



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-95-5/18-T

Date: 7 December 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: 7 December 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTIONS TO ADMIT
DOCUMENTS PREVIOUSLY MARKED FOR IDENTIFICATION
AND PUBLIC REDACTED VERSION OF D1938**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the Accused’s “Motion to Admit Documents Previously Marked for Identification”, filed on 11 September 2012 (“First Motion”); “Motion to Admit Documents Previously Marked for Identification”, filed on 24 September 2012 (“Second Motion”); “Motion to Admit Documents Previously Marked for Identification”, filed on 12 October 2012 (“Third Motion”) (together, “Motions”); and the “Request to Admit Public Redacted Version of Exhibit D1938”, filed on 28 September 2012 (“28 September Motion”), and hereby issues its decision thereon.

I. Background and Submissions

Submissions Related to Admission of Items Previously Marked for Identification

1. In the Motions, the Accused requests that the Chamber admit into evidence 91 items (“Items”) previously marked for identification (“MFI”).¹ 71 of the Items are documents—MFI D264,² D401, D887, D1065, D1224, D1267, D1361, D1385, D1386, D1389, D1397, D1398, D1399, D1440, D1441, D1635, D1651, D1668, D1669, D1687, D1720, D1721, D1772, D1793, D1798, D1810, D1834, D1850, D1896, D1928, D1936, D1937, D1938, D1952, D1956, D1984, D1985, D1987, D1995, D2014, D2016, D2033, D2063, D2066, D2078, D2089, D2090, D2107, D2108, D2109, D2110, D2121, D2123, D2124, D2132, D2142, D2156, D2164, D2195, D2198, D2226, D2227, D2228, D2229, D2231, D2235, D2240, D2241, D2244, D2245, and D2252 (“Documents”)—that were marked for identification pending English translation or further information about their provenance and authenticity.³

2. The Accused also moves for the admission of 20 of the Items that are transcripts of conversations that he states were intercepted by Bosnian Muslims and previously marked for identification, arguing that they “share the same provenance” as other intercepts that the Prosecution tendered and which were subsequently admitted into evidence—MFI D275, D283,

¹ First Motion, para. 1; Second Motion, paras. 1–4; Third Motion, para. 1. The Chamber notes that the Accused moves for the admission of MFI D2222 in both the First Motion and the Second Motion.

² The Chamber notes that the Accused erroneously refers to D264, a document, as an intercept. Second Motion, para. 2.

³ First Motion, para. 1; Second Motion, para. 1; Third Motion, para. 1. The Chamber notes that, for certain items, the Accused erroneously implies that they were marked for identification pending English translation when in fact this was not the case. The Chamber will consider these items in more detail in paragraph 14 below.

D1015, D1037, D1181, D1747, D1915, D2019, D2020, D2029, D2093, D2200, D2202, D2205, D2206, D2207, D2208, D2209, D2221, and D2222 (“Intercepts”).⁴

3. In the Third Motion, the Accused clarifies that the English translations for some of the Documents referred to in paragraph 1 above have now been uploaded onto e-court—MFI D1065, D1440, D1651, D2063, D2089, D2090, D2108, D2109, and D2123.⁵

4. The Accused also withdraws his request for the admission of MFI D968.⁶

5. In the “Prosecution Response to Motion to Admit Documents Previously Marked for Identification”, filed on 24 September 2012 (“First Response”); “Prosecution Response to Motion to Admit Documents Previously Marked for Identification with Confidential Appendix A”, filed on 8 October 2012 (“Second Response”); and “Prosecution response to Motion to Admit Documents Previously Marked for Identification”, filed on 25 October 2012 (“Third Response”) (together, “Responses”), the Prosecution does not object to the admission of 45 of the Documents—MFI D264, D401, D1224, D1065, D1385, D1386, D1397, D1398, D1399, D1440, D1441, D1635, D1651, D1687, D1810, D1896, D1928, D1937, D1984, D1985, D1995, D2014, D2016, D2033, D2063, D2066, D2078, D2089, D2090, D2107, D2108, D2109, D2110, D2123, D2124, D2132, D2142, D2195, D2198, D2226, D2229, D2231, D2240, D2244, and D2245.⁷ For these documents, the Prosecution submits that they may be admitted publicly.⁸ The Prosecution also states that it does not object to the admission of seven of the Documents—MFI D1668, D1772, D1793, D1936, D1938, D1952, and D1987, as long as they are admitted under seal.⁹ The Prosecution also notes that five of the Documents have in fact already been admitted into evidence, namely, D1850, D1956, D2156, D2164, and D2235.¹⁰

6. With regard to the Intercepts, the Prosecution does not object to the admission of nine of them—D275, D283, D1015, D1181, D1915, D2029, D2093, D2202, and D2221—which it submits may be admitted publicly.¹¹ The Prosecution also states that it does not object to the admission of

⁴ Second Motion, paras. 1–2. The Chamber notes that some of the “documents” sought for admission by the Accused in paragraph 1 of the Third Motion are in fact intercepts.

⁵ Third Motion, para. 2. On 11 October 2012, the Accused’s defence team had notified the Chamber *via* e-mail (“11 October e-mail”) that, *inter alia*, the English translations of the following of the Documents were made available on e-court: MFI D1065, D1440, D1651, D2063, D2089, D2090, D2109, and D2121.

⁶ Second Motion, para. 5.

⁷ First Response, para. 4; Second Response, para. 2; Third Response, para. 3.

⁸ First Response, para. 4; Second Response, para. 2; Third Response, para. 3. The Chamber notes that the Accused never refers to the status of the Items in the Motions and addresses this failure in paragraph 13 below.

⁹ First Response, para. 5; Second Response, para. 3; Second Response, Confidential Appendix A, para. 1.

¹⁰ First Response, para. 3.

¹¹ Second Response, para. 6. The Prosecution incorrectly refers to D2093 and D2202, both intercepts, as documents. Third Response, para. 3.

eight of the Intercepts—D2019, D2020, D2205, D2206, D2207, D2208, D2209, and D2200—which it submits should be admitted under seal.¹²

7. The Prosecution does not object to the admission of MFI D1361, a decision of the President of the Republic of Croatia regarding crisis staffs, with the qualification that three additional presidential decisions that were not marked for identification and which are now contained in the English translation of the document should be removed.¹³ The Prosecution also does not object to the admission of MFI D1720, with the qualification that the English translation available in e-court should be reviewed by the Tribunal's Conference and Language Services Section ("CLSS") because it contains errors.¹⁴

8. The Prosecution does object to the admission of three of the Documents—MFI D887, D1267, and D2121—due to either a lack of a full or any English translation on e-court.¹⁵ The Prosecution also objects to the admission of the nine remaining Documents—MFI D1389, D1669, D1721, D1798, D1834, D2227, D2228, D2241, and D2252—on the basis that (i) D1389 was marked for identification following Prosecution objections regarding its relevance and provenance, and the Prosecution now maintains its objection that the document is irrelevant as the witness through which it was tendered was not able to confirm that anything in the document reflects a general pattern;¹⁶ (ii) the English translation of MFI D1669 does not include a translation of the second page of the original document, even though the Accused used both pages of the document during cross-examination;¹⁷ (iii) MFI D1721 was marked for identification pending English translation and document 1D4277 was to be added to this exhibit, but a full English translation of 1D4277 has not yet been added;¹⁸ (iv) D1798 is a large document, the witness through whom it was tendered did not meaningfully comment on the document, and its contents may be misleading;¹⁹ (v) MFI D1834 was marked for identification pending English translation, but no complete translation has been uploaded to e-court;²⁰ (vi) the Accused failed to establish any basis for admission of MFI D2227 because the witness did not comment on it and the provenance was not

¹² Second Response, para. 7; Third Response, para. 4. The Prosecution incorrectly refers to MFI D2207, an intercept, as a document. Third Response, para. 4.

¹³ First Response, para. 6(a).

¹⁴ First Response, para. 6(b).

¹⁵ First Response, para. 7. Though the Prosecution objected to the admission of 12 of the Documents on this ground in the First Response, in the Third Response it withdrew its objection to the admission of nine documents for which the Accused had uploaded English translations onto e-court.

¹⁶ Second Response, para. 4(a).

¹⁷ First Response, para. 8(a).

¹⁸ First Response, para. 8(b).

¹⁹ Second Response, Confidential Appendix A, para. 2. Alternatively, in the event that MFI D1798 is admitted, the Prosecution requests that it remain under seal. Second Response, Confidential Appendix A, fn. 16.

²⁰ First Response, para. 8(c).

clear;²¹ (vii) the provenance of MFI D2228 is unclear;²² (viii) the English translation for MFI D2241 only includes one document, while the BCS version appears to be a compilation of documents and the other BCS documents were not commented upon by or put to the witness through whom the document was tendered;²³ and (ix) the witness with whom MFI D2252 was discussed only confirmed that he was the author of the document, and admission of the article is not necessary to understand the witness's answers.²⁴

9. With regard to the Intercepts, the Prosecution objects to the admission of MFI D1037, D1747, and D2222—on the basis that (i) MFI D1037 is a duplicate of two conversations previously admitted into evidence, P4629 and P4632;²⁵ (ii) MFI D1747 was only read out to the witness during cross-examination and the witness provided no meaningful comment on it;²⁶ and (iii) MFI D2222, a public redacted version of D2200, is insufficiently redacted to address confidentiality concerns.²⁷

Submissions Related to Admission of Public Redacted Version of Exhibit D1938

10. In the 28 September Motion, the Accused moves for admission into evidence of the public redacted version of exhibit D1938, currently uploaded on e-court as 65 *ter* 1D06000.²⁸ In the “Prosecution Response to Request to Admit Public Redacted Version of Exhibit”, filed on 4 October 2012 (“4 October Response”), the Prosecution states that it does not oppose the Accused's request.²⁹

II. Applicable Law

11. The Chamber recalls the “Order on the Procedure for the Conduct of the Trial,” issued on 8 October 2009 (“Order on Procedure”), in which it stated, *inter alia*, that any item marked for identification in the course of the proceedings, either because there is no English translation or for any other reason, will not be admitted into evidence until such time as an order to that effect is issued by the Chamber.³⁰

²¹ Third Response, para. 5(a).

²² Third Response, para. 5(b).

²³ First Response, para. 8(e).

²⁴ Third Response, para. 5(c).

²⁵ Second Response, para. 5.

²⁶ Second Response, para. 8(b).

²⁷ First Response, para. 8(d); Second Response, para. 8(a).

²⁸ 28 September Motion, paras. 1, 2.

²⁹ 4 October Response, p. 1.

³⁰ Order on the Procedure for the Conduct of the Trial, 8 October 2009, Appendix A, paras. O, Q.

III. Discussion

12. Preliminarily, the Chamber urges the Accused to be more timely in making available on e-court English translations of MFI documents for which he is seeking admission. The Chamber notes the Accused's 11 October e-mail and subsequently-filed Third Motion—making available multiple English translations on e-court almost a month after filing the First Motion and after the Prosecution had already filed the Responses in which it noted that some English translations were missing—and finds this to be an inefficient use of Tribunal resources.

13. The Chamber also notes that the Accused failed to make any requests regarding the confidential or public status of the Items, thus leaving the Prosecution to address that issue in the Responses. The Chamber instructs the Accused, when moving for the admission of MFI items, to pay closer attention to their status.

14. Finally, the Chamber also notes that the following Items have already been admitted into evidence: D264,³¹ D1850, D1956, D2156, D2164, D2229,³² and D2235.

Documents

15. On the basis of the information provided by the Accused in the Motions, and having reviewed the documents, their proposed translations, and the relevant transcripts, the Chamber is satisfied that 45 of the Documents should now be admitted: MFI D1065, D1224, D1385, D1386, D1397, D1398, D1399, D1440, D1441, D1635, D1651, D1687, D1810, D1896, D1928, D1937, D1984, D1985, D1995, D2014, D2016, D2033, D2063, D2066, D2089, D2090, D2078, D2107, D2108, D2109, D2110, D2121, D2123, D2124, D2132, D2142, D2195, D2198, D2221, D2226, D2231, D2240, D2241, D2244, and D2245. The Chamber will also admit MFI D1793 and D1798 in accordance with the “Decision on Status of Exhibits Admitted Through Witness KDZ492”, issued confidentially on 13 January 2012 (“KDZ492 Decision”).³³ With regard to MFI D1798, the Chamber considers that the witness through whom the document was tendered sufficiently commented on it for purposes of its admission into evidence. These documents will all be admitted publicly.

16. With regard to MFI D2227—a Republika Srpska (“RS”) Presidency decision granting pardon to convicted persons, dated 18 May 1995—and D2228—an RS Presidency decision to remit

³¹ The Chamber notes that D264 was admitted into evidence on 8 June 2010. Robert Donia, T. 3436 (8 June 2010).

³² The Chamber notes that D2229 was admitted into evidence on 10 April 2012. Amor Mašović, T. 27306 (10 April 2012).

³³ KDZ492 Decision, paras. 19, 20.

the prison sentences of six individuals from Banja Luka, dated 27 December 1995—the Chamber notes that the documents were marked for identification because there was no English translation available and also pending further information about their provenance.³⁴ The Chamber also notes that the Prosecution reiterates its objection to the admission of both documents because the witness did not comment on MFI D2227, and the provenance of both documents remains unclear.³⁵ The Chamber notes that an English translation has been uploaded and considers that the witness sufficiently commented on both documents for the purposes of admission.³⁶ The Chamber also considers that, upon further inspection of both documents, it is satisfied that both bear sufficient indicia of authenticity for purposes of admission. The Chamber will thus admit MFI D2227 and D2228.

17. Furthermore, on the basis of the information provided by the Accused in the Motions, and having reviewed the documents, their proposed translations, and the relevant transcripts, the Chamber is satisfied that four of the Documents should now be admitted under seal: MFI D1668, D1936, D1938, and D1987. The Chamber will also admit under seal D1772 in accordance with the KDZ492 Decision.³⁷

18. With regard to MFI D401—which was marked for identification pending further information about its foundation³⁸—and MFI D1952—which was marked for identification pending further information about its authenticity³⁹—the Chamber notes the Accused’s submissions regarding the possible provenance of the documents.⁴⁰ The Chamber will thus admit MFI D401 publicly and admit MFI D1952 under seal.

19. With regard to MFI D1361, on the basis of the information provided by the Accused in the First Motion, and having reviewed the document, its proposed translation, and the relevant transcript, the Chamber is satisfied that it may be admitted. However, the Chamber also notes the Prosecution’s submission that the English translation contains three additional decisions that were not marked for identification and orders that they should be removed.⁴¹

20. With regard to MFI D1720, the Chamber notes the Prosecution’s submission that the English translation is partially incorrect and instructs the Accused to submit a request to CLSS for a

³⁴ Amor Mašović, T. 27270 (10 April 2012).

³⁵ Third Response, paras. 5(a)–(b).

³⁶ Amor Mašović, T. 27263–27270 (10 April 2012)

³⁷ KDZ492 Decision, para. 17.

³⁸ Momčilo Mandić, T. 4951–4954 (8 July 2010).

³⁹ Johannes Rutten, T. 22008–22013 (28 November 2011).

⁴⁰ Second Motion, paras. 3–4.

⁴¹ First Response, para. 6(a).

revised translation.⁴² The Chamber will thus stay its decision on the admission of MFI D1720 until receipt of the revised English translation.

21. With regard to D1772, on the basis of the information provided by the Accused in the First Motion, and having reviewed the document, its proposed translation, and the relevant transcript, the Chamber is satisfied that MFI D1772 may be admitted under seal. However, the Chamber also notes that the BCS original is almost illegible and thus orders the Accused to upload a new version of the BCS original.

22. Having reviewed MFI D887, D1267, D1669, and D1834, the Chamber notes that there is either no English translation or no full English translation for these four items. The Chamber will thus deny their admission at this stage and maintain their MFI status pending receipt of an English translation.

23. With regard to MFI D1721, which consists of excerpts of a statement relating to Sanski Most in early 1992, the Chamber notes that the document was marked for identification pending English translation and that the document bearing 65 *ter* 1D04277, another excerpt of a statement, was to be added to the exhibit.⁴³ The Chamber considers that the current translation is incomplete and that 65 *ter* 1D04277 has not been added to MFI D1721. The Chamber will thus deny its admission at this stage and maintain its MFI status pending receipt of a full English translation and the addition of 65 *ter* 1D04277.

24. With regard to MFI D1389, the Chamber notes that it is a document from Konjić municipality, a municipality which is not included in the Third Amended Indictment. Furthermore, the Chamber notes that, as stated by the Prosecution, witness Asim Džambasović stated that “this is not my diagram”, took no part in drafting it, and that the chain of command was “customary in the TO” but he was “not aware of all the details” with regard to the Croatian Defence Council chain.⁴⁴ The Chamber will thus deny admission of MFI D1389.

25. With regard to MFI D2252, the Chamber—as it noted on the day the document was marked for identification—questions the necessity of admitting the article for purposes of understanding the testimony of witness Zoran Petrović-Piroćanac before the Chamber on 3 May 2012.⁴⁵ The Chamber does not consider that the witness sufficiently commented on the article which he authored and will thus deny admission of MFI D2252.

⁴² First Response, para. 6(b).

⁴³ KDZ474, T. 19305–19313 (21 September 2011) (closed session).

⁴⁴ Asim Džambasović, T. 15264–15268 (23 June 2011).

⁴⁵ Zoran Petrović-Piroćanac, T. 28462 (3 May 2012).

Intercepts

26. With regard to the Intercepts—MFI D275, D283, D1015, D1037, D1181, D1747, D1915, D2019, D2020, D2029, D2093, D2200, D2202, D2205, D2206, D2207, D2208, D2209, and D2222—the Chamber notes that the Accused merely states that the conversations were intercepted by Bosnian Muslims, the transcripts were marked for identification, and share the “same provenance as other intercepts admitted into evidence at the request of the prosecution”.⁴⁶ The Chamber recalls its practice of treating intercepts as a “special category” of evidence because they bear no *prima facie* indicia of authenticity or reliability and, thus, may only be admitted into evidence after the Chamber has heard from the relevant intercept operators or the participants in the intercepted conversation.⁴⁷ In other words, “in the absence of any previous showing regarding their authenticity or reliability, [...] the bar table is not an appropriate means by which intercepts may be tendered into evidence”.⁴⁸ The Chamber recalls the Intercepts Decision, in which the Chamber denied the Accused’s motion to admit 15 intercepts related to the Sarajevo component of the case on the basis that the Accused had made no attempt to show either that the intercepts had been authenticated by an intercept operator or that judicial notice of its authenticity could be taken pursuant to Rule 94(B).⁴⁹ Similarly, in the present case, the Chamber considers that the Accused moves for the admission of the Intercepts without showing authentication by an intercept operator or judicial notice of their authenticity. In the absence of any further specifics regarding authenticity, the Chamber will thus deny admission of MFI D275, D283, D1015, D1037, D1181, D1747, D1915, D2019, D2020, D2029, D2093, D2200, D2202, D2205, D2206, D2207, D2208, D2209, and D2222.

Admission of Public Redacted Version of Exhibit D1938

27. Finally, with regard to the Accused’s request in the 28 September Motion, the Chamber notes that on 23 November 2011, D1938 was placed under seal and marked for identification pending English translation.⁵⁰ On the same day, the Chamber informed the Accused that he “may consider producing a public redacted version” of MFI D1938.⁵¹ The Chamber has reviewed the public redacted version of D1938 and English translation, which have been uploaded into e-court as 1D06000, and will admit them into evidence.

⁴⁶ Second Motion, para. 2.

⁴⁷ Decision on Prosecution’s First Bar Table Motion, 13 April 2010 (“First Bar Table Decision”), para. 13. *See also*, e.g., Decision on the Accused’s Bar Table Motion (Sarajevo Intercepts), 9 October 2012 (“Intercepts Decision”), para. 9.

⁴⁸ First Bar Table Decision, para. 13. *See also*, e.g., Intercepts Decision, para. 9.

⁴⁹ Intercepts Decision, para. 12.

⁵⁰ KDZ456, T. 21835 (23 November 2011).

⁵¹ KDZ456, T. 21835 (23 November 2011).

IV. Disposition

28. Accordingly, the Chamber, pursuant to Rules 54 and 89 of the Rules, hereby **GRANTS** the Motions in part, and:

- a) **ADMITS** into evidence the Documents currently marked for identification as MFI D401, D1065, D1224, D1385, D1386, D1397, D1398, D1399, D1440, D1441, D1635, D1651, D1687, D1793, D1798, D1810, D1896, D1928, D1937, D1984, D1985, D1995, D2014, D2016, D2033, D2063, D2066, D2089, D2090, D2078, D2107, D2108, D2109, D2110, D2121, D2123, D2124, D2132, D2142, D2195, D2198, D2221, D2226, D2227, D2228, D2231, D2240, D2241, D2244, and D2245;
- b) **ADMITS** into evidence the Document currently marked as MFI D1361 and **INSTRUCTS** the Accused to remove the portions indicated in paragraph 19 above;
- c) **ADMITS** into evidence under seal the Documents currently marked for identification as MFI D1668, D1936, D1938, D1952, and D1987;
- d) **ADMITS** into evidence under seal the Document currently marked as MFI D1772 and **INSTRUCTS** the Accused to upload a more legible BCS original as set out in paragraph 21 above;
- e) **ADMITS** into evidence the document bearing 65 *ter* number 1D6000;
- f) **STAYS** its decision on the admission of MFI D1720 and **INSTRUCTS** the Accused to submit a request to CLSS for a revised translation of MFI D1720, to replace the existing translation with the revised translation, and to inform the Chamber and the Prosecution thereof;
- g) **INSTRUCTS** the Registry to mark MFI D968 as not admitted; and

- h) **DENIES** the remainder of the Motions and **INSTRUCTS** the Registry to mark documents MFI D275, D283, D1015, D1037, D1181, D1389, D1747, D1915, D2019, D2020, D2029, D2093, D2200, D2202, D2205, D2206, D2207, D2208, D2209, D2222, and D2252 as not admitted.

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



Judge O-Gon Kwon
Presiding

Dated this seventh day of December 2012
At The Hague
The Netherlands

[Seal of the Tribunal]