



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: 22 March 2011

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Order of: 22 March 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**ORDER SCHEDULING A HEARING PURSUANT TO RULE 54 *BIS*
(BOLIVARIAN REPUBLIC OF VENEZUELA)**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

The Government of Venezuela

via Embassy of Venezuela to
The Netherlands, The Hague

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 (“Statute”) 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 him with certain documents 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 consent to disclosure to him by the UN of documents pertaining to Venezuela and clarification of its position in relation to the substance of the Motion;⁸

NOTING that, on 9 December 2010, as a result of the Reply to UN Motion, 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 consent to the UN disclosing documents pertaining to Venezuela to the Accused;⁹

NOTING that Venezuela filed, on 28 December 2010, confidential correspondence informing the Chamber that it was "taking the necessary steps to locate the required information" but not indicating how much time it would need to do so or whether it would consent to the disclosure of documents by the UN pertaining to it;¹⁰

NOTING that, on 31 January 2011 the Chamber, *ex proprio motu*, invited Venezuela to file, within 14 days, a progress report in relation to the documents requested in the Motion, as well as to indicate whether it consents to the UN disclosing documents pertaining to Venezuela to the Accused ("Third Invitation"), but that no such response has yet been filed;¹¹

NOTING that Rule 54 *bis* (D)(i) allows the Chamber to hold a hearing on applications made pursuant to Rule 54 *bis* during which the state concerned shall have an opportunity to be heard, and provides that the relevant state shall be given no less than 15 days' notice of the hearing;

NOTING that, pursuant to Rule 54 *bis* (F)(i), if the concerned state raises an objection on the basis that disclosure of the documents requested would prejudice its national security interests, it

⁶ Reply to UN Motion, para. 4.

⁷ Reply to UN Motion, paras. 3 and 4.

⁸ Accused's 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 Third Invitation to the Bolivarian Republic of Venezuela, 31 January 2011 ("Third Invitation").

shall file a notice of objection, not less than five days before the hearing, specifying such grounds, and shall identify “as far as possible, the basis upon which it claims that its national security interests will be prejudiced”;

NOTING that, pursuant to Rule 54 *bis* (F)(ii), the concerned state may request, in its notice of objection, that the Chamber direct that appropriate measures be made for the hearing;

CONSIDERING that a month has passed since the deadline given by the Chamber in its Third Invitation and that the Chamber has not heard from Venezuela on either the substance of the Motion or whether Venezuela consents to the UN disclosing documents which pertain to Venezuela;

CONSIDERING that the need to resolve this matter expeditiously and before Ambassador Arria gives evidence in this case means it is necessary to proceed to a determination of the substance of the Motion;

CONSIDERING the responsibility of Venezuela to co-operate with the Tribunal pursuant to Article 29 of the Statute;

PURSUANT TO Article 29 of the Statute and Rules 54 and 54 *bis* (D) of the Rules;

HEREBY ORDERS that a hearing shall be held on Tuesday, 10 May 2011, at 10:00 a.m. in Courtroom 1;

REQUESTS the authorised representatives of Venezuela to appear before the Trial Chamber at the time and place indicated above;

INFORMS the Office of the Prosecutor that its participation is not required but that it would be helpful should its representatives wish to attend the hearing;

INFORMS Venezuela that it may, should it deem it necessary, file a notice of objection pursuant to Rule 54 *bis* (F) not less than five days before the hearing;

INFORMS the parties that, following such filings, if any, the Chamber shall issue a detailed schedule of the order of presentation of arguments; and

REQUESTS the Registry to serve this Order to Venezuela.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-second day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]