

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. John Hocking

Date: 3 March 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

SIXTH MOTION FOR BINDING ORDER:
UNITED STATES OF AMERICA

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

United States of America

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves, pursuant to Article 29 and Rule 54*bis*, for an order to the United States of America, compelling it to produce the following documents:

- (A) A paper prepared by the DCI Interagency Balkan Task Force on or about February 27, 1995 concerning increased air activity over Bosnia. The paper was attached to a memo from Ray Converse of the Task Force to the Deputy Director for intelligence dated February 27, 1995 which was among those released by the United States government and Clinton library.
- (B) A copy of the cable from Brigadier Jones referred to in the memorandum of the deputies committee meeting of 22 February 1993 on p. 2 in which it was attached and allegedly reported that the Muslims were responsible for all UNPROFOR casualties.
- (C) A copy of the detailed documentation of recent helicopter and fixed-wing activity in Bosnia ordered by the Principals committee on 21 February 1995.
- (D) Contents of Intelligence Tab and Serb Objectives Tab to 13 July 1995 memo from Norman Schindler to CIA Director.

Background

2. Dr. Radovan Karadzic is charged with, *inter alia*, the infliction of terror on the civilian population of Sarajevo through shelling and sniping, and the expulsion and murder of Bosnian Muslims of Srebrenica in July 1995.

3. In late September 2013, the United States Central Intelligence Agency, in connection with the Clinton Library, released some 300 previously classified documents pertaining to the war in Bosnia. Upon reviewing the documents, Dr. Karadzic saw references to other documents that appeared to him to be relevant and necessary for his defence.

4. He now brings this motion as a result of his lack of success in obtaining the documents before the Trial Chamber's deadline for closing of his defence case.

The Efforts to Obtain the Documents

5. On 23 September 2013, Dr. Karadzic sent a letter to the United States Embassy in The Netherlands in which he requested, *inter alia*, document (A) listed above.¹

¹ A copy of Dr. Karadzic's letter is attached as Annex "A".

6. On 8 October 2013, having reviewed additional documents released to the public, Dr. Karadzic sent another letter to the United States Embassy in The Netherlands in which he requested, *inter alia*, documents (B), (C), and (D) listed above.²

7. On 25 October 2013, when no response had been received, Dr. Karadzic filed a *Motion for Invitation to United States of America* requesting the Trial Chamber to invite the United States to respond. The Trial Chamber issued such an invitation on 30 October 2013.³

8. On 21 November 2013, the United States responded that it was in the process of conducting a review for the information and requested that the Trial Chamber not set a deadline for its response. It promised to respond as quickly as possible.⁴

9. On 12 December 2013, Dr. Karadzic wrote yet another letter requesting a substantive response.⁵

10. On 10 January 2014, the United States government responded to Dr. Karadzic's letters, indicating that it was still "working towards providing you with the remaining responses to your inquiries."⁶

11. On 20 February 2014, the Trial Chamber issued an order setting a deadline of 3 March 2014 for the filing by Dr. Karadzic of any remaining evidence-related motions.⁷

Applicable Provisions

12. Article 29 of the Statute provides that:

1. States shall co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

- (a) the identification and location of persons;
- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;

² A copy of Dr. Karadzic's letter is attached as Annex "B".

³ *Invitation to the United States of America*.

⁴ *Response of the United States of America to the Trial Chamber's 30 October 2013 Invitation to the United States of America*.

⁵ A copy of Dr. Karadzic's letter is attached as Annex "C".

⁶ A copy of the letter from the United States of America is attached as Annex "D".

⁷ *Order Regarding the Close of the Defence Case*.

- (d) the arrest or detention of persons;
- (e) the surrender or the transfer of the accused to the International Tribunal.

13. Rule 54 *bis* of the Rules of Procedure and Evidence provides in pertinent part that:

[A] party seeking an order that a State produce documents or information must (1) identify as far as possible the documents or information to which the application relates; (2) indicate how they are relevant to any matter in issue and necessary for a fair determination of that matter; and (3) explain the steps that have been taken by the applicant to secure the State's assistance.

Argument

14. Dr. Karadzic has met the three requirements of Rule 54 *bis*. His request is specific, calls for relevant and necessary documents, and he has taken steps to obtain the assistance of the United States before filing the motion.

Specificity Requirement

15. Dr. Karadzic has identified the specific documents that he is requesting by date and identifying the references where the document has been mentioned in public-source material. Therefore, Dr. Karadzic has satisfied the requirement of specificity.

Relevance and Necessity Requirement

16 Under Rule 54 *bis*, a request for a binding order must set out why the requested documents are deemed relevant and necessary for the trial.⁸ The relevance and necessity requirements serve the purpose of shielding States from requests which will not result in useful information for the party or the Trial Chamber.

17. Documents (A) and (C) relate to the alleged "Black Flights to Tuzla" episode in February 1995 wherein UN personnel observed what appeared to be an air-drop delivery of high-value military equipment to the Bosnian Army in violation of the United Nations arms embargo. Some of these arms were shipped to Zepa and Srebrenica later in February 1995.⁹

⁸ *Prosecutor v. Tihomir Blaskic*, No. IT-95-14-AR108*bis*, *Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997*, 29 October 1997, para. 32; *Prosecutor v. Milutinovic et al*, No. IT-05-87-PT, *Decision on Second Application of Dragoljub Ojdanic for Binding Orders Pursuant to Rule 54 bis* (17 November 2005) at para. 19.

⁹ A detailed account of the events underlying the requests for information pertaining to the "Black Flights to Tuzla" can be found in Dr. Karadzic's *Third Motion for Binding Order to United States of America* (24 January 2011) at paras. 2-20

18. The Trial Chamber has previously found that evidence of the February 1995 Tuzla air shipments was both relevant and necessary to the defence of Dr. Karadzic and issued a binding order for such records from Germany.¹⁰ Germany later claimed not to have any such material.

19. The "Black Flights to Tuzla" material was also the subject of Dr. Karadzic's *Motion for Binding Order to the United States of America* (11 September 2009). The Trial Chamber denied that motion based upon the representations of the United States that it was not refusing to provide the requested documents.¹¹

20. Dr. Karadzic again sought a binding order for the Tuzla material in his *Third Motion for Binding Order to the United States of America* (24 January 2011), noting that while it had produced some material related to the Black Flights to Tuzla, the United States had not agreed to produce all of the relevant material requested. The Trial Chamber again denied the motion based upon the representations of the United States that it was not refusing to provide the requested documents.¹²

21. On 12 April 2011, Dr. Karadzic filed his *Fourth Motion for Binding Order to the United States of America* after the United States failed to produce what Dr. Karadzic believed were additional documents in its possession concerning the "Black Flights to Tuzla". Dr. Karadzic later withdrew that motion after the United States insisted that it had produced all of the requested material.¹³

22. Dr. Karadzic was disappointed, but not surprised, when the CIA/Clinton Library disclosures of September 2013 revealed the existence of documents pertaining to the "Black Flights to Tuzla" that had not been disclosed to him by the United States.

23. Therefore, Dr. Karadzic has satisfied the requirement of relevance and necessity for documents (A) and (C).

24. Document (B) seeks a report indicating that the Bosnian Muslims were responsible for all of the UNPROFOR casualties in Sarajevo as of February 1993. The relevance of this report is that it supports Dr. Karadzic's case that the Bosnian Muslims

¹⁰ *Decision on the Accused's Application for a Binding Order Pursuant to Rule 54 bis (Federal Republic of Germany)* (19 May 2010) at para. 36

¹¹ *Decision on the Accused's Application for Binding Order Pursuant to Rule 54 bis (United States of America)* (11 October 2009)

¹² *Decision on the Accused's Third Motion for Binding Order (United States of America)* (17 February 2011)

¹³ *Withdrawal of Fourth Motion for Binding Order to the United States of America* (2 May 2011)

were engaged in efforts to provoke international intervention by committing crimes such as sniping and shelling that could be blamed on the Serbs. Therefore, responsibility for the scheduled incidents of shelling and sniping, as well as unscheduled crimes, lies with the Bosnian Muslim side and are not crimes for which Dr. Karadzic can be held responsible.

25. While Dr. Karadzic has led some evidence of this from Edin Garaplija and Witness KW586, the prosecution has attacked the credibility of those witnesses. Evidence in the form of a report from the United States government is necessary because it may corroborate this evidence from a source whose credibility the prosecution does not dispute.

26. Therefore, Dr. Karadzic has satisfied the requirements of relevance and necessity for document (B).

27. Document (D) seeks information in the possession of the United States relating to the events in Srebrenica. The 13 July 1995 intelligence analysis of Bosnian Serb intentions is relevant to show that there was no information at that time that indicated that genocide would be committed in Srebrenica.

28. This is relevant to support Dr. Karadzic's defence that he had no knowledge that prisoners from Srebrenica would be executed, and no reason to believe that the events in Srebrenica would lead to genocide. Therefore he cannot be found guilty on Count Two of the indictment under theories of, *inter alia*, aiding and abetting by omission or JCE III.

29. The information in Document (D) is necessary because it would constitute support for his defence from a source that is not connected to Republika Srpska and therefore be of greater credibility than the testimony of the numerous defence witnesses who have so far testified that Dr. Karadzic had no knowledge of, or reason to believe, that genocide would be committed in Srebrenica in July 1995.

Efforts to Obtain the Material Voluntarily

30. Rule 54 *bis* requires that the party seeking a binding order have made efforts to obtain the material from the State or international organizations voluntarily. As described above, Dr. Karadzic has requested the United States to provide the documents voluntarily, but it has failed to do so.

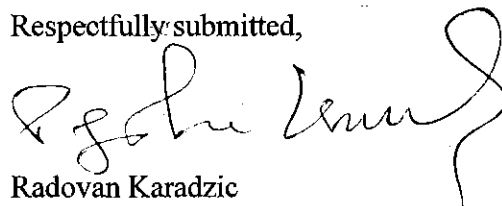
31. While the United States has continually professed its willingness to provide the requested documents, the defence case is coming to a close and Dr. Karadzic is obliged to file this motion. Should the Trial Chamber wish to wait for voluntary compliance from the United States, as it has done in the past, Dr. Karadzic has no problem with that. However, he will not be able to close his defence case until he has received the documents and determined whether to offer them, or evidence derived from those documents, into evidence.

Conclusion

32. It is respectfully requested that the Trial Chamber issue a binding order to the United States of America requiring it to produce the material specified in paragraph 1 of this motion.

Word count: 2074

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style. The signature is positioned to the right of the typed name 'Radovan Karadzic'.

Radovan Karadzic

ANNEX "A"

Dr. Radovan Karadzic
International Criminal Tribunal for the former Yugoslavia
The Hague, Netherlands

24 September 2013

Mr. Paul Veidenheimer
Legal Counselor
Embassy of the United States
Lange Voorhout 102
2514 EJ The Hague, The Netherlands

Dear Mr. Veidenheimer,

I have two additional requests for documents from the United States.

I have noticed that the United States government has recently declassified some documents relating to the war in Bosnia in connection with the Clinton Library. I appreciate the transparency and found the declassified documents to be very interesting and enlightening.

I noticed that among the declassified documents were two transcripts of recordings made for the Dayton History Project. The transcripts which were made available were recordings of the recollections of Richard Holbrooke, Christopher Hill, and Roberts Owen. Derek Chollet, James O'Brien, and Christopher Hoh also participated. They included discussions on June 18 and July 10, 1996 about the events leading up to the Dayton Peace Conference. You can find these on the CIA website, or I can provide them to you if it is easier.

For my first request, I am now asking that the United States government to search for and provide me any recordings and/or transcripts of the Dayton History Project, or any summaries or memoranda in connection with that project, which deal with the events of July 1996 concerning the negotiations for my resignation and withdrawal from public life.

As you know, I contended in a Motion to Dismiss at the ICTY that I had been promised by Mr. Holbrooke that I would not be prosecuted in exchange for my resignation and withdrawal from public life. The ICTY refused to dismiss my case but held that information about the alleged agreement was relevant to sentencing in the event I was convicted.

I will be producing evidence related to sentencing at the end of my trial. Any information obtained in the course of the Dayton Historical Project about the events leading up to my resignation would be relevant and necessary for my defence.

Mr. Paul Veidenheimer

--page two--

My second request is for a paper prepared by the DCI Interagency Balkan Task Force on or about February 27, 1995 concerning increased air activity over Bosnia. The paper was attached to a memo from Ray Converse of the Task Force to the Deputy Director for intelligence dated February 27, 1995 which was among those released by the United States government and Clinton library. The Converse memo is contained on the CIA website, but if it is easier for you, I can provide you a copy.

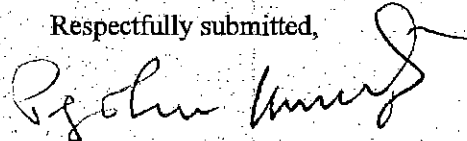
This information is relevant to the issue of the "Black Flights to Tuzla" which has been the subject of earlier requests and earlier production of documents by the United States. However, I did not find the paper among the documents previously provided.

I appreciate the production of information on these issue that has been made by the United States government in the past, and hope that you can ensure that this request is processed expeditiously in light of the fact that my trial is ongoing and in the defence case phase,

Please feel free to contact my Legal Advisor Peter Robinson at peter@peterrobinson.com if you have any questions about this request and when responding to the request.

Thank you very much for your cooperation.

Respectfully submitted,



Radovan Karadzic

ANNEX "B"

Dr. Radovan Karadzic
International Criminal Tribunal for the former Yugoslavia
The Hague, Netherlands

8 October 2013

Mr. Paul Veidenheimer
Legal Counselor
Embassy of the United States
Lange Voorhout 102
2514 EJ The Hague, The Netherlands

Dear Mr. Veidenheimer,

I have now completed my review of the Clinton Bosnia collection released on 1 October and have some additional requests to my letter of 24 September 2013 arising from the latest documents.

3. Copy of the cable from Brigadier Jones referred to in the memorandum of the deputies committee meeting of 22 February 1993 on p. 2 in which it was attached and allegedly reported that the Muslims were responsible for all UNPROFOR casualties.

This is relevant to support my claim that many of the shelling and sniping incidents in Sarajevo blamed on the Bosnian Serbs were in fact carried out by the Bosnian Muslims.

4. A copy of the detailed documentation of recent helicopter and fixed-wing activity in Bosnia ordered by the Principals committee on 21 February 1995.

This is relevant to support my claim that the Bosnian Muslims received arms smuggled through the Tuzla Airport with the assistance of third countries, which they thereafter sent to Srebrenica.

5. Contents of Intelligence Tab and Serb Objectives Tab to 13 July 1995 memo from Norman Schindler to CIA Director.

These documents are relevant to support my claim that the Muslims and international community favored the evacuation from Srebrenica and that there was no forcible transfer of the population, as well as to show that there was no knowledge or expectation that the Muslim men would be executed at that time.

6. Unredacted version of the paragraph in document 1995-10-06C which refers to an estimated 600 people on a soccer field at Kasaba and another 400 near a road at Sandici.

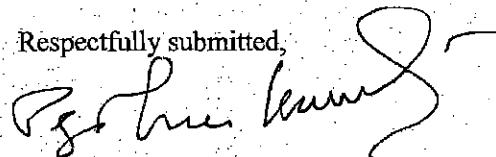
This unredacted material is needed to confirm that US estimates from their own imagery is far less than the number of people at these locations estimated from the same photos by the prosecution and that the number of victims of the Srebrenica events are less than previously determined.

Finally, I am requesting that the United States government make available Mr. Norman Schindler, the former head of the Balkan Interagency Intelligence Task Force (CIA, DIA, NSA) for an interview by my Legal Advisor Peter Robinson. From my review of the documents released through the Clinton Bosnia project, it appears that Mr. Schindler had a great deal of knowledge and insight into the events in Bosnia. I would like Mr. Robinson to ask him about any information he may have come across concerning my alleged knowledge and involvement in the Srebrenica events, the shelling of the Markale market, and conditions in prison camps as well as have him authenticate some of the documents from the collection that I would like to use in my trial.

Please feel free to contact my Legal Advisor Peter Robinson at peter@peterrobinson.com if you have any questions about this request and when responding to the request.

Thank you very much for your cooperation.

Respectfully submitted,



Radovan Karadzic

ANNEX "C"

Dr. Radovan Karadzic
International Criminal Tribunal for the former Yugoslavia
The Hague, Netherlands

12 December 2013

Mr. Paul Veidenheimer
Legal Counselor
Embassy of the United States
Lange Voorhout 102
2514 EJ The Hague, The Netherlands

Dear Mr. Veidenheimer,

I have not received any further information from the United States since its 21 November 2013 *Response of the United States of America to the Trial Chamber's 30 October 2013 Invitation to the United States of America*.

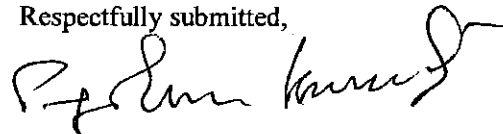
While I understand that responding to my requests take time, the requests were made now more than two months ago. Because my defence case is expected to be concluded in March 2014, I need to take all steps necessary to obtain the information I need so that the closing of my case is not delayed.

Therefore, I would appreciate it if you could advise me when I can expect to receive the material I have requested, and if the United States will decline to provide any of that material.

Meanwhile, I would like to proceed with the interview of Norman Schindler by my Legal Advisor Peter Robinson. I propose that this interview take place on Monday, 13 January 2014 at 10 am at the U.S. State Department in Washington, D.C.

Thank you very much for your consideration of this request.

Respectfully submitted,



Radovan Karadzic

ANNEX “D”



IT-95-5/18-T 81984
Embassy of the United States of America

*Office of the Legal Counselor
Lange Voorhout 102
2514 EJ The Hague, the Netherlands*

*Telephone: +31 (070) 310 2578
Telefax: +31 (070) 361 7416
<http://netherlands.usembassy.gov>*

January 10, 2014

Mr. Peter Robinson
Legal Advisor to Mr. Radovan Karadzic

Via email: peter@peterrobinson.com

RE: Prosecutor v. Karadzic, Case IT-95-5/18-T, International Criminal Tribunal for the former Yugoslavia (ICTY)

Dear Mr. Robinson,

I am writing in response to Mr. Karadzic's letters of September 24, 2013 and October 8, 2013, seeking assistance from the United States Government. At this time, we are able to provide you with responses to three of the seven inquiries set forth in those letters. We continue to work towards providing you with the remaining responses to your inquiries.

The first request in the September 24, 2013, letter was for recordings or transcripts contained in the Dayton History Project that deal with "events of July 1996 concerning the negotiations for [Mr. Karadzic's] resignation and withdrawal from public life." We have conducted a search of the holdings in our Dayton History Project and have not found any material responsive to your request.

With regard to Mr. Karadzic's October 8, 2013, letter, the request identified in that letter as No. 6 sought "the unredacted version of the paragraph in document 1995-10-06C which refers to an estimated 600 people on a soccer field at Kasaba and another 400 near a road in Sandici." Mr. Karadzic stated that the unredacted version of this paragraph "is needed to confirm that US estimates from their own imagery is far less than the number of people at these locations estimated from the same photos by the prosecution and that the number of victims of the Srebrenica events are less than previously determined." We have located and reviewed the original document in question. The unredacted portions of the paragraph do not provide any new information that could be used to confirm the number of people at certain locations nor do they address the number of victims of the Srebrenica genocide beyond what is already provided in the redacted version in the possession of Mr. Karadzic. Therefore, the unredacted portions of the paragraph do not contain information supportive of Mr. Karadzic's assertions regarding its relevance to his defense.

Mr. Karadzic's October 8, 2013, letter, in its final request, asked the United States to make available for an interview Mr. Norman Schindler. The letter states that "it appears that Mr. Schindler had a great deal of knowledge and insight into the events in Bosnia." It seeks authorization to question Mr. Schindler "about any information he may have come across concerning [Mr. Karadzic's] alleged knowledge and involvement in the Srebrenica events, the shelling of the Markale market, and the conditions in prison camps." It further indicates a desire to have Mr. Schindler authenticate documents from the Clinton Library's Bosnia collection that Mr. Karadzic would like to use at trial. We do not believe the request to interview Mr. Schindler is relevant or justified with regard to Mr. Karadzic's trial. In addition to the highly speculative nature of Mr. Karadzic's request, it is inherently unclear how Mr. Schindler, based in the United States throughout the time in question, could be an authority on Mr. Karadzic's knowledge or involvement regarding the events mentioned above. Information of this sort is best obtained from Mr. Karadzic himself and others who were participants in or witness to the events in question. Furthermore, Mr. Schindler does not have the authority to authenticate U.S. documents on behalf of the U.S. Government. The documents in the Clinton Library's Bosnia collection are self-authenticating and thus do not require Mr. Schindler or a U.S. representative to authenticate them. Therefore, we must decline your request to interview Mr. Schindler at this time.

Our work continues on the remaining items you requested. We will inform you promptly when we have completed our work and provide any responsive materials.

If you have any questions, do not hesitate to contact me.

Sincerely,



Paul S. Veidenheimer
Deputy Legal Counselor