

**UNITED  
NATIONS**

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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-T  
Date: 18 December  
2013

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**IN TRIAL CHAMBER III**

**Before:** Judge O-Gon Kwon, Presiding  
Judge Howard Morrison  
Judge Melville Baird  
Judge Flavia Lattanzi, Reserve Judge

**Registrar:** Mr. John Hocking

**THE PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

**PUBLIC**

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**PROSECUTION RESPONSE TO KARADŽIĆ'S MOTION FOR  
APPOINTMENT OF *AMICUS CURIAE* PROSECUTOR TO  
INVESTIGATE OFFICIALS OF THE UNITED STATES OF  
AMERICA**

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**The Office of the Prosecutor:**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**Embassy of the United States of America**

**The Accused:**

Mr. Radovan Karadžić

**Standby Counsel:**

Mr. Richard Harvey

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**Case No. IT-95-5/18-T**

**THE PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**PROSECUTION RESPONSE TO KARADŽIĆ'S MOTION FOR APPOINTMENT  
OF *AMICUS CURIAE* PROSECUTOR TO INVESTIGATE OFFICIALS OF THE  
UNITED STATES OF AMERICA**

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1. The Chamber<sup>1</sup> should deny the Accused's motion requesting the appointment of an *amicus curiae* to investigate officials and employees of the United States government for contempt.<sup>2</sup> The Motion fails to provide any "reason to believe" that the United States is "knowingly and wilfully interfer[ing] with [this Chamber's] administration of justice" as required by Rules 77(A) and (C).<sup>3</sup>
  
2. In support of his Motion, the Accused attaches and refers to an array of unrelated documents and items generally concerning wiretapping by the National Security Agency of the United States and alleging an unspecified interest by the United States in the work

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<sup>1</sup> Under Rule 77(C) of the ICTY's Rules of Procedure and Evidence ("Rules"), this Chamber retains the power to determine whether there is "reason to believe that a person may be in contempt of the Tribunal". See in contrast Karadžić's request seeking contempt proceedings against Carla del Ponte, which concerned a completed case of which no judge was seised. See *Prosecutor v. Radovan Karadžić*, Case Nos. IT-95-5/18-T & IT-02-54-T, Decision on Jurisdiction Following the Assignment of a Specially Appointed Chamber, 18 October 2013, p.1.

<sup>2</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, T.Ch., Motion for Appointment of Amicus Curiae Prosecutor to Investigate Officials of the United States of America, 9 December 2013 ("Motion"). All references herein are to Case No. IT-95-5/18-T unless otherwise specified.

<sup>3</sup> See also Practice Direction on Procedure for the Investigation and Prosecution of Contempt before the International Tribunal, Doc. No. IT/227, 6 May 2004, para.7 ("Practice Direction").

of the Tribunal.<sup>4</sup> From this, the Accused speculates that the United States must therefore be intercepting conversations between himself and his legal advisor.<sup>5</sup> Such speculative assertions fail to identify the “facts and/or evidence” that would give a credible reason to believe that the United States is in contempt.<sup>6</sup> For example, the Accused claims that the United States received intercepted communications between Slobodan Milošević and his wife and legal advisors.<sup>7</sup> He mischaracterizes the document, which is not an intercept but a cable summarizing information received directly from a UNDU official based on that official’s personal observations.<sup>8</sup> The Accused also restates his allegation that former Prosecutor Carla del Ponte violated a Tribunal order by providing the United States government with the names of its officials on Milošević’s witness list;<sup>9</sup> an allegation that has already been dismissed as unsupported under the “reason to believe” standard.<sup>10</sup> Further, the Accused relies upon his “correspondence and litigation” with the United States. He assumes that, as a result of his own actions, the United States must be intercepting his communications with his attorney, and that the United States’ rejection of his request for intercepted conversations was in bad faith.<sup>11</sup>

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<sup>4</sup> See Motion, paras.5-18; fn.12.

<sup>5</sup> Motion, para.18.

<sup>6</sup> See Practice Direction, paras.5-6.

<sup>7</sup> Motion, para.8.

<sup>8</sup> *Contra* Motion, para.8. See Motion, Annex C.

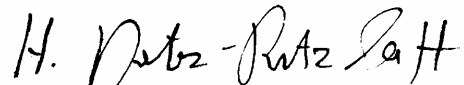
<sup>9</sup> Motion, para.10, Annex D.

<sup>10</sup> *Prosecutor v. Radovan Karadžić*, Case No.MICT-13-55-R90.1, Decision on Karadžić’s Request to Appoint an Amicus Curiae Prosecutor to Investigate Contempt Allegations Against Former ICTY Prosecutor Carla del Ponte, 27 November 2013, para.11 (“Carla del Ponte Contempt Decision”) (holding that because Karadžić did not identify any Tribunal order that had been violated when the names of witnesses were disclosed, there was “no reason to believe that del Ponte was in contempt of the ICTY”); see also Motion, para.10.

<sup>11</sup> See Motion, paras.4-5, 14-18.

3. Under Rule 77(C), the party seeking an investigation into possible contempt must present evidence that there is a “reason to believe” that contempt has occurred. Because Karadžić has not met that standard here, his Motion should be dismissed.<sup>12</sup>

Word Count: 352



Ms. Hildegard Uertz-Retzlaff  
Senior Trial Attorney

Dated this 18<sup>th</sup> day of December 2013  
At The Hague, The Netherlands

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<sup>12</sup> *E.g.* Carla del Ponte Contempt Decision, para.10 (holding that absent showing that an order of Trial Chamber was violated when certain names on the Accused’s witness list were disclosed, the mere fact that the witness list was confidential was insufficient to meet the “reason to believe” standard). *Cf. Prosecutor v. Charles Taylor*, Case No.SCSL-03-01-T, T.Ch., Decision on Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 25 February 2011, para.35 (“an allegation of contempt must be *credible* enough to provide a Judge or Trial Chamber with ‘reason to believe’ that a person may be in contempt.”) (emphasis in original).