

IN TRIAL CHAMBER No. 3

Before: Judge Iain Bonomy, Presiding  
Judge Christoph Flügge  
Judge Michèle Picard

Acting Registrar: Mr. John Hocking

Date Filed: 6 February 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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MOTION FOR ORDER PURSUANT TO RULE 70

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The Office of the Prosecutor:

Mr. Alan Tieger  
Mr. Mark Harmon

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves for an order, pursuant to Rules 54 and 70, that the provisions of Rule 70 shall apply to any information provided by the United States of America in response to the request of Dr. Karadzic attached as Annex "A" to this motion.

2. The United States of America has required such an order as a condition to providing any material sought by the request, and as a condition of the interview of Ambassador Phillip Goldberg as sought by the request. Dr. Karadzic and his Legal Advisor Peter Robinson have agreed in undertakings attached as Annex B, not to disclose the information received from the United States of America without its consent.

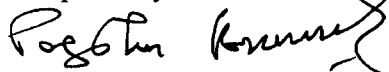
3. Therefore, it is respectfully requested that the Trial Chamber order that the provisions of Rule 70 should apply to any information, including that provided orally during the interview of Ambassador Goldberg, provided by the United States of America in response to the request of Dr. Karadzic contained in Annex "A".

4. The relevance of the material sought has already been recognized by the Trial Chamber in its *Decision on Accused's Second Motion for Inspection and Disclosure: Immunity Issue* (17 December 2008) at para. 21.<sup>1</sup> In a meeting on 4 February 2009, United States Legal Counselor Denise Manning expressed the willingness of the United States to search for and provide material responsive to the request, and to make Ambassador Goldberg available for an interview, so long as a Rule 70 order was obtained.

5. Trial Chambers in other cases have routinely granted such Rule 70 orders at the request of the accused.<sup>2</sup> Although such motions are often filed *ex parte*, Dr. Karadzic has no objection if the prosecution wishes to be heard on his motion.

Word count: 412

Respectfully submitted,



Radovan Karadzic

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<sup>1</sup> Ambassador Goldberg was present at the meeting at which the alleged "Holbrooke agreement" was entered into. Richard Holbrooke, *To End a War* at p. 341

<sup>2</sup> See i.e. *Prosecutor v Milutinovic et al*, No. IT-05-88-T, *Decision on Sainovic Motion for Order Pursuant to Rule 70* (20 February 2007)

# **ANNEX "A"**

Dr. Radovan Karadzic  
International Criminal Tribunal  
for the former Yugoslavia  
The Hague, Netherlands

11 December 2008

Government of the United States  
Washington, D.C.

Dear Sir or Madam,

Pursuant to Article 29 of the Statute of the International Criminal Tribunal for the former Yugoslavia and Rule 54 *bis* of the Rules of Procedure and Evidence, I hereby request to be provided with copies of the following material:

1. All information in the possession of the government of the United States, concerning the representations made by Richard Holbrooke about the arrest and/or prosecution of Radovan Karadzic during meetings held on 18-19 July 1996 with President Slobodan Milosevic and others in Belgrade.
2. Any recordings, transcripts, notes, minutes, or memoranda of the meetings described in item 1.
3. Any recordings, transcripts, notes, or memoranda of any telephone conversations between Richard Holbrooke and officials of the United States government made during the time of the meetings described in item 1.
4. Any recordings, transcripts, notes, or memoranda of any telephone conversations between Slobodan Milosevic and Radovan Karadzic made during the time of the meetings described in item 1.

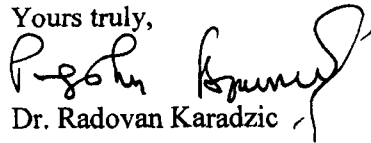
You may furnish these materials by delivering them to me at the United Nations Detention Unit in The Hague.

I further request that Ambassador Phillip Goldberg be made available to be interviewed by my legal advisor, Peter Robinson, concerning this agreement. Mr. Goldberg was one of the representatives of the United States who was present at the meeting described in item 1. On 5 December 2008, he was contacted by telephone by Mr. Robinson, but declined to discuss the matter and requested that contact be made with the U.S. State Department Legal Advisor.

Government of the United States  
--page two--

Thank you very much for your cooperation.

Yours truly,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Dr. Radovan Karadzic

## **ANNEX “B”**

**NON-DISCLOSURE AGREEMENT**

Pursuant to this Agreement and Rule 70 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (Tribunal), the United States Government (USG) agrees to make available to Peter Robinson, In his or her capacity as a member of the Defense in the case of Prosecutor v. Karadzic (Case No. IT-95-5/18-PT), certain information on a confidential basis solely for the purpose of generating new evidence.

In consideration for being granted access to such information, the Recipient agrees pursuant to this Agreement and Rule 70 to the following:

- (1) The Recipient agrees to protect the confidentiality of USG-provided information.
- (2) The Recipient agrees not to disclose such information, the source of such information, or the existence of such information by any means whatsoever, to any person other than another member of the Defense who has executed a Non-Disclosure Agreement and who is specifically authorized to have access to the information, notwithstanding any motions or orders of the Tribunal or any other entity or person, unless specifically authorized in writing by the USG.
- (3) The Recipient agrees that failure to uphold the above-stated condition by any authorized member of the Defense may result in termination of access to USG-provided information and/or other judicial or administrative relief from the Tribunal or another competent body.
- (4) The Recipient agrees that this Agreement will remain permanently binding on him or her.

Peter Robinson  
Signature of Recipient

\_\_\_\_\_  
USG Representative

5 Feb 08  
Date

\_\_\_\_\_  
Date

The Hague  
Place

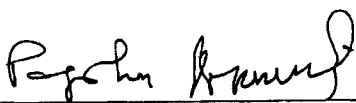
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**NON-DISCLOSURE AGREEMENT**

Pursuant to this Agreement and Rule 70 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (Tribunal), the United States Government (USG) agrees to make available to RADOVAN KARADZIC, In his or her capacity as a member of the Defense in the case of Prosecutor v. Karadzic (Case No. IT-95-5/18-PT), certain information on a confidential basis solely for the purpose of generating new evidence.

In consideration for being granted access to such information, the Recipient agrees pursuant to this Agreement and Rule 70 to the following:

- (1) The Recipient agrees to protect the confidentiality of USG-provided information.
- (2) The Recipient agrees not to disclose such information, the source of such information, or the existence of such information by any means whatsoever, to any person other than another member of the Defense who has executed a Non-Disclosure Agreement and who is specifically authorized to have access to the information, notwithstanding any motions or orders of the Tribunal or any other entity or person, unless specifically authorized in writing by the USG.
- (3) The Recipient agrees that failure to uphold the above-stated condition by any authorized member of the Defense may result in termination of access to USG-provided information and/or other judicial or administrative relief from the Tribunal or another competent body.
- (4) The Recipient agrees that this Agreement will remain permanently binding on him or her.

  
Signature of Recipient

\_\_\_\_\_  
USG Representative

06.02.2009  
Date

\_\_\_\_\_  
Date

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Place