



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: 2 February 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: 2 February 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**ORDER INVITING SUBMISSIONS ON ACCUSED'S MOTION FOR BINDING ORDER
TO UNITED NATIONS**

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”),

BEING SEISED OF the Accused’s “Motion for Binding Order: United Nations”, 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 United Nations (“UN”) to provide certain documents to him on the basis that they relate to an upcoming witness in the case, former Ambassador of the Bolivarian Republic of Venezuela (“Venezuela”), Diego Arria;¹

NOTING that, upon the invitation of the Chamber,² the UN filed a response to the Motion on 12 November 2010 (“Response”), stating that it was complying with the Accused’s request in good faith,³ but that the request “largely concerns categories of documents that the [UN] may not be in a position to disclose” because doing so would either (i) breach the duty of confidentiality the UN owes to Venezuela or (ii) reveal the “informal consultations of the Security Council, in which the Member States express their positions on the assumptions of confidentiality” thereby compromising the “confidentiality of the Security Council’s decision making process;”⁴

NOTING that the UN also argues in the Response that it is under no obligation to release its documents “for use in proceedings before the Tribunal” as Article II of the Convention on the Privileges and Immunities of the UN (“UN Convention”) provides for the inviolability of the UN archives;⁵

NOTING that, upon being granted permission to do so,⁶ the Accused filed his “Reply Brief: Motion for Binding Order: United Nations” on 30 November 2010 (“Reply”) wherein he argues, *inter alia*, that Rule 54 *bis* applies to the UN as it would to any other international organisation,

¹ Motion, para. 1.

² Invitation to United Nations, 2 November 2010.

³ Response, p. 3.

⁴ Response, p. 5.

⁵ Response, p. 2.

⁶ Decision on the Accused’s Request for Leave to Reply: Motion for Binding Order (United Nations), 29 November 2010.

and that the UN cannot withhold documents from the Tribunal but, if it so wishes, should instead rely on the protective measures provided in Rule 54 *bis*;⁷

CONSIDERING that the Accused, in his Reply, does not address the specific issue of the applicability of the UN Convention in the circumstances of this Motion and that the Office of the Prosecutor (“Prosecution”) has not provided its position in relation to the Motion;

CONSIDERING that the Chamber would benefit from detailed submissions from the Accused and the Prosecution on this issue;

PURSUANT TO Rule 54 of the Rules,

HEREBY ORDERS the Accused and the Prosecution to file, by 10 February 2011, submissions before the Chamber, addressing the following issue, and any other related points:

Does Article 29 of the Tribunal’s Statute and Rule 54 *bis* of its Rules apply vis-à-vis the UN, the organisation of which the Tribunal is a part, or does the UN Convention affect the application of those provisions to the UN?

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



Judge O-Gon Kwon, Presiding

Dated this second day of February 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ Reply, para. 6.