



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-02-54-T

Date: 4 December 2003

Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Order of: 4 December 2003

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**ORDER ON PROSECUTION'S THIRD MOTION FOR
VARIANCE OF PRIOR ORDERS OF NON-DISCLOSURE**

The Office of the Prosecutor

Ms. Carla Del Ponte
Mr. Geoffrey Nice

Ms. Hildegard Uertz-Retzlaff
Mr. Dermot Groome

The Accused

Mr. Slobodan Milošević

Amici Curiae

Mr. Steven Kay, QC
Mr. Branislav Tapušković
Prof. Timothy L.H. McCormack

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 (“International Tribunal”),

BEING SEISED OF a confidential and partly *ex parte* “Prosecution’s Third Motion for Variance of Prior Orders of Non-Disclosure” filed on 2 December 2003 (“Motion”), seeking, in respect of specific Rule 68 materials (“materials”) provided to the Prosecution pursuant to Rule 70 by an information provider (and described in confidential and *ex parte* Annex A to the Motion), that the Trial Chamber order the Accused, his associates and the *amici curiae*, to comply with two restrictions on use of the Rule 68 material:

- (a) That the material must continue to remain under the protection of Rule 70, and therefore may not be disclosed to others apart from the Accused, his associates and the *amici curiae*, without the prior approval of the information provider; and
- (b) That unless authorised by the provider, the information may only be introduced into the record under seal and referred to in trial in closed session.

NOTING the prior Orders of the Trial Chamber concerning non-disclosure of Rule 66 materials¹ and Rule 68 Materials²,

CONSIDERING the Appeals Chamber has held that where it can be established that information is provided to the Prosecution on a confidential basis under Rule 70, then it is protected by paragraphs (C) and (D) of that Rule,³ and the information provider may impose conditions upon the use of that information,

CONSIDERING that the content of the materials set out in an *ex parte* Annex to the Motion indicate that the information is important Rule 68 material and that the orders sought would allow the information to be provided to the Accused,

PURSUANT TO Rules 54, 68 and 70 of the Rules of Procedure and Evidence,


¹ 19 July 2001 and 21 March 2002.

² 23 January 2003 and, more recently, 17 November 2003, in which it issued the same orders sought in this Motion.

HEREBY GRANTS THE MOTION and ORDERS AS FOLLOWS:

- (1) The material may not be disclosed to others apart from the Accused, his legal associates and the *amici curiae*, without the prior approval of the information provider; and
- (2) Unless authorised by the information provider, the information may only be introduced into the record under seal and referred to in trial in closed session.

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



Richard May
Presiding

Dated this fourth day of December 2003
At The Hague
The Netherlands

[Seal of the Tribunal]

³ *Prosecutor v. Milošević*, “Decision on the Interpretation and Application of Rule 70”, IT-02-54-AR108bis & AR73.3, 23 October 2002 (“*Milosevic Appeals Decision*”), para. 20.