. Whether the Remaining Documents represent only a selective or partial account of the Accused’s work, activities and/or knowledge,²⁹ or to what extent they do so, concerns their interpretation and not whether they should be admitted as evidence. The Chamber concludes that the Remaining Documents are relevant and have probative value. Accordingly they may be admitted as evidence.

III. DISPOSITION

21. For the reasons set out above, pursuant to Rule 89 of the Rules, the Trial Chamber hereby **GRANTS** the Motion, **IN PART**, and:

- (1) **ORDERS** that the Proposed Transcript be marked for identification after the addition to it of the diagram attached to the Response as Appendix C and requests the Registry to assign it an exhibit number;
- (2) **ADMITS** into evidence under seal the Proposed Documents with the following Rule 65 *ter* numbers and requests the Registry to assign exhibit numbers to them: 03531, 03532, 03538,

²⁷ Response, para. 11.

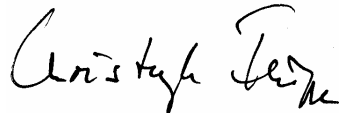
²⁸ Motion, paras. 8–17; Response, para. 11.

²⁹ Response, para. 13.

03539, 03541, 03544, 03545, 03547, 03553, 03573, 03578, 03582, 03594, 03595, 03597, 03599–03601, 03620, 03622, 03623, 03626, 03627, 03636, 03664, 03700–03703, 03705, 03708, 03710–03712, 03719, 03720, 03722, 03723, 03725, 03728–03730, 03732–03735, 03737–03743, 03745–03748, 03750, 03754–03762, 03764–03766, 03769, 03772, 03774, 03777, 03778, 03780–03784, 03790, 03792, 03793, 03795–03799, 03801, 03804–03806, 03808, 03810–03817, 03819–03822, 03824–03828, 03830–03832, 03836–03839, 03841, 03842, 03851, 03852, 03854–03856, 03858, 03863–03865, 03868, 03869, 03871, 03873, 03875, 03877, and 03886;

- (3) **ADMITS** into evidence as public documents the Proposed Documents with the following Rule 65 *ter* numbers and requests the Registry to assign exhibit numbers to them: 03897, 03901, 03908, 03910, 03911, 03994, 03997, 04008–04011, 04013, 04015, 04024, 04027, 04061, 04064, 04067, 04079, 04080, 04873, 05673, 05674, 05677, 05685, 05694, 05696, 05708, 05860, and 05880;
- (4) **DENIES**, without prejudice, the admission into evidence of the Proposed Documents for which there is no English translation, the Proposed Documents which have not been uploaded in eCourt and the Proposed Document with Rule 65 *ter* number 03530; and
- (5) **DENIES** the Motion in all other respects.

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



Judge Christoph Flügge
Presiding Judge

Dated this seventeenth day of February 2012
At The Hague
The Netherlands

[Seal of the Tribunal]