



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: 3 March 2010

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Order of: 3 March 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

ORDER FOR RESPONSE

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Appointed 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”),

BEING SEISED of the following seven motions for binding orders filed by the Accused pursuant to Rule 54 bis of the Rules of Procedure and Evidence (“Rules”): “Motion for Binding Order: Government of Italy”, filed on 4 August 2009; “Motion for Binding Order: Government of Germany”, filed on 12 August 2009; “Motion for Binding Order: Government of France”, filed on 24 August 2009; “Motion for Binding Order: Government of Iran”, filed on 27 August 2009; “Motion for Binding Order: Government of Bosnia”, filed on 31 August 2009; “Motion for Binding Order: Government of Croatia”, filed on 11 September 2009; and “Motion for Binding Order: Government of The Netherlands”, filed on 11 September 2009 (collectively, “Rule 54 *bis* Applications”), all requesting that the states named above (“States”) provide the Accused with a number of documents he claims to be relevant to his case;

NOTING that, on 15 February 2010, the Trial Chamber held a hearing pursuant to Rule 54 *bis* (“Hearing”), to which it invited representatives of the Governments of Germany, France, Bosnia, Croatia, and Iran;¹

NOTING that, during the Hearing, the Trial Chamber was informed by the Prosecution that some of the materials already disclosed to the Accused by the Prosecution related to his Rule 54 *bis* Applications;²

NOTING that, as a result, the Chamber requested the Prosecution to indicate in writing all the documents disclosed by it to the Accused which would fall under the different categories of documents requested by the Accused in his Rule 54 *bis* Applications;³

NOTING that, on 24 February 2010, the Prosecution filed a submission with confidential appendices (“Prosecution’s Submission”) indicating the relevant disclosure it has made to the Accused pursuant to his Rule 66 (B) requests dated 8 and 10 July 2009, 23 September 2009, and 14 January 2010, those requests being identical or related to the Accused’s requests in the Rule 54 *bis* Applications;

¹ The Trial Chamber notes that Governments of Italy and The Netherlands were excused from attending the Hearing. *See* Scheduling Order, 11 February 2010.

² Hearing, T. 776–777 (15 February 2010).

³ Hearing, T. 777–778 (15 February 2010).

NOTING that the Chamber's review of the Prosecution's Submission shows that the Prosecution appears to have already disclosed to the Accused some of the specific documents requested in the Rule 54 *bis* Applications;

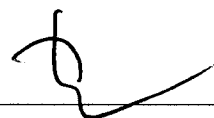
CONSIDERING that Rule 54 *bis* orders are to "be reserved for cases in which they are really necessary",⁴ and thus the applicant needs to demonstrate "either that (i) it has exercised due diligence in obtaining the requested materials elsewhere and has been unable to obtain them or (ii) the information obtained or to be obtained from other sources is insufficiently probative for a fair determination of a matter at trial and thus necessitates a Rule 54 *bis* order";⁵

CONSIDERING that, in light of the Prosecution's Submission and in order to determine the Rule 54 *bis* Applications, the Chamber should hear from the Accused whether the Prosecution disclosure renders some of his requests to the relevant States unnecessary and, if so, the Chamber should be given a clear indication of the Rule 54 *bis* Applications and particular requests so affected;

PURSUANT TO Rule 54 of the Rules,

HEREBY ORDERS the Accused to file a response to the Prosecution's Submission by close of business on 17 March 2009, indicating whether there are any categories of documents requested by him in the Rule 54 *bis* Applications for which binding orders are no longer necessary.

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



Judge O-Gon Kwon, Presiding

Dated this third day of March 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR108*bis*.2, Decision on Request of the United States of America for Review, 12 May 2006 ("Milutinović Decision"), para. 27; *Prosecutor v. Blaškić*, Case No. IT-95-14-AR108*bis*, Judgement on the Request of the Republic of Croatia for Review of Trial Chamber II of 18 July 1997, 29 October 1997, para. 31.

⁵ *Milutinović Decision*, para. 25.