



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: 25 February 2015
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: 25 February 2015

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**ORDER REGARDING ACCUSED'S MOTION FOR RECLASSIFICATION OF FILINGS
RELATING TO DAVID HARLAND**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

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”);

BEING SEISED OF the “Motion for Reclassification of Filings Relating to David Harland”, filed confidentially by the Accused on 4 December 2014 (“Motion”) whereby the Accused requests that the Chamber reclassify as public eight filings—including this Chamber’s decision issued on 24 November 2009 (“Decision”)¹—related to the testimony of the United Nations (“UN”) staff member, David Harland (“Filings”);²

NOTING that in the Motion the Accused also requests that the Chamber order reclassification of the Motion, should it be granted;³

NOTING that the Office of the Prosecutor (“Prosecution”) filed confidentially the “Prosecution Response to Motion for Reclassification of Filings Related to David Harland” on 18 December 2014 (“Response”) in which it argues that the Motion should be denied because the Filings discuss “sensitive communications between the Prosecution and a Rule 70 provider” or, in the alternative, that only the Decision should be reclassified as public, but in a redacted form;⁴

RECALLING that the Filings concern the request the UN made back in 2009 that David Harland testify in closed session in this case, which then prompted the Prosecution to file a motion requesting closed session testimony under both Rules 70 and 75 of the Tribunal’s Rules of Procedure and Evidence (“Rules”);⁵

RECALLING further that the Prosecution’s motion for closed session was denied, which in turn resulted in the UN eventually agreeing to Harland testifying in public session;

NOTING that on 23 January 2015, the Chamber issued, confidentially, the “Interim Order Regarding Accused’s Motion for Reclassification of Filings Relating to David Harland” (“Interim Order”) in which it instructed the Prosecution to liaise with the UN in order to verify

¹ Decision on Prosecution’s Motion for Protective Measures for Witness KDZ487, confidential, 24 November 2009.

² Motion, paras. 1–2, Confidential Annex A. The Chamber notes, however, that one of the Filings, namely the Decision on Prosecution Request for Leave to Reply to Response to Prosecution’s Motion for Protective Measures for Witness KDZ487, issued on 30 October 2009, is already public. The Motion is therefore moot with respect to that particular filing.

³ Motion, footnote 1.

⁴ Response, paras. 1–2.

⁵ Motion, Confidential Annex A.

whether the UN would be willing to consent to the relief sought in the Motion and, if that consent is not forthcoming, to outline clearly the scope of the information in the Filings that should remain confidential;⁶

NOTING that, on 12 February 2015, the Prosecution filed, confidentially, the “Prosecution Submission on Position of United Nations Regarding Accused’s Motion for Reclassification of Filings Relating to David Harland” (“Submission”) in which it informs the Chamber that the UN has identified certain information in four of the Filings that should remain confidential;⁷

NOTING that in the Submission the Prosecution also reports that, in addition to the remainder of the four of the Filings mentioned in the preceding paragraph, the UN consents to reclassification of three of the Filings;⁸

CONSIDERING that 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”⁹;

CONSIDERING that the UN is therefore entitled to protect its communication with the Prosecution in this matter;

PURSUANT TO Rule 54 of the Rules,

HEREBY:

- a. **GRANTS** the Motion in part;

⁶ Interim Order, p. 3.

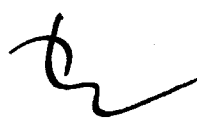
⁷ The portions of the Filings that should remain confidential are as follows: Prosecution’s Motion for Protective Measures for Witness KDZ487, confidential, 15 October 2009, paras. 6–7, 11, 19–21, and Confidential Appendix A; Response to Prosecution’s Motion for Protective Measures for Witness KDZ–487, confidential, 27 October 2009, paras. 4, 9–11; Prosecution’s Reply to “Response to Prosecution’s Motion for Protective Measures for Witness KDZ487”, confidential, 2 November 2009, paras. 6 (and footnote 7), 8; and Decision, paras. 1–2, 11–13, 17. *See* Submission, para. 3.

⁸ The filings in question are: Prosecution Request for Leave to Reply to “Response to Prosecution’s Motion for Protective Measures for Witness KDZ487”, confidential, 29 October 2009; Prosecution Motion for Leave to Disclose a Confidential Decision, confidential, 26 November 2009; and Order Granting Leave to Disclose, filed confidentially on 30 November 2009. *See* Submission, para. 3.

⁹ *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.

- b. **ORDERS** the Registry to reclassify as public three of the Filings listed in footnote 8 above, as well as the Motion (including Confidential Annex A) and the Interim Order;
- c. **ORDERS** the parties to file public redacted versions of the Filings listed in footnote 7, with the exception of the Decision;¹⁰
- d. **ORDERS** the Prosecution to file a public redacted version of the Response and the Submission, which should be redacted in accordance with the concerns of the UN; and
- e. **DECIDES** that it shall file a public redacted version of the Decision.

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



Judge O-Gon Kwon, Presiding

Dated this twenty-fifth day of February 2015
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁰ These redactions should be made in accordance with the instructions given by the UN and outlined in the Submission and in footnote 7 of this order.