

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

IT-95-5/18-T  
D85977 - D85973  
06 August 2014

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HL  
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AJ

Case No.: IT-95-5/18-T  
MICT-13-55-R90.3

Date: 6 August 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:** 6 August 2014

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

**DECISION ON INVITATION FROM THE SINGLE JUDGE OF THE MECHANISM FOR  
INTERNATIONAL CRIMINAL TRIBUNALS**

**Office of the Prosecutor**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**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”),

**NOTING** the “Decision to Invite the ICTY Trial Chamber in the *Karadžić* Case to Determine whether there is ‘Reason to Believe’ that Contempt has been Committed by Members of the Office of the Prosecutor” issued by a Single Judge of the Mechanism for International Criminal Tribunals on 21 July 2014 (“Invitation”, “Single Judge”, and “MICT”, respectively);

**NOTING** the determination of the Single Judge that, even after 1 July 2013, where a contempt matter arises before the Tribunal, the Trial or Appeals Chamber of the Tribunal seised of that underlying matter has “the authority to determine whether there is reason to believe that a person may be in contempt” pursuant to Rule 90(C) of the Rules of Procedure and Evidence of the MICT (“MICT Rules”);<sup>1</sup>

**NOTING** that the Single Judge invited this Chamber to make such a determination in relation to the Accused’s claim that contempt may have been committed by members of the Tribunal’s Office of the Prosecutor (“Prosecution”);<sup>2</sup>

**NOTING** that the Chamber has issued numerous decisions on the Accused’s motions for disclosure violations and is acquainted with the circumstances attendant to those motions;

**CONSIDERING** that the Chamber does not take a position as to whether or not the Chamber has the authority to make the determination whether there is reason to believe that a person may be in contempt pursuant to Rule 90(C) of the MICT Rules;

**CONSIDERING**, however, that given the Chamber’s familiarity with the surrounding circumstances, out of judicial comity, the Chamber, by majority, Judge Morrison dissenting, decides to accept the Single Judge’s Invitation;<sup>3</sup>

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<sup>1</sup> Invitation, paras. 12–13.

<sup>2</sup> Invitation, paras. 1, 21, I–III.

<sup>3</sup> The Chamber considers that an Invitation issued by a Single Judge of the MICT constitutes a scenario that is procedurally distinct from the Chamber’s prior decision in which it dismissed a motion filed under Rule 77 of the Tribunal’s Rules of Procedure and Evidence for lack of jurisdiction pursuant to Article 4(2) of the Transitional Arrangements of the MICT. Decision on Accused’s Motion for Appointment of *Amicus Curiae* Prosecutor to Investigate Officials of the United States of America, 16 January 2014.

**CONSIDERING** that although the Chamber has found that the Prosecution has violated its disclosure obligations on numerous occasions, it has never found that such violations were indicative of a lack of good faith on the part of the Prosecution;<sup>4</sup>

**HEREBY** by majority, Judge Morrison dissenting,

**INFORMS** the Single Judge of the Chamber's view that, based on the information available to the Chamber, and having reviewed the underlying disclosure violation motions and the Prosecution responses thereto, there is no reason to believe that contempt may have been committed by members of the Prosecution in connection with the multiple disclosure violations in this case.

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



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Judge O-Gon Kwon  
Presiding

Judge Morrison appends his dissenting opinion.

Dated this sixth day of August 2014  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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<sup>4</sup> See e.g. Decision on Eightieth and Eighty-First Disclosure Violation Motions, 9 July 2013, para. 18; Decision on Seventy-Fourth Disclosure Violation Motion, 6 November 2012, para. 12; Decision on Seventeenth *bis* and Twenty-Eighth Disclosure Violation Motions, 16 December 2010, para. 25; Decision on Twenty-Second, Twenty-Fourth, and Twenty-Sixth Disclosure Violation Motions, 11 November 2010, para. 37.

## DISSENTING OPINION OF JUDGE HOWARD MORRISON

1. My divergence from the Majority's decision stems from a differing view regarding the acceptance of the Single Judge's Invitation. Unlike the Majority, I would have declined that Invitation.
2. I note that the Single Judge found that this Chamber retains jurisdiction to determine whether there is "reason to believe" that members of the Prosecution may be in contempt pursuant to Rule 90(C) of the Rules of Procedure and Evidence of the MICT and then invited this Chamber to make that determination.<sup>1</sup> The Single Judge also indicated that in the event that the Chamber declined the invitation, he would have competence to make the same determination.<sup>2</sup> In light of the language of Article 4(2) of the Transitional Arrangements of the MICT, as well as the fact that the Accused filed the underlying contempt motion directly with the MICT, I consider that the Single Judge should make such a determination in this instance.<sup>3</sup>
3. Given my decision to decline the Invitation, I will not consider whether there is reason to believe that members of the Prosecution may have committed contempt.

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<sup>1</sup> Invitation, paras. 10–21.

<sup>2</sup> Invitation, para. 23.

<sup>3</sup> According to Article 4(2) of the Transitional Arrangements of the MICT, the MICT has "competence to conduct, and complete, all proceedings for which the indictment is confirmed on or after the commencement date of the respective branch" of the MICT. As this and other ICTY Chambers have previously noted, this provision, as well as Article 1(4)(a) of the MICT Statute and Rule 90 of the MICT Rules, have previously been interpreted to confer exclusive power on the MICT to decide whether to initiate contempt proceedings in matters where the indictment was not confirmed prior to the commencement date of the relevant branch of the Mechanism. See Decision on Accused's Motion for Appointment of *Amicus Curiae* Prosecutor to Investigate Officials of United States of America, 16 January 2014, fn 3 (citing *inter alia In Re Deogratias Sebureze and Maximilien Turinabo*, Case Nos. MICT-13-40-R90 and MICT-13-41-R90, Decision on Deogratias Sebureze and Maximilien Turinabo's Motions on the Legal Effect of the Contempt Decision and Order Issued by the ICTR Trial Chamber, 20 March 2013, para. 9; Decision on Jurisdiction Following the Appointment of a Specially Appointed Chamber, 18 October 2013, p. 1). Although I note the distinction drawn by the Single Judge between a situation where the underlying allegations of contempt "relat[e] to a number of decisions rendered by the Trial Chamber" and previous instances where the underlying allegations were not so linked, I still consider that the Single Judge should make the determination here. This is particularly so since the circumstances that inform the Majority's view as to whether there is reason to believe that members of the Prosecution may have committed contempt are apparent from its numerous decisions on the Accused's motions for disclosure violations. Moreover, I note that this Chamber, as it is not technically seised of the underlying motion, is unable to consider all of the arguments the Accused lists therein.

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



Howard Morrison

Judge

Dated this sixth day of August 2014  
At The Hague  
The Netherlands

[Seal of the Tribunal]