



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: 9 December 2010
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Order of: 9 December 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

THIRD INVITATION TO CANADA

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of Canada

via the Embassy of Canada to
the Netherlands, The Hague

The Accused

Mr. Radovan Karadžić

Standby 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 Accused’s “Motion for Binding Order: Government of Canada”, filed on 17 August 2010 (“Motion”), whereby the Accused requests the Trial Chamber to issue a binding order pursuant to Article 29 of the Statute of the Tribunal and Rule 54 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”) requiring the Government of Canada (“Canada”) to produce documents relating to two Markale Market shelling incidents (“Markale Documents”) charged in the Third Amended Indictment;¹

NOTING that in the Motion the Accused indicates that over a year ago he sought a number of different documents from Canada, and that, with the exception of the Markale Documents, Canada has been co-operative in delivering the requested documents to him;²

NOTING that, with respect to the Markale Documents, Canada informed the Accused on 4 September 2009 that it was “continuing to review [its] materials” and would get back to him as soon as possible;³

NOTING that, after no response was received by mid-August 2010, the Accused filed the Motion and the Chamber immediately invited Canada to respond to it by 1 September 2010;⁴

NOTING that Canada filed its confidential response on 1 September 2010, stating that it has now provided “all relevant information in its possession” to the Accused, with the exception of one “third party document” which would be provided to the Accused as soon as permission was given by the originating state;⁵

NOTING however that the Accused filed, on 3 September 2010, his “Motion for Leave to Reply and Reply: Motion for Binding Order: Canada” (“Reply”), asking the Chamber for leave to file a reply to Canada’s response, and attaching the said Reply, in which he requested that the Chamber

¹ Motion, para. 1.

² Motion, para. 9, Annexes A and B.

³ Motion, para. 10, Annex B.

⁴ Invitation to Canada, 18 August 2010.

⁵ Confidential Correspondence from Canada, 1 September 2010.

give Canada a deadline of 1 October 2010 within which it would provide the remaining document to the Accused;⁶

NOTING that the Chamber deemed it inappropriate to set a deadline for Canada to produce the remaining document because Canada was awaiting permission of a third state before it was able to do so, but that it invited Canada to provide it with a progress report in relation to the remaining document, by close of business on 13 October 2010;⁷

NOTING further that Canada filed its confidential response on 13 October 2010, stating that “officials of the Government of Canada have been in contact with officials of the government of the originating State on three occasions requesting permission to disclose the documents” but that, even though informed of the urgency of the situation, the originating state made no indication to Canada of when a response may be forthcoming;⁸

NOTING that, as a result, the Accused filed, on 14 October 2010, his “Response to Submission of Government of Canada” (“Response”), asking the Chamber again “to issue an order to Canada directing it to disclose the remaining document within ten days, and to notify the originator state of that order”, and proposing that if “the originator state then object to this disclosure, it can file an objection directly with the Chamber and the disclosure can be withheld until the objection is adjudicated;”⁹

CONSIDERING that it is in the interests of all parties involved that requests for documents are, if possible, dealt with on a voluntary basis;

CONSIDERING that the Chamber still deems it inappropriate to set a deadline for Canada to disclose the remaining document, because Canada is awaiting permission of a third state before it is able to disclose it;

CONSIDERING however that almost two months have passed since Canada filed the correspondence of 13 October 2010, and that the Chamber would be assisted by hearing from Canada as to its progress, if any, in relation to the said document;

CONSIDERING further that, in order to facilitate and speed up the process of the production of the document in question, and to enable the Accused to approach that state directly, the Chamber

⁶ Reply, paras. 5–6.

⁷ Second Invitation to Canada, 29 September 2010.

⁸ Confidential Correspondence from Canada, 13 October 2010.

⁹ Response, para. 7.

would be assisted by hearing from Canada on whether it would be willing to disclose to the Accused the identity of the originator state;

PURSUANT TO Rule 54 of the Rules,

HEREBY:

- (a) **INVITES** Canada to assist the Trial Chamber by providing a progress report in relation to the document which remains to be disclosed to the Accused, by close of business on **23 December 2010**;
- (b) **INVITES** Canada to assist the Trial Chamber by indicating in the progress report whether it would be willing to inform the Accused of the identity of the originator state;
- (c) **REQUESTS** the Registry to provide the Accused's Response and this Invitation to Canada.

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



Judge O-Gon Kwon
Presiding

Done this ninth day of December 2010
At The Hague
The Netherlands

[Seal of the Tribunal]