



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-T
Date: 24 February 2011
Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 24 February 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON THE ACCUSED'S MOTION FOR ORDER
PURSUANT TO RULE 70 (UNITED NATIONS)**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

United Nations

Office of Legal Affairs

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS TRIAL CHAMBER of the 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 (“Tribunal”) is seised of the Accused’s “Motion for Order Pursuant to Rule 70 (United Nations)”, filed on 16 February 2011 (“Motion”), and hereby renders its decision thereon.

1. In his Motion, the Accused requests the Trial Chamber to issue an order pursuant to Rules 54 and 70 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) that the provisions of Rule 70 should apply to seven documents to be provided to him by the United Nations (“UN”).¹ The Accused submits that the UN requires such an order as a condition to providing any of the material sought by him.² The Accused further submits that he does not believe these seven documents have already been disclosed to him by the Office of the Prosecutor (“Prosecution”).³

2. Rule 70 of the Rules creates an incentive for co-operation by States, organisations, and individuals with the Tribunal, by allowing them to share sensitive information with the Tribunal “on a confidential basis and by guaranteeing information providers that the confidentiality of the information they offer and of the information’s sources will be protected”.⁴

3. Paragraphs (B) through (E) of Rule 70 relate to material in the possession of the Office of the Prosecutor, and paragraph (F) provides for the Trial Chamber to order that the same provisions apply *mutatis mutandis* to specific information in the possession of the Defence. The Appeals Chamber has interpreted Rule 70(F) as “enabling the Defence to request a Trial Chamber that it be permitted to give the same undertaking as the Prosecution to a prospective provider of confidential material that that material will be protected if disclosed to the Defence”, and has held that the purpose of the Rule is “to encourage third parties to provide confidential information to the defence in the same way that Rule 70(B) encourages parties to do the same for the Prosecution”,⁵ a purpose which is served by explicitly affirming the applicability of Rule 70 to confidential material provided to the Defence.⁶

¹ Motion, para. 1, Confidential Annex A.

² Motion, para. 2.

³ Motion, para. 2.

⁴ *Prosecutor v. Milošević*, Case Nos. IT-02-54-ARI08bis & IT-02-54-AR73.3, Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, 23 October 2002, para. 19.

⁵ *Prosecutor v. Orić*, Case No. IT-03-68-AR73, Public Redacted Version of the Decision on Interlocutory Appeal Concerning Rule 70, 26 March 2004 (“*Orić* Decision”), para. 6.

⁶ *Orić* Decision, paras.6–7.

4. Having regard to confidential Annex A of the Motion, the Trial Chamber is satisfied that the UN has consented to provide the seven documents responsive to the Accused's request, so long as there is an order from the Chamber that confirms the application of Rule 70 to those documents.

5. The Trial Chamber recalls that by granting the Motion and making an order under Rule 70(F) it does not make a determination as to the relevance of the information in the documents to the present case.

6. Accordingly, the Trial Chamber, pursuant to Rules 54 and 70 of the Rules, hereby:

- a. **GRANTS** the Motion; and
- b. **ORDERS** that the provisions of Rule 70 of the Rules shall apply *mutatis mutandis* to the seven documents listed in Confidential Annex A to the Motion.

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



Judge O-Gon Kwon, Presiding

Dated this twenty-fourth day of February 2011
At The Hague
The Netherlands

[Seal of the Tribunal]