



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: 5 March 2009
Original: English

IN THE TRIAL CHAMBER

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

Acting Registrar: Mr. John Hocking

Order of: 5 March 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

ORDER PURSUANT TO RULES 54 AND 70

Office of the Prosecutor:

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

The Government of the United States of America

via the Embassy of the United States of America
to The Netherlands, The Hague

The Accused

Mr. Radovan Karadžić

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”, filed on 9 February 2009 (“Motion”), and hereby renders its decision thereon.

I. Submissions

1. The relief sought in the Motion is “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 Accused’s] request”.¹ In Annex A to the Motion, the Accused provides a letter dated 11 December 2008 to the Government of the United States of America, specifying the nature and scope of the Accused’s request, namely, to interview Ambassador Goldberg and to be provided with certain materials concerning the alleged meetings held on 18–19 July 1996 between Richard Holbrooke, Slobodan Milošević, and others.

2. The Accused maintains that “[t]he 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*”.² The Accused further submits that “[i]n 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.”³

3. In its Invitation to the United States of America pursuant to Rules 54 and 70, filed on 16 February 2009 (“Invitation”), the Trial Chamber invited the Government of the United States of America to assist the Chamber with information and comments on its communication with the Accused to that effect. On 3 March 2009, the Government of the United States of America submitted that “in response to the requests made by Mr. Radovan Karadzic in his letter dated December 11, 2008, the United States has initiated a search for material responsive to those requests and has started the process of making the U.S. Government official available for an interview”, and that “we require that he obtain an order that applies Rule 70 to that information.”⁴

¹ Motion, para. 3.

² Motion, para. 4, *see also Prosecutor v. Karadžić, case No. IT-95-5/18-PT, Decision on Accused’s Second Motion for Inspection and Disclosure: Immunity Issue, 17 December 2008.*

³ Motion, para. 4.

⁴ Correspondence from the United States, filed on 3 March 2009, p. 1.

4. The Trial Chamber considers that it can decide this matter without having heard the Prosecution.

II. Applicable Law

5. Rule 70 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) creates an incentive for co-operation by States, organisations, and individuals, 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”.⁵

6. 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.

7. 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”,⁶ a purpose which is served by explicitly affirming the applicability of Rule 70 to confidential material provided to the Defence.⁷

III. Discussion

8. The Trial Chamber considers that it must be in a position to assess whether the provider has consented to produce the information requested by the Accused. Upon receipt of the submissions from the Government of the United States of America, the Trial Chamber is satisfied that it has consented to provide any information responsive to the Accused’s request, so long as there is an order from the Chamber that applies Rule 70 to that information.

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

⁵ *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.

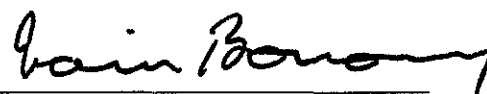
⁶ *Prosecutor v. Orić*, Case No. IT-03-68-AR73, Public Redacted Version of the Decision on Interlocutory Appeal Concerning Rule 70, 26 March 2004, para. 6.

⁷ *Ibid.*, paras.6–7.

IV. Disposition

10. 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 any information provided by the Government of the United States of America to the Accused and his legal associates in response to their request.

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



Judge Iain Bonomy, Presiding

Dated this fifth day of March 2009
At The Hague
The Netherlands

[Seal of the Tribunal]