



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: 24 July 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: 24 July 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 seized of the Accused’s “Rule 70 Motion (United Kingdom)”, filed on 17 July 2013 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. The lengthy background to the Motion was summarised in previous decisions and will not be repeated here.¹ In the Motion, the Accused submits that the government of the United Kingdom of Great Britain and Northern Ireland (“UK”) indicated to him that it had identified two additional documents (“Two Documents”) that are responsive to his original request for documents which led to this litigation.² Accordingly, the Accused requests that the Chamber issue an order that the provisions of Rule 70 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) apply to the summaries of the Two Documents which will then be voluntarily provided to him by the UK.³

2. In a letter provided in Annex A to the Motion, the UK submits that the Two Documents were identified by the originator state in the course of preparing for the confidential and *ex parte* hearing conducted by the Chamber on 18 March 2013.⁴ According to the UK, the Two Documents were shared with the UK by the originator state, and the originator state intends to provide the Accused with summaries of the Two Documents subject to Rule 70 conditions identical to those the Chamber approved for the earlier disclosure of the summaries of seven documents, which were the subject of previous litigation.⁵

3. On 23 July 2013, the Prosecution informed the Chamber *via* email that it did not wish to respond to the Motion.

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

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; Decision on the Accused’s Motion to Compel Production of Seven Documents, 28 March 2013, paras. 1–6.

² Motion, para. 1.

³ Motion, para. 1.

⁴ Motion, Annex A.

⁵ Motion, Annex A; *see also* Decision on the Accused’s Motion for Order Pursuant to Rule 70 (United Kingdom of Great Britain and Northern Ireland), 11 April 2013.

basis and by guaranteeing information providers that the confidentiality of the information they offer and of the information's sources will be protected".⁶

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.⁷

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.⁸ Having reviewed the submissions made by the UK,⁹ the Chamber is satisfied that the originator state has consented to the UK providing the summaries of the Two Documents responsive to the Accused's request, subject to the Chamber issuing a Rule 70 order relating to the summaries of the Two Documents and the information contained therein. Accordingly, the Chamber shall issue such an order.

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 Two Documents which are to be voluntarily provided to the Accused by the UK; and

⁶ *Prosecutor v. Milošević*, Case Nos. IT-02-54-ARI08bis & IT-02-54-AR73.3, Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, 23 October 2002, para. 19.

⁷ *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.

⁸ 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.

⁹ See Motion, Annex A.

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 twenty-fourth day of July 2013
At The Hague
The Netherlands

[Seal of the Tribunal]