UNITED
NATIONS

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-PT

Date: 17 December 2008

Original: English

IN THE TRIAL CHAMBER

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

Registrar: **Mr. Hans Holthuis**

Decision of: **17 December 2008**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S SECOND MOTION FOR INSPECTION AND DISCLOSURE: IMMUNITY ISSUE

Office of the Prosecutor

Mr. Alan Tieger
Mr. Mark B. Harmon

The Accused

Mr. Radovan Karadžić

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 Accused's "Motion for Inspection and Disclosure: Holbrooke Agreement", filed on 6 November 2008 ("Motion"), the Prosecution's "Response to Karadžić's Motion for Inspection and Disclosure", filed on 19 November 2008 ("Response"), and the Accused's "Motion for Leave to Reply and Reply Brief: Motion for Inspection and Disclosure: Holbrooke Agreement", filed on 28 November 2008 ("Reply"), and hereby renders its decision thereon.

I. Procedural background

1. On 6 August 2008, the Accused filed an "Official Submission concerning my first appearance and immunity agreement with the USA" ("Official Submission") in which he alleged, *inter alia*, the existence of a diplomatic agreement made in 1996 that he would not be tried before this Tribunal.[1] The Prosecution responded to the Official Submission on 20 August 2008.[2] At the Status Conference on 17 September 2008, the Accused requested that the Chamber not answer the Official Submission until he could provide additional material.[3]

2. On 6 October 2008, the Accused filed a "Motion for Inspection and Disclosure: Immunity Issue" ("initial Motion") seeking an order requiring the Prosecution to allow inspection of certain materials under Rule 66(B) of the Rules of Procedure and Evidence of the Tribunal ("Rules") and/or their disclosure under Rule 68. On 9 October 2008 the Trial Chamber issued a "Decision on Accused Motion for Inspection and Disclosure", informing the Accused that he should submit directly to the Prosecution his request pursuant to Rule 66(B), and ruling that the initial Motion did not satisfy the test for establishing a breach of Rule 68 and warranting an order thereunder.

II. Submissions

3. In the present Motion, the Accused, pursuant to Rule 66(B) and Rule 68 of the Rules, having directed his request to the Prosecution and been refused, again seeks an order requiring the Prosecution to allow inspection and disclosure of certain information it may have in its possession which he submits is material to the preparation of his defence and/or serves to exculpate him.[4]

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[1] Official Submission, pp. 1–2.
[2] Prosecution's Response to Karadžić's Submission Regarding Alleged Immunity Agreement, 20 August 2008.
[3] Status Conference, 17 September 2008, T. 52–54.
[4] Motion, para. 20.

4. In the Motion, the Accused categorises the information he seeks to inspect and/or have disclosed under three headings as follows:

(a) all information in the possession of the Prosecution concerning the agreement made with Radovan Karadžić on or about 18-19 July 1996 by Richard Holbrooke, including:

i. a copy of the written agreement made on those days

ii. memoranda, correspondence, reports, or recordings with individuals who have knowledge or were asked about their knowledge of the agreement

iii. any contemporaneous notes, recordings, or memoranda or correspondence reflecting what took place during the meeting on 18–19 July 1996 in Belgrade among Richard Holbrooke, Slobodan Milošević, and others

iv. any other document or recording which tends to show the existence of a promise, representation, or suggestion that Radovan Karadžić not be arrested, transferred, or prosecuted at the ICTY

v. any memoranda, correspondence, reports, public statements or recordings reflecting a concern by the Office of the Prosecutor or any other individual that representations had or would be made to Dr Karadžić that would affect his prosecution at the ICTY, or that he would claim the existence of such an agreement

vi. any information in the possession of the Prosecution concerning the failure to arrest Radovan Karadžić after 18 July 1996 and/or reasons therefore

(b) all information in the possession of the Prosecution concerning the actual or apparent authority of Richard Holbrooke to make representations to Radovan Karadžić on behalf of the international community on 18-19 July 1996, including:

i. any correspondence, public statements, resolutions, reports, recordings, or memoranda from United Nations personnel or entities reflecting support for, consultation with, knowledge of, or requests from, the United States concerning efforts to negotiate peace in Bosnia from August 1995 to August 1996

ii. any correspondence, public statements, reports, recordings, or memoranda from United States personnel or entities to the United Nations or any of its personnel or entities, requesting support for, providing knowledge of, or demonstrating consultation with the United States' efforts to negotiate peace in Bosnia from August 1995 to August 1996

iii. any correspondence, public statements, reports, recordings, or memoranda concerning Richard Holbrooke's visit to the former Yugoslavia region in July 1996 generated by, or received by, any United Nations personnel or entity

iv. any correspondence, public statements, reports, recordings, or memoranda from United Nations Security Council member States personnel or entities, including the Contact Group, NATO, IFOR, Peace Implementation Council and its Steering Committee, or the Office of High Representative for Bosnia, reflecting support for, consultation with, knowledge of, or requests from, the United States concerning efforts to negotiate peace in Bosnia from August 1995 to August 1996

v. any correspondence, public statements, reports, recordings, or memoranda from United States personnel or entities to a member State or any of its personnel or

entities, requesting support for, providing knowledge of, or demonstrating consultation with the United States' efforts to negotiate peace in Bosnia

vi. any correspondence, public statements, reports, recordings, or memoranda concerning Richard Holbrooke's visit to the former Yugoslavia region in July 1996 generated by, or received by, any Member State personnel or entity

(c) all information in the possession of the Prosecution showing the relationship between the United States of America and the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia as of 18-19 July 1996:

i. any memoranda, correspondence, or reports reflecting any agreements by the United States to facilitate or provide personnel and resources to the Office of the Prosecutor

ii. any memoranda, correspondence, public statements, or reports generated by the Office of the Prosecutor concerning the United States' negotiations for peace in Bosnia and its implications upon the ICTY

iii. any correspondence, public statements, reports, recordings, or memoranda concerning Richard Holbrooke's visit to the former Yugoslavia region in July 1996 generated by, or received by the Office of the Prosecutor.[5]

5. The Accused submits that these documents are "material to the preparation of his defence" for the purposes of Rule 66(B), because it is part of his case that: "(i) he was promised on 18–19 July 1996 by Richard Holbrooke that he would not have to face prosecution in The Hague if he agreed to withdraw completely from public life; and (ii) ... this promise is attributable to the ICTY because it was made on behalf of, or in consultation with the member states of the United Nations Security Council, or was reasonably believed to be so made".[6] He further contends that any evidence of an agreement that he should not face prosecution at the Tribunal and the attributability of such an agreement to the Tribunal "might suggest the legal innocence of the Accused or mitigate his punishment if convicted", and that he is therefore entitled to disclosure of any such material in the possession of the Prosecution under Rule 68(i).[7]

6. In the Response, the Prosecution opposes the Motion, submitting that: "(i) even if the alleged immunity agreement existed, it would be legally irrelevant to the present proceedings, and therefore would not fall within the scope of Rules 66(B) or 68; and (ii) alternatively, the categories of documents listed in [paragraphs] 1(A)(4)-(6), 1(B) and 1(C) of the Motion are formulated too broadly" and therefore do not meet the requirements of Rule 66(B).[8]

[5] Motion, para. 1.
[6] Motion, para. 3.
[7] Motion, para. 10.
[8] Response, para. 2.

7. The Response was served on the Accused on 21 November 2008. In the Reply, the Accused moves pursuant to Rule 126 *bis* for leave to reply to the Prosecution's claim in the Response that the Accused has failed to identify with sufficient specificity the materials sought. The Accused sets out the purpose for requesting each category of materials and further explains the type of materials sought under each heading.

III. Applicable law

A. Rule 66(B) of the Rules

8. Rule 66(B) of the Rules requires that "the Prosecutor shall, on request, permit the Defence to inspect any books, documents, photographs and tangible objects in the Prosecutor's custody or control" which: (i) are material to the preparation of the defence, or (ii) are intended for use by the Prosecutor as evidence at trial, or (iii) were obtained from or belonged to the accused.

9. In accordance with the language of the Rule, the Defence should first direct any request for inspection to the Prosecution. Even where the Defence may be able to search for the materials itself within Prosecution databases, to which it has access through the Electronic Disclosure System, the Appeals Chamber has held that "'[a] request under Rule 66(B) is one of the methods available to the Defence for carrying out investigations' and the fact or possibility of other investigations does not prevent the use of inspection under this provision".[9]

10. Where the Defence is not satisfied with the outcome of its initial request, it may file a motion seeking an order from the Trial Chamber to permit inspection. To satisfy a motion pursuant to Rule 66(B), the Appeals Chamber has held that the Defence must:

(a) specifically identify the items sought;

(b) demonstrate *prima facie* that the requested items are "material to the preparation of the defence"; and

(c) demonstrate *prima facie* that the requested items are in the custody or control of the Prosecutor.[10]

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[9] *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.11, Decision on the Prosecution's Interlocutory Appeal Concerning Disclosure Obligations, 23 January 2008 ("First *Karemera* Decision"), para. 15; *Prosecutor v. Bagosora*, Case No. ICTR-98-41-AR73, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence, 25 September 2006 ("*Bagosora* Decision"), para. 11.

[10] *Bagosora* Decision, paras. 9–10; First *Karemera* Decision, para. 12; *see also Naletilić & Martinović*, Decision on Joint Motions for Order Allowing Defence Counsel to Inspect Documents in the Possession of the Prosecution, 16 September 2002, p. 3; *Prosecutor v. Delalić et al.*, Case No. IT-96-21, Decision on Motion by the Accused Zejnil

11. The Appeals Chamber in *Prosecutor v. Bagosora*, overturning a Trial Chamber decision declining to order inspection, held that "[i]n accord with the plain meaning of Rule 66(B) of the Rules, the test for materiality under the first category is the relevance of the documents to the preparation of the defence case. Preparation is a broad concept and does not necessarily require that the material itself counter the Prosecution evidence".[11] It also commented that "the Appeals Chamber routinely construes the Prosecution's disclosure obligations under the Rules broadly in accord with their plain meaning. Nothing in Rule 66(B) limits an accused's right to inspection only of material related to the Prosecution's case-in-chief. Rather, this Rule uses much broader language: 'material to the preparation of the defence case' and 'intended for use ... at trial'".[12] In *Prosecutor v. Karemera*, the Appeals Chamber upheld this interpretation of Rule 66(B).[13]

B. Rule 68 of the Rules

12. Rule 68(i) of the Rules, subject to the provisions of Rule 70, places an independent obligation upon the Prosecution to disclose to the Defence, "as soon as practicable ... any material which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence".

13. The Prosecution's obligation under Rule 68 is one of its most onerous responsibilities, and has been considered as important as the obligation to prosecute.[14] The Appeals Chamber has consistently determined that in order to fulfil this duty the Prosecution must, within its own discretion, make an initial fact-based assessment as to whether any materials in its possession are exculpatory as to the accused, and must expeditiously disclose any such materials.[15]

14. The Appeals Chamber described the nature of exculpatory material in the *Krstić* Judgment: "material to be disclosed under Rule 68 is not restricted to material which is in a form which would be admissible in evidence. Rather, it includes all information which in any way tends to suggest

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Delalić for the Disclosure of Evidence, 26 September 1996, para. 9; Decision of the President on the Prosecutor's Motion for the Production of Notes Exchanged between Delalić and Mucić, 11 November 1996, para. 40.

[11] *Bagosora* Decision, para. 9.

[12] *Bagosora* Decision, para. 8.

[13] First *Karemera* Decision, para. 14.

[14] *Prosecutor v Blaškić*, Case No. IT-95-14-A, Appeal Judgement, 29 July 2004 ("*Blaškić* Appeal Judgement"), para. 264; *Prosecutor v Kordić and Čerkez*, Case No. IT-65-14/2-A, Appeal Judgement, 17 December 2004 ("*Kordić* Appeal Judgement"), para. 183; *Prosecutor v. Brđanin*, Case No IT-99-36-A, Decision on Appellant's Motion for Disclosure Pursuant to Rule 68 and Motion for an Order to the Registrar to Disclose Certain Materials, 7 December 2004 ("*Brđanin* Decision"), p. 3.

[15] *Blaškić* Appeal Judgement, para. 264; *Kordić* Appeal Judgement, para. 183; *Brđanin* Decision, p. 3; *Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Present Additional Evidence pursuant to Rule 115 of the Rules of Procedure and Evidence, 8 December 2006, para. 34; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.13, Decision on Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion, 14 May 2008 ("Second *Karemera* Decision"), para. 9.

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".[16] Information falling under Rule 68 will necessarily also be "material to the preparation of the defence" under Rule 66(B).[17]

15. The general practice of the Tribunal has been to respect the Prosecution's execution in good faith of its function under Rule 68.[18] Nevertheless, if the Defence believes that the Prosecution has not complied with its obligation to disclose exculpatory material within its custody or control, it may make a submission to the Trial Chamber alleging a breach of Rule 68 by the Prosecution, and requesting an order compelling disclosure thereunder. An order of this type should only be contemplated where the Defence can satisfy the Trial Chamber that the Prosecution has failed to meet its obligations under Rule 68.[19]

16. The Appeals Chamber has held that, to warrant such an order, the Defence must:

(a) specifically identify the items sought;

(b) demonstrate *prima facie* that the items are exculpatory in respect of the accused; and

(c) demonstrate *prima facie* that the items are in the custody or control of the Prosecution.[20]

C. Prosecution before the Tribunal

17. According to customary international law, there are some acts for which immunity from prosecution cannot be invoked before international tribunals.[21]

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[16] *Prosecutor v. Krstić*, Case No. IT-98-33-A, Appeal Judgement, 19 April 2004 ("*Krstić* Appeal Judgement", para. 178 (footnotes omitted).

[17] *Prosecutor v. Delalić*, Case No. IT-96-21-T, Decision on the Request of The Accused Hazim Delić pursuant to Rule 68 for Exculpatory Information, 24 June 1997. para. 14; *Prosecutor v. Tihomir Blaškić*, IT-95-14-PT, Decision on the Production of Discovery Materials, 27 January 1997, p. 20.

[18] *Kordić* Appeal Judgement, para. 183; *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motion for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, 26 September 2000 ("*Blaškić* Decision"), para. 45.

[19] *Blaškić* Decision, para. 50.2; *Brđanin* Decision, p. 3.

[20] *Blaškić* Appeal Judgement, para. 268; *Kordić* Appeal Judgement, para. 179; *Brđanin* Decision, p. 3; Second *Karemera* Decision, para. 9.

[21] *See* Charter of the International Military Tribunal of Nuremberg, art. 7; Charter of the International Military Tribunal for the Far East, art. 6; Convention for the Prevention and the Punishment of the Crime of Genocide, art. IV; Statute of the International Criminal Tribunal for the former Yugoslavia, art. 7(2); Statute of the International Criminal Tribunal for Rwanda, art. 6(2); Statute of the Special Court for Sierra Leone, art. 6(2); Rome Statute of the International Criminal Court, art. 27; Draft Code of Crimes against the Peace and Security of Mankind, art. 7; "Arrest Warrant of 11 April 2000" (*Democratic Republic of the Congo v. Belgium*), Judgement, ICJ Reports 2002,

18. Pursuant to the Statute of the International Tribunal adopted by the United Nations Security Council on 25 May 1993,[22] this Tribunal is empowered "to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991",[23] and the Prosecutor is charged with the responsibility to carry out investigations and prosecutions pursuant to this power.[24] In executing that function, "the Prosecutor shall act independently as a separate organ of the Tribunal", and "shall not seek or receive instruction from any Government or from any other source".[25]

IV. Discussion

A. Motion for Leave to Reply

19. The Trial Chamber considers that the Reply adds little, in the circumstances, to the obvious meaning of the terms of the Motion, and therefore does not see it necessary to seek a surreply from the Prosecution.

B. Specific identification of the requested items

20. For the purposes of both Rule 66(B) and Rule 68, the Trial Chamber considers that in his Motion, the Accused has described with sufficient specificity the type of document requested under sub-paragraph 4(a)(i) above. It considers that the category of documents requested under sub-paragraph 4(a)(iii) also meets the specificity test, but only in respect of "contemporaneous notes, [and] recordings", not "memoranda or correspondence". The Trial Chamber considers that the remaining categories are overly broad in scope, and are framed in language too vague for the Prosecution to be able to determine in every case whether a particular document falls into a particular category. Each category also potentially encompasses an enormous variety of documents. While the Trial Chamber observes that the request is not required to be so specific as to identify exactly which documents are sought to be disclosed,[26] and may refer to a category of

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para. 61; *Prosecutor v. Karadžić et al,* Case No. IT-95-5-D, Decision in the matter of a proposal for a formal request for deferral to the competence of the tribunal addressed to the Republic of Bosnia and Herzegovina in respect of Radovan Karadžić, Ratko Mladić and Mićo Stanišić, 16 May 1995, paras. 23–24; *Prosecutor v. Blaškić*, Case 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. 41; *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998, para. 140; *Prosecutor v. Milošević,* Case No. IT-99-37-PT, Decision on Preliminary Motions, 8 November 2001, para. 28.

[22] U.N. Security Council, 3217th Meeting, "Resolution 827 (1993)" (S/RES/827), 25 May 1993, para. 2.

[23] Statute of the Tribunal, Art 1.

[24] Statute of the Tribunal, Art 16, paragraph 1. For example, pursuant to Rules 50 and 51 of the Rules, the Prosecutor of the Tribunal may, in his discretion, amend or withdraw an indictment.

[25] Statute of the Tribunal, Art 16, paragraph 2.

[26] *See Blaškić* Decision, para. 40.

documents,[27] it considers that such a request should be made in as precise wording as is possible, rather than in sweeping "catch-all" phrases. The Accused has the benefit of access to the Electronic Disclosure System, should he wish to make use of it in order to help in identifying the material he seeks, although he is not required to do so.[28]

C. Exculpatory nature of the requested items

21. 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 ("undertaking document of 18 July 1996") has been identified and disclosed to the Accused on the basis that it may mitigate any eventual sentence.[29] 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 light on the behaviour 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.[30]

D. Materiality to the defence of the requested items

22. In respect of Rule 66(B), the Trial Chamber considers that the information described in sub-paragraphs 4(a)(i) and 4(a)(iii) above may be material to the preparation of the defence only to the extent that it may be exculpatory in respect of the Accused.

23. The Trial Chamber considers, however, that the requested information is not material for any other reason than its potential relevance in the determination of any eventual sentence. Applying the test set out by the Appeals Chamber in *Bagosora*, the Trial Chamber considers that documents will only be of "relevance" to the preparation of the defence case where they are used to support a colourable argument; that is, an argument that has some prospect of success.

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[27] The Trial Chamber notes, for example, that the Appeals Chamber in *Prosecutor v. Bagosora* allowed a request for a category of documents; in that case, material related to the immigration status of defence witnesses: *see Bagosora* Decision.

[28] *See Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.11, Decision on the Prosecution's Interlocutory Appeal Concerning Disclosure Obligations, 23 January 2008 ("First *Karemera* Decision"), para. 15; *Prosecutor v. Bagosora*, Case No. ICTR-98-41-AR73, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence, 25 September 2006 ("*Bagosora* Decision"), para. 11.

[29] Response, para. 9.

[30] Rule 101(B) of the Rules provides that the Trial Chamber, in determining the sentence of an accused, shall take into account, *inter alia*, "(i) any aggravating circumstances; [and] (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction". In the *Plavšić* and *Kupreškić et al.* trial judgements, for example, voluntary surrender to the jurisdiction of the Tribunal was considered a factor in mitigation of sentence: *see Prosecutor v. Plavšić*, Case No. IT-00-39&40/1, Sentencing Judgement, 27 February 2003, paras. 82–84; *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16, Judgement, 14 January 2000, para. 853; *but see Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2, Judgement, 26 February 2001, paras. 845, 856.

24. The Trial Chamber notes the vague nature of the Accused's submissions in relation to the alleged agreement. In particular, in the Official Submission the Accused states repeatedly and emphatically that "there is no doubt that this offer was made in the name of the USA" and refers to the alleged agreement as being "between the USA and me",[31] but in the Motion he argues he is "the beneficiary of ... a specific agreement not to prosecute him as an individual" and that the alleged agreement is attributable to the ICTY.[32] The Accused does not specify in what form the agreement was made. The Accused indicates that he intends to demonstrate "the effective control of the United States over the peace process in Bosnia from August 1995... [and] the relationship between the United States and the ICTY OTP"[33] in order to draw a connection between the actions of Mr Holbrooke in his capacity as a representative of the United States and either the United Nations, its member states or the Office of the Prosecutor of the Tribunal.[34] The Trial Chamber considers that the Accused makes no *prima facie* showing of that connection, and appears to have misinterpreted the law on this point.

25. The Trial Chamber considers it well established 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. The Trial Chamber further considers that, pursuant to the Statute and Rules of the Tribunal, neither its own mandate nor that of the Prosecutor is affected by any alleged undertaking made by Mr. Holbrooke.

26. The Trial Chamber concludes that this argument is without substantive basis, and therefore that information that the Accused may intend to use in support of it is not material to the preparation of the defence in this respect.

E. Custody or control of the requested items

27. The Trial Chamber considers that, as the Prosecution was in possession of the undertaking document of 18 July 1996, it may well have custody or control of other items relating to proceedings during the alleged meeting in Belgrade on 18–19 July 1996.

28. The Trial Chamber is of the view that the Accused has satisfied the relevant legal standards in respect of materials matching the descriptions set out in sub-paragraphs 4(a)(i) and 4(a)(iii) as limited above, and will order that the Accused be given access to any such materials which are within the custody or control of the Prosecution.

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[31] Official Submission, pp. 1, 2, 3.
[32] Motion, paras. 16, 18, 19.
[33] Motion, para. 19.
[34] Motion, paras. 18–19.

V. Disposition

29. Accordingly, the Trial Chamber, pursuant to Rules 54, 66, 68, 70 and 126 *bis* of the Rules, hereby GRANTS the Motion, in part, and DENIES the Motion, in part, and GRANTS the Motion for Leave to Reply, and:

(a) ORDERS the Prosecution to disclose to the Accused:

i. any written agreement made at the alleged meeting in Belgrade on 18–19 July 1996, and

ii. any notes taken or recordings made on 18–19 July 1996 of proceedings at the alleged meeting in Belgrade on those days,

which are within the custody or control of the Prosecution;

(b) DENIES the Motion in all other respects.

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

Judge Iain Bonomy
Presiding

Dated this seventeenth day of December 2008
At The Hague
The Netherlands

[Seal of the Tribunal]