



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: 14 September 2011

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Order of: 14 September 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**INVITATION TO THE GOVERNMENT OF CROATIA REGARDING INTERVIEW OF
MIROSLAV TUĐMAN**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

The Government of Croatia

via the Embassy of the Republic
of Croatia to The Netherlands,
The Hague

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 “Request for Invitation to Government of Croatia” filed on 29 August 2011 (“Request”), whereby the Accused requests the Chamber to issue an invitation to the Government of Croatia (“Croatia”) inquiring whether Croatia is now willing to waive the general obligation of Miroslav Tudman to maintain state secrets;¹

RECALLING that, on 14 July 2011, this Chamber issued the “Decision on Accused’s Motion for Subpoena to Interview Miroslav Tudman,” granting the said motion on the basis, *inter alia*, that Tudman was a “prospective witness” in the case,² and on the same day issued a subpoena requiring Tudman to appear for an interview with the Accused’s legal advisor;³

NOTING that, also on 14 July 2011, this Chamber issued an “Order to Croatia Concerning Subpoena” requesting that Croatia serve the subpoena upon Tudman, and that it “take all reasonable and necessary measures to ensure that Tudman appears at the time and place to be notified by the Accused’s legal advisor”;⁴

NOTING that, on 27 July 2011, the Accused filed a “Notice to Government of Croatia and Miroslav Tudman,” informing the parties that his legal advisor would conduct an interview with Tudman in Zagreb on 26 August 2011;⁵

NOTING that, on 11 August 2011, Croatia filed a correspondence notifying the Chamber that it had served the subpoena upon Tudman, who had agreed to attend the interview, that representatives of Croatia would be present during the interview, and that due to Tudman’s status as a “potential witness” it would not relieve him from his general obligation to maintain state secrets during the course of an interview with the Accused’s legal advisor;⁶

NOTING that, on 18 August 2011, the Accused sent a letter to Croatia expressing his belief that Tudman would refuse to answer any questions unless Croatia were to waive his obligation to

¹ Request, paras. 1, 5.

² Decision on the Accused’s Motion for Subpoena to Interview Miroslav Tudman, 14 July 2011, para. 27. The decision to issue a subpoena was made by majority. Judge Kwon dissented on the basis that the requirements for the issuance of the subpoena were not met by the Accused.

³ Subpoena, 14 July 2011.

⁴ Order to the Government of Croatia Concerning Subpoena, 14 July 2011, p. 2.

⁵ Notice to Government of Croatia and Miroslav Tudman, 27 July 2011, para. 1.

⁶ Memorandum of Service of Subpoena, filed confidentially on 11 August 2011, p. 8.

maintain state secrets, and inquiring of Croatia whether the representatives of Croatia present at the meeting would be empowered to waive Tudman's obligation to maintain state secrets;⁷

NOTING that, on 19 August 2011, Croatia filed a correspondence restating its position that Tudman would not be relieved of his duty to maintain state secrets due to his status as a potential witness;⁸

NOTING that, on 22 August 2011, the Accused sent a letter to Croatia stating that because Tudman would refuse to answer any questions absent a waiver of his obligation to maintain state secrets, the Accused had excused him from appearing at the scheduled date and time, and that his legal advisor would instead meet with representatives of Croatia to discuss a solution short of an application for a binding order by which Tudman could be relieved of his duty to maintain state secrets;⁹

NOTING that, on 26 August 2011, the Accused's legal advisor met with representatives of Croatia who indicated that no law or procedure exists allowing Croatia to free any individual from his obligation to maintain state secrets based on his status as a potential witness;¹⁰

NOTING further that Croatian representatives also indicated to the Accused's legal advisor that Croatia would have no objection to waiving Tudman's obligation on a question-by-question basis during an interview were he designated as a witness in this case, and requested from the legal advisor information on the topics to be covered during such interview;¹¹

NOTING that in the Request, the Accused informs Croatia and the Chamber that he has now designated Tudman as a witness for his defence,¹² and provides a list of topics to be discussed in an interview with Tudman;¹³

CONSIDERING that the Accused has met the condition upon which Croatia predicated the waiver of Tudman's obligation to maintain state secrets by designating Tudman as a witness for his defence;

CONSIDERING finally that the Chamber would be assisted by hearing from Croatia on the issue of whether it is now willing to waive Tudman's obligation to maintain state secrets;

⁷ Amended Letter to Croatia, 18 August 2011, para. 2. The Accused filed the original version of this letter on 15 August 2011.

⁸ Correspondence from Croatia, filed confidentially on 19 August 2011.

⁹ Second Notice to Government of Croatia and Miroslav Tudjman, 22 August 2011.

¹⁰ Request, para. 2.

¹¹ Request, paras. 3, 4.


¹² Request, para. 3.

PURSUANT TO Article 29 of the Statute of the Tribunal and Rule 54 of the Tribunal's Rules of Procedure and Evidence;

HEREBY

- a. **INVITES** Croatia to respond to the Request within 14 days of receipt of this Invitation, indicating:
 - (i) whether it is prepared to waive Miroslav Tudman's obligation to maintain state secrets;
 - (ii) any specific conditions or modalities it wishes to place on such a waiver; and
- b. **REQUESTS** that the Registry provide the Request and this Invitation to Croatia.

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



Judge O-Gon Kwon
Presiding

Dated this fourteenth day of September 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

¹³ Request, para. 4.