



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 April 2014

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 April 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S BAR TABLE MOTION FOR 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 Accused’s “Bar Table Motion: Intercepted Conversations”, filed on 3 March 2014 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused moves, pursuant to Rule 89(C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), for an order admitting into evidence 74 intercepted communications from the bar table (“Intercepts”).¹ In Annex A to the Motion, the Accused sets out a brief description of each document as well as of its relevance, probative value, and how it fits into his case.²

2. According to the Motion, the Office of the Prosecutor (“Prosecution”) has indicated that it has no objection to the admission of many of these documents.³ As for the remainder, the Accused submits that the Prosecution objects to their admission on the grounds that: (i) the authenticity of intercepts originating from the Republic of Croatia (“Croatia”) (“Croatian Intercepts”) is not established; (ii) some intercepts relate to municipalities not charged in the Third Amended Indictment (“Indictment”); and (iii) the others should have been presented to witnesses who testified at trial.⁴

3. With regard to the first category of objections, the Accused requests that the Chamber take these matters under submission until it has heard the testimony of KDZ584, an intercept operator from Croatia.⁵ With regard to the second category of objections, the Accused submits that the conversations in question, while conducted with interlocutors located in uncharged municipalities, “are relevant to [the Accused’s] own conduct in seeking to reach agreements to avoid the war and in seeking to restrain local SDS leaders from resorting to violent retaliation or confrontation.”⁶ Finally, with regard to the third category of objections, the Accused contends that the Chamber has

¹ Motion, paras. 1, 6; Annex A.

² Motion, para. 2; Annex A.

³ Motion, para. 2; Annex A.

⁴ Motion, paras. 3–5.

⁵ Motion, para. 3.

⁶ Motion, para. 4.

admitted intercepts when contextualisation by a witness was considered unnecessary, which is the case for a number of the Intercepts tendered in this Motion.⁷

4. On 7 March 2014, the Prosecution filed the “Prosecution Response to Bar Table Motion: Intercepted Conversations” (“Response”), in which it requests that the Motion be denied in part.⁸ The Prosecution first notes that its position in relation to each of the Intercepts has been set out in Annex A to the Motion, including its challenges to the authenticity of 20 Croatian Intercepts.⁹ The Prosecution then expands on its objections to six intercepts, on grounds other than authenticity, namely four Croatian Intercepts in which Prosecution witness Manojlo Milovanović was one of the participants (“Milovanović Intercepts”),¹⁰ and two intercepts relating to events in uncharged municipalities, namely Višegrad and Mostar.¹¹

5. The Prosecution also submits that 65 *ter* 1D07263 (MFI D3269) has now been admitted into evidence, and thus the Accused’s request in relation to this document is moot.¹² Finally, the Prosecution contends that while not objecting to the admission of a number of the Intercepts, it neither accepts the interpretation of those documents as contended by the Accused nor that they advance his case as argued in Annex A to the Motion, or at all.¹³

6. By way of background to the Croatian Intercepts, the Chamber recalls that the Accused initially intended to call KDZ584 as a Defence witness so that he could verify and authenticate intercepted conversations that the Accused wished to offer into evidence.¹⁴ For this purpose, the Accused requested the government of Croatia to make KDZ584 available to testify as a witness in his case.¹⁵ On 3 March 2014, the Accused filed the Subpoena Motion, requesting the Chamber to compel KDZ584 to testify in his case as the Accused made reasonable efforts to obtain KDZ584’s voluntary co-operation but KDZ584 failed to appear for testimony on the dates requested.¹⁶ During the hearing on the same day, the Prosecution indicated that it would not require KDZ584’s attendance in court to authenticate the intercepted conversations should he provide authentication

⁷ Motion, para. 5.

⁸ Response, paras. 1, 15.

⁹ Response, para. 1. The documents in question are 65 *ter* 30877, 30882, 31623, 31625, 31626, 31627, 31628, 31682, 32322, 32334, 32344, 32345, 32595, 32597, 32598, 32649, 1D05803, 1D05813, 1D05822, and 1D49056.

¹⁰ Response, paras. 9–12. The documents in question are 65 *ter* 31627, 31628, 32322, and 1D05813.

¹¹ Response, para. 13. The documents in question are 65 *ter* 30263 and 1D05739. The Chamber further notes that the Prosecution also objected to three Croatian Intercepts in which the then Commander of the United Nations Protection Force (“UNPROFOR”) in Bosnia and Herzegovina (“BiH”), General Philippe Morillon, was a participant (“Morillon Intercepts”), namely 65 *ter* 32595, 32597, and 32598; Response, paras. 3–8. However, the Accused did not renew his request with respect to these three intercepts; *see infra* fn. 23.

¹² Response, para. 2.

¹³ Response, para. 14.

¹⁴ *See* Motion for Subpoena to Witness KDZ584, 3 March 2014 (“Subpoena Motion”), para. 5.

¹⁵ *See* Subpoena Motion, paras. 5–14.

¹⁶ Subpoena Motion, paras. 1, 15, 19.

information in writing.¹⁷ In light of this submission by the Prosecution, the Chamber instructed the Accused to obtain the information from KDZ584 through Croatia.¹⁸

7. On 6 March 2014, the Accused filed the “Letter to Croatia” (“Letter to Croatia”), requesting Croatia to forward KDZ584 a chart—attached as Confidential Annex to the Letter to Croatia—containing a number of documents, including the Croatian Intercepts, which he seeks this witness to authenticate and to comment upon, including whether the intercept in question is a summary, an “intel report” or a transcript, and whether it was recorded by his agency.¹⁹ The Accused also requested KDZ584 to check the dates of the conversations recorded in 65 *ter* 31626, 31627, 31628, 32595, 32597, and 32598 and to provide the correct dates where possible.²⁰

8. On 11 March 2014, the Chamber issued the “Invitation to Croatia”, in which Croatia was invited to assist the Chamber to receive KDZ584’s comments authenticating the intercepts in question by close of business on 24 March 2014.²¹ On 20 March 2014, the Chamber received a reply from Croatia, which included KDZ584’s comments to the intercepts in question in BCS (“KDZ584 Reply”) and which was ultimately filed on 26 March 2014 upon translation into English.

9. On 27 March 2014, the Accused filed the “Submission on Croatian Intercepts” (“Submission”), renewing his request, in relation to the Motion, that the following Croatian Intercepts be admitted from the bar table: 65 *ter* 30877, 30882, 31623, 31625, 31626, 31627, 31628, 31682, 32322, 32334, 32344, 32345, 32649, 1D05803, 1D05813, 1D07263, and 1D49056.²² The Accused also submits that where the date on the document is different from the date indicated in the KDZ584 Reply, the latter should be considered to be the accurate date.²³

10. On 31 March 2014, the Prosecution filed the “Prosecution’s Response to Defence Submissions and Motion to Admit Croatian Intercepts” (“Response to Submission”) stating that it no longer objects to the admission of 11 of the Croatian Intercepts, namely 65 *ter* 30877, 30882, 31623, 31625, 31626, 32334, 32344, 32345, 32649, 1D05803, and 1D49056, on the grounds that authenticating information has now been provided in respect of these items, and thus withdraws its

¹⁷ T. 47553–47554 (3 March 2014).

¹⁸ The Subpoena Motion was withdrawn orally; T. 47555 (3 March 2014).

¹⁹ Letter to Croatia, p. 2; Confidential Annex.

²⁰ Letter to Croatia, p. 2.

²¹ Invitation to Croatia, 11 March 2014, p. 3.

²² Submission, paras. 6–7. The Chamber notes that the Accused did not renew his request with respect to the Morillon Intercepts, namely 65 *ter* 32595, 32597, and 32598. It will therefore not consider them as part of its analysis in this Decision.

²³ Submission, paras. 6–7.

objections in relation thereto.²⁴ The Prosecution also withdraws its objection in relation to the second and third intercepted conversations contained in 65 *ter* 31682, but not to the first, which was not authenticated by KDZ584.²⁵ Furthermore, the Prosecution maintains its objections in relation to the Milovanović Intercepts, namely 65 *ter* 31627, 31628, 32322, and 1D05813, despite KDZ584's authentication.²⁶ The Prosecution finally notes that 1D07263 is the same item as D3269, and thus should not be admitted.²⁷

II. Applicable Law

11. 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.

12. 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 Tribunal.²⁸ 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.²⁹ 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.³⁰ 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.³¹

²⁴ Response to Submission, paras. 5–6.

²⁵ Response to Submission, para. 7.

²⁶ Response to Submission, para. 8.

²⁷ Response to Submission, para. 9.

²⁸ 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 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.

²⁹ Rule 89(C), (E).

³⁰ 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.

³¹ Hostages Bar Table Decision, para. 4, citing First Bar Table Decision, paras. 9, 15.

13. The Chamber also recalls its “Order on Procedure for Conduct of Trial”, issued on 8 October 2009 (“Order on Procedure”), 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.³²

III. Discussion

A. Intercept Already Admitted

14. As a preliminary matter, and in line with the Prosecution’s submissions in the Response and the Response to Submission, the Chamber notes that 1D07263 is already in evidence as D3269 in light of its decision issued on 28 February 2014,³³ and thus the Accused’s request in relation to this document is moot.

B. Authenticity

15. With respect to the requirement that documents offered from the bar table bear sufficient indicia of authenticity, the Chamber recalls its prior 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.³⁴

i. Intercepts from BiH

16. The Chamber notes that the Accused initially scheduled the testimony of two intercept operators from BiH, namely KDZ126 and KDZ145, on 18 February 2014 for the authentication of certain intercepted conversations.³⁵ On 21 January 2014, the Accused filed lists containing the specific intercepted conversations that he intended to have authenticated through these witnesses.³⁶ During the hearing of 18 February 2014, the Chamber found, based on the agreement between the

³² Order on Procedure, Appendix A, Part VII, para. R.

³³ Decision on Accused’s Motion to Admit Intercepts Previously Marked for Identification, 28 February 2014, paras. 11–13.

³⁴ *See, e.g.*, 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. 9; First Bar Table Decision, para. 13.

³⁵ *See* Notice to Government of Bosnia of Date of Testimony of Witnesses KDZ126 and KDZ145, 21 January 2014 (“Notice to BiH”).

³⁶ Notice to BiH, Confidential Annex A, listing the specific intercepted conversations which KDZ126 would be requested to authenticate, and Confidential Annex B, listing the specific intercepted conversation which KDZ145 would be requested to authenticate.

parties as to the authenticity of the intercepts in question, the Chamber's past admission of a number of intercepts through intercept operators and numerous interlocutors, and the Prosecution's possible authentication of those intercepts based upon its "evidence collection", that it had a basis to establish the authenticity of the transcripts of intercepted conversations which the Accused intended to tender through KDZ126 and KDZ145.³⁷ Thus, in light of the parties' agreement and the further factors noted during the hearing of 18 February 2014, the Chamber considers that the authenticity of the following 53 intercepts is now sufficiently established: 65 *ter* 30010, 30063, 30263, 30275, 30283, 30295, 30305, 30317, 30463, 30483, 30536, 30586, 30609, 30759, 31502, 31806, 31812, 31975, 32026, 32080, 32102, 32160, 32167, 32171, 32173, 32177, 32404, 1D05687, 1D05699, 1D05703, 1D05704, 1D05709, 1D05712, 1D05714, 1D05718, 1D05724, 1D05725, 1D05726, 1D05729, 1D05730, 1D05737, 1D05739, 1D05740, 1D05741, 1D05774, 1D05785, 1D05787, 1D05790, 1D05791, 1D05792, 1D05793, 1D05802, and 1D05822³⁸. The Chamber will therefore proceed below to determine whether they may be admitted from the bar table.

ii. Croatian Intercepts

17. The Chamber recalls the Prosecution's objection in relation to the Croatian Intercepts, for lack of authenticity.³⁹ In this regard, the Chamber notes that KDZ584 has now authenticated 65 *ter* 30877, 30882, 31623, 31625, 31626, 31627, 31628, 32322, 32334, 32344, 32345, 32649, 1D05803, 1D05813, 1D49056, and the transcripts of two intercepted conversations in 65 *ter* 31682.⁴⁰ In light of the Prosecution's withdrawal of its objections with respect to these items, and the Chamber's previous findings in relation to the evidence admitted through KDZ584 as a Prosecution witness with regard to the process and methodology for transcribing intercepts,⁴¹ the Chamber considers that the authenticity of 65 *ter* 30877, 30882, 31623, 31625, 31626, 31627, 31628, 32322, 32334, 32344, 32345, 32649, 1D05803, 1D05813, 1D49056, and the second and third parts of 65 *ter* 31682, is now sufficiently established. Below, the Chamber will proceed to determine whether these 16 documents may be admitted from the bar table.

18. The Chamber further notes that KDZ584 failed to authenticate 65 *ter* 1D49051, by stating that such intercept did not originate in his organisation.⁴² Similarly, while KDZ584 authenticated

³⁷ T. 47255–47259 (18 February 2014). *See also* Decision on Accused's Motion to Admit Intercepts from Bosnia and Herzegovina Previously Marked for Identification or as Not Admitted, 26 February 2014, para. 1.

³⁸ The Chamber notes that 65 *ter* 1D05822 was referred to in the Response as one of the Croatian Intercepts; however this document was authenticated by KDZ126, as one of the intercepted conversations included in Confidential Annex A to the Notice to BiH.

³⁹ *See* paras. 2, 4 above.

⁴⁰ KDZ584 Reply, pp. 2–5.

⁴¹ *See* T. 27101–27104 (28 March 2012) (closed session). *See also* Decision on Prosecution's First Bar Table Motion for the Admission of Intercepts, 14 May 2012 ("First Bar Table Decision on Intercepts"), para. 2.

⁴² KDZ584 Reply, p. 7.

the two transcripts of intercepted conversations contained in 65 *ter* 31682, and the Prosecution accepted such authentication, KDZ584 did not address, and thus authenticate, the summary of a conversation contained in the first part of this document.⁴³ Thus, given that the Chamber has not heard from the relevant intercept operator with respect to 65 *ter* 1D49051 and the first part of 65 *ter* 31682, or the participants referred to therein, the Chamber considers that the requirements of authenticity or reliability, as described in paragraph 15 above, have not been sufficiently met for the purposes of their admission into evidence. Accordingly, the Chamber shall deny the admission of 65 *ter* 1D49051 and the first part of 65 *ter* 31682, from the bar table.

C. Admission from the Bar Table

19. The Chamber recalls its previous finding that, in seeking the admission of evidence from the bar table, it is incumbent upon the offering party to demonstrate, with sufficient clarity and specificity, where and how each of the documents fits into its case.⁴⁴ The Chamber notes that, in the Motion, the Accused has by and large explained how most of the Intercepts fit into his case.⁴⁵ Thus, with the exception of a number of the Intercepts, which will be discussed further below,⁴⁶ the Chamber is generally satisfied with the Accused's explanations.

20. In addition, the Chamber notes that 23 of the Intercepts predate the commencement of the Indictment period in October 1991 ("Pre-Indictment Period Intercepts").⁴⁷ As the Chamber has previously stated, while an intercept that predates the time-period of the actual crimes alleged in the Indictment, does not, in and of itself, render it irrelevant, the parties should generally refrain from tendering such evidence given their marginal relevance to the crimes charged in the Indictment.⁴⁸ 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.⁴⁹

⁴³ KDZ584 Reply, p. 3. *Cf.* with the authentication by KDZ584 of 65 *ter* 31626 where KDZ584 specifically addressed a summary of a conversation which had not been previously noted by the Accused in the chart attached as Confidential Annex to the Letter; KDZ584 Reply, p. 2.

⁴⁴ First Bar Table Decision, para. 6.

⁴⁵ Motion, Annex A.

⁴⁶ *See infra* paras. 24, 27–29, 37.

⁴⁷ The intercepts in question are 65 *ter* 30063, 30263, 30275, 30283, 31806, 31812, 1D05687, 1D05699, 1D05703, 1D05704, 1D05709, 1D05712, 1D05714, 1D05718, 1D05724, 1D05725, 1D05726, 1D05729, 1D05730, 1D05737, 1D05739, 1D05740, and 1D05741.

⁴⁸ Decision on Prosecution's Second Bar Table Motion for the Admission of Intercepts, 25 May 2012 ("Second Bar Table Decision on Intercepts"), para. 21.

⁴⁹ Second Bar Table Decision on Intercepts, para. 21.

i. Prosecution's specific challenges

21. The Chamber will now examine specific objections raised by the Prosecution in relation to a number of the Intercepts.

a. Milovanović Intercepts

22. The Prosecution objects to the admission from the bar table of 65 *ter* 31627, 31628, 32322, and 1D05813 on the basis that they are significant to central issues in this case and thus require contextualisation, and should therefore have been put to Milovanović in court, given that he is one of the participants in the conversations.⁵⁰

23. The Chamber recalls its earlier finding that failure to tender a document through a particular witness during his testimony does not, in and of itself, prevent the relevant party 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.⁵¹ The Chamber has also held that while it 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.⁵² Based on these prior conclusions, the Chamber has reviewed each of the four intercepts individually, to find whether, in the present circumstances, they can be admitted through the bar table.

24. In relation to 65 *ter* 31628, the Chamber notes that the document is generally relevant to this case as it goes to the Accused's actions and statements in relation to the Sarajevo joint criminal enterprise ("JCE"), as charged in the Indictment. The Chamber also notes that, despite the original mistake reflected in the document's date, the intercepted conversation has now been correctly dated by KDZ584.⁵³ The Chamber has analysed the Accused's submissions on the relevance of 65 *ter* 31628 and his explanation as to how it fits into his case.⁵⁴ Given that various topics are successively and briefly discussed in the conversation in an unclear way, making it difficult for the Chamber to understand, it considers that without more contextualisation from one of the participants, the probative value of this document is low and will be of little to no use to the Chamber. Accordingly, the Chamber shall deny admission of 65 *ter* 31628 as its probative value would be substantially outweighed by the need to ensure a fair trial if tendered through the bar table.

⁵⁰ Response, paras. 1, 9–12. *See also* Response to Submission, para. 8.

⁵¹ Hostages Bar Table Decision, para. 11, reinforced in the First Bar Table Decision on Intercepts, para. 16.

⁵² First Bar Table Decision on Intercepts, para. 16.

⁵³ *See* Motion, Annex A, p. 80; KDZ584 Reply, p. 3.

⁵⁴ *See* Motion, Annex A, pp. 80–81.

25. Turning now to 65 *ter* 31627, 32322 and 1D05813, the Chamber notes that 65 *ter* 31627 refers to a conversation between the Accused and “*an unidentified general*” which has been identified as Milovanović, in relation to the events in Sarajevo during the Indictment period; 65 *ter* 32322 is an intercept of a conversation between Milovanović and Gvero and a conversation between Milovanović and Tolimir, in relation to the VRS operation in 1994 in the wider area of Goražde; and 65 *ter* 1D05813 contains the transcript of an intercepted conversation between Milovanović and General Brinkman—through Brinkman’s interpreter—in relation to the restrictions of movement of UNPROFOR fuel convoys to the enclaves in 1994, as well as a short summary of such intercepted conversation. Despite the Prosecution’s objections in relation to these documents, the Chamber notes that all three intercepts are verbatim transcripts of the intercepted conversations⁵⁵ and, as such, speak for themselves. Furthermore, the correct date for the conversation recorded in 65 *ter* 31627 has now been established.⁵⁶ Thus, while it would have been preferable for the Accused to tender all three documents during Milovanović’s testimony, the Chamber finds that they are relevant and have probative value, and that the conversations contained therein do not require further contextualisation for the purpose of admission from the bar table. Furthermore, the fact that Accused did not have an opportunity to ask Milovanović questions in relation to these intercepted conversations does not prevent them from being admitted into evidence from the bar table if the requirements of Rule 89(C) are met and if the Chamber is satisfied that pursuant to Rule 89(D), their probative value is not substantially outweighed by the need to ensure a fair trial. The Chamber finds that these requirements are met with respect to 65 *ter* 31627, 32322 and 1D05813 and shall therefore admit them into evidence from the bar table.

b. Irrelevant intercepts

26. The Chamber further recalls the Prosecution’s objection to the admission from the bar table of 65 *ter* 30263 and 1D05739 on the grounds that they are related to events in Višegrad and Mostar, neither of which is a charged municipality in the Indictment.⁵⁷

27. The Chamber notes that 65 *ter* 30263 is an intercept from 22 September 1991 in which a person named Savić from the Serbian Democratic Party (“SDS”) in Višegrad provides the Accused with the information that a bus from Serbia was halted and the driver severely maltreated, and that Savić’s village and area had been blocked and cut off by armed Muslims. In this conversation, the Accused advises Savić not to undertake any actions and to send a fax about this incident to Simović, Deputy Prime Minister, and to Plavšić, President of the Council for the Protection of

⁵⁵ See KDZ584 Reply, pp. 2, 4–5. For the sake of accuracy, the Chamber notes that 65 *ter* 1D05813 also contains a summary of the conversation recorded.

⁵⁶ KDZ584 Reply, p. 2.

⁵⁷ Response, paras. 1, 13.

Constitutional Order. The Accused submits that this intercept is relevant to this case as “evidence that armed Muslims blocked the barracks in Višegrad, cut off Serbian villages and stopped and mistreated Serbian population [and that the Accused] advised Savić to be calm and avoid any confrontation and that everything should be reported to the police”.⁵⁸ As previously noted, the Chamber has admitted little evidence in relation to Višegrad, for which there are no charged scheduled incidents in the Indictment.⁵⁹ Furthermore, the Chamber considers that the Accused’s contextualisation of this intercept, which is part of the Pre-Indictment Period Intercepts, is insufficient to warrant its admission from the bar table.

28. In relation to 1D05739, the Chamber notes that the document is an intercept from 20 September 1991 in which Fezlija Hebibović, a Muslim journalist from Mostar, informs the Accused of a “very unpleasant” situation in his region, stating that his and his family’s life is in danger. The Accused submits that this document is relevant as evidence that he “was willing to protect all people regardless of their ethnicity”.⁶⁰ Considering that this intercept concerns an incident in Mostar, for which there are no charged scheduled incidents in the Indictment and that this falls within the Pre-Indictment Period Intercepts, the Chamber is not satisfied that this intercept is sufficiently relevant or probative.

29. Accordingly, the Chamber shall deny the admission from the bar table of 65 *ter* 30263 and 1D05739.

ii. Remaining intercepts

30. Having addressed the specific objections raised by the Prosecution in relation to a number of the Intercepts, it remains for the Chamber to assess whether the remaining intercepts fulfil the requirements of Rule 89(C).

31. The Chamber has already stated that, save for the exception discussed in paragraphs 27 to 29 above, and paragraph 37 below, it is generally satisfied with the Accused’s explanations as to how the Intercepts fit into his case. Thus, having reviewed the remaining intercepts and the submissions of the Accused and the Prosecution in light of the additional requirements for admission through the bar table, the Chamber finds that they are all relevant to this case as they go to one or more of the following issues arising from the Indictment, including: (1) the Accused’s

⁵⁸ Motion, Annex A, pp. 32–33.

⁵⁹ Second Bar Table Decision on Intercepts, para. 23. In this regard, the Chamber notes that, while for the purpose of the Indictment, the Prosecution lists Scheduled Incident A.14.2 under Višegrad Municipality, the killing incident charged therein is alleged to have occurred in the municipality of Sokolac; *see* Prosecution Submission Pursuant to Rule 73 *bis*(D), 31 August 2009, fn. 14; Indictment, fn. 3; Schedule A, fn. 1.

⁶⁰ Motion, Annex A, pp. 16–17.

actions and statements in relation to events leading up to the takeover of the municipalities charged in the Indictment; (2) the Accused's relationship and co-ordination with other alleged members of the alleged JCEs in the Indictment, including Nikola Koljević, Momčilo Krajišnik, Jovica Stanišić, and Slobodan Milošević; (3) the Accused's contacts with and authority over civilian and military structures; (4) restrictions and control over the free movement of humanitarian convoys; (5) negotiations between parties to the conflict in BiH and, specifically, the Accused's views in relation to such negotiations; (6) the Accused's role in the implementation of ceasefires; (7) the Accused's knowledge, or lack thereof, about the killing of Bosnian Muslims in Srebrenica; and (8) Ratko Mladić's control over the VRS. The Chamber also finds that these intercepts have probative value. 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 them into evidence from the bar table: 65 *ter* 30063, 30275, 30283, 30295, 30305, 30317, 30463, 30483, 30536, 30586, 30609, 30759, 30877, 30882, 31502, 31623, 31625, 31626, the second and third parts of 31682, 31806, 31812, 31975, 32026, 32080, 32102, 32160, 32167, 32171, 32173, 32177, 32334, 32344,⁶¹ 32345, 32404, 32649, 1D05687, 1D05699, 1D05703, 1D05704, 1D05709, 1D05712, 1D05714, 1D05718, 1D05724, 1D05725, 1D05726, 1D05729, 1D05730, 1D05737, 1D05740, 1D05741, 1D05774, 1D05785, 1D05787, 1D05790, 1D05791, 1D05792, 1D05793, 1D05802, 1D05803, 1D05822, and 1D49056.

32. In relation to 65 *ter* 30295, 32080, and 1D05802, however, only the BCS versions of the intercepts contain the dates of the conversations having been transcribed.⁶² The Chamber therefore instructs the Accused to revise the English translation of these documents so as to reflect the dates in those versions, and to upload the revised translations into e-court.

33. The Chamber further notes that the BCS and English versions of 65 *ter* 30063 consist of two parts, the latter of which appears to be corrections of the intercepted conversation in both languages.⁶³ Accordingly, it instructs the Accused to file the revised versions in BCS and English, respectively, and to upload the revised translations into e-court.

⁶¹ In relation to 65 *ter* 32344, the Chamber notes the Prosecution's claim that it remains unclear whether the places described in this intercepted conversation are correctly transcribed; *see* Response to Submission, para. 6. However, the Chamber has reviewed the contents of the document and is satisfied that the locations mentioned therein can be identified despite their alleged incorrect transcriptions.

⁶² The BCS version of 65 *ter* 30295 shows 1 October 1991, the BCS version of 65 *ter* 32080 shows 1 January 1992, and the BCS version of 65 *ter* 1D05802 shows 2 March 1992.

⁶³ The BCS version, pp. 8–11 in e-court and the English version, pp. 9–14 in e-court. The Chamber recalls that the Prosecution had no objection to the admission of this document provided that the Accused uploads the revised versions; Motion, Annex A, pp. 31–32.

34. Similarly, with regard to 65 *ter* 31812, the Chamber notes that the date on the first page of the English translation of this intercepted conversation should be June and not April.⁶⁴ Accordingly, it instructs the Accused to fix this error, and to upload a revised translation into e-court.

35. Furthermore, in relation to 65 *ter* 32404, the Chamber notes that the conversation on the first page of the original BCS version of the document is not part of the intercepted conversation being tendered by the Accused and should therefore be deleted.⁶⁵ Accordingly, the Chamber instructs the Accused to correct this error and to upload a revised version of the original BCS document into e-court.

36. Similarly, having denied the admission of the summary contained in the first part of 65 *ter* 31682, as discussed in paragraph 18 above, the Chamber instructs the Accused to redact this portion thereof, and to upload revised versions of the original BCS document and its English translation into e-court.

37. The Chamber is not satisfied, however, of the relevance or probative value of 65 *ter* 30010, which is an intercept from 13 December 1991. In this conversation, Vujadin Milić from Skender Vakuf (renamed to Kneževo) informed the Accused about the situation in the municipality. The Accused submits, *inter alia*, that this intercept is relevant to this case as evidence of the Accused's attitude that "everything should be done in accordance with the laws of existing state" and that it shows that the Accused "wants to find a solution to the political struggle in Skender Vakuf through the consultation of all sides".⁶⁶ While this intercept falls within the Indictment period, the evidence therein is related to Kneževo, for which there are no charged scheduled incidents in the Indictment. Considering that detailed information as to this municipality was excluded from a proposed Rule 92 *ter* statement,⁶⁷ the Chamber is not satisfied that this intercept is sufficiently relevant or probative.

38. As a final matter, the Chamber notes that 36 of the Intercepts which the Chamber has found otherwise to be admissible through the bar table, namely 65 *ter* 30063, 30275, 30283, 30295,

⁶⁴ Motion, Annex A, p. 47. The Chamber recalls that the Prosecution had no objection to the admission of this document provided that the date on its English translation is corrected.

⁶⁵ Motion, Annex A, p. 58. The Chamber notes that the Prosecution did not object to the admission of 65 *ter* 32404 on the condition that the conversation on the first page of the original BCS version of the conversation—which is not in the English translation—is deleted. Additionally, while the Chamber notes that this intercepted conversation has no date on either the original BCS version or its English translation, the parties have agreed with the authenticity of the document, as noted in paragraph 16 above. Consequently, the Chamber is satisfied that the conversation was recorded on 3 June 1995, as noted in the Annex A to the Motion.

⁶⁶ Motion, Annex A, p. 31.

⁶⁷ See T. 47078 (14 February 2014), regarding proposed Rule 92 *ter* evidence of Defence Witness Vladimir Glamočić.

30305, 30317, 30463, 30483, 30536, 30586, 30609, 30759, 30877, 30882, 31502, 31623, 31625, 31626, 31682, 31806, 31812, 31975, 32026, 32080, 32102, 32160, 32167, 32171, 32173, 32177, 32334, 32344, 32345, 32404, 32649, and 1D49056, are not on the Accused's exhibit list filed pursuant to Rule 65 *ter* ("Exhibit List"). In the Motion, the Accused fails to seek leave to add these documents to his Exhibit List; the Prosecution makes no arguments in this regard in the Response. While the Chamber notes that by this stage of the case the Accused should know that he needs to request the late addition of documents to his Exhibit List, and show good cause for the late addition, the Chamber takes no issue with those documents being added to the Accused's Exhibit List.

IV. Disposition

39. Accordingly, the Chamber, pursuant to Rule 89 of the Rules, hereby **GRANTS** the Motion in part, and:

- a) **GRANTS** leave to the Accused to add documents bearing the following Rule 65 *ter* numbers to his Rule 65 *ter* exhibit list: 30063, 30275, 30283, 30295, 30305, 30317, 30463, 30483, 30536, 30586, 30609, 30759, 30877, 30882, 31502, 31623, 31625, 31626, 31682, 31806, 31812, 31975, 32026, 32080, 32102, 32160, 32167, 32171, 32173, 32177, 32334, 32344, 32345, 32404, 32649, and 1D49056;
- b) **ADMITS** into evidence the intercepts bearing the following Rule 65 *ter* numbers: 30063, 30275, 30283, 30295, 30305, 30317, 30463, 30483, 30536, 30586, 30609, 30759, 30877, 30882, 31502, 31623, 31625, 31626, 31627, the second and third parts of 31682, 31806, 31812, 31975, 32026, 32080, 32102, 32160, 32167, 32171, 32173, 32177, 32322, 32334, 32344, 32345, 32404, 32649, 1D05687, 1D05699, 1D05703, 1D05704, 1D05709, 1D05712, 1D05714, 1D05718, 1D05724, 1D05725, 1D05726, 1D05729, 1D05730, 1D05737, 1D05740, 1D05741, 1D05774, 1D05785, 1D05787, 1D05790, 1D05791, 1D05792, 1D05793, 1D05802, 1D05803, 1D05813, 1D05822, and 1D49056;
- c) **INSTRUCTS** the Accused to upload revised versions of Rule 65 *ter* numbers 30063, 30295, 31682, 31812, 32080, 32404, and 1D05802, as ordered in paragraphs 32 to 36 above, by no later than 14 April 2014;

- d) **INSTRUCTS** the Registry to assign the appropriate exhibit numbers to the documents referred to in paragraph 39(b) above; and
- e) **DENIES** the remainder of the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this seventh day of April 2014
At The Hague
The Netherlands

[Seal of the Tribunal]