



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: 24 May 2012

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: 24 May 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC with CONFIDENTIAL ANNEX A

**DECISION ON PROSECUTION'S THIRD BAR TABLE MOTION FOR THE ADMISSION
OF INTERCEPTS (SREBRENICA)**

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 Third Bar Table Motion for the Admission of Intercepts with Appendix A”, filed on 4 May 2012 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Office of the Prosecutor (“Prosecution”) seeks the admission of 97 intercepts (“Intercepts”) from the bar table pursuant to Rule 89(C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), which are related to the Srebrenica component of the case.¹ The Prosecution explains the relevance and probative value of each of the Intercepts and how they fit into its case.² It also notes that the Accused was given an opportunity to comment on each of the Intercepts and has outlined the Accused’s response in a separate column in Appendix A.³

2. The Prosecution also seeks the admission of six printout versions of intercepts already admitted into evidence.⁴ The Prosecution submits that the handwritten versions of the five intercepts that were admitted during the testimony of Richard Butler did not show the date on which each conversation was intercepted.⁵ Thus, the Prosecution submits that the printout version of these intercepts which clearly indicate the date in the heading should now be admitted.⁶ For the sixth intercept, the printout version admitted into evidence did not bear any date at the time it was admitted.⁷ Thus, the Prosecution seeks the admission of the printout version of this intercept which now contains the date in the heading.⁸

3. The Prosecution argues that the Intercepts are authentic and reliable based on the testimony of the intercept operators and that of Stephanie Frease.⁹ In addition, the Prosecution submits that all but five¹⁰ of the Intercepts were found to be authentic and reliable in prior cases,

¹ Motion, paras. 1, 35, Appendix A. While the Prosecution in the Motion states that it seeks to admit 96 intercepts, Appendix A lists 97 intercepts.

² Motion, paras. 2, 6–8, Appendix A.

³ Motion, para. 5, Appendix A.

⁴ Motion, paras. 23–26.

⁵ Motion, para. 23, referring to exhibits P4952, P4953, P4955, P4958, and P4964.

⁶ Motion para. 24, the Prosecution seeks admission of the printouts with Rule 65 *ter* numbers 31091C (corresponding to P4952), 31096D (corresponding to P4953), 31128C (corresponding to P4955), 31145D (corresponding to P4958), and 31223C (corresponding to P4964).

⁷ See P4971.

⁸ Motion, para. 25, referring to document with Rule 65 *ter* number 31569B (corresponding to P4971).

⁹ Motion, paras. 3, 9–17.

¹⁰ Rule 65 *ter* numbers 31502, 31697, 31534, 31563, and 31738.

and thus requests that the Chamber take judicial notice of their authenticity pursuant to Rule 94(B) of the Rules.¹¹

4. For all of the Intercepts, the Prosecution requests that they be admitted under seal because they bear the initials of, and other references to, protected witnesses.¹² The Prosecution submits that it will produce and upload a public version of all of the Intercepts that the Chamber ultimately admits into evidence.¹³

5. Having been instructed by the Chamber, *via* email on 4 May 2012, to respond to the Motion by 11 May 2012, the Accused filed a “Response to Prosecution’s Third Bar Table Motion for the Admission of Intercepts” on 7 May 2012 (“Response”). The Accused objects to the admission of 27 of the Intercepts in which both of the interlocutors are not identified.¹⁴ The Accused also objects to the admission of three of the Intercepts on the basis that they should have been presented through a witness at trial.¹⁵ Finally, the Accused objects to the admission of three of the Intercepts on an individual basis.¹⁶

II. Applicable Law

6. Rule 89 of the 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.
- (E) A Chamber may request verification of the authenticity of evidence obtained out of court.

7. The Chamber recalls that while the most appropriate method for the admission of a document is through a witness who can speak to it and answer questions in relation thereto, the admission of evidence from the bar table is a practice established in the case-law of the

¹¹ Motion, paras. 4, 18–22.

¹² Motion, para. 35.

¹³ Motion, para. 35.

¹⁴ Response, paras. 2–3; Motion, Appendix A.

¹⁵ Response, para. 4; Motion, Appendix A.

¹⁶ These are Rule 65 *ter* numbers 30922, 31600, and 35012. The Chamber notes that in the Response, para. 5, the Accused states that he objects to the admission of document “65 *ter* #35012” but the Prosecution does not seek the admission into evidence of an intercept with this Rule 65 *ter* number. The Chamber assumes that the Accused erroneously referred to “35012” instead of Rule 65 *ter* number 31052, which the Prosecution does seek to admit and corresponds to the Accused’s objection. The Chamber will proceed on this basis. *See also* Motion, Appendix A, p. 26.

Tribunal.¹⁷ Evidence may be admitted from the bar table if it is considered to fulfil the requirements of Rule 89, namely that it is relevant, of probative value, and bears sufficient indicia of authenticity.¹⁸ Once these requirements are satisfied, the Chamber maintains discretionary power over the admission of the evidence, including by way of Rule 89(D), which provides that it may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.¹⁹ Admission from the bar table is a mechanism to be used on an exceptional basis since it does not necessarily allow for the proper contextualisation of the evidence in question.²⁰

8. The Chamber also recalls its “Order on Procedure for Conduct of Trial” filed on 8 October 2009 (“Order”), which states 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.²¹

9. Rule 94(B) of the Rule allows the Chamber to take judicial notice of the authenticity of documentary evidence which has been admitted in prior proceedings. To take judicial notice, the Chamber shall assess whether the documentary evidence in question was sufficiently authenticated and admitted into evidence in a previous trial.²² For the authenticity of intercepts, this Chamber considered it necessary to find that for each intercept it was admitted in a prior proceeding and also sufficiently authenticated and found to be reliable before it can take judicial notice of the intercept.²³ 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.

¹⁷ Decision on the Prosecution’s First Bar Table Motion, 13 April 2010 (“First Bar Table Decision”), para. 5; Decision on Prosecution Bar Table Motion for the Admission of Bosnian Serb Assembly Session Records, 22 July 2010 (“Second Bar Table Decision”), para. 4; Decision on Prosecution’s Motion for Admission of Evidence from the Bar Table (Hostages), 1 May 2012 (“Hostages Bar Table Decision”), para. 4.

¹⁸ Rule 89(C), (E).

¹⁹ Hostages Bar Table Decision, para. 4, citing First Bar Table Decision, para. 5. *See also*, Decision on Prosecution’s Motion for Admission of Evidence from the Bar Table and for Leave to Add Exhibits to the Rule 65 *ter* Exhibit List, 21 February 2012, para. 5.

²⁰ Hostages Bar Table Decision, para. 4, citing First Bar Table Decision, paras. 9, 15.

²¹ Order, Appendix A, Part VII, para. R.

²² Decision on the Prosecution’s First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component, 31 March 2010 (“First Judicial Notice Decision”), para. 16; 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, 4 February 2011 (“4 February 2011 Judicial Notice Decision”), paras. 12–17.

²³ 4 February 2011 Judicial Notice Decision, para. 13, citing First Judicial Notice Decision, para. 11.

III. Discussion

10. As a preliminary matter, the Chambers notes that the Prosecution also sought the admission into evidence of Rule 65 *ter* number 31697 in its “Prosecution’s Second Bar Table Motion for the Admission of Intercepts with Public Appendix A and Confidential Appendix B”, filed on 20 April 2012, and the Chamber will therefore not deal with its admission in this decision.

Judicial notice of authenticity of intercepts

11. The Chamber recalls that evidence offered for admission from the bar table must bear sufficient indicia of authenticity. However, as stated previously, the Chamber considers intercepts to be a special category of evidence given that they bear no indicia of authenticity or reliability on their face.²⁴ The authenticity or reliability of intercepts is established by further evidence, such as hearing from the relevant intercept operator or an interlocutor in the intercepted conversation.²⁵ The Chamber indicated that intercepts which were authenticated by intercept operators but the content of which had not been discussed with a witness would be marked for identification pending anticipated bar table motions which properly contextualised those documents.²⁶ Thus, witness KDZ245 authenticated MFI P4612, MFI P4613, and MFI P4614²⁷ and witness KDZ126 authenticated MFI P4617, MFI P4619, MFI P4621, MFI P4622,²⁸ MFI P4623, MFI P4624, and MFI P4625.²⁹ The remaining Intercepts that are the subject of the Motion were not authenticated by an intercept operator or an interlocutor in this case; therefore, the question of authenticity is at issue for these remaining Intercepts.

12. The Prosecution requests that the Chamber take judicial notice of the authenticity of the remaining Intercepts pursuant to Rule 94(B). For the purpose of taking judicial notice of documentary evidence pursuant to Rule 94(B), the Chamber must be satisfied that the documentary evidence in question was sufficiently authenticated and admitted into evidence in a previous trial.³⁰ For the four intercepts with Rule 65 *ter* numbers 31502, 31534, 31563, and 31738 the Prosecution fails to make any submissions as to their authenticity.³¹ For others, the Prosecution only lists the case number, the date on which the intercept was admitted in the prior

²⁴ First Judicial Notice Decision, para. 9.

²⁵ First Judicial Notice Decision, para. 9.

²⁶ T. 26378 (15 March 2012), T. 27104 (28 March 2012) (Closed Session).

²⁷ T. 26325, 23660–26332 (15 March 2012).

²⁸ The Chamber notes that in the Motion, Appendix, p. 18, the Prosecution states that Rule 65 *ter* number 31017 is “MFI P1541” when in fact the correct exhibit number is MFI P4622.

²⁹ T. 26383–26385 (15 March 2012); P4616.

³⁰ First Judicial Notice Decision, para. 16; 4 February 2011 Judicial Notice Decision, paras. 12–17.

³¹ See Motion, Appendix A, pp. 63–65, 72.

case, and the exhibit number from that case.³² The Prosecution does not provide the Chamber with any transcript references or with the title and date of the written decision through which these documents may have been admitted. Thus, the Chamber is unable to satisfy itself that Rule 65 *ter* numbers 31271, 31478, 31502, 31534, 31563, 31597, 31738 and exhibit MFI P4775 were sufficiently authenticated and admitted in previous cases. Therefore, the Chamber will not take judicial notice of their authenticity pursuant to Rule 94(B) of the Rules and will not admit them from the bar table. In addition, the Chamber will not accept any additional submissions on this issue from the Prosecution, given that the Prosecution has failed to satisfy one of the basic requirements for seeking judicial notice of the authenticity of documentary evidence.

13. For Rule 65 *ter* number 31600, the Chamber finds that, contrary to the oral decision cited by the Prosecution in the Motion,³³ this intercept was not authenticated by an intercept operator or interlocutor in the previous case when it was admitted into evidence. The oral decision cited by the Prosecution does not indicate that this intercept was authenticated either by an intercept operator or an interlocutor, rather that it was admitted through a witness who spoke about its contents.³⁴ For Rule 65 *ter* numbers 30899 and 30943, the Prosecution requests that the Chamber take judicial notice of their authenticity based on the “Decision on Prosecution Motion to Admit Butler Documents” issued on 12 May 2009 in the *Prosecutor v. Popović et al.* case (Case No. IT-05-88-T). The Chamber notes that this decision does not indicate whether these intercepts were authenticated by an intercept operator or an interlocutor, rather it states that the intercepts were referred to in Richard Butler’s report and admitted into evidence because they were *prima facie* relevant and had probative value. Thus, the Chamber will not take judicial notice of the authenticity of Rule 65 *ter* numbers 30899, 30943, and 31600 because it is unable to satisfy itself that these three intercepts were sufficiently authenticated in a previous case. Therefore, the Chamber will not admit these documents into evidence from the bar table.

14. For the remaining Intercepts³⁵ where the Prosecution cites to a specific written decision from a prior case in which the intercept was authenticated,³⁶ the Chamber is satisfied that these

³² See 65 *ter* 31271, 31478, 31597, and MFI P4775.

³³ See Appendix A, p. 71, citing *Prosecutor v. Popović et al.* case No. IT-05-88-T, Oral Decision on 22 July 2008, T. 23826, exhibit P3540 in that case.

³⁴ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Oral Decision, T. 23826 (22 July 2008).

³⁵ Rule 65 *ter* numbers 30005, 30868, 30895, 30906B, 30912C, 30911, 30922, 30933, 30944, 30947, 30951, 30957B, 30958, 30962, 30966, 30968, 30977, 30981, 30988, 30991, 30996, 30997, 31001, 31012, 31029, 31035, 31045B, 31046, 31052, 31053, 31074, 31075, 31084, 31095, 31098, 31110, 31112, 31134, 31135, 31144, 31146A, 31160, 31162, 31169, 31171, 31173, 31180, 31184C, 31197, 31198, 31200, 31213, 31228, 31229, 31248, 31253, 31295, 31317, 31326, 31327, 31341, 31424, 31450, 31452, 31462C, 31484, 31498B, 31573B, 31608, and MFI P4254, MFI P4753, MFI P4776, MFI P4785, MFI D2023, MFI D2024.

³⁶ See *Prosecutor v. Tolimir*, Case No. IT-05-88/2-T, Decision on Prosecution’s Motion for Admission of 28 Intercepts From the Bar Table, 20 January 2012; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on

Intercepts were sufficiently authenticated by an intercept operator and admitted into evidence in the previous case. Thus, the Chamber will take judicial notice of the authenticity of the following Intercepts with Rule 65 *ter* numbers 30005, 30868, 30895, 30906B, 30911, 30912C, 30922, 30933, 30944, 30947, 30951, 30957B, 30958, 30962, 30966, 30968, 30977, 30981, 30988, 30991, 30996, 30997, 31001, 31012, 31029, 31035, 31045B, 31046, 31052, 31053, 31074, 31075, 31084, 31095, 31098, 31110, 31112, 31134, 31135, 31144, 31146A, 31160, 31162, 31169, 31171, 31173, 31180, 31184C, 31197, 31198, 31200, 31213, 31228, 31229, 31248, 31253, 31295, 31317, 31326, 31327, 31341, 31424, 31450, 31452, 31462C, 31484, 31498B, 31573B, 31608, and MFI P4254, MFI P4753, MFI P4776, MFI P4785, MFI D2023, and MFI D2024 and will proceed to determine whether they may be admitted from the bar table.

Admission of evidence from the bar table

15. Turning now to the requirements for admission of evidence from the bar table, the Chamber has stated that in seeking the admission of evidence from the bar table, the offering party must demonstrate, with sufficient clarity and specificity, where and how each of the documents fits into its case.³⁷ The Chamber is satisfied that the Prosecution has explained how the Intercepts fit into its case.³⁸

16. First, there are five intercepts that were authenticated by an intercept operator in this case and marked for identification and for which the Accused raises no objections to their admission into evidence, these are MFI P4613, MFI P4614, MFI P4621, MFI P4622, and MFI P4623. The Chamber finds that they have probative value and are relevant to issues arising from the Third Amended Indictment (“Indictment”), including: (i) the VRS activities in Srebrenica on 12 and 13 July 1995, and (ii) events immediately after the fall of Srebrenica. The Chamber finds that the requirements of Rule 89(C) of the Rules have been met with respect to MFI P4613, MFI P4614, MFI P4621, MFI P4622, and MFI P4623, and will admit them into evidence from the bar table.

17. Turning next to those of the Intercepts for which the Accused raises no objection to their admission into evidence and in relation to which the Chamber has decided to take judicial notice of their authenticity,³⁹ the Chamber finds that they are relevant to a number of issues arising

Admissibility of Intercepted Communications, 7 December 2007; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Decision on the Admission into Evidence of Intercept-Related Materials, 18 December 2003.

³⁷ First Bar Table Decision, para. 6.

³⁸ Motion, Appendix A.

³⁹ See Rule 65 *ter* numbers 30005, 30868, 30895, 30906B, 30912C, 30911, 30933, 30944, 30951, 30957B, 30958, 30962, 30968, 31001, 31029, 31045B, 31046, 31053, 31074, 31084, 31095, 31098, 31110, 31112, 31134, 31135, 31160, 31162, 31169, 31171, 31173, 31180, 31184C, 31197, 31198, 31213, 31228, 31229, 31295, 31317, 31326,

from the Indictment, including: (i) the Bosnian Serb military strategy and operations in and around Srebrenica from June 1995 until September 1995; (ii) the VRS's relationship with UNPROFOR and DutchBat in Srebrenica; (iii) the movement of the civilian population in and around Srebrenica; and (iv) events immediately after the fall of Srebrenica. The Chamber also finds that these Intercepts have probative value and, as stated above, bear sufficient indicia of authenticity. Consequently the Chamber finds that the requirements of Rule 89(C) of the Rules have been met with respect to the following Intercepts, and will admit Rule 65 *ter* numbers 30005, 30868, 30895, 30906B, 30912C, 30911, 30933, 30944, 30951, 30957B, 30958, 30962, 30968, 31001, 31029, 31045B, 31046, 31053, 31074, 31084, 31098, 31110, 31112, 31134, 31135, 31160, 31162, 31169, 31171, 31173, 31180, 31184C, 31197, 31198, 31213, 31228, 31229, 31295, 31317, 31326, 31341, 31424, 31450, 31452, 31484, 31498B, 31573B, 31608, and MFI P4254, MFI P4753, MFI P4776, MFI P4785, and MFI D2024 into evidence from the bar table.

18. The Accused made specific objections to 33 of the Intercepts.⁴⁰ The Chamber will analyse his objections in turn.

Accused's challenge to admission from the bar table of intercepts where the speakers are not identified

19. The Accused objects to the admission of 27 of the Intercepts on the basis that the interlocutors are not identified.⁴¹ The Prosecution submits that the intercepts "further confirm the reliability of the entire intercept collection since they demonstrate that no guess was made as to the identity of the speaker".⁴² In addition, the Prosecution argues that the lack of identification of the speakers may go to the weight of the evidence and that these intercepts are reliable.⁴³

20. The fact that the identity of the speakers in an intercepted conversation is unknown is not, in and of itself, a bar to their admission into evidence should the Chamber find that the requirements for admission from the bar table are met. The Chamber has analysed Rule 65 *ter*

31341, 31424, 31450, 31452, 31484, 31498B, 31573B, 31608, and MFI P1541, MFI P4254, MFI P4753, MFI P4776, MFI P4785, MFI D2024.

⁴⁰ The Accused objects to the admission of 27 of the Intercepts on the basis that the interlocutors are not identified. He further objects to the admission of 3 of the Intercepts (Rule 65 *ter* number 30899, 31327 and MFI P4619) on the basis that they should have been used with a witness. Finally, he objects to the admission of Rule 65 *ter* "35012", 31600, and 30922. Motion, paras. 2, 4-7.

⁴¹ These include Rule 65 *ter* numbers 30922, 30947, 30966, 30977, 30981, 30988, 30991, 30996, 30997, 31012, 31035, 31075, 31144, 31146A, 31200, 31248, 31253, 31271, 31462C, 31563, 31597, MFI P4612, MFI P4617, MFI P4624, MFI P4625, MFI P4775, and MFI D2023.

⁴² Motion, para. 29.

⁴³ Motion, para. 30.

numbers 30947, 30966, 30977, 30981, 30988, 30991, 30996, 30997, 31012, 31035, 31144, 31146A, 31200, 31248, 31253, 31462C, MFI P4612, MFI P4617, MFI P4624, MFI P4625, and MFI D2023.⁴⁴ The Chamber finds that despite the identity of the speakers in these intercepted conversations being unknown, the subject matter of the conversations is clearly relevant to issues in the Indictment, including, (i) the movement of civilians in and around the Srebrenica area, sometimes referring to the civilians as “the column”; (ii) the involvement of the VRS in supplying buses and fuel to the Srebrenica area; (iii) the communications between VRS Main Staff members and VRS units in Srebrenica; (iv) the relationship between the VRS and UNPROFOR in Srebrenica; and (v) the situation immediately after the fall of Srebrenica. The Chamber also finds these documents have probative value and, as stated above, that they bear sufficient indicia of authenticity. The Chamber is therefore satisfied that the requirements of Rule 89(C) of the Rules have been fulfilled and will admit these intercepted conversations into evidence from the bar table.

21. The Chamber has examined Rule 65 *ter* number 31075, which is a short conversation between two unknown speakers on 14 July 1995, at 10:18 p.m., where one of the speakers asks where Drago Nikolić is and to have him call Đukić. The Prosecution submits that this intercept shows that Nikolić was active and offers some indications as to his whereabouts.⁴⁵ The Chamber finds that this intercept is relevant to Nikolić’s whereabouts on 15 July 1995 in that there was a meeting scheduled between him and the Chief of the Vlasenica Security Centre on 15 July 1995 at 9 am. The Chamber is also satisfied of the probative value of this intercept and will therefore admit Rule 65 *ter* number 31075 from the bar table.

22. The Chamber has examined Rule 65 *ter* number 31095,⁴⁶ which is a short conversation between Major Jokić and the duty officer at “Palma” in which the duty officer informs Jokić that “they are coming”, “our lot with the boss”. The Chamber finds that this conversation is so cryptic that it is difficult to discern who the duty officer is speaking about and when “they” will be coming, as well as the location where they will be coming. Thus, the Chamber finds the probative value of this intercepted conversation is not sufficient to warrant its admission from the bar table. The Chamber will therefore not admit Rule 65 *ter* number 31095 from the bar table.

⁴⁴ The Chamber will not analyse Rule 65 *ter* numbers 31271, 31563, 31597 and MFI P4775 here as it has already made a finding that the requirements for judicial notice of authenticity were not established, *see supra* para. 12 for these items.

⁴⁵ Motion, Appendix A, p. 26.

⁴⁶ The Chamber notes that this conversation is contained on page one of a two-page document and the Prosecution’s submission only refers to the first page. The second page contains an entirely different intercepted conversation.

Accused challenge to admission from the bar table of documents which should have been put to a witness

23. The Chamber's reasoning in relation to these documents is found in Confidential Annex A to this decision.

*Accused challenge to the admission from the bar table of specific intercepts*⁴⁷

24. The Accused objects to the admission of Rule 65 *ter* number 31052⁴⁸ on the basis that "it has no probative value since the meaning of what was said can only be based upon speculation" and that the Prosecution should have called Major Malinić, the Commander of the 65th Protection Regiment's Military Police Unit, to testify.⁴⁹ This is a brief intercepted conversation on 14 July 1995, at 10:36 p.m., in which an unknown speaker tells Malinić that Krstić "has just come up here" and will "assign someone to coordinate it", and that Živanović told him information and he is "up to speed". The Prosecution submits that this shows that Krstić, Živanović, and Malinić had knowledge of an unspecified assignment and were working together on 14 July 1995. In addition, the Prosecution submits that the VRS knew that these conversations were being intercepted, thus the language is coded.⁵⁰ The participants in this conversation are discussing an unspecified assignment. However, without more information about what this particular assignment was or how it relates to the case, the Chamber finds that this intercept has no probative value. Thus, the Chamber will deny its admission into evidence from the bar table.

25. Lastly, the Accused objects to the admission of Rule 65 *ter* number 30922, stating that this intercept adds nothing to the Prosecution's case.⁵¹ This is an intercepted conversation from 11 July 1995, at 6:23 p.m., where the speakers state that the town is completely deserted and "our flag is on the church", and that "they" are down there towards Potočari. The Prosecution submits that this conversation is relevant to the chronology of events in Srebrenica and that it is corroborated by a video from 11 July 1995 in Srebrenica which shows the Serbian flag on the church. The Chamber finds that Rule 65 *ter* number 30922 is relevant to the chronology of events in Srebrenica on 11 July 1995 and has probative value. The Chamber will therefore admit Rule 65 *ter* number 30922 into evidence from the bar table.

⁴⁷ The Chamber notes its finding in relation to Rule 65 *ter* number 31600 in paragraph 13 above, an intercept the admission of which the Accused objects to.

⁴⁸ See *supra* footnote 16. The Chamber also notes that both the Prosecution's submission on this intercept and the Accused's objection only pertains to page 1 of the intercept in court, even though Rule 65 *ter* number 31052 consists of four pages and pages 2 to 4 contain a different intercepted conversation.

⁴⁹ Response, para. 5; Motion, Appendix A, pp. 26-27.

⁵⁰ Motion, Appendix A, pp. 26-27.

Admission of printout versions of intercepted conversations already admitted into evidence

26. Finally, the Prosecution requests that additional printout versions of intercepts admitted into evidence through Butler now be admitted into evidence through the bar table because these printout versions show the date of the intercepted conversations in the heading, whereas the exhibits already admitted did not.⁵² These additional printouts bear Rule 65 *ter* numbers 31091C, 31096D, 31128C, 31145D, 31223C, and 31569B and correspond to exhibits P4952, P4953, P4955, P4958, P4964, and P4971, respectively. The Chamber finds that the printout versions of documents with Rule 65 *ter* number 31091C, 31096D, 31145D, 31223C, and 31569B do clearly contain the date of the intercepted conversation, and thus the Chamber will admit them into evidence.

27. The Prosecution also requests that all of the Intercepts admitted by the Chamber be admitted under seal and that it will provide the public redacted versions of these Intercepts in court.⁵³ The Chamber grants the request to admit under seal the Intercepts admitted through this decision and orders the Prosecution to provide the public redacted versions of the Intercepts, with the names, signatures, initials and other identifying information of the intercept operators redacted.

IV. Disposition

28. Accordingly, the Trial Chamber, pursuant to Rules 89 and 94(B) of the Rules, hereby **GRANTS** the Motion **IN PART** and:

- 1) **DECIDES** to take judicial notice of the authenticity of Rule 65 *ter* numbers 30005, 30868, 30895, 30906B, 30911, 30912C, 30922, 30933, 30944, 30947, 30951, 30957B, 30958, 30962, 30966, 30968, 30977, 30981, 30988, 30991, 30996, 30997, 31001, 31012, 31029, 31035, 31045B, 31046, 31052, 31053, 31074, 31075, 31084, 31095, 31098, 31110, 31112, 31134, 31135, 31144, 31146A, 31160, 31162, 31169, 31171, 31173, 31180, 31184C, 31197, 31198, 31200, 31213, 31228, 31229, 31248, 31253, 31295, 31317, 31326, 31327, 31341, 31424, 31450, 31452, 31462C, 31484, 31498B, 31573B, 31608, MFI P4254, MFI P4753, MFI P4776, MFI P4785, MFI D2023, and MFI D2024;

⁵¹ Response, para. 7.

⁵² Motion, paras. 23–26.

⁵³ Motion, para. 35.

- 2) **ADMITS** into evidence MFI P4254, MFI P4612, MFI P4613, MFI P4614, MFI P4617, MFI P4619, MFI P4621, MFI P4622, MFI P4623, MFI P4624, MFI P4625, MFI P4753, MFI P4776, MFI P4785, MFI D2023, and MFI D2024;
- 3) **INSTRUCTS** the Registry to mark these documents as admitted;
- 4) **ADMITS** into evidence Rule 65 *ter* numbers 31091C, 31096D, 31128C, 31145D, 31223C, and 31569B;
- 5) **ADMITS** into evidence, under seal, Rule 65 *ter* numbers 30005, 30868, 30895, 30906B, 30912C, 30911, 30922, 30933, 30944, 30951, 30957B, 30958, 30962, 30968, 31001, 31029, 31045B, 31046, 31053, 31074, 31075, 31084, 31098, 31110, 31112, 31134, 31135, 31160, 31162, 31169, 31171, 31173, 31180, 31184C, 31197, 31198, 31213, 31228, 31229, 31295, 31317, 31326, 31327, 31341, 31424, 31450, 31452, 31484, 31498B, 31573B, 31608, 30947, 30966, 30977, 30981, 30988, 30991, 30996, 30997, 31012, 31035, 31144, 31146A, 31200, 31248, 31253, and 31462C;
- 6) **INSTRUCTS** the Registry to assign exhibits numbers to the documents referenced above in paragraphs 27(4) and 27(5);
- 7) **ORDERS** the Prosecution to upload into e-court the public redacted versions of those documents admitted into evidence above in paragraph 27(5) by 7 June 2012 and **INSTRUCTS** the Registry to assign exhibit numbers to them; and
- 8) **DENIES** the remainder of the Motion and instructs the Registry to mark MFI P4775 as not admitted.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-fourth day of May 2012
At The Hague
The Netherlands

[Seal of the Tribunal]