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: 26 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: **26 February 2014**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTIONS TO ADMIT INTERCEPTS FROM BOSNIA AND HERZEGOVINA PREVIOUSLY MARKED FOR IDENTIFICATION OR AS NOT ADMITTED

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 Bosnian Government Intercepts Previously Marked for Identification or as Not Admitted", filed on 18 February 2014 ("First Motion") and the Accused's "Motion to Admit Seven Bosnian Army Intercepts Previously Marked as Not Admitted", also filed on 18 February 2014 ("Second Motion") (together, "Motions"), and hereby issues its decision thereon.

I. Background and Submissions

1. During the hearing of 18 February 2014, the parties informed the Chamber of the agreement reached between them regarding the authentication of transcripts of intercepted conversations which the Accused intended to tender through two intercept operators who he had planned to call to testify in his case.[1] On the same day, the Chamber found that based on the fact that it has admitted a number of intercepts pursuant to the evidence of intercept operators, as well as numerous interlocutors, and moreover that the Office of the Prosecutor ("Prosecution") can authenticate those intercepts based upon its "evidence collection", and that there is a "genuine agreement between the parties as to their authenticity", it now has a basis to establish their authenticity.[2]

2. As a result, the Accused filed the Motions, in which he requests that the Chamber admit into evidence 22 transcripts of intercepted conversations which were previously marked for identification ("MFI") or marked as not admitted ("MNA") because their authenticity had not been demonstrated at that time—MNA D275, MNA D1015, MNA D1181, MNA D1747, MNA D1915, MNA D2200, MNA D2202, MNA D2205, MNA D2206, MNA D2207, MNA D2208, MNA D2209, MFI D3171, MFI D3172, MFI D3205, MFI D3267, MFI D3377, MFI D3530, MFI D3534, MFI D4058, MFI D4059, and MFI D4287 ("Intercepts").[3] The Accused submits that the Intercepts originate from the security service of the government of Bosnia and Herzegovina ("BiH") and the Army of BiH ("ABiH") and were to be authenticated by the two abovementioned intercept operators who were to testify as witnesses in his case.[4] However, given the agreement from the Prosecution regarding the authenticity of the Intercepts, and the Chamber's acceptance of the parties' agreement as such, the Accused requests that the Intercepts be fully admitted at this stage.[5]

[1] Hearing, T. 47255–47258 (18 February 2014).
[2] Hearing, T. 47258–47259 (18 February 2014).
[3] First Motion, paras. 1, 3; Second Motion, paras. 1, 3.
[4] First Motion, para. 2; Second Motion, para. 2.
[5] First Motion, para. 2; Second Motion, para. 2.

3. On 20 February 2014, the Prosecution filed both the "Prosecution Response to Karadžić's Motion to Admit Bosnian Government Intercepts Previously Marked for Identification or as Not Admitted" ("First Response") and the "Prosecution Response to Karadžić's Motion to Admit Seven Bosnian Army Intercepts Previously Marked as Not Admitted" ("Second Response"), in which it submits that it does not dispute the authenticity of the Intercepts.[6] Moreover, in the Second Response, the Prosecution adds that MNA D2200 was originally marked for identification pending translation; however, now that an English translation of this document has been uploaded into e-court, the Prosecution has no objection to its admission.[7] Furthermore, the Prosecution requests that the Chamber admit MNA D2200, D2202, D2205, D2206, D2207, D2208, and D2209 under seal, in order to avoid revealing confidential information, and requests that the Chamber separately admit public redacted versions of these documents, as proposed in the confidential appendix to the Second Response.[8]

II. Discussion

4. The Chamber recalls the "Order on the Procedure for the Conduct of the Trial," issued on 8 October 2009 ("Order on Procedure"), in which it stated, *inter alia*, 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.[9]

5. The Chamber notes that the Intercepts were marked for identification or marked as not admitted following the Chamber's practice regarding intercepts—*i.e.* pending the Chamber being satisfied of their authenticity. In light of the parties' agreement as to the authenticity of the Intercepts, as well as the further factors noted by the Chamber during the hearing on 18 February 2014,[10] the Chamber considers that the authenticity of the Intercepts can now be sufficiently established for the purposes of their admission into evidence.

6. With regard to MNA D2200, the Chamber notes that it was originally marked for identification pending translation on 15 March 2012[11] and later marked as not admitted on

[6] First Response, p. 1; Second Response, paras. 2–3.

[7] Second Response, para. 3.

[8] Second Response, para. 4. The Prosecution also observes that MNA D2200 and MNA D2202 have been provisionally admitted under seal in e-court; however, it informs the Chamber that public redacted versions of both documents are already uploaded into e-court as MNA D2222 and MNA D2225, respectively. Second Response, para. 4.

[9] Order on Procedure, Appendix A, paras. O, Q.

[10] Hearing, T. 47258–47259 (18 February 2014).

[11] T. 26361 (15 March 2012).

7 December 2012.[12] The Chamber notes that the English translation is now available in e-court and having reviewed the original document, along with the relevant transcripts and translations, the Chamber is satisfied that it should now be admitted fully, under seal.

7. With regard to MFI D4059, the Chamber notes that the English translation has not been uploaded into e-court[13] and therefore, will stay its decision on its admission pending its complete review. The Chamber instructs the Accused to upload the English translation for MFI D4059, liaising with the Prosecution if necessary.

8. Otherwise, the Chamber will thus admit MNA D275, MNA D1015, MNA D1181, MNA D1747, MNA D1915, MFI D3171, MFI D3172, MFI D3205, MFI D3267, MFI D3377, MFI D3530, MFI D3534, MFI D4058, and MFI D4287 into evidence as public exhibits.

9. The Chamber shall also admit MNA D2202, D2205, D2206, D2207, D2208, and D2209, under seal.

10. The Chamber further notes that MNA D2222 and D2225 are public redacted versions of MNA D2200 and D2202, respectively, and were marked as not admitted in connection with the non-admission of D2200 and D2202.[14] However, despite the Prosecution's lack of objection to the admission of MNA D2222 and D2225 at this stage,[15] the Chamber notes the Prosecution's original objection to the admission of D2222 because it was insufficiently redacted to address confidentiality concerns.[16] The Chamber has reviewed MNA D2200 and D2222 together, is satisfied that the redactions to MNA D2222 are sufficient, and will therefore admit MNA D2222 into evidence publicly. However, the Chamber has also reviewed MNA D2202 and D2225 and observes that MNA D2225 has not been redacted at all, nor has an English translation been uploaded into e-court for MNA D2225. The Chamber thus instructs the Accused to make the necessary redactions to MNA D2225 and to upload its English translation into e-court. As a result, the Chamber shall stay its decision on MNA D2225 pending its review of the redacted documents.

11. Finally, the Chamber shall admit the public redacted versions of MNA D2205, D2206, D2207, D2208, and D2209, in the form proposed by the Prosecution in the confidential appendix to

[12] Decision on Accused's Motions to Admit Documents Previously Marked for Identification and Public Redacted Version of D1938, 7 December 2012 ("7 December 2012 MFI Decision"), paras. 26, 28(h).

[13] *See* Hearing, T. 43968–43971 (21 November 2013).

[14] *See* 7 December 2012 MFI Decision, paras. 9, 26, 28(h); Oral Ruling, T. 31845–31846 (15 January 2013).

[15] *See* Second Response, para. 4.

[16] *See* Prosecution Response to Motion to Admit Documents Previously Marked for Identification, 24 September 2012, para. 8(d); Prosecution Response to Motion to Admit Documents Previously Marked for Identification with Confidential Appendix A, 8 October 2012, para. 8(a).

the Second Response, and instructs the Accused to liaise with the Prosecution and to upload them into e-court accordingly.

III. Disposition

12. Accordingly, for the reasons outlined above and pursuant to Rule 89 of the Tribunal's Rules of Procedure and Evidence, the Chamber hereby **GRANTS** the Motions, in part, and:

a) **ADMITS** into evidence the documents currently marked as MNA D275, MNA D1015, MNA D1181, MNA D1747, MNA D1915, MNA D2222, MFI D3171, MFI D3172, MFI D3205, MFI D3267, MFI D3377, MFI D3530, MFI D3534, MFI D4058, and MFI D4287;

b) **ADMITS** into evidence, under seal, the documents currently marked as MNA D2200, D2202, D2205, D2206, D2207, D2208, D2209;

c) **INSTRUCTS** the Accused to upload the public redacted versions of MNA D2205, D2206, D2207, D2208, and D2209 by 5 March 2014, as set out in paragraph 11 above, and **REQUESTS** the Registry to assign them exhibit numbers;

d) **STAYS** its decision on the admission of MFI D4059, **INSTRUCTS** the Registry to retain it as marked for identification until further order, and **INSTRUCTS** the Accused to upload the English translation by 5 March 2014, as set out in paragraph 7 above; and

e) **STAYS** its decision on the admission of MNA D2225, and **INSTRUCTS** the Accused to upload the English translation and the accurate public redacted version of MNA D2225 by 5 March 2014, as set out in paragraph 10 above.

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

Judge O-Gon Kwon
Presiding

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

[Seal of the Tribunal]