



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: 31 January 2011
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

Order of: 31 January 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

THIRD INVITATION TO THE BOLIVARIAN REPUBLIC OF VENEZUELA

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of Venezuela

via the Embassy of Venezuela to
The Netherlands, The Hague

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”),

BEING SEISED OF the Accused’s “Motion for Binding Order: Government of Venezuela”, filed on 1 November 2010 (“Motion”), whereby the Accused requests the Trial Chamber to issue a binding order, pursuant to Article 29 of the Statute of the Tribunal and Rule 54 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), requiring the Government of the Bolivarian Republic of Venezuela (“Venezuela”) to provide certain documents to him, which relate to the testimony of the scheduled witness, Ambassador Diego Arria of Venezuela;¹

RECALLING that, also on 1 November 2010, the Accused filed his “Motion for Binding Order: United Nations”, (“UN Motion”) in relation to, *inter alia*, a similar category of documents as requested in the Motion,² and that the Chamber invited the United Nations (“UN”) to respond to it;³

NOTING that the Chamber invited Venezuela, on 2 November 2010, to respond to the Motion by close of business on 16 November 2010 but that no such response had been filed by that date;⁴

NOTING that, on 17 November 2010, the UN filed its response, stating, *inter alia*, that “correspondence between Ambassador Arria and the [UN] during the period of Venezuela’s membership in the Security Council [...], other than the one-month period of Venezuela’s presidency and in his role as Security Council President, may not be disclosed without breaching the duty of confidentiality that the [UN] owes to Venezuela” and that the Accused’s Motion to Venezuela “may be an appropriate means of obtaining such documentation directly from Venezuela” (“Response to UN Motion”);⁵

NOTING that the Accused filed, on 30 November 2010, his “Reply Brief: Motion for Binding Order: United Nations” (“Reply to UN Motion”), asking, *inter alia*, that the Chamber issue a second invitation to Venezuela, reminding it of its obligation to respond to the first invitation,

¹ Motion, para. 1.

² UN Motion, para. 1.

³ Invitation to United Nations, 2 November 2010.

⁴ Invitation to the Bolivarian Republic of Venezuela, 2 November 2010.

⁵ Response to UN Motion, p. 5.

and requesting it to inform the Chamber whether it consents to the disclosure of the Venezuela-related documents requested from the UN;⁶

NOTING that in the Reply to UN Motion, the Accused states that, on 23 November 2010, his legal advisor, Mr. Peter Robinson, met with the UN Senior Legal Officer, Mr. Huw Llewellyn, and asked that the UN Office of Legal Affairs seek Venezuela's consent to the release of the documents to the Accused but that Mr. Llewellyn declined, stating that the UN's practice was for the requestor to seek such consent;⁷

NOTING also that, following this meeting, the Accused sent a letter to Venezuela, on 25 November 2010, requesting such consent;⁸

NOTING that, on 9 December 2010, the Chamber issued a second invitation to Venezuela, asking Venezuela to comment, by 23 December 2010, on both the substance of the Motion and whether it would be willing to consent to the UN disclosing the documents pertaining to Venezuela;⁹

NOTING that, on 28 December 2010, Venezuela filed its confidential response stating that (i) "because of the nature of this request" the disclosure of the requested documents could, *prima facie*, affect Venezuela's national security interests; (ii) its authorities were taking steps to locate and analyse the documents in question; and (iii) "any new element" relating to the Motion would be communicated to the Chamber "as soon as possible";¹⁰

CONSIDERING that a month has now passed since this response was filed and the Chamber has not heard from Venezuela on either the substance of the Motion or whether Venezuela would consent to the UN disclosing the documents in its possession which pertain to Venezuela;

CONSIDERING that the Chamber would benefit from being apprised by Venezuela of its progress in relation to the documents requested in the Motion, as well as whether it would consent to the disclosure of Venezuela-related documents in the possession of the UN;¹¹

⁶ Reply to UN Motion, para. 4.

⁷ Reply to UN Motion, paras. 3 and 4.

⁸ Letter to Venezuela, 25 November 2010.

⁹ Second Invitation to the Bolivarian Republic of Venezuela, 9 December 2010.

¹⁰ Confidential Correspondence from Venezuela, 28 December 2010.

¹¹ The documents in UN possession are outlined in the Response to UN Motion, p. 5.

CONSIDERING also that it is in the interests of all parties involved that requests for documents are, if possible, dealt with on a voluntary basis;

PURSUANT TO Rule 54 of the Rules,

HEREBY:

- (a) **INVITES** Venezuela to assist the Trial Chamber by filing a progress report in relation to the documents requested in the Motion, as well as to indicate whether it consents to the UN disclosing to the Accused documents pertaining to Venezuela, within 14 days of this Invitation; and
- (b) **REQUESTS** the Registry to provide this Invitation to Venezuela.

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



Judge O-Gon Kwon
Presiding

Dated this thirty-first day of January 2011
At The Hague
The Netherlands

[Seal of the Tribunal]