

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-PT

IN TRIAL CHAMBER No. 3

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

Acting Registrar: Mr. John Hocking

Date: 23 March 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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MOTION FOR EXTENSION OF TIME—  
THE HOLBROOKE AGREEMENT MOTION

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The Office of the Prosecutor:  
Mr. Alan Tieger  
Mr. Mark Harmon  
Ms. Hildegard Uertz-Retzlaff

The Accused:  
Radovan Karadzic

1. Dr. Radovan Karadzic intends to bring a preliminary motion for dismissal of the Third Amended Indictment as the result of an agreement he had with Richard Holbrooke that he would not be prosecuted by the ICTY.<sup>1</sup> Because of several related issues which remain pending before the Trial Chamber and Appeals Chamber as the deadline for the filing of preliminary motions approaches, Dr. Karadzic respectfully moves for an extension of time to file his motion.

2. In order to fully prosecute his motion, Dr. Karadzic needs disclosure of information that would confirm the existence of the agreement and the authority of Mr. Holbrooke to have made it.

3. On 6 October 2008, Dr. Karadzic filed his *Motion for Inspection and Disclosure: Immunity Issue*. On 9 October 2008, the Trial Chamber denied the motion and directed Dr. Karadzic to request the material from the prosecution before filing a motion.<sup>2</sup>

4. After the prosecution refused Dr. Karadzic's disclosure request, Dr. Karadzic filed his second *Motion for Inspection and Disclosure: Holbrooke Agreement* on 6 November 2008. The Trial Chamber denied the motion on 17 December 2008,<sup>3</sup> and granted certification to appeal on 19 January 2009.<sup>4</sup>

5. Dr. Karadzic filed his appeal on 28 January 2009,<sup>5</sup> the prosecution responded on 9 February 2009<sup>6</sup>, and Dr. Karadzic replied on 24 February 2009.<sup>7</sup> The Appeals Chamber has not yet rendered a decision.

6. The issues on appeal are whether (1) any agreement not to prosecute an Accused indicted for genocide, war crimes and/or crimes against humanity before an international tribunal is invalid as a matter of international law; (2) any agreement by Mr. Holbrooke could be binding on the ICTY; and (3) the Accused was entitled to disclosure

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<sup>1</sup> This motion will supersede and render moot the Motion filed by Dr. Karadzic on 6 August 2008.

<sup>2</sup> *Decision on Accused Motion for Inspection and Disclosure* (9 October 2008)

<sup>3</sup> *Decision on Accused's Second Motion for Inspection and Disclosure: Immunity Issue* (17 December 2008)

<sup>4</sup> *Decision on Accused's Application for Certification to Appeal Decision on Inspection and Disclosure* (19 January 2009)

<sup>5</sup> *Appeal of Decision Concerning Holbrooke Agreement Disclosure* (28 January 2009)

<sup>6</sup> *Prosecution's Response to Karadzic's Appeal of Decision Concerning Holbrooke Agreement* (9 February 2009)

<sup>7</sup> *Reply Brief: Appeal of Decision Concerning Holbrooke Agreement Disclosure* (24 February 2009)

to pursue an abuse of process claim irrespective of the validity or binding nature of the agreement.<sup>8</sup>

7. On 12 December 2008, Dr. Karadzic also filed a *Motion for Interview of Defence Witness* in which he requested to interview former Republika Srpska Foreign Minister Alexa Buha, who had been present when the agreement with Holbrooke was made. The prosecution responded to the motion on 15 December 2008<sup>9</sup> and the Registrar made submissions on 24 December 2008.<sup>10</sup>

8. On 19 January 2009, the Pre-Trial Judge indicated that the Trial Chamber's decision on this motion would be deferred until after the Appeals Chamber had ruled.<sup>11</sup> The Pre-Trial Judge also suggested that perhaps Dr. Karadzic should await the outcome of the appeal before filing a motion on the merits of the Holbrooke Agreement.<sup>12</sup>

9. On 4 February 2009, Dr. Karadzic filed his *Third Motion for Disclosure: Holbrooke Agreement* in which he sought evidence of the existence of the agreement by Wesley Clark and Biljana Plavsic. The prosecution responded on 16 February 2009.<sup>13</sup> The Trial Chamber has not yet decided the motion, perhaps, as foreshadowed by the Pre-Trial Judge at the 19 January 2009 Status Conference, because it is waiting for the outcome of the appeal.<sup>14</sup>

10. Dr. Karadzic is also awaiting compliance by the United States government with his request for documents and an interview of one of the participants at the meeting where the Holbrooke Agreement was entered into.<sup>15</sup> In the most recent exchange on 12 March 2009, the representative of the United States advised that "the process has started but we're still a ways from having it completed." Dr. Karadzic's legal advisor responded by reiterating the deadline for the filing of preliminary motions and requesting compliance by 1 April. Nothing further has been heard from the United States.

<sup>8</sup> *Appeal of Decision Concerning Holbrooke Agreement Disclosure* (28 January 2009) at paras. 12-13

<sup>9</sup> *Prosecution's Response to Karadzic's Motion for Interview of a Defence Witness* (15 December 2008)

<sup>10</sup> *Registry's Submission Pursuant to Rule 33(B) of the Rules Regarding the Accused's Motion for Interview of Defence Witness* (24 December 2008)

<sup>11</sup> Transcript of 19 January 2009 at 78

<sup>12</sup> Transcript of 19 January 2009 at 79

<sup>13</sup> *Prosecution's Response to Karadzic's Third Motion for Disclosure: Holbrooke Agreement* (16 February 2009)

<sup>14</sup> See Transcript of 19 January 2009 at 79

<sup>15</sup> See *Order Pursuant to Rules 54 and 70* (5 March 2009)

11. Therefore a number of issues remain pending that prevent the filing of a motion on the merits of the Holbrooke Agreement.

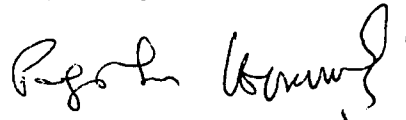
12. Dr. Karadzic intends to file a consolidated motion under both Rules 72 and 73, arguing that the indictment does not relate to a person over whom the Tribunal has jurisdiction pursuant to Article 1 of its Statute because of the agreement (the Rule 72 component) and, alternatively, that the circumstances of the agreement, if not enforced, constitute an abuse of process, and that the Tribunal should decline to exercise jurisdiction over him in order to uphold the integrity of this institution and international criminal justice (the Rule 73 component).

13. However, he needs disclosure before he can file such a motion.

14. Therefore, it is respectfully requested that the Trial Chamber grant an extension of time for Dr. Karadzic to file his Holbrooke Agreement Motion until a reasonable time after the pending matters are resolved.

Word count: 1002

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', with a stylized flourish at the end.

Radovan Karadzic