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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

TRIAL CHAMBER III

Original: English

Before: Judge Yakov Ostrovsky, Presiding
Judge Lloyd George Williams
Judge Pavel Dolenc

Registrar: Mr. Adama Dieng

Decision of : 15 March 2001

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR
versus
LAURENT SEMANZA

Case No. ICTR-97-20-I

DECISION ON THE PROSECUTOR'S FURTHER MOTION FOR JUDICIAL
NOTICE PURSUANT TO RULES 94 AND 54

Counsel for the Prosecutor:
Mr. Chile Eboe-Osuji
Ms. Patricia Wildermuth

Counsel for the Accused:
Mr. Charles A. Taku
Mr. Sadikou Ayo Alao

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”)

SITTING as Trial Chamber III, composed of Judge Yakov Ostrovsky, presiding, Judge Lloyd George Williams, and Judge Pavel Dolenc (the “Chamber”);

BEING SEIZED of the Prosecutor’s Further Motion for Judicial Notice Pursuant to Rules 94 and 54, filed on 12 February 2001 (the “Motion”);

NOTING the Prosecutor’s Memorial, filed on 12 February 2001;

CONSIDERING the Defence Preliminary Reply to the Motion, filed on 14 February 2001;

RECALLING the Chamber’s Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, dated 3 November 2000 and filed on 6 November 2000 (the “Decision”);

HAVING HEARD the parties on 6 March 2001;

NOW DECIDES the matter.

PLEADINGS BY THE PARTIES**Prosecutor’s Submissions**

1. Based on Rule 94(B) of the Rules of Procedure and Evidence of the Tribunal (the “Rules”) which did not exist at the time the Chamber made its Decision on the Prosecutor’s first motion for judicial notice, the Prosecutor requests the Chamber to take judicial notice of the following facts that were adjudicated in other proceedings of the Tribunal:
 - (A) Between 1 January 1994 and 17 July 1994, Tutsis were killed in Rwanda with the intent to destroy their ethnic group wholly or partially;
 - (B) Between 1 January 1994 and 17 July 1994, serious bodily or mental harm was occasioned to persons perceived to be Tutsis with the intent to destroy their ethnic group wholly or partially; and
 - (C) Between 1 January 1994 and 17 July 1994, there was an armed conflict between the Rwandese Armed Forces (FAR) and the Rwandese Patriotic Front (RPF) which was an organized dissident armed group, under responsible command and which exercised control over territory in Rwanda and was able to carry out

sustained and concerted military operations.¹

Defence Response

2. In response, the Defence argues that Rule 94(B) does not confer any right on a party to seek reconsideration of an earlier ruling purely on the basis that Rule 94 had been amended.
3. Moreover, the Defence argues, the Prosecutor is repeating her earlier motion for review and this matter is *res judicata*, at least to the extent that the Chamber's prior decisions dealing with judicial notice in this case were based in part on the same Rule (Rule 54).
4. The Defence posits that drawing inferences from judicially noticed facts would be highly prejudicial to the accused and would relieve the Prosecutor of her burden of proving all material elements of the case.
5. Furthermore, taking judicial notice at this stage would prejudice the submissions of the *amicus curiae* and some of the issues on which evidence has already been adduced.
6. Consequently, the Defence urges the Chamber to dismiss the present Motion and to make an order to preclude the repeat of the same motion in another form.

DELIBERATIONS

7. At the outset, the Chamber points out that the present Motion is not one for reconsideration or review of any earlier ruling on the matter of judicial notice, but rather a motion brought under Rule 94(B), a Rule which did not exist at the time the Chamber made its first decision on judicial notice in this case. Additionally, there is no merit in the Defence argument that the subject matter of the Motion is *res judicata* since the Chamber's prior rulings on judicial notice in this case were based, at least in part, on Rule 54. The Chamber's first Decision on judicial notice in this case was made under Rule 94, while the Chamber disposed of the Prosecutor's motion for review of that Decision on the basis of Article 25 of the Statute of the Tribunal and Rule 120 of the Rules.
8. As for the substance of the Prosecutor's request, the Chamber does not consider it appropriate at this stage to go any further than it did in its first Decision on judicial notice. It is desirable to avoid a multiplication of decisions on the same subject matter.
9. Moreover, the Chamber is not inclined to consider as adjudicated facts within the meaning of Rule 94(B) the propositions that Tutsis were killed in Rwanda with the *intent*

¹This is the Prosecutor's wording of the facts of which she requested the Chamber to take judicial notice.

to destroy their ethnic group and that serious bodily or mental harm was occasioned to persons perceived to be Tutsis with the *intent* to destroy their ethnic group. Rather, such intent was inferred from facts adjudicated in prior Judgements of the Tribunal.²

10. Additionally, the Chamber is concerned that applying Rule 94(B) in respect of such a complex matter as intent at this stage of the trial may prejudice the rights of the accused. This is especially so in this case, when Rule 94(B) came into existence after the trial has already begun. The Chamber has discretion to take judicial notice under Rule 94(B) and it is not inclined to exercise its discretion in a way that may result in prejudice to the accused. While fully appreciating all measures aimed at speeding up proceedings and conserving judicial time, the Chamber is ever mindful of the rights of accused persons and of the requirements of a fair trial.

FOR THESE REASONS, THE TRIBUNAL

11. **DENIES** the Motion.

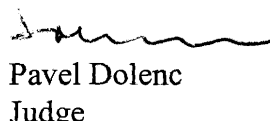
Arusha, 15 March 2001.



Yakov Ostrovsky
Judge, Presiding



Lloyd George Williams
Judge



Pavel Dolenc
Judge

[Seal of the Tribunal]

²See, e.g. *Akayesu*, paras. 523, 730; *Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgement, 6 December 1999, paras. 398-400.