



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-PT
Date: 15 April 2009
Original: English

TRIAL CHAMBER III

Before: Judge Iain Bonomy, Pre-Trial Judge
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. John Hocking, Acting Registrar

Submission date: 15 April 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**REGISTRY SUBMISSION REGARDING
SERVICE OF DOCUMENTS**

The Office of the Prosecutor:

Mr. Alan Tieger
Mr. Mark B. Harmon
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić

I Introduction

1. Pursuant to Rule 33(B) of the Rules of Procedure and Evidence ("Rules") of the International Criminal Tribunal for the former Yugoslavia ("Tribunal"), the Registry respectfully makes this submission in relation to the "Motion for Service of Documents", filed by the Accused Radovan Karadžić ("Accused") on 7 April 2009 ("Motion").¹
2. On 7 April 2009, by his "Order Setting a Deadline for Registry Submission on Accused's Motion for Service of Documents", the Pre-Trial Judge invited the Registry to file any submission it wished to be considered in relation to the Motion, no later than Wednesday, 15 April 2009.² The Registry hereby complies with the order.

II Discussion

3. In the Motion, the Accused claims that by refusing to serve a copy of the Accused's letter³ to the representative of a State through diplomatic channels, the Registrar has deprived the Accused of adequate facilities for his defence and violated his right to equality of arms.
4. The Registry submits that the Accused's submission is neither supported by the Statute of the Tribunal ("Statute") nor the Rules and misplaces defence preparatory work onto the Registry.
5. Neither the Statute nor the Rules require the Registry to act as a channel of communication for accused persons or their defence counsel. Pursuant to Article 17 of the Statute, the Registry is responsible for the administration and servicing of the Tribunal. Rule 33 of the Rules further provides that the Registrar shall assist the Chambers, the plenary meetings of the Tribunal, the Judges and the Prosecutor in the performance of their functions, shall be responsible for the administration and servicing of the Tribunal, and serve as its channel of communication.⁴

¹ *The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Motion for Service of Documents, dated 6 April 2009, filed on 7 April 2009.

² *The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Order Setting a Deadline for Registry Submission on Accused's Motion for Service of Documents, filed on 7 April 2009.

³ The letter is attached as Confidential and *Ex Parte* Annex A to the Motion.

⁴ This responsibility is further set out in Article 5 of the Directive for the Court Management and Support Services Section, IT/121/Rev.1, 15 May 2007, ("Directive" and "CMSS" respectively) which provides that the

6. The Accused submits that according to Rule 54bis of the Rules a party is required to make sufficient efforts to obtain the cooperation of the State prior to applying for an order.⁵ He claims that it is therefore necessary for him to have “official communication” with States and seems to indicate that such communication involves assistance from the Registry.⁶ The Registry submits that Rule 54bis requires the party requesting an order to first seek to secure the State’s assistance before seizing a Chamber under Rule 54bis. The Rules do not confer this responsibility onto the Registry. Defence teams, as a rule, undertake steps to secure a State’s assistance and do not approach the Registry for these purposes.⁷
7. There are no obstacles for the Accused and/or his defence team to contact a State directly and there is no evidence that the State in question would refuse to cooperate. At present, the Registry has assigned and remunerates two legal associates and one investigator to the Accused. Additionally, on an exceptional basis, the Registry has offered to assign and remunerate up to five additional defence team members.⁸ This exception was granted in order to assist the Accused to adequately prepare his defence. The Registry moreover notes that one of the legal associates, who enjoys privileged communication with the Accused (“Associate”), has in other cases corresponded with States and Organisations directly before making applications to a Trial Chamber for binding orders.⁹ There is no justification for proceeding differently in the present case.

Deputy Registrar may delegate, *inter alia*, the following responsibilities to CMSS: (i) serving as a channel of communication between the Tribunal and States or Organisations; and (ii) filing and distributing judgements, orders, requests, pleadings, and other official documents of the Tribunal. Pursuant to Article 11 of the Statute, the Defence is not an organ of the Tribunal.

⁵ Motion, paragraph 5.

⁶ Motion, paragraphs 6 and 7.

⁷ See, for example, *The Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-T, Joint Motion Seeking an Order for Access to EUMM Archives, filed on 9 December 2003; *The Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Sreten Lukić’s Motion, Pursuant to Rule 54bis for a Binding Order Directed to Serbia-Montenegro for Production of Documents, filed on 17 May 2006; *The Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, General Ojdanić’s Request for Binding Order to Government of the United Kingdom, filed on 10 October 2006; *The Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, General Ojdanić’s Motion for Binding Order to the United States, NATO, and General Wesley Clark, filed on 2 April 2007.

⁸ This brings the total number of defence team members whose work will be remunerated by the Registry to eight. This opportunity has been granted to the Accused on an exceptional basis bearing in mind that the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused envisages remuneration for up to four persons only.

⁹ See *The Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, General Ojdanić’s Request for Binding Order to Government of the United Kingdom, filed on 10 October 2006 and *The Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, General Ojdanić’s Motion for Binding Order to the United States, NATO, and General Wesley Clark, filed on 2 April 2007. Annexed to these two filings is extensive correspondence between the Associate, who then acted as Legal Consultant to the Accused Ojdanić, and States and Organisations.

8. The Accused erroneously asserts that the Registrar is facilitating communication between the defence and third parties in cases where accused are represented. He submits that in the *Milutinović et al.* case the Registrar served requests for disclosure of General Ojdanić's intercepted conversations on approximately 28 embassies and NATO.¹⁰ In support of his argument, the Accused quotes a Trial Chamber decision in the *Milutinović et al.* case.¹¹ However, the decision quoted does not indicate that the Registry delivered correspondence for that accused and the Registry did not do so.
9. The Accused asserts that the International Criminal Tribunal for Rwanda regularly serves correspondence from the defence to States and international organisations through diplomatic channels.¹² The Registry is not aware of such practice and would not consider it binding for the Tribunal, should it in fact exist.
10. As a matter of policy, the Registry submits that it would not be appropriate to use the diplomatic pouch for the delivery of documents originating from an accused. The diplomatic pouch is intended for the official correspondence of the Tribunal only. It is only the official correspondence of the Tribunal which enjoys privileges and immunities in accordance with the Convention on the Privileges and Immunities of the United Nations.¹³ The Registry also disagrees with the Accused's assertion that rejecting his request to deliver his mail would result in delays.¹⁴ Involving the Registry as an intermediary would introduce an additional link into the chain of communication, which is more likely to result in delays than if the Accused directly sought the assistance of his legal associates for this task.
11. Finally, the Registry cannot take responsibility for the contents of correspondence sent by an accused or his defence counsel. By serving as a channel of communication the Tribunal would be attaching its name to the correspondence and thereby could potentially be held responsible for any breach of orders or decisions imposing protective measures, or the use of inappropriate language.

¹⁰ Motion, paragraph 8.

¹¹ Motion, footnote 5. *The Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Second Application of Dragoljub Ojdanić for Binding Orders Pursuant to Rule 54 bis, filed on 17 November 2005.

¹² Motion, paragraph 9.


¹³ Pursuant to Article 30 of the Statute, the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the Tribunal, the Judges, the Prosecutor and his staff, and the Registrar and his staff. See Article II, Sections 9 and 10 of this Convention.

¹⁴ Motion, paragraph 11.

III Conclusion

12. For the foregoing reasons, the Registry requests the Trial Chamber to dismiss the Motion.

13. The Registry remains available to provide the Trial Chamber with any further information it may require.

Respectfully Submitted,

John Hocking
Acting Registrar

Dated this fifteenth day of April 2009

At The Hague,

The Netherlands.