



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: 16 January 2013

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

Decision of: 16 January 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTION TO SUBPOENA AMBASSADOR HALL

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

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”) is seised of the Accused’s “Motion for Subpoena to Ambassador Hall” filed on 10 December 2012 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests the Chamber to issue, pursuant to Rule 54 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), a subpoena directing Ambassador Tony Hall (“Ambassador Hall”) to appear for testimony in his defence case on 25 February 2013.¹

2. The Accused argues that he has made reasonable efforts to obtain the voluntary co-operation of Ambassador Hall.² He contends that Ambassador Hall had initially agreed to testify and had provided a signed statement to his defence team.³ However, when Ambassador Hall was contacted on two subsequent occasions, he advised the Accused’s legal adviser, Peter Robinson, that he had decided not to testify after receiving feedback from “family and friends in the human rights field who felt strongly that he should not testify on behalf of Dr. Karadžić”.⁴ The Accused also submits that the Office of the Prosecutor (“Prosecution”) rejected his request to agree to the admission of Ambassador Hall’s written statement (“Statement”).⁵

3. The Accused submits that there are reasonable grounds to believe that Ambassador Hall has information that can materially assist his case.⁶ He states that, as a Congressman of the United States of America (“U.S.”), Ambassador Hall was in Bosnia and Herzegovina (“BiH”) in 1995 to meet with humanitarian organisations and learn first-hand about human rights issues.⁷ The Accused submits that Ambassador Hall travelled to Pale to meet with him on the evening of 30 July 1995.⁸ According to the Motion, at the suggestion of Ambassador Hall, the Accused allowed passage of a food convoy that had been blocked from entering Sarajevo to pass.⁹ The Accused submits that at the time Ambassador Hall did not know if the food convoy had been able to enter Sarajevo and this was not confirmed until about two years later when Ambassador

¹ Motion, paras. 1–2, 15.

² Motion, paras. 5, 9.

³ Motion, para. 5.

⁴ Motion, paras. 5–7.

⁵ Motion, paras. 6, 14.

⁶ Motion, para. 10.

⁷ Motion, para. 11.

⁸ Motion, para. 12.

⁹ Motion, para. 12.

Hall was at a meeting with individuals from the Balkans in Bled, Slovenia.¹⁰ On this occasion, Ambassador Hall mentioned his meeting with the Accused and a participant of the meeting told Ambassador Hall that he was in Sarajevo when a food convoy was let through and at the time did not understand why all of a sudden the Accused had let it enter.¹¹ The Accused submits that Ambassador Hall is expected to testify that he knows that “Dr. Karadžić has been accused of many human rights violations during the war, but on that particular day he did something very good”.¹²

4. The Accused contends that the testimony of Ambassador Hall is relevant to rebut the allegations in paragraph 14(j) of the Third Amended Indictment (“Indictment”) that he “directed and/or authorized the restriction of humanitarian aid to Bosnian Muslim and/or Bosnian Croat enclaves”.¹³ He argues that the evidence is necessary because the Accused “has no other non-Serb witnesses who can assist him in rebutting this allegation, let alone someone with the stature and credibility of Ambassador Hall”.¹⁴

5. The Accused requests that the Motion be served upon the U.S. and Ambassador Hall and that both be invited to respond to the Motion if they so wish.¹⁵

6. On 17 December 2012, the Chamber issued an “Invitation to the United States of America” (“Invitation”) to respond to the Motion by 14 January 2013. The Chamber also requested the U.S. to inform Ambassador Hall of the existence of the Motion.¹⁶

7. On 21 December 2012, the Prosecution filed the “Prosecution Response to Motion for Subpoena to Ambassador Hall” (“Response”). In the Response, the Prosecution argues that the Motion should be rejected on the basis that the issuance of a subpoena is not necessary and the information sought is available through other means.¹⁷ It further argues that the Motion “disregards the Trial Chamber’s admonitions concerning the injudicious or inappropriate use of subpoenas, a practice which squanders the time and resources of the Trial Chamber, the Office of the Prosecutor, and the Defence team”.¹⁸

¹⁰ Motion, para. 13.

¹¹ Motion, para. 13.

¹² Motion, para. 13.

¹³ Motion, para. 14.

¹⁴ Motion, para. 14.

¹⁵ Motion, para. 16.

¹⁶ Invitation, p. 2.

¹⁷ Response, para. 1.

¹⁸ Response, para. 1.

8. The Prosecution submits that the subpoena is not necessary because the information the Accused seeks to elicit from Ambassador Hall does not materially assist his case as it is consistent with, and in fact supports, the Prosecution's case "that the Accused and other members of the Bosnian Serb leadership modulated the level of humanitarian aid into Sarajevo, not that they restricted it altogether".¹⁹ It further argues that the Accused's action in allowing the food convoy entry does not rebut the allegation in paragraph 14(j) of the Indictment.²⁰ In the Prosecution's submission, Ambassador Hall's evidence in fact shows that the Accused had *de jure* and *de facto* control over the VRS units which blocked the humanitarian aid from entering Sarajevo.²¹

9. The Prosecution further contends that there is "ample existing evidence supporting the generally uncontested point that the Accused and the Bosnian Serb leadership permitted some access of humanitarian convoys to Sarajevo for various purposes".²² The Prosecution further argues that the Accused has failed to show why, given the numerous similar occasions in which he was involved in enabling humanitarian access, it is necessary for him to present this particular evidence.²³

10. The Prosecution argues that the Accused has not asked that it stipulate to the information sought from Ambassador Hall and that given the proposed Statement of Ambassador Hall is largely consistent with the Prosecution's case it would consider such a stipulation.²⁴ The Prosecution argues this is yet another factor demonstrating the Accused's failure to establish Ambassador Hall's testimony is necessary.²⁵

11. The Prosecution further argues that even if the Accused could demonstrate that the information contained in Ambassador Hall's Statement would materially assist his case, he has failed to demonstrate that the same information is not available through other means.²⁶ It is the Prosecution's submission that there are a number of other potential witnesses who may be able to provide the information sought by the Accused and it is apparent that no efforts have been made to obtain it from these potential witnesses before seeking the subpoena.²⁷ The Prosecution

¹⁹ Response, paras. 1, 6.

²⁰ Response, para. 8.

²¹ Response, para. 9.

²² Response, para. 10.

²³ Response, para. 11.

²⁴ Response, paras. 12, 20.

²⁵ Response, para. 12.

²⁶ Response, paras. 13–14.

²⁷ Response, para. 15–18.

argues that the Motion should be denied as the subpoena being sought is not “a method of last resort”.²⁸

12. The Prosecution further submits that the Motion misrepresents the communication between the Accused’s legal adviser and the Prosecution.²⁹ It states that “[t]he Accused falsely states in the Motion that the Prosecution refused to stipulate to the admission of this information in writing”.³⁰ The Prosecution contends that the Accused never offered, and the Prosecution therefore never refused, a stipulation regarding the information in the Statement.³¹ In its Response, the Prosecution states that it was “invited” to agree to the admission of the Statement without Ambassador Hall coming to The Hague to be cross-examined.³² The Prosecution “reminded the Accused of what he already knew or should have known—that such a proposal violated Rule 92*bis* of the Rules because the Statement related almost exclusively to the acts and conduct of the Accused”.³³

13. On 8 January 2013, the U.S. Government responded to the Invitation advising the Chamber that it would not be filing a substantive response to the Motion.

II. Applicable Law

14. Rule 54 of the Rules provides that a Trial Chamber may issue a subpoena when it is “necessary for the purpose of an investigation or the preparation or conduct of the trial”. A subpoena is deemed “necessary” for the purpose of Rule 54 where a legitimate forensic purpose for having the information has been shown:

An applicant for such [...] a subpoena before or during the trial would have to demonstrate a reasonable basis for his belief that there is a good chance that the prospective witness will be able to give information which will materially assist him in his case, in relation to clearly identified issues relevant to the forthcoming trial.³⁴

15. To satisfy this requirement of legitimate forensic purpose, the applicant may need to present information about such factors as the positions held by the prospective witness in relation to the events in question, any relationship that the witness may have had with the

²⁸ Response, para. 18.

²⁹ Response, para. 19.

³⁰ Response, para. 19.

³¹ Response, para. 19.

³² Response, para. 19.

³³ Response, para. 19, referring to, Decision on Accused’s Motion for Admission of Supplemental Rule 92 *bis* Statement (Mile Janić), 25 June 2012; Response, Appendix A.

³⁴ *Halilović* Decision, para. 6; *Prosecutor v. Krstić*, Case No. IT-98-33-A, Decision on Application for Subpoenas, 1 July 2003 (“*Krstić* Decision”), para. 10 (citations omitted); *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Assigned Counsel Application for Interview and Testimony of Tony Blair and Gerhard Schröder, 9 December 2005 (“*Milošević* Decision”), para. 38.

accused, any opportunity the witness may have had to observe those events, and any statements the witness has made to the Prosecution or to others in relation to the events.³⁵

16. Even if the Trial Chamber is satisfied that the applicant has met the legitimate purpose requirement, the issuance of a subpoena may be inappropriate if the information sought is obtainable through other means.³⁶ Finally, the applicant must show that he has made reasonable attempts to obtain the voluntary co-operation of the potential witness and has been unsuccessful.³⁷

17. Subpoenas should not be issued lightly as they involve the use of coercive powers and may lead to the imposition of a criminal sanction.³⁸ A Trial Chamber's discretion to issue subpoenas, therefore, is necessary to ensure that the compulsive mechanism of the subpoena is not abused and/or used as a trial tactic.³⁹ In essence, a subpoena should be considered a method of last resort.⁴⁰

III. Discussion

18. Turning to the merits of the Motion, the Chamber finds that the Accused has made reasonable efforts to secure Ambassador Hall's voluntary co-operation.⁴¹

19. As stated above, the issuance of a subpoena may be inappropriate if the information sought is obtainable through other means.⁴² Ambassador Hall is expected to testify about a meeting he had with the Accused in Pale on 30 July 1995, following which, at the suggestion of Ambassador Hall, the Accused allowed passage of a food convoy that had previously been prevented from entering Sarajevo.⁴³ According to the Motion, Ambassador Hall would also testify about a meeting two years later in Bled, Slovenia, where he learnt from a man who was present in Sarajevo in 1995 that a food convoy had been let into Sarajevo around the time of his

³⁵ *Halilović* Decision, para. 6; *Krstić* Decision, para. 11; *Milošević* Decision, para. 40.

³⁶ *Halilović* Decision, para. 7; *Milošević* Decision, para. 41.

³⁷ *Prosecutor v. Perišić*, Case No. IT-04-81-T, Decision on a Prosecution Motion for Issuance of a Subpoena ad Testificandum, 11 February 2009, para. 7; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for a Subpoena for Witness SHB, 7 February 2005, para. 3.

³⁸ *Halilović* Decision, para. 6; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-AR73.9, Decision on Interlocutory Appeal, 11 December 2002, para. 31.

³⁹ *Halilović* Decision, paras. 6, 10.

⁴⁰ See *Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on the Prosecution's Additional Filing Concerning 3 June 2005 Prosecution Motion for Subpoena, confidential and *ex parte*, 16 September 2005, para. 12: "Such measures [subpoenas], in other words, shall be applied with caution and only where there are no less intrusive measures available which are likely to ensure the effect which the measure seeks to produce."

⁴¹ Motion, paras. 5–7, 9.

⁴² See *supra*, para. 16.

⁴³ Motion, para. 12.

meeting with the Accused.⁴⁴ The Chamber notes that there is no indication that the Accused has attempted to locate and/or contact one or more of the participants present at either of these meetings to confirm the discussions that transpired. As such, the Chamber considers that the proposed evidence of Ambassador Hall is obtainable through other means and that the Accused should investigate other avenues before seeking a subpoena for Ambassador Hall. In line with this, the Chamber notes that the proposed testimony of Ambassador Hall is generally similar to documentary and testimonial evidence already in evidence,⁴⁵ and that the Prosecution would consider stipulating to certain portions of Ambassador Hall's proposed testimony if the Accused so wishes.

20. The Chamber finds that the requirement that the prospective evidence may not be obtainable through other means has not been met in this case. Accordingly, there is no need for the Chamber to enter into a discussion on whether the Accused has satisfied the other requirements for issuing a subpoena in this particular case.

21. The Chamber takes this opportunity to reiterate its concern once again with what seems to be the Accused's practice, namely, to subpoena every individual who is in some way connected to the case but who is not willing to co-operate with him. In that respect, the Chamber notes that the Accused and his legal advisers should neither expect absolute co-operation from all those they wish to speak to or designate as witnesses, nor should they expect that subpoenas would be issued as a matter of course to such individuals. The Chamber reminds the Accused that subpoenas will not be issued lightly, and that their use should be limited and used sparingly as a method of last resort for obtaining information that is both legally and factually relevant and necessary to his case.⁴⁶

⁴⁴ Motion, para. 13.

⁴⁵ For evidence regarding the Accused allowing humanitarian aid into Sarajevo and BiH generally, *see, e.g.*, John Wilson, T. 3995 (21 June 2010); P845 (UNPROFOR report re meeting with Radovan Karadžić, 15 October 1993), p. 1; P890 (UNPROFOR Weekly Situation Report (Sarajevo), 10 June 1995), pp. 1–3; P949 (Announcement of SDS leadership re Sarajevo airport and humanitarian supplies, 27 May 1992); P1029 (Witness statement of John Wilson dated 4 November 2008), para. 123.

⁴⁶ Decision on Accused's Motion to Subpoena President Karolos Papoulias, 23 October 2012, para. 21; Decision on the Accused's Second Motion for Subpoena to Interview President Bill Clinton, 21 August 2012, para. 16.

IV. Disposition

22. For the reasons outlined above, the Chamber, pursuant to Rule 54 of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this sixteenth day of January 2013
At The Hague
The Netherlands

[Seal of the Tribunal]