



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: 11 April 2013

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

Decision of: 11 April 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON THE ACCUSED'S MOTION FOR ORDER PURSUANT TO RULE 70
(UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND)**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of the United Kingdom

via the Embassy of the United Kingdom 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”) is seised of the Accused’s “Rule 70 Motion (United Kingdom)”, filed on 2 April 2013 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. The background to the Motion was summarised in previous decisions and will not be repeated here.¹ It is sufficient to recall that on 28 March 2013, the Chamber issued the “Decision on the Accused’s Motion to Compel Production of Seven Documents” in which it found, after having conducted a review of the summaries and redacted versions of the seven documents (“Seven Documents”) which were the subject of the Accused’s “Motion to Compel Production of Seven Documents” filed on 24 January 2012 (“Binding Order Motion”), that the Accused would not be prejudiced if he accepted the summaries of the Seven Documents under the conditions imposed by the governments of the United Kingdom of Great Britain and Northern Ireland (“UK”) and a third state (“Originator State”) pursuant to Rule 70 of the Tribunal’s Rules of Procedure and Evidence (“Rules”).² The Chamber was thus satisfied that both the UK and the Originator State were co-operating with the Accused and therefore, the Accused had not satisfied one of the requirements of Rule 54 *bis* warranting the granting of the Binding Order Motion.³ Accordingly, the Chamber denied the Binding Order Motion and advised the Accused to submit a request for an order pursuant to Rule 70 of the Rules for the summaries of the Seven Documents.⁴

2. In the Motion, the Accused requests that the Chamber issue an order that the provisions of Rule 70 apply to the summaries of the Seven Documents that will be provided to him by the UK.⁵

3. In Annex A to the Motion, the Accused provides the non-disclosure agreement between him and the UK which sets forth the Rule 70 conditions stipulated by the UK and to which the Accused and his legal adviser have agreed.⁶

¹ Decision on Accused’s Motion to Compel Production of Seven Documents, confidential, 21 August 2012, paras. 1–11; Decision in Relation to the United Kingdom of Great Britain and Northern Ireland’s Response to the Trial Chamber’s Decision of 21 August 2012, confidential, 23 November 2012, paras. 1–6.

² Decision on the Accused’s Motion to Compel Production of Seven Documents, 28 March 2013 (“28 March Decision”), para. 15.

³ 28 March Decision, para. 16.

⁴ 28 March Decision, paras. 16–18.

II. Applicable Law

4. 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”.⁷

5. Paragraphs (B) through (E) of Rule 70 relate to material in the possession of the Prosecution, and paragraph (F) provides for the Trial Chamber to order that the same provisions apply *mutatis mutandis* to “specific information in the possession of the defence”.

6. The Appeals Chamber has interpreted Rule 70(F) as “enabling the [d]efence to request a Trial Chamber that it be permitted to give the same undertaking as the Prosecution to a prospective provider of confidential material that that material will be protected if disclosed to the [d]efence”, and has held that the purpose of the Rule is “to encourage third parties to provide confidential information to the defence in the same way that Rule 70(B) encourages parties to do the same for the Prosecution”, a purpose which is served by explicitly affirming the applicability of Rule 70 to confidential material provided to the defence.⁸

III. Discussion

7. As noted previously, the Chamber must be in a position to assess whether the Rule 70 provider has consented to produce the information requested by the Accused.⁹ Having reviewed the previous submissions made by the UK,¹⁰ the Chamber is satisfied that the UK has consented to provide the summaries of the Seven Documents responsive to the Accused’s request, so long as there is an order from the Chamber that applies Rule 70 to the summaries of the Seven Documents and the information contained therein. Accordingly, the Chamber shall issue such an order.

⁵ Motion, para. 1.

⁶ Motion, para. 2, Annex A.

⁷ *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.

⁸ *Prosecutor v. Orić*, Case No. IT-03-68-AR73, Public Redacted Version of the Decision on Interlocutory Appeal Concerning Rule 70, 26 March 2004, paras. 6–7.

⁹ Decision on the Accused’s Fifth Motion for Order Pursuant to Rule 70 (United States of America), 20 December 2012, para. 8, citing Decision on the Accused’s Fourth Motion for Order Pursuant to Rule 70 (United States of America), 5 October 2009, para. 6 and Order Pursuant to Rules 54 and 70, 15 May 2009, para. 8.

¹⁰ United Kingdom of Great Britain and Northern Ireland’s Response to Trial Chamber’s Invitation of 10 February 2012, confidential, 7 May 2012, para. 18. *See also* 28 March Decision 2013, para. 1.

IV. Disposition

8. Accordingly, the Trial Chamber, pursuant to Rules 54 and 70 of the Rules, hereby:
- a. **GRANTS** the Motion;
 - b. **ORDERS** that the provisions of Rule 70 of the Rules shall apply *mutatis mutandis* to the summaries of the Seven Documents which are to be voluntarily provided to the Accused by the UK; and
 - c. **INSTRUCTS** the Registry to provide this Decision to the UK.

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



Judge O-Gon Kwon
Presiding

Dated this eleventh day of April 2013
At The Hague
The Netherlands

[Seal of the Tribunal]