



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: 17 July 2013

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: 17 July 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

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

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the Accused’s “Motion to Admit Documents Previously Marked for Identification”, filed on 29 May 2013 (“First Motion”), “Motion to Admit Documents Previously Marked for Identification”, filed on 10 June 2013 (“Second Motion”), and “Motion to Admit Documents Previously Marked for Identification”, filed on 24 June 2013 (“Third Motion”) (together, “Motions”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the First Motion, the Accused requests that the Chamber admit into evidence 16 documents previously marked for identification (“MFI”)—MFI D1267, D1575, D1669, D2513, D2594, D2620, D2942, D3081, D3131, D3132, D3142, D3234, D3313, D3354, D3361, and D3523—as their English translations have now been uploaded into e-court.¹
2. In the “Prosecution Response to Motion to Admit Documents Previously Marked for Identification”, filed on 11 June 2013 (“First Response”), the Office of the Prosecutor (“Prosecution”) submits that it does not object to the admission of ten of the documents tendered in the First Motion, namely MFI D1575, D2620, D2942, D3081, D3131, D3132, D3234, D3313, D3361, and D3523.² The Prosecution also notes that two of the documents have already been admitted into evidence, namely D2513 and D3142.³
3. However, the Prosecution objects to the admission of the four remaining documents tendered in the First Motion—MFI D1267, D1669, D2594, and D3354—on the basis that i) the English translation of MFI D1267 does not appear to correspond to the document discussed in court; ii) the English translation of MFI D1669 is not complete and only the first page of the BCS original has been translated; and iii) the English translations of MFI D2594 and D3354 do not correspond to their BCS originals.⁴
4. In the Second Motion, the Accused requests that the Chamber admit into evidence 14 items previously marked for identification—MFI D166, D183, D596, D1720, D1769, D1953, D2235, D2425, D2790, D2824, D2961, D3100, D3235, D3430—as their English translations

¹ First Motion, para. 1.

² First Response, para. 3.

³ First Response, para. 2.

⁴ First Response, para. 4.

have now been uploaded into e-court or, alternatively, further information about their provenance and authenticity has been provided.⁵

5. In the “Prosecution Response to Motion to Admit Documents Previously Marked for Identification,” filed on 20 June 2013 (“Second Response”), the Prosecution submits that it does not object to the admission of eight of the documents tendered in the Second Motion, namely MFI D166, D596, D1953, D2425, D2790, D2961, D3100, and D3430.⁶ The Prosecution also notes that three of the documents have already been admitted into evidence, namely D1769, D2235, and D2824.⁷

6. However, the Prosecution objects to the admission of three of the items tendered in the Second Motion—MFI D183, D1720, and D3235. First, the Prosecution argues that with regard to MFI D183, it is unclear whether the document uploaded into e-court corresponds in its entirety to the document discussed in court and moreover, that both the BCS original and the English translation are illegible in parts. Second, the Prosecution submits that the translation of MFI D1720 appears to still be a draft translation.⁸ Finally, the Prosecution objects to the admission of MFI D3235—video footage from the 2010 documentary film “Weight of Chains”.⁹ The Prosecution maintains its original objection to the admission of MFI D3235 due to its lack of reliability on the basis that i) the Accused has not provided sufficient additional information about the video, but merely refers to a Wikipedia article about the film and the film’s website; ii) the introductory language upon which the Accused “clearly seeks to rely” is not part of the contemporaneous footage, but was added as part of the 2010 documentary, and furthermore makes claims which are directly contradicted by contemporaneous documentation; and iii) the film has been “widely criticised as propaganda and historical revisionism” according to the same sources the Accused relies upon.¹⁰ The Prosecution adds that if the Accused wishes to rely upon such a film, he should tender it through a witness with “relevant knowledge of the production of the film who can be cross-examined on it”.¹¹

⁵ Second Motion, paras. 1–9.

⁶ Second Response, para. 3.

⁷ Second Response, para. 2.

⁸ Second Response, para. 4.

⁹ Second Response, para. 4.

¹⁰ Second Response, para. 4.

¹¹ Second Response, para. 4.

7. Finally, in the Third Motion, the Accused requests the admission of eight items previously marked for identification—MFI D3514, D3518, D3520, D3523,¹² D3560, D3620, D3621, and D3622—as their English translations have now been uploaded into e-court.¹³

8. In the “Prosecution Response to Motion to Admit Documents Previously Marked for Identification”, filed on 3 July 2013 (“Third Response”), the Prosecution submits that it does not object to the admission of five of the documents tendered in the Third Motion, namely MFI D3514, D3520, D3523, D3620, and D3622.¹⁴ The Prosecution also notes that one of the documents has already been admitted into evidence—D3621.¹⁵ However, the Prosecution objects to the admission of the two remaining documents tendered in the Third Motion—MFI D3518 and D3560—on the basis that their English translations were not available in e-court at the time.¹⁶

9. On 4 July 2013, the Prosecution informed the Chamber that the missing English translations for MFI D3518 and D3560 appear to have been uploaded and that it no longer objects to the admission of those documents.¹⁷

II. Discussion

10. 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.¹⁸

11. Preliminarily, the Chamber notes that the following six documents have already been admitted into evidence: D1769, D2235, D2513, D2824, D3142, and D3621.

12. With respect to the First Motion, the Chamber first notes that on 19 June 2013, it ordered the Accused to upload into e-court complete and accurate translations for MFI D1267, D1669, D2594, and D3354, as well as a legible, original copy of MFI D2594 by 26 June 2013.¹⁹ On

¹² The Chamber notes that the Accused tendered MFI D3523 for admission twice—in the First Motion and Third Motion; therefore, the Chamber will only discuss it once below. See First Motion, para. 1; Third Motion, para. 1.

¹³ Third Motion, para. 1.

¹⁴ Third Response, para. 3.

¹⁵ Third Response, para. 2.

¹⁶ Third Response, para. 4.

¹⁷ Addendum to Prosecution Response to Motion to Admit Documents Previously Marked for Identification, 4 July 2013, para. 3.

¹⁸ Order on Procedure, Appendix A, paras. O, Q.

¹⁹ T. 39976 (19 June 2013).

26 June 2013, the Accused informed the Chamber that the relevant translations had been uploaded into e-court;²⁰ however, with respect to MFI D2594, the Accused submits that he obtained this document from the Prosecution's Electronic Disclosure Suite and has not been able to obtain a more legible copy.²¹ Also on 26 June 2013, the Prosecution informed the Chamber *via* email that it did not have a more legible copy of MFI D2594 either. Despite not being provided with a more legible copy of the original document for MFI D2594, having reviewed it, its revised English translation, and the submissions by the parties, the Chamber is satisfied that it can now be admitted into evidence. The Chamber has also reviewed the original documents and revised translations for MFI D1267, D1669, and D3354, as well as the relevant transcripts, and is satisfied that they shall also be admitted into evidence.

13. With respect to the Second Motion, the Chamber recalls that on 8 April 2011, it denied the admission of MFI D183 at the time because it was not clear that the English translation uploaded into e-court contained all of the parts of the document used with the witness in court, finding that the Accused could seek to tender it again if the issues were resolved.²² The Chamber also recalls that on 7 December 2012, it stayed its decision on the admission of MFI D1720 pending the receipt of a revised English translation.²³ The Chamber notes that on 25 June 2013, it ordered the Accused to upload into e-court by 1 July 2013: i) a legible, original copy, as well as a revised English translation, for MFI D183 and ii) a revised English translation for MFI D1720.²⁴ On 1 July 2013, the Accused informed the Chamber that the relevant documents had been uploaded into e-court as instructed.²⁵ The Chamber has now reviewed the original documents and revised translations for MFI D183 and D1720, as well as the relevant transcripts, and is satisfied that they shall now be admitted into evidence.

14. With regard to MFI D3235, the Chamber notes that the video footage was marked for identification pending provision of further information about its provenance.²⁶ The Chamber also notes the Prosecution's objection to its admission based on the fact that the Accused has not provided sufficient additional information about the video, and the introductory language upon which the Accused seeks to rely was added as a part of the documentary.²⁷ The Chamber notes

²⁰ Report on Exhibits MFI D1267, D1669, D2594, and D3354, 26 June 2013 ("Report"), para. 5.

²¹ Report, para. 4.

²² Decision on Accused's Fifth Motion to Admit Documents Previously Marked for Identification, 8 April 2011, paras. 7, 11.

²³ Decision on Accused's Motions to Admit Documents Previously Marked for Identification and Public Redacted Version of D1938, 7 December 2012, paras. 20, 28(f).

²⁴ T. 40344 (25 June 2013).

²⁵ Report on Exhibits MFI D183 and MFI D1720, 1 July 2013, paras. 1–2.

²⁶ Milovan Bjelica, T. 36403–36409 (2 April 2013).

²⁷ Second Response, para. 4.

that it has not been provided with a copy of the video and thus has been unable to review it. In light of this, and having reviewed the relevant transcript when it was marked for identification, the Chamber moreover is not satisfied that the provenance of MFI D3235 has been sufficiently established by the Accused's submissions in the Second Motion. Accordingly, the Chamber will stay its decision on the admission of MFI D3235 at this stage and maintain its MFI status pending receipt of the video and further information from the Accused regarding its provenance.

15. Otherwise, on the basis of the information provided by the Accused in the Motions, having reviewed the documents themselves along with the relevant transcripts and translations, the Chamber is satisfied that the following 24 items previously marked for identification should now be marked as admitted publicly:

MFI D166, D596, D1575, D1953, D2425, D2620, D2790, D2942, D2961, D3081, D3100, D3131, D3132, D3234, D3313, D3361, D3430, D3514, D3518, D3520, D3523, D3560, D3620, and D3622.

III. Disposition

16. Accordingly, for the reasons outlined above and pursuant to Rule 89 of the Tribunal's Rules of Procedure and Evidence, the Chamber hereby **GRANTS** the Motions in part and:

- a) **ADMITS** into evidence the items currently marked for identification as MFI D166, D183, D596, D1267, D1575, D1669, D1720, D1953, D2425, D2594, D2620, D2790, D2942, D2961, D3081, D3100, D3131, D3132, D3234, D3313, D3354, D3361, D3430, D3514, D3518, D3520, D3523, D3560, D3620, and D3622; and
- b) **STAYS** its decision on the admission of MFI D3235, **INSTRUCTS** the Registry to retain it as marked for identification until further order, and **INSTRUCTS** the Accused to provide the Chamber with a copy of the video and to make submissions on it as set out in paragraph 14 above by 24 July 2013.

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



Judge O-Gon Kwon
Presiding

Dated this seventeenth day of July 2013
At The Hague
The Netherlands

[Seal of the Tribunal]