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06 February 2014

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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: 6 February 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: 6 February 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON THE ADMISSION OF INTERCEPTS AND
AUTHENTICATION CHARTS**

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. During the testimony of witness John Wilson from 10 to 12 October 2012, the parties tendered into evidence five intercepts bearing Rule 65 *ter* numbers 27602, 27571, 27576, 21363 and 22234.¹ These intercepts were marked for identification under exhibit numbers D75, P323, P324, P325 and P330 respectively. At that time, the general objection made by the Defence was that the authenticity of the intercepts tendered by the Prosecution had not been established.² In response, the Prosecution informed the Chamber and the Defence that it intended to lead additional evidence at later stages in the proceedings for the purpose of proving the provenance of those intercepts.³ On 19 November 2013, the Chamber informally communicated to the parties that they could make additional submissions as regards the admission into evidence of the five intercepts in question. On 20 November 2013, the Prosecution informed the Chamber, through an informal communication which has since been filed, of its submissions in connection with the question of the authenticity of D75, P323, P324, P325 and P330.⁴ On 25 November 2013, the Defence informed the Chamber, through an informal communication which was subsequently filed, of its objections to the admission into evidence of the four intercepts tendered by the Prosecution.⁵

2. Between 31 October and 1 November 2013, Witness RM-507 testified before the Chamber. His witness statement and a number of associated exhibits were admitted into evidence under seal.⁶

3. On 31 October 2013 and in connection with the testimony of Witness RM-507, the Prosecution tendered two charts into evidence ("Authentication Charts").⁷ The Authentication Charts were marked for identification, under seal, as exhibits P2566 and P2567.⁸ The Prosecution also tendered 153 intercepts from the bar table ("Bar Table Intercepts").⁹ All of the Bar Table Intercepts were marked for identification and placed under seal.¹⁰ On 4 November 2013, the Prosecution filed a notice ("Notice") which contained, as a confidential annex thereto, a table setting out the probative value and the relevance of the Bar Table Intercepts ("Table").¹¹ On 15

¹ T. 3950-3951, 3955, 3957, 3980, 4049.

² T. 3951.

³ *Ibid.*

⁴ Prosecution Notice Regarding Certain Intercepts, 18 December 2013 (Confidential).

⁵ Defence Position as to the Revisions to Intercepts Relating to RM518, 16 December 2013 (Confidential).

⁶ T. 18680-18681, 20072-20079.

⁷ T. 18547, 18552.

⁸ T. 18549, 18553.

⁹ T. 18929-18930.

¹⁰ Internal Memorandum from the Registry Listing the Exhibit Numbers Reserved Pursuant to the Trial Chamber's Oral Decision of 7 November 2013, 12 November 2013 (Confidential).

¹¹ Prosecution Notice Regarding Intercept Chart in Connection with RM507, 4 November 2013 (Confidential).

November 2013, the Defence filed its response to the Prosecution's Notice ("Response").¹² On 22 November 2013, the Prosecution filed its request for leave to reply to the Defence's Response pursuant to Rule 126 *bis* ("Request for Leave to Reply").¹³ The Prosecution attached its Reply to the Response as a confidential annex to its Request for Leave to Reply.¹⁴

4. On 28 November 2013, the Parties made further submissions in court in connection with the admission into evidence of the intercepts tendered through witness John Wilson, the Bar Table Intercepts and the Authentication Charts.¹⁵

5. On 30 January 2014, following the Chamber's instructions,¹⁶ the Prosecution tendered redacted versions of the Authentication Charts.¹⁷ The Prosecution also withdrew its request for the admission into evidence of two of the Bar Table Intercepts, namely P2716 and P2763.¹⁸

II. APPLICABLE LAW

6. The Chamber recalls and refers to the applicable law governing the admission of documents from the bar table as set out in its previous decisions.¹⁹

III. DISCUSSION

A. Preliminary Issues

7. As a preliminary matter, the Chamber considers the large number and volume of the documents that are being tendered into evidence. The Chamber also considers the Prosecution's submission that there is a manifest misunderstanding on the part of the Defence in respect of the nature of the material that the Prosecution is tendering into evidence. In light of these considerations and because of the prejudice that would be caused to the Prosecution if the alleged misconception on the part of the Defence leads to the denial of the admission of the documents in question, the Chamber decides to grant the Request for Leave to Reply.

¹² Defence Response to Prosecution Notice Regarding Intercept Chart in Connection with RM507, 15 November 2013 (Confidential).

¹³ Prosecution Request for Leave to Reply to Defence Response to Prosecution Notice Regarding Intercept Chart in Connection with RM507, 22 November 2013 (Confidential).

¹⁴ Prosecution Reply to Defence Response to Prosecution Notice Regarding Intercept Chart in Connection with RM507, 22 November 2013 (Confidential).

¹⁵ For the parties' submissions, the Chamber refers to T. 20058-20069, 20079-20103.

¹⁶ T. 20102-20103.

¹⁷ Prosecution Motion to Tender Redacted Authentication Charts in Relation to RM507, 30 January 2014 (Confidential), paras 6-11, 14.

¹⁸ *Ibid.*, paras 12, 15.

¹⁹ Decision on Prosecution First Motion to Admit Evidence from the Bar Table: Mladić Notebooks, 25 September 2012, paras 4, 12; Decision on Prosecution's Bar Table Motion for the Admission of Intercepts: Srebrenica Segment, 2 May 2013, paras 7-8.

8. Moreover, the Chamber finds that the Defence's objections to the admissibility of the Table are misplaced since the Prosecution is not seeking to tender that document into evidence but is merely using it in order to explain the probative value and the relevance of each of the Bar Table Intercepts. The Chamber will therefore not consider those objections any further.

9. Furthermore, the Chamber will not consider the admissibility of P2716 and P2763. As for the Authentication Charts currently marked for identification as P2566 and P2567, the Chamber will only consider them as part of appraising the probative value of their redacted versions.

B. The Intercepts

1. D75, P323, P324, P325 and P330

a. *Relevance*

10. The five intercepts currently marked for identification as D75, P323, P324, P325 and P330 describe a number of conversations which either directly involve the Accused or refer to him. The contents of these conversations pertain to, *inter alia*, the general situation of the forces of the Army of Republika Srpska ("VRS") which were positioned around the city of Sarajevo; the use of artillery against non-Serb civilian areas in and around the city of Sarajevo; the availability of heavy weapons and snipping rifles fitted with silencers among the weaponry employed by the VRS; the situation in and around the Sarajevo airport; and the evacuation of the Serb forces and all their equipment from the Viktor Bubanj Barracks as part of a ceasefire agreement between the VRS and the Bosnian Muslim forces. For these reasons, the Chamber finds that the five intercepts are relevant to this case.

b. *Probative value*

11. The Chamber notes that one witness commented on D75 and testified that one of the voices in the corresponding audio recording belonged to the Accused.²⁰ On this basis, the witness concluded that the intercept is authentic.²¹ The Prosecution does not oppose the admission of this document.

²⁰ T. 5041-5042; P1596, pp. 3-4.

²¹ *Ibid.*

12. The Chamber will now turn to the authentication evidence provided by Witness RM-507 in relation to P323, P324, P325, and P330.²²

13. The Defence's first objection is that the authentication evidence of Witness RM-507 is unreliable because he was not present when the conversations described in P323, P324, P325, and P330 were intercepted. In this respect, the Chamber considers that according to his testimony, when possible, Witness RM-507 listened to the audio recordings of the intercepted conversations and compared the content of those recordings with the transcripts.²³ On the basis of these comparisons, he then affirmed the authenticity and accuracy of the transcripts.²⁴ Where no corresponding audio recording was available, Witness RM-507 inspected and verified the authenticity of the copy of the handwritten transcript of the intercept.²⁵ Furthermore, in his statement, Witness RM-507 provided a detailed account of the locations and the equipments that were used to intercept communications, and described the methodology by which conversations were intercepted, transcribed, and ultimately stored.²⁶

14. In the context of determining the reliability of the authentication evidence provided by Witness RM-507, the Chamber also considers that the testimony of John Wilson refers to certain events which closely correspond with the events discussed in a number of the conversations that are described in the intercepts in question.²⁷ Having made these observations, the Chamber finds that the mere fact that Witness RM-507 was not present when the conversations described in P323, P324, P325, and P330 were intercepted does not by itself preclude RM-507's authentication of those intercepts.

15. The Defence further submits that of the four intercepts tendered by the Prosecution, only P325 is accompanied by a corresponding audio recording and that the absence of audio recordings for the other three intercepts raises questions about Witness RM-507's ability to certify their corresponding transcripts as being genuine and accurate. The Chamber notes that audio recordings for P323 and P324 are in fact available and have been provided to the Defence and the Chamber.²⁸ This allows the Defence to verify the accuracy of the transcripts of the two intercepted

²² P323 and P324 are listed as items 11 and 12 respectively in the document which has been marked for identification as P2567 whereas P325 and P330 are listed as items 563 and 654 respectively in the document that is marked for identification as P2566.

²³ T. 18546.

²⁴ *Ibid.*

²⁵ P2565 (Amalgamated Statement of Witness RM507, 22 February 2012), para. 79.

²⁶ *Ibid.*, paras 24, 27-41, 46-47.

²⁷ Most notably the conversation described in P324 and at least three of the conversations described in P330.

²⁸ T. 20092.

conversations in question. With regard to P330, the Chamber considers that the absence of corresponding audio recordings is not a bar to admission but may be a factor which the Chamber will bear in mind when attributing weight to the intercepts at a later stage.

16. The Defence also submits that according to Witness RM-507's testimony, he did not use any machinery to corroborate the authenticity of the intercepts and that the practice of authentication by ear effectively undermines his own claim that voices are like fingerprints and can therefore be recognised by their characteristic imprints. The Chamber notes, however, that Witness RM-507's claim does not imply that the failure to employ specialised machinery in any authentication process will have the inevitable consequence of invalidating the outcome of that process. The Chamber instead interprets his evidence to suggest that as with the method of authentication by specialized machinery, the process of authentication by ear also seeks to identify voices on the basis of their unique distinguishing features.

17. In addition, the Defence alleges that in June 1996, two members of the organ responsible for recording, transcribing and storing the intercepts, namely the Bosnia-Herzegovina Agency for Investigation and Documentation ("AID"), were involved in the abduction and torture of one of their colleagues.²⁹ The Defence, moreover, refers to the murder of the assistant director of the AID and alleges that this murder was carried out by individuals from or affiliated with the AID.³⁰ The Defence further alleges that in another instance, an AID investigator was involved in the torture of another AID member and that the AID employed certain individuals who were skilled in forgery of official documents.³¹ Finally, the Defence raises the general objection that collaboration between the AID and the Iranian Intelligence Service "is reflective of the murky methods of AID."³² The Defence has hardly furnished the Chamber with any evidence in support of its allegations. More importantly, the Chamber does not see how these allegations, even if proven to be true, would impel the conclusion that the intercepts that were recorded, transcribed and stored by the AID are devoid of any probative value for the purpose of admission. The Chamber will nevertheless consider the Defence's position with respect to the AID when attributing weight to the intercepts at a later stage. With respect to the general objection raised by the Defence, the Chamber concludes that by placing emphasis on the alleged collaboration between the AID and a foreign entity, the

²⁹ T. 18645-18646.

³⁰ T. 18648-18649, 20096-20097.

³¹ T. 18655, 18657-18658, 18661-18663, 20096-20097.

³² Defence Position as to the Revisions to Intercepts Relating to RM518, 16 December 2013 (Confidential), p. 7.

Defence is in effect contesting the lawfulness of the manner in which the intercepts were made.³³ However, the Chamber finds that the Defence has not demonstrated how the admission of the material in question amounts to conduct which is described in Rule 95 and Rule 89(D) of the Rules. In other words, the Defence has failed to show that the admission of the intercepts is antithetical and seriously damaging to the integrity of the proceedings and that their probative value is outweighed by the need to ensure a fair trial.

18. In the light of the foregoing, the Chamber finds that documents D75, P323, P324, P325, and P330 are relevant and of probative value.

2. The Bar Table Intercepts

a. *Relevance*

19. The Defence submits that many of the Bar Table Intercepts pertain to a time-frame which is outside the Indictment period. The Defence refers to 12 May 1992 as the beginning of the Indictment period and alleges that before that date, the Accused was not even present in Bosnia-Herzegovina.³⁴ The Defence's second objection is that many of the intercepted conversations do not involve the Accused whatsoever.³⁵ However, the Defence refers to merely three intercepts as instances where in its view the content of the intercepted conversation bears no connection with the Accused.³⁶

20. The Chamber observes, firstly, that according to the Indictment, the Accused was a member "of an overarching joint criminal enterprise which lasted from at least October 1991 until 30 November 1995."³⁷ For this reason, the Chamber is satisfied that contrary to the Defence's assertion, the intercepts dating from October 1991 onwards may be relevant to the crimes charged in the Indictment. As regards those intercepts which date prior to October 1991,³⁸ the Chamber observes that the mere fact that a particular piece of evidence is dated or refers to events outside of a specific time-frame that is mentioned in the Indictment does not necessarily make it irrelevant. After having given careful consideration to these intercepts as well as those that according to the

³³ In its oral submissions, the Defence claimed that the intercepts tendered by the Prosecution "were all collected by abuse of authority." See T. 20097.

³⁴ T. 20080-20081.

³⁵ T. 20083-20086.

³⁶ T. 20086-20088. The intercepts which are specifically contested by the Defence are P2632, P2639 and P2643.

³⁷ Fourth Amended Indictment, 16 December 2011, para. 5.

³⁸ These intercepts are P2632, P2633, P2634, P2635, P2636, P2637, P2638, P2639, P2640, P2641, P2642, P2643, P2644, P2645, P2646, and P2647.

Defence do not involve the Accused, the Chamber finds that they relate to, *inter alia*, (1) Radovan Karadžić's purported ability to influence and control Serb ministers within the government of the Republic of Bosnia-Herzegovina; (2) the alleged collaboration between Radovan Karadžić and Slobodan Milošević for the creation of an exclusively Serb state; (3) the preparations allegedly made for the establishment of Serb-dominated institutions in municipalities that were earmarked for inclusion in this envisioned Serb state; (4) the relationships, communications and coordination efforts between members of the alleged overarching joint criminal enterprise ("JCE") other than the Accused; (5) the role and the composition of the Yugoslav People's Army prior to the outbreak of the war; and, (6) the efforts geared towards the alleged training, arming and mobilising the Bosnian Serb population in Bosnia-Herzegovina. The intercepts in question, therefore, concern matters that are relevant to the charges in the Indictment.

21. The Defence has raised no specific objections with regard to the remaining Bar Table Intercepts. Having reviewed them and the Prosecution's submissions, the Chamber finds that they are relevant to a number of issues arising from the Indictment, including: (1) Radovan Karadžić's oversight and control over municipal and regional authorities; (2) the relationship and logistical coordinations between the members of the alleged JCEs, in particular, the Accused, Radovan Karadžić, Slobodan Milošević, Biljana Plavšić, Nikola Koljević, and Momčilo Krajišnik; (3) the relationship that other alleged members of the JCEs had with municipal and regional authorities; (4) the Accused's control over the VRS; (5) the Accused's alleged involvement with a campaign of indiscriminate shelling and sniping in Sarajevo; (6) Radovan Karadžić's purported control over those forces holding United Nations personnel as hostages; (7) the alleged participation of the Bosnian Serb leadership in procurement of arms and ammunitions from Serbia; (8) Radovan Karadžić's relationship with the Accused; (9) the alleged expulsion of non-Serbs after the takeover of territory by Serb forces; (10) the alleged involvement of the Bosnian Serb leadership in the exchange of prisoners; and (11) the awareness on part of the members of the Bosnian Serb political and military leadership that the international community would probe their actions.

b. Probative Value

22. The Chamber has reviewed each of the Bar Table Intercepts and has, in the previous section of this decision, rejected all the objections raised by the Defence as regards the authentication evidence provided by Witness RM-507. The Chamber is satisfied that the Bar Table Intercepts are of probative value.

c. *How the Intercepts Fit Into the Prosecution's Case*

23. In its Table, the Prosecution made submissions in order to explain how each Bar Table Intercept connects with the various aspects of its case. Having reviewed those submissions, the Chamber is satisfied that the Prosecution has indicated, with sufficient clarity and specificity, how each intercept fits into its case.

C. The Authentication Charts

a. *Relevance*

24. The Authentication Chart which bears the Rule 65 *ter* number 30405a includes entries for P325 and P330 as well as for 139 of the Bar Table Intercepts. For each of those entries, there are a number of columns that provide, *inter alia*, the Rule 65 *ter* number that was assigned to the intercept in *Prosecutor v. Karadžić*, the Rule 65 *ter* number that has been assigned to the intercept in the present case, a brief description of the intercepted conversation, its date, the name of the interlocutors as identified by Witness RM-507, the comments of Witness RM-507, the audio reference numbers as well as hyperlinks to the eCourt transcripts and the audio recording of the intercepted conversation. The Authentication Chart which bears the Rule 65 *ter* number 30445a is largely patterned after 30405a. It includes entries for P323, P324 and 12 Bar Table Intercepts. The Chamber considers that the Authentication Charts assist in the understanding of the intercepts dealt with in this decision. For this reason, the Chamber finds them to be relevant to the crimes charged in the Indictment.

b. *Probative Value*

25. The Authentication Charts, currently marked for identification as P2566 and P2567, are dated and signed by Witness RM-507. During his testimony, the witness confirmed that the charts listed the intercepts which he had listened to and authenticated.³⁹ For these reasons, the Chamber finds that the Authentication Charts and their redacted versions have probative value.

IV. DISPOSITION

26. For the foregoing reasons, pursuant to Rules 89 and 126 *bis* of the Rules, the Chamber

GRANTS the Prosecution's Request for Leave to Reply;

³⁹ T. 18540-18547, 18549-18550.

ADMITS into evidence the following documents currently marked for identification as:

D75; P323; P324; P325; P330;

ADMITS into evidence, under seal, the following documents currently marked for identification as:

P2632-P2715; P2717-2762; 2764-P2783;

INSTRUCTS the Registry to mark P2566 and P2567 as not admitted;

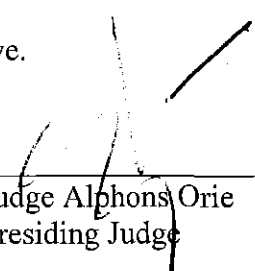
NOTES the withdrawal of the documents currently marked for identification as P2716 and P2763 and consequently **INSTRUCTS** the Registry to vacate those exhibit numbers;

ADMITS into evidence, under seal, the documents bearing Rule 65 *ter* numbers 30405a and 30445a;

INSTRUCTS the Registry to assign exhibit numbers to the documents bearing Rule 65 *ter* numbers 30405a and 30445a and inform the Chamber, the Prosecution and the Defence of such exhibit numbers; and

INSTRUCTS the Prosecution to identify which of the Bar Table Intercepts and which of the two redacted Authentication Charts may be made public and make a request to that effect within two weeks of the filing of this decision.

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



Judge Alphons Orie
Presiding Judge

Dated this sixth day of February 2014
At The Hague
The Netherlands

[Seal of the Tribunal]