



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 June 2009

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision of: 5 June 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTION FOR FURTHER EXPLANATION FROM THE PROSECUTION
CONCERNING GENERAL WESLEY CLARK**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

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 Further Explanation from the Prosecution Concerning General Wesley Clark”, filed on 21 May 2009 (“Motion”), and hereby renders its decision thereon.

1. In the Motion, the Accused requests the Trial Chamber to order the Office of the Prosecutor (“Prosecution”) to explain the efforts it has made to locate the transcript or report of a meeting which, as alleged in a report of a statement made by the Tribunal’s former spokesperson, Florence Hartmann, took place between the then Chief Prosecutor Louise Arbour and General Wesley Clark. According to Florence Hartmann, during the meeting Wesley Clark referred to the existence of an agreement by which the Accused would not be prosecuted by the Tribunal.¹ The Accused notes the order of the Trial Chamber of 9 April 2009, requesting the Prosecution to disclose any such transcript or report, and the Prosecution’s notice of 20 April 2009, in which the Prosecution informed the parties that it was not in possession of such material.² Having received the notice, the Accused wrote to the Prosecution, questioning the “complete disconnect” between the Prosecution’s position and the information provided by Florence Hartmann. He received no response and, as a result, filed the present Motion.³

2. In “Prosecution’s Response to Motion for Further Explanation Concerning General Wesley Clark”, filed on 26 May 2009 (“Response”), the Prosecution argues that the Motion should be dismissed as the Prosecution had, before filing its notice, conducted a thorough review of its records. It found no materials requested by the Accused.⁴

3. The pre-trial Judge raised the issue at the status conference on 3 June 2009, and inquired with the Prosecution as to the extent of its knowledge of the alleged meeting and the records of it, if any. The Prosecution responded by saying that a thorough electronic and manual search of its records showed no indication that the Prosecution ever had such a document in its possession. The Prosecution further explained that its inquiry indicated that no such meeting ever took place as

¹ Motion, paras. 1, 11.

² Motion, paras. 6–7; *see also* Decision on Accused Motion for Interview of Defence Witness and Third Motion for Disclosure, 9 April 2009, para. 28(c); Prosecution Notice Relating to a Meeting Between Louise Arbour and General Wesley Clark, 20 April 2009.

³ Motion, paras. 8–11.

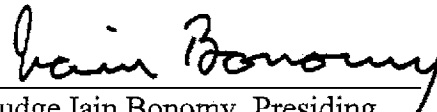
⁴ Response, para. 2.

claimed by Florence Hartmann which, in turn, made it impossible for the Prosecution to ask its employees whether they attended any such meeting.⁵

4. In light of the Response provided by the Prosecution, as well as the Prosecution's further clarification at the status conference, the Chamber considers that there is no need for the order requested. As suggested to the Accused during the status conference, he is free to contact Florence Hartmann, and indeed Wesley Clark and Louise Arbour, to seek to obtain the relevant information.⁶

5. Accordingly, pursuant to Rule 54 of the Rules of Procedure and Evidence of the Tribunal, the Trial Chamber hereby **DENIES** the Motion.

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


Judge Iain Bonomy, Presiding

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

[Seal of the Tribunal]

⁵ Status Conference, T. 263–266 (3 June 2009).

⁶ Status Conference, T. 265 (3 June 2009).