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: 7 May 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 May 2014**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTIONS FOR ADMISSION OF ITEMS PREVIOUSLY MARKED FOR IDENTIFICATION

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 Documents Previously Marked for Identification", filed on 17 March 2014 ("Motion"), and part of the Accused's "Submission on Croatian Intercepts", filed on 27 March 2014 ("Submission on Croatian Intercepts") (together, "Motions"), and hereby issues its decision thereon.

I. Background and Submissions

Motion

1. On 20 February 2014, the Chamber instructed the parties to file submissions on any exhibit-related matter, including on documents that remain currently marked for identification, no later than 17 March 2014.[1]

2. In the Motion, the Accused makes submissions on numerous items. First, he requests that D1285 and MNA D2093 be "withdrawn" as they are duplicates of other evidence.[2] The Accused further submits that MFI D3681, D4005, D4006, and D4055 were marked for identification pending the Chamber being satisfied as to their authenticity or provenance and requests that they now be admitted as they were either admitted into evidence in prior cases, or originate from the evidence collection of the Office of the Prosecutor ("Prosecution"), and their authenticity and provenance can be established on these bases.[3]

3. The Accused further requests that MFI D4300 and D4305, which were marked for identification pending the uploading of the public redacted versions thereof, be fully admitted now that the public redacted versions have been uploaded into e-court.[4] Regarding MFI D4201, which was marked for identification pending English translation, the Accused submits that the translation has now been uploaded in e-court and that it should remain under seal upon admission as it pertains to an individual's medical information. The Accused submits that the same reasoning should apply to D4202 and suggests that it be placed under seal.[5]

4. Finally, the Accused requests that the Chamber admit into evidence 46 documents previously marked for identification pending English translation—MFI D3954, D3973, D3976,

[1] Order Regarding the Close of the Defence Case, 20 February 2014, p. 2.
[2] Motion, paras. 2–3.
[3] Motion, paras. 4, 6–8.
[4] Motion, paras. 11–12.
[5] Motion, para. 9.

D3996,[6] D4179, D4239, D4240, D4243, D4267, D4282,[7] D4302, D4303, D4308, D4309, D4310, D4311, D4314, D4321, D4323, D4324, D4325, D4326, D4349, D4350, D4351, D4352, D4353, D4354, D4357, D4358, D4359, D4360, D4361, D4362, D4375, D4376, D4381, D4382, D4383, D4384, D4385, D4386, D4413, D4416, D4418, and D4420—as their English translations have now been uploaded into e-court.[8]

5. In the "Prosecution Response to Karadžić's Motion to Admit Documents Previously Marked for Identification", filed on 21 March 2014 ("Response"), the Prosecution submits that it does not object to the admission of 37 of the items tendered in the Motion for which English translations have been uploaded, namely MFI D3954, D3973, D3976, D4179, D4201,[9] D4243, D4267, D4282,[10] D4308, D4309, D4310, D4311, D4314, D4349, D4350, D4351, D4352, D4353, D4354, D4357, D4358, D4359, D4360, D4361, D4362, D4375, D4376, D4381, D4382, D4383, D4384, D4385, D4386, D4413, D4416, D4418, and D4420.[11]

6. Furthermore, the Prosecution does not object to the admission of MFI D3681—an intercepted conversation which the Prosecution confirms was admitted into evidence in two previous cases.[12] The Prosecution also does not object to the admission of MFI D4005 and D4006—two documents which were marked for identification pending further information as to their provenance—on the basis that they were previously admitted in another case.[13]

7. However, the Prosecution objects to the admission of the remaining items. First with regard to MFI D3996, the Prosecution notes that there is no English translation or cover page uploaded into e-court for this document and it should not be admitted on this basis.[14] Similarly, nothing is uploaded into e-court under MFI D4300, D4305, D4323, D4324, and D4325 and therefore, they should not be admitted.[15] Moreover, the Prosecution opposes the admission of MFI D4321 as the Accused is "simply re-submitting the same untranslated material that he originally tendered" and there is no translation now uploaded into e-court despite his

[6] The Accused submits that MFI D3996 was marked for identification pending the uploading of the English translation and the cover page of the document, and that both have now been completed. Motion, para. 5.

[7] The Accused submits that MFI D4282 was marked for identification pending the uploading of the English translation and the identification of the relevant pages. The Accused submits that the translation has been uploaded into e-court and he identifies the relevant pages. Motion, para. 10.

[8] Motion, paras. 5, 10, 13.

[9] The Prosecution submits that it agrees with the Accused's submission that MFI D4201 and D4202 should be placed under seal. Response, para. 2.

[10] The Prosecution submits that it does not object to the admission of MFI D4282 as proposed by the Accused. Response, para. 3.

[11] Response, para. 2.

[12] Response, para. 7, Confidential Appendix.

[13] Response, para. 5.

[14] Response, para. 4.

[15] Response, para. 4.

submission; furthermore, the Prosecution submits that the correct pages of the BCS original are not uploaded into e-court either.[16]

8. Furthermore, the Prosecution objects to the admission of MFI D4055 on the basis that the Accused has not demonstrated its provenance by simply asserting that the document originates from the Prosecution's evidence collection.[17] The Prosecution confirms that the document was seized in February 2008 from the Banja Luka Security Service Centre ("CSB"), but argues that given that it contains no indicia of reliability, nor was Defence witness Radoslav Brđanin able to confirm any aspect of it, the Prosecution cannot confirm its authenticity.[18] In addition, the Prosecution argues that MFI D4055 appears to be a written media report which was not commented upon or confirmed by a witness and should therefore be denied admission.[19]

9. The Prosecution further objects to the admission of MFI D4302, D4303, and D4326 on the basis they are not sufficiently relevant to the charges in the Third Amended Indictment ("Indictment") in this case.[20]

10. Finally, with respect to MFI D4239 and D4240—case files referred to by Defence witness Jevto Janković—the Prosecution objects to the admission of the pages referred to in court on the basis that "when they are taken out of the overall context of their respective case files, they create a misleading impression of the procedure involving those two cases".[21] Therefore, the Prosecution requests that should the Chamber admit MFI D4239 and D4240, the documents in full should be admitted to provide the necessary context.[22]

Submission on Croatian Intercepts

11. In the Submission on Croatian Intercepts, the Accused *inter alia* requests the admission of four summaries or transcripts of conversations intercepted by the Republic of Croatia ("Croatia") which were marked for identification or marked as not admitted pending the Chamber being satisfied as to their authenticity—MFI D3744, MNA D3746, MFI D3871, and MFI D3872 ("Croatian Intercepts").[23]

[16] Response, para. 11.
[17] Response, paras. 6, 8.
[18] Response, para. 8.
[19] Response, para. 8.
[20] Response, paras. 9–10, 12.
[21] Response, para. 13.
[22] Response, paras. 14–18.
[23] Submission on Croatian Intercepts, paras. 1–4.

12. By way of background to the Croatian Intercepts, the Chamber recalls that on 18 February 2014, the Accused filed the "Motion to Admit Croatian Government Intercepts Previously Marked for Identification or as Not Admitted" ("First Motion on Croatian Intercepts"), requesting the admission of seven summaries or transcripts of intercepted conversations which were to be authenticated by witness KDZ584, who the Accused initially intended to call so that he could verify and authenticate intercepted conversations the Accused wished to offer into evidence.[24] For this purpose, the Accused requested the government of Croatia to make KDZ584 available to testify as a witness in his case.[25] On 3 March 2014, the Accused filed the Subpoena Motion, requesting the Chamber to compel KDZ584 to testify in his case.[26] During the hearing on the same day, the Prosecution indicated that it would not require KDZ584's attendance in court to authenticate the intercepted conversations should he provide authentication information in writing.[27] The Chamber thus instructed the Accused to obtain the information from KDZ584 through Croatia.[28]

13. On 6 March 2014, the Accused filed the "Letter to Croatia" ("Letter to Croatia"), requesting Croatia to forward KDZ584 a chart—attached as Confidential Annex to the Letter to Croatia—containing a number of documents, including the Croatian Intercepts, which he sought this witness to authenticate and to comment upon, including whether the intercept in question was a summary, an "intel report" or a transcript, and whether it was recorded by his agency.[29] On 11 March 2014, the Chamber issued the "Invitation to Croatia", in which Croatia was invited to assist the Chamber to receive KDZ584's comments authenticating the intercepts in question by close of business on 24 March 2014.[30] On 20 March 2014, the Chamber received a reply from Croatia, which included KDZ584's comments to the intercepts in question in BCS ("KDZ584 Reply") and which was ultimately filed on 26 March 2014 upon translation into English.

14. In the Submission on Croatian Intercepts, the Accused now renews his request for the admission of the Croatian Intercepts given that KDZ584 has authenticated them and confirmed that they are summaries or transcripts of intercepted conversations.[31]

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[24] First Motion on Croatian Intercepts, paras. 2–3. *See* Motion for Subpoena to Witness KDZ584, 3 March 2014 ("Subpoena Motion"), para. 5.
[25] *See* Subpoena Motion, paras. 5–14.
[26] Subpoena Motion, paras. 1, 15, 19.
[27] T. 47553–47554 (3 March 2014).
[28] The Subpoena Motion was withdrawn orally; T. 47555 (3 March 2014).
[29] Letter to Croatia, p. 2; Confidential Annex.
[30] Invitation to Croatia, 11 March 2014, p. 3.
[31] Submission on Croatian Intercepts, paras. 3–4.

15. On 31 March 2014, the Prosecution filed the "Prosecution's Response to Defence Submissions and Motion to Admit Croatian Intercepts" ("Response to Submission on Croatian Intercepts") stating that it no longer objects to the admission of the Croatian Intercepts, given that authenticating information has now been provided for these items by the Croatian authorities.[32]

II. Applicable Law

16. 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.[33]

17. In addition, Rule 94(B) of the Tribunal's Rules of Procedure and Evidence ("Rules") allows a Chamber to take judicial notice of authenticity of documentary evidence which has been admitted in prior proceedings. Accordingly, in order to take judicial notice, the Chamber should be satisfied that the documentary evidence in question was sufficiently authenticated and admitted into evidence in a previous trial.[34] Moreover, the Chamber recalls its practice of treating intercepts as a "special category" of evidence given that they bear no indicia of authenticity or reliability on their face and accordingly, may only be admitted into evidence after the Chamber has heard from the relevant intercept operator or the participants in the intercepted conversation.[35] The Chamber also recalls that it has considered that it is in the interests of judicial economy to apply Rule 94(B) to intercepts.[36]

[32] Response to Submission on Croatian Intercepts, para. 9.

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

[34] Decision on the Prosecution's First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component, 31 March 2010 ("First Decision"), para. 11; Decision on the Prosecution's Motion for Judicial Notice of Intercepts Related to the Sarajevo Component and Request for Leave to Add One Document to the Rule 65 *ter* List, 4 February 2011 ("Second Decision"), paras. 12–17; Decision on the Accused's Bar Table Motion (Sarajevo Intercepts), 9 October 2012, para. 6.

[35] *See*, *e.g.*, First Decision, para. 9; Decision on Prosecution's First Bar Table Motion ("First Bar Table Decision"), 13 April 2010, para. 13.

[36] First Decision, para. 9. The Chamber has found that the recording of an intercepted conversation is covered by the term "documentary evidence". *See* Second Decision, para. 17.

III. Discussion

Motion

18. The Chamber first notes the Accused's request that D1285 be withdrawn from the record and grants it.[37] The Chamber also notes the Accused's request to "withdraw MNA D2093" but since it was not admitted in the first place, it considers that this request is moot and will not address it further.

19. Furthermore, the Chamber notes that D4300 has already been admitted into evidence.[38] The Chamber also notes that it has already admitted into evidence D4282, including the document uploaded under 65 *ter* 1D49070.[39]

20. The Chamber will first analyse the items which admission the Prosecution does not oppose. With regard to MFI D3681, the Chamber notes that it is an intercepted conversation which was discussed with Dušan Kovačević on 11 June 2013 and was marked for identification following the Chamber's practice regarding intercepts—i.e. pending the Chamber being satisfied of its authenticity.[40] Having reviewed the intercept and the information provided by the Accused in the Motion, as well as the further information provided by the Prosecution in the Response regarding its admission in previous cases,[41] the Chamber considers that the authenticity of MFI D3681 has been sufficiently established and will therefore take judicial notice of its authenticity. Furthermore, based on Kovačević's testimony about the contents of this document,[42] the Chamber finds that it is relevant to the current proceedings and shall therefore admit MFI D3681 into evidence.

21. In relation to MFI D4005 and D4006, the Chamber recalls that they were marked for identification on 13 November 2013 through Momčilo Krajišnik, pending further information being provided by the Accused as to their provenance and authenticity.[43] Having reviewed the information provided by the Accused in the Motion regarding the documents' prior admission in the *Krajišnik* case,[44] the Chamber is satisfied that the authenticity of MFI D4005 and D4006 has sufficiently been established and shall take judicial notice of their authenticity. Further, the

[37] The Chamber notes that D1285 is a duplicate of P938 and not of D938 as indicated by the Accused in the Motion.

[38] KW426, T. 46687 (6 February 2014).

[39] Decision on Accused's Bar Table Motion: Municipality Component Documents, 14 April 2014, fn. 27, para. 161(c)(i).

[40] Dušan Kovačević, T. 39708–39711 (11 June 2013).

[41] *See* Motion, para. 4; Response, para. 7, Confidential Appendix.

[42] Dušan Kovačević, T. 39708–39711 (11 June 2013).

[43] Momčilo Krajišnik, T. 43377–43379 (13 November 2013) with respect to MFI D4005. Momčilo Krajišnik, T. 43380–43381 (13 November 2013) with respect to MFI D4006.

Chamber finds that the documents are relevant to the current proceedings and shall therefore admit MFI D4005 and D4006 into evidence.

22. With regard to MFI D4201, the Chamber notes that it was marked for identification pending English translation.[45] Having reviewed the document along with the relevant transcript and English translation, the Chamber is satisfied that it can now be admitted. The Chamber further notes the Accused's submissions on the confidential status of MFI D4201 and D4202 and considers that given the nature of their contents, they should be placed under seal permanently.

23. Turning to MFI D4349, D4350, D4351, D4352, D4353, D4354, D4359, D4361, D4375, and D4376, the Chamber notes that they were marked for identification pending English translation and placed under seal. On the basis of the information provided by the Accused in the Motion, having reviewed the documents themselves along with the relevant transcripts and translations, the Chamber is satisfied that they should now be admitted under seal.

24. With regard to the following 25 items marked for identification pending English translation, on the basis of the information provided by the Accused in the Motion, having reviewed the documents themselves along with the relevant transcripts and translations, the Chamber is satisfied that the items should now be admitted publicly:

> MFI D3954, D3973, D3976, D4179, D4243, D4267, D4308, D4309, D4310, D4311, D4314, D4357, D4358, D4360, D4362, D4381, D4382, D4383, D4384, D4385, D4386, D4413, D4416, D4418, and D4420.

25. The Chamber will now analyse the items which admission the Prosecution opposes. First, MFI D4055—an interview of Miloš Bojinović by a reporter Dragan Stegić—was put to witness Brđanin and marked for identification on 18 November 2013 pending the Chamber being satisfied as to its provenance.[46] The Chamber recalls its consistent position that written media reports are unlikely to be considered admissible without a witness to testify to the accuracy of the information contained therein as they would not meet the reliability and probative value requirements.[47] Given that Brđanin was unable to comment upon the document, the Chamber is

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[44] *See* Motion, paras. 6–7; Response, para. 5.

[45] Milomir Stakić, T. 45194–45196 (16 December 2013).

[46] Radoslav Brđanin, T. 43638–43640 (18 November 2013).

[47] Decision on Prosecution's Motion for the Admission of Documents from the Bar Table (Municipalities), 25 May 2012 ("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; Decision on Prosecution's Motion for the Admission of Evidence from the Bar Table (Srebrenica), 22 May 2012 ("Srebrenica Bar Table Decision"), para. 15.

not satisfied of its authenticity and probative value to be admitted into evidence. As such, the Chamber shall not admit MFI D4055 into evidence.

26. Turning to MFI D4302, D4303, and D4326 to which the Prosecution objects on relevance grounds, the Chamber notes that these three documents were marked for identification pending their English translations being uploaded into e-court.[48] Having reviewed the documents along with the relevant transcripts and English translations, the Chamber is satisfied that they are relevant to this case and can now be admitted.

27. MFI D4239 and D4240—two criminal case files against Serbs from Banja Luka courts—were discussed with witness Jevto Janković and those pages were marked for identification on 27 January 2014 pending English translation.[49] The Chamber also notes that the English versions of both documents contain portions which have been struck out. Having reviewed the documents along with the relevant transcripts and English translations, the Chamber is satisfied that they can now be admitted. The Chamber notes the Prosecution's request to admit the documents in full so that proper context is provided.[50] The Chamber further notes that the Accused also initially preferred the documents to be fully admitted.[51] Therefore, the Chamber shall admit these two case files in full and requests that the Registry replace the document which is currently uploaded under MFI D4239 with 65 *ter* 1D09623 and the document which is currently uploaded under MFI D4240 with 65 *ter* 1D09624.

28. The Chamber notes that MFI D3996 was marked for identification on 7 November 2013 pending translation and uploading of its cover page.[52] Given both its cover page and English translation have been uploaded into e-court and having reviewed the document along with the relevant transcript and English translation, the Chamber is satisfied that it should now be admitted into evidence.

29. With respect to MFI D4305, D4321, D4323, D4324, and D4325, to which the Prosecution objects on the basis that no English translation uploaded, the Chamber note that they were marked for identification pending English translation.[53] Having reviewed the documents along

[48] KW426, T. 46691–46694 (6 February 2014) with respect to MFI D4302. KW426, T. 46698–46701 (6 February 2014) with respect to MFI D4303. Gojko Kličković, T. 46925–46929 (12 February 2014) with respect to MFI D4326. The Chamber notes that MFI D4303 was marked for identification under seal.

[49] Jevto Janković, T. 45954–45955 (27 January 2014) with respect to MFI D4239. Jevto Janković, T. 45958–45959 (27 January 2014) with respect to MFI D4240.

[50] *See* Response, paras. 13–17.

[51] Jevto Janković, T. 45954 (27 January 2014).

[52] Momčilo Krajišnik, T. 43167–43168 (7 November 2013).

[53] KW426, T. 46705–46706 (6 February 2014) with respect to MFI D4305. Gojko Kličković, T. 46912–46924 (12 February 2014) with respect to MFI D4305, D4321, D4323, and D4324. Gojko Kličković, T. 46929 (12 February 2014) with respect to MFI D4325.

with the relevant transcripts and English translations which have now been uploaded, the Chamber is satisfied that they can now be admitted.

Submission on Croatian Intercepts

30. The Chamber notes that KDZ584 has now authenticated the Croatian Intercepts in the comments attached in the KDZ584 Reply.[54] As such, and in light of the Chamber's previous findings in relation to the evidence admitted through KDZ584 as a Prosecution witness with regard to the process and methodology for transcribing intercepts,[55] the Chamber considers that the authenticity of the Croatian Intercepts is now sufficiently established for the purposes of their admission into evidence. The Chamber shall therefore fully admit MFI D3744, MNA D3746, MFI D3871, and MFI D3872.

[54] KDZ584 Reply, pp. 2, 4.

[55] *See* T. 27101–27104 (28 March 2012) (closed session). *See also* Decision on Prosecution's First Bar Table Motion for the Admission of Intercepts, 14 May 2012, para. 2; Decision on Accused's Bar Table Motion for Admission of Intercepts, 7 April 2014, para. 17.

IV. Disposition

31. Accordingly, for the reasons outlined above and pursuant to Rules 89 and 94(B) of the Rules, the Chamber hereby **GRANTS** the Motions in part and:

a) **ADMITS** into evidence the items currently marked as MFI D3681, D3744, MNA D3746, MFI D3871, D3872, D3954, D3973, D3976, D3996, D4005, D4006, D4179, D4243, D4267, D4302, D4303, D4305, D4308, D4309, D4310, D4311, D4314, D4321, D4323, D4324, D4325, D4326, D4357, D4358, D4360, D4362, D4381, D4382, D4383, D4384, D4385, D4386, D4413, D4416, D4418, and D4420;

b) **ADMITS** into evidence, under seal, the items currently marked as MFI D4201, D4349, D4350, D4351, D4352, D4353, D4354, D4359, D4361, D4375, and D4376;

c) **INSTRUCTS** the Registry to replace the document which is currently uploaded under MFI D4239 with 65 *ter* 1D09623 and the document which is currently uploaded under MFI D4240 with 65 *ter* 1D09624 and to mark both MFI D4239 and D4240 as fully admitted;

d) **INSTRUCTS** the Registry to change the status of D4202 from public to confidential;

e) **INSTRUCTS** the Registry to mark D1285 and MFI D4055 as not admitted; and

f) **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 May 2014
At The Hague
The Netherlands

[Seal of the Tribunal]