

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-PT

IN TRIAL CHAMBER No. 3

Before: Judge Iain Bonomy, Presiding  
Judge Christoph Flügge  
Judge Michèle Picard

*Letting* Registrar: Mr. ~~Ray Williams~~ *John Hocking*  
*Regis Williams*  
Date Filed: 3 February 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

---

THIRD MOTION FOR DISCLOSURE:  
HOLBROOKE AGREEMENT

---

The Office of the Prosecutor:

Mr. Alan Tieger  
Mr. Mark Harmon

The Accused:

Radovan Karadzic

1. Radovan Karadzic respectfully moves, pursuant to Rule 68, for an order requiring the prosecution to disclose the following items:

1. The transcript or report of a meeting between Louise Arbour and General Wesley Clark at NATO headquarters in which Clark referred to the existence of an agreement by which Dr. Karadzic would never end up in The Hague.<sup>1</sup>
2. All statements or reports of interviews of Biljana Plavsic in which she was asked or spoke about the existence of an agreement by which Dr. Karadzic would never end up in The Hague or the circumstances of my resignation in July 1996.<sup>2</sup>
3. Any other items in the possession of OTP which tend to support the contention that Richard Holbrooke represented that Dr. Karadzic would not be arrested and prosecuted during the meeting of 18-19 July 1996.

2. By letter of 12 January 2009, a copy of which is attached as Annex "A", Dr. Karadzic requested these items from the prosecution. By letter of 16 January 2009, a copy of which is attached as Annex "B", the prosecution refused to provide disclosure of these items.

3. On 17 December 2008, the Trial Chamber issued its *Decision on Accused's Second Motion for Inspection and Disclosure: Immunity Issue*. In that decision, it held that:

In respect of Rule 68, the prosecution states that a document dated 18 July 1996 reflecting an undertaking by the Accused to step down from politics... has been identified and disclosed to the Accused on the basis that it may mitigate any eventual sentence. In view of this submission the Trial Chamber considers it possible that in the same way, a copy of any other existing written agreement made at the alleged meeting on 18-19 July 1996 in Belgrade, as well as any notes taken or recordings made during that alleged meeting, could shed

<sup>1</sup> See an interview with former OTP spokesperson Florence Hartmann on 11 October 2007, entitled "Behind the Curtains of International Justice" the following was said:

SA: In your book you also talk about the meeting between Wesley Clark and Louise Arbour at NATO's headquarters during which they were discussing Karadzic's surrender and Wesley Clark was supposed to say that if Karadzic was brought to justice he would allege a deal with Warren Christopher that Karadzic would never end up in the Hague. Were you present during this conversation?

No, I was not present during this conversation because I was not with the Tribunal at that time. But I have the transcript of that conversation and Wesley Clark did say exactly what I quoted in my book and it has been certified by those from the ICTY present at the meeting.

<sup>2</sup> Ms. Plavsic is a signatory to the written agreement which resulted from these negotiations and is known to have been interviewed by the prosecution.

light on the behavior of the Accused after the fact, and, if so, would be items which may be taken into consideration in the determination of any eventual sentence.<sup>3</sup>

4. The Trial Chamber went on to order disclosure of any written agreement, notes, or recordings made during the meeting of 18-19 July 1996 in Belgrade.<sup>4</sup> The prosecution subsequently informed Dr. Karadzic that it had no notes or recordings of that meeting in its possession.<sup>5</sup>

5. Dr. Karadzic appealed, with certification from the Trial Chamber, the portion of the decision which denied his request for disclosure and inspection of other items related to the Holbrooke Agreement.<sup>6</sup> Neither party appealed that portion of the Trial Chamber's order concerning the exculpatory nature of the agreement.

6. Dr. Karadzic now seeks an order from the Trial Chamber applying the uncontested portion of the Trial Chamber's decision that evidence of the existence of an agreement by which Dr. Karadzic relinquished his posts and withdrew from public life in exchange for a promise that he would not be prosecuted at the ICTY is exculpatory material which must be disclosed pursuant to Rule 68.

7. Dr. Karadzic has identified two specific items which he believes would tend to establish the existence of this agreement. The first is an interview of American General Wesley Clark in which he purportedly confirmed to OTP the existence of this agreement even before Dr. Karadzic was arrested. The second is an interview with Biljana Plavsic, who was one of the signatories of the written agreement signed on 18 July 1996.

8. Dr. Karadzic also believes that by its letter contained in Annex "B", the prosecution has misinterpreted its disclosure obligations pursuant to Rule 68. Therefore, he has requested that the Trial Chamber order that the prosecution search for and disclose any other items which would tend to support the contention that Richard Holbrooke represented that Dr. Karadzic would not be arrested and prosecuted during the meeting of 18-19 July 1996.

---

<sup>3</sup> Para. 21

<sup>4</sup> Para 29

<sup>5</sup> *Decision on Accused's Application for Certification to Appeal Decision on Inspection and Disclosure* (19 January 2009) at para. 5

<sup>6</sup> *Appeal of Decision Concerning Holbrooke Agreement Disclosure* (28 January 2009)

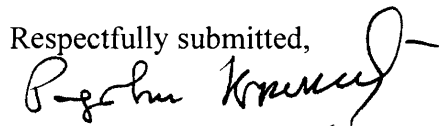
9. The Trial Chamber has determined that the existence of the agreement described above may be relevant to Dr. Karadzic's sentencing. Evidence of the existence of the agreement is not limited to notes and recordings of the meeting. The existence of the agreement may also be proven by other evidence, such as statements of persons with knowledge of the agreement. General Clark and Biljana Plavsic are two such persons. Dr. Karadzic has now specifically requested the reports or transcripts of their interviews. Therefore, he has met the specificity requirement of Rule 68. The Trial Chamber should order disclosure of this material pursuant to Rule 68.

10. In addition, the prosecution's response indicates that it has misunderstood its disclosure obligations under Rule 68. It should be ordered to search for and disclose all material which would tend to show the existence of this agreement. As the Trial Chamber recalled in its decision, the Appeals Chamber has defined exculpatory material under Rule 68 as "all information which in any way tends to suggest the innocence or mitigate the guilt of an accused, or may affect the credibility of Prosecution evidence, as well as material which may put an accused on notice that such material exists."<sup>7</sup>

11. Therefore, it is respectfully requested that the Trial Chamber order the prosecution to disclose the two items specifically identified by Dr. Karadzic, and to search for and disclose all other material in its possession which would tend to show the existence of the Holbrooke agreement.

Word count: 972

Respectfully submitted,



Radovan Karadzic

---

<sup>7</sup> *Decision on Accused's Second Motion for Inspection and Disclosure: Immunity Issue* (17 December 2009) at para. 14

# **ANNEX “A”**

Dr. Radovan Karadzic

Mr. Alan Tieger  
Office of the Prosecutor  
ICTY

Mr. Tieger,

In its *Decision on Accused's Second Motion for Inspection and Disclosure: Immunity Issue*, the Trial Chamber held that the existence of an agreement between myself and Richard Holbrooke was exculpatory within the meaning of Rule 68 and ordered disclosure of any notes or recordings of the meetings on 18-19 July 1996 at which this agreement was entered into.

The Trial Chamber also denied the other requests contained in my motion on the grounds that they did were not specific enough.

I am now writing to you, in light of that decision, with a follow-up request for information which may tend to reveal the existence of an agreement between myself and Richard Holbrooke.

Therefore, I am requesting disclosure of the following:

1. The transcript or report of a meeting between Louise Arbour and General Wesley Clark at NATO headquarters in which Clark referred to the existence of an agreement by which I would never end up in The Hague.<sup>8</sup>
2. All statements or reports of interviews of Biljana Plavsic in which she was asked or spoke about the existence of an agreement by which I would never end up in The Hague or the circumstances of my resignation in July 1996.

---

<sup>8</sup> See an interview with former OTP spokesperson Florence Hartmann on 11 October 2007, entitled "Behind the Curtains of International Justice" the following was said:

SA: In your book you also talk about the meeting between Wesley Clark and Louise Arbour at NATO's headquarters during which they were discussing Karadzic's surrender and Wesley Clark was supposed to say that if Karadzic was brought to justice he would allege a deal with Warren Christopher that Karadzic would never end up in the Hague. Were you present during this conversation?

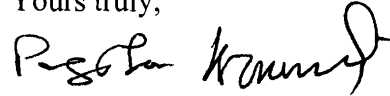
No, I was not present during this conversation because I was not with the Tribunal at that time. But I have the transcript of that conversation and Wesley Clark did say exactly what I quoted in my book and it has been certified by those from the ICTY present at the meeting.

Mr. Alan Tieger  
--page two--

3. Any other items in the possession of OTP which tend to support my contention that Richard Holbrooke represented that I would not be arrested and prosecuted during the meeting of 18-19 July 1996.

Thank you for your cooperation.

Yours truly,



Dr. Radovan Karadzic .

# **ANNEX “B”**





United Nations  
Nations Unies



International  
Criminal Tribunal  
for the former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

Office of the  
Prosecutor

Bureau du  
Procureur

16 January 2009

Dear Mr. Karadžić,

We acknowledge receipt of your undated letter requesting three categories of material in relation to the alleged Holbrooke agreement. The material requested by you does not fall within the ambit of the Prosecution's disclosure obligations in this matter.

In paragraph 25 of its *Decision on Accused's second Motion for Inspection and disclosure: Immunity Issue* ("Decision"), the Trial Chamber stated that any immunity agreement in respect of an accused indicted for genocide, war crimes and/or crimes against humanity before an international tribunal would be invalid under international law.

Further, in paragraph 21 of this Decision, the Trial Chamber noted the Prosecution's view that an undertaking of the Accused to step down from politics as stated in the already disclosed undertaking document of 18 July 1996 may be taken into consideration in the determination of any eventual sentence, as it could shed light on the behaviour of the Accused after the fact.

Under this very narrow scope, the Trial Chamber has specified the Prosecution's disclosure obligations in relation to the alleged Holbrooke agreement. The Prosecution has already complied with the orders contained in the disposition of the Decision. Thus, as stated above, the material requested does not fall within the ambit of the Prosecution's disclosure obligations in this matter.

As to item number 1 and number 2 in your letter, neither Louise Arbour or General Clark nor Biljana Plavšić had been present during the alleged meeting in 1996 and thus cannot provide observations that may be taken into consideration in the determination of any eventual sentences.

In relation to statements or interviews Biljana Plavšić may have given I would like to remind you that you may find her statements and interviews in the EDS or in publications in the public domain.

Yours truly,

Hildegard Uertz-Retzlaff  
Senior Trial Attorney

Mr. Radovan Karadžić  
UNDU