UNITED NATIONS

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: 19 March 2014

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: **19 March 2014**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON THE ACCUSED'S SEVENTH MOTION FOR ORDER PURSUANT TO RULE 70 (UNITED STATES OF AMERICA)

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of the United States of America

via the Embassy of the United States of America 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 "Seventh Motion for Order Pursuant to Rule 70: United States of America", filed on 14 March 2014 ("Motion"), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests the Chamber to issue an order, pursuant to Rules 54 and 70 of the Tribunal's Rules of Procedure and Evidence ("Rules"), to the effect that the provisions of Rule 70 should apply to the document which was requested by the Accused from the government of the United States of America ("U.S.") and which the U.S. is now willing to provide to him.[1]

2. In the Motion, the Accused provides a letter from the U.S. dated 13 March 2014, in which the U.S. informed him that in response to his request for a paper prepared by the "DCI Interagency Balkan Task Force on or about 26 February 1995 concerning increased air activity over Bosnia", it has agreed to provide the Accused with a declassified copy of the document.[2] However, the U.S. states that it will disclose the document to him once he has obtained "a Rule 70 order from the Trial Chamber".[3] The U.S. notes that the document may not be used or disseminated further without its prior written approval.[4] In addition, it requests that only those members of the Accused's defence team who have signed a non-disclosure agreement with the U.S. may have access to the document.[5] In the Motion, the Accused notes that he accepts all of the conditions proposed by the U.S.[6]

3. On 14 March 2014, the Office of the Prosecutor ("Prosecution") informed the Chamber *via* e-mail that it would not 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] Motion, para. 3.
[2] Motion, Annex A, p. 1. The Chamber notes that the Accused refers to "on or about 27 February 1995" in the Motion, para. 1.
[3] Motion, Annex A, p. 1.
[4] Motion, Annex A, p. 1.
[5] Motion, Annex A, p. 1.
[6] Motion, para. 3.

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 Motion and the information contained in the Annex A, the Chamber is satisfied that the U.S. has consented to provide the document responsive to the Accused's request, so long as there is an order from the Chamber that applies Rule 70 to the document and the information contained therein. Accordingly, the Chamber shall issue such an order.

8. The Chamber also notes that by granting the Motion and making an order under Rule 70(F), it does not make a determination as to the relevance of the document to this case.

[7] *Prosecutor v. Milošević*, Case Nos. IT-02-54-ARl08*bis* & 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 Sixth Motion for Order Pursuant to Rule 70 (United States of America), 4 March 2013, para. 7, citing Decision on the Accused's Fifth Motion for Order Pursuant to Rule 70 (United States of America), 20 December 2012, para. 8, 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.

IV. Disposition

9. 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 document which is to be voluntarily provided to the Accused by the U.S.; and

c. **INSTRUCTS** the Registry to provide this Decision to the U.S.

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

Judge O-Gon Kwon
Presiding

Dated this ninteenth day of March 2014
At The Hague
The Netherlands

[Seal of the Tribunal]