



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: 25 May 2012

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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: 25 May 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S SECOND BAR TABLE MOTION
FOR THE ADMISSION OF INTERCEPTS**

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 Second Bar Table Motion for the Admission of Intercepts with Public Appendix A and Confidential Appendix B”, filed on 23 April 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 384 intercepts (“Intercepts”) from the bar table pursuant to Rule 89(C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ The Prosecution explains the relevance, probative value, and reliability of each of the intercepts and how they fit into its case.² The Prosecution 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 to its submissions in Appendix A.³
2. For the majority of the Intercepts dated prior to 7 April 1992, the Accused has no other objection than the “Rule 95 objection” to “pre-war intercepts” previously denied.⁴ The Accused also objects to the admission of 14 of the Intercepts by reiterating the challenge he has previously made to the reliability of Croatian intercepts with no audio recordings.⁵ The Accused also objects to the admission of 40 of the Intercepts on the additional basis that they should have been put to one of several earlier witnesses (“Witness Intercepts”), and submits that their admission may require recalling these witnesses.⁶ Finally, the Accused objects to the admission of two specific intercepts on an individual basis, namely 65 *ter* 30633 on the ground that it is irrelevant, lacks probative value, and is cumulative of other evidence,⁷ and 65 *ter* 30444 on the ground that it is irrelevant, lacks probative value, and is cumulative of other evidence.⁸

¹ Motion, paras. 1, 18, Appendix A. Though the Accused states that the Prosecution seeks the admission of 382 intercepts, the Prosecution is in fact tendering 384. Response, para. 2.

² Motion, para. 2, Appendix A, confidential Appendix B.

³ Motion para. 2, Appendix A.

⁴ Motion, para. 6, Appendix A. The Prosecution also notes that it has agreed not to tender four intercepts that were in the initial version of Appendix A, which was provided to the Accused and to which the Accused objected: 65 *ter* 30053, 30433, 30432, and 30455. Motion, para. 5.

⁵ Motion, paras. 7–8, confidential Appendix B. Though the Prosecution states in the Motion that the Accused objects to 13 intercepts on this ground, he in fact objects to 14, namely Rule 65 *ter* numbers 30199, 30362, 30449, 30494, 30499, 30638, 30641, 30644, 30647, 30652, 30653, 30658, 31631, 31724. The Chamber also notes that, although the Accused does not object to the admission of 65 *ter* 30640 on that basis, it also falls under this category as there are no audio recordings included.

⁶ Motion, para. 9.

⁷ Motion, para. 12.

⁸ Motion, para. 15.

3. The Accused filed his “Response to Second Bar Table Motion for the Admission of Intercepts” on 24 April 2012 (“Response”), wherein he details arguments already incorporated in Appendix A to the Motion. The Accused—despite acknowledging that the Chamber has twice rejected the argument—reiterates his objection to the admission of 275 conversations on the ground that they were intercepted prior to the outbreak of war on 7 April 1992 and thus in violation of the Constitution and laws of Bosnia and Herzegovina (“BiH”).⁹ With regard to the Witness Intercepts, the Accused also renews the objection previously set forth in his “Response to First Bar Table Motion for the Admission of Intercepts”, filed on 23 April 2012, in which he objected to the admission of intercepted conversations of witnesses who had previously testified in these proceedings.¹⁰ Specifically, the Accused states that he objects to the admission of 23 intercepted conversations in which Momčilo Mandić was a participant, nine intercepted conversations in which Nedeljko Prstojević was a participant, five intercepted conversations in which Branko Đerić was a participant, one intercepted conversation in which Manojlo Milovanović was a participant, and one intercepted conversation in which Radomir Nešković was a participant.¹¹ The Accused contends that it would be unfair to admit such conversations without first putting them to a witness, and that he will request that each one of these witnesses be recalled if any of the intercepted conversations in which they participated are admitted from the bar table at this stage.¹²

II. Applicable Law

4. 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.

5. 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

⁹ Response, paras. 2–4. The Chamber notes that, although the Accused states in the Response that he objects to 282 intercepts on the ground that they were intercepted prior to 6 April 1992, in Appendix A to the Motion the Accused in fact objects to 277. The Chamber also notes that although the Accused states in the Response that he objects to conversations intercepted prior to 6 April 1992, the Prosecution states in the Motion that he objects to the intercepts dated prior to 7 April 1992. In light of the fact that the Accused, in Appendix A to the Motion, objects to the admission of two intercepted conversations dated 6 April 1992, the Chamber understands “prior to 6 April 1992” to mean “on or prior to 6 April 1992”. See Motion, para. 6, Appendix A; Response, para. 2.

¹⁰ Response, para. 6; Response to First Bar Table Motion for the Admission of Intercepts, 23 April 2012, paras. 5–17.

¹¹ Response, para. 6.

¹² Response, para. 7.

admission of evidence from the bar table is a practice established in the case-law of the Tribunal.¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶

6. 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.¹⁷

III. Discussion

7. While introducing a document through a witness is the preferred method for the admission of evidence, a bar table motion can be “a supplementary method of introducing evidence, which should be used *sparingly* to assist the requesting party to fill specific gaps in its case at a later stage in the proceedings”.¹⁸ This remains the view of the Chamber and should continue to be the general practice in this case.

8. More specifically, in relation to intercepts, the Chamber has generally held that “in the absence of any previous showing regarding their authenticity or reliability, the Chamber considers that the bar table is not an appropriate means by which intercepts may be tendered into evidence”.¹⁹ However, as it became clear that the Prosecution would be tendering a number of intercepts by way

¹³ 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.

¹⁴ Rule 89(C), (E).

¹⁵ 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.

¹⁶ Hostages Bar Table Decision, para. 4, citing First Bar Table Decision, paras. 9, 15.

¹⁷ Order, Appendix A, Part VII, para. R.

¹⁸ First Bar Table Decision, para. 9 (emphasis added).

¹⁹ First Bar Table Decision, para. 13.

of bar table motions at the end of its case,²⁰ 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.²¹

9. Having reviewed Appendix A and confidential Appendix B to the Motion, as well as all of the Intercepts, the Chamber is satisfied that the Intercepts were sufficiently authenticated.²² The Chamber will now examine each of the Accused's challenges.

Accused's challenge to admission from the bar table of conversations intercepted on or prior to 6 April 1992

10. For the majority of the Intercepts dated prior to 7 April 1992, the Accused has no other objection than the "Rule 95 objection" to "pre-war intercepts" previously denied.²³ The Prosecution notes that this is a reiteration of the Accused's objection to pre-war intercepts, an objection that the Chamber has denied on numerous occasions.²⁴ The Chamber recalls its decisions in which it rejected this argument and is thus of the view that this argument should be rejected.²⁵

Accused's challenge to admission from the bar table of Intercepts with no audio recordings

11. The Accused objects to the admission of 14 of the Intercepts by reiterating the challenge he has previously made to the reliability of Croatian intercepts with no audio recordings.²⁶ The Prosecution contends that the issue of whether there is an audio recording goes to weight and not admissibility, and notes that the Chamber has already ruled on the admissibility of communications intercepted by the Croatian army accordingly.²⁷ The Prosecution argues that the same considerations apply to BiH State Security Services intercepts with no audio recordings.²⁸ The Chamber reiterates that the absence of audio recordings is an issue which the Chamber will bear in

²⁰ Prosecution's Motion for Admission of Intercepts Marked for Identification with Confidential Appendices A and B, 19 March 2012, para. 5.

²¹ Hearing, T. 26378 (15 March 2012), T. 27104 (28 March 2012) (closed session).

²² P4635 (Intercepts authentication chart of intercepts authenticate by witness KDZ145) (under seal).

²³ Motion, para. 7, Appendix A.

²⁴ Motion, para. 6.

²⁵ See, e.g., Decision on Accused's Motion for Reconsideration of Chamber's Decision on Motion to Exclude Intercepted Communications, 18 April 2012 ("Reconsideration Decision"), paras. 5, 8; Decision on the Accused's Motion to Exclude Intercepted Conversations, 30 September 2010, paras. 9–13. The Chamber recalls that, in the Reconsideration Decision, it noted "that the Accused's Legal Adviser, by his own admission, acknowledge[d] that the Chamber would likely deny the Motion, thus leaving the Chamber unclear as to the utility of filing the Motion in the first place". Reconsideration Decision, para. 5.

²⁶ Motion, paras. 7–8, confidential Appendix B.

²⁷ Motion, para. 8, confidential Appendix B.

²⁸ Motion, confidential Appendix B.

mind in attributing appropriate weight to these intercepts and is not an obstacle to their admission at this stage of the proceedings.²⁹ The Chamber thus rejects the Accused's argument in this regard.

Accused's challenge to admission from the bar table of Intercepts which should have been put to witnesses

12. In relation to the Witness Intercepts, the Chamber notes that it has recently held that the failure to tender a document through a witness during his testimony did not, in and of itself, prevent it from subsequently tendering the document from the bar table provided that the requirements of Rule 89(C) are met and if the Chamber is satisfied that pursuant to Rule 89(D), its probative value is not substantially outweighed by the need to ensure a fair trial.³⁰ As the Chamber has previously held, while it is preferable for documents to be admitted during the testimony of a witness who can speak to their contents, "admitting evidence through the bar table may be used sparingly as a method of introducing evidence to fill in specific gaps in the requesting party's case at a later stage of the proceedings".³¹ However, while the Chamber may on an exceptional basis allow for the admission of isolated documents from the bar table which could have been tendered through a witness, this should not be the default position.

13. First, with regard to 65 *ter* 30781, which the Accused contends should have been put to Manojlo Milovanović, the Chamber recalls that it has recently denied admission of seven intercepts in which Milovanović was an interlocutor on the ground that it was not satisfied that this amounted to a reasonable and limited use of the bar table motion to fill in specific gaps.³² In reaching its decision, the Chamber noted the Prosecution's failure to tender any intercepts in which Milovanović was an interlocutor during either direct examination or re-examination.³³ The Chamber also found that the intercepts should have been put to Milovanović during his testimony to ensure proper contextualisation, provide Milovanović an opportunity to explain his words, and give an opportunity for the Accused to cross-examine Milovanović regarding these conversations.³⁴ With regard to the present intercept, however, the Chamber notes that it is a 20 May 1992 conversation wherein Ratko Mladić orders Milovanović to stop a convoy going to Goražde, thus

²⁹ Decision on Prosecution's First Bar Table Motion for the Admission of Intercepts, 14 May 2012 ("First Decision on Intercepts"), para. 15.

³⁰ Hostages Bar Table Decision, para. 11. For instance, the Chamber recalls that two intercepts in which Momčilo Mandić was an interlocutor have been tendered through witnesses who testified after the conclusion of his testimony. Hearing, T. 16552 (13 July 2011) which refers to an intercept tendered by the Prosecution, and T. 13797–13800 (21 March 2011) which refers to an intercept tendered by the Accused.

³¹ Hostages Bar Table Decision, para.11, citing First Bar Table Decision, para. 9.

³² First Decision on Intercepts, para. 17.

³³ First Decision on Intercepts, para. 17.

³⁴ First Decision on Intercepts, para. 17.

relating to issues of Bosnian Serb control of movement of humanitarian convoys and Mladić's authority to do so. The Chamber thus considers that this intercept is relevant and has probative value and that its contents are clear and further contextualisation by Milovanović is not necessary. The Chamber will thus admit 65 *ter* 30781 from the bar table.

14. With regard to the 21 intercepts that the Accused contends should have been put to Momčilo Mandić when he testified,³⁵ the Chamber observes that the Prosecution tendered a total of 23 intercepts through Mandić, a Chamber witness, during its cross-examination. The Chamber recalls the bar table's function as a method to be used sparingly to fill specific gaps in the Prosecution's case. The Chamber notes that certain intercepts should have been put to Mandić during his testimony to ensure proper contextualisation, provide Mandić with an opportunity to explain his words, and give an opportunity for the Accused to cross-examine Mandić regarding these conversations. For example, the Chamber notes that 65 *ter* 31838 is a 24 July 1991 conversation between Mandić and the Accused in which the Accused asks for a "load" and Mandić agrees to provide "ten pieces". The Prosecution submits that this intercept indicates the Accused's "influence and control over Bosnian Serb cadres in the BiH governmental authorities, to the distribution of arms and to the creation of a separate Serb MUP".³⁶ The Chamber is of the view that this is not apparent from the face of the document and that further contextualisation from Mandić was required. The Chamber thus denies admission through the bar table of Rule 65 *ter* number 31838. For the same reasons, the Chamber denies admission of Rule 65 *ter* numbers 30238, 30669, and 30834. For the remaining intercepts which the Accused submits should have been put to Mandić, the Chamber finds that they are sufficiently relevant, have probative value, and are sufficiently contextualised, and thus will admit through the bar table Rule 65 *ter* numbers 30220, 30452, 30659, 30668, 30677, 30678, 30681, 30688, 30711, 30806, 30807, 30855, 30857, 30860, 31768, 31769, and 32765.

15. With regard to the nine intercepts that the Accused contends should have been put to Nedeljko Prstojević, the Chamber observes that the Prosecution tendered a total of four intercepts during direct and re-examination. The Chamber finds that Prstojević could have given further

³⁵ Though the Accused states in his Response that he objects to the admission of 23 intercepts, the Chamber notes that Momčilo Mandić is not a participant to the conversation in 65 *ter* 30656 and that 65 *ter* 31614 does not actually specify that Mandić is an interlocutor. 65 *ter* 30656 is a conversation with Momčilo Krajišnik and "Momo Garić", a member of the Novo Sarajevo Territorial Defence, whereas in 65 *ter* 31614 the interlocutor named "Mandić" specifically indicates that his name is "Mladen". The Chamber thus considers the Accused's objection as relating to Rule 65 *ter* numbers 30220, 30238, 30452, 30659, 30668, 30669, 30677, 30678, 30681, 30688, 30711, 30806, 30807, 30834, 30855, 30857, 30860, 31768, 31769, 31838, 32765. The Chamber notes that the Accused objects to the admission of 65 *ter* 30688 on the grounds that it should have been put to either Đerić or Mandić. Motion, Appendix A.

³⁶ Motion, Appendix A, p. 21.

context to, and the Accused could have thus conducted cross-examination on, 65 *ter* 31748, a conversation between Prstojević and “Zora” from 23 June 1992, in which Prstojević uses the BCS word “čiste”—a word that the English translation states could mean “mopping up” or “cleansing”—to describe the activity of “special units”. The Chamber also finds that the contextualisation of Rule 65 *ter* 31647 is insufficient to warrant its admission from the bar table. The Chamber thus denies admission of Rule 65 *ter* numbers 31647 and 31748. For the remaining intercepts that the Accused submits should have been put to Prstojević, the Chamber finds that they are sufficiently relevant, have probative value, and are sufficiently contextualised, and thus will admit through the bar table Rule 65 *ter* numbers 30694, 30700, 30760, 30765, 30837, 31634, and 31635.

16. With regard to the seven intercepts that the Accused contends should have been put to witness Branko Đerić, the Chamber observes that the Prosecution did not tender any intercepts during direct examination.³⁷ The Chamber considers that Rule 65 *ter* numbers 30008 and 30732 should have been presented to the witness so that he could have given further context and the Accused could have cross-examined the witness on these two intercepts. For example, the Chamber notes that 65 *ter* 30008 is a brief May 1992 conversation in which, according to the Prosecution, Đerić tells Mićo Stanišić that the Accused and Momčilo Krajišnik are present at “our place” and Stanišić then says he will leave for that unknown location in half an hour. The Prosecution submits that this intercept “shows close logistical co-ordination between senior members of the Bosnian Serb leadership”.³⁸ Without further contextualisation from Đerić as to the location of the meeting, the exact identities of the participants, or what the participants discussed there, the Chamber considers that Rule 65 *ter* 30008 is not clear on its face and therefore may not be admitted from the bar table. For the same reason, the Chamber will not admit Rule 65 *ter* number 30732. For the remaining intercepts that the Accused submits should have been used with Đerić, the Chamber finds that they are sufficiently relevant, have probative value, and are sufficiently contextualised, and thus will admit through the bar table Rule 65 *ter* numbers 30680, 30725, 30733, and 30738.

17. With regard to the one intercept that the Accused contends should have been put to witness Radomir Nešković, the Chamber observes that the Prosecution tendered three intercepts during his testimony. The Chamber also notes that 65 *ter* 31926 is an intercept from 21 September 1991 in

³⁷ Though the Accused states in his Response that he objects to the admission of five intercepts, according to Appendix A to the Motion, he objects to seven. The Chamber also notes that, in paragraph 14 above, it has already determined that 65 *ter* 30688 intercept is admissible because it is sufficiently relevant, has probative value, and is sufficiently contextualised.

³⁸ Motion, Appendix A, p. 130.

which the Accused and Nešković discuss a column of people passing through Višegrad and the Accused receives updates about events in other municipalities. The Prosecution submits that the intercept is relevant to the Accused's "oversight and control of municipal and regional-level SDS figures and his receipt of detailed information for that purpose".³⁹ The Chamber considers that the document is not sufficiently contextualised, given that it relates to events in Višegrad and is dated prior to the commencement of the Indictment period in October 1991. The Chamber thus denies admission through the bar table of 65 *ter* 31926.

Accused's challenge to admission from the bar table of irrelevant or cumulative intercepts

18. With regard to the Accused's objection to the admission from the bar table of Rule 65 *ter* number 30633 on the basis that it is irrelevant, lacks probative value, and is cumulative to other evidence,⁴⁰ the Chamber considers that the intercept is relevant to the Accused's knowledge of events in Sarajevo in March 1992. The Chamber also finds that the intercept has probative value and has been sufficiently contextualised. Accordingly, the Chamber grants admission from the bar table of 65 *ter* 30633.

19. With regard to Rule 65 *ter* number 30444, the Chamber notes that it is an intercepted telephone conversation dated 26 November 1991 between the Accused and Branko Kostić, a member of the Presidency of the Socialist Federal Republic of Yugoslavia ("SFRY"). The Accused states that the area around Ploče, an area in Croatia near the BiH coast, is "vital to us" and "of great importance," and that this area along with Dubrovnik is of both "strategic importance" and "economic importance". The Prosecution submits that the intercept may foreshadow the Accused's announcement of the sixth strategic objective in May 1992—that the Bosnian Serb Republic, later renamed Republika Srpska, have access to the sea.⁴¹ However, the Chamber notes, as the Prosecution recognises in its pre-trial brief, that the second to sixth strategic objectives were "geographically oriented"⁴² and that the sixth objective—relating to southern BiH and related policies in that region—is neither directly related to any of the alleged joint criminal enterprises ("JCEs") or the municipalities in the Indictment. The Chamber thus denies admission of 65 *ter* 30444 on the ground that it is irrelevant.

Intercepts to which the Accused either has no objection or no objection other than pursuant to Rule 95 of the Rules

³⁹ Motion, Appendix A, p. 44.

⁴⁰ Motion, Appendix A, pp. 114–115.

⁴¹ Motion, Appendix A.

⁴² Prosecution Submission Pursuant to Rule 65 *ter* (E)(i)–(iii), 18 May 2009, para. 47.

20. It remains for the Chamber to assess whether the intercepts to which the Accused either has no objection or no objection other than pursuant to Rule 95 of the Rules (“Remaining Intercepts”) fulfil the requirements of Rule 89(C).

21. The Chamber notes that approximately one third of the Remaining Intercepts in the Motion are dated prior to the commencement of the Indictment period in October 1991 (“Pre-Indictment Period Intercepts”). While an intercept that predates the time-period of the actual crimes alleged in the Indictment does not, of itself, render it irrelevant,⁴³ the Chamber is of the view that the parties should generally refrain from tendering such evidence given their marginal relevance to the crimes charged in the Indictment. The Chamber recalls that it has previously admitted through the bar table transcripts, shorthand records, and minutes of Bosnian Serb Assembly records outside of the Indictment period because the documents related to the Dayton Agreement and therefore were relevant and had probative value.⁴⁴ In reviewing the Pre-Indictment Period Intercepts, the Chamber has therefore paid close attention to their relevance and probative value in relation to the allegations in the Indictment.

22. The Chamber notes that, in the Motion, the Prosecution has explained how each of the Remaining Intercepts fits into its case and finds—with the exception of the intercepts described in paragraphs 23 to 24 below—that they have been sufficiently contextualised for the purposes of admission from the bar table.⁴⁵ Having reviewed the Remaining Intercepts and the Prosecution’s submissions in that regard, the Chamber finds that—again, with the exception of the intercepts described in paragraphs 23 to 24 below—they are relevant to a number of issues arising from the Indictment, including: (i) the Accused’s oversight and control of municipal and regional authorities; (ii) the Accused’s relationship and logistical co-ordination with other alleged members of the JCEs, including Slobodan Milošević, Biljana Plavšić, Nikola Koljević, and Momčilo Krajišnik; (iii) the relationship that other alleged members of the JCEs had with municipal and regional authorities; (iv) the Accused’s authority over the Bosnian Serb MUP; (v) the knowledge of the Accused and other Bosnian Serb leaders about events in the field through contact with VRS personnel and commanders; (vi) the Accused’s involvement with the VRS at an operational and tactical level and his authority over high ranking VRS personnel; and (vii) Ratko Mladić’s control over the VRS. The Chamber also finds that such intercepts have probative value and that, pursuant to Rule 89(D), the probative value of the Remaining Intercepts is not substantially outweighed by

⁴³ See Decision on the Second Prosecution Motion for Leave to Amend Its Rule 65 *ter* Exhibit List (Mladić Notebooks), 22 July 2010, para. 14.

⁴⁴ Decision on Prosecution Bar Table Motion for the Admission of Bosnian Serb Assembly Records, 22 July 2010, para. 10.

⁴⁵ Motion, Appendix A.

the need to ensure a fair trial. The Chamber will therefore admit from the bar table the intercepted conversations bearing the following Rule 65 *ter* numbers:

30011, 30018,⁴⁶ 30022, 30023, 30024, 30025, 30030, 30037, 30039, 30040, 30043, 30059, 30060, 30062, 30065, 30068, 30069, 30074, 30078, 30079, 30084, 30086, 30089, 30092, 30098, 30100, 30128, 30131, 30134, 30139, 30173, 30185, 30188, 30192, 30193, 30209, 30232, 30234, 30235, 30240, 30244, 30251, 30252, 30262, 30265, 30269, 30270, 30271, 30272, 30286, 30294, 30297, 30307, 30311, 30314, 30316, 30323, 30324, 30326, 30330, 30336, 30337, 30344, 30350, 30352, 30355, 30356, 30361, 30362, 30364, 30367, 30370, 30377, 30383, 30387, 30389, 30391, 30393, 30394, 30395, 30396, 30398, 30399, 30415, 30416, 30418, 30419, 30420, 30421, 30422, 30423, 30425, 30427, 30430, 30434, 30435, 30440, 30441, 30442, 30445, 30449, 30456, 30458, 30459, 30464, 30470, 30471, 30472, 30473, 30474, 30475, 30477, 30479, 30482, 30485, 30487, 30488, 30490, 30492, 30494, 30496, 30499, 30501, 30502, 30503, 30508, 30509, 30513, 30517, 30520, 30524, 30525, 30526, 30527, 30528, 30530, 30539, 30540, 30546, 30548, 30552, 30553, 30556, 30561, 30565, 30571, 30572, 30574, 30581, 30582, 30583, 30587, 30588, 30589, 30592, 30594, 30597, 30599, 30601, 30603, 30604, 30615, 30616, 30617, 30618, 30619, 30623, 30624, 30626, 30629, 30631, 30635, 30638, 30640, 30644, 30647, 30652, 30653, 30656, 30657, 30658, 30660, 30661, 30671, 30676, 30683, 30686, 30693, 30695, 30696, 30698, 30699, 30703, 30707, 30710, 30718, 30723, 30729, 30741, 30742, 30747, 30756, 30763, 30771, 30772, 30773, 30774, 30776, 30778, 30779, 30780, 30783, 30796, 30800, 30804, 30805, 30811, 30825, 30827, 30832, 30840, 30841, 30846, 30848, 30864, 30867, 30894, 31414, 31614, 31631, 31665, 31667, 31671, 31674, 31676, 31678, 31697, 31726, 31735, 31739, 31747, 31758, 31825, 31972, 31991, 32004, 32063, 32015, 32030, 32034, 32036, 32070, 32104, 32122, 32137, 32138, 32162, 32165, 32168, 32170, 32175, 32183, 32400, 32436, 32640B, 32677, 32743, 32757, 32760, 32764, 32767, and 35044.

23. However, the Chamber is not satisfied of the relevance or probative value of the following Pre-Indictment Period Intercepts, or indeed that the Prosecution provided sufficient contextualisation in relation thereto:

30019, 30028, 30047, 30049, 30056, 30061, 30063, 30071, 30075, 30077, 30099, 30109, 30119, 30120, 30124, 30129, 30135, 30148, 30152, 30156, 30159, 30171, 30183, 30187, 30195, 30196, 30199, 30200, 30205, 30206, 30207, 30208, 30211,

⁴⁶ The Chamber notes that, though undated, 65 *ter* 30018 can be dated to late 1991 due to the reference to “President Krajišnik” in the intercept and his election to that position by 24 October 1991. P1343 (Transcript of 1st Session of Assembly of SerBiH, 24 October 1991).

30212, 30217, 30218, 30222, 30223, 30224, 30227, 30229, 30246, 30250, 30255, 30260, 30273, 30279, 31700, 31806, 31847, 31863, 31866, 31878, 31887, 31905, 31938, and 32741.

For instance, 65 *ter* 30028 is an intercepted conversation, dated 29 May 1991, between the Accused and Slobodan Milošević relating to an expected attack the following day on Knin, Croatia. The Chamber considers that the Prosecution’s contextualisation of the intercept—that it is “relevant to showing logistical co-ordination and sharing of confidential information” between the Accused and Milošević—to be insufficient to warrant admission of this intercepted conversation from the bar table. Additionally, the Chamber considers that 65 *ter* 30200, 30205, 30206, 30207, 30208, 30211, 30212, 30217, and 30224 relate to the arrest of Milan Martić.⁴⁷ Furthermore, the Chamber considers that 65 *ter* 30260 and 30255 relate to Višegrad, a municipality for which there are no charged scheduled incidents in the Indictment and for which the Chamber has admitted little evidence. Others intercepts include: (i) conversations between alleged members of the JCEs about events in Croatia, (ii) conversations between alleged members of the JCEs about matters unrelated to issues raised in the Indictment, (iii) conversations that are insufficiently clear because of coded language used by the interlocutors, and (iv) conversations between municipal and regional authorities that are insufficiently contextualised.⁴⁸

24. For the Remaining Intercepts that fall within the Indictment period, the Chamber is not satisfied that fifteen of them are relevant or sufficiently contextualised. For instance, 65 *ter* 30342 is a 14 October 1991 conversation between two individuals, one of whom may be a relative of Jovan Tintor, regarding events in October 1991. 65 *ter* 32131 is a 22 January 1992 general conversation between the Accused and Jovica Stanišić about a newspaper article. 65 *ter* 30720, intercepted on 27 April 1992, relates to Milenko Karišik and plans for helicopter flights between Belgrade and Pale. The Chamber notes that other intercepts include (i) conversations about the takeover of “Cenex”, (ii) conversations about indictments that the Tribunal issued in 1995, (ii) general discussions about municipalities such as Foča, and (iv) conversations between or including individuals who are either unknown or inadequately described in the Motion. The Chamber thus denies admission from the bar table of Rule 65 *ter* numbers 30340, 30342, 30366, 30403, 30408, 30641, 30697, 30720, 30767, 30801, 30818, 31724, 31737, 31995, and 32131.

⁴⁷ 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 (“February 2011 Decision”), para. 29. The Chamber recalls that it has already denied admission of the document bearing 65 *ter* 30200 through the bar table. February 2011 Decision, para. 29.

⁴⁸ The Chamber also notes that the document with Rule 65 *ter* number 30077 is undated.

IV. Disposition

25. Accordingly, the Chamber, pursuant to Rule 89 of the Rules, hereby **GRANTS** the Motion **IN PART** and:

a) **ADMITS** into evidence the intercepts bearing the following 65 *ter* numbers:

30011, 30018, 30022, 30023, 30024, 30025, 30030, 30037, 30039, 30040, 30043, 30059, 30060, 30062, 30065, 30068, 30069, 30074, 30078, 30079, 30084, 30086, 30089, 30092, 30098, 30100, 30128, 30131, 30134, 30139, 30173, 30185, 30188, 30192, 30193, 30209, 30220, 30232, 30234, 30235, 30240, 30244, 30251, 30252, 30262, 30265, 30269, 30270, 30271, 30272, 30286, 30294, 30297, 30307, 30311, 30314, 30316, 30323, 30324, 30326, 30330, 30336, 30337, 30344, 30350, 30352, 30355, 30356, 30361, 30362, 30364, 30367, 30370, 30377, 30383, 30387, 30389, 30391, 30393, 30394, 30395, 30396, 30398, 30399, 30415, 30416, 30418, 30419, 30420, 30421, 30422, 30423, 30425, 30427, 30430, 30434, 30435, 30440, 30441, 30442, 30445, 30449, 30452, 30456, 30458, 30459, 30464, 30470, 30471, 30472, 30473, 30474, 30475, 30477, 30479, 30482, 30485, 30487, 30488, 30490, 30492, 30494, 30496, 30499, 30501, 30502, 30503, 30508, 30509, 30513, 30517, 30520, 30524, 30525, 30526, 30527, 30528, 30530, 30539, 30540, 30546, 30548, 30552, 30553, 30556, 30561, 30565, 30571, 30572, 30574, 30581, 30582, 30583, 30587, 30588, 30589, 30592, 30594, 30597, 30599, 30601, 30603, 30604, 30615, 30616, 30617, 30618, 30619, 30623, 30624, 30626, 30629, 30631, 30633, 30635, 30638, 30640, 30644, 30647, 30652, 30653, 30656, 30657, 30658, 30659, 30660, 30661, 30668, 30671, 30676, 30677, 30678, 30680, 30681, 30683, 30686, 30688, 30693, 30694, 30695, 30696, 30698, 30699, 30700, 30703, 30707, 30710, 30711, 30718, 30723, 30725, 30729, 30733, 30738, 30741, 30742, 30747, 30756, 30760, 30763, 30765, 30771, 30772, 30773, 30774, 30776, 30778, 30779, 30780, 30781, 30783, 30796, 30800, 30804, 30805, 30806, 30807, 30811, 30825, 30827, 30832, 30837, 30840, 30841, 30846, 30848, 30855, 30857, 30860, 30864, 30867, 30894, 31414, 31614, 31631, 31634, 31635, 31665, 31667, 31671, 31674, 31676, 31678, 31697, 31726, 31735, 31739, 31747, 31758, 31768, 31769, 31825, 31972, 31991, 32004, 32015, 32030, 32034, 32036, 32063, 32070, 32104, 32122, 32137, 32138, 32162, 32165, 32168, 32170, 32175, 32183, 32400, 32436, 32640B, 32677, 32743, 32757, 32760, 32764, 32765, 32767, and 35044.

- b) **INSTRUCTS** the Registry to mark as admitted the intercepts admitted into evidence by this decision.
- c) **DENIES** the remainder of the Motion.

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



Judge O-Gon Kwon
Presiding

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

[Seal of the Tribunal]