

1 Tuesday, 10 May 2011  
2 [Open session]  
3 [Rule 54 bis Motion Hearing]  
4 [The accused entered court]  
5 --- Upon commencing at 4.02 p.m.

6 JUDGE KWON: Good afternoon, everyone.  
7 Will the Court Officer please call the case.

8 THE REGISTRAR: Thank you and good afternoon, Your Honours.  
9 This is case number IT-95-5/18-T, the Prosecutor versus  
10 Radovan Karadzic.

11 JUDGE KWON: Thank you.  
12 Could I have the appearances for the Defence first.

13 THE ACCUSED: [Interpretation] Good afternoon, Excellencies. Good  
14 afternoon to everyone.

15 You know me. It is quite clear. With me is Mr. Peter Robinson,  
16 my legal adviser, and I believe that there is someone from Mr. Harvey's  
17 team as well.

18 JUDGE KWON: Yes. Can I have separately the appearances for the  
19 stand-by counsel?

20 MS. VUKAJLOVIC: [Interpretation] Good afternoon, everyone. On  
21 behalf of the standby team, Mr. Eric Tully and Mirjana Vukajlovic.

22 JUDGE KWON: Thank you.  
23 Appearances for the Prosecution, please.

24 MR. TIEGER: Good afternoon, Mr. President, Your Honours.  
25 Alan Tieger, Susanne Elliot, and Iain Reid appear for the

1 Prosecution.

2 JUDGE KWON: Thank you, Mr. Tieger.

3 I would now like to ask the representatives of the  
4 Bolivarian Republic of Venezuela to identify themselves by name and title  
5 for the record, please.

6 MS. MADAH: [Interpretation] Good afternoon. Haifa Aissami Madah,  
7 Ambassador of the Bolivarian Republic of Venezuela and before the Kingdom  
8 of the Netherlands.

9 MR. D'SANTIAGO: [Interpretation] Thank you, Mr. Chairman.  
10 Alfonso D'Santiago, director of Multilateral Treaties of the  
11 Ministry of Foreign Relations.

12 JUDGE KWON: If you could also introduce your colleagues who  
13 accompany yourselves today.

14 MS. MADAH: [Interpretation] Yes, of course. We'll be pleased to  
15 do so.

16 We have with us Dr. Jose Gabriel Ponce [phoen], assistant of the  
17 Judicial Office of the Ministry for Foreign Relations of Venezuela;  
18 further, Mr. Jose Angel Bucarello, assistant minister of the Embassy in  
19 the Netherlands; Mr. Milton Mesa [phoen], assistant minister of the  
20 Embassy of Venezuela for or vis-a-vis the Netherlands. Thank you very  
21 much.

22 JUDGE KWON: Thank you, Your Excellency.

23 Today, we are holding a hearing to discuss primarily a binding  
24 order motion filed by the accused, Mr. Karadzic, on 1st of November,  
25 2010, in which he requests a number of documents from Venezuela relating

1 to the testimony of the upcoming witness, Ambassador Diego Arria which he  
2 says are relevant to his case.

3 For the purpose of today's hearing, let us call this motion as  
4 "Venezuela Motion."

5 While Venezuela, having been invited to do so twice by this  
6 Chamber, eventually responded to the motion on 28th of December, 2010,  
7 stating that it was taking necessary steps to locate the required  
8 information, no progress has been made since then. Indeed, on 31st of  
9 January, 2011, the Chamber invited Venezuela to provide an update on its  
10 activities, but did not hear back. Thus, progress has been very slow,  
11 and the motion remains pending. Accordingly, the Chamber determined that  
12 it would be helpful to hear from the representatives of Venezuela and the  
13 accused at an oral hearing.

14 I should note that the accused has also filed another motion for  
15 a binding order against the United Nations, requesting certain documents  
16 also relating to Ambassador Arria. Let us call this motion, for the  
17 purposes of today's hearing, as "UN Motion."

18 As the parties are aware, the United Nations is of the view that  
19 it may not disclose some of these documents without breaching the duty of  
20 confidentiality it owes to Venezuela, and that the accused should,  
21 therefore, seek Venezuela's consent for the release of the documents in  
22 the United Nations' possession. The accused has done so, but has  
23 received no response from Venezuela on this issue.

24 On 15th of April this year, the Chamber invited the  
25 representatives of the United Nations to attend the hearing, but the

1 United Nations indicated that it did not feel this was necessary, and  
2 elected, rather, to rely on its written submissions contained in its  
3 previous correspondence. Therefore, we are sitting today in the presence  
4 of the accused, the Prosecution, the standby counsel, and the  
5 representatives of Venezuela.

6 I would like to thank the Venezuelan representatives, on behalf  
7 of the Tribunal and this Chamber, for their attendance and their  
8 contribution to this hearing.

9 To introduce the Trial Chamber to the representatives of  
10 Venezuela, I am Judge O-gon Kwon, Presiding Judge in this case, and to my  
11 right is Judge Howard Morrison, and to my left is Judge Melville Baird,  
12 and to my far right, Judge Flavia Lattanzi.

13 Before we move into the submissions, there are a few procedural  
14 matters that should be addressed.

15 As you know from the scheduling order issued yesterday, following  
16 my opening remarks, I will ask the Defence to update us on the progress  
17 in relation to his two motions against Venezuela and the United Nations,  
18 and we'll then proceed to ask Venezuelan representatives a certain number  
19 of questions. Following these questions, the participants will have an  
20 opportunity to raise any other issue relating to the two binding order  
21 motions that they feel should be covered during this hearing.

22 The next matter I want to deal with is any application for a  
23 private or closed-session hearing.

24 Given that many of the filings in relation to this hearing are  
25 public and that no notice of objection, pursuant to our Rule, has been

1 filed by Venezuela, we have decided that we will proceed in public  
2 session until a specific issue requiring us to go into a private or  
3 closed session arises. Therefore, it is for the Venezuelan  
4 representatives to notify the Chamber if they believe we have reached  
5 that point, and then the Chamber will consider whether a private session  
6 is necessary. If the Chamber decides to go into private session, those  
7 watching the hearing in the public gallery will not be able to hear what  
8 is being said in the courtroom, nor will the hearing be broadcast to the  
9 public. In addition, those portions of transcripts that are in private  
10 session will not be available to the public. Indeed, only the parties  
11 and the state concerned will receive a copy of those portions of the  
12 transcript that are in private session.

13 There is one other matter.

14 As you know, the Chamber has invited the Prosecution to attend  
15 this hearing. Unless the accused or the Venezuelan representatives  
16 request that discussion of a particular issue or document to be heard  
17 ex parte, i.e., in the absence of the Prosecution, the Prosecution shall  
18 be here throughout the hearing and shall have access to the transcripts  
19 of the hearing. I, therefore, would like to know if there are any  
20 objections to that from the Venezuelan representatives and/or from the  
21 accused.

22 None from the accused.

23 Madam Aissami Madah.

24 MS. MADAH: [Interpretation] On the part of the Bolivarian of  
25 Venezuela, there is no objection whatsoever. Thank you very much.

1 JUDGE KWON: Thank you, Your Excellency.

2 Then I would like to hear from the Defence first. I take it that  
3 it will be Mr. Robinson that will make submissions in relation to these  
4 motions.

5 MR. ROBINSON: Mostly, yes, Mr. President.

6 JUDGE KWON: So if you could update us as to any progress since  
7 your last submission to the Chamber in relation to these two motions.

8 MR. ROBINSON: I'm sorry to say there's been no progress. I  
9 don't have anything additional to report.

10 JUDGE KWON: Even from the United Nations?

11 MR. ROBINSON: That's correct. We received the same  
12 communication that you did, that they didn't choose to attend this  
13 hearing, and we've had no other communication with them about this  
14 matter.

15 JUDGE KWON: Thank you, Mr. Robinson.

16 Then turning now to Venezuela: As I have said earlier, the  
17 progress in relation to the accused's binding order motion and the  
18 related matter of consent to disclosure of documents by the  
19 United Nations has been very slow. The one response filed by Venezuela  
20 was late, and following that the Chamber heard nothing for months,  
21 despite several invitations extended to Venezuela to update the Chamber  
22 on the progress it was making in relation to the motion. So before we  
23 come to the subject-matter of today's hearing, I wonder if the Venezuelan  
24 representatives would like to comment on any of these observations.

25 MS. MADAH: [Interpretation] Thank you, Mr. Chairman.

1 I would like to begin by informing you of the following: The  
2 Bolivarian Republic of Venezuela greets the honourable tribunal  
3 responsible for persecuting those who have committed violations in the  
4 area of Yugoslavia in 1991, and we thank you for the opportunity to speak  
5 before this Trial Chamber.

6 In that respect, I would like to give the floor to  
7 Dr. Alfonso D'Santiago, whom we have already introduced to you before.  
8 He is the director of Multilateral Treaties of the Judicial Unit of the  
9 ministry in charge of foreign relations of the Bolivarian Republic of  
10 Venezuela, who will be presenting the official and formal point of view  
11 of my government as regards the subject matter of this hearing.

12 MR. D'SANTIAGO: [Interpretation] Thank you, Mr. President.

13 Mr. President, I would like to read my statement in Spanish.

14 Mr. President, Honourable Judges of the Tribunal, first of all, I  
15 would like to say hello on behalf of the Government of the Bolivarian  
16 Republic of Venezuela. It's an honour to be at this Tribunal, at this  
17 hearing, to inform you on what the Government of the Bolivarian Republic  
18 of Venezuela has done to meet the request to provide documents by the  
19 accused, Radovan Karadzic.

20 On behalf of my government, let me give you the arguments of my  
21 country.

22 First of all, I would like to state that the Bolivarian Republic  
23 of Venezuela is fully committed to co-operating with this Court, based on  
24 general international law and on Article 29 of the Statute of the  
25 Tribunal, and this within the limits of Article 54 bis of the Rules of

1 Procedure and Evidence. In this respect, my government is determined to  
2 taking action as soon as possible, voluntarily and based on the principle  
3 of good faith --

4 THE INTERPRETER: Could the speaker be asked to slow down a  
5 little, please.

6 JUDGE KWON: Excuse me, Dr. D'Santiago.

7 You are being asked by the interpreters to slow down when reading  
8 the document. So if you could repeat from your government is determined  
9 to taking actions as soon as possible.

10 MR. D'SANTIAGO: [Interpretation] Yes. I apologise,  
11 Mr. President.

12 So in this respect, my government is determined to taking action  
13 as soon as possible, voluntarily and based on the principle of good  
14 faith, in the interests of justice.

15 The Bolivarian Republic of Venezuela should say that the request  
16 of the accused refers to a pretty broad period of time. And in addition  
17 to that, it refers to very old documents. Therefore, looking for those  
18 documents, finding them, and compiling them has been extremely difficult,  
19 because the archives are not the archives we use daily. However, my  
20 government is making all the efforts possible to find those documents.

21 We also would like to add that because of the tragedy that  
22 Venezuela has undergone because of the heavy rain we had in November  
23 2010, during which over 120.000 people were left homeless, my country has  
24 had to devote very valuable human and financial resources to be able to  
25 confront this tragedy. So public offices has been used as shelters to

1 temporarily house many of those people. Offices and archives have had to  
2 be moved. What I've just said has made it extremely difficult to locate  
3 and compile the documents requested by the accused.

4 Moving on to other things regarding the legal aspects of the  
5 request, I would like to point out the following: For my country, the  
6 request of the accused, in his letter of 18 October 2010, which was  
7 addressed to the Embassy of the Bolivarian Republic of Venezuela in  
8 The Hague, does not comply with the Rules of Procedure, of Article 54 bis  
9 of the Rules of Procedure and Evidence, because Mr. Diego Arria, in  
10 addition to having been permanent representative of Venezuela at the UN,  
11 was also the president of the Security Council during one month.

12 Article 54 bis, which we've mentioned, provides that the  
13 applicant should identify, to the extent possible, the documents or the  
14 information requested. However, my country considers that the accused's  
15 request does not take into account the fact that during March 1992, the  
16 documents produced by Ambassador Arria, in his capacity as President of  
17 Security Council, does not belong to the Bolivarian Republic of  
18 Venezuela, but belongs to the United Nations. Therefore, the accused's  
19 request includes providing documents which do not belong to my country  
20 and which my country might not have. Therefore, in our opinion, the  
21 requirement of identifying the documents covered by the Article is not  
22 complied with.

23 We should also recall that the accused made a similar request to  
24 the UN. He requested a broad range of documents produced by Diego Arria,  
25 former permanent representative of Venezuela to the United Nations,

1 during the period between January 1st, 1992, and September 1st, 1993.

2 During that period, my country was a non-permanent member of the  
3 Security Council of the United Nations.

4 And related to this, we should remember that in its response, the  
5 international organisation has provided arguments to the Tribunal  
6 according to which revealing certain categories of documents could  
7 compromise the principle of confidentiality, which is inherent to the  
8 decision-making process of the Security Council. That would be the case  
9 for documents which are based or which refer to informal consultations.

10 My country is reasonably concerned by providing documents which  
11 could make reference to those informal consultations and which could,  
12 therefore, violate the principle of confidentiality and undermining the  
13 meaning of the Security Council's debates.

14 What I've just said led our authorities to co-ordinate and  
15 consult with the UN in order to decide with that organisation the  
16 criteria to determine the documents which can be provided to the accused  
17 respecting, at the same time, the principle of confidentiality.

18 Mr. President, I am glad to inform you that after these  
19 consultations, my country recently reached an agreement with the  
20 Legal Affairs Office of the United Nations. Based on the agreement, my  
21 country has committed to working with that organisation to identify the  
22 documents that may be handed over. Therefore, and because of the  
23 importance our country attaches to the requests from the Tribunal,  
24 Venezuela has appointed an official who will work closely in New York  
25 with the person responsible at the Legal Affairs Office at the UN in

1 order to identify those documents.

2 Mr. President, with that same spirit, the same spirit in which my  
3 country has expressed its willingness to co-operate with this Tribunal,  
4 and to conclude the search process, the compilation process, and the  
5 analysis process of the requested documents, we would like to inform this  
6 Tribunal that the Bolivarian Republic of Venezuela hopes to meet the  
7 request in this procedure in a time-frame which would be between three  
8 and five months.

9 Taking into account the arguments which have been submitted, and  
10 to conclude, the Bolivarian Republic of Venezuela considers very  
11 respectfully that this Court needs not issue an order to enforce the  
12 accused's request, since it is doing everything it can to voluntarily  
13 respond to that request.

14 Thank you very much, Mr. President and Judges of the Tribunal.

15 JUDGE KWON: Thank you, Dr. D'Santiago.

16 Let me be clear in understanding your submission.

17 I just heard that the search process will have been concluded in  
18 three to five months from now on. Separate from that, whether the  
19 Bolivarian Republic of Venezuela will consent to the disclosure of  
20 documents in custody of the United Nations, you submitted that as a  
21 result of consultation, an appointed official will work within OLA in  
22 determining whether or not to disclose the document.

23 How long will that process take? When can we hear from you  
24 whether or not you consent to the disclosure of those documents?

25 MR. D'SANTIAGO: [Interpretation] Thank you, Mr. President.



1           First of all, we're happy to hear that the Government of  
2           Venezuela will be co-operating with the Tribunal and will be providing  
3           the documents. And as long as we receive them in enough time in advance  
4           before Ambassador Arria's testimony, then that will be okay with us.

5           However, I find that there may be some ambiguities in the way  
6           things are proceeding that may cause further delays beyond the three to  
7           five months, particularly the issue of consent, so I think that we need  
8           to resolve the question of whether or not there are any categories of  
9           documents which either Venezuela or the United Nations will not consent  
10          or will not produce to us. And we can have those issues litigated well  
11          before the three to five months so that finally whatever documents we do  
12          receive are received in a timely fashion before the testimony of the  
13          ambassador.

14          Thank you.

15          JUDGE KWON: But I wonder whether we can hear those answers today  
16          at this hearing.

17          MR. ROBINSON: No, I don't think so, Mr. President. I think also  
18          we need to hear from the United Nations. So the issue of disclosing the  
19          informal consultations of the Security Council is one that involves both  
20          Venezuela and the United Nations. I would note that Ambassador Arria,  
21          himself, in his statement, has disclosed those, and I believe that  
22          there's good grounds for the United Nations and Venezuela also being  
23          willing to disclose those. But until we hear some official position from  
24          them, I don't think we're in a position for you to make a decision on  
25          that.

1 [Trial Chamber confers]

2 JUDGE KWON: So I take it, Dr. D'Santiago, that it is Venezuela's  
3 position that Venezuela will liaise with the United Nations on this issue  
4 directly, without involving the Chamber, and then inform the accused and  
5 the Chamber of the outcome once the inspection and consultation have been  
6 finished.

7 MR. D'SANTIAGO: [Interpretation] Yes. Yes, Mr. President.

8 JUDGE KWON: And you also heard the submission from Mr. Robinson,  
9 so could you bear that in mind in having consultation with the  
10 United Nations.

11 MR. D'SANTIAGO: [Interpretation] Yes, Mr. President, we will take  
12 into account what the Defence just said.

13 JUDGE KWON: I wonder whether there is any matters to be raised  
14 by any of the parties?

15 MR. ROBINSON: No. Thank you, Mr. President.

16 JUDGE KWON: Mr. Tieger.

17 MR. TIEGER: No, Mr. President. Thank you.

18 JUDGE KWON: Ambassador Aissami Madah or Dr. D'Santiago, are  
19 there any matters to raise at this moment?

20 Yes, Doctor.

21 MR. D'SANTIAGO: [Interpretation] Yes, Mr. President.

22 Venezuela would like to clarify the fact that in many documents  
23 and some documents, we've seen that reference is made to Mr. Diego Arria  
24 as "Ambassador Arria from Venezuela" or "Ambassador Arria." My  
25 government would like to inform the Tribunal that Mr. Arria was

1 ambassador -- Venezuela's ambassador between 1991 and 1993, and he no  
2 longer worked for the Foreign Office as of September 1st, 1993.  
3 Therefore, the delegation of Venezuela would like to request the Tribunal  
4 that it refers to Mr. Arria as "Ex-Ambassador Arria" or "the former  
5 representative of Venezuela to the UN."

6 Thank you, Mr. President.

7 JUDGE KWON: Thank you.

8 MR. ROBINSON: Mr. President, if I could just comment that from  
9 what we're used to, there's a few titles, when you have them once, they  
10 last forever, and "Ambassador" and "General" are some, and we've only  
11 been referring to "Ambassador Arria" out of --

12 JUDGE KWON: Out of courtesy.

13 MR. ROBINSON: Out of custom, yes.

14 JUDGE KWON: Thank you, Dr. D'Santiago.

15 Three months from now will be the 10th of July, and five months  
16 will be the 10th of September. In our Tribunal, we'll have a summer  
17 recess until sometime middle of August, so I wonder if the  
18 Bolivarian Republic of Venezuela could do its best to produce their final  
19 report before we resume after the recess; that is, Monday, the 15th of  
20 August. That will be about a bit more than four months' time from now  
21 on. And if that is not feasible, I would appreciate it very much if  
22 Venezuela could produce a progress report at three months' time from now  
23 on, i.e., on 10th of July, whether we can expect a report from Venezuela.  
24 Would that be possible, Dr. D'Santiago?

25 MR. ROBINSON: Mr. President, it's actually two months between

1 now and the middle of July, but --

2 JUDGE KWON: Oh, I'm very sorry. I was mistaken. I was carried  
3 away, probably.

4 Yes. Let me consult the calendar again. Yes, three months from  
5 now is 10th of August, and five months is 10th of October. So whether  
6 my -- my statement was whether we could receive the response from  
7 Venezuela by 10th of September, and if not feasible, whether we could  
8 expect a progress report by 15th of August, when we resume after the  
9 summer recess.

10 MR. D'SANTIAGO: [Interpretation] Thank you, Mr. President.

11 Regarding your request, the delegation of Venezuela is not in a  
12 position to provide an exact reply, but we will make our best efforts to  
13 give you a satisfactory response.

14 Thank you, Mr. President.

15 JUDGE KWON: So at the minimum, we expect Venezuela to respond or  
16 to make a report by 10th of November, which is five months from now. I'm  
17 sorry, October. Yes, October, 10th of October. But more than that, we  
18 also expect the Venezuelan authorities to expedite their proceedings so  
19 much so that they could produce the report by 10th of September.  
20 Otherwise -- 10th of September, four months' time. But if that is not  
21 feasible, Venezuela should make a progress report on 15th of August.  
22 I think we can agree on that.

23 MR. D'SANTIAGO: [Interpretation] Yes, we would do that,  
24 Mr. President. We will do what you requested.

25 [Trial Chamber confers]

1           JUDGE KWON: To make things clear, a written order will follow  
2 after this hearing.

3           The hearing is now adjourned. Have a nice afternoon.

4                           --- The hearing concluded at 4.38 p.m.

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