



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
14-05-2004
(20102 - 20100)

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S. Mussa

TRIAL CHAMBER I

Before: Judge Erik Møse

Registrar: Adama Dieng

Date: 13 May 2004

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

JUDICIAL RECORD
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**DECISION ON DEFENCE MOTION TO OBTAIN COOPERATION FROM THE
VATICAN PURSUANT TO ARTICLE 28**

The Office of the Prosecutor

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

SITTING as Judge Møse, as designated by Trial Chamber I pursuant 73(A) of the Rules of Procedure and Evidence;

BEING SEIZED OF the Defence for Bagosora’s “Requête de la Défense de Théoneste Bagosora visant à obtenir la collaboration du Saint-Siège et de l’État du Vatican”, filed on 19 April 2004;

NOTING that the Prosecutor has not filed a response to this motion;

HEREBY DECIDES the motion.

INTRODUCTION

1. In its motion, the Defence for Bagosora requests the Chamber to order the Vatican to cooperate with the Defence in order to facilitate a meeting between the Defence and the former Ambassador of the Holy See to Rwanda who served in Kigali between April and July 1994. The Defence has indicated in its motion that the Vatican has not responded to written requests for a meeting with its former Ambassador to Rwanda, made through the Vatican’s Ambassador to Paris by the Defence on 3 December 2002 and by the Registry in January 2004.

SUBMISSIONS

2. The Vatican is not a member state of the United Nations. However, the Defence argues that Article 28 of the Statute, which requires states to cooperate with the Tribunal, does not make any distinction between member states and non-member states of the United Nations. The Defence further argues that the Vatican is obliged to cooperate with the Tribunal in light of paragraph 4 of Security Council Resolution 955 (1994), which urges states and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the Tribunal, including the offer of expert personnel.

DELIBERATIONS

3. The Chamber is not satisfied that the Defence has adequately demonstrated that the Tribunal has the authority compel a non-member state of the United Nations to cooperate with it. The enforcement of any order issued pursuant to Article 28 is ultimately the responsibility of the Security Council acting under Chapter VII of the United Nations Charter. The Tribunal’s coercive authority cannot exceed Chapter VII, which by its plain language imposes obligations on member states of the United Nations only.¹ It is difficult to interpret Article 28 as imposing obligations on non-member states of the United Nations in the absence of clear evidence that this was the Security Council’s intention and an adequate demonstration in customary international law that a non-member state is legally bound to implement a decision of the Security Council.² Paragraph 4 of Security Council Resolution 955 (1994) requests voluntary financial, material, and expert assistance from states and organizations and does not mandate the type of cooperation requested by the Defence. Consequently, the Chamber cannot grant the Defence motion.

¹ U.N. CHARTER articles 41-45, 48-49, and 51.

² See generally B. Simma (ed.): *The Charter of the United Nations: A Commentary* (1995), pp. 132-139.

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4. This being said, the Chamber would welcome the voluntary cooperation of the Vatican and requests the Registrar to continue to facilitate the Defence efforts to communicate with the Vatican to these ends.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence motion.

Arusha, 13 May 2004



Erik Mose
Judge

[Seal of the Tribunal]

