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**UNITED
NATIONS**



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-09-92-T
Date: 23 January 2014
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 23 January 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION SECOND BAR TABLE
MOTION FOR THE ADMISSION OF INTERCEPTS:
SREBRENICA SEGMENT**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 2 May 2013, the Chamber delivered its decision on the Prosecution's Bar Table Motion for the Admission of Intercepts related to the Srebrenica segment of the case ("First Decision").¹ On 30 September 2013, the Prosecution filed a motion seeking the admission into evidence, pursuant to Rule 89 (C) of the Tribunal's Rules of Procedure and Evidence ("Rules"), of 19 documents pertaining to intercept material, including five documents that were denied admission in the First Decision, and the addition of one document to its Rule 65 *ter* exhibit list ("Motion").² On 14 October 2013, the Defence requested an additional 30 days in which to respond to the Motion, which the Chamber granted on 17 October 2013, setting the new deadline of 14 November 2013.³ On 14 November 2013, the Defence filed its response objecting to the Motion in its entirety ("Response").⁴

II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law governing the admission of documents from the bar table as set out in a previous decision.⁵ The Chamber further recalls and refers to the applicable law governing amendments to the Prosecution's Rule 65 *ter* exhibit list as set out in a previous decision.⁶

III. DISCUSSION

A. Addition to Rule 65 *ter* Exhibit List

3. The Prosecution seeks leave to add to its Rule 65 *ter* exhibit list the document bearing Rule 65 *ter* number 30329, which is a typed report of a transcribed intercept, dated 11 July 1995 at 18:45 hours.⁷ Its addition (and admission) is sought for the purpose of establishing, together with the proffered notebook extract bearing Rule 65 *ter* number 22241A, the dates of two other previously

¹ Decision on Prosecution's Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 2 May 2013.

² Prosecution's Second Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 30 September 2013 (Confidential). The Chamber refers to the Prosecution's filing for its submissions. The documents that were denied admission in the First Decision are documents bearing Rule 65 *ter* numbers 25072, 25077, 27948, 21250A, and 21250B.

³ Defence Motion for Enlargement of Time to Respond to "Prosecution Second Bar Table Motion for the Admission of Intercepts: Srebrenica Segment", 14 October 2013 (Confidential); T. 18019-18021.

⁴ Defence Response to Prosecution's Second Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 14 November 2013 (Confidential). The Chamber refers to the Defence's filing for its submissions.

⁵ Decision on Prosecution First Motion to Admit Evidence from the Bar Table: Mladić Notebooks, 25 September 2012, paras 4, 12.

⁶ Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012 ("Second Amendment Decision"), paras 5-6.

⁷ Motion, paras 19-20.

admitted handwritten intercept transcripts: P1237 and P1239.⁸ The Prosecution submits that, in the proffered notebook extract, the same conversation that is contained in the document bearing Rule 65 *ter* number 30329 is immediately followed by the conversations contained in P1237 and P1239.⁹ The Prosecution further submits that, from this, it can be deduced that P1237 and P1239 were intercepted on 12 July 1995 since intercepts were recorded in sequence.¹⁰ The Defence objects to the addition on the ground that the Prosecution has failed to demonstrate diligence and good cause for the late addition, which the Defence argues would prejudice the Accused.¹¹ Considering that P1237 and P1239 have previously been admitted into evidence, the Chamber is satisfied that the document bearing Rule 65 *ter* number 30329, as part of the same chronological record of events, is *prima facie* relevant to and probative of the alleged JCE to eliminate the Bosnian Muslims in Srebrenica, as charged in the Indictment.¹²

4. The Prosecution has not argued good cause for adding this intercept transcript to its Rule 65 *ter* exhibit list at this stage of the proceedings, but submits that, given the purpose for which the addition is sought, the Defence will not suffer prejudice.¹³ The Chamber recalls that the showing of good cause is only one factor to be considered in determining whether, on balance, the addition is in the interests of justice.¹⁴ The document bearing Rule 65 *ter* number 30329 is in form similar to previously admitted intercept transcript reports, and, given that its addition is requested only for the purpose of establishing the date of admitted intercept transcripts, it does not raise novel issues that would create an undue burden on the Defence.¹⁵ Thus, the Chamber grants the request to add the document bearing Rule 65 *ter* number 30329 to the Prosecution's Rule 65 *ter* exhibit list.

B. Admissibility Pursuant to Rule 89 (C) of the Rules

5. The Chamber notes that the document bearing Rule 65 *ter* number 21168D has already been admitted into evidence as P2172.¹⁶ The Chamber thus declares the request moot in relation to this document.

6. The Chamber notes, as a general observation pertaining to subheadings one through four below, that the documents mentioned therein are tendered for the limited purpose of establishing

⁸ Motion, paras 10, 19.

⁹ Motion, para. 10.

¹⁰ *Ibid.*

¹¹ Response, paras 15-16.

¹² For admissibility into evidence, *see infra* paras 18-21.

¹³ Motion, para. 20.

¹⁴ Second Amendment Decision, para. 6.

¹⁵ For similar previously admitted intercept transcript reports, *see e.g.* P1620, P1666, and P1667.

¹⁶ Decision on Prosecution Tenth Motion to Admit Evidence Pursuant to Rule 92*bis*: Srebrenica, 26 August 2013, para. 18.

the dates of previously admitted documents.¹⁷ The Chamber is therefore satisfied that the Prosecution has shown with sufficient clarity and specificity how these documents fit into its case.¹⁸

1. Typed Reports of Admitted Handwritten Intercept Transcripts¹⁹

7. The Prosecution seeks the admission of seven – one of which has been admitted previously – dated typed versions of handwritten intercept transcripts that were admitted in the First Decision, and argues in this respect that the handwritten intercept transcripts do not allow for the precise identification of the date on which each conversation was intercepted.²⁰ The Defence objects to their admission arguing that the redacted versions uploaded in eCourt make the proffered documents incomparable with the admitted documents.²¹ The Chamber notes in this regard that the proffered typed reports on eCourt appear to have been redacted only to exclude conversations that are not being proffered into evidence, in accordance with the Chamber’s guidance.²² The dates and relevant conversations, allowing for comparison to the admitted intercept transcripts, however, have not been redacted. If the Defence maintains that the redactions go beyond just leaving out what is not being proffered into evidence, or if it requires unredacted versions, the Chamber will consider the same if requested. Noting moreover that the conversations in the proffered and admitted documents appear to match in substance, the Chamber finds the Defence’s objection to be without merit.

8. As argued by the Defence, the dates in the remaining six typed reports appear to pertain to the date of report, which, the Chamber acknowledges, does not necessarily correspond to the date of interception. However, Witness RM-279 testified that the reports were sent “unselectively as required by the communications traffic and depending of the amount of information”, and report numbers were assigned based on the sequence in which reports were produced.²³ Further, considering the intelligence purpose for which the reports were produced, the Chamber is of the opinion that the date of report is related to the date of interception, and may thus assist the Chamber in determining the sequence of events. The Chamber therefore finds the Defence’s objection in this regard to be without merit.

¹⁷ Motion, paras 7-10.

¹⁸ Documents bearing Rule 65 *ter* numbers 21009C, 21164B, 21162D, 20952C, 21087DD, 21088E, 20951C, ERN 0320-1752, 22238A, 22249A, 22241A, 30329, and 22248A.

¹⁹ For the process of transcribing conversations into typed and encrypted reports, *see* the testimony of Witness RM-279 at T. 13314.

²⁰ Documents bearing Rule 65 *ter* numbers 21009C, 21164B, 21162D, 20952C, 21087DD, and 21088E. *See* Motion, para. 7. For the document bearing Rule 65 *ter* number, 21168D, *see supra* para. 5.

²¹ Response, para. 7.

²² T. 106.

²³ T. 13315-13316.

9. With regard to additional Defence objections against the admission of the remaining six typed reports, the Chamber recalls that demonstrating good cause for not tendering the complete notebooks, as argued in the Response, is not a condition for the admission of parts thereof.²⁴ In fact, the Chamber considers this to be in line with judicial economy and the Chamber's guidance to limit tendered material to what the Parties intend to rely upon.²⁵ If the Defence requires complete notebooks into evidence, the Chamber will consider the same if requested. As regards the Defence's objections relating to "ample difference between admitted and proffered material in terms of *dates*" and to "deficiency of proffered material", the Chamber understands this to relate to the objection addressed in the previous paragraph. The Chamber does not see, in the absence of more specific submissions from the Defence, an "ample difference" between the materials nor any deficiency in the proffered material in this regard. The Chamber therefore finds that these Defence objections are without merit.

10. With regard to the relevance of the remaining six typed reports, referred to above in paragraph 7, the Chamber considers that their relevance to the Indictment was sufficiently established when the handwritten intercept transcripts were admitted into evidence.²⁶ Moreover, the Chamber considers the identification of dates pertaining to the admitted intercept transcripts to be relevant to establishing the activities of Serb forces during and after the fall of Srebrenica, and thus more generally to the alleged JCE to eliminate the Bosnian Muslims in Srebrenica. The Chamber is therefore satisfied that the six typed reports are sufficiently relevant to the Indictment.

11. Turning to the probative value of the six typed reports, the Chamber notes that they originate from the same intercepting unit and location, and follow the same report numbering, as several other typed intercept reports that were commented upon by, and admitted through, Witness RM-279.²⁷ Moreover, the Chamber has taken judicial notice of the authenticity of the admitted handwritten transcripts of conversations contained in the documents bearing Rule 65 *ter* numbers 21009C, 20952C, and 21087DD.²⁸ Furthermore, the documents bearing Rule 65 *ter* numbers 21009C, 21164B, and 21162D are cumulative with the testimony of witness Richard Butler.²⁹ The Chamber is therefore satisfied that the six typed reports are of probative value to the alleged JCE to eliminate the Bosnian Muslims in Srebrenica, as charged in the Indictment. For the reasons set out above, the Chamber will admit into evidence the documents bearing Rule 65 *ter* numbers 21009C, 21164B, 21162D, 20952C, 21087DD, and 21088E pursuant to Rule 89 (C) of the Rules.

²⁴ For the Defence's objection, *see* Response, para. 8.

²⁵ T. 106.

²⁶ *See* First Decision, paras 23-24 and T. 15112, 16460, 16462.

²⁷ *See* e.g. P1620, P1666, and P1667.

²⁸ First Decision, para. 17.

²⁹ For P1319, *see* T. 16355; For P2139, *see* T. 16459; For P2140, *see* T. 16461.

2. Dated Transcript of an Admitted Summary

12. In addition to the six typed reports of admitted handwritten intercept transcripts, the Prosecution seeks the admission of the document bearing Rule 65 *ter* number 20951C, which it submits is a dated and complete transcript of the same conversation that is summarised in P1231.³⁰ The Chamber notes that the proffered version contains an intercepted conversation between the same persons who are identified in P1231, the substance of the conversation is similar, and the time of interception appears to match. However, the Chamber notes that the English translation for the proffered version is only partial and does not include succeeding intercepted conversations that appear in the original BCS language document. Provided that the admissibility criteria are met, the Chamber will admit into evidence only the translated portions of the document, namely conversation number 561 found on BCS ERN 0320-5245. With regard to the relevance of the proffered intercept, the Chamber notes that it comprises a conversation recorded by the BiH State Security Services on 12 July 1995 involving a high-ranking VRS officer. With regard to probative value of the proffered transcript, the Chamber recalls that it has taken judicial notice of the authenticity of the summary contained in P1231.³¹ For the reasons set out above, the Chamber finds the document bearing Rule 65 *ter* number 20951C relevant to and probative of the alleged JCE to eliminate the Bosnian Muslims in Srebrenica, as charged in the Indictment, and admits into evidence the portion of the proffered document comprising conversation number 561 found on BCS ERN 0320-5245 pursuant to Rule 89 (C) of the Rules.

3. Additional Page to Admitted Intercept Transcript

13. The Prosecution further seeks leave to add a page to exhibit P1394 in order to establish its date.³² The Chamber notes in this regard that the proffered page included in Annex A to the Motion has been redacted to include only the date, the interception location, and the confidentiality status of the report. However, it is clear from the ERN 0320-1752, pertaining to the proffered page, that this page immediately precedes the pages contained in P1394, namely ERN 0320-1753-0320-1754. Therefore, the Chamber is satisfied that the proffered page pertains to the same transcription sequence as P1394, and is therefore relevant to establishing its date.³³ Noting further that the Defence has not objected to the addition, the Chamber grants the requested leave to add page ERN 0320-1752 to exhibit P1394.

³⁰ Motion, para. 8.

³¹ First Decision, para. 17.

³² Motion, para. 9.

³³ With regard to the relevance of establishing dates of intercept reports, the Chamber refers to its finding in *supra* para. 10. The Prosecution submits that it will provide an unredacted version should the Chamber or the Defence

4. Additional Notebook Pages

14. As a general observation with regard to the authenticity and reliability of the intercept notebooks, the Chamber notes that it has received evidence from Witness RM-279 who, *inter alia*, authenticated some of the notebooks.³⁴ With regard to the Defence's argument, that issues of authenticity and reliability pertaining to material tested in court cannot be conflated with authenticity and reliability of proffered material not tested in court, the Chamber notes that the proffered notebook material and the notebook material in evidence originate from the same body of evidence, and the Prosecution's request only concerns additional pages. The Chamber further notes that it has received written evidence from witness Stephanie Frease pertaining to the authenticity and reliability of the notebooks.³⁵ For the foregoing reasons, the Chamber finds this Defence's objection to be without merit.

15. With regard to the Defence's objections against the admission of the additional notebook pages, which are tendered for the purpose of establishing the dates of five admitted intercepts, the Chamber finds merit in the Defence's observation that the Prosecution has had the opportunity to tender the additional pages into evidence with witnesses in court. However, the fact that the Prosecution has failed to do so does not, in the Chamber's view, amount to a bar to admission in this instance. Rather, the Chamber considers this to pertain to the weight to be attributed to the pages in light of the totality of the evidence. With regard to the Defence's objection that the Prosecution fails to show good cause for tendering the additional pages at this late stage, the Chamber recalls that good cause is not a condition for the admission of evidence pursuant to Rule 89 (C) of the Rules. Noting further the purpose for which the additional notebook pages are tendered, the Chamber considers that their admission would impose only a limited additional burden on the Defence, and therefore finds the Defence's objections in this regard to be unconvincing.

16. With regard to the notebook extracts bearing Rule 65 *ter* numbers 22238A and 22249A, that are tendered for the purpose of establishing the dates of P1236 and P1280, the Chamber notes that, based on the ERN ranges, the proffered pages are the preceding pages to the admitted intercepts, respectively. Moreover, in order to establish that the dates contained in the proffered pages pertain to the conversations comprised in the admitted intercepts, the Chamber notes that, in addition to the dates, entries are still visible on the proffered pages which appear to correspond with the

require it. For the reasons set out in paragraph 13, the Chamber does not require an unredacted version, and notes that the Defence has also not made such a request.

³⁴ See e.g. T. 13322, 13334, 13336, 13571-13572.

³⁵ Decision on Prosecution Twenty-Fifth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 20 December 2013.

conversations comprised in the admitted intercepts. The conversations included in the tendered pages between the date and the relevant corresponding conversations have been redacted, and the Prosecution proposes to include only the information necessary for the dating of the relevant admitted but undated intercepts.³⁶ Provided that the admissibility criteria for these additional notebook extracts are met, the Chamber will instruct the additional pages to be added to the admitted intercepts in their redacted format, as proffered.

17. With regard to the relevance of the extracts bearing Rule 65 *ter* numbers 22238A and 22249A, the Chamber refers to its findings in paragraph 10 above. With regard to their probative value, the Chamber recalls that it has taken judicial notice of the authenticity of the two admitted exhibits (P1236 and P1280) that originate from the same notebooks as the two proffered extracts, respectively. Moreover, the Chamber notes that witness Richard Butler's testimony is cumulative with the proffered pages.³⁷ For the reasons set out above, the Chamber admits the extracts bearing Rule 65 *ter* numbers 22238A and 22249A into evidence pursuant to Rule 89 (C) of the Rules in accordance with paragraph 16 above.

18. With regard to the notebook extract bearing Rule 65 *ter* number 22241A, the Chamber notes that it is tendered together with the document bearing Rule 65 *ter* number 30329, which is a typed report of an intercept transcript, dated 11 July 1995.³⁸ The proffered notebook extract appears to contain, first, the same conversation that is contained in the document bearing Rule 65 *ter* number 30329 and, following that, what appear to be the same conversations that are contained in P1237 and P1239, in sequence. What appears to be the beginning of the conversation contained in P1239 is included in the English translation of the proffered extract, but it is not included in the BCS original, which has been redacted to exclude the contents of P1239. From the ERN ranges pertaining to the proffered extract, P1237, and P1239, it is however clear that the conversations in fact appear in sequence in the notebook. Provided that the admissibility criteria for the proffered extract is met, the Chamber will instruct (a) the Prosecution to upload into eCourt both language versions of the proffered extract, containing in addition the content of what is currently P1239, and (b) the Registry to subsequently replace exhibits P1237 and P1239 with the newly uploaded version of the document bearing Rule 65 *ter* number 22241A.

³⁶ Motion, para. 10.

³⁷ See T. 16260, 16304.

³⁸ See also *supra* paras 3-4. The Chamber notes that the correct Rule 65 *ter* number of admitted exhibit P1237 is 20937A. In reference to the Prosecution submission regarding the ERN ranges of the proffered documents, the Chamber notes that the correct ERN range for the notebook extract bearing Rule 65 *ter* number 22241A is 0077-8873-0077-8878, and will consider the Prosecution's request as such.

19. The Prosecution submits that, since the first conversation in the proffered notebook extract is reported, in document bearing Rule 65 *ter* number 30329, at 18:45 hours on 11 July 1995, and the following conversations in the extract are timed 13:45 hours and 14:40 hours respectively, it “can be deduced” that these conversations, contained in P1237 and P1239, were intercepted on 12 July 1995.³⁹ The Chamber considers that the proffered notebook extract relates to establishing the sequence of interception, while the document bearing Rule 65 *ter* number 30329 relates to the establishment of a date pertaining to that sequence.⁴⁰

20. The Chamber recalls in this regard the testimony of Witness RM-279 who testified, *inter alia*, that the date in the notebooks was inserted when a new entry started, and this was followed by the sequence of recorded conversations until the end of that particular day.⁴¹ The Prosecution submits that: “Establishing the date of the intercept requires a review of the pages in the notebook preceding the relevant intercept so as to arrive at the page that notes the date on which the subsequent intercepts were recorded.”⁴² The Chamber notes that, in the proffered notebook extract, there is no date inserted between the first two conversations, at 18:43 hours and 13:45 hours, respectively.⁴³ However, the fact that a new date, 12 July 1995, was not entered between these recorded conversations does not, in the Chamber’s view, deprive the proffered notebook extract of its probative value nor does it suggest that the conversations were not recorded in sequence. Considering that the sequence of interception, taken together with the date 11 July 1995 pertaining to the first conversation in the sequence, may assist the Chamber in dating the conversations contained in P1237 and P1239, the Chamber finds the documents bearing Rule 65 *ter* numbers 22241A and 30329, taken together, relevant to the activities of Bosnian Serb forces during the fall of Srebrenica.

21. Turning to the probative value of the document bearing Rule 65 *ter* number 22241A, the Chamber notes that it originates from the same body of evidence as P1237 and P1239. With regard to the document bearing Rule 65 *ter* number 30329, the Chamber notes that it corresponds in form to several intercept reports admitted through Witness RM-279.⁴⁴ For the reasons set out above, the Chamber finds the documents bearing Rule 65 *ter* numbers 22241A and 30329 relevant to and probative of the alleged JCE to eliminate the Bosnian Muslims in Srebrenica, as charged in the

³⁹ Motion, para. 10.

⁴⁰ Witness RM-279 testified on 25 June 2013 that reports were compiled in sets, and conversations were typed one after the other. See T. 13326-13327.

⁴¹ T. 13326-13327.

⁴² Motion, para. 10.

⁴³ Document bearing Rule 65 *ter* number 22241A. The Chamber notes that the first conversation in the document is timed at 18:43 hours, while what appears to be the same conversation in document bearing Rule 65 *ter* number 30329 is timed at 18:45 hours. The Chamber will not consider this discrepancy for the purpose of admission.

⁴⁴ See *supra* note 27.

Indictment, and admits these documents into evidence pursuant to Rule 89 (C) in accordance with paragraph 18 above.⁴⁵

22. With regard to the notebook extract bearing Rule 65 *ter* number 22248A, tendered for the purpose of establishing the date of P1416 as 17 July 1995, the Chamber notes that the only visible date in the proffered extract is 16 July 1995, and no page that would note the date of subsequent intercepts as 17 July 1995 is contained therein. However, for the same reasons given above in paragraph 20, the Chamber considers that the proffered document may assist the Chamber in establishing the activities of Serb forces during and after the fall of Srebrenica. With regard to probative value, the Chamber notes that the proffered document originates from the same body of evidence as P1416, which is authenticated by Witness RM-275.⁴⁶ For the foregoing reasons, the Chamber finds the proffered extract relevant to and probative of the alleged JCE to eliminate the Bosnian Muslims in Srebrenica, as charged in the Indictment, and will admit it into evidence pursuant to Rule 89 (C) of the Rules.

5. Croatian Army Sourced Intercepts

23. With regard to the Croatian Army sourced intercepts, proffered documents bearing Rule 65 *ter* numbers 25072, 25077, and 27948, the Chamber recalls that they were tendered in the Prosecution's Bar Table Motion for the Admission of Intercepts, filed on 2 October 2012, and the Chamber declined to take judicial notice of their authenticity.⁴⁷ In the First Decision, the Chamber deferred any decision on their admission until a decision on the judicial notice of authenticity has been taken.⁴⁸ The Chamber did however establish the relevance of the documents bearing Rule 65 *ter* numbers 25072 and 25077.⁴⁹

24. With regard to the relevance of the intercept bearing Rule 65 *ter* number 27948, the Chamber notes that it appears to contain a brief conversation between the Accused and General Manojlo Milovanović on 16 July 1995 where the Accused "expected Milovanović to make him happy with the 'new'(?)". The Prosecution submits that the intercept is relevant as it corroborates previously admitted intercept P1657, which appears to contain a conversation between the Accused and a person named "Mane" on 16 July 1995 where the Accused asks if there is any chance to make

⁴⁵ The Chamber notes that the Prosecution only relies on the document bearing Rule 65 *ter* numbers 30329 to the extent that it assists in dating exhibits P1237 and P1239, but does not appear to indicate that it will redact the document. *See* Motion, para. 19. In order to be able to maintain the connection between the documents bearing Rule 65 *ter* numbers 30329 and 22241A, and exhibits P1237 and P1239, established in *supra* para. 19, the Chamber admits into evidence the unredacted document bearing Rule 65 *ter* number 30329.

⁴⁶ *See* P2904, pp. 1-3.

⁴⁷ First Decision, para. 19.

⁴⁸ First Decision, paras 13, 20.

⁴⁹ First Decision, paras 25, 28.

him happy “with a new one tomorrow.”⁵⁰ Considering that the intercepts appear to have been recorded on the same day and the conversations are similar, the Chamber finds the intercept bearing Rule 65 *ter* number 27948 relevant to the alleged JCE to eliminate the Bosnian Muslims in Srebrenica, as charged in the Indictment.

25. As to the probative value of the Croatian Army sourced intercepts, the Prosecution argues that the testimony of Witness RM-506 establishes their authenticity and reliability.⁵¹ The Defence objects to their admission on the ground that their reliability has not been tested in court, and their admission from the bar table is therefore not appropriate. In this regard, the Chamber notes that Witness RM-506 gave oral evidence before this Chamber relating to the procedure and methods for intercepting communications during the war, including the accuracy of the process and the protocols in place for the use of symbols, the identification of speakers, and the audit of intercept operators.⁵² Contrary to the Prosecution’s submissions, the Chamber does not see “independent indicia of reliability” in the three intercepts.⁵³

26. However, the Chamber notes that the documents bearing Rule 65 *ter* numbers 25072 and 25077 are included in exhibit P1755, which is a list, under seal, of intercepts marked and signed by Witness RM-506, and admitted, in *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T.⁵⁴ In exhibit P1754, under seal, an excerpt of Witness RM-506’s testimony in *Tolimir*, the witness confirms the intercepts’ provenance and authenticity.⁵⁵ The content of the document bearing Rule 65 *ter* number 25077 is also cumulative with other admitted evidence before the Chamber.⁵⁶ With regard to the intercept bearing Rule 65 *ter* number 27948, the Chamber notes that it is not contained in P1755, but its content is cumulative with other evidence received by the Chamber.⁵⁷ Moreover, all three intercepts appear to correspond in form to a number of intercepts admitted through Witness RM-506.⁵⁸ The Chamber is satisfied by the foregoing reasons that the three intercepts are sufficiently probative of the alleged JCE to eliminate the Bosnian Muslims in Srebrenica, as charged in the Indictment.⁵⁹ Based on the Prosecution’s Bar Table Motion for the Admission of

⁵⁰ Motion, para. 14; P1657.

⁵¹ Motion, para. 12.

⁵² T. 14315-14316, 14325, 14362-14363, 14380-14385; P1754.

⁵³ Motion, para. 12.

⁵⁴ See P1755. Documents bearing Rule 65 *ter* numbers 25072 and 25077 are documents bearing Rule 65 *ter* numbers 05573 and 05589 in *Tolimir*, respectively.

⁵⁵ See P1754, pp. 8-9.

⁵⁶ See P1138 and the testimonies of Witness RM-294 and Robert Franken at T. 9895-9903, 10745.

⁵⁷ See P1657 and the testimony of Witness RM-316 at T. 13618, 13674-13676.

⁵⁸ See e.g. P2235-P2237.

⁵⁹ On 1 October 2013 at T. 17708, the Prosecution indicated that it preserves the ability to call Witness RM-509 if the Chamber again denies the admission into evidence of the documents bearing Rule 65 *ter* numbers 25072 and 25077. Having determined these documents admissible, the Chamber understands that the Prosecution will not adduce the evidence of Witness RM-509.

Intercepts, filed on 2 October 2012, and the evidence of Witness RM-506, it is also clear to the Chamber how they fit into the Prosecution's case.⁶⁰ For the foregoing reasons, the Chamber admits the documents bearing Rule 65 *ter* numbers 25072, 25077, and 27948 into evidence pursuant to Rule 89 (C) of the Rules.

6. Remaining Intercepts

27. As regards the Prosecution's request for admission of the documents bearing Rule 65 *ter* numbers 21250A and 21250B, the Chamber notes that the former is a handwritten undated intercept at 18:44 hours that appears to comprise a communication between Lieutenant Colonel Popović and a certain Mihalić concerning the arrival of fuel, while the latter document is a typed report, dated 22 September 1995, comprising what appears to be the same conversation. In the First Decision, the Chamber took judicial notice of the authenticity of both documents, but denied their admission on the ground that the Prosecution's submissions on relevance did not appear to relate to the proffered intercept.⁶¹

28. The Defence objects to the admission of these two documents on the ground that the Prosecution's request is moot because the Chamber denied their admission in the First Decision.⁶² The Chamber recalls that the documents were denied admission without prejudice, and thus finds this objection to be without merit.⁶³ The Defence moreover incorporates by reference all the objections it made against other documents tendered in the Motion.⁶⁴ These objections have been addressed above and the Chamber will not consider them further.

29. The Prosecution asserts that the person identified in the two documents as Popović is the Drina Corps Chief of Security Vujadin Popović, the person identified as Mihalić is Drago Nikolić because Popović refers to him by his nickname "Niđo", and Trbić, who is mentioned in the conversation, is Milorad Trbić, Nikolić's deputy.⁶⁵ The Prosecution states that the fuel referred to in the conversation is fuel that "was allotted for the reburial of thousands of Muslim men from primary graves in a number of locations".⁶⁶ While acknowledging that the Prosecution has not tendered the documents with a witness who could substantiate its submissions related to the identity of the involved persons and the use of the fuel, the Chamber does not consider the documents *ipso*

⁶⁰ See Prosecution's Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 2 October 2012 (confidential with Confidential Annexes A, B and C), Annex A, pp. 71, 95-96.

⁶¹ First Decision, para. 27.

⁶² Response, para. 14.

⁶³ First Decision, para. 27.

⁶⁴ Response, para. 14.

⁶⁵ Motion, para. 16.

⁶⁶ *Ibid.*

facto inadmissible pursuant to Rule 89 (C), as suggested by the Defence.⁶⁷ Recalling that it remains within the Chamber's discretion to attribute weight to individual documents in light of the totality of the evidence before it, the Chamber considers that both versions of the intercept are sufficiently relevant to the alleged JCE to eliminate the Bosnian Muslims in Srebrenica and the activities of Serb forces in the aftermath of the alleged crimes charged in the Indictment.⁶⁸

30. With regard to probative value, recalling that the Chamber has already taken judicial notice of the authenticity of the documents bearing Rule 65 *ter* numbers 21250A and 21250B, the Chamber notes in addition that the latter document is in a form similar to several other typed intercept transcripts commented upon by, and admitted through, Witness RM-279. Specifically, the proffered typed report appears to originate from the same interception location, identifies the same military unit, and contains the same confidentiality status indicators as P1662 and P1663. Also several other typed intercept transcripts from another interception location, admitted through Witness RM-279, correspond in form to the report bearing Rule 65 *ter* number 21250B.⁶⁹ For the foregoing reasons, the Chamber is satisfied that the documents bearing Rule 65 *ter* numbers 21250A and 21250B are of probative value to the alleged JCE to eliminate the Bosnian Muslims in Srebrenica and the activities of Serb forces in the aftermath of the alleged crimes charged in the Indictment. The Prosecution has also demonstrated with sufficient clarity and specificity how the documents fit into its case. For the reasons set out above, the Chamber admits the documents bearing Rule 65 *ter* numbers 21250A and 21250B into evidence pursuant to Rule 89 (C) of the Rules.

C. Other Matters

31. Turning to two matters relating to the coherence of the intercept evidence before the Chamber, the Chamber first recalls that, in the First Decision, it instructed the Prosecution to ensure that the Rule 65 *ter* numbers, pertaining to the intercepts subject to that decision, clearly identify only the specific intercept and the corresponding English translation, by means of, for example, redacting portions of intercepts or entire intercepts that the Prosecution does not intend to rely upon.⁷⁰ Pursuant to the First Decision, the Registry assigned provisional exhibit numbers to the admitted exhibits, and some of the documents may have subsequently been used by the Parties in court while the documents were still being brought into compliance with the Chamber's instruction. This may have led to page references on the record that do not correspond to the final form of the

⁶⁷ Response, paras 10-11, 14.

⁶⁸ As regards the relevance of establishing the date of the intercept, *see supra* para. 10.

⁶⁹ *See e.g.* P1620, P1666, and P1667.

⁷⁰ First Decision, para. 30.

exhibits. Thus, to the extent this has occurred, the Chamber instructs the Prosecution to file a notification on the record (a) identifying any such exhibits, (b) where they have been used by the Parties in their non-finalised version, and (c) clarifying whether any portions of those exhibits have subsequently been removed from the exhibit.

32. Secondly, as the majority of the documents proffered in the present decision are typed report versions of previously admitted handwritten transcripts, the Chamber instructs the Prosecution, for the clarity of the evidentiary record, to file a chart clearly setting out where an intercept has a handwritten and a typed report version in different documents.

IV. DISPOSITION

33. For the foregoing reasons, pursuant to Rules 65 *ter* (E) (iii) and 89 (C) of the Rules, the Chamber

GRANTS the Motion in part;

GRANTS the request to add the document bearing Rule 65 *ter* number 30329 to the Prosecution's Rule 65 *ter* exhibit list;

DECLARES the Motion moot in relation to the request for the admission of the document bearing Rule 65 *ter* number 21168D;

ADMITS into evidence **UNDER SEAL** the documents bearing Rule 65 *ter* numbers 21009C, 21164B, 21162D, 20952C, 21087DD, 21088E, 22238A, 22249A, 22241A, 30329, 22248A, 25072, 25077, 27948, 21250A and 21250B;

INSTRUCTS the Prosecution to upload new versions of exhibits P1236, P1280 and P1416, including the content of Rule 65 *ter* numbers 22238A, 22249A, and 22248A, respectively, and **INSTRUCTS** the Registry to replace exhibits P1236, P1280, and P1416 with the newly uploaded versions;

GRANTS the request to add **UNDER SEAL** page ERN 0320-1752-0320-1752 to exhibit P1394, **INSTRUCTS** the Prosecution to upload a new version of exhibit P1394, including the content of ERN 0320-1752-0320-1752, and **INSTRUCTS** the Registry to replace exhibit P1394 with the newly uploaded version;

INSTRUCTS the Prosecution to, in accordance with paragraph 18 above, upload both language versions of the document bearing Rule 65 *ter* number 22241A, containing, in addition to the current

content, the entire content of P1239, and **INSTRUCTS** the Registry to subsequently replace exhibits P1237 and P1239 with the newly uploaded version of document bearing Rule 65 *ter* number 22241A;

ADMITS into evidence **UNDER SEAL** the portion of the document bearing Rule 65 *ter* number 20951C that comprises conversation number 561 found on BCS ERN 0320-5245-0320-5245;

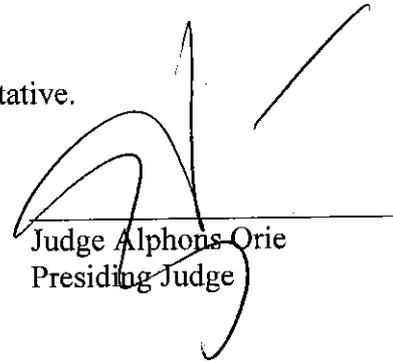
INSTRUCTS the Prosecution, to the extent that it has not done so already, to upload the documents admitted by this decision into eCourt within 14 days from the filing of this decision and to notify the Registry and Chamber when it has done so;

INSTRUCTS the Prosecution to identify admitted intercepts that may be made public and make a request to that effect within 14 days from the filing of this decision;

INSTRUCTS the Prosecution to file a discrepancy chart in accordance with paragraph 31 above and a duplicate chart in accordance with paragraph 32 above; and

REQUESTS the Registry to assign exhibit numbers to the documents admitted by this decision and inform the parties and the Chamber of the numbers so assigned.

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



Judge Alphons Orie
Presiding Judge

Dated this Twenty-Third day of January 2014
At The Hague
The Netherlands

[Seal of the Tribunal]