



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: 4 February 2011

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:** 4 February 2011

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

**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 EXHIBIT LIST**

**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 “Prosecution’s Motion for Judicial Notice of Intercepts Related to the Sarajevo Component and Request for Leave to Add One Document to the 65 *ter* Exhibit List”, filed by the Office of the Prosecutor (“Prosecution”) on 20 October 2010 (“Motion”), and of the “Prosecution Supplemental Submission to Motion for Judicial Notice of Intercepts Related to the Sarajevo Component” filed by the Prosecution on 17 December 2010 (“Supplemental Submission”), and hereby issues its decision thereon.

### I. Background and Submissions

1. On 19 October 2009, the Prosecution filed the “Prosecution’s First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component With Confidential Appendix A” (“First Motion”) in which it requested the Chamber to take judicial notice of a number of documents, amongst which were 164 intercepts of telephone conversations involving various individuals, including the Accused, in the period relevant to the Indictment.<sup>1</sup> On 11 March 2010, the Accused filed his “Second Supplemental Response to Motion for Judicial Notice of Documents” (“Second Supplemental Response”) in which he objected to (i) the admission of intercepted conversations on the grounds that they are unreliable absent foundational testimony as to the manner and authority of the intercepts, and (ii) the admission of documents whose authors or recipients are on the Prosecution’s witness list.<sup>2</sup> He further argued that the pre-war intercepts were unlawful and should be excluded pursuant to Rule 95 of the Tribunal’s Rules of Procedure and Evidence (“Rules”).<sup>3</sup>

2. On 31 March 2010, the Chamber issued its “Decision on the Prosecution’s First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component” (“First Decision”) in which it held that, because taking judicial notice of documentary evidence effectively presumes the authenticity and reliability of the document, on the basis that this has been established in the prior proceedings, the Chamber must be satisfied that each of the proffered intercepts was not only admitted in the prior proceedings, but also sufficiently authenticated and found to be reliable.<sup>4</sup> Moreover, the Chamber noted that it “considers

<sup>1</sup> First Motion, para. 1.

<sup>2</sup> Second Supplemental Response, paras. 2–3. On 23 December 2009, the Accused filed his “Response to Prosecution Motion for Judicial Notice of Documents and Motion for Further Extension of Time” (“First Response”) in which he provided a partial response to the Prosecution’s First Notice. The Accused was then granted additional time in which to file the Second Supplemental Response.

<sup>3</sup> Second Supplemental Response, para. 2.

<sup>4</sup> First Decision, para. 10.

intercepts to be a special category of evidence given that they bear no indicia or authenticity or reliability on their face. [...] [T]he authenticity and reliability of intercepts is established by further evidence, such as hearing from the relevant intercept operators or the participants in the intercepted conversation themselves.”<sup>5</sup> The Chamber further noted that, although it would be in the interests of judicial economy to admit these intercepts into evidence pursuant to Rule 94(B), it must balance the interests of judicial economy against the right of the Accused to a fair and expeditious trial.<sup>6</sup> Upon review of the intercepts, the Chamber found that the references provided for some of the intercepts were either incorrect or unclear and that it was unable to ascertain the basis upon which the intercepts were admitted in the prior proceedings.<sup>7</sup> The Chamber thus denied the First Motion insofar as it related to the 164 proffered intercepts, without prejudice, so that the Prosecution could resubmit its request for judicial notice of these intercepts, clearly directing the Chamber to the manner in which each was authenticated, in addition to where they were admitted, in the prior proceedings.<sup>8</sup>

3. In the Motion, the Prosecution resubmits its request to the Chamber to take judicial notice of 124 intercepts pursuant to Rule 94(B).<sup>9</sup> The Prosecution argues that these intercepts qualify for judicial notice because (i) they were all admitted into evidence in prior proceedings; (ii) they have *prima facie* indicia of reliability; and (iii) admitting the intercepts pursuant to Rule 94(B) would be in the interests of judicial economy.<sup>10</sup> More specifically, of the 124 intercepts, the Prosecution maintains that 85 have been authenticated by witness KDZ145, an intercept operator, in prior proceedings and have been shown to be sufficiently reliable to satisfy the Chamber’s concerns with admitting intercepts under Rule 94(B).<sup>11</sup> The Prosecution further maintains that 26 of these intercepts have been authenticated in prior proceedings by a participant in the intercepted conversations, while 13 have been corroborated by previous testimony from witnesses who have first-hand knowledge of the subject matter of the conversations.<sup>12</sup>

4. On 29 October 2010, the Accused filed his “Response to Motion for Judicial Notice of Intercepted Conversations Relating to Sarajevo” (“Response”) in which he opposes the Motion. The Accused recalls that he favours the admission of intercepted conversations principally through witnesses who participated in the conversations themselves or, alternatively, through

<sup>5</sup> First Decision, para. 9.

<sup>6</sup> First Decision, para. 9.

<sup>7</sup> First Decision, para. 11.

<sup>8</sup> First Decision, para. 11.

<sup>9</sup> Motion, para. 2.

<sup>10</sup> Motion, paras. 3–4, 12–13.

<sup>11</sup> Motion, paras. 6–9.

<sup>12</sup> Motion, paras. 10–11.

witnesses who can attest to the integrity of the methods used for interception and recording.<sup>13</sup> The Accused maintains that judicial notice of previously admitted intercepted conversations puts him at an unfair advantage because (i) the intercepted conversations were almost all offered by the Prosecution in the prior proceedings and therefore reflect selective intercepts which the Prosecution has found useful to its case; and (ii) the manner in which the intercepted conversations were disclosed to the Accused makes it almost impossible for him to identify and offer intercepted conversations that are useful to his case.<sup>14</sup> He does not object to the Prosecution's request for leave to add one document to its 65 *ter* exhibit list, but continues to object to the admission of pre-war intercepted conversations under Rule 95.<sup>15</sup>

5. On 1 November 2010, the Chamber granted the Prosecution leave to reply to the Response.<sup>16</sup> On 5 November 2010, the Prosecution filed the "Prosecution's Reply to Accused's Response to Motion for Judicial Notice of Intercepted Conversations Relating to Sarajevo" ("Reply") in which it argues that, contrary to the Accused's claim that the manner in which intercepted conversations were disclosed makes it "almost impossible for him to identify and offer intercepted conversations that are useful to his case", it has disclosed the intercept material in an organised and accessible manner.<sup>17</sup> The Prosecution further contends that the Accused offers no support for this claim other than asserting that it would be "very time consuming to collect" the intercepts, and requests the Prosecution to undertake this exercise on his behalf.<sup>18</sup>

6. An amendment to Rule 94 was adopted during the plenary session held on 8 December 2010, and entered into force on 20 December 2010. As a result of this amendment, Rule 94(B) now reads :

At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or of the authenticity of documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings. (emphasis added)

7. During the hearing of 13 December 2010, the Chamber invited the parties to file further submissions if they so wished in light of this recent amendment to Rule 94(B).<sup>19</sup> On 14 December 2010, the Chamber clarified that the Prosecution should file its submission before the end of the winter recess and that the Accused should file his submission in response within

<sup>13</sup> Response, para. 3.

<sup>14</sup> Response, paras. 5–6.

<sup>15</sup> Response, paras. 1, 7. The Chamber addressed this objection in its "Decision on the Accused's Motion to Exclude Intercepted Conversations", 30 September 2010. *See also* para. 15 *infra*.

<sup>16</sup> Hearing of 1 November 2010, T. 8753–8754.

<sup>17</sup> Reply, para. 1.

<sup>18</sup> Reply, para. 5, citing Response, para. 5, Annex B.

<sup>19</sup> Hearing of 13 December 2010, T. 9749.

seven days of receipt of the Prosecution's submission.<sup>20</sup> On 17 December 2010, the Prosecution filed the Supplemental Submission, requesting that the Chamber apply the new Rule 94(B), take judicial notice of the authenticity of the intercepts and admit them into evidence from the bar table.<sup>21</sup> The Prosecution submits that the Motion satisfies the requirements of Rule 94(B), as amended on 8 December 2010, and that it would be in the interests of judicial economy to take judicial notice of the authenticity of the 124 intercepts.<sup>22</sup> The Prosecution further submits that the Motion fulfils the requirements of a bar table motion pursuant to Rule 89(C) and contends that the Accused has been on notice of the Prosecution's intention to seek the admission of the intercepts since 19 October 2009, and will therefore not suffer any prejudice.<sup>23</sup>

8. The Accused did not respond to the Supplemental Submission within the time-limit set forth by the Chamber. The Accused filed his "Supplemental Response to Motion for Judicial Notice of Intercepted Conversations Relating to Sarajevo" on 6 January 2011 ("Supplemental Response"), almost two weeks after the deadline set by the Chamber. The Chamber nonetheless considers that, despite the tardiness of the Supplemental Response it is in the interests of justice to examine the arguments presented by the Accused therein. The Accused first argues that the term 'document' referred to in Rule 94(B) does not apply to recordings and, as such, does not cover intercepts.<sup>24</sup> He further submits that some of the requirements applicable to judicial notice of adjudicated facts should equally apply to judicial notice of documentary evidence. The Accused thus submits that the proffered documentary evidence should i) be relevant, ii) not have been admitted in the original proceedings on the basis of an agreement, iii) not be related to the acts, conduct, or mental state of the accused, and iv) not be subject to a pending appeal or review.<sup>25</sup> Finally, the Accused submits that admission of the recordings should be deferred until the Prosecution tenders them through a witness or files a bar table motion.<sup>26</sup>

9. On 13 January 2011, the Chamber orally granted the "Prosecution's Request for Leave to Reply to Accused's Supplemental Response to Motion for Judicial Notice of Intercepted Conversations Relating to Sarajevo", filed on 10 January 2011.<sup>27</sup> The Prosecution then filed the "Prosecution's Reply to Accused's Supplemental Response to Motion for Judicial Notice of Intercepted Conversations Related to Sarajevo" on 14 January 2011 ("Reply to Supplemental

<sup>20</sup> Hearing of 14 December 2010, T. 9752–9753, setting the end of the winter recess and seven days after reception of the Prosecution's submission as respective deadlines for the Prosecution and the Accused.

<sup>21</sup> Supplemental Submission, para. 1.

<sup>22</sup> Supplemental Submission, para. 10.

<sup>23</sup> Supplemental Submission, para. 11.

<sup>24</sup> Supplemental Response, para. 3.

<sup>25</sup> Supplemental Response, paras. 5–20.

<sup>26</sup> Supplemental Response, para. 21.

<sup>27</sup> Hearing of 13 January 2011, T. 10070–10071.

Response”). The Prosecution first contends that the Accused has misstated Rule 94(B), which does not refer to “documents” but to “documentary evidence”.<sup>28</sup> The Prosecution then submits that the use of “documentary evidence” in Rule 94(B), which was the same term used prior to the amendment of the Rule, only serves to distinguish it from testimonial evidence.<sup>29</sup> The Prosecution further argues that none of the requirements for judicial notice of adjudicated facts are applicable to judicial notice of documentary evidence.<sup>30</sup>

## II. Applicable Law

### *Amendment to the 65 ter Exhibit List*

10. Rule 65 *ter* (E)(iii) provides that the Prosecution shall file the list of exhibits it intends to offer within a time-limit set by the pre-trial Judge and not less than six weeks before the Pre-Trial Conference. The Chamber may authorise requests for addition later than six weeks before the Pre-Trial Conference in the exercise of its inherent discretion to manage the trial proceedings, and if satisfied that this is in the interests of justice.<sup>31</sup>

11. When exercising this discretion, the Chamber examines whether the Prosecution has shown good cause for its request and whether the items sought to be added are relevant and of sufficient importance to justify their late addition.<sup>32</sup> The Chamber may also take into account other factors which militate in favour of or against a requested addition,<sup>33</sup> including whether the proposed evidence is *prima facie* relevant and of probative value to the charges against an accused,<sup>34</sup> the complexity of the case, on-going investigations, and translation of documents and other materials.<sup>35</sup> Finally, the Chamber must carefully balance any amendment to the Prosecution’s exhibit list with an adequate protection of the rights of the accused,<sup>36</sup> namely that

<sup>28</sup> Reply to Supplemental Response, para. 2.

<sup>29</sup> Reply to Supplemental Response, para. 2.

<sup>30</sup> Reply to Supplemental Response, paras. 3–7.

<sup>31</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.1, Decision on Appeals Against Decision Admitting Material Related to Borovčanin’s Questioning, 14 December 2007 (“*Popović et al.* Appeal Decision”), para. 37; *Prosecutor v. Perišić*, Case No. IT-04-81-PT, Decision on Prosecution Motion for Leave to File a Fifth Supplemental Rule 65 *ter* Exhibit List with Annex A (Confidential), 29 August 2008, para. 10; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Prosecution’s Third Motion for Leave to Amend Its Rule 65 *ter* Exhibit List, 23 April 2007, p. 3 (“*Dragomir Milošević* Decision”).

<sup>32</sup> *Popović et al.* Appeal Decision, para. 37; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Confidential Decision on Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List, 8 May 2008 (“*Stanišić & Simatović* Decision”), para. 6.

<sup>33</sup> *Stanišić & Simatović* Decision, para. 6.

<sup>34</sup> *Dragomir Milošević* Decision, p. 3; *Prosecutor v. Popović et al.*, Decision on Prosecution’s Motions for Leave to Amend Rule 65 *ter* Witness List and Rule 65 *ter* Exhibit List (Confidential), 6 December 2006, p. 7 (“*Popović et al.* Decision”).

<sup>35</sup> *Popović et al.* Decision, p. 7.

<sup>36</sup> *Stanišić & Simatović* Decision, para. 6.

amendments to the exhibit list at that stage of the proceedings provide an accused sufficient notice, and do not adversely affect his ability to prepare for trial.<sup>37</sup>

*Judicial Notice under Rule 94(B)*

12. The recently amended Rule 94(B) now only allows a Chamber to take judicial notice of the authenticity of documentary evidence which has been admitted in prior proceedings. This means that such documentary evidence is no longer admitted into evidence as a result of judicial notice. Rather, Rule 94(B) now creates a well-founded presumption for the authenticity of the documentary evidence in question.

13. In its First Decision issued before the amendment, the Chamber had considered “it necessary for it to be satisfied that each of these intercepts was not only admitted in the prior proceedings but also sufficiently authenticated and found to be reliable, before it can take judicial notice of any of them”.<sup>38</sup>

14. Before the amendment, it was not clear from the text of Rule 94(B) itself whether the relevance and the probative value of the proffered documentary evidence should be established in relation to the second proceedings and, if so, how. Prior Chambers considered, however, that the moving party was under an obligation to identify, with clarity and specificity, the precise portions of the document for which it sought judicial notice and to either demonstrate their particular relevance to the second proceedings or establish that they had more than a remote connection to the second proceedings.<sup>39</sup>

15. However, with the amendment, it has now become clear that the proffered documentary evidence is no longer admitted by taking its judicial notice and that the relevance and probative value of the documentary evidence in question should be established vis-à-vis the second proceedings. Therefore, after creating a well-founded presumption of the authenticity of the documentary evidence by virtue of taking judicial notice, the moving party may tender the documentary evidence in question either through a witness or through a bar table motion by fulfilling the Rule 89(C) requirements.

16. The requirements for taking judicial notice of adjudicated facts, which are well established, are not applicable to judicial notice of documentary evidence. The argument put

<sup>37</sup> *Dragomir Milošević* Decision, p. 3.

<sup>38</sup> First Decision, para. 11.

<sup>39</sup> *Prosecutor v. Delić*, Case No. IT-04-83-PT, Decision on Prosecution’s Motion for Admission of Documentary Evidence Pursuant to Rule 94(B), 9 July 2007 (“*Delić* Pre-Trial Decision”), pp. 3–4; *Milutinović* Decision, para. 16.

forth by the Accused that there should be a correlation between the requirements for judicial notice of adjudicated facts and of documentary evidence does not, in any event, stem from the recent amendment to Rule 94(B).<sup>40</sup> As stated in the previous paragraphs, for the purpose of taking judicial notice, the Chamber only assesses whether the documentary evidence in question was sufficiently authenticated and admitted into evidence in a previous trial and whether or not it is relevant to the current proceedings. Therefore, whether or not a party objected to the admission of the said document in the previous proceedings is irrelevant to the determination as to whether the document was ultimately admitted. Whether or not the documentary was the subject of appeal or review in the previous proceedings is also irrelevant to the assessment as to whether the document was ultimately admitted.

17. The Accused also argues, in the Supplemental Response, that Rule 94(B) does not cover recordings.<sup>41</sup> The Chamber considers, contrary to the Accused, that the recording of an intercepted conversation is covered by the term “documentary evidence”. To that effect, the Chamber would only recall its First Decision in which it considered that it would be in the interests of judicial economy to apply Rule 94(B) to intercepts.<sup>42</sup>

#### *Admission from the Bar Table*

18. Evidence may be admitted from the bar table if it is considered to fulfil the above requirements of Rule 89. Once the requirements of the Rule are satisfied, the Chamber maintains discretionary power over the admission of the evidence, including by way of Rule 89(D).<sup>43</sup>

19. The Chamber also recalls its “Order on Procedure for Conduct of Trial” filed on 8 October 2009 (“Order”), which stated with regard to any request for the admission of evidence from the bar table that

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.<sup>44</sup>

<sup>40</sup> The Chamber notes that this argument falls outside the scope of the issues on which the parties were invited to make further submissions.

<sup>41</sup> The Chamber reiterates that this argument does not stem from the recent amendment of the Rule and thus falls outside the scope on which the parties were invited to make submissions.

<sup>42</sup> First Decision, para. 9.

<sup>43</sup> Decision on the Prosecution’s First Bar Table Motion, 13 April 2010, para. 5 (citations omitted).

<sup>44</sup> Order, Appendix A, Part VII, para. R.



### III. Discussion

20. As a preliminary matter, the Chamber notes that the document assigned Rule 65 *ter* number 30789 has not been uploaded into e-court and that the document with Rule 65 *ter* number 30696 does not have an English translation in e-court. The Chamber has therefore not examined these intercepts.

21. The Chamber further notes that it has addressed and dismissed the Accused's objection to the admission of pre-war intercepted conversations pursuant to Rule 95 in its "Decision on Accused's Motion to Exclude Intercepted Conversations", issued on 30 September 2010 ("Intercepts Decision"), and will not repeat it here.

#### **A. Addition to the Rule 65 *ter* Exhibit List**

22. In the Motion, the Prosecution seeks to add the document assigned Rule 65 *ter* number 22998 to its Rule 65 *ter* list of exhibits.<sup>45</sup> The Accused does not oppose the request.<sup>46</sup> The Chamber considers that this document is *prima facie* relevant, that the Prosecution has shown good cause for its late addition to the Rule 65 *ter* exhibit list, that the Accused was adequately notified and that his ability to prepare for trial will not be adversely affected by this late addition. The Chamber therefore grants the Prosecution leave to add Rule 65 *ter* number 22998 onto its Rule 65 *ter* list of exhibits.

#### **B. Judicial Notice of the Authenticity of the Intercepts**

23. As noted above, before it will take judicial notice of the authenticity of a particular piece of documentary evidence, the Chamber must be satisfied that the documents sought for judicial notice were tendered as evidence in another case before the Tribunal and were found to be authentic in the prior proceedings. Having reviewed the intercepts listed by the Prosecution in Appendix A to the Motion, and the information provided therein in relation to their prior admission, the Chamber makes the following findings.

24. The Chamber first notes that the documents with Rule 65 *ter* numbers 14041, 20288, and 22998 are not intercepts but rather declarations and spreadsheets admitted in previous cases for the purpose of authenticating intercepted conversations. The Chamber considers that the authenticity of Rule 65 *ter* numbers 20288 and 22998 has been sufficiently established and will therefore take judicial notice of their authenticity. The Chamber is also satisfied that the authenticity of Rule 65 *ter* number 14041 has been sufficiently established. However, the

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<sup>45</sup> Motion, para. 14.

Chamber is not convinced that Rule 65 *ter* number 14041 is the corrected version of the spreadsheet discussed and ultimately admitted in the *Milošević* case.<sup>47</sup> In this regard, the Chamber notes that Rule 65 *ter* 14041 bears the date of 18 November 2003 and that it was during the hearing of 4 December 2003, more than two weeks after the date indicated on the spreadsheet, that the issue of corrections to the spreadsheet was raised. At this stage, the Chamber will therefore not take judicial notice of Rule 65 *ter* number 14041.

25. With regard to the intercepts, the Chamber is satisfied that the following items were admitted in previous cases and finds that their authenticity was sufficiently established for the purposes of judicial notice:

Rule 65 *ter* numbers 30020, 30022, 30088, 30200, 30216, 30335, 30695, 30700, 30704, 30814, 30833, 30857, 30770, 30701, 30046, 30203, 30219, 30230, 30627, 30631, 30635, 30666, 30674, 30679, 30691, 30724, 30726, 30730, 30736, 30739, 30746, 30752, 30753, 30762, 30772, 30777, 30785, 30795, 30817, 30828, 30831, 30740, and 30813.

26. With regard to the remainder of the proffered intercepts, the Chamber is first not satisfied that the Prosecution has sufficiently established that some of them were admitted in previous cases. These are Rule 65 *ter* numbers 30656, 31679, 32498, 30206, 30215, 30651, 30658, 30705, 30517, 30581, 30589, 30628, 30836, 30841, 30061, 30692, 30384, 30387, 30409, 30424, 30501, 30516, 30655, 30197, 30228, 30267, 30436, 30611, 30638, 30340, 30689, 30745, 30815, and 30826.

27. For other intercepts, the Prosecution relied on Rule 65 *ter* number 14041 and on declarations of persons who were neither participants in the conversations nor intercept operators. For these intercepts, the Chamber is not satisfied that their authenticity was sufficiently established. It recalls its earlier finding concerning Rule 65 *ter* number 14041. Therefore, the Prosecution may not rely on this spreadsheet as the sole means to authenticate the proffered intercepts. The Chamber further recalls the First Decision, in which it had considered “intercepts to be a special category of evidence”, the authenticity and reliability of which “is established by further evidence, such as hearing from the relevant intercept operators or the participants in the intercepted conversation themselves”.<sup>48</sup> Therefore, declarations from persons who are neither participants in the conversation themselves nor intercept operators are not sufficient for the purposes of establishing an intercept’s authenticity. The Chamber is thus not satisfied that the authenticity of the following intercepts was sufficiently established:

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<sup>46</sup> Response, para. 1.

Rule 65 *ter* numbers 30202, 30212, 31680,<sup>49</sup> 30063, 30124, 30205, 30208, 30211, 30214, 30217, 30220, 30224, 30423, 30441, 30595, 30604, 30660, 30671, 30677, 30698, 30702, 30703, 30712, 30720, 30723, 30738,<sup>50</sup> 30756, 30766, 30767, 30773, 30779, 30780, 30793, 30796, 30800, 30810, 30811, 30822, 30823, 30894, 31614, 30709, 32616, 30650, and 30865.

### C. Admission of the Intercepts

#### *Admission of the Intercepts from the Bar Table*

28. As it would for any document for which admission from the bar table is sought, the Chamber has carefully examined the relevance and probative value of each intercept the authenticity of which has been subject to judicial notice, and whether the Prosecution has satisfactorily explained how they fit into its case. The Chamber is satisfied that these criteria have been met for Rule 65 *ter* numbers 20288, 22998, 30230, 30704, 30770, 30046, 30203, 30219, 30627, 30674, 30679, 30691, 30724, 30730, 30739, 30752, 30753, 30762, 30777, 30785, 30817, 30828, 30831, 30740, and 30813.

29. However, the Chamber is not satisfied that the above criteria have been met for a number of the proffered intercepts. First, the Chamber is not convinced that the relevance of the following intercepts has been established: Rule 65 *ter* numbers 30022, 30200, 30700, 30833, 30857, 30701, 30631, and 30635. Rule 65 *ter* number 30022 is remotely linked to the Accused's ability to appoint personnel in the Ministry of Internal Affairs before the Indictment period. Rule 65 *ter* number 30200 is generally related to Milan Martić's arrest. Rule 65 *ter* number 30700 is a conversation between Neđeljko Prstojević and an unknown male which pertains, in part, to the situation around Sarajevo, the relevance of which is not clear from the intercept itself. The Chamber considers that, since Prstojević is scheduled to testify in these proceedings, it is preferable for this intercept to be tendered live through him so that the Prosecution can explain more adequately how this intercept is relevant to its case. Rule 65 *ter* number 30833 is a general exchange of information between Momčilo Krajišnik and two other participants. Rule 65 *ter* number 30857 is a 23 page intercept dealing, for the most part, with a general conversation between the participants. Rule 65 *ter* number 30701 is a general conversation. With regard to Rule 65 *ter* number 30631, the Chamber is not satisfied that the Prosecution has established how the fact that Rajko Đukić was in charge of barricades fits in its

<sup>47</sup> *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, T. 30105–30106 (closed session)(4 December 2003).

<sup>48</sup> First Decision, para. 9.

<sup>49</sup> In this intercept, the participants identified by KDZ145 in Rule 65 *ter* 22998 are not the participants mentioned on the intercept itself.

<sup>50</sup> KDZ145 comments in Rule 65 *ter* 22998 that he cannot recognise the participants in this conversation with any certainty.

case. Rule 65 *ter* number 30635 is a conversation where Jovan Tintor discusses the prospect of war. Second, the Chamber is not satisfied that the probative value of the following intercepts has been sufficiently established as they are unclear and cannot be understood independently: Rule 65 *ter* numbers 30736, 30772, and 30695.

*Admission of Intercepts previously Marked for Identification in this Case*

30. A number of intercepts listed in Annex A of the Motion were previously discussed in court with witnesses in this case and marked for identification, pending additional evidence being presented regarding their authenticity. Having found in paragraph 25 above that the authenticity of these exhibits has been sufficiently established, the Chamber will admit these intercepts, namely Rule 65 *ter* numbers 30020 (MFI D357), 30088 (MFI D364), 30216 (MFI D365), 30335 (MFI D279), 30814 (MFI P1519), 30666 (MFI P1109), 30726 (MFI P1515), 30746 (MFI P1086), and 30795 (MFI P1517).


**IV. Disposition**

31. Accordingly, the Trial Chamber, pursuant to Rules 89 and 94(B) of the Rules, hereby **GRANTS** the Motion and the Supplemental Submission in part and **DECIDES** to:

- 1) Grant the Prosecution leave to add the document with Rule 65 *ter* number 22998 to its Rule 65 *ter* exhibit list;
- 2) Take judicial notice of the authenticity of the documents with Rule 65 *ter* numbers 20288, 22998, 30020, 30022, 30088, 30200, 30216, 30335, 30695, 30700, 30704, 30814, 30833, 30857, 30770, 30701, 30046, 30203, 30219, 30230, 30627, 30631, 30635, 30666, 30674, 30679, 30691, 30724, 30726, 30730, 30736, 30739, 30746, 30752, 30753, 30762, 30772, 30777, 30785, 30795, 30817, 30828, 30831, 30740, and 30813;
- 3) Admits into evidence the documents with Rule 65 *ter* number 20288, 22998, 30020 (MFI D357), 30088 (MFI D364), 30216 (MFI D365), 30230, 30335 (MFI D279), 30814 (MFI P1519), 30666 (MFI P1109), 30726 (MFI P1515), 30746 (MFI P1086), 30795 (MFI P1517), 30704, 30770, 30046, 30203, 30219, 30627, 30674, 30679, 30691, 30724, 30730, 30739, 30752, 30753, 30762, 30777, 30785, 30817, 30828, 30831, 30740, 30813 and requests the Registry to assign exhibit numbers for each of these documents.

32. The Chamber **DISMISSES** the remainder of the Motion.

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



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Judge O-Gon Kwon  
Presiding

Dated this fourth day of February 2011  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**