



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

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

Date: 4 December 2013

Original: English

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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:** 4 December 2013

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**DECISION ON ACCUSED'S MOTION TO ADMIT  
DOCUMENTS PREVIOUSLY MARKED FOR IDENTIFICATION**

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**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 7 November 2013 (“Motion”), and hereby issues its decision thereon.

### **I. Background and Submissions**

1. In the Motion, the Accused requests that the Chamber admit into evidence five transcripts of intercepted conversations previously marked for identification (“MFI”)—MFI D3531, D3532, D3533, D3535, and D3537 (“Intercepts”).<sup>1</sup> The Accused submits that the Intercepts were admitted into evidence in previous trials and accordingly, requests the Chamber to take judicial notice of their authenticity pursuant to Rule 94(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) and admit them into evidence in this case.<sup>2</sup>

2. On 18 November 2013, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Response to Motion to Admit Documents Previously Marked for Identification” (“Response”), in which it argues that the Motion should be denied on the basis that the Accused fails to provide sufficient details on the prior admission of the Intercepts for the Chamber to determine whether they were sufficiently authenticated and admitted in previous cases.<sup>3</sup>

3. On 19 November 2013, the Chamber instructed the Accused to provide further information by 25 November 2013 regarding the prior admission of the Intercepts, including the references of the decisions through which they were admitted.<sup>4</sup> The Accused filed the “Supplemental Submission on Motion to Admit Documents Previously Marked for Identification” on 19 November 2013 (“Supplemental Submission”), providing the Chamber with the further details requested by the Chamber on the prior admission of the Intercepts.<sup>5</sup>

4. On 22 November 2013, the Prosecution filed the “Prosecution Response to Supplemental Submission on Motion to Admit Documents Previously Marked for Identification” (“Second

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

<sup>2</sup> Motion, para. 1.

<sup>3</sup> Response, paras. 2, 5–7.

<sup>4</sup> Oral Ruling, T. 43731 (19 November 2013).

<sup>5</sup> Supplemental Submission, paras. 1–5.

Response”), informing the Chamber that considering the additional information provided by the Accused in the Supplemental Submission, it no longer objects to the admission of the Intercepts.<sup>6</sup>

## **II. Applicable Law**

5. 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.<sup>7</sup>

6. In addition, Rule 94(B) of the Rules allows a Chamber to take judicial notice of the authenticity of documentary evidence which has been admitted in prior proceedings. Accordingly, in order to take judicial notice, the Chamber should be satisfied that the documentary evidence in question was sufficiently authenticated and admitted into evidence in a previous trial.<sup>8</sup> Moreover, the Chamber recalls its practice of treating intercepts as a “special category” of evidence given that they bear no indicia of authenticity or reliability on their face and accordingly, may only be admitted into evidence after the Chamber has heard from the relevant intercept operators or the participants in the intercepted conversation.<sup>9</sup> The Chamber also recalls that it has considered that it is in the interests of judicial economy to apply Rule 94(B) to intercepts.<sup>10</sup>

## **III. Discussion**

7. The Chamber notes that the Intercepts were marked for identification as associated exhibits to Milan Martić’s Rule 92 *ter* statement following the Chamber’s practice regarding intercepts—i.e. pending the Chamber being satisfied of their authenticity. Having reviewed the documents and the information provided by the Accused in the Supplemental Submission in relation to their admission in previous cases,<sup>11</sup> the Chamber considers that the authenticity of the Intercepts has been sufficiently established and will therefore take judicial notice of their authenticity.

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<sup>6</sup> Second Response, para. 2.

<sup>7</sup> Order on Procedure, Appendix A, paras. O, Q.

<sup>8</sup> Decision on the Prosecution’s First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component, 31 March 2010 (“First Decision”), para. 11; 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 (“Second Decision”), paras. 12–17; Decision on the Accused’s Bar Table Motion (Sarajevo Intercepts), 9 October 2012, para. 6.

<sup>9</sup> *See, e.g.*, First Decision, para. 9; Decision on Prosecution’s First Bar Table Motion, 13 April 2010, para. 13.

<sup>10</sup> First Decision, para. 9. The Chamber has found that the recording of an intercepted conversation is covered by the term “documentary evidence”. *See* Second Decision, para. 17.

<sup>11</sup> Supplemental Submission, paras. 1–5.

Furthermore, based on Martić's evidence about the contents of the Intercepts,<sup>12</sup> the Chamber finds them relevant to the current proceedings and shall therefore admit MFI D3531, D3532, D3533, D3535, and D3537 into evidence.

#### **IV. Disposition**

8. Accordingly, for the reasons outlined above and pursuant to Rules 89 and 94(B) of the Rules, the Chamber hereby **GRANTS** the Motion, and **ADMITS** into evidence the documents currently marked for identification as MFI D3531, D3532, D3533, D3535, and D3537.

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



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Judge O-Gon Kwon  
Presiding

Dated this fourth day of December 2013  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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<sup>12</sup> See D3528 (Witness statement of Milan Martić dated 7 May 2013), paras. 28, 36, 38, 40.