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CASE/AFFAIRE NO. IT-95-5/18-PT **DATE** 18 June 2009 D 20416

FROM/DE RAM DORAISWAMY, COURT OFFICER

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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-PT

Date: 18 June 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. John Hocking

Order of: 18 June 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

ORDER PURSUANT TO RULES 54 AND 70

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of the Kingdom of Sweden

via the Embassy of the Kingdom of Sweden
to The Netherlands, The Hague

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”) issues this order upon the request of the Accused in connection with his “Holbrooke Agreement Motion”, filed on 25 May 2009.

1. The Accused requests the Trial 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 any information provided by Mr. Carl Bildt, an official of the Government of the Kingdom of Sweden (“Swedish Government”) in an interview with the Accused’s legal advisor about his knowledge of the existence and nature of the alleged agreement discussed in the Holbrooke Agreement Motion.

2. The Swedish Government submitted on 2 June 2009 that Mr. Bildt would readily make himself available for an interview with the Accused’s legal advisor.¹ In a Status Conference held on 3 June 2009, the Swedish Ambassador to the Netherlands repeated that Mr Bildt would be available for an interview if the Trial Chamber would deem it suitable or necessary.²

3. On 15 June 2009, the Swedish Ambassador to the Netherlands informed the Trial Chamber by e-mail correspondence that Mr. Bildt would grant an interview with the Accused’s legal advisor, provided that the Trial Chamber was first requested to issue a Rule 70 order. The matter was discussed at the Rule 65 *ter* meeting held on 15 June 2009, attended by the Accused and representatives of the Office of the Prosecutor (“Prosecution”), and the pre-trial Judge informed the Accused that it was unnecessary for him to file a written motion for a Rule 70 order and that he would convey to the Trial Chamber the request for such an order.³

4. The Prosecution takes no position on this matter.

5. 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”.⁴

¹ Correspondence from the Kingdom of Sweden, filed on 2 June 2009.

² Status Conference, T. 256 (3 June 2009).

³ Rule 65 *ter* meeting, T. 84 (15 June 2009).

⁴ *Prosecutor v. Milošević*, Case Nos. IT-02-54-ARI08*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.

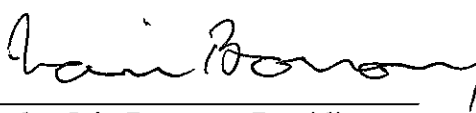
6. Paragraphs (B) through (E) of Rule 70 relate to material in the possession of the Office of the Prosecutor, and paragraph (F) provides for the Trial Chamber to order that the same provisions apply *mutatis mutandis* to specific information in the possession of the Defence.

7. The Appeals Chamber has interpreted Rule 70(F) as “enabling the Defence 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 Defence”, 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”,⁵ a purpose which is served by explicitly affirming the applicability of Rule 70 to confidential material provided to the Defence.⁶

8. The Trial Chamber is satisfied that the Swedish Government is willing to arrange an interview between Mr. Bildt and the Accused’s legal advisor, so long as there is an order from the Chamber that applies Rule 70 to any information resulting from that interview. The Chamber recalls that by making an order under Rule 70(F) it does not make a determination as to the relevancy of the information in the present case.

9. Accordingly, the Trial Chamber, pursuant to Rules 54 and 70 of the Rules, hereby **ORDERS** that the provisions of Rule 70 of the Rules shall apply *mutatis mutandis* to any information provided by Mr. Carl Bildt during any interview to be conducted by the Accused’s legal advisor.

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



Judge Iain Bonomy, Presiding

Dated this eighteenth day of June 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵ *Prosecutor v. Orić*, Case No. IT-03-68-AR73, Public Redacted Version of the Decision on Interlocutory Appeal Concerning Rule 70, 26 March 2004, para. 6.

⁶ *Ibid.*, paras.6–7.