



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: 14 February 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: 14 February 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON AGREED FACTS

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 “Stipulation of Facts: Ambassador Tony Hall”, filed on 30 January 2013 (“Stipulation”), and hereby issues its decision thereon.

1. On 16 January 2013, the Chamber denied the Accused’s “Motion for Subpoena to Ambassador Hall” filed on 10 December 2012 (“Subpoena Decision”), on the basis that his request for a subpoena did not meet one of the requirements of Rule 54 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) as the information sought from Ambassador Hall was obtainable through other means.¹ In the Subpoena Decision, the Chamber also noted that the Office of the Prosecutor (“Prosecution”) was willing to consider stipulating to certain portions of Ambassador Hall’s proposed testimony if the Accused so wished.² Following the Chamber’s Subpoena Decision, the Accused filed the Stipulation.³

2. In the Stipulation, the Accused submits that the “parties have agreed to the facts” contained in Annex A to the Stipulation.⁴ The Stipulation is signed by both the Accused and the Prosecution in support of their mutual agreement.⁵

3. As set out in the Chamber’s “Decision on ‘Prosecution Response to Karadžić’s Submission of Agreed Facts and Motion for Reconsideration’” issued on 26 August 2010 (“Decision on Agreed Facts”), even though the only provision of the Rules that refers to agreement between the parties is Rule 65 *ter*(H), which deals with pre-trial phase of the case, the Chamber may also choose to note on the record any matters of fact or law which are agreed between the parties during the trial.⁶

¹ Decision on Accused’s Motion to Subpoena Ambassador Hall, 16 January 2013 (“Subpoena Decision”), paras. 19–20, 22.

² Subpoena Decision, para. 19.

³ The Accused’s legal adviser requested to read the stipulation of facts in court but was informed by the Chamber that it preferred a joint submission, in writing, by the parties. *See* T. 32910 (30 January 2013).

⁴ Stipulation, para. 1.

⁵ Stipulation, p. 2.

⁶ Decision on Agreed Facts, para. 6. *See also* *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Motion for Admission of Agreed Facts, 12 January 2011; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Decision in Respect of Joint Submission of Agreed Facts Proposed by the Defence, 29 June 2010; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Second Decision in Respect of Srebrenica Agreed Facts, 30 September 2009; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Decision in Respect of Srebrenica Agreed Facts, 19 August 2009; and *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-T, Decision on Motion Concerning Further Agreed Facts, 25 July 2005.

4. The Chamber must be satisfied that, pursuant to Rule 65 *ter*(H), there is indeed an agreement between the parties before any fact can be noted as agreed.⁷ In the Stipulation, the Accused submits that the parties have agreed to the facts contained in Annex A as evidenced by the fact that they both signed it.⁸ Accordingly, the Chamber is satisfied that the parties have agreed to the facts contained in Annex A of the Stipulation.

5. As the Chamber has previously stated, the effect of recording points of agreement between the parties at trial is not the same as accepting such recorded agreed facts as evidence pursuant to Rule 89 of the Rules.⁹ The Chamber considers that the admission of evidence or taking judicial notice of adjudicated facts or facts of common knowledge pursuant to Rule 94(B) is an entirely different process than a simple recording that the parties have agreed to certain facts.¹⁰ An agreement between the parties is primarily a matter for the parties themselves, and they may choose to agree on any number of matters which the Chamber may, ultimately, consider have no bearing on the case.¹¹ Therefore, it is the view of the Chamber that where the parties do agree on matters of fact and this agreement is recorded by the Chamber, it does not render those facts evidence, but rather simply makes them facts in support of which no evidence needs be brought and upon which the Chamber may rely, should it so choose, in its final judgement.¹²

6. Accordingly, the Chamber, pursuant to Rule 54 and 65 *ter* of the Rules, hereby **NOTES** that the parties have agreed to the facts contained in Annex A of this Decision.

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



Judge O-Gon Kwon
Presiding

Dated this fourteenth day of February 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ Decision on Agreed Facts, para. 8.

⁸ Stipulation, p. 2.

⁹ Decision on Agreed Facts, para. 9.

¹⁰ Decision on Agreed Facts, para. 9.

¹¹ Decision on Agreed Facts, para. 9.

¹² Decision on Agreed Facts, para. 9.

Annex A

| | |
|--------|--|
| Fact 1 | In July 1995, United States Congressman Tony Hall met with members of humanitarian organisations in Sarajevo and was informed that they had been trying to get a food shipment into Sarajevo for a long time, but the shipment was blocked by the Bosnian Serb forces. |
| Fact 2 | On 30 July 1995, Congressman Hall met with Radovan Karadžić and at this meeting, Congressman Hall told Karadžić that Karadžić’s reputation was not good and that the whole world looked upon him as “a monster”. |
| Fact 3 | At the 30 July 1995 meeting, Congressman Hall could see that Karadžić was worried about his bad reputation and Karadžić told Congressman Hall that he was not the monster that the world thought he was, and said that he wanted to change his image. |
| Fact 4 | At the 30 July 1995 meeting, Congressman Hall suggested to Karadžić that he allow the convoy of food trucks that was blocked from entering Sarajevo to pass through and suggested that this would be a way to show the world that he was doing something good. Karadžić agreed and said that he would do so. |
| Fact 5 | After the 30 July 1995 meeting, Karadžić announced to the media that he had agreed to let the food convoy through to Sarajevo. |
| Fact 6 | Two years after the 30 July 1995 meeting in which Karadžić announced to the media that he would let food convoys to Sarajevo, Congressman Hall learned that the convoy did indeed reach Sarajevo. |