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: 8 November 2010

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:** **8 November 2010**

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

# DECISION ON MOTION FOR ADMISSION INTO EVIDENCE OF MFI D684

**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 "Motion to Admit Exhibit MFI D684", filed on 7 October 2010 ("Motion"), and hereby issues its decision thereon.

1. On 6 October 2010, the Accused put a document bearing the title "The Truth About Goražde" to witness Michael Rose ("Witness") during his cross-examination.[1] The document is an 11-page report which purports to be authored by the Task Force on Terrorism and Unconventional Warfare of the U.S. House of Representatives Republican Research Committee. The document bears no signatures and was apparently downloaded from the website *serbialinks.freehosting.net/gorazde.html*.

2. The Chamber notes that at the time the document was put to him, the Witness confirmed that some portions of the report were consistent with his recollection.[2] However, he was unable to make any comment on portions of the report addressing events prior to his arrival in Bosnia and Herzegovina in 1994, and denied the accuracy of other portions of it.[3]

3. At the time it was tendered into evidence by the Accused, the Office of the Prosecutor ("Prosecution") objected to the authenticity of the report and also noted that the Witness had denied significant portions of it.[4] The presiding Judge expressed doubt as to the foundation of the document and stated *inter alia* that in order to properly assess and determine its probative value, the Chamber needed to know who performed the research and authored the document, as well as the members of the Committee that released it.[5] The document was then marked for identification as D684 ("MFI D684") pending the Chamber's satisfaction as to its foundation.[6]

4. On 7 October 2010, the Accused submitted the Motion requesting the admission into evidence of MFI D684. In the Motion, he provides general information about the House Republican Research Committee and purports to list the members of the Committee.[7] However, the Chamber notes that nothing in the cited material names this particular report or lists its

[1] Hearing, T. 7375-7390, 7397-7402 (6 October 2010).
[2] Hearing, T. 7375, 7377-7378 (6 October 2010).
[3] Hearing, T. 7376-7379, 7385-7390 (6 October 2010).
[4] Hearing, T. 7399 (6 October 2010).
[5] Hearing, T. 7399, 7401 (6 October 2010).
[6] Hearing, T. 7401 (6 October 2010).
[7] Motion, paras. 7-9.

authors.[8] The Accused asserts that "[t]he report was staffed by a team of researchers lead by Vaughn Forrest, who served as Congressman McCollum's Chief of Staff at the time, and Donald Morrissey, who served as legislative Director. The research was supervised by Yossef Bodansk".[9] He provides no support for these assertions, though he does provide a *Wikipedia* biography of Yossef Bodansky which confirms that he was the Director of the Congressional Task Force on Terrorism and Unconventional Warfare during the relevant time period.

5. On 20 October 2010, the Prosecution made an oral response to the Motion, in which it reiterated its concerns about the partisan nature of the document and the "policy implications" of its admission.[10] The Prosecution also stated its view that the weight to be given to the document would be little to non-existent and noted that the relevant portion of it had been read into the record in any event.[11]

6. Rule 89 of the Tribunal's Rules of Procedure and Evidence ("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.

7. The Chamber recalls that, on 8 October 2009, it issued the "Order on the Procedure for the Conduct of the Trial" ("Order") in which it *inter alia* stated that any item marked for identification in the course of the proceedings, either because there is no English translation or for any other reason, will not be admitted into evidence until such time as an order to that effect is issued by the Chamber.[12] In making its determination on the admission of documents previously marked for identification, the Chamber shall consider whether the proposed exhibits satisfy the requirements of Rule 89(C) of the Rules. This duty applies regardless of any agreement by the parties: it remains the Chamber's province to ensure that all material tendered for admission meets the relevant standards for admission.[13]

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[8] The Motion cites to the website *www.fas.org/irp/congress/1992_rpt/bod4.htm* as the source of the membership of the Committee. However, the website appears to list the 1992 members of the Committee who authored a different report ("Tehran, Baghdad & Damascus: The New Axis Pact").

[9] Motion, para. 10.

[10] Hearing, T. 8259-8260 (20 October 2010).

[11] Hearing, T. 8258-8260 (20 October 2010).

[12] Order on the Procedure for the Conduct of the Trial, 8 October 2009, Appendix A, paras. O and Q.

[13] Decision on Guidelines for the Admission of Evidence Through a Witness, 19 May 2010, para. 10. *See also Prosecutor v. Perišić*, Order on Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court, 29 October 2008, Annex, para. 40.

8. The Chamber further recalls that it has previously clarified the circumstances in which documents or other proposed items of evidence can be admitted through a witness. On 6 May 2010, the presiding Judge stated that documents put to a witness but which the witness "has no knowledge of or cannot speak to" should not be admitted.[14] This is because: "[i]n addition to relevance and authenticity, the Chamber must be satisfied as to the probative value of a piece of proposed evidence, and this requires that the witness to whom it is shown is able to confirm its content or make some other positive comment about it."[15] Subsequently, in its Decision on Guidelines for the Admission of Evidence Through a Witness, issued on 19 May 2010 ("Decision on Admission of Evidence"), the Chamber stated that it:

> must be able to assess the probative value of all tendered material, and, ultimately, it must be able to assess the weight to be ascribed to it. Neither will be possible unless the Chamber is satisfied of each agreed document's relevance, probative value, and place in either or both parties' cases. Similar considerations apply to any documents offered into evidence by either party in the courtroom and to which the opposing party does not object.[16]

The Chamber further stated that:

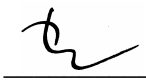
> it is desirable that a witness speak to the origins and/or content of a document to be tendered into evidence, to allow the Chamber to properly assess the relevance, authenticity, and reliability of that document, and thus its probative value, and, ultimately, be able to make use of that document in a meaningful way in its overall consideration of the evidence in the case. This general principle does not rule out the possibility of admitting documents that challenge a witness's credibility, including in situations where the witness states that he or she has no knowledge of the document or rejects its contents. In such a context, the fact that the document goes to the witness's credibility *may* constitute sufficient nexus between the witness and the document for it to be admissible. However, the party tendering the document must also be able to satisfy the Chamber as to the document's authenticity and reliability before it could be admitted.[17]

9. The information the Accused has provided purportedly to satisfy the Chamber of MFI D684's reliability is insufficient. Moreover, the Chamber reminds the parties that documents marked for identification are not automatically admissible, but rather that it must be in a position to determine both their relevance and probative value, the latter either from the offering party's submission or, in the case of documents tendered through a witness, from a proper foundation being laid by that witness. With regard to MFI D684, no such foundation was laid with the exception of limited portions which were read into the trial record.

[14] Hearing, T. 1952 (6 May 2010).
[15] *See also* Decision on Admission of Evidence, para. 10.
[16] Decision on Admission of Evidence, para. 21.
[17] Decision on Admission of Evidence, para. 11.

10. Accordingly, the Trial Chamber, pursuant to Rule 89 of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this eighth day of November 2010
At The Hague
The Netherlands

**[Seal of the Tribunal]**