



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: 14 February 2006
Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 14 February 2006

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**PRELIMINARY ORDER ON REQUEST BY ASSIGNED COUNSEL FOR THE RECALL
OF WITNESS GENERAL CLARK AND FOR REVIEW OF A PREVIOUS DECISION**

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused:

Mr. Slobodan Milošević

Court Assigned Counsel:

Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:

Prof. Timothy 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 (“the International Tribunal”),

BEING SEIZED OF a “Request by Assigned Counsel Motion for the Recall of Prosecution Witness General Clark Pursuant to Rule 54 and for the Trial Chamber to Review the ‘Decision on Prosecution’s Application for a Witness Pursuant to Rule 70(B)’ Dated 30 October 2003”, filed on 10 February 2006 (“Request”), in which Assigned Counsel seek for the recall of Prosecution witness General Clark (“witness”) for further cross-examination and to review and change the terms of the Trial Chamber’s previous Decision on the terms under which the witness could testify,¹

NOTING that the Clark Decision was issued pursuant to the provision of the witness by the US Government under Rule 70,²

NOTING that Assigned Counsel seek the recall of the witness and a review by the Trial Chamber of the Clark Decision on the basis that the Defence were limited to asking questions related to matters solely within the statement disclosed by the Prosecution,

NOTING that Order (9) of the Clark Decision stated that “[T]he Accused or *Amici Curiae* may seek to have the scope of examination expanded by prior agreement of the US Government (obtained directly from that Government or through the representation of the Office of the Prosecutor), once the summary of the evidence-in-chief to be given is disclosed to them”, but that the Trial Chamber never received an application or notice at the time that this had occurred,

CONSIDERING that the Request does not set out the procedure that Assigned Counsel envisage will be utilised for recalling the witness, nor what measures they have taken to secure the testimony of the witness,

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the International Tribunal,

¹ “Decision on Prosecution’s Application for a Witness Pursuant to Rule 70(B)”, 30 October 2003 (“Clark Decision”). The Decision was issued confidentially but changed to a public document by subsequent order of the Chamber on 17 October 2003.

² The terms under which the Trial Chamber was bound to deal with the application were set out in a ruling of the Appeals Chamber: *Prosecutor v. Milošević*, “Decision on the Interpretation and Application of Rule 70”, IT-02-54-AR108bis & AR73.3, 23 October 2002.

HEREBY ORDERS Assigned Counsel to file submissions within seven days stating:

- (1) The procedure that Assigned Counsel envisage will be utilised for recalling the witness;
and
- (2) What measures they have taken, including any discussions with the witness and/or US Government, to secure the testimony of the witness,

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

Judge Robinson
Presiding

Dated this fourteenth day of February 2006
At The Hague
The Netherlands

[Seal of the Tribunal]