



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: 16 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: 16 June 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON THE ACCUSED'S THIRD MOTION FOR ORDER
PURSUANT TO RULE 70**

Office of the Prosecutor

Mr. Alan Tieger
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 “Third Motion for Order Pursuant to Rule 70”, filed on 21 May 2009 (“Motion”), and hereby issues its decision thereon.

1. In his Motion, the Accused requests the Trial Chamber to issue an order pursuant to Rules 54 and 70 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) to the effect that the provisions of Rule 70 should apply to any information provided by Mr. Doug Lute, former Joint Chiefs of Staff officer, and Mr. John Feeley, former National Security Council employee in the Government of the United States of America (“U.S. Government”), in their interviews with the Accused’s legal adviser.¹

2. The Accused submits that he wishes to interview those two representatives of the U.S. Government about their recollection of the discussion at the meeting at which the alleged “Holbrooke agreement” was negotiated and the existence of notes, reports, or memoranda of the meeting.² He maintains that “[t]he relevance of the information sought has already been recognized by the Trial Chamber in its *Decision on Accused’s Second Motion for Inspection and Disclosure: Immunity Issue*”.³

3. In its Invitation to the United States of America pursuant to Rules 54 and 70, filed on 26 May 2009, the Trial Chamber invited the U.S. Government to assist the Chamber with information on its communication with the Accused to the effect that it has consented to produce the information sought through Mr. Lute and Mr. Feeley on the condition that the provisions of Rule 70 will apply. On 29 May 2009, the U.S. Government submitted that the Accused’s legal adviser requested interviews with Mr. Lute and Mr. Feeley in a letter dated 18 May 2009, but informed the Chamber that the request was still the subject of discussions between the U.S. Government and the Accused’s legal associate on “why additional interviews are necessary and how they would be substantially different from the interviews ... already facilitated”.⁴ Accordingly, the U.S. Government expressed the view that an order from the Chamber applying the provisions of Rule 70 of the Rules to information obtained during interviews with these individuals

¹ Motion, paras. 1–3.

² Motion, paras. 4–5.

³ Motion, para. 6, *see also* Decision on Accused’s Second Motion for Inspection and Disclosure: Immunity Issue, 17 December 2008, para. 21.

⁴ Correspondence from the United States, filed on 2 June 2009, p. 1.

would appear premature. As a result, the Chamber decided not to determine the Motion until the end of the discussions between the U.S. Government and the Accused.

4. On 13 June 2009, the Accused's legal adviser informed the Chamber, via email correspondence, that the U.S. Government has declined to authorise the interview of Mr. Lute and Mr. Feeley.

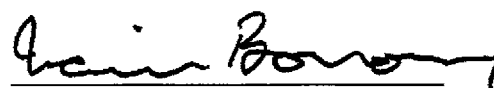
5. The Office of the Prosecutor has indicated that it does not intend to respond to the Motion.

6. Rule 70 of the 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

7. In light of the fact that the Chamber has been informed that the U.S. Government has not consented to producing the information requested by the Accused, it cannot issue an order under Rule 70 in relation to that information. For that reason, the Accused's Motion is now moot.

8. Accordingly, the Trial Chamber, pursuant to Rules 54 and 70 of the Rules, hereby **DENIES** the Motion.

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


Judge Iain Bonomy, Presiding

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

[Seal of the Tribunal]

⁵ *Prosecutor v. Milošević*, Case Nos. IT-02-54-AR108bis & IT-02-54-AR73.3, Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, 23 October 2002, para. 19.