IT-95-5/18-PT
D25997-D25767
16 OCTOBER 2009

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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

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: 16 October 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

NOTICE OF REQUEST TO UNITED NATIONS SECURITY COUNCIL

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

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully notifies the Trial Chamber that he has requested the United Nations Security Council to enact a resolution which honors the agreement made on its behalf by Richard Holbrooke that Dr. Karadzic not be prosecuted at the ICTY.

2. The Appeals Chamber has held that such a resolution was required. Since Dr. Karadzic complied with his part of the agreement, he is asking the Security Council to comply with its part.

3. A copy of the letter sent to the President of the Security Council is attached for the Trial Chamber's information. No action is required by the Trial Chamber on this notice.

Respectfully submitted,

Radovan Karadzic

ANNEX "A"

Dr. Radovan Karadzic
International Criminal Tribunal for
the former Yugoslavia

16 October 2009

The Honorable Le Luong Minh, President
United Nations Security Council
New York, NY 10017

BY FAX TO 1 212 963 4879

Dear Mr. President,

I am the former President of Republika Srpska, now awaiting trial at the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague.

I am writing to request that the United Nations Security Council honor an agreement made with me on its behalf on 18 July 1996 by United States Special Envoy Richard Holbrooke that provide that I would not be prosecuted at the ICTY.

On 12 October 2009, the Appeals Chamber of the ICTY ruled that the agreement with Mr. Holbrooke was not effective without a resolution from the Security Council. Therefore, I would appreciate it if you would enact the required resolution.

Let me provide you some background.

On 18 July 1996, I entered into an agreement with Richard Holbrooke in which I agreed to resign as President of Republika Srpska and President of the SDS political party, and to withdraw from public life. He agreed that I would not face prosecution in The Hague.

I kept my part of the agreement, dutifully resigned my positions, and withdrew from public life. It was not my responsibility to obtain a resolution from the UN Security Council. Those things had been taken care of by Mr. Holbrooke in the past when agreements involving UN functions had been made, such as at Dayton.

Initially, the agreement was also honored by the international community. I moved about Bosnia freely despite the presence of SFOR and IFOR troops in the country. However, after my arrest in 2008, the ICTY has refused to honor the agreement I made with Mr. Holbrooke.

At first, the ICTY prosecution denied that such an agreement had been made. However, I presented evidence from 18 witnesses as well as documents from the United States and United Nations which demonstrates that indeed such an agreement was made with Mr. Holbrooke on 18 July 1996.

Then, the prosecution changed course and said that even if the agreement had been made, I was not reasonable in relying on Holbrooke's authority to make such an agreement.

Once again, I presented evidence from the United Nations own archives, as well as witnesses such as former High Representative Carl Bildt, showing that the negotiations for my resignation in 1996 were a collective effort between the UN, Contact Group (which consisted of all permanent Security Council members except China), and the UN member States. Holbrooke was simply the last in a line of interlocutors with whom I negotiated. It was therefore reasonable for me to believe that Holbrooke acted with the authority of the UN Security Council.

In fact, if you check your records, you will see that the Security Council was briefed on Holbrooke's negotiations with me both immediately before (17 July 1996) and after (22 July 1996) they took place.

In the face of this evidence, the Appeals Chamber changed course and held that even if I had been reasonable in relying on the apparent authority of Richard Holbrooke to negotiate on behalf of the Security Council, the agreement was not legally binding without a resolution of the Security Council. Of course, it was never my responsibility to obtain such a resolution, and Mr. Holbrooke neglected to do so.

Now, the ICTY wants to commence my trial on 26 October 2009. I ask you to honor the agreement made by Mr. Holbrooke by passing a resolution that I not be prosecuted at the ICTY.

The precedent established by the ICTY in this matter will put an end to the ability of diplomats to make agreements to end conflicts around the world. For example, what is President Karzai of Afghanistan to do when faced with an offer from Mr. Holbrooke? Based upon my experience, and the ICTY decision, he can only demand a resolution from the U.N. Security Council before accepting any representations or entering into any agreements.

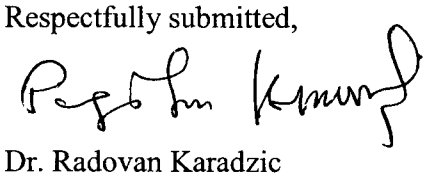
Likewise in other parts of the world, from Sudan to Zimbabwe to Honduras, leaders simply cannot trust the words of diplomats, but instead must demand a UN Security Council resolution. If the UN Security Council is unwilling to stand behind the diplomats who negotiate an end to these crises, then it cannot expect the representations of those diplomats to be taken seriously.

The Honorable Le Luong Minh
--page three—

Therefore, I respectfully request that the UN Security Council honor the agreement entered into by Mr. Holbrooke by enacting a resolution that I not be prosecuted at the ICTY.

I have attached the evidence which I submitted to the Tribunal concerning this agreement for your assistance.

Respectfully submitted,



Dr. Radovan Karadzic

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

Registrar: Mr. John Hocking

Date: 25 May 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

HOLBROOKE AGREEMENT MOTION

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

The Accused:
Radovan Karadzic

Introduction

1. Dr. Radovan Karadzic respectfully moves, pursuant to Rules 72 and 73, to dismiss the indictment on the grounds that the Tribunal lacks jurisdiction, or, alternatively, should decline to exercise jurisdiction, as a result of the agreement made with Richard Holbrooke that Dr. Karadzic would not face prosecution at this Tribunal.

2. Dr. Karadzic contends that the indictment does not relate to a person over whom the Tribunal has jurisdiction pursuant to Article 1 of its Statute because of that agreement-- made by an official with actual or apparent authority of the United Nations Security Council and its organs.

3. Alternatively, Dr. Karadzic contends that a failure to enforce this agreement constitutes an abuse of process, and that the Tribunal should decline to exercise jurisdiction over him in order to uphold the integrity of this institution and international criminal justice.

The Agreement

4. The agreement in question was made during the evening and into the early morning hours of 18 and 19 July 1996. United States special negotiator Richard Holbrooke proposed that if Dr. Karadzic resigned from all positions in the Republika Srpska government, including his post as President, resigned as President of the SDS political party, and withdrew completely from public life, Dr. Karadzic would not have to face prosecution in The Hague. This proposal was accepted.

5. Mr. Holbrooke required the undertakings of Dr. Karadzic and the Bosnian Serbs to be in a signed writing, which his team prepared. This document is attached to this motion as Annex "A".

6. However Holbrooke declined to put his own obligation in writing, explaining that it was politically impossible to do so, and that there would in fact be harsh rhetoric following the announcement that Dr. Karadzic had relinquished his posts, but that Holbrooke could be trusted to see that the agreement was honored.[1]

7. Dr. Karadzic honored his part of the agreement. He now seeks to require the Tribunal to honor Holbrooke's part.

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[1] See Declaration of Radovan Karadzic, attached as Annex B to this motion and Declaration of Momcilo Krajisnik, attached as Annex D.

Motion for Evidentiary Hearing

8. The existence of the "Holbrooke Agreement" is a disputed factual issue. Dr. Karadzic respectfully requests that the Trial Chamber hold an evidentiary hearing and make findings of fact concerning the existence of this agreement after hearing from witnesses on both sides of the dispute.

9. At such an evidentiary hearing, Dr. Karadzic would establish from the testimony of the two representatives from Republika Srpska who attended the meeting with Holbrooke, Assembly Speaker **Momcilo Krajisnik** and Foreign Minister **Aleksa Buha**, that Holbrooke expressly represented that Dr. Karadzic would not be prosecuted in The Hague, but that Holbrooke declined to reduce that promise to writing for political reasons.[2]

10. This testimony is corroborated by a United States Department of State cable dated 22 July 1996 from U.S. Ambassador to Bosnia John Menzies to State Department headquarters. In the cable, Menzies reports on a meeting he had that day with Krajisnik and Buha. Both of them maintained that, at the 18 July 1996 meeting, Holbrooke had promised that The Hague would "disappear."[3]

11. Therefore, from the United States government's own documents, it appears that the Bosnian Serb representatives at the 18 and 19 July 1996 meeting were led to believe that Dr. Karadzic would not be prosecuted at The Hague.

12. **Dr. Radovan Karadzic** would testify to his understanding of the promise from Holbrooke that he would not be prosecuted in The Hague, as that promise was relayed to him by those attending the meeting, including Krajisnik, Buha, President Slobodan Milosevic, and the FRY Director of State Security Jovica Stanisic.[4]

13. The existence of the promise that Dr. Karadzic would not be prosecuted in The Hague can be confirmed by others who were not present at the meeting, but who learned about the promise thereafter.

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[2] See Declaration of Momcilo Krajisnik (Annex D) and Declaration of Alexa Buha (Annex E)

[3] See U.S. State Department cable of 22 July 1996, paras. 10 and 14, attached as (Annex F). Dr. Karadzic expresses his appreciation to the United States government for its permission to make that document public.

[4] See Declaration of Radovan Karadzic (Annex B). Mr. Stanisic was unable to be interviewed for this motion due to his medical condition. (Annex I) Another signatory to the agreement, FRY Foreign Minister Milan Milutinovic has indicated that he was not present when the agreement was negotiated. (Annex J)

14. **Professor Radomir Lukic,** who was present in Dr. Karadzic's office in Pale and participated in the discussions with Jovica Stanisic that evening, confirms that Dr. Karadzic was told that Holbrooke had represented that he would not be prosecuted in The Hague.[5] Professor Lukic's presence is confirmed by the diary of Dr. Karadzic's secretary for 18 July 1996 which shows that he was in Dr. Karadzic's office at the same time as Stanisic.[6]

15. Three high-ranking officials of the U.S. State Department have confirmed the existence of this agreement to Purdue University Professor **Charles Ingrao,** author of *Confronting the Yugoslav Controversies: A Scholars' Initiative* (2009). Two of them repeated this information in an interview with the *New York Times.*[7]

16. United States General **Wesley Clark** reportedly told ICTY Prosecutor Louise Arbour that if he was arrested, Dr. Karadzic would claim to have an agreement with United States Secretary of State Warren Christopher that he would not be prosecuted in The Hague.[8] The Office of the Prosecutor has subsequently denied being in possession of this information.[9]

17. Republika Srpska Prime Minister **Gojko Klickovic** has testified under oath that he was aware of this agreement when it was entered into in July 1996.[10]

18. Dr. Karadzic's wife **Ljiljana Zelen-Karadzic,** daughter **Sonja Karadzic-Jovicevic,** son-in-law **Branislav Jovicevic,** and a close family friend, **Dragan Draskovic,** have also confirmed that shortly after that promise was made, Dr. Karadzic informed them of the promise by Holbrooke that he would not face prosecution in The Hague.[11]

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[5] See Declaration of Radomir Lukic attached as (Annex G) Biljana Plavsic, who was also present in Pale that evening, and signed the agreement, declined to be interviewed in connection with this motion. (Annex H)

[6] The relevant page from the diary is attached as Annex C.

[7] See excerpt of Ingrao, *Confronting the Yugoslav Controversies: A Scholars' Initiative* (2009)(Annex K) and Marlise Simons, *Indicted Bosnian Serb Claims Immunity,* New York Times (21 March 2009) (Annex L)

[8] Hartmann, *Peace and Punishment* (2007); Aulich, *Behind the Curtains of International Justice: Interview with Florence Hartmann* (Annex M)

[9] *Prosecution's Notice Relating to a Meeting between Louise Arbour and General Wesley Clark* (17 April 2009)

[10] Balkan Insight, *Karadzic-Holbrooke Deal was Signed,* (9 April 2009) (Annex N)

[11] See Declarations of Ljiljana Zelen-Karadzic (Annex O), Sonja Karadzic-Jovecivec (Annex P), Branislav Jovicevic (Annex Q), and Dragan Draskovic (Annex R)

19. **Muhamed Sacirbey**, Minister of Foreign Affairs of Government of Bosnia and Herzegovina, has stated that he was informed of the agreement shortly after it was entered into during a conversation with American diplomat Robert Frowick (now deceased), who was in charge of the Bosnian elections of 1996.[12]

20. Former *New York Times* Washington correspondent **David Binder** and Washington consultant **Obrad Kesic** have provided statements that in September 1996, they were told directly by Dr. Karadzic that Holbrooke had agreed that he would not be prosecuted in The Hague.[13]

21. In addition to these 15 witnesses with information that supports the existence of an agreement that Dr. Karadzic would not be prosecuted in The Hague, circumstantial evidence concerning the 18 July 1996 meeting indicates that such an agreement was made.

22. In his own book, Holbrooke recounts how he had no permission from his government to use the sanctions as leverage for Karadzic's withdrawal from public life and was told by his superiors to "make it sound better than it is"[14] and "just use that old creative ambiguity."[15]

23. On the day after the agreement was made, an article appeared in the *New York Times*, which reported that "Mr. Holbrooke acknowledged that an agreement had been reached with the Bosnian Serbs, and that the agreement "fell short of the goal of removing Dr. Karadzic from Bosnia and putting him on trial at the war crimes tribunal in The Hague."[16]

24. In an interview with National Public Radio on 22 July 1996, Holbrooke was asked what was to follow. He answered that Ambassador John Kornblum would be following up. He was asked if Karadzic would have to go to the Tribunal in The Hague. Holbrooke replied, "I'm going to let Ambassador Kornblum work that out."

25. The reporter then asked, "is that the goal?" Holbrooke replied:

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[12] Statement of Muhamed Sacirbey "Understanding the Karadzic-Holbrooke Deal" (27August 2008) and interview with Sacirbey (01 August 2008) (Annex S)
[13] Declaration of David Binder (Annex T), Declaration of Obrad Kesic (Annex U), and Marlise Simons, *Envoy Denies Immunity Offer to Leader of Bosnian Serbs*, New York Times (25 March 2009)(Annex V)
[14] Holbrooke, *To End a War* (Modern Library 1998) at p. 341
[15] Holbrooke, *To End a War* (Modern Library 1998) at p. 341
[16] New York Times, "Top Bosnian Serb Agrees to Resign" (20 July 1996)

> The long-term goal is unambiguous--Karadzic and General Mladic to the War Crimes Tribunal in the Hague. **But the details of confidential diplomatic negotiations by necessity must remain confidential**...[17] (emphasis added)

26. Therefore, Holbrooke confirmed that there had been confidential negotiations concerning Dr. Karadzic's prosecution at the Hague Tribunal—the very topic he later claimed was not discussed.

27. Dr. Karadzic honored his end of the agreement and withdrew from public life. However, even a year later, in June 1997, United States Secretary of State Madeline Albright asked Republika Srpska President Biljana Plavsic if she could persuade Karadzic to leave Republika Srpska.[18] Dr. Karadzic was unwilling to do so, and ultimately the international community reneged on its agreement that he would not be prosecuted in The Hague and forced him into hiding.

28. Dr. Karadzic recognizes that Holbrooke and other officials of the United States government now deny that such an agreement was made. He believes that he can show at an evidentiary hearing that their versions are not credible.

29. Dr. Karadzic has requested the United States government produce its documents concerning the meeting of 18-19 July 1996.

30. The United States agreed to search for and provide the documents pursuant to Rule 70.[19] While it has produced some peripheral documents, it did not produce any contemporaneous records of the meeting of 18 July 1996—not a single, note, memorandum, cable, report, or recording.

31. In addition, those in attendance at the meeting have provided conflicting accounts of the existence of notes. Roberts Owen, an experienced lawyer for whom note-taking would be a reflex, has stated that he took no notes of the meeting, but that notes were likely taken by the junior team member at the meeting, Philip Goldberg.[20]

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[17] Public Broadcasting System interview with Charlayne Hunter-Gault (22 July 1996)
[18] Bildt, *Peace Journey*, at p. 360
[19] Letter of United States to Trial Chamber (3 March 2009)
[20] Report of interview of Roberts Owen (Annex W)

32. However, Ambassador. Goldberg has claimed that he took no notes.[21] Ambassador Lawrence Butler, who also attended the meeting in his capacity of Acting Chief of Mission at the United States Embassy in Belgrade, also claims to have taken no notes, nor written any cables or reports of the meeting.[22]

33. Ambassador Butler indicated that in addition to Holbrooke, Owen, Goldberg and himself, the meeting was attended by three other Americans: Thomas Longstreth (Office of the Secretary of Defence), John Feeley (National Security Council) and Colonel Doug Lute (J5 department of Joint Chiefs of Staff).[23] Given that the sole purpose of many of those in attendance was to take notes and report to their superiors, the absence of notes and reports is indicative of a deliberate effort not to document the representations that were made at this meeting.

34. Other United States officials who would likely have knowledge of the agreement, such as Undersecretary of State Peter Tarnoff, Undersecretary of State Strobe Talbott, and National Security Advisor Sandy Berger have refused to be interviewed.[24]

35. There is also evidence that the United States continued to try to make other agreements whereby Serbian officials would not be prosecuted in The Hague even as late as 2003. In her book, *Madame Prosecutor*, Carla del Ponte recounts how United States Ambassador at Large for War Crimes Issues Pierre Prosper negotiated directly with the Serbian government for the dismissal of ICTY indictments against Generals Pavkovic, Lazarevic, Lukic, and Djorjevic in exchange for the arrest of General Ratko Mladic.[25]

36. Dr. Karadzic requests an evidentiary hearing at which the Trial Chamber can determine who is telling the truth about the Holbrooke Agreement and who is not.

The Validity of the Agreement

37. In its *Decision on Accused's Second Motion for Inspection and Disclosure: Immunity Issue* (17 December 2008), the Trial Chamber held that "it is well established

[21] See Statement of Philip S. Goldberg (Annex X). Dr. Karadzic expresses his appreciation to the United States government for its permission that this document could be made public.
[22] See Statement of Lawrence Butler (Annex AC). Dr. Karadzic expresses his appreciation to the United States government for its permission that this document could be made public
[23] See Annex AC. Dr. Karadzic has requested that the United States make Col. Feeley and Lt. Gen Lute available for interview before this motion is decided. See *Third Motion for Order Pursuant to Rule 70* (22 May 2009)
[24] See report of contact with Peter Tarnoff (Annex Y), Strobe Talbott (Annex Z), and Sandy Berger (Annex AA)
[25] Del Ponte, *Madame Prosecutor* (New York 2009) at pp. 214-18

that any immunity in respect to an Accused indicted for genocide, war crimes and/or crimes against humanity before an international tribunal would be invalid as a matter of international law."[26]

38. In coming to this conclusion, the Trial Chamber relied solely on authorities which provide that there is no immunity for Heads of State.[27] But Dr. Karadzic does not claim to benefit from immunity by virtue of his position as President of Republika Srpska. Rather, he claims to benefit from a specific cooperation agreement.

39. It is well established that the discretion exists to dismiss charges of genocide, war crimes, and crimes against humanity as part of a cooperation agreement. The prosecutor of the ICTY has done it on at least 15 occasions.[28]

40. In the case of Dr. Karadzic, he contends that the Holbrooke Agreement provided the same kind of *quid pro quo* as those agreements which have been routinely approved by Trial Chambers of this Tribunal. For his part, he agreed to relinquish power. This allowed the international community to implement the Dayton Agreement and contributed to the maintenance of peace in the region. In exchange, he was promised that he would not be prosecuted in The Hague.

41. During the mid-1990s, the international community was focused on solving the dual problems of Haiti and Bosnia. In 1994, President Clinton had said:

> "[T]he two-year civil war in Bosnia and the defiance of the military in Haiti were two areas that defied easy solutions. At least on the international front, I would say the problems are more difficult than I imagined them to be as a candidate..."[29]

42. President Clinton stated that these conflicts would have to be solved by negotiation. In Haiti, the negotiator was former President Carter and the result was an agreement that General Cedras and his colleagues would leave power in exchange for a promise that they would not be prosecuted.[30] In Bosnia, the negotiator was Mr. Holbrooke and the result was an agreement that Dr. Karadzic would leave power in

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[26] *Decision on Accused's Second Motion for Inspection and Disclosure: Immunity Issue* (17 December 2008) at para. 25
[27] *Decision on Accused's Second Motion for Inspection and Disclosure: Immunity Issue* (17 December 2008) at para. 17, fn. 21
[28] See *Motion for Inspection and Disclosure: Holbrooke Agreement* (5 November 2008) at fn. 14
[29] AP: "Clinton Rejects Criticism He' Vacillated on Foreign Policy" by Nancy Benac, 3 May 1994
[30] Governor's Island Accord and Presidential Decree (1993)

exchange for a promise that he would not be prosecuted. The Security Council obviously believed that such a cooperation agreement was possible and lawful—it specifically approved the Haiti agreement.[31] If there was power to make the agreement in Haiti, there was power to make the same agreement in Bosnia.

43. Therefore, it cannot be said that any agreement not to prosecute an individual for international crimes is invalid as a matter of law.

The ICTY's Obligation to Honor this Agreement

44. The difference between the promise made to the Generals in Haiti and Dr. Karadzic was that President Carter was above-board and the agreement was endorsed by the Security Council while Holbrooke was duplicitous and insisted that the agreement remain a secret. As a result, Dr. Karadzic never benefitted from a Security Council resolution. There is no doubt that such a resolution would clearly have been binding on the ICTY.

45. In its *Decision on Accused's Second Motion for Inspection and Disclosure: Immunity Issue* (17 December 2008), the Trial Chamber held that "neither its own mandate nor that of the prosecutor is affected by any alleged undertaking made by Mr. Holbrooke."[32]

46. Dr. Karadzic respectfully contends that the Trial Chamber was wrong in that conclusion. Under the doctrine of actual or apparent authority, the Holbrooke agreement is binding on the United Nations Security Council and its organs, including the ICTY.

A. Actual Authority

47. When a principal authorizes its agent to take action on its behalf, actual authority is created for that agent to enter into agreements that will be binding on the principal.[33] The International Court of Justice has defined the term agent as "any person who, whether a paid official or not, and whether permanently employed or not, has been

[31] United Nations Security Council resolution 948 (15 October 1994)
[32] Impugned Decision at para. 25
[33] An example of this principle can be found in U.S. law: *Restatement of Agency 3d,* American Law Institute (2006) at section 3.01

charged by an organ of the Organization with carrying out, or helping to carry out, one of its functions – in short, any person through whom it acts."[34]

48. Therefore, the Trial Chamber's statement that Holbrooke's undertaking could not bind the prosecutor under any circumstances is clearly wrong. What needs to be determined is the relationship between Holbrooke and the United Nations Security Council and/or the relationship between the Holbrooke and the ICTY. What is needed to determine that relationship is disclosure of documents in the possession of the prosecution which bear on this question.

49. However, the prosecution has categorically refused to provide that disclosure[35] and the Trial Chamber has categorically refused to order it.[36] Therefore, under those circumstances, Dr. Karadzic is unable to make submissions to the Trial Chamber on whether Holbrooke was acting with the actual authority of the ICTY, or its parent body, the United Nations Security Council.

B. Apparent Authority

50. Even if actual authority is determined not to have existed, Holbrooke's undertakings may be found to be attributable to the ICTY under the doctrine of apparent authority.

51. The American Law Institute's Restatement of Agency defines apparent authority as "the power held by an agent or another actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations."[37]

52. It goes on to state that "Apparent authority...is created by a person's manifestation that another has authority to act with legal consequences for the person who makes the manifestation, when a third party reasonably believes the actor to be authorized and the belief is traceable to the manifestation."[38]

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[34] *Reparations for Injuries Suffered in the Service of the United Nations*, I.C.J. Advisory Opinion, 1949 I.C.J. 174 at p. 177.
[35] *Prosecution's Response to Karadzic Motion for Inspection and Disclosure* (19 November 2008) at Appendix A
[36] *Decision on Accused's Second Motion for Inspection and Disclosure: Immunity Issue* (17 December 2008)
[37] See, e.g., *Restatement of Agency 3d,* American Law Institute (2006) at section 2.03
[38] See, e.g., *Restatement of Agency 3d,* American Law Institute (2006) at section 3.03

53. The consequences of the doctrine of apparent authority is that the principal is estopped from denying an agreement entered into by the person with apparent authority and must honor the terms of the agreement with a third party who detrimentally relied upon it.[39]

54. This principle has been given widespread application in the laws of national jurisdictions.[40]

55. It was said in 1958 by a leading scholar that "there is a modern tendency to consider estoppel as one of the general principles of law recognized by civilized nations."[41] Over thirty years ago, the ICTY's own Judge Meron, after analyzing cases from international tribunals in existence at that time, concluded that States have been held to be under an obligation to ratify contracts made by those purporting to act on their behalf, even where the agents did not have the actual authority to make such contracts.[42]

56. He wrote that:

> It is submitted that under the soundest theory expounded by the tribunals is that under which the conduct of the State in repudiating a contract made between an agent and an official acting within his apparent authority is considered as internationally wrongful. Certainly, the security of international trade and investment can be considerably fostered by holding States bound internationally by the apparent authority which they themselves have conferred on their officials.[43]

57. In the case at bar, there was ample reason for Dr. Karadzic to believe that Richard Holbrooke was acting on behalf of the international community, including the United Nations Security Council, when he made the agreement with Holbrooke in July 1996 that he would not be prosecuted at the ICTY.

58. The facts that Dr. Karadzic has assembled so far from public sources in support of the apparent authority of Richard Holbrooke to make this agreement are

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[39] See, e.g., *Restatement of Agency 3d,* American Law Institute (2006) at section 2.05

[40] GERMANY: German Civil Code, Fifth Title, Agency. Power of Attorney. GREECE: Kerameus & Kozyris, Introduction to Greek Law, 2nd ed. (Deventer: Kluwer/Sakkoulas, 1993) at 69 CANADA: Canadian Encyclopedic Digest Agency § 133, UNIDROIT Principles, Article 2.2.5, Comment 2; European Principles, Article 3:201(3),NETHERLANDS: Civil Code, Article 3:61(2); JAPAN: Civil Code Act NO. 89 of 1896 as amended by Act No. 87 of 2005 , Article 109

[41] I.C. MacGibbon, *Estoppel in International Law,* 7 Int'l & Comp L.Q. 468 (1958)

[42] Meron, *Repudiation of Ultra Vires States Contracts and the International Responsibility of States*, 6 Int'l & Comp L.Q.273, 281,286, (1957)

[43] Meron, *Repudiation of Ultra Vires States Contracts and the International Responsibility of States*, 6 Int'l & Comp L.Q.273, 289 (1957)

contained in the letter to United Nations Secretary General Ban Ki Moon attached to this motion as Annex AB.[44] Those facts show that the United Nations repeatedly encouraged the parties in Bosnia to cooperate with those leading the negotiations for peace, and ratified the promises made by Richard Holbrooke on every occasion in which it was called upon to do so.

59. Agreements made by a person lacking actual authority, but having apparent authority, have been enforced in the criminal justice system of national jurisdictions when an accused has justifiably relied upon the agreement.

60. In the United Kingdom case of *R v Croydon Justices, Ex parte Dean,* police officers promised the accused immunity in exchange for his testimony against two co-accused. The Crown prosecuted him anyway. The Court dismissed the case, finding that the accused was entitled to believe that the officers had authority to make the promises that they made, and that it would be an abuse of process to allow the prosecution to proceed.[45]

61. The case was followed by the House of Lords in *Jones v. Whalley*, where police issued a caution to an accused on the form that stated the accused would not be prosecuted. The form incorrectly represented the law in force at that time. In dismissing the prosecution, the Justices found that the Crown was bound by the representation which had been made to the accused by the police.[46]

62. In the United States, the following promises were enforced even though the agent did not have actual authority:

--promises made by an administrative agency (Securities and Exchange Commission) that the accused would not be criminally prosecuted.[47]

--promises made by U.S. Attorney for one district, and where prosecution was initiated by U.S. Attorney in a different district.[48]

--promises by a military officer granting immunity from criminal prosecution[49]

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[44] Dr. Karadzic would have liked to include this material in the body of this motion, but was prevented from doing so by the Trial Chamber's word limit. If the Trial Chamber prefers to have the material in the body of this motion, it is respectfully requested to grant another 2735 words and Dr. Karadzic will file an amended motion.
[45] *R v Croydon Justices, Ex Parte Dean* [1993] QB 769; [1993] 3 WLR 198; [1993] 3 All ER 129, DC
[46] *Jones v. Whalley*, 2006 WL 2049652 (HL), [2007] 1 A.C. 63, [2006] 4 All E.R. 113, [2007]
[47] *United States v. Rodman*, 519 F.2d 1058 (1st Cir. 1975)
[48] *United States v. Carter*, 454 F.2d 426 (4th Cir. 1972)

--promises by a criminal prosecutor that the accused would not be deported by immigration officials[50]

63. In the Australia case of *R v Mohi,* the Supreme Court of South Australia held that a promise made by a police officer that an accused would not be prosecuted would be enforced even in the absence of actual authority by the police officers to make such a promise. The Court said:

> The administration of justice will be brought into disrepute if, without good reason, the investigating and prosecuting authorities are permitted to decline to comply with the undertakings or assurances given to such persons that they will not be charged and to pursue prosecutions against those to whom such undertakings or assurances have been given. [51]

64. Dr. Karadzic has demonstrated in Annex AB that Holbrooke had the apparent authority of the United Nations Security Council to enter into an agreement with him. Dr. Karadzic reasonably relied on that authority when he accepted the Holbrooke Agreement and when he fulfilled his part by immediately stepping down from his positions as President of Republika Srpska and the SDS party, and withdrawing from pubic life.[52]

65. As a result of that agreement Dr. Karadzic is not a person over whom the Tribunal has jurisdiction. Therefore the indictment does not relate to a person who may be prosecuted under Article 1 of the Statute. The Trial Chamber now has a duty to enforce the agreement by dismissing the indictment.

The Abuse of Process Doctrine

66. Even if the Trial Chamber were to find that the Holbrooke agreement was not legally binding upon the ICTY, it should dismiss the indictment or stay the proceedings on equitable grounds under the abuse of process doctrine.

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[49] *Cooke v. Orser*, 12 M.J. 335, 354 (C.M.A.1982) (citing United States v. Hardin, 7 M.J. 399 (C.M.A.1979)); *United States v. McKeel*, 63 M.J. 81 at 83 (citing United States v. Kimble, 33 M.J. 284, 289-92 (C.M.A.1991); *United States v. Churnovic*, 22 M.J. 401 at 405 (C.M.A.1986); *United States v. Brown*, 13 M.J. 253 (C.M.A.1982)

[50] *Geisser v. United States*, 513 F.2d 862 (5th Cir. 1975), after remand, 554 F.2d 698 (5th Cir. 1977), after remand, 627 F.2d 745 (5th Cir. 1980); *Margalli-Olivera v. INS*, 43 F.3d 345 (8th Cir. 1994); *Thomas v. INS*, 35 F.3d 1332 (9th Cir. 1994)

[51] *R v Mohi*, 78 SASR 55, 2001 WL 13476; [2000] SASC 384, Supreme Court of South Australia at paras. 46-47

[52] See also Declaration of Radovan Karadzic (Annex B) and Declaration of Momcilo Krajisnik (Annex D)

67. The Tribunal has inherent supervisory power to dismiss any prosecution in the interest of justice "regardless of a specific violation".[53] This includes a power to stay proceedings which are an abuse of process.[54]

68. A Chamber may decline – as a matter of discretion – to exercise its jurisdiction in cases "where to exercise that jurisdiction in light of serious and egregious violations of the accused's right would prove detrimental to the court's integrity."[55] The abuse of process doctrine may be relied on if "in the circumstances of a particular case, proceeding with the trial of the accused would contravene the court's sense of justice."[56]

69. The Trial Chamber in the *Nikolic* case held that:

> "...[T]he issue of respect for due process of law encompasses more than merely the duty to ensure a fair trial for the Accused. Due process of law also includes questions such as how the Parties have been conducting themselves in the context of a particular case and how an Accused has been brought into the jurisdiction of the Tribunal. The finding in the *Ebrahim* case that the State must come to court with clean hands applies equally to the Prosecution coming to a Trial Chamber of this Tribunal..."[57]

70. The Appeals Chamber has recognized that the abuse of process doctrine may be invoked even where the violation of rights was committed by a third party unrelated to the Tribunal.[58] Therefore, while the relationship between Holbrooke and the Security Council and the ICTY is relevant, Holbrooke's acts do not have to be binding on the ICTY for the abuse of process doctrine to apply.

71. However, as the Trial Chamber in the *Nikolic* case observed:

> "Both SFOR and the Tribunal are involved in a peace mission and are expected to contribute in a positive way to the restoration of peace and security in the area. Any use of methods and practices that would, in themselves, violate fundamental principles of international law and

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[53] *Barayagwiza*, AC para. 76

[54] *Prosecutor v. Tadic*, IT-94-1-A-R77, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, para. 13, 18; ***Prosecutor v Bobetko***, No. IT-02-62-AR54*bis*, *Decision on Challenge by Croatia to Decision and Orders of Confirming Judge* (29 November 2002) at para. 15; *Prosecutor v. Kallon and Kamara*, SCSL, Decision on Challenge to Jurisdiction: Lome Accord Amnesty, 13 March 2004, at para. 76 "

[55] *Barayagwiza v Prosecutor*, No. ICTR-97-19-AR72, *Decision* (3 November 1999) at para. 74

[56] *Barayagwiza v Prosecutor*, No. ICTR-97-19-AR72, *Decision* (3 November 1999) at para. 75

[57] *Prosecutor v. Nikolic*, No. IT-94-2-PT, *Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal* (9 October 2002) at para. 111

[58] *Barayagwiza v Prosecutor*, No. ICTR-97-19-AR72, *Decision* (3 November 1999) at para. 73; See also *Prosecutor v. Nikolic*, No. IT-94-2-PT, *Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal* (9 October 2002) at para. 114

justice would be contrary to the mission of this Tribunal."[59]

72. The same is as true for Richard Holbrooke and those involved in his peace mission, as it is for SFOR.

73. Decisions of other Tribunals have also stated that the court ought to refuse to exercise its jurisdiction where a cooperation agreement is breached.

74. In *Prosecutor v. Kondewa*, Justice Robertson of the SCSL Appeals Chamber argued for a narrow interpretation of the doctrine of abuse of process. However, even he recognized that prosecution of an accused who complied with the conditions of a cooperation agreement would constitute "a literal abuse of process which, as national court decisions show, affect the conscience of the court and may incline it to hold the prosecutor to his word if the defendant has performed his side of the bargain."[60]

75. Furthermore, the ICC Appeals Chamber in *Prosecutor v. Lubanga* similarly recognized that "broken promises to the accused with regard to his prosecution"[61] constitute circumstances where stay of proceedings on grounds of abuse of process may be ordered.

76. In *Lubanga*, the ICC Appeals Chamber in determining whether abuse of process took place inquired into whether the Accused's arrest and appearance before the Congolese authority involved any violation of his rights[62] and stated that in cases of breaches of the rights of the accused

> the interest of the world community to put persons accused of the most heinous crimes against humanity on trial, great as it is, is outweighed by the need to sustain the efficacy of the judicial process as the potent agent of justice.[63]

77. In Dr. Karadzic's case, Richard Holbrooke came to Belgrade in July 1996 to negotiate the enforcement of the Dayton Agreement's provision that an ICTY indictee

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[59] *Prosecutor v. Nikolic*, No. IT-94-2-PT, *Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal* (9 October 2002) at para. 65

[60] *Prosecutor v. Kondewa*, 25 May 2004, SCSL AC, Decision on Lack of Jurisdiction / Abuse of Process: Amnesty Provided by the Lome Accord, Separate Opinion of Justice Robertson, at para. 56 [emphasis added]

[61] *Prosecutor v. Lubanga*, 14 December 2006, ICC AC, *Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute of 3 October 2006*, at 29.

[62] *Lubanga*, Appeals Chamber, para. 41

[63] *Lubanga*, Appeals Chamber, para. 39

should not hold office or seek election. In the course of those negotiations, he agreed that Dr. Karadzic would not face prosecution at the ICTY in exchange for Karadzic's agreement to resign from public and party office and to withdraw from public life. Dr. Karadzic relied upon the promise and complied with his part of the agreement. It would now be a miscarriage of justice for the ICTY to exercise its jurisdiction.

78. Therefore, the indictment should be dismissed, or the proceedings should be stayed, so that the hands of the Tribunal are not stained with Holbrooke's deception.

Conclusion

79. At its heart, this motion is about fundamental fairness.

80. The Trial Chamber should squarely confront the factual issue of whether Richard Holbrooke entered into an agreement with Radovan Karadzic by which it was promised that Dr. Karadzic would not be prosecuted by this Tribunal. Therefore, the first step should be to hold an evidentiary hearing on the existence of the agreement. Dr. Karadzic is willing to testify, to be fully cross examined, and to bring witnesses who will corroborate the existence of this agreement.

81. If the Trial Chamber were to find that there was no such agreement, its work on this motion is done.

82. If the Trial Chamber were to find that there was such an agreement, it is only then that it needs to proceed to step two and determine whether such an agreement is possible under international law.

83. If the Trial Chamber finds that such an agreement is possible, it is only then that it needs to proceed to step three and determine whether such an agreement is binding on the Tribunal.

84. If the Trial Chamber finds that the Holbrooke agreement is binding on the Tribunal, it should order that the indictment be dismissed.

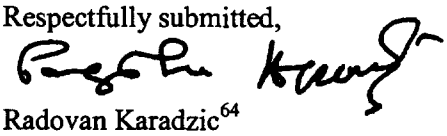
85. If the Trial Chamber finds that the Holbrooke agreement is not binding on the Tribunal, it must go to step four and consider whether it should exercise its discretion to decline jurisdiction under the abuse of doctrine so as to not taint the integrity of the Tribunal by prosecuting someone who, through no fault of his own, relied upon an agreement in which was based upon deception.

86. The Trial Chamber should not skip step one. To escape from this basic factual issue would be to do a disservice to Dr. Karadzic and to history. If the Tribunal is serious about fulfilling its mandate for truth and reconciliation, it cannot be afraid to uncover the truth.

87. Therefore, it is respectfully requested that the Trial Chamber hold an evidentiary hearing and, after such a hearing, dismiss the indictment on the grounds that the Tribunal lacks jurisdiction, or, alternatively, should decline to exercise jurisdiction, as a result of the agreement made with Richard Holbrooke that Dr. Karadzic would not face prosecution at this Tribunal.

Word count: 5995

Respectfully submitted,



Radovan Karadzic[64]

[64] The assistance of Legal Intern Anatoly Vlasov of the University of Toronto (Canada) in the research for this motion is gratefully acknowledged.

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

Registrar: Mr. John Hocking

Date: 25 May 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

ANNEXES TO HOLBROOKE AGREEMENT MOTION

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

The Accused:
Radovan Karadzic

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AC	Statement of Lawrence Butler

ANNEX "A"

R1117620

18 July 1996 07:17 PREDSEDNIK RS TEL 071766022

Final Version

STATEMENT OF MR. KARADZIC, MR. KRAJISNIK, MR. BUHA, AND MADAME PLAVSIC

The undersigned reaffirm their commitment to fulfill the General Framework Agreement for Peace and Annexes negotiated in Dayton and signed in Paris December 14, 1995; and state the following:

1. As of July 19, 1996, Dr. Biljana Plavsic has assumed the office of Temporary Acting President of Republika Srpska until completion of the elections of September 14, 1996, scheduled in accordance with the Dayton Peace Agreement, when a new President will be elected. So that, therefore, on July 19, 1996, Dr. Radovan Karadzic has relinquished the office of President of the Republika Srpska and has relinquished all powers associated therewith.

2. Dr. Radovan Karadzic states that he shall withdraw immediately and permanently from all political activities. He will not appear in public, or on radio or television or other media or means of communication, or participate in any way in the elections.

3. As of July 19, 1996, Dr. Radovan Karadzic relinquishes the office of President of the SDS and all the functions, powers and responsibilities of the President of the SDS shall be frozen until the SDS chooses a new President. These powers and responsibilities shall be taken over by Professor Buha.

Signed:

Radovan Karadzic

Momcilo Krajisnik

Biljana Plavsic

Aleksa Buha

Witnessed by:

Slobodan Milosevic

Milan Milutinovic

ANNEX "B"

STATEMENT OF RADOVAN KARADZIC

I, Radovan Karadzic, do hereby declare under penalty of perjury that the following is true and correct:

1. On 18 July 1996, a meeting took place in Belgrade to discuss my political future. I was not present at this meeting. I had been informed that Richard Holbrooke had requested to meet with President Slobodan Milosevic to negotiate about my political future. I was not invited to attend, but, at the request of President Milosevic, Republika Srpska ("RS") sent two representatives to this meeting—Momcilo Krajisnik, Speaker of the RS Assembly and Aleksa Buha, RS Foreign Minister.

2. I remained in my office in Pale and was in frequent telephone contact with our representatives at the meeting. I also spoke with President Milosevic on the telephone during that meeting. I never spoke directly with any of the Americans during that meeting.

3. The negotiations continued during the course of the evening and different proposals were discussed with me by telephone and were sent between Belgrade and Pale by FAX.

4. Finally, we reached an agreement. I agreed to resign as President of Republika Srpska, to resign as President of the SDS political party, to withdraw from public life, and not to participate in any way in the forthcoming elections, in exchange for the assurances that I would not be prosecuted in The Hague. I was informed of these terms on the telephone by Momcilo Krajisnik, Aleksa Buha, and Slobodan Milosevic.

5. Holbrooke drafted an agreement which contained only my obligations. When I saw that, I balked. I wanted his obligations to be in writing as well.

6. At this point, President Milosevic spoke with me on the telephone and explained to me that Holbrooke had said that the United States could not put their part of the agreement in writing for political reasons. He said in fact Holbrooke said that I could only expect a harsh rhetoric from the United States for a while, and that their promise could not be made known publicly. Milosevic explained that Holbrooke said that this was necessary so that the United States would not spoil their relations with the other parties in the region. Holbrooke also said that the United States and the International community

Pk.

wanted to discourage my supporters from blocking implementation of the Dayton agreement, according to Milosevic.

7. When I continued to request that their part of the agreement be put in writing, Milosevic assured me that these people were representing the big powers and they don't put their signature to every piece of paper. He said that everything Holbrooke had promised had been honored in the past.

8. Based upon those assurances, I agreed to sign the agreement containing my part of the undertakings. That document is Annex A to my preliminary motion.

9. One can note from the document I signed that it is dated July 18, 1996 in the American format of writing the date. It is labeled "final version", which means that it had been changed in the course of negotiations, and it is written entirely in English. It is clear that although the no American names appear on the document, it was drafted by Holbrooke and his team, as Holbrooke confirmed in his book.

10. During the course of the evening of 18 July and early morning hours of 19 July 1996, Jovica Stanisic flew from Belgrade to Pale. I do not recall if he came once or twice during that period. We discussed the agreement and the promise that I not be prosecuted in The Hague. Stanisic encouraged me to sign the agreement. I finally signed and he returned with the document to Belgrade.

11. My secretary, Milijana Rasovic's record of my activities for that evening, which is attached as Annex C to my preliminary motion, indicates that Jovica Stanisic arrived at around 9:20 p.m. and left at 12:05 a.m. It also indicates that I left my office at 12:50 a.m. and that General Subotic and Professor Radomir Lukic had been at my office during the time that Stanisic was there.

12. Although my secretary's record indicates that Biljana Plavsic was present in my cabinet until 10:00 p.m., I do not recall the circumstances under which she affixed her signature to the agreement. She certainly was around and I do not recall whether she was completely acquainted with the details as she was later when she spoke with U.S. Secretary of State Madeline Albright in 1997 on the same subject and with the same proposals.

 P. K.

13. At the time the agreement was entered into, I had no doubt that Richard Holbrooke had promised that I would not be prosecuted at the ICTY and that he had the authority to make that promise.

14. I was aware that during the negotiations over Bosnia in which Holbrooke was involved since 1995, whenever he had made a promise to us, it had been fulfilled. When those promises had involved action by the United Nations Security Council, that action had soon followed. Indeed, the United Nations had expressly encouraged us to work with Holbrooke and others to find a solution to the problems in Bosnia.

15. Therefore, I had no doubt that Holbrooke had the authority to make such an agreement, and I relied upon it.

16. In reliance on that agreement, I dutifully fulfilled my obligations. I resigned as President of Republika Srpska and as President of my party, withdrew from public life, and did not participate in the elections.

17. In the days and months that followed, there was indeed harsh rhetoric against me, but there was no effort to arrest me. I moved openly in Bosnia in full view of international armed forces.

18. Because I understood that the agreement that I not be prosecuted in The Hague was not to be made public, I did not publicize that agreement myself. However, I did tell some people about it, including my family, some close associates, and some international personalities who came to Pale and met with me after the agreement had been entered into.

19. About one and one half years later, the Republika Srpska security services advised me of information that the international forces had apparently decided to renege on our agreement and that there were efforts underway to kill me. At that time, I went into hiding.

DATED: 22.04.09

P. K.

ANNEX "C"

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06385319

17.07.1996.

+ Мирко Шобић, Драган Шолић, Радивој Гајић, Милорад Чопић, Бошко Лешић, проф. Клисуровић (10,50 - 13,...) Ив. Знаменит
+ проф. Крстић, Б. Сенић (11,75 - 13,75)
+ делегација Одбора за чешће, Камилић, Ђенић, Радуновић (15,15 - 15,25) 15,...
Камилић, Шиванић (14,15 - 16,00)
+ Славица Гавић (10,55 - 11,05)
+ проф. Плавшић (12,45 - 13,25) (15,25 - 16,10)
+ Мил. Бука (13,10 - 13,25) + Ромео Тошић (15,25 - 16,10)
+ Т. Матић, Н. Ковачевић, М. Рајић (13,45 - 14,20) + Снежа Бојић (17,25 - 18,0...
+ делегација из Власенице (15,15 - 15,35) + Раде Тешић (18,00 - 18,15)
+ Мил. Аћић, Т. Нешковић (16,10 - 16,35) + Борко Сенић (18,35 - 19,15)
+ Д. Козић, Д. Колевдић (16,35 - 17,25)

18.07.1996. 19,20

+ 11,00 здравствени одбор Вијећа за здравље - 14,50
+ 13,00 Одбор за жалбе (15,00 - 19,30)
- Живојин Радовић и Слободан Ранчић - одлучили су
+ Душко Козић (12,10 - 12,20)
+ ген. Толимир (14,50 - 15,00) (19,30 - 20,10)
мин. Камилић, Драган Булатић
+ мин. Кецман, Драшка Михић (20,10 - 20,15) (21,40 - 00,45
+ Пушица Кијић и гости (20,20 - 22,00)
+ проф. Плавшић, мин. Кијић, мин. Сладе (20,20 - 22,00)
22,25 - 00,30
+ Станојлović Ђовица (21,20 - 00,05)
+ ген. Суботић (22,25 - 22,45)
+ проф. Кијић (23,40 - 00,45)

00,50

ANNEX "D"

STATEMENT OF MOMCILO KRAJISNIK

I, Momcilo Krajisnik, do hereby declare under penalty of perjury that the following is true and correct:

1. On 18 July 1996, I attended a meeting in Belgrade with Richard Holbrooke, Slobodan Milosevic, and others. I was representing Republika Srpska ("RS") along with Aleksa Buha.

2. I do not recall the names of the persons accompanying Holbrooke. Also present at the meeting on behalf of the Federal Republic of Yugoslavia ("FRY") besides Milosevic was Milan Milutinovic, and others who I do not recall.

3. At that time, President Milosevic was being pressured by the international community by the threat of United Nations Security Council sanctions.

4. I understood Richard Holbrooke to be acting at this meeting as a representative of the international community. Holbrooke had come to the meeting after consulting in Sarajevo with High Representative for Bosnia Carl Bildt, who also represented the international community.

5. We had already agreed with Mr. Bildt that Radovan Karadzic would resign as President of RS in favor of Biljana Plavsic. However, there had been no agreement as to Karadzic's position as President of the SDS party.

6. On 4 July 1996, an article was published in which it was indicated that Biljana Plavsic was not replacing Karadzic, but was just holding his post temporarily. Another article was published on 13 July 1996, indicating that NATO had stated that it did not have a mandate to arrest Karadzic. These articles are attached to my statement.

Suddenly Richard Holbrooke appeared with additional demands and offers.

6. In the past, Holbrooke had acted on behalf of the international community in connection with the Dayton Peace Agreement, both before its conclusion and after on its implementation. I considered the topic of the meeting of 18 July 1996 to be directly related to the implementation of the Dayton Peace Agreement, specifically the upcoming elections in Bosnia.

7. At the meeting, Holbrooke initially requested that Karadzic resign not only from the Presidency of RS, but that he also resign the Presidency of the SDS party, and that Karadzic leave the territory of RS, suggesting Montenegro as a destination.

8. During the course of the negotiations that evening, the Serbian negotiators indicated that the condition that Karadzic leave the territory of RS was not acceptable.

8. Holbrooke excused himself on several occasions to use the telephone to consult others. Finally, he agreed that Karadzic would not be required to leave the territory of RS.

9. We also conferred with Radovan Karadzic on the telephone during the course of the negotiations that evening and informed him of what was being said at the meeting, including Holbrooke's statements about Karadzic's indictment in The Hague. He was also receiving papers by FAX to Pale.

10. Holbrooke expressly represented that if Karadzic agreed to resign his RS government positions, resign as President of SDS party, and withdraw completely from public life, he would not have to worry about The Hague. He would not be arrested for, handed over to, or prosecuted in The Hague. The Hague would be a thing of the past.

11. This was what was agreed upon during the meeting of 18 July 1996.

12. Holbrooke and his team produced a written agreement reflecting the promises made by the RS. I signed this agreement, and it was taken to Pale to be signed by Karadzic. I have identified the document bearing #R1117620 as a true copy of this agreement.

13. We were told that the promises made by Holbrooke could not be put in writing. He also said that there would be some rhetoric against Karadzic for awhile. However, during the course of the negotiations with Holbrooke before and after Dayton, Holbrooke had made many oral agreements and the international community had fulfilled them.

14. For example, Holbrooke had orally promised that we would have our own entity and we would get the name "Republika Srpska". This promise was fulfilled. I had no reason to believe that Holbrooke's

oral promise concerning Karadzic and The Hague would not also be fulfilled.

15. None of the negotiators on the Serbian side had any doubt that Holbrooke had the authority to make such a promise.

16. Republika Srpska and Karadzic fulfilled their part of the agreement. The international community initially fulfilled its part of the agreement. No efforts were made to arrest Karadzic, even though IFOR and SFOR had a strong military presence in Bosnia. It was only later that things changed and the international community reneged on Holbrooke's promise.

DATED: 22.04.09.

ОСЛОБОЂЕЊЕ

Method
SOK

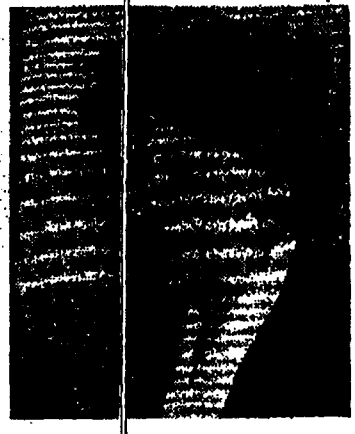
ДИНА LIV – НОВА СЕРИЈА, БРОЈ 92 САРАЈЕВО, 4. ЈУЛИ

[illegible] ДЕМОКРАТСКЕ СТРАНКЕ СРПСКИХ [illegible]

[illegible] Конвенција највеће и [illegible] странке у РС [illegible] у атмосфери у [illegible] Караџића [illegible] српског на[illegible] чека да је [illegible] изабрана Странка, која [illegible] српским [illegible] експо[illegible] међународној седници [illegible] превазилазе [illegible] осталих по[illegible] и утрошиваља [illegible] "Осарђени се на [illegible] предратним и [illegible] и дјеловања [illegible] Караџић је истакао [illegible] страдања огромна, [illegible] величанственије а [illegible] је будбиња [illegible] и да је тре-ба испунити без остатка. "Храбро и достојанствено како се очекује и прихвата воља Вожје", нагласио је др Караџић. Скупштина је у свом дводневном заседању потврдила изабрала Главни одбор, који броји 85 чланова из РС и 37 из осталих српских земаља и дијаспоре, укупно: 122 члана. Дан након видовданске конвенције СДС-а, новоизабрани Главни одбор је чврсто стао иза утврђене и дубоко патриотске политике коју Странка води свих шест година постојања и рата; једногласно упутио захтев предсједнику Караџићу да се кандидује на предстојећим изборима и отпочео консултације око утврђивања листе странчких кандидата за септембарске изборе. До закључења овога броја ниједна листа, нису позната имена тих кандидата

(2, 3,4 стр)

[illegible] ПОЗДРАВНИК



"Прин[illegible] у Републици Српској Вилијам [illegible] Караџић. Господа [illegible] вести које стране агенције [illegible] Караџић поднио оставку [illegible] свог наслједника.

[illegible] је искористио уставно [illegible] 40. Устав [illegible] у случају [illegible] Републике.

[illegible] Српске, [illegible] могућности да [illegible] је на сингу 30. [illegible] у државној поли-

[illegible] исправну [illegible] народ", рекла је [illegible] нагласила да је пре-[illegible] функцију легалним пу-[illegible] који остаје до избора у

ОСТАЊ ЗДРАВИ

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01/10 '07 MON 17:33 [TX/RX NO 7747] 003

... у Трнову

... своје душе ... у Трнову ... у којој се ... Хиландар ... у којој се ... Хиландара ... Свете Лидије ... Грчкој са сестрама ... Митрофан. ... Хиландар ... у манастиру Свете Лидије ... народу Трнова ... присуствовало ... свештеника архиман... Трново је извану остатог ре...

... грских свештеника

... ово ... ...

ANNEX "E"

Na traženje gospodina dr Radovana Kradžića, koje mi je preneo advokat Goran Petronijević, pod punom odgovornošću dajem Međunarodnom krivičnom sudu za bivšu Jugoslaviju, u postupku koji se vodi po optužnici protiv gospodina Radovana Karadžića, sledeću:

IZJAVU

Zovem se Aleksa Buha, rođen sam 1939.godine, od oca Vula i majke Ljubice, u selu Ribari, opština Gacko, sada Republika Srpska – BiH. Moje sadašnje prebivalište je u Beogradu – Srbija, ulica Molerova 16. Radio sam do 1. novembra 2008.godine, u zvanju redovnog profesora, na Filozofskom fakultetu u Banja Luci – Republika Srpska. Redovni sam član Akademija nauka i umetnosti RS.

Godine 1990. biran sam za poslanika na listi Srpske demokratske stranke u zajedničku narodnu skupštinu Socijalističke republike BiH. Od oktobra 1991. godine do septembra 1998.godine bio sam poslanik u Skupštini srpskog naroda BiH, odnosno u Narodnoj skupštini Repulike Srpske. Istovremeno, od kraja marta 1992.godine do januara 1998.godine bio sam ministar inostranih poslova u Vladi RS. U tom svojstvu učestvovao sam u svim pregovorima koje je rukovodstvo Srpskog naroda vodilo sa predstavnicima druga dva konstitutivna naroda BiH i međunarodnim činiocima, i to: prije rata u cilju iznalaženja formule za demokratsku transformaciju BiH, a tokom rata u cilju postizanja pravednog mira. Mogu kazati da sam ne samo bio učesnik u koncipiranju raznih dokumenata, koji su dolazili sa naše strane, nego bio upućen i u "običaje" i atmosferu koja je vladala prilikom pregovora, i pretpostavljene i podrazumevajuće polazne tačke. To važi i za sporazum Karadžić-Holbruk.

Naime, Momčilo Krajišnik, Radomir Lukić, Jovan Zametica i ja doputovali smo hitno u kasnim poslepodnevnim satima sa Pala u Beograd 18. jula 1996.godine. Došli smo po pozivu pok.predsednika Slobodana Miloševića. Objašnjavajući nam zbog čega smo morali da dojurimo, Milošević je rekao da treba hitno perfektuirati sporazum Kradžića sa gospodinom Holbrukom. Po tonu i držanju Miloševića, mogao sam videti da je on glavni dio posla sa Holbrukom već završio, a da nas trojica sa Pala (gosp.Lukić nije bio prisutan) treba da učestvujemo u dijelu posla koji se tiče dr Karadžića, i kao neophodni svjedoci. Mi smo se, shodno tome, pretvorili u aktere koji taj dogovor perfektuiraju, u stvari stavljaju na papir. Krenuli smo od teksta izjave koja je već bila koncipirana. Tekst je nekoliko puta faksom odašiljan na Pale i vraćan u Beograd kako bi se dr Karadžić saglasio sa svakom izmenom ili dodatkom koji su dolazili ili sa naše strane ili sa strane Holbrukove ekipe. Kažem "ekipe", i sjećam se da su uz Holbruka bili i dvojica ambasadora. Konačna izjava verzije, sa potpisima bila je gotova iza ponoći, tj u ranim časovima 19. jula 1996. godine. Pored Radovana Kradžića izjavu su potpisali Biljana Plavšić, Momčilo Krajišnik i ja, te Slobodan Milošević i Milan Milutinović. Dok smo čekali povratak helikoptera sa Pala kojim je donesen primerak potpisane Izjave, u jednom trenutku sam upitao, tobože naivno, a ustvari smišljeno, kako bih proverio svoj utisak sa početka sastanka: Dobro ljudi, dr Karadžić se evo obavezao da dobrovoljno ode sa svih

funkcija, je li Holbruk ušao u neke obaveze prema dr Karažiću. Uslijedila je reakcija pokojnog predsednika Miloševića, manirom kakav sam poznavao od ranije: Bre Aleksa, ti nisi glup čovek, to na šta ti misliš podrazumjeva se da je već utvrđeno. Ti kao ministar spoljnih poslova znaš da uz ovakav sporazum ide i tajni dio.

(Tekst Izjave dr Karadžića publikovan je u beogradskom listu Politika ekspres 20.jula 1996.godine. Engleska verzija sa nabrojanim potpisima objavljenaje u knjizi Ričarada Holbruka. Na osnovu prevoda mogu tvrditi da je to autentičan tekst Izjave)

Pomenute riječi predsednika Miloševića nisu me do kraja uvjerile. Oko 2 sata posle ponoći razilazili smo se svako na svoju stranu. Pozdravljajući se, upitao sam gospodina Holbruka: Na čemu smo sada? (Pitanje je bilo na francuskom). Pokazijući mi potpisanu Izjavu dr Karadžića Holbruk je odgovorio: Poslije ovoga, Srpska demokratska stranka ide na izbore, a za Karadžića je Tribunal u Hagu prošlost.

U vezi sa ovim sporazumom želim da potvrdim i ono što sam čuo iz usta gospođe Plavšić desetak meseci kasnije. Gospođa Plavšić je u maju ili junu 1997.godine, u svojstvu predsednika RS primila u Banja Luci državnog sekretara SAD Madlen Olbrajt. Odmah iza toga došla je na Pale i preda mnom i Krajišnikom prenijela poruku gospođe Olbrajt sažimajući je u dvije kratke rečenice: da je Biljana Plavšić od sada lično njoj odgovarna za RS, a dr Karadžić mora da nestane iz RS, pa će za njega prestati da postoji i Haški tribinal. Kao što je poznato dr Karadžić je bio nestao iz RS, ali Holbruk, gđa Olbrajt i Haški tribunal nisu prestali da jure dr Karadžića.

U vremenu dok sam obavljao odgovorne, stranačke i državne funkcije, a nakon ovog događaja, više puta sam kontaktirao sa visokim predstavnicima tzv.međunarodne zajednice i američke administracije. Iz tih kontakata sam zaključio da su i oni upoznati sa sporazumom.

U Beogradu
21.04.2009.godine

Aleksa Buha
Molerova 16
Beograd

Aleksa Buha

ANNEX "F"

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ACTION EUR-01

INFO	LOG-00	INLB-01	AID-00	CIAE-00	SMEC-00	INL-01	OASY-00
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	L-01	ADS-00	M-00	NSAE-00	NSCE-00	OMB-01	PA-00
	PM-00	PRS-00	P-00	SCT-00	SP-00	SSO-00	TRSE-00
	USIE-00	PMB-00	DRL-09	G-00	/015W		

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FM AMEMBASSY SARAJEVO
TO SECSTATE WASHDC IMMEDIATE 3216
INFO IFOR COLLECTIVE

DEF: 09-0003

C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 002528

E.O. 12958: DECL: 07/21/06
TAGS: PREL, PGOV, BK
SUBJECT: BUHA AND KRAJISNIK: DOWN WITH KARADZIC,
- DOWN WITH DAYTON

1. (U) CLASSIFIED BY JOHN K. MENZIES, AMBASSADOR, PER 1.5 (D).

2. (C) SUMMARY: BUHA AND KRAJISNIK TOLD US IN PALE JULY 22 THAT THE GORS WILL UPHOLD COMMITMENTS MADE IN BELGRADE WITH THE HOLBROOKE DELEGATION CONCERNING THE REMOVAL OF KARADZIC FROM PUBLIC LIFE AND OFFICE.. BUHA AND KRAJISNIK TOLD US THAT AGREEMENTS REACHED WITH HOLBROOKE LED THEM TO BELIEVE THAT THE WAR

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PAGE 02 SARAJE 02528 01 OF 03 221623Z
CRIMES TRIBUNAL WOULD CONTINUE TO EXIST THROUGH THE SEPTEMBER ELECTIONS, AND WOULD THEN 'VANISH'. THEY SPOKE OF GORS CONFUSION AS TO THE APPROPRIATE INTERLOCUTOR IN THE INTERNATIONAL COMMUNITY ON THE DAYTON ACCORDS. COMMENT: KRAJISNIK WAS UNUSUALLY COMBATIVE AND MORE CONFRONTATIONAL THAN WE HAVE EVER SEEN HIM. END SUMMARY AND COMMENT.

3. (C) AMBASSADOR, DCM, AND POLOFF MET WITH RS ASSEMBLY PRESIDENT MOMCILO KRAJISNIK AND GORS

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UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: FRANK H PEREZ
DATE/CASE ID: 10 APR 2009 D200900011

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MINISTER ALEKSA BUHA IN PALE JULY 22. AMBASSADOR REPORTED TO KRAJISNIK AND BUHA THAT HE HAD SPOKEN WITH HOLBROOKE JULY 21, AND THAT HOLBROOKE HAD REPORTED TO WASHINGTON ON THE WRITTEN AND ORAL AGREEMENTS REACHED WITH GORS REPRESENTATIVES IN BELGRADE. AMBASSADOR REMINDED THEM THAT THE USG EXPECTED FULL COMPLIANCE WITH THE AGREEMENTS, AND SAID THERE WOULD BE A SWIFT RESPONSE IF THE GORS DOES NOT UPHOLD ITS COMMITMENTS. AMBASSADOR SAID THE USG EXPECTS PALE TO UPHOLD ITS COMMITMENT TO REMOVE POSTERS AND PORTRAITS OF FORMER RS PRESIDENT RADOVAN KARADZIC FROM PUBLIC DISPLAY, AND SAID THAT THE USG BELIEVES KARADZIC SHOULD BE REFERRED TO AS EITHER DR. KARADZIC OR EX-PRESIDENT KARADZIC, NOT PRESIDENT. AMBASSADOR TOLD BUHA AND KRAJISNIK THAT POLITICAL ACTIVITY BY OPPOSITION PARTIES IN COMING MONTHS MUST BE PERMITTED AND THAT THERE SHOULD BE NO INTIMIDATION OF VOTERS IN THE PRE-ELECTION PERIOD OR ON SEPTEMBER 14.

4. (C) KRAJISNIK TOLD AMBASSADOR THAT THESE POINTS

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HAD BEEN AGREED TO WITH HOLBROOKE IN BELGRADE AND THAT THE GORS WOULD STRIVE TO FULFIL THEM. KRAJISNIK SAID IT WOULD BE VERY DIFFICULT TO CONTROL THE MASSES AND PREVENT THEM FROM DISPLAYING PICTURES OF KARADZIC. KRAJISNIK ACCUSED THE USG OF LOOKING FOR EXCUSES TO REIMPOSE SANCTIONS OR FURTHER PERSECUTE THE RS, SAYING IT WILL BE EASY TO FIND A PUBLIC PORTRAIT OF KARADZIC. THE GORS, HE CONTINUED, HAS FULFILLED ITS AGREEMENTS, WITH KARADZIC'S RESIGNATION AS PRESIDENT OF THE REPUBLIKA SRPSKA AND FROM HIS POSITION AS PRESIDENT OF THE SDS. KRAJISNIK SAID HE ONLY CALLED KARADZIC 'PRESIDENT KARADZIC' OUT OF HABIT, AS A MISTAKE. (NOTE: IN OUR MEETING, KRAJISNIK EXCLUSIVELY CALLED KARADZIC PRESIDENT.) HE SAID THE PORTRAITS OF KARADZIC AND REFERENCES TO HIM AS PRESIDENT WERE UNDERSTANDABLE, SINCE THE SDS HOPES TO WIN THE SEPTEMBER ELECTIONS. THE LEADERSHIP, HE SAID, WILL ADHERE TO THE AGREEMENTS, BUT CANNOT CONTROL THE PEOPLE.

5. (C) AMBASSADOR TOLD KRAJISNIK HE HAD SEEN A POSTER OF KARADZIC (CAPTIONED 'WE WON, WE WILL

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CONTINUE') IN A WINDOW OF THE RS GOVERNMENT BUILDING IN PALE. BUHA SAID THE PICTURE HAD BEEN SEEN SATURDAY, JULY 20, AND THEN REMOVED. AMBASSADOR TOLD KRAJISNIK HE HAD SEEN THE PICTURE SUNDAY, AND THAT THIS SORT OF PUBLIC DISPLAY WAS NOT IN KEEPING WITH AGREEMENTS REACHED IN BELGRADE. KRAJISNIK ASKED WHAT BOTHERED THE AMBASSADOR ABOUT THE PICTURE, AND PROCEEDED TO ACCUSE THE USG OF

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(UNSPECIFIED) BLACKMAIL. HE SAID AGREEMENTS REACHED IN BELGRADE CONCERNING KARADZIC HAD BEEN 'FINISHED', AND THAT HE AND HOLBROOKE HAD AGREED THERE WOULD BE NO MORE DISCUSSIONS OF KARADZIC. HE DISPUTED CHARGES OF WAR CRIMES WHICH HAVE BEEN DIRECTED TOWARDS THE FORMER RS PRESIDENT, AND BECAME VISIBLY UPSET. HE REPEATED HIS ASSERTION THAT THE GORS HAD COMPLETED ITS OBLIGATIONS UNDERTAKEN IN BELGRADE, AND THAT KARADZIC HAD ACCEPTED THE PROPOSAL TO RESIGN: IT WAS NOT IMPOSED, KRAJISNIK SAID. THE USG SHOULD NOT WORRY ABOUT POSTERS, NOR ABOUT MISTAKES MADE REFERRING TO KARADZIC AS PRESIDENT.

6. (C) BUHA SAID AN ISSUE OF MAJOR CONCERN TO THE GORS WAS THE APPROPRIATE INTERLOCUTOR IN THE INTERNATIONAL COMMUNITY ON QUESTIONS OF THE DAYTON ACCORDS. HE SAID THAT AFTER SPEAKING WITH BILDT, FROWICK CALLED BILDT'S STATMENTS 'DECEPTIONS'. AFTER REACHING AGREEMENTS WITH FROWICK, THEN HOLBROOKE ARRIVES ON THE SCENE, LEAVING GORS OFFICIALS WONDERING WHO, IN FACT, SPEAKS FOR THE INTERNATIONAL COMMUNITY. BUHA SAID THE GORS HAD BELIEVED BILDT WAS THE APPROPRIATE INTERLOCUTOR, BUT

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INFO	LOG-00	INLB-01	AID-00	CIAE-00	SMEC-00	INL-01	OASY-00
	DODE-00	SRPP-00	FBIE-00	H-01	TEDE-00	INR-00	SAL-00
	L-01	ADS-00	M-00	NSAE-00	NSCE-00	OMB-01	PA-00

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TO SECSTATE WASHDC IMMEDIATE 3216
INFO IFOR COLLECTIVE

C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 002528

E.O. 12958: DECL: 07/21/06
TAGS: PREL, PGOV, BK
SUBJECT: BUHA AND KRAJISNIK: DOWN WITH KARADZIC,
- DOWN WITH DAYTON

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PAGE 02 221623Z
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PAGE 03 221623Z

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5. (C) AMBASSADOR TOLD KRAJISNIK HE HAD SEEN A POSTER OF KARADZIC (CAPTIONED 'WE WON, WE WILL CONTINUE') IN A WINDOW OF THE RS GOVERNMENT BUILDING IN PALE. BUHA SAID THE PICTURE HAD BEEN SEEN SATURDAY, JULY 20, AND THEN REMOVED. AMBASSADOR TOLD KRAJISNIK HE HAD SEEN THE PICTURE SUNDAY, AND THAT THIS SORT OF PUBLIC DISPLAY WAS NOT IN KEEPING WITH AGREEMENTS REACHED IN BELGRADE. KRAJISNIK ASKED WHAT BOTHERED THE AMBASSADOR ABOUT THE PICTURE, AND PROCEEDED TO ACCUSE THE USG OF

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ACTION EUR-01

INFO	LOG-00	INLB-01	AID-00	CIAE-00	SMEC-00	INL-01	OASY-00
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	L-01	ADS-00	M-00	NSAE-00	NSCE-00	OMB-01	PA-00
	PM-00	PRS-00	P-00	SCT-00	SP-00	SSO-00	TRSE-00
	USIE-00	PMB-00	DRL-09	G-00	/015W		

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C O N F I D E N T I A L SECTION 02 OF 03 SARAJEVO 002528

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Def: 09-0003

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E.O. 12958: DECL: 07/21/06
TAGS: PREL, PGOV, BK
SUBJECT: BUHA AND KRAJISNIK: DOWN WITH KARADZIC,
- DOWN WITH DAYTON

NO LONGER BELIEVES THAT TO BE THE CASE.

7. (C) BUHA SAID THE GORS DISAGREES WITH FROWICK'S DECISION TO ALLOW PARTIES REGISTERED IN THE FEDERATION TO STAND FOR ELECTION IN THE REPUBLIKA SRPSKA. HE SAID THE GENEVA AND DAYTON AGREEMENTS LEAVE ELECTIONS SOLELY IN THE HANDS OF THE ENTITIES, AND CALLED FROWICK'S DECISION A VIOLATION OF THE DAYTON ACCORDS. BUHA SAID HE UNDERSTOOD FROWICK

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INTENDS TO POSTPONE ELECTIONS IN BRCKO, CALLING THIS DECISION ANOTHER VIOLATION OF THE DAYTON ACCORDS. AMBASSADOR AGREED THAT THE COMPLICATED NATURE OF THE DAYTON ACCORDS, AND THE DISTRIBUTED AUTHORITY FOR DIFFERENT AREAS OF THE AGREEMENT, MADE A SINGLE POINT OF CONTACT IMPOSSIBLE, WHICH COULD SERVE TO ENCOURAGE CONFUSION.

8. (C) BUHA REPEATED HIS ASSERTION THAT THE GORS WILL RESPECT AGREEMENTS REACHED IN BELGRADE WITH HOLBROOKE. HE SAID FREEDOM OF MOVEMENT WAS A GOOD IDEA IN A 'THEORETICAL AND MORAL SENSE', BUT THAT FREEDOM OF MOVEMENT REMAINS AN ILLUSION. HE ASSERTED THAT IF GROUPS OF RS SERBS WANT TO PASS INTO THE FEDERATION, OR VICE VERSA, THIS DEMANDS CONTROLS ON THE IEBL. BUHA DREW A PARALLEL WITH WESTERN EUROPEAN BORDERS, WHICH ARE GENERALLY OPEN, BUT HE SAID THAT IF 'HUNDREDS OF PEOPLE APPEAR AT A BORDER' IN WESTERN EUROPE, CONTROLS WILL BE QUICKLY INSTITUTED. HE ALSO SAID THAT REFUGEE RETURNS ARE A MORAL AND HUMAN IDEA, BUT THAT NECESSARY CONDITIONS MUST FIRST BE MET. HOUSING MUST BE PROVIDED, HE SAID, AND MECHANISMS MUST BE PUT INTO PLACE TO COORDINATE OCCUPIED HOUSING AND REFUGEES. HE URGED MECHANISMS FOR PROPERTY EXCHANGES AND COMPENSATION BE QUICKLY IMPLEMENTED, AS ENVISAGED BY DAYTON.

9. (C) BUHA SAID THE INTERNATIONAL COMMUNITY IS DEALING WITH THE CONFLICT IN BOSNIA LIKE PARENTS WOULD DEAL WITH TWO FIGHTING CHILDREN. THE

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INTERNATIONAL COMMUNITY CANNOT SIMPLY PRETEND THAT
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THERE WAS NOT A BRUTAL WAR IN BOSNIA, AND MUST TREAT THE ENTITIES EQUALLY. BUHA ASSERTED THAT THE DAYTON ACCORDS HAD IN FACT DIVIDED BOSNIA INTO TWO ENTITIES. THE AMBASSADOR REMINDED BUHA AND KRAJISNIK THAT BOSNIA, UNDER DAYTON, REMAINED AN INTEGRAL STATE WITH TWO ENTITIES. KRAJISNIK SAID HE AND BUHA ARE THE 'ACTIVE PARTICIPANTS' IN THE RS ON THE DAYTON AGREEMENT. HE SAID IT WILL BE A GREAT MISTAKE FOR ANYONE TO TRY AND MAKE THE GOBH MORE OR LESS THAN ENVISAGED IN DAYTON. HE DESCRIBED HIS CONCEPT OF POST-DAYTON BOSNIA AS TWO ENTITIES SUPPORTING AND COVERED BY A THIN ROOF.

10. (C) KRAJISNIK SAID THAT PUBLIC STATEMENTS CONCERNING THE AGREEMENTS REACHED IN BELGRADE WITH HOLBROOKE HAD BEEN 'VERY DISRUPTIVE' AND HAD LED TO A GREAT DEAL OF CONDEMNATION OF HIM AND BUHA. HE WORRIED ABOUT PUBLIC MENTION OF THE HAGUE TRIBUNAL, AND SAID THAT HE HAD AGREED WITH HOLBROOKE IN BELGRADE THAT THERE WOULD BE NO PUBLIC MENTION OF THE HAGUE'S PROCEEDINGS AND THAT AFTER ELECTIONS, THE TRIBUNAL WOULD SIMPLY GO AWAY. AMBASSADOR EXPRESSED DOUBT THAT SUCH AN AGREEMENT WOULD HAVE BEEN REACHED, AND REMINDED KRAJISNIK THAT ONLY THE TRIBUNAL COULD SPEAK FOR THE TRIBUNAL. HE ADDED THAT THE USG DOES, AND WILL CONTINUE TO, SUPPORT THE TRIBUNAL'S ACTIVITIES.

11. (C) KRAJISNIK RETURNED AGAIN TO THE ISSUE OF THE KARADZIC POSTER IN THE GOVERNMENT BUILDING WINDOW, SAYING THAT THIS COULD BE INTERPRETED AS A VIOLATION
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OF THE BELGRADE AGREEMENTS WITH HOLBROOKE AND THEREFORE STOP THE ENTIRE PROCESS. HE SAID HE WOULD IMMEDIATELY DRAFT A LETTER TO HOLBROOKE OUTLINING BOTH THE WRITTEN AND ORAL AGREEMENTS REACHED IN BELGRADE. KRAJISNIK SAID THE INTERNATIONAL COMMUNITY SHOULD BE MORE CONCERNED WITH HARASSMENT

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OF SERBS IN SARAJEVO THAN PICTURES OF KARADZIC IN PALE. AMBASSADOR REMINDED KRAJISNIK OF CONTINUING USG INTEREST IN THE ISSUE OF SERBS IN SARAJEVO.

12. (C) KRAJISNIK SAID HE PERSONALLY DOUBTED THERE WILL BE ELECTIONS IN SEPTEMBER. HE SAID THAT IF THERE WAS SUCH CONCERN OVER A SINGLE PICTURE OF KARADZIC, EVEN A SMALL OUTBREAK OF VIOLENCE WILL SERVE TO CANCEL THE ELECTIONS. KRAJISNIK ASSERTED THAT HE WAS MORE PESSIMISTIC ON THE POSSIBILITY OF ELECTIONS THAN AT THE OUTSET OF OUR MEETING.

13. (C) BUHA EXPRESSED CONCERN OVER THE DISARMAMENT AGREEMENTS SIGNED IN FLORENCE AND THE U.S.-LED EQUIP AND TRAIN PROGRAM. AMBASSADOR TOLD BUHA THAT THE USG BELIEVED THE EQUIP AND TRAIN PROGRAM WILL PROVIDE FOR GREATER STABILITY IN THE REGION. BUHA

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ACTION EUR-01

INFO	LOG-00	INLB-01	AID-00	CIAE-00	SMEC-00	INL-01	OASY-00
	DODE-00	SRPP-00	FBIE-00	H-01	TEDE-00	INR-00	SAL-00
	L-01	ADS-00	M-00	NSAE-00	NSCE-00	OMB-01	PA-00
	PM-00	PRS-00	P-00	SCT-00	SP-00	SSO-00	TRSE-00
	USIE-00	PMB-00	DRL-09	G-00	/015W		

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TAGS: PREL, PGOV, BK
SUBJECT: BUHA AND KRAJISNIK: DOWN WITH KARADZIC,
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THEN BEGAN TO DISCUSS THE DIFFERENT POSSIBLE INTERPRETATIONS OF POST-DAYTON BOSNIA. AMBASSADOR ASKED IF THIS MEANT THE BOSNIAN SERBS WERE STILL COMMITTED TO PARTICIPATING IN POST-ELECTION CENTRAL GOVERNMENT INSTITUTIONS, AND BUHA SAID YES HE SAID

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THE BOSNIAN SERBS WILL PARTICIPATE, BUT ONLY ON THE BASIS OF CONSENSUS AND THE DAYTON AGREEMENT.

14. (C) COMMENT: THIS WAS THE MOST UNPLEASANT

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MEETING WE HAVE EVER HAD WITH KRAJISNIK. HE WAS ARGUMENTATIVE AND WILLFULLY MISINTERPRETED AMBASSADOR'S REMARKS. BUHA WAS IN THE ROLE OF 'GOOD COP', AS MUCH AS POSSIBLE. IN A PRIVATE ASIDE WITH THE AMBASSADOR AFTER THE MEETING, BUHA EXPLAINED THE ALLEGED HOLBROOKE PROPOSAL FOR THE HAGUE TRIBUNAL TO 'VANISH' AFTER SEPTEMBER ELECTIONS.

15. (C) COMMENT CONTINUED: THE SEPARATIST GOALS OF THE BOSNIAN SERBS ARE BECOMING MORE CLEAR AS THE DAYTON AGREEMENT AGES. THE THEME OF THE BOSNIAN CENTRAL GOVERNMENT AS A 'THIN ROOF' IS LONGSTANDING RS RHETORIC, WHICH IS IN KEEPING WITH BUHA AND KRAJISNIK'S MINIMALIST COMMITMENT TO DAYTON. WE EXPECT THEM TO CONTINUE THE MAXIMUM POSSIBLE OBSTRUCTION TO THE AGREEMENT, CONCEDING ONLY THE MINIMUM NECESSARY TO AVOID INTERNATIONAL CONDEMNATION AND RETRIBUTION. END COMMENT.

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ANNEX "G"

На тражење господина др РАДОВАНА КАРАЏИЋА које ми је пренео адвокат ГОРАН ПЕТРОНИЈЕВИЋ дајем МЕЂУНАРОДНОМ КРИВИЧНОМ ТРИБУНАЛУ ЗА БИВШУ ЈУГОСЛАВИЈУ, у поступку који се води по тужби против господина РАДОВАНА КАРАЏИЋА, следећу

И З Ј А В У

Познато ми је да је дана 18. јула 1996. године у Београду, у вили у Ботићевој улици, одржан састанак са господином РИЧАРДОМ ХОЛБРУКОМ, специјалним изаслаником Председника Сједињених Америчких Држава, и да је на том састанку требало да се између осталог разговара и о условима под којима ће се др Радован Караџић, председник Републике Српске и председник СДС-а, повући са те функције у Републици Српској и у СДС. Из Републике Српске том састанку су присуствовали господин МОМЧИЛО КРАЈИШНИК, председник Народне Скупштине Репубике Српске и господин АЛЕКСА БУХА, министар иностраних послова Републике Српске.

Ове чињенице су ми познате јер је требало да и сам учествујем у преговорима, као заменик министра иностраних послова Републике Српске и правник. Тако сам тог дана заједно са председником Крајишником и министромом Бухом стигао у вилу у Ботићевој улици, ушао у зграду, негде око 16 или 17 часова, али нисам отишао у просторију за преговоре због тога што нисам ценио Холбруков начин вођења преговора. Неко време, отприлике између 40 минута и сат времена, провео сам у ходнику зграде, близу улаза, а потом сам замолио да ме одвезу до виле Босанка у Ужичкој улици, коју су и иначе користили политички и државни функционери, изборна и именована лица и високи државни службеници из Републике Српске за време пословног боравка у Београду. Тамо сам остао следећи сат времена, када су се појавили председник Крајишник и министар Буха, у краћој паузи преговора. Кратко су ме обавестили о томе да се преговара о повлачењу председника Караџића и да се усклађује текст споразума између изасланика Холбрука и председника Караџића, и да следи одлучујући део преговора који се односи на давање гаранција да председник Караџић неће бити изведен пред Међународни кривични трибунал за бившу Југославију.

Председник Крајишник и министар Буха су се после отприлике 20-ак минута вратили на наставак преговора у вилу у Ботићевој улици и тамо остали све до отприлике 19 часова и 40 минута, када су се вратили и казали ми да је текст споразума о повлачењу председника Караџића са свих државних и политичких функција у Републици Српској усаглашен, да је сачињен у писменој форми и да је изасланик Холбрук гарантовао да председник Караџић неће бити изведен пред Међународни трибунал за бившу Југославију, као и да се таква одредба налази у писмену самог споразума. Замолили су ме да хитно одем на Пале и тамо присуствујем састанку председника Караџића и господина Јовице Станишића, шефа Ресора државне безбедности Републике Србије.

После неких десетак минута разговора са председником Крајишником и министром Бухом сео сам у аутомобил и пар минута пре 20 часова кренуо према Палама. Редак аутомобилски саобраћај на аутопуту и регионалном путу према

Палама омогућио ми је да брзом вожњом стигнем у Пале негде око 23 часа. Одмах са се одвезао до фабричког круга фабрике „ФАМОС" у Корану у Палама, где су се налазиле просторије кабинета Председника Републике Српске. Успео сам да стугнем пре господина Јовице Станишића. У кабинету Председника Републике Српске затекао сам председника Караџића, господина Николу Кољевића, потпредседника Републике Српске, госпођу Биљану Плавшић, потпредседника Републике Српске и господина Гордана Михића, саветника Председника Репубике за безбедност. Убрзо је стигао и господин Јовица Станишић, који је до Пала превезен хеликоптером из Београда.

Састанак је одмах почео. Господин Станишић је обазложио потребу да се председник Караџић повуче са свих државних и политичких функција и положаја из Републике Српске, говорећи да је то како у интересу Републике Српске, задржавања њеног положаја утврђеног споразумом из Дејтона и њених грађана, тако и у интересу самог председника Караџића. После отприлике сат времена председник Караџић и господин Станишић су се на тражење господина Станишића повукли у салу са састанке, која се налазила одмах до кабинета председника Караџића, а делила су их само једна врата, где су остали наредних 30-40 минута. По изласку из те просторије, господин Станишић се поздравио са нама и напустио просторије Председника Републике.

Председник Караџић нас је потом обавестио да је потписао споразум о његовом повлачењу и да ће се наредних дана одлучивати о томе ко ће га заменити на функцији Председника Републике и на положају председника СДС. Негде око 2 сата после пола ноћи, дакле већ 19.06.1996. године, напустио сам просторије Председника Републике Српске.

На крају желим да истакнем и то да ми и је познато да је пре изасланика Холбрука преговоре о повлачењу председника Караџића без успеха водио господин КАРЛ БИЛТ, први Високи представник међународне заједнице за Босну и Херцеговину, пошто сам учествовао у тим преговорима у два наврата, од којих једнапут чак и целу ноћ, у просторијама председника Народне скупштине Републике Српске у Палама.

Познато ми је и да се господин др Радован КАРАЏИЋ после повлачења дуже време кретао слободно у Палама и да није на било који начин избегавао представнике и патроле ИФОР-а у Палама и Републици Српској. У том времену сусрео сам се неколико пута са њим и ни једном ми није изразио своју бојазан од хапшења или извођења пред Међународни кривични трибунал за бившу Југославију.

У Београду, 16.04.2009.г.

Радомир В. Лукић
Карпошева 5
Београд

ANNEX "H"

PETER ROBINSON
International Criminal Law
P.O. Box 1844
Santa Rosa, California 95402
(707) 575-0540
E-mail: peter@peterrobinson.com

06 April 2009

Swedish Prison and Probation Service
Norkopping, Sweden

FAX: 46 11 496 3939

Dear Sir or Madam,

I am the Legal Advisor for Radovan Karadzic, who is an accused at the International Criminal Tribunal for the former Yugoslavia (ICTY). I attach my CV for your information.

I am writing to request authorization to visit an ICTY prisoner, Biljana Plavsic, who is serving her sentence in Hinseberg Prison. The purpose of the visit is to interview her about an agreement to which she was a signatory in July 1996 which involved a promise that Dr. Karadzic would not be prosecuted in The Hague. I am attaching a copy of the written portion of that agreement.

We need to interview her for a preliminary motion which we are filing and which is likely to be due in the near future. Therefore, time is of the essence.

I am also attaching the letter of Dr. Karadzic requesting the ICTY Registry to facilitate the visit and their response, in which they referred us to you.

I would appreciate it if you would contact me by e-mail at your earliest convenience with a response to this request. If it is necessary for Ms. Plavsic to be contacted in advance to consent to the interview, please feel free to provide her with this letter and its attachments and ask her directly if she consents to meet me.

Swedish Prison and Probation Service
--page two—

Thank you very much for your cooperation.

Yours truly,

PETER ROBINSON
Legal Advisor for Radovan Karadzic

Subject: Ms Plavsic
From: "Jonson Ulf /HK" <Ulf.Jonson@kriminalvarden.se>
Date: Tue, April 7, 2009 8:45 am
To: peter@peterrobinson.com
Priority: Normal
Read receipt: requested [Send read receipt now]
Options: View Full Header | View Printable Version | Download this as a file | View Message details

J have sent your letter and its attachments to Ms Plavsic. After reading the
information Ms Plavsic has responded to the prison manager that she is not willing
to meet you. We can not arrange a meeting without ms Plavsic´s consent.

Best regards

Ulf Jonson
Head of Department

ANNEX "I"

Van: Peter Robinson [mailto:peter@peterrobinson.com]
Verzonden: dinsdag 14 april 2009 13:44
Aan: Knoops office; Tanja R
Onderwerp: Jovica Stanisic and the Karadzic case

Dear Alexander and Tanja,

I hope this e-mail finds you doing well.

I need your help with something.

We are filing a motion in the Karadzic case concerning an agreement he had with Richard Holbrooke that he would not be prosecuted in The Hague in exhange for his resignation as President of Republika Srpska, President of SDS Party, and withdrawal from public life,

The agreement was made the night of 18 July 1996 and Jovica Stanisic was present for part of that meeting, which tool place in Belgrade among Holbrooke, Milosevic and others. Stanisic flew to Pale that night and got Karadzic to sign off on his promises--the promises of the Americans were not put in writing.

It is important to us to have you ask Stanisic whether he can confirm that Karadzic was promised that he would not be prosecuted in The Hague. I understand that because he is ill, he would not be able to be interviewed, or to make a written statement. But for purposes of our motion, I need to report something to the Trial Chamber about Stanisic's position.

I would be most grateful if someone on your team could just put that question to him, and send me an e-mail with his answer.

Our motion is due on 23 April, so I would appreciate a response before then.

I am attaching the agreement that Karadzic signed.

Thank you for your help and I am sorry to bother you with this.

Your friend,

Peter Robinson
Legal Advisor to Radovan Karadzic

Dear Peter,

Thank you for your message. As you may know, Mr Stanisic is currently medically treated in Belgrade and mentally far from capable of commenting on his case and not even able to assist his own defence counsel. Therefore he is in no position to assist in the way you request. I hope you understand this situation.

Best regards,

Alexander

G.J. ALEXANDER KNOOPS
PROFESSOR OF INTERNATIONAL CRIMINAL LAW
UNIVERSITY OF UTRECHT

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e: office@knoops.info
www.knoops.info

ANNEX "J"

TO: Peter Robinson, counsel for Dr. Radovan Karadžić

FROM: Eugene O'Sullivan and Slobodan Zečević, counsel for Mr. Milan Milutinović

DATE: 16 April 2009

RE: Dr. Karadžić's Withdrawal from Political and Public Life, as of 19 July 1995

Following your request, we are writing to confirm that we have spoken to our client, Mr. Milutinović and he informed us that although the "Holbrooke Agreement" of 18 July 1996 bears his signature, he only witnessed the signatures of the others and was not present during the negotiations that led to this agreement. Therefore, he is unable to say one way or the other whether Richard Holbrooke made any representations about whether Radovan Karadžić would or would not be prosecuted in The Hague.

E. O'Sullivan

Eugene O'Sullivan
Lead counsel for Mr. Milutinović

Slobodan Zečević
Co-counsel for Mr. Milutinović

ANNEX "K"

Such deferential treatment extended to Radovan Karadžić, who regularly commuted between his Pale home and office in full view of the town's International Police Task Force (IPTF) headquarters manned by Austrian, Swedish, and Ukrainian officers who neglected to report the encounters to their Sarajevo headquarters.**207** The U.S. military's refusal to apprehend him exacerbated tensions with the State Department, which regarded his total removal from politics as indispensable to stabilizing postwar Bosnia.**208** The task of securing Karadžić's withdrawal fell to Richard Holbrooke who, in turn, sought the assistance of Slobodan Milošević. Milošević readily accepted the challenge, given his immediate strategic interest in retaining American and western support, including the removal of sanctions. Karadžić agreed to leave, but only on condition that he be left alone. Holbrooke accepted Karadžić's terms, knowing fully well that the U.S., French and British military had no intention of arresting *any* ICTY indictees, but declined to put such a promise in writing. Instead, he instructed his principal assistant Christopher Hill to draft a memorandum to be signed by Karadžić in which he agreed to give up power and retire to private life. The agreement almost came to grief when Holbrooke vigorously refused Karadžić's demand – and Hill's appeal – that he also affix his signature to it. Securing Karadžić's signature required a late night helicopter flight to Pale by Milošević's state security chief Jovica Stanišić, who overcame Karadžić's resistance after several hours of intensive discussions.**209** Whereas Holbrooke, High Representative Carl Bildt, and Karadžić himself have readily confirmed that the Bosnian Serb leader pledged to step down, Holbrooke and other U.S. officials have consistently claimed that there was no quid pro quo; by contrast, Karadžić has insisted since his July 2008 arrest that he was promised immunity from *prosecution* in exchange for his withdrawal.**210** What we know from three senior State Department officials with intimate knowledge of Holbrooke's activities is that the ambassador explicitly assured Karadžić that he would not be *arrested,* a concession that is common knowledge among several others at the State Department who have heretofore remained silent.**211**

207 Anthony Lewis, "Winking at Karadzic," *New York Times,* 28 October 1996; interviews with IPTF Deputy Commissioner Robert Wasserman, IPTF-Pale staff, and Press Spokesman Alex Ivanko by Charles Ingrao.

208 Interviews with senior State Department official #1 and Intelligence and Research—Europe Director Daniel Serwer by Charles Ingrao.

209 The agreement, which has been authenticated by Karadžić's legal team and a State Department source, bears the signatures of Aleksa Buha, Momčilo Krajišnik, Slobodan Milošević, Milan Milutinović, and Biljana Plavšić. Senior State Department official #2.

210 "Bildt confidently predicts that Karadzic will leave gov't.," CourtTVNews, 5 April 1996; Bildt, *Peace Journey*, 237; www.courttv.com/archive/casefiles/warcrimes/reports/week3.html (accessed 5 April 2008); "Radovan Karadzic Finally Steps Aside," by James Hill, *Phoenix Gazette,* 23 July 1996. www.balkan-archive.org.yu/kosta/autori/hill.james/karadzic.steps.aside.html (accessed 5 April 2008); "Irregularities Linked to My Arrival before the Tribunal," pretrial statement by Radovan Karadžić, IT-95-5/18-I D11337-D11344, 1 August 2008.

211 Interviews with senior State Department officials #2, #3 and #4, and former Bosnian Foreign Minister Muhamed Sačirbey.

ANNEX "L"

Indicted Bosnian Serb Claims Immunity

By MARLISE SIMONS
New York Times
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PARIS — Every time Radovan Karadzic, the onetime Bosnian Serb leader, appears in court on war crimes charges he has hammered on one recurring claim: a senior American official pledged that he would never be standing there.

The official, Richard C. Holbrooke, now a special envoy on Afghanistan and Pakistan for the Obama administration, has repeatedly denied promising Mr. Karadzic immunity from prosecution in exchange for abandoning power after the Bosnian war.

But the rumor persists, and different versions have recently emerged that line up with Mr. Karadzic's assertion, including a new historical study of the Yugoslav wars published by Purdue University in Indiana.

Charles W. Ingrao, the study's main editor, said that three senior State Department officials, one of them retired, and several other people with knowledge of Mr. Holbrooke's activities told him that Mr. Holbrooke assured Mr. Karadzic in July 1996 that he would not be pursued by the international war crimes tribunal in The Hague if he left politics.

Mr. Ingrao said that Mr. Holbrooke used Slobodan Milosevic, then the Serbian leader, and other Serbian officials as intermediaries to convey the promise and to reach the deal with Mr. Karadzic.

Mr. Holbrooke's memoirs recount a night of fierce negotiation on July 18, 1996, but make no mention of any such pledge. Mr. Holbrooke, who brokered the peace agreement that ended the war in 1995, was back in Bosnia to press Mr. Karadzic to resign as president of the Bosnian Serb republic.

At the time, Mr. Karadzic had already been charged with genocide and other crimes against civilians by the International Criminal Tribunal for the

former Yugoslavia in The Hague. There were some 60,000 American and NATO troops in Bosnia, but Western diplomats complained that the soldiers had no orders to arrest indicted Bosnians for fear of inciting local rebellion.

Last summer, after more than a decade on the run, Mr. Karadzic was found living disguised in Belgrade, Serbia's capital. He was arrested and sent to The Hague for his trial, which is expected to start this year.

Two of the sources cited anonymously in the new report, a former senior State Department official who spent almost a decade in the Balkans and another American who was involved with international peacekeeping there in the 1990s, provided further details in interviews with The New York Times, speaking on condition that they not be further identified.

The former State Department official said he was told of the offer by people who were close to Mr. Holbrooke's team at the time. The other source said that Mr. Holbrooke personally and emphatically told him about the deal on two occasions.

While the two men agreed, as one of them put it, that "Holbrooke did the right thing and got the job done," the recurring story of the deal has dogged Mr. Holbrooke.

Asked for comment for this article, Mr. Holbrooke repeated his denial in a written statement. "No one in the U.S. government ever promised anything, nor made a deal of any sort with Karadzic," he said, noting that Mr. Karadzic stepped down in the summer of 1996 under intense American pressure.

"In subsequent meetings, as a private citizen, I repeatedly urged officials in both the Clinton and Bush administrations to capture Karadzic," Mr. Holbrooke said. "I am glad he has finally been brought to justice, even though he uses his public platform to disseminate these fabrications."

Mr. Holbrooke declined to accept further questions and did not address the specifics of the new accounts.

Mr. Karadzic, by insisting that he is exempt from legal proceedings, has forced the war crimes tribunal to deal with his allegations, illustrating the difficulty of both administering international justice and of conducting diplomacy.

In December, tribunal judges ruled that even if a deal had been made, it would have no bearing on a trial. They said no immunity agreement would be valid before an international tribunal in a case involving genocide, war crimes or crimes against humanity. Mr. Karadzic is charged with all three.

But Mr. Karadzic has appealed and filed motions demanding that prosecutors disclose every scrap of confidential evidence about negotiations with Mr. Holbrooke. He has asked his lawyers to seek meetings with American diplomats.

His demands have led the court to write to the United States government for clarification.

Peter Robinson, a lawyer for Mr. Karadzic, said that he had received a promise from Washington that he could interview Philip S. Goldberg, who was on the Holbrooke team meeting in Belgrade the night the resignation was negotiated.

"Goldberg took the notes at that meeting," Mr. Robinson said. "The U.S. government has agreed to search for the notes and provide them if they find them."

A State Department spokesman said that the government was cooperating with the tribunal but would provide no further details.

The 442-page report, Confronting the Yugoslav Controversies: A Scholars' Initiative, is the product of eight years of research by teams of historians, jurists and social scientists into the wars that tore the former Yugoslavia apart in the 1990s. Mr. Ingrao said scholars from all sides contributed in an effort to reconcile disparate views of the conflicts.

The report says that Mr. Holbrooke, in Belgrade, "instructed his principal assistant, Christopher Hill, to draft the memorandum to be signed by Karadzic," who was in Pale, Bosnia, committing him to give up power.

"The agreement almost came to grief when Holbrooke vigorously refused Karadzic's demand, and Hill's appeal, that he affix his signature to it," the report says, citing unidentified State Department sources. Neither Mr. Goldberg nor Mr. Hill responded to requests for interviews for this article.

In an interview, the former State Department official, who had access to confidential reports and to members of the Holbrooke team, said that during that evening in 1996, Mr. Milosevic and other Serbian officials were on the phone with Mr. Karadzic.

The former official said that Mr. Karadzic wanted written assurances that he would not be pursued for war crimes and refused to sign without them.

"Holbrooke told the Serbs, 'You can give him my word he won't be pursued,' but Holbrooke refused to sign anything," the official said. Mr. Holbrooke could make that promise because he knew that American and other Western militaries in Bosnia were not then making arrests, the official said.

In the short statement Mr. Karadzic eventually signed, he agreed to withdraw "from all political activities" and to step down from office. It carried the signatures of Mr. Milosevic and four other Serbian leaders acting as witnesses and guarantors. It did not include any American names and made no mention of immunity.

The American who was involved in peacekeeping insisted in an interview that Mr. Holbrooke himself told him that he had made a deal with Mr. Karadzic to get him to leave politics. He recalled meeting Mr. Holbrooke in Sarajevo, Bosnia, on the eve of Bosnian elections in November 2000, just after Mr. Milosevic had finally been ousted from power in Serbia.

Mr. Holbrooke was worried about the outcome of the Bosnian vote because he knew that Mr. Karadzic was still secretly running his nationalist political

party, picking candidates, including mayors and police chiefs who had run prison camps and organized massacres.

"Holbrooke was angry, he was ranting," the American recalled. He quoted Mr. Holbrooke as saying: "That son of a bitch Karadzic. I made a deal with him that if he'd pull out of politics, we wouldn't go after him. He's broken that deal and now we're going to get him."

Mr. Karadzic's party won those elections in the Bosnian Serb republic. Shortly afterward, he disappeared from public view.

ANNEX "M"

No. IT-95-5/18-PT

BEHIND CURTAINS OF INTERNATIONAL JUSTICE – *October 11, 2007*

- interview with Mrs. Florence Hartmann, former spokesperson of the U.N. International Criminal Tribunal for former Yugoslavia in the Hague and author of the book "*Peace and Punishment*" in which she describes the mechanisms and politics influencing the international criminal justice system.

Sebastian Aulich: *Why did you decide to write your book? What made you to write it?*

Florence Hartmann: International justice finally exists but is still fragile and may be even in danger in this new century. The hopes given to humanity by creating the first ever established judicial bodies to implement international humanitarian law should not be destroyed. The ICC is the best gift we have from the bloody XX century. International justice is not prefect, it has deficiencies, it doesn't work as we wish, we have not succeeded to put an end to impunity but the process is on and should be sustained. Therefore, I believe it was necessary to learn from the experience of the first international criminal court established since Nuremberg and Tokyo. With ICTY we have almost 15 years of experience of how an international judicial body works, what gave us important information about the problems, deficiencies and negatives, which were part of the ICTY experience. I also believe it would be very useful for others to better understand what was going on in the ICTY, what was not functioning properly, why there is some frustration about international justice system. It isn't easy for somebody from the outside to figure those things out, identify and understand them. Therefore I wanted to write about all those difficulties, how they were overcome or how they failed to be overcome, about what was going right and what was going wrong. I believe it is something very precious and we need to assist international justice. I wanted to explain that the problem was not primarily with the international justice but with some external factors. It will take time for international justice to become independent and it was important to write about political influences on the ICTY in order to protect it from such political pressures in the future. The book's purpose is to identify the problem, not to generalize it. I am a journalist. I worked as a journalist before I started to work at the Tribunal, therefore I believe in a necessity to inform. In this case there were many things, which appeared to be necessary to write about, the things related to ICTY but also some elements related to the conflict in former Yugoslavia. I have been covering the Balkans' issues since 1987. Do you think it is wrong to write such a book?

SA: Not at all. I think it is good you published your book because it gives us better understanding of what is going on inside the Tribunal...

That was my goal. It was not a kind of a story I should be keeping only to myself.

SA: What did you want to suggest by naming your book "Peace and Punishment"?

Well. You can have peace and you can have punishment. The punishment is what the justice is supposed to do. The peace is supposed to be done by the politicians. But you can not have a real and long lasting peace without justice. Therefore you need to have the interest of the politics and the interests of justice coinciding. The problem is that in many occasions the "realpolitik" seems to be sacrificing the interests of justice. Impunity is still a main card in the hands of diplomats to bring the belligerents to the green table. "Peace and Punishment" is also the two positive elements, the opposite of war and crimes.

SA: Let me ask a question about some recent developments first. On September 27, ICTY sentenced Mile Mrkšic and Veselin Šljivancanin for the crimes connected to the Vukovar massacre but acquitted Miroslav Radic. Last Friday, Croatia responded by issuing an international arrest warrant to apprehend Miroslav Radic and accused him of orchestrating the bombardments of Vukovar between 1991 and 1995. In the lights of these recent developments, is the Hague Tribunal an efficient judicial body? Is the Tribunal really doing what it is supposed to do?

I wouldn't judge the efficiency of the international justice only on one judgment. Whether national or international justice can succeed in establishing the truth depends on access to evidence. I have commented in depth the Vukovar judgment in the Croatian press recently. I was a witness in that case. As a journalist for the French daily *Le Monde*, I revealed to the public the location of the mass grave in Vukovar. The U.N. found the mass grave in 1992 but they didn't say what happened or who the victims were. Then I went over there following the testimony of a survivor and I found the place. I could then link the mass grave which was announced with the story of the survivor who survived the killings of more than 200 patients from the Vukovar hospital in November 1991. It is a little difficult for me to comment on this judgment because I was a witness in that case and I was covering the region at the time and have my personal experience on who was in charge there at the time. But that is not sufficient evidence for a tribunal. The prosecution had to convince the Chamber through evidence that the Yugoslav army, which officers were indicted, was in charge and had command responsibility over the volunteers and local forces who committed the crime. The judges were not satisfied with the evidence. It should be analyzed deeply why they were not, despite the hard evidence was provided. Then the Yugoslav army commanders who handed over prisoners of war to local units and volunteers known for not respecting the Geneva Convention were not found responsible for the killings of the PW they had left with no protections because they had not ordered it explicitly. In my opinion and on the basis of my experience of the Yugoslav conflict, you don't need to give any orders: handing over "enemies" to their killers is equal to an order to kill, only an order not to kill them could have prevented the crime. The Yugoslav army commanders gave the order to withdraw the military police and they knew exactly what would happen next. So I don't see why the criminal responsibility is not any more valid after they turned their back on what was going on. These findings are quite surprising to me. The judges believe that the local units and the volunteers were not any more under Yugoslav army control at the time of the crimes. I don't believe that this reflects the reality of what was going on then. But if so then the prosecution has not provided sufficient evidence to

establish the truth. In Croatia, they have been condemning the judgment. It is something emotional, however I understand their reaction. But if you want to analyze this judgment you can not be emotional.

SA: Let me ask a question about Rwanda. If I understand it correctly, you claim in your book that the U.S. did not agree for the Tribunal for Rwanda to have jurisdiction over the RPF soldiers. Nevertheless, the official position of the U.S. is however that they supported a concept of Tribunal acquiring jurisdiction based on the complementarity's rule, meaning that should Rwanda fail to prosecute the RPF soldiers, the Tribunal would acquire the jurisdiction.

I regret but the ICTR by its Statute established by a 1994 UNSC resolution has primacy over domestic jurisdiction. No state can challenge the jurisdiction of the tribunal and interfere in the judicial process. That is also in the Statute. The ICC has been established on the principle of complementarity's rule but the ad hoc tribunals, ICTY and ICTR, had primacy, which means priority over domestic judiciary. The U.S. wanted the ICTR prosecutor, namely Carla Del Ponte, to give up her investigations on alleged crimes committed by the RPF soldiers so that she can concentrate on the genocide cases. Well, there would be nothing wrong to give the RPF investigations to the Rwandan judiciary if the Rwandan authorities had a political will to prosecute their own soldiers for war crimes committed against those who were fleeing Rwanda after committing or supporting the genocide. But the fact is that president Kagame who led the RPF army was against prosecuting his men who put an end to the genocide by defeating the Hutus extremists. The U.S. knew it and requested the ICTR chief prosecutor not only to leave the Rwandan judiciary dealing with those cases but to renounce to her jurisdiction to take over back those cases if Rwanda failed to properly investigate and prosecute RPF soldiers. Such a request was not valid in regard to the law and the ICTR statute. Nevertheless, the US made direct pressure on Del Ponte to forget about the RPF investigations, and I have provided very precisely the wording of those pressures in my book, the date and the place where it occurred. Her refusal was by the law. Nevertheless, the US succeeded through Rwanda and the UK to have Del Ponte's mandate at the ICTR not renewed in September 2003. Since then neither ICTR nor the Rwandan judiciary have investigated or prosecuted any of the RPF suspects.

SA: What do you believe was the role of the United States in capturing, apprehending and transferring the war criminals to the U.N. tribunals? You seem very critical of U.S. role and its engagement.

I am critical of the U.S., the U.K. and France altogether. They did contribute to arrests of other criminals but not to the arrests of Karadzic and Mladic. It's not only about the U.S. In my book I go through all 12 years since Karadzic and Mladic are under an international arrest warrant for genocide and crimes against humanity (1995), giving ample examples of what happened in relation to both fugitives. 12 years of facts well documented and I provide evidence, including quotations of high level U.S., UK and French officials that lead to one conclusion. It was not the lack of information. On the contrary, there was in fact a lot of information leading to the arrests of Karadzic and Mladic and there were enough international forces, including the U.K.'s, France's and

American soldiers to do it. A lot of war criminals were arrested by NATO or thanks to the pressure by the EU or the U.S. on local governments to get those indictees, who were not being handed over. But it doesn't relate to Karadzic and Mladic. Even when the U.S. and the EU applied strong pressure on Belgrade to get Mladic who is in Serbia since 1997, they would eventually step back each time saying that they were satisfied with the arrests of other fugitives. Well, that can be a carrot and stick strategy to bring Serbia to fulfill its obligation but when for years you don't have result then you withhold the carrot until you get result. In November 2006, Serbia was anyway authorized to join the NATO Partnership for Peace despite that handing over of Mladic was a pre-condition to its membership. The EU is now ready to give to Serbia a free access to EU candidacy despite that Belgrade still protects Mladic from being brought to justice. But that is only the end of a long story which illustrates not only the failure to get Mladic and Karadzic but a pattern of behaviors and decisions by the Western powers that inferred that there was a clear policy of not bringing Karadzic and Mladic to justice. Even when the Tribunal created its own tracking team early in 2002 to overcome the obstacles and succeeded in locating Karadzic in Serbia and in Bosnia, big powers refused to act. I have quoted officials saying in multiple occasions that a green light from President Clinton, and it appears that a green light from President Chirac was also required, was necessary in order to arrest Karadzic and Mladic. How can you arrest a fugitive within the next few hours after locating him if you need the green light of one or more heads of State? Firstly, they should have given a general a green light and delegate the final decision to someone accessible at any time. But they did not because in fact there was a red light. That is why Karadzic and Mladic are still at large after 12 years. Another example you'll find in the book: Joschka Fisher, the German minister of Foreign Affairs told Del Ponte, the ICTY chief prosecutor that according to his secret services, Paddy Ashdown, a UK politician who was the international high representative in Bosnia, met with Karadzic at the end of 2003 in Bosnia! Despite all of that, our Western governments continue to tell us: "we want the two most wanted fugitives transferred to the Hague but we can't locate them!

SA: This however leads to another question. Veseljin Sljivancanin, who was captured in June 2003, was nobody as important as Karadzic or Mladic, however he was apprehended only after 10 hours of fighting between police and the crowd, which was fiercely defending him. As a consequence 80 people were injured. Therefore one may assume that apprehending Karadzic or Mladic would cause huge civil disturbances in the region and some people could even die.

Firstly, there was no fighting while Sljivancanin was being apprehended. It took so much time to apprehend him because the police had to force the armored door he had installed at the entrance of his bedroom. The crowd was outside the building and Sljivancanin was waiting in his bed when the police open the door. There was no fight. It just took hours to get him out due to the door. He was protected by the army until, under international pressure, Serbia had to withdraw this protection and conduct the arrest. There are of course difficulties such as hostile environment or lack of cooperation from local governments. But it is possible to overcome those problems in regards to almost all fugitives (ICTY has 4 indictees still at large including Karadzic and Mladic). I worked six years with Del Ponte's team and we were working each single day on

Karadzic and Mladic and on the other fugitives. There were over 30 fugitives at one point and mainly in Serbia. Some were even in Russia. That was not easy, but we found a way despite Russia's obstruction, which was denying harboring ICTY indictees. The evidence, because these are not allegations, you'll find in the chapter of "Peace and Punishment" that has not yet been translated into English. This evidence is documented and shows that there was not only a lack of will but a deliberate policy by the Western powers not to arrest them. They always deny that because it is unacceptable. They always respond that it is just a matter of time and as soon as they know where Karadzic is they will arrest him. Then, once the Prosecutor requests NATO to catch him saying that he has seen Karadzic in a Bosnian Serb town of Foca, having a coffee with a female. And although NATO claims that for more than a year they don't know where Karadzic is, they respond that he could not be on that day in Foca because he was then for several days in Belgrade! . I wish the Western powers to challenge the evidence I have brought to the public knowledge through my book. For now, only the U.S. is denying everything calling it a lie, but they are not challenging the very evidence, which I refer to. Instead of denying in France, Belgium or Switzerland were the book is available, they have chosen to speak to the Balkans media despite that the book will be available in the local language only in November. For example they deny in the Bosnian press that Holbrooke signed an immunity agreement with Karadzic, but in fact I never said or wrote that Holbrooke did sign any agreement with him. What I wrote is that Karadzic's family says that he signed such an agreement, and that Holbrooke and the U.S. have always denied it. We don't have any hard evidence that there was any agreement between Karadzic and Holbrooke. I even underline it in my book that the only alleged agreement, which was published in the local Bosnian press, is a fake one.

SA: So you don't have any evidence of any U.S. official making a secret deal with Mladic and Karadzic? You are just saying that there are some facts showing that the U.S. was not willing to arrest them?

I repeat if there is a secret deal between the U.S. and Karadzic or even one between Mladic and France, for the moment we don't have any hard evidence. So, the Serbs should provide convincing evidence if they want the public to believe them. But for the moment we cannot say that it existed and we cannot rule it out completely. These are not "some facts" showing that not only the U.S. but also France and UK were unwilling to arrest them. All of the facts through the last 12 years show that they were not hunting Karadzic. They had him all the time under surveillance, sometimes he surely escaped this surveillance, but they had him at their reach, but they did not act to bring him to justice. I don't believe that a secret deal could explain this tragic policy. They had thousands of reasons to break the deal which was not legal and not binding. They have been reluctant at the beginning to arrest them because of the fear that the peace agreement could be derailed, however since years that risk does not exist anymore. To the contrary, their non-arrest is a factor of instability in the region. However the non-arrest of Karadzic is the consequence of something deeper than a deal with war criminals. In order to understand you have to go back to1995 when the great powers were desperate to get a peace agreement after more than 3 years of war and crimes and diplomatic failures. Then you would understand that the price for peace was tragically high and that it is why they don't want Karadzic and Mladic at trial to allow them to

blame the Western powers, which have not stopped them, for crimes they have committed themselves.

SA: But don't you think that the reason why the Western powers have been acting like that is because of the Milosevic's trial? He was the most wanted war criminal, he was captured and transferred to ICTY but his trial became a political circus. He was allowed to politically attack the Western powers and politicians from the courtroom and it didn't have much to do with criminal justice. Why would the Western powers want to increase their endeavors to apprehend Karadzic and Mladic and start more such politicized trials?

His trial has not become a political circus. Milosevic has used the court room to make political speeches and could do it because he was authorized to represent himself. Under continental law that would not be possible. Nevertheless Milosevic did not challenge seriously the evidence which was brought against him because he spent most of his time making political speeches. He did not dare responding to the charge of genocide. Political speeches are not efficient in court. They may be for his people back home but they have no effect on the judicial process. And during the trial, hundreds of thousands pages of testimony and documents against him were provided to the court. After the prosecution case, the Chamber said it was satisfied with the evidence to keep all the counts in the indictment, including genocide. The prosecution evidence is mostly public evidence, not all, but mostly, and it is the best documentation ever gathered on the criminal enterprise conducted by Milosevic regime. The trial did not lead to a judgment due to the death of the accused but the evidence will be the reference for historians and others to understand what happened in the Balkans in the 90's. It is criminal justice, but a fair justice that enables the accused to defend himself even if he prefers political speeches than a more constructive defense. Milosevic was saying that he doesn't recognize the Tribunal, but he played along the rules and made his defense, a political one but that was his choice despite the limited efficiency of such a defense.

The reason why western powers don't want to see Karadzic and Mladic on trial is not their endless and useless political speeches we have already heard for years but their very likely intent to put the blame for the crimes they have committed on international community by saying that they have been given a green or orange light to take over the Srebrenica enclave. This territory, which Milosevic wanted in order to have a compact territory to sign for at the peace talks, was sacrificed to the Serb side despite that it was under international (UN) protection. It was sacrificed in order to get a peace agreement. By sacrificing Srebrenica, Western powers have created the conditions for mass killings to happen. They did not take any measures to prevent or stop it and the price of peace became high and terrific, 8000 lives taken in three days.

Western powers have already showed during the Milosevic case that there were not comfortable with evidence related to Srebrenica. I have precisely listed in my book which kind of evidence Western governments wanted to give us and which they wanted to hide and how they were trying to disrupt the process related to Srebrenica and especially the foreseeability of the killings. They simply don't want some elements related to Srebrenica to be available to the public. As a matter of fact they had nothing

against that Milosevic was tried. But they wanted him to be tried on specific evidence they provided, what is explained in the book. They didn't want the Tribunal to go deeper in the involvement of Belgrade in Bosnia and specifically in Srebrenica. But Milosevic was not so dangerous for them as Karadzic and Mladic could be. Milosevic did not want to speak about Srebrenica and the charge of genocide against him. He was simply saying I have nothing to do with it which was exactly what Western powers were saying about him. Western powers prefer to keep Mladic and Karadzic far from the dock because, contrary to Milosevic, they can not deny their involvement and therefore they would disclose what they know about the most disgraceful decisions that could have been made by our governments during the war and the peace negotiations. Even if it doesn't help Karadzic and Mladic to avoid conviction, it would damage the credibility of the Western powers. And it is their goal. As it was probably Saddam Hussein's goal but the tribunal were he was tried was made not for him to speak too much.

SA: In one of your recent interviews you said that what happened in Dayton, more precisely the signing of the Dayton Peace Accords, made Western powers accomplices of people committing genocide in Bosnia.

Yes. Milosevic didn't want to sign the peace agreement without having some part of territory he did not have control of. So the Western powers decided to sacrifice some territory to get his signature and achieve peace. The aim was to get the peace to stop the sufferings in Bosnia. But by making this compromise, by giving what Milosevic was requesting they created a condition for a massacre. The price for the peace was 8 thousand lives.

SA: Let me make sure if I understand correctly. What you are saying is that the Western powers were aware in advance that by sacrificing some territory, in this instance Srebrenica, they were agreeing that an act of genocide would happen?

Not at all. They did not agree to the crimes, they agreed by closing their eyes to the military operation against Srebrenica which could not lead to anything else but the take over of the enclave. This territory was, since the first attempt to overrun it by the Serb forces in 1993, a "protected area" under a UN Security Council's resolution. They had the obligation to protect the "safe area" but they did not. Officially they said that they didn't know that the enclave would have been overrun. By saying that they wanted to make clear that they couldn't foresee the massacre because as soon as the enclave would fall in the hands of general Mladic, it was clear that there was going to be a massacre if the population was left unprotected. Western powers had advance notice of the offensive, they knew that the Serb forces were equipped for the take over of the enclave. They had to prepare a response in case of such a scenario, they did not. They had to take measure to protect the population after the fall of Srebrenica, they did not. They had to act when they found out that the killings had started they did not. They had advance notice and ongoing information that Milosevic and his men were involved but they did not act even by diplomatic means in Belgrade in order to prevent the killings. And then when the 8000 men were killed in few days, the mass grave were located by air picture, the testimonies of survivors were starting to be collected, they sat at the peace table with

Milosevic and gave him the territory on which the genocide just happened and signed the peace agreement.

SA: So you believe that the U.S. sacrificed lives of 8.000 Muslims to get the peace agreement signed?

Don't put it this way. Come on. You try to put it in this stereotype that here you have a French attacking the U.S. again. I am talking not only about the U.S., but also about France and the U.K. And whether the U.S. was leading these peace negotiations and in this case indeed the U.S. was doing so from May until November 1995, still France and the U.K. were participating and agreed to all what was decided. If France and the U.K. were against it, they would have chosen another option. At one point there was a phone conversation between Chirac and Clinton to do something about the men and the women being separated in Srebrenica and the very likely killings of the male population, but the U.S. did not want to assist with air support and nothing happened. France accepted it and did not protest and let the crimes being committed. So it's not only about the U.S. It is about the main Western players in the Balkans: the U.S., France and the UK. The fact is however that they did know that an offensive on Srebrenica was going to happen. Our investigation revealed that the U.S. had very good intelligence capacity in the region in 1995. They created an intelligence underground compound in Croatia in order to intercept conversation of the Serbian leadership. We were interested in the U.S. intelligence materials because of our investigation against Milosevic and especially in conversations between the Serbian and the Bosnian Serb leadership in spring and summer of 1995. However the U.S. refused to give it to us. So far we know however that Mladic was in contact with the Belgrade leadership to prepare the attack on Srebrenica. So only by intercepting those conversations the U.S. had enough advance notice of what was going to happen. Through other intelligence means, they knew that special units trained to kill were joining the area just before the beginning of the offensive. But neither the U.S. nor France or the UK did anything to stop it. We don't have even a small piece of evidence that they went to Belgrade to persuade Milosevic not to touch the population of any of those enclaves. Those people were protected by international law. However what happened afterwards is that they gave those enclaves in Dayton to Bosnian Serbs, the perpetrators of the massacre. So there is a problem. The U.K., France and the U.S. agreed to give up a territory were 8.000 men protected by international law were killed and to give this territory to the perpetrators. Of course, now they are denying it that was the condition of signing the peace agreement by Bosnian Serbs and Milosevic. They are denying that it was a pre-condition Milosevic had imposed on them to get Srebrenica and Zepa and that he also wanted Gorazdze. As a matter of fact Richard Holbrooke said in front of a camera that he had instructions to sacrifice Gorazdze, Zepa and Srebrenica. Also in a previous Kinkel-Juppe plan they didn't give Zepa and Srebrenica to the Serbs, but Milosevic didn't agree to this map, so the following map was a Dayton map in which Srebrenica and Zepa went to the Serbs.

SA: In one of your previous interviews you said that Dragomir Kojic is a person organizing Karadzic's secret life. Also that back in 1998 he was doing business with companies financed by the U.S. Department of State. In other words, are you saying

that the State Department was indirectly, by third parties, providing money to Karadzic to help him to stay in hiding?

Yes, and they did not stop doing it for years despite that they knew that Kojic was one among others providing money to Karadzic for protection when "hiding". But that's only one example. Not the only one. But this example is quite interesting because the EU was also financing Kojic's company through a Greek de-mining company!

SA: How do you know that Dragomir Kojic is responsible for organizing Karadzic's secret life?

I am not saying that he is organizing Karadzic's secret life. I am just saying that at one point he was financing it. Afterwards because of the pressure from ICTY he was blacklisted for financing Karadzic, which included not only giving money to Karadzic himself but also to his former party. This story was well known in the media at that time. Kojic was former Karadzic's chief of police. Suddenly he became a millionaire thanks to the maps of the mines put in the ground during the war by his own men or by his fellow soldiers. Those were dollars provided by the U.S. and the EU. Back in 1998, Kojic was found financing Karadzic with this money. It's only one example. Also Karadzic was writing letters to his family, which were very interesting because those letters showed how much he was aware of what was going on, what showed that he was not far away from the region because he had read the newspapers, he was following the news in TV etc. In those letters he was also discussing business, suggesting investments to his family and requesting that certain things be provided to him. For instance new shirts! For years those letters were not handed over to the ICTY although there were basic documents for conducting an investigation on a fugitive. We started receiving those letters only in 2003 and still firstly they were given to the press not to the ICTY.

SA: Let's go back to the deal-making issue. You said in your book that there was a U.S. citizen and an employee of ICTY, Paul Nell, who had a series of secret meetings with Karadzic to negotiate his surrender and that he was told by Karadzic that there was a deal between him and Richard Holbrooke, who promised Karadzic that he would not be handed over to the Tribunal.

That's what Karadzic told him, but it doesn't mean what Karadzic said is necessarily true.

SA: Are there any official transcripts of those conversations between Paul Nell and Karadzic?

Yes, there are official reports related to those conversations kept by ICTY and I am quoting in my book directly from those reports. Paul Nell was indeed a U.S. citizen, however he worked for the office of the prosecutor and met Karadzic in that capacity and on the request of Louise Arbour, then the chief prosecutor who wanted to bring Karadzic to a voluntary surrender as she could not count on NATO to go hunting him. Those meetings with Karadzic led to the situation that I mentioned before, when the ICTY asked NATO commander in Bosnia, if they would be ready to transfer Karadzic to

the Hague or take military action in case he refused to surrender. They wouldn't do that without Clinton's "ok". There was always something preventing them to take any kind of action. They were not jumping at the opportunity.

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.

SA: So there is an official transcript of this conversation with all those things being said, which you are quoting in your book?

Yes, there is a report of this conversation. And that's what Wesley Clark said to Louis Arbour. That's the fact. It is something he has to clarify himself.

SA: But that official report, is it from ICTY or NATO's headquarters? Which report did you quote from?

I have only the official ICTY version from an ICTY report, which I had access to because those were the things we were working on over there.

SA: So all the quotations in your book are based only on the reports kept by ICTY?

Yes, it's all documented in ICTY's reports. I had to rely on them because in my book I was also describing events that took place before I started to work at the ICTY. After that, I was also using my private notes because I was present during the majority of the meetings I refer to after I began to work at the Tribunal. In respect to the meeting at NATO's headquarters that you are asking about, I used the report from the ICTY in which there are described statements Wesley Clark made to Louise Arbour. I have no idea what is in the official report held by NATO's headquarters.

SA: It seems like your book has a good timing because of the presidential campaign in the U.S.

It was a coincidence. And to be honest, I did not think at all about this while writing. Instead I was thinking about another crucial timing, the UNSC resolution that will be deciding whether the Tribunal should close its doors before trying Karadzic and Mladic. That was my main concern and it will be on the agenda in the following months, at the latest in the course of 2008. Relating to the U.S. presidential campaign, the thing is that in my book I describe endeavors of both the Clinton Administration and the Bush Administration. For example in respect to the Bush Administration, I describe what

Pierre Prosper did to pressure the Tribunal for Yugoslavia. I describe how the U.S. pressured the prosecutors to give up indictments of some war criminals, how he was giving instructions, interfering in the legal process, threatening, etc. I am also describing U.S. foreign policy in respect to Rwanda, that they wanted the ICTR to investigate the RPF soldiers only as a last possible option. I quoted what was really said during the meeting at the U.S. State Department, what was later on misrepresented to the press. I quoted exactly what Prosper said to us. He said "you will give the investigations to the Rwandan judiciary and you will not take those investigations back". These are all very precise quotations. He said the Rwandan government will be the only one in charge of the investigations of the RPF members. The ICTR's prosecutors wouldn't have any control of what was going on with it. And that it is what happened after they sacked Del Ponte from the ICTR. There was no RPF investigation whether at the ICTR or before the Rwandan judiciary. But there was a UNSC resolution in 2003 and then in 2004 underlying that the ICTR should conduct the RPF investigations in accordance with its mandate.

SA: Do you have any official transcripts of that meeting?

Well, I have my own personal notes, I was present at all the meetings related to this issue in Washington. And I have the document prepared by Washington and that Washington wanted Del Ponte to sign which is clearly contrary to the ICTR statute.

SA: Carla Del Ponte is finishing her mandate this year. Should we expect a similar book from her in which she will be describing the issues we are discussing right now? I read an interview she gave recently in which she said she is investigating the things you are talking about in your book.

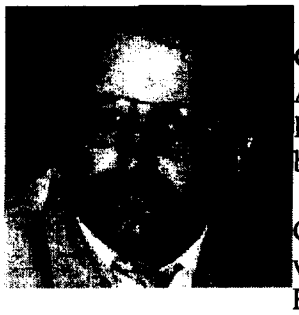
She said that she will write her memoirs. However I don't know which approach she will choose. My book describes relation between international politics and international justice. Let's wait. I guess she will not wait long before telling her part of the story. She did not deny my book but she has not been commenting on it publicly.

ANNEX "N"

No. IT-95-5/18-PT

'Karadzic - Holbrooke deal was signed'

Sarajevo | 09 April 2009 | Balkan Insight



Gojko Klickovic

A deal guaranteeing immunity for Bosnian war-time leader Radovan Karadzic was agreed by US special envoy Richard Holbrooke, it has been claimed.

Gojko Klickovic, who is indicted for war crimes, said he was present when an agreement was made and signed by Radovan Karadzic and Richard Holbrooke in 1996, he told the Court of Bosnia and Herzegovina in Sarajevo.

Giving testimony as a defence witness at his own trail, Klickovic, who is charged with crimes committed in Bosanska Krupa, said the deal was signed sometime in July 1996.

"I was involved in negotiations pertaining to the agreement on Karadzic's withdrawal from the political scene. At that time, the gentlemen agreed that they would not speak about it in public," Klickovic said.

From 1996 to 1998, Klickovic was Prime Minister of Republika Srpska. During the war he was commander of the Crisis Committee and leader of the Serb municipality of Bosanska Krupa.

Radovan Karadzic, former president of Republika Srpska, is charged, before the International Criminal Tribunal for the former Yugoslavia, ICTY, with genocide and other crimes committed in Bosnia and Herzegovina during the war. Richard Holbrooke was special US envoy to the Balkans in the 1990s.

Klickovic is charged, together with Mladen Drljaca and Jovan Ostojic, with murder, forcible resettlement, physical and mental abuse, rape, and detention and torture of non-Serb population of Bosanska Krupa in 1992. They are also charged with taking part in a joint criminal enterprise along with Vojislav Maksimovic and Radovan Karadzic.

Klickovic's trail started in May 2008 in the front of the state War Crimes Chamber.

ANNEX "O"

I Z J A V A

Ja, Ljilijana Zelen-Karadžić, rođena 27.11.1945.godine u Sarajevu, nastanjena u Palama, Ul. Viktora Igoa 7, ljekar neuropsihijatar u penziji, pod punom moralnom, krivičnom i materijalnom odgovornošću izjavljujem :

Polovinom 1996.god bila sam zaposlena u Ministarstvu zdravlja Vlade Republike Srpske na poslovima zamjenika ministra. U tom periodu na mog supruga, Radovana Karadžića, svakodnevno je vršen enorman pritisak, sa prijetnjama i ucjenama od strane međunarodnih faktora, da odstupi sa političke funkcije. Nešto pred ponoć 18.07.1996.god. službeno sam obavještena iz Kabineta Predsednika RS da treba odmah da dođem. Nakon mog dolaska stigla su i moja djeca i zet. Upućeni smo u salon da sačekamo Radovana. Uskoro je došao i saopštio nam da će pristati da se povuče sa funkcije Predsednika Republike Srpske i Predsednika SDS-a kao i da [redacted] ne učestvuje u javnom političkom životu, te da će to učiniti na osnovu garancija dobivenih od R. Holbruka da neće biti proganjan niti procesuiran pred bilo kojim sudom, pa ni pred Tribunalom u Hagu. Tražila sam pojašnjenje garancija, na šta je on rekao da su Kontakt grupa i Savjet bezbjednosti ovlastili američkog predstavnika Holbruka da pregovara i pruži takve garancije, da su one vrlo ozbiljne i čvrste, a da nisu takve ne bi ni pristao.

Shvatila sam da iza garancija stoje najviše institucije, razumjela i da te garancije pružaju mom suprugu bezbjednost, sigurnost i povratak normalnom životu.

Kasnije, kada se vratio kući skoro pred zoru, dugo smo razgovarali o svim aspektima novonastale situacije bez prijetnji po njegovu bezbijednost i slobodu, o mogućnostima za povratak normalnom životu, o porodičnim i profesionalnim stvarima, o budućnosti.

I sledećih dana smo sa članovima porodice razgovarali o postignutom sporazumu, garancijama i planovima rada u okvirima registrovanih djelatnosti instituta - Fondacije Sveti Jovan, koji sam osnovala sa djecom.

Saglasna sam da se ova moja izjava koristi pred bilo kojim sudom uključujući i Međunarodni krivični sud za bivšu Jugoslaviju.

U Palama
Dana 21.04.2009.

Davalac izjave
Lj. Zelen-Karadžić
Ljilijana Zelen - Karadžić

ANNEX "P"

I Z J A V A

Ja, Sonja Karadžić-Jovičević, rođena 22.05.1967.godine u Sarajevu, nastanjena u Palama, Ul. D.Jevđevića 0-9, ljekar, zaposlena u Domu zdravlja u Palama, pod punom moralnom, krivičnom i materijalnom odgovornošću izjavljujem :

sredinom 1996.god bila sam zaposlena u Vladi Republike Srpske na poslovima direktora Međunarodnog pres-centra. U tom periodu bilo mi je poznato da se već neko vrijeme vrši pritisak na mog oca, Radovana Karadžića, da napusti političke funkcije. Kasno uveče, dana 18.07.1996.god. primila sam službeni poziv iz Kabineta Predsednika RS da odmah dođem. Po dolasku sa suprugom, vidjela sam da su pozvani i moja majka i brat. Sekretarica nas je uputila u salon prekoputa očevog ofisa da ga sačekamo. Ubrzo nam se pridružio i saopštio nam da će pristati da se povuče sa funkcije Predsednika Republike Srpske i sa funkcije Predsednika stranke SDS kao i da se ne pojavljuje u javnom političkom životu. Pojasnio nam je da će to učiniti jer je dobio garancije R. Holbruka da neće biti proganjan niti procesuiran pred bilo kojim sudom uključujući i Tribunal u Hagu. Nakon traženja da nam objasni garancije rekao je da je R.Holbruk, kao predstavnik američke administracije, ovlašten od strane Kontakt grupe i Savjeta bezbjednosti da pruži ovakve garancije i da su, stoga, one krajnje ozbiljne i čvrste, te da na nesigurne garancije ne bi ni pristao.
Shvatila sam da garancije nisu mogle doći sa višeg mjesta nego što jesu i razumjela da moj otac više nije dio političkog miljea, da je potpuno bezbjedan i slobodan da se vrati porodici i profesiji, da će moći da vodi potpuno normalan privatni i poslovni život, da će moći da se kreće, putuje, piše knjige, liječi ljude.
Sledećih dana smo u užem i širem porodičnom krugu razgovarali o budućim porodičnim i poslovnim planovima (vezanim za Institut - Fondaciju Sveti Jovan,koji sam osnovala sa majkom i bratom i koji je bio registrovan za medicinske nauke i medije pod pokroviteljstvom Srpske pravoslavne Crkve). Razumjela sam da nam date garancije daju mogućnost da živimo i radimo zajedno, bez prijetnji i progona.
Saglasna sam da se ova moja izjava koristi pred bilo kojim sudom uključujući i Međunarodni krivični sud za bivšu Jugoslaviju.

U Palama
Dana 21.04.2009.

Davalac izjave
Sonja Karadžić-Jovičević

ANNEX "Q"

I Z J A V A

Ja, Branislav Jovičević, rođen 25.05.1966.godine u Sarajevu, nastanjen u Palama, Ul. D. Jevđevića 0-9, elektroničar, zaposlen u A.D.,,Petrol,,P.C.Istočno Sarajevo, pod punom moralnom, krivičnom i materijalnom odgovornošću izjavljujem :

Polovinom 1996.god bio sam angažovan na otpočinjanju rada medija Instituta-Fondacije Sveti Jovan na poslovima pomoćnika direktora za medije. U to vrijeme bio sam upoznat sa pritiscima koje je međunarodna zajednica vršila na mog punca, Radovana Karadžića, da potpuno nestane iz političkog života Republike Srpske.Dana 18.07.1996.god. kasno uveče, iz Kabineta Predsednika RS moju suprugu su pozvali da hitno dođe u Kabinet. Ja sam je odvezao i ušao sa njom u prijemnu kancelariju. Tu sam video moju punicu i šuru. Njima je rečeno da uđu u salon i pričekaju Predsednika,a ja sam ostao u prijemnoj kancelariji. Uskoro je Predsednik izašao iz ofisa, pozdravili smo se, i ušao je u salon. Nakon 20-tak minuta moja supruga je izašla i odmah smo pošli kući. U kolima mi je ispričala da im je njen otac saopštio da će pristati da se povuče sa funkcije Predsednika i Republike Srpske i stranke, da ne učestvuje javno u političkom životu, i da će na to pristati zbog garancija dobivenih od R. Holbruka da neće biti proganjan i da neće biti vođen postupak protiv njega ni pred kojim sudom, pa ni pred Tribunalom u Hagu.

Sledećeg dana smo se okupili u porodičnoj kući i razgovarali o svemu što se događalo tokom pregovora i postizanja dogovora. Želio sam da mi punac objasni koliko su čvrste garancije i ko stoji iza njih, pa mi je objasnio da su Kontakt grupa i Savjet bezbjednosti dali ovlaštenje američkom predstavniku Holbruku da vodi pregovore i pruži te garancije, i da je samo na takav sporazum mogao pristati.

To mi je imalo smisla, jer nisam vidio zašto bi napustio sve bez stvarno čvrstih garancija najviših međunarodnih institucija, koje mu, kako sam razumio, pružaju bezbjedan i slobodan povratak normalnom životu, porodici i svojoj profesiji.

Tokom narednog perioda planirali smo obaveze pod okrilijem Instituta Sveti Jovan i o mojim planovima da započnem studije prava (sto sam nesto kasnije i učinio).

Saglasan sam da se ova moja izjava koristi pred bilo kojim sudom uključujući i Međunarodni krivični sud za bivšu Jugoslaviju.

U Palama
Dana 21.04.2009.

Davalac izjave

Branislav Jovičević

ANNEX "R"

I Z J A V A

Ja, Dragan Draskovic, rodjen 07.10.1967.godine u Sarajevu, nastanjen u Istocnoj Ilidzi, Ul. Srpskih izvidjaca 46, gradjevinski radnik u invalidskoj penziji, pod punom moralnom, krivicnom i materijalnom odgovornoscu izjavljujem :

Od pocetka proljeca 1996.god bio sam angazovan na pripremema za pocetak rada Radija Sveti Jovan, na poslovima arhiviranja nosaca zvuka. Znao sam za stalna nastojanja predstavnika medjunarodne zajednice da Radovana Karadzica, oca moje kume Sonje, uklone iz politickog zivota Republike Srpske. Dana 19.07.1996.god. rano ujutro kuma mi je rekla da su prethodno vece, jako kasno, pozvali nju, majku i brata da hitno dodju u Kabinet. Ispricala mi je da im je njen otac saopstio da ce pristati da se povuce sa funkcije Predsednika Republike Srpske i Predsednika stranke, i da ne ucestvuje u javnom politickom zivotu. Rekla mi je da se ne iznenadim kada cujem na vijestima za tu odluku. Iznenadjen sam je zamolio da mi objasni kako i zasto je na to pristao, a ona mi je rekla da cemo razgovarati sa njim kasnije, jer moramo vidjeti sta cemo dalje uopste, a i sa Institutom Sveti Jovan. Kasnije smo otisli u porodicnu kucu gdje nam je kum sve objasnio kako se i sta desavalo u tih nekoliko sati pregovora i – da je na to pristao zbog garancija dobivenih od R. Holbruka da nece biti proganjan i da nece biti vodjen postupak protiv njega ni pred kojim sudom, pa ni Tribunalom u Hagu.
Objasnio je koliko su cvrste garancije i ko stoji iza njih, odnosno da su Kontakt grupa i Savjet bezbjednosti dali ovlastenje americkom predstavniku Ricardu Holbruku da predvodi pregovore i da garantuje da nece biti progona, hapsenja, sudjenja.
Shvatio sam da su to stvarno cvrste garancije, s obzirom na to u cije ime su mu date i da mu te garancije daju slobodu i bezbjednu buducnost, a sto je najvaznije vracaju mu normalan zivot, porodicu i njegov posao u profesiji.
Poslije smo cesto razgovarali o buducnosti i pravili planove o radu medija Instituta Sveti Jovan i angazovanja clanova porodice u medicinskoj djelatnosti.

Saglasan sam da se ova moja izjava koristi pred bilo kojim sudom ukljucujuci i Medjunarodni krivicni sud za bivsu Jugoslaviju.

U Palama
Dana 21.04.2009.

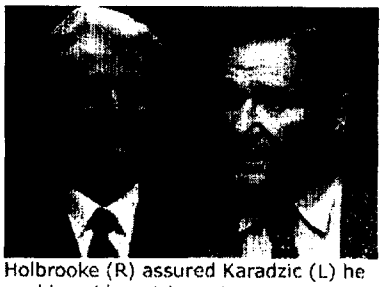
Davalac izjave
Dragan Drašković
Dragan Draskovic

ANNEX "S"

Sacirbey: They knew about Karadzic deals

Fri, 01 Aug 2008 19:47:59 GMT
By Afshin Rattansi, Press TV, Tehran

The following is Press TV's exclusive full-length interview with former Bosnian foreign minister Mohammad Sacirbey.


Holbrooke (R) assured Karadzic (L) he could avoid punishment

Press TV: I noticed that Richard Holbrooke is saying that it is an outrageous fabrication. What did Karadzic mean by a deal with Richard Holbrooke?

Sacirbey: I have actually been aware of the deal from almost the day it was made. In the summer of 1996, Karadzic withdrew from Bosnian politics, presumably. He withdrew from the leadership of his party. Then he was already indicted, but in fact, he was also running to become a member of the Republika Srpska's chair in the presidency. All of a sudden he withdrew.

That night I met with a US diplomat, a very distinguished gentleman who I have a lot of respect for and he was quite enthused to tell me that Karadzic had withdrawn from politics, and, of course, when I said that why would he withdraw, what is the deal?...there was a bit of silence.

In the end, it was acknowledged that in fact Karadzic had been promised by Richard Holbrooke that he would not be arrested even though he was indicted and wanted by the war crimes tribunal if he did withdraw, and of course for the next two to three years, Karadzic, in fact, was quite free and was relatively at liberty and without any threat of arrest.

Press TV: Obviously, I don't expect you to name your source, but Richard Holbrooke is quoted here as saying "I never made such a deal. It would have been unethical and immoral."

Sacirbey: No, let me make sure. I have been very straight with the same picture for over a decade. My source was Ambassador Robert Frowick, at that time the head of the OSCE mission in Bosnia that was overseeing the elections. I have put this on the record, I think, at least 10 years ago.

Press TV: Would president Bill Clinton have been aware as well of this deal with Radovan Karadzic?

Sacirbey: Well, I am not sure of that. All I can tell you is that there was another deal that I think was much more serious and the consequences were much more grave and that was a deal that took place early in the summer of 1995.

That involved Richard Holbrooke and that involved Carl Bildt who, then, was the EU mediator and now is Sweden's foreign minister. It involved a French general who was the head of the military forces of the UN in Bosnia i.e. Bernard Jean Vieh. It involved Yasushi Akashi who was the head UN civilian official. They, in effect, acquiesced, gave the green light to Milosevic, Mladic as well as Karadzic to take over the territory of Srebrenica but also Zepa and Gorazda.

At that time there was enormous pressure on us to trade these territories and to give, in effect, to Belgrade and the Bosnian Serbs what they wanted in return for them presumably during the peace talks what would end up being Dayton. We refused and as we resisted the green light was given to the Serbian forces to attack that enclave. Of course, I did not know about it.

I do not think anyone in my government knew about it and the result was 8000 people murdered. So the second deal probably is explained by the first deal. I suspect many people who were in the US administration at that time, even if they objected to making deals with Milosevic, Mladic and Karadzic, who all subsequently were indicted at that time, they clearly would not be very pleased if that information came out right now.

Press TV: The UN peacekeepers, of course, were watching the Srebrenica massacre in real time. Why do you think the Dayton agreement was so important to the United States that they would be willing to turn a blind eye to massacres like [the one in] Srebrenica. What is it about Dayton?

Sacirbey: First of all I am not sure that actually the Dutch peacekeepers knew of the deal. I think that the Dutch peacekeepers and the Dutch government were supposed to be left holding the bag as one would say. What I mean by that is they were supposed to be the excuse why, in fact, NATO and the United Nations did not act to protect Srebrenica as they were obliged to do under the UN and the NATO resolutions.

The defenders of Srebrenica were disarmed and the UN and the NATO were supposed to defend them, so when the Dutch peacekeepers were faced with substantial Serbian tanks and heavy weapons, clearly a superior force, all they had was small guns to fight back.

That is when the NATO was supposed to come in. In fact, the Dutch defense minister did call the NATO. I spoke to him on the evening before Srebrenica fell. He told me "I am calling in NATO. They are going to come in the morning and I am going to do it regardless of what the consequence are for the Dutch forces.

That call was not honored and that call resulted in a Dutch government falling. It obviously resulted in shame for the Dutch forces who were there and it resulted in 8,000 Bosnian men, children and also women being murdered. It also was a black eye upon NATO because obviously, NATO did not fulfill its commitment and it was clearly one of the worst moments for the United Nations.

So it is rather unfortunate, someone who always wants to speak of multilateralism, in fact, betrayed multilateralism in Srebrenica and here I am speaking specifically of Richard Holbrooke but I also must include people like Carl Bildt, like Bernard Jean Vieh and Akashi.

Press TV: Some people say it is even higher up than your making out and that right from the start it was a deal by Bill Clinton's government with the German government to dismember Yugoslavia and the Dayton agreement was about privatizing all the resources of a state which had resources in the hands of the government.

Do you think it goes as far as that and in fact all of this is part of an agenda for big companies? And do you think this will all come out in The Hague as we watch Radovan

Karadzic defend himself?

Sacirbey: Well, I want to be very careful that I speak of what I have at least some limited first-hand knowledge of. I do have some, now, first-hand knowledge of the deal that was made, simply because as foreign minister certain things were told to me...certain things happened rather peculiar and coming back upon it all it fits into a deal.

Was this something that was arranged at the very highest levels? That I leave for someone else to speculate but clearly, I think, what would be more appropriate now is to talk about if Dayton was achieved through, in effect, genocide, if Dayton is the consequences of embracing the results of that genocide shouldn't we talk about reversing Dayton, in effect, reversing that which in fact rewarded genocide?

Let me be very clear on this, Bosnia is a multiethnic country. We have there not only Bosniac Muslims but we also have the Serbs who are orthodox. We have the Croats who are Catholics but Dayton is a form of Apartheid. Dividing these people in a way that they have never been divided and creating clear ethnic enclaves and this is something that I do not believe is consistent with the history of Bosnia nor with the future of Bosnia in a European family and I certainly can not see how Europe can tolerate that.

How the Euro-Atlantic family can tolerate that type of division in a country that clearly has a future as part of the Euro-Atlantic family. So there seems to be something rather funny here, which is that, that one country that has a Muslim majority seems to be subject to a different set of criteria. I will grant you that and as an American, remember that I am also an American, I see this very clearly these double standards.

On the other hand, the rather bigger game that you speak of, whether that exists or not, as I said, I leave that for someone else to speculate but I cannot understand how either the United States or the European countries can now tolerate the continuation of the Dayton. Built not only upon the framework, the foundation of genocide, but, in effect, perpetuating what amounts to fascist and racist ideas.

Press TV: Well, I can assure you that German companies, shipping, construction and so on and other European countries are very happy with the present deals. Do you think, in the end, that this was not NATO just out there in the former Yugoslavia trying to help Muslims and do you think that the people are quite frightened in Washington and in London and in Berlin and in Paris at the prospect of what we are going to here at The Hague in the coming month?

Sacirbey: Well, I think that is a good guess. They have been rather upset with some of the things that I have said as you can imagine and I have been saying this for over a decade. It is just that most people weren't either paying attention or they, of course, tried to make sure that my words were not heard too loud beyond the four walls I am sure there will be much more that comes out.

Nonetheless, as I said, looking at this as a Bosnian, I cannot be happy with what I have seen for the Bosnian people. It clearly is not something that is sustainable nor does it make a normal country and as an American I cannot stand behind something that is, in my opinion, so inconsistent with the values of the United States, a country that is divided along ethnic lines, along religious lines and, in fact, when something was achieved like that through the genocide of a significant portion of the Muslim population of Bosnia

Herzegovina.

UNDERSTANDING THE KARADZIĆ-HOLBROOKE "DEAL" - *August 27, 2008*

On August 29, as Radovan Karadzic is scheduled to make another appearance before the Tribunal, the question that is asked now: what were the motivations behind a Karadzic/Holbrooke deal? Most people would question why a representative of the US Government would engage in deal making with a person who directed some of the most detestable crimes and genocide as the then president of the Republika Srpska and even after Karadzic had been indicted by International Criminal Tribunal for the former Yugoslavia, (ICTY)? The motivations for such a deal were several presumably advancing the peace process but also parochial interests of the promoters of the Dayton Accords:

- Karadzic's candidacy for the Presidency of BiH in 1996 was contrary to the Dayton Accords due to his indictment by the ICTY, and removing him from the political scene was a precondition for holding "free and fair" elections in all of BiH.
- Karadzic's continued public, political engagement was vivid evidence of the lack of will to arrest him and Mladic, despite a year earlier indictment by the ICTY, and was embarrassing the US and promoters of the Dayton Accords.
- The timing, September 1996, of elections in BiH was not coincidental but fashioned to be proof the superiority of the Holbrooke and thereby Clinton strategy in Bosnia over that of rival Bob Dole, (and Holbrooke also had his aspirations for Secretary of State as well as the Nobel Peace Prize).
- Karadzic's or Mladic's arrest was not desirable potentially exposing "big power" acquiescence, complicity and other "deals."

EFFORTS IN DAYTON TO CONFIRM US & NATO COMMITMENT TO ARREST

Karadzic's public and political engagement in 1996, again well after the indictments and signing of the Dayton Accords, is only further indication that the so termed Karadzic/Holbrooke "deal" was not perceived as particularly altering. Karadzic and Mladic were already enjoying unobstructed movement through US and NATO troop positions without apparent concern of arrest, whether a formal deal existed or not.

Some current media reports err by referring to Karadzic and Mladic as "fugitives" in hiding since 1995, the year of the ICTY indictments and Dayton Accords. To the contrary, they were not in hiding at all for at least the first couple of years after the Accords were signed and were assertive in their respective roles as political and military chiefs.

During our negotiations in Dayton, we, the delegation of Bosnia & Herzegovina (BiH), demanded that the US and NATO troops assume the duty to apprehend indicted war criminals. We were refused. Nonetheless, we continued to insist that these peace implementation forces (IFOR) explicitly acknowledge their obligation, under international law as well, to arrest such indicted war criminals if they happen to come across the indicted persons. This provision was finally incorporated into the Accords upon our assistance, but was actually never honored. Karadzic and Mladic continued to move unhindered through US and NATO lines, and there are at least several known meetings with such indicted war criminals.

AMNESTY IN DAYTON

Independent of the negotiations regarding IFOR and the "SOFA," (Status of Forces Agreement), the idea of broad amnesty from prosecution was introduced into the negotiations. I cannot be certain whether this was Ambassador Holbrooke's initiative or whether he did this at the behest of Milosevic. I promptly took it upon myself to alert the Tribunal through back channels. This idea quickly faded, and certainly is something that no international mediator would now acknowledge as theirs.

It is also not certain that such "amnesty" would have been valid under international law or enforceable with respect to the ICTY. However, the ICTY is both a creation of the UN Security Council and dependent on UN member states for enforcement, including detention and delivery of evidence. If the UN Security Council adopted the Dayton Accords with an amnesty provision incorporated, the situation would have been more ambiguous both on the level of practical enforcement and legal standing. The UN Security Council, or at least the P-5, (Permanent 5 UNSC members), could have also pressed to prematurely shut down the Tribunal, as is the case to some extent now.

THE "RULES OF THE ROAD" ORCHESTRATED BY HOLBROOKE, BOSNIA & HERZEGOVINA COULD NOT ARREST ON ITS OWN INITIATIVE

In the spring of 1996, the Government of BiH undertook arrests of relatively mid to high level Serbian commanders responsible for grave violations of international humanitarian law in attacks upon civilian populations. Only a couple of "small fish" were being arrested then by the international forces taking charge throughout BiH. The Government of BiH, was discouraged that the "worst" of the war criminals appeared to enjoy impunity, even cooperation from "IFOR."

The international functionaries and military did not look favorably upon these arrests, (even after The Hague Tribunal Prosecutor's office confirmed that those detained in fact were potentially criminally culpable and subject to indictment by the ICTY). These arrests were deemed to be potentially provocative and the BiH Government was told to cease. Holbrooke, US and European representatives responsible for Dayton Accord implementation convened a meeting in Rome, and the dictate became known as the "Rome Rules of the Road:" The BiH Government would not apprehend suspected war criminals, without effective prior permission of the internationals. The safeguarding of the Dayton Accords and the will of its implementers had precedence over the BiH

Governments prerogative and responsibility of arresting suspected war criminals. Ambassador Holbrooke was decisive in the bargain, whether the initiative had come from military or political authorities in Washington and/or Brussels. (Holbrooke has recently come to blame NATO and even the Pentagon for the lack of will to arrest war criminals, with possibly some justification.) In this light it also may be easier to comprehend how Holbrooke had come to assume the prerogative of committing to decisions that would subjugate justice to political and military authority and effectively immunize the highest ranking indicted persons.

There is both circumstantial and direct evidence of the "deal," at least with respect to Karadzic and Holbrooke. My evidence is mostly second hand from those directly present and or familiar as well as from Ambassador Holbrooke's own vague descriptions of what he had also then termed as a "deal" with Karadzic.

DEAL WAS MADE

Well before Karadzic's arrest and recent statements to the Court, (ICTY), that he and Holbrooke had consummated a "deal," for more than the last ten years I had presented second-hand evidence of such an arrangement. My statements are documented, and Ambassador Holbrooke has been aware of my rather precise charge.

Holbrooke has chosen to respond to my charge by projecting surprise. In the most recent interviews on CNN and NOVA, (Dutch television), he has referred to me as an "old friend," and tried to suggest that I was "believing," relying upon Karadzic's claims rather than Holbrooke's denials. On one occasion he has linked my allegations to my dissatisfaction with how the Dayton Accords were delivered. ("Mo has never been happy with the Dayton Accords."). On another occasion, he has attempted to explain my charge to allegations launched against me personally.

Ambassador Holbrooke indeed has been a friend, and I wish him no personal injustice or animosity. As I have already indicated, I have spoken out for some time, and before allegations were launched against me personally. Perhaps the cause and effect is the opposite of what Ambassador Holbrooke implies.

It is true that I have not been satisfied with the Dayton Accords, having seen the process go wrong even before the implementation, as Milosevic was allowed to dictate negotiations and terms inconsistent with a democratic, open and functional BiH state. During Dayton, I resigned my post as Foreign Minister of BiH, in part to express my protest and alleviate any potential coercion. Regardless, and perhaps paradoxically in the view of some, I supported the peace process, simply because even if fatally flawed, for then it was an end to war and killing and at least some relief to the suffering. Nonetheless, even in the spring of 1996 I publicly spoke out of my reservations and suspicions, (including an interview on the US PBS program Charlie Rose which still can be found here) I also placed much of my faith in the case for genocide brought by Bosnia & Herzegovina before the International Court of Justice, (I was BiH's Agent before the ICJ), as well as the future work of ICTY.

Perhaps my confidence in US diplomatic, political and/or military institutions should have been exhausted in 1996. However, it was America that had embraced me as young boy and immigrant, and I embraced the America of principle and integrity. America's value's and reason are not necessarily reflected in its political or military leadership, but my idealism was, is borne of first had benefits of being an American.

Ambassador Robert Froewick was also one that encouraged optimism in American institutions. He was ambitious, but balanced such with his personal values and commitments, not losing himself in the function or further aspirations. He was eager to gain the post as head of the OSCE, (Organization of Security and Cooperation in Europe) Mission in BiH, and I worked behind the scenes to try to assure his selection.

As I have stated previously, Ambassador Froewick confirmed to me immediately after the "deal" that such was made. (Professor Charles Ingrao of the "Scholars' Initiative Confronting the Yugoslav Controversies" has also gone on record that four other current and former US State Department officials have confirmed that a "deal" was made with Karadzic, read here) Ambassador Froewick was pleased that Karadzic had removed himself from direct participation in BiH politics. However, I suspect that he was also not comfortable with the "deal," and that its implications, principled, legal and political had a price, and did not merely confirm the de-facto impunity enjoyed already by Karadzic and Mladic.

MOTIVES BEHIND THE "DEAL"

I cannot confirm whether the "deal" was in writing or merely an oral understanding validated by mutual interests in not having Karadzic testify before the Tribunal. Signatures on a paper would be a bit of surprise, but it is more likely that a "talking points" paper was prepared. It is unlikely that the motives for such a deal would have been outlined in any paper. For Karadzic, the motive was simple: stay out of the Tribunal's custody. For Holbrooke, and perhaps others, the motives are hazier due to passage of time, but they were perceived as tangible nonetheless:

Karadzic's candidacy for the Presidency of BiH as well as his continued public political engagement was a violation of the Dayton Accords. Under terms of the Dayton Accords persons indicted by the Tribunal, such as Karadzic, were not permitted to seek or hold political office. Karadzic had directly challenged the Dayton Accords by announcing his candidacy for the new collective Presidency of BiH from the newly recognized "entity" of BiH, Republika Srpska. Of course, IFOR, NATO and the US could have easily solved this problem by simply arresting him, if they wanted to since there were numerous such opportunities.

Karadzic's candidacy and continued political engagement as head of the "Serb Democratic Party," responsible for adopting and executing ethnic cleansing, was an embarrassment to the promoters of the Dayton Accords. As Karadzic had already been cited as the political architect of genocide, his candidacy and political leadership manifestly evidenced the principled and legal flaws of the Dayton Accords and how such acceded to the consequences of genocide. Potentially

more embarrassing, Karadzic might have possibly gained the "Chair" of the collective Presidency of BiH on the basis of a rather homogeneous vote from an ethnically cleansed and pure Republika Srpska while Alija Izetbegovic faced a formidable electoral challenge as the candidate of the Bosniak (Bosnian Muslim) ethnic group and a population reduced and displaced.

Holbrooke had aspired that the Dayton Accords would deliver to him a Nobel Peace Prize, book deals and the office of Secretary of State. The embarrassment of Karadzic's candidacy and visible political lifestyle discernibly undermined the ethical credibility of the Dayton Accords, and by extension, the ambitions of Ambassador Richard Holbrooke.

The elections for BiH were set for September 1996, not so coincidentally to precede US November elections for President and anticipated nomination of new Secretary of State for President Clinton's second term. Republican Presidential candidate Bob Dole had led the call for a more assertive US response to Karadzic, Mladic and Milosevic as compared to the accommodations finally made in Dayton. The success of elections in BiH in September of 1996 would be decisive evidence of which strategic approach was better, in terms of risk to US personnel as well as justice and legality. Perhaps President Clinton would not need such assistance to win the November 1996 election, but Holbrooke wanted to deliver his part, if for no other reason than to display why he deserved to be named Secretary of State, (including over a more principle aligned Madeline Albright).

Both Ambassador Robert Froewick, as head of the OSCE Mission in BiH and former Amsterdam Mayor, EduardVan Thijn were under immense pressure to certify before September 1996 that the conditions had been met for free and fair elections. There were several reservations, besides Karadzic's political engagement contrary to Dayton. Most critically, the return of refugees, (those ethnically cleansed), had not been accomplished in any substantive way, but in fact the consequences of ethnic cleansing had begun to harden. The media was largely not independent of political patronage as were not most economic and political institutions especially in Republika Srpska. The elections unfortunately only furthered stratification along both ethnic and old political lines and legitimized the status quo. Perhaps without the pressure for premature elections throughout BiH, (I had proposed to at least delay in Republika Srpska until conditions were genuinely satisfied), the voting process could have been a fresh start to reintegration, true democracy and open society. Unfortunately though, the overwhelming pressure from Washington, or at least Holbrooke, and some other Euro-Atlantic capital politicos was for a self-promoting advertisement in the form of a 5 second sound bite on Bosnian elections, regardless of substance.

The "deal" was made not to allow other deals and dealings to be exposed. The "deal" not to arrest was not necessarily a pure accommodation to Karadzic. It also reflected mutually shared interests with Holbrooke and perhaps other Euro-Atlantic politicos not to have Karadzic testify before the Tribunal regarding other deals and dealings. While I cannot be certain of all other deals, I have over the last 10 years and more spoken and given evidence of the betrayal of Srebrenica and Zepa. The prime

architects that allowed Mladic, Karadzic and Milosevic to overrun Srebrenica and Zepa, (despite UN and NATO guarantees for the security of these enclaves), included Holbrooke and Carl Bildt, Bildt was in 1995 the EU mediator for the Balkans and in 1996, the "High representative" for BiH responsible for implementing the Dayton/Paris Accords.

It is not imaginable that Holbrooke and Bildt would premeditatedly be accomplices in the murder of 8,000 people. Rather, they gave Mladic's forces what I have described previously as a "yellow light" to take over the enclaves perhaps expecting only "minimal" civilian casualties and not systematic massacres and genocide. This acquiescence was despite the Dutch peacekeepers therein, and the UN and NATO guarantees, They were motivated by the objective to give Milosevic, Karadzic and Mladic territories and conditions demanded in order for them to support Holbrooke's mediation initiative. (The BiH Government had refused to cede such despite pressure). Also lost in the accommodation to Milosevic, Mladic and Karadzic was the UN and NATO's standing, undermined in the abandonment of Srebrenica, (as well as the Dutch peacekeeping contingent relying upon NATO air protection). The acquiescence to Belgrade and the Pale Serbs and their ethnic redesign of BiH perhaps is deeper and started earlier; however the abandonment of Srebrenica has become symbolic of the betrayal of multilateralism and the genetic flaw of the Dayton Accords.

MY MOTIVES

Perhaps some will now ask what is my motive in delivering evidence regarding the "deal." The Dayton Accords did end a war. That is a consequence that I endorsed with my signature on the Dayton Accords. However, now that war and genocide is no longer held as a loaded gun to my head, I can and will work to promote a better peace and more democratic, reintegrated and open society for all of BiH's people. The Dayton Accords are not a Holly Cow because they constitute part of someone's promotional legacy and are integral to grander ambitions. The truth places the Dayton Accords and its after effects in a proper rather than stylized context. And, while I understand my self as an American, the genocide of Srebrenica occurred during my watch as BiH's Foreign Minister. My sense of betrayal cannot compare to that of the actual victims. However I also feel betrayed by these "deals," as an American and Bosnian.

Muhamed Sacirbey

Mr. Muhamed Sacirbey holds B.A. degree in history and J. D. degree from Tulane University in New Orleans. He also holds M.B.A. degree from Columbia University. Prior to becoming Bosnia's Foreign Minister and Ambassador to the United Nations, he practiced as an attorney in New York City and worked for several years as an investment banker. He presently writes his book "A Convenient Genocide, in a fishbowl" and is a commentator on human rights and political issues.

ANNEX "T"

Statement of David Binder

I, David Binder, do hereby declare under penalty of perjury, that the following is true and correct:

1. I was employed as a reporter for The New York Times from 1961 until February 1996. I continued working for The New York Times on contract until 1999.

2. In September 1996, along with Obrad Kesic, I met with Radovan Karadzic at his office in a factory in Pale, Bosnia & Hercegovina.

3. During the course of our meeting, Dr. Karadzic told us that he had agreed to withdraw from public life in return for a promise from Richard Holbrooke and associates that he would not be prosecuted in or sent to The Hague.

DATED: April 17, 2009

David Binder

ANNEX "U"

ANNEX "V"

Envoy Denies Immunity Offer to Leader of Bosnian Serbs

- E-MAIL
- SEND TO PHONE
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By MARLISE SIMONS
Published: March 25, 2009

PARIS — A member of the American team negotiating to remove the Bosnian Serb leader Radovan Karadzic from power in 1996 said that he was never promised immunity from prosecution as part of a deal to step down, contradicting several accounts cited in an article on Sunday in The New York Times.

Related

Study Backs Bosnian Serb's Claim of Immunity (March 22, 2009)

Philip S. Goldberg, who was on the team led by Richard C. Holbrooke, issued a statement saying that "at no time during the negotiations in Belgrade or elsewhere in the region was an immunity agreement made or contemplated."

The Times article reported that a new study published by Purdue University said that Mr. Karadzic had been promised that he would not be pursued by the war crimes tribunal in The Hague if he left politics. Several people cited anonymously in the study were also interviewed by The Times.

Mr. Holbrooke, now a special representative on Afghanistan and Pakistan for the Obama administration, has repeatedly denied having made such a promise. Objecting to the publication of the article in The Times, he reiterated his denial, cited in the article, and challenged the reliance on anonymous sources by both the article and the Purdue study.

The people quoted "should have the courage to identify themselves," he said in an e-mail message to The Times. "All of this is fabricated and untrue."

Longstanding rumors of a deal have resurfaced because of the publication of the Purdue study and because Mr. Karadzic has repeatedly said that he had been promised immunity at the war crimes tribunal in The Hague, forcing the court to deal with this claim.

Mr. Karadzic, who was arrested last summer, faces charges of genocide, war crimes and crimes against humanity. The judges have ruled that no immunity agreement would be valid in cases involving charges of genocide, war crimes or crimes against humanity. Mr. Karadzic has appealed that ruling.

Two of the people interviewed for the article in The Times, a former senior State Department official who served in the Balkans and an American who was involved with peacekeeping in the 1990s, said Mr. Holbrooke had assured Mr. Karadzic that he would not be pursued for war crimes. The second American said that Mr. Holbrooke had personally and emphatically told him about the deal on two occasions.

Contacted again this week, they stood by their version of the events.

Another American diplomat cited in the study as having drafted the agreement for Mr. Karadzic to give up power, Christopher R. Hill, sent an e-mail message to The Times on Tuesday denying any role in it. Mr. Hill, who had previously been on Mr. Holbrooke's Balkans team, said that by that time he had already moved to Macedonia as the United States ambassador. "I had nothing to do with anything regarding Karadzic's departure either in

Macedonia or before," he wrote. "I was not consulted, nor did I produce any papers."

The study's co-editor, Charles W. Ingrao, said Tuesday that he would look into Mr. Hill's contention.

After intense negotiations, Mr. Karadzic agreed to step down on July 18, 1996, and signed a brief statement that made no mention of immunity.

American diplomats have said that rumors of an immunity deal emerged in Serbia in recent years, circulated by Mr. Karadzic's relatives. David Binder, a former Balkans correspondent for The Times who is now retired, said Wednesday that Mr. Karadzic told him in 1996, shortly after he stepped down as the Bosnian Serb president, that Mr. Holbrooke had offered him an immunity deal.

Obrad Kesic, who said he had met Mr. Karadzic in Pale, Bosnia, with Mr. Binder, confirmed the account.

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~~18442~~

ANNEX "W"

PETER ROBINSON
International Criminal Law
P.O. Box 1844
Santa Rosa, California 95402
(707) 575-0540
E-mail: peter@peterrobinson.com

MEMORANDUM

To: Radovan Karadzic

Re: Interview of Roberts Owen

Date: 5 December 2008

ROBERTS OWEN, [address redacted], was interviewed at his residence on 5 December 2008 by Peter Robinson. Owen's wife was also present during the interview.

OWEN was shown a copy of the agreement signed on 19 July 1996 by Radovan Karadzic, Slobodan Milosevic and others. He indicated that he recalled being present at the meeting in Belgrade at which this agreement was negotiated.

OWEN said that no promises or representations were made at that meeting by Richard Holbrooke that Karadzic would not be arrested or prosecuted at The Hague. OWEN said that such a promise would have been inconsistent with Holbrooke's own view that he expressed frequently that Karadzic should be arrested and taken to The Hague.

OWEN said that he did not take any notes of the meeting. He said that it was likely that Philip Goldberg, the junior member of their delegation, would have taken notes. He noted that "Holbrooke never took a note in his life."

OWEN said that a promise or representation that Karadzic would not be arrested or prosecuted would have been inconsistent with Holbrooke's approach to the Bosnian problem. Holbrooke was an advocate for arresting Karadzic and other indicted war criminals and was frustrated with the attitude of Admiral "Snuffy" Smith, who took the position that his soldiers were not policemen and that arresting criminals was not part of their duties.

OWEN said that he is sure that Holbrooke did not promise that Karadzic would not be arrested. Had such a promise or representation been made by Holbrooke, he would likely recall it. However, he does not know what Milosevic or the others from the Bosnian delegation may have told Karadzic over the telephone about the promises that were made on that occasion.

ANNEX "X"

Def: 09-0009-A

Statement of Ambassador Philip S. Goldberg

I, PHILIP S. GOLDBERG, do hereby state the following:

1. I am a career Foreign Service Officer currently serving as a Senior Adviser to the Undersecretary of State for Political Affairs. On 18-19 July 1996, I was working as a Special Assistant to Deputy Secretary of State Strobe Talbott.

2. On those dates, I was part of a diplomatic mission to Belgrade, Federal Republic of Yugoslavia (FRY) concerning the removal of Radovan Karadzic from public and political life in Bosnia-Herzegovina.

3. In addition to myself, other United States Government representatives included Ambassador Richard Holbrooke, former State Department Legal Adviser Roberts Owen, Lawrence Butler, Charge d'affaires of the United States Embassy in the Federal Republic of Yugoslavia (FRY); and representatives of the National Security Council, the Office of Secretary of Defense, and the Joint Chiefs of Staff.

4. The FRY delegation included Slobodan Milosevic, Milan Milutinovic, Milosevic's Chief of Staff whose first name is Goran, and Nikola Sainovic. The representatives of the Bosnian Serbs who were present were Momcilo Krajisnik and Alexa Buha.

5. I participated in the drafting of a document which was presented to Milosevic during the course of the negotiations.

6. Approaching the Karadzic issue, the United States Government had three general goals - out of office, out of Bosnia, and to The Hague. At that negotiation we achieved the first.

7. I have been shown a copy of the document bearing #R1117620 by Peter Robinson, Legal Advisor to Radovan Karadzic, and I identified it as the agreement had been signed at the conclusion of the 18-19 July 1996 meetings in Belgrade. It is the only agreement to result from those meetings.

8. At no time during the meetings in 1996 was an agreement made, discussed, or contemplated to offer Radovan Karadzic immunity from prosecution at the International Criminal Tribunal for the Former Yugoslavia in The Hague, or to prevent his arrest or prosecution. Specifically, there were no representations made at the meetings that

would lead anyone to believe that Karadzic would not be arrested or prosecuted in The Hague.

9. I have been asked if I took any notes at the meeting and I have no recollection of having done so.

DATED: May 11, 2009

ANNEX "Y"

PETER ROBINSON
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E-mail: peter@peterrobinson.com

MEMORANDUM

To: Radovan Karadzic

Re: Attempt to interview Peter Tarnoff

Date: 23 December 2008

On 18 December 2008, I proceeded to the residence of Peter Tarnoff, former Undersecretary of State, at [redacted]

Mr. Tarnoff declined to speak with me at that time and asked that I send him an e-mail and explain what I wanted. He provided an e-mail address.

On 18 December 2008, I sent him the following e-mail:

Dear Mr. Tarnoff,

I am sorry to have disturbed you at home this morning. I only had your street address, but no phone number or e-mail.

I have been assigned by the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague as legal advisor to former Bosnian Serb President Radovan Karadzic, who is facing charges of genocide and crimes against humanity.

I would be most grateful if you could spare about one hour to speak with me about negotiations in 1996 that led to his resignation as President of Republika Srpska. I understand that you were the person in Washington who was in telephone contact with the Holbrooke team on 18-19 July 1996 as they negotiated Karadzic's future in Belgrade with President Milosevic and others.

Can you let me know if you are willing to receive me?

By way of background on me, I was an Assistant United States Attorney in San Francisco for 10 years and a private criminal defence lawyer in Santa Rosa for 12 more. In the last 8 years I have been working at the ICTY as well as the International Criminal Tribunal for Rwanda. You can check out my website at www.peterrobinson.com .

Thank you for your consideration of this request. Please respond to both e-mail addresses above to ensure I receive your message, or you can call me at 707 575 0540.

Yours truly,

Peter Robinson

Tarnoff never responded. On 22 December 2008, I sent him another e-mail:

Dear Mr. Tarnoff,

Could you kindly confirm receipt of my e-mail, reproduced below?

Thank you.

Peter Robinson

Tarnoff did not respond.

ANNEX "Z"

PETER ROBINSON
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MEMORANDUM

To: Radovan Karadzic

Re: Attempt to interview Strobe Talbott

Date: 9 December 2008

On 5 December 2008, I proceeded to the Brookings Institution, 1775 Massachusetts Avenue, Washington, DC, telephone (202) 797-6000 in an effort to make an appointment with Strobe Talbott for an interview.

I was advised to contact Katie Short. I spoke with Ms. Short who advised that Talbott was leaving for Norway on Monday morning and would not be back until 16 December. She suggested that I send her an e-mail at [redacted] and she would see if Talbott might be available in January.

I sent an e-mail on 5 December and received the following reply from Ms. Short:

Strobe will be unable to meet with you Monday, December 8th for the reasons we discussed earlier. However, we can try to set up a half-hour phone call for you with him either Tuesday, December 16th or Wednesday, December 17th. Let me know which day is best for you and I'll get back to you with times

I replied on the same day that I would be available any time on those days to speak with Mr. Talbott. However, on 9 December 2008, I received the following e-mail:

Peter,

I am terribly sorry but unfortunately, while we thought Mr. Talbott might have time to speak with you at some point in the coming weeks, a few Brookings-related matters have come up and I am afraid his plate is just too full at this point for him to commit to anything more. He recommends that you work through the legal advisor at the State Department.

Best wishes,

Katie Short

ANNEX "AA"

PETER ROBINSON
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(707) 575-0540
E-mail: peter@peterrobinson.com

MEMORANDUM

To: Radovan Karadzic

Re: Attempt to interview Sandy Berger

Date: 8 December 2008

On 5 December 2008, I proceeded to the building at 555 13th St. NW, Washington, DC 20004 to make contact with former National Security Advisor Sandy Berger. Berger is the President of Stonebridge International, a consulting firm with offices in that building.

From the lobby, the security personnel called Mr. Berger's office and announced my presence. I was put on the telephone with Laura Huber. She advised that Berger was out of the office for the day. She requested that I send her an e-mail at [redacted] explaining the nature of my proposed meeting with Mr. Berger.

That afternoon, I sent Ms. Huber an e-mail.

On Monday, 8 December 2008, I called Laura Huber at (202) 637-8600. She advised that she would ask Mr. Berger when he came into the office if he was available to meet with me. A few hours later she called back and said that she had spoken with Mr. Berger and that he was "unable to comply with your request for a meeting".

ANNEX "AB"

No. IT-95-5/18-PT

Dr. Radovan Karadzic

11 May 2009

The Honorable Ban Ki Moon
Secretary General of the United Nations
New York, NY 10017

BY FAX TO 1 212 963 4879

Dear Mr. Secretary General,

I am the accused in *Prosecutor v Karadzic*, Case No. IT-95-5/18-PT at the International Tribunal for the former Yugoslavia in The Hague. On 18-19 July 1996, I entered into an agreement with Mr. Richard Holbrooke that I would not be prosecuted at that Tribunal if I resigned as President of the Republika Srpska and as President of my political party, and withdrew completely from public life. I fulfilled my part of this agreement, and now I am attempting to convince the Tribunal that it must fulfill its part.

The Trial Chamber hearing my case, in determining issues relating to disclosure, has held that the agreement by Mr. Holbrooke is not binding on the Tribunal. I contend that it is binding because Mr. Holbrooke was acting with the apparent authority of the United Nations Security Council, the parent body of the Tribunal. I have attached to this letter as Annex 1 a statement of facts in our possession from public sources which we believe demonstrate the existence of this apparent authority. I hope it will help you understand the reasons for and nature of the request that I make in this letter.

So that I may have access to all of the facts when filing a preliminary motion to dismiss the indictment at the ICTY, I am requesting that the United Nations furnish to me copies of the following documents in its possession:

A. Any correspondence during the period 1 August 1995 and 18 July 1996 between the United Nations and the government of Republika Srpska or Dr. Radovan Karadzic in which the United Nations encouraged cooperation with the efforts of Richard Holbrooke or the United States.

B. Any public statements made by representatives of the United Nations or member states of the Security Council during the period 1 August 1995 and 18 July 1996 in which the parties to the war in Bosnia were encouraged to cooperate with the efforts of Richard Holbrooke or the United States to achieve peace in Bosnia.

The Honorable Ban Ki Moon
--page two--

C. Any correspondence between the United Nations and the United States of America during the period 1 August 1995 and 18 July 1996 in which the cooperation of the United Nations was sought or provided to fulfill agreements which had been negotiated by Richard Holbrooke concerning the war in Bosnia.

I hope that this request will be one which you can fulfill in the name of truth and justice. You may provide the documents to me by furnishing them to my Legal Advisor Peter Robinson. Additionally, if you have any questions about this request, or require assistance in its implementation, please contact Mr. Robinson at peter@peterrobinson.com. He has my full authority to negotiate compliance with this request on my behalf and to receive all documents related thereto on my behalf.

Thank you very much for your cooperation.

Yours truly,

Dr. Radovan Karadzic

FACTS SHOWING THE APPARENT AUTHORITY OF RICHARD HOLBROOKE

1. Beginning in September 1991, the United Nations and international community employed a series of negotiators to resolve the crisis in Bosnia: Lord Carrington, Jorge Cutileiro, Cyrus Vance, Lord David Owen, Thorvald Stoltenberg, Carl Bildt, and Richard Holbrooke.

2. Richard Holbrooke represented the United States no more than Carl Bildt represented Sweden or Thorvald Stoltenberg represented Norway. All mediators represented international community, in general, and the United Nations Security Council particularly. All of them depended on the Security Council for sanctions, embargo, bans on flights and other leverage. As such, they were agents of the United Nations Security Council in the Bosnia negotiations.

3. Holbrooke publicly made this link in a speech before the North Atlantic Assembly in Budapest on 29 May 1995. He said:

> "Response by NATO and the UN to the outrageous behavior of the Bosnian Serbs is being developed now through close consultation between the UN, NATO, the Contact Group, and the nations concerned..."[1]

4. Dr. Karadzic had seen how Holbrooke had negotiated with Croatia on behalf of the United Nations Security Council in March 1995. Holbrooke had traveled to Zagreb after the Croatian government had insisted that UN forces in its country be replaced with troops from NATO or the European Union.[2] Holbrooke was publicly said to be leading the effort to keep the U.N. forces in place.[3] Holbrooke testified before the U.S. Congress in March 1995 that "it should be possible to reconfigure the U.N. presence in Croatia to satisfy the most important legitimate concerns of the Croats and Serbs while keeping faith with the relevant U.N. Security council resolutions."[4] And, it happened—when Holbrooke made an agreement with Croatian President Francis Tudjman, the United

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[1] U.S. Department of State Dispatch, June 26, 1995, Vol. 6, No. 26 at 526
[2] Alan Cowell, U.S. Envoy Calls, but Croatia Seems Firm on U.N. Ouster, 7 March 1995, The New York Times, 10
[3] James O Jackson, Dancing at the brink, 20 March 1995, Time, 55, Volume 145; Issue 11
[4] William Scally, U.S. cautiously optimistic on Croatia crisis. 9 March 1995, Reuters News

Nations Security Council promptly passed a resolution reconfiguring the peacekeeping operation in Croatia in accordance with that agreement.[5]

5. The ICTY was an integral part of Holbrooke's and the international community's negotiating strategy. Even before any ICTY indictment, in February 1995, Holbrooke publicly stated that Radovan Karadzic would not be invited to an envisaged peace conference unless he accepted the international community's plan.[6] When Karadzic turned out to be a tough negotiator and a popular leader, Holbrooke and the international community turned to the ICTY to sideline him with its July 1995 indictment.

6. According to a study by Bookings Institute fellow Ivo Daalder, beginning in around August 1995, the United States decided to take the lead in negotiating an end to the war in Bosnia. U.S. National Security Adviser Tony Lake travelled to the European capitals and told the allies exactly what the U.S. had decided to do, not ask them what they wanted.[7]

7. Asked along the way how he was going to get the allies on board, Lake had said that the United States was the 'big dog' that others followed. After each successful stop at a European capital, the Lake team concluded that "the big dog had barked."[8]

8. The United States planned to use the existing United Nations Security Council sanctions as its major bargaining chip, offering suspension of the sanctions after an agreement had been signed and complete lifting of sanctions once the agreement had been implemented.[9] Therefore, they were counting on the cooperation of the United Nations Security Council and its member States.

9. Richard Holbrooke was selected as the chief negotiator for the United States as they took over the Bosnian negotiations. On 17 August 1995, he flew to Yugoslavia and met with President Slobodan Milosevic. He implemented his "sanctions" strategy

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[5] UNSC Resolution 982 (31 March 1995)
[6] The Independent (London): "US turns screw on defiant Bosnian Serbs" by Emma Daly, February 8, 1995
[7] Ivo H. Daalder, *Getting to Dayton: The Making of America's Bosnia Policy* Brookings Institution 2000 at p. 110
[8] Ivo H. Daalder, *Getting to Dayton: The Making of America's Bosnia Policy* Brookings Institution 2000 at p. 114
[9] Ivo H. Daalder, *Getting to Dayton: The Making of America's Bosnia Policy* Brookings Institution 2000 at p. 113

immediately, insisting that he would not deal with the Bosnian Serbs and that Milosevic "must speak for Pale."[10]

10. Holbrooke recognized that" the United Nations sanctions against Serbia were always a central issue."[11] He wrote:

> "Milosevic hated the sanctions. They really hurt his country and he wanted them lifted...The decision to take a hard line on sanctions proved correct, had we not done so we would have begun the negotiations with almost no bargaining chips."[12]

11. Therefore, from August 1995 at least, the United States and Holbrooke spoke for the United Nations Security Council on issues related to Bosnia.

12. Holbrooke marshaled control of the negotiating process through the Contact Group—which comprised all of the permanent members of the United States Security Council except China, which had little interest in Bosnia. On 23 August 1995, he informed these States that the United States planned to negotiate first and consult them later, reversing the previous procedure, in which the five nations tried to work out a common position before taking it to the parties in the Balkans—a system which Holbrooke viewed as "cumbersome and unworkable."[13]

13. In a note to U.S. Secretary of State Warren Christopher, Holbrooke wrote:..."In the end we must keep the Contact Group together, especially since we will need it later to endorse and legitimize any agreement."

14. He continued that "of there is ever a settlement, we will need—"the UN for legitimizing resolutions..."[14]

15. The United States' control of the Bosnia peace negotiations was recognized by the first High Representative for Bosnia, Carl Bildt, who said that "the UN was dismissed from the Bosnia peace process in the autumn of 1995. It was to a large extent the Americans who called the shots when it came to setting up the peace implementation operation."[15]

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[10] Holbrooke, *To End a War* (Modern Library 1998) at p. 5
[11] Holbrooke, *To End a War* (Modern Library 1998) at p. 87
[12] Holbrooke, *To End a War* (Modern Library 1998) at p. 88
[13] Holbrooke, *To End a War* (Modern Library 1998) at p. 84
[14] Holbrooke, *To End a War* (Modern Library 1998) at p. 84
[15] Bildt, *Peace Journey*, at p. 384

16. Holbrooke made it clear from the outset of his diplomatic efforts that bombing of Bosnian Serb positions by the United Nations and NATO was directly linked to the results of his negotiations. Therefore, it was abundantly clear to Dr. Karadzic and the other parties to the Bosnian negotiations that Holbrooke had the authority to speak for the United Nations and enter into agreements which the Security Council would honor.

17. Holbrooke was also acting in close consultation with the Office of the Prosecutor of the ICTY. Before meeting Dr. Karadzic directly, the U.S. State Department had "sounded out" ICTY Prosecutor Richard Goldstone about meeting Karadzic and Mladic. Goldstone had given his approval.[16]

18. On 13 September 1995, Holbrooke met directly with Dr. Karadzic in Belgrade. As Holbrooke recounted, it was Dr. Karadzic who proposed that the Americans produce a draft agreement to end the siege of Sarajevo.[17] The document which the Americans produced was a precedent it would follow again a year later when entering into the "Holbrooke Agreement."

19. After an agreement was reached, the Americans refused to sign, insisting that only the signatures of the Bosnian Serbs, witnessed by Milosevic and Milan Milutinovic on behalf of the Federal Republic of Yugoslavia, appear on the document. As Holbrooke explained:

> This was something of a diplomatic innovation—a document drafted by us, but signed only by the Serbs as a unilateral undertaking. None of us were aware of diplomatic precedent for it, but it fit our needs perfectly.[18]

20. This same "diplomatic innovation" was employed in the Holbrooke agreement of 18 July 1996 when Holbrooke again produced a written agreement containing only the unilateral undertaking signed by Bosnian Serbs, witnessed by Milosevic and Milutinovic, and bearing no signature of any Americans nor reflecting their promises.

21. After the September 1995 meeting with Karadzic, Holbrooke took the "unilateral undertaking" to UN General Janvier in Sarajevo and "recommended" that the UN suspend its bombing of the Serbs. It did.[19]

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[16] Bass, *Stay the Hand of Vengeance* (Princeton University Press 2000) at p. 234
[17] Holbrooke, *To End a War* (Modern Library 1998) at p. 150
[18] Holbrooke, *To End a War* (Modern Library 1998) at p. 152
[19] Holbrooke, *To End a War* (Modern Library 1998) at p. 153

22. This was part of the pattern of Holbrooke promises and United Nations Security Council delivery. On 16 September 1995, Holbrooke again met President Milosevic in Belgrade and bluntly told him that "henceforth the US and NATO, not the UN, would decide if they were in compliance."[20]

23. Two days later, the United Nations expressly signaled to Dr. Karadzic and the rest of the world that Holbrooke would have the authority to speak for them. United Nations Secretary General Boutros Boutros-Ghali informed the Security Council on 18 September 1995 that he would be ready to end the UN role in the former Yugoslavia, and "allow all key aspects of implementation to be placed with others."[21]

24. Three days later, on 21 September 1995, the Security Council sent the same message in Resolution 1016 in which it called upon "member states involved in promoting an overall peaceful settlement in the region to intensify their efforts."

25. In October 1995, in the run up to Dayton, Holbrooke had also personally urged Goldstone to bring an indictment against "Arkan".[22]

26. The Dayton negotiations began on 1 November 1995. Again, Holbrooke and the United States acted in close consultation with the ICTY Prosecutor. On 15 and 16 November 1995, during the Dayton talks, Prosecutor Goldstone met in Washington with U.S. CIA Director John Deutch, Secretary of Defence William Perry, National Security Advisor Anthony Lake, and Undersecretaries of State Strobe Talbott and John Shattuck. He was told that amnesty for Dr. Karadzic as part of the Dayton Accord could not be ruled out.[23]

27. As a counter measure, Goldstone rushed out an indictment against Dr. Karadzic for Srebrenica. OTP staff members were quoted as saying that they hurried to have the indictment ready for Dayton. Deputy Prosecutor Graham Blewitt said, "We wanted to make sure we were going to be part of the Dayton solution, that we were going to be part of the deal."[24]

28. Ultimately, Holbrooke inserted a provision in the Dayton agreement that:

> No person who is serving a sentence imposed by the International

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[20] Holbrooke, *To End a War* (Modern Library 1998) at p. 157
[21] Holbrooke, *To End a War* (Modern Library 1998) at p. 175
[22] Holbrooke, *To End a War* (Modern Library 1998) at p. 190
[23] Bass, *Stay the Hand of Vengeance* (Princeton University Press 2000) at p. 244-45
[24] Bass, *Stay the Hand of Vengeance* (Princeton University Press 2000) at p. 244

> Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold any appointive, elective, or other public office in the territory of Bosnia and Herzegovina.[25]

29. It was this very provision which was to be the *reason d'tere* of the Holbrooke agreement some 8 months later when Holbrooke sought Karadzic's resignation and forbearance from seeing elective office as part of the implementation of this Agreement.

30. The proceedings at Dayton cemented Holbrooke's role and reputation as the person with the authority of the international community and United Nations Security Council.

31. On 7 November, under Holbrooke's leadership, the participants at Dayton agreed to lift UN sanctions on heating fuel for the Federal Republic of Yugoslavia.[26] The United Nations Security Council dutifully lifted the sanctions a week later, saying that:

> The Committee hopes that such a decision would facilitate the ongoing proximity peace talks among the parties to the conflict in the former Yugoslavia and others."[27]

32. When Holbrooke promised, the Security Council delivered.

33. The Dayton Agreement was reached on 21 November 1995. Holbrooke had promised that the arms embargo would be modified if an agreement was reached. On the very next day, the United Nations Security Council voted to modify the arms embargo.[28]

34. Holbrooke had promised that the sanctions against the Federal Republic of Yugoslavia would be suspended if an agreement was reached. On the very next day, the United Nations Security Council voted to suspend the sanctions.[29]

35. Holbrooke had promised that the UN would maintain a military presence in Bosnia until the end of January 1996, at which time that role would be assumed by NATO. On 30 November 1995, the United Nations Security Council dutifully voted to

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[25] Annex IV, Article 9
[26] Holbrooke, *To End a War* (Modern Library 1998) at p. 252
[27] UN Security Council statement of 14 November 1995
[28] UNSC Resolution 1021 (22 November 1995)
[29] UNSC Resolution 1022 (22 November 1995)

extend UNPROFOR's mandate until 31 January 1996 and to ensure the orderly transition of the military mission to NATO.[30]

36. When Holbrooke promised, the Security Council delivered.

37. On 8 December 1995, UN Secretary General Boutros Boutros-Ghali addressed the opening session of the London conference on the implementation of the Dayton agreements. He "saluted the brilliant diplomacy that had been seen at Dayton and paid tribute to the negotiators who had laid the foundation for the breakthrough that had taken place there." He pledged that "the United Nations would do all it could to support the agreement."[31]

38. This sent an unmistakable message to Dr. Karadzic and the others involved in the Bosnia peace process that Holbrooke had full authority and support from the United Nations for his efforts.

39. Even China gave its express support to Holbrooke's efforts. During the Security Council proceedings on 15 December 1995, the Chinese Ambassador expressed his country's support for the peace process.[32]

40. On that same day, the Security Council passed a resolution welcoming the signing of the peace agreement in Paris the day before and specifically urged "that all parties should cooperate fully with all entities involved in the implementation of the peace settlement." The resolution authorized member States to "take all necessary measures to assure compliance with the peace agreement."

41. Holbrooke had promised at Dayton that the military presence in Bosnia would be maintained by an interim stabilization force run by NATO. In the resolution, the United Nations dutifully urged all member States to cooperate with the stabilization force.

42. Holbrooke had promised at Dayton that the civilian administration would not be run by the United Nations but by a newly created Office of High Representative. In its resolution, the Security Council dutifully endorsed the Office of High Representative.[33]

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[30] UNSC Resolution 1026 (30 November 1995)
[31] UN Secretary General Report (13 December 1995)
[32] UNSC Statement (15 December 1995)
[33] UNSC Resolution 1031 (15 December 1995)

43. Holbrooke had promised at Dayton that the civilian police force would be under the control of the United Nations. On 21 December 1995, the Security Council dutifully passed a resolution creating the United Nations civilian police force in Bosnia.[34]

44. When Holbrooke promised, the Security Council delivered.

45. Holbrooke continued his close coordination with the ICTY Office of the Prosecutor. When problems arose over the ICTY's arrest of two low-ranking Serb military officers in mid-February 1996, Holbrooke called Prosecutor Goldstone and arranged for an American helicopter to transport the two accused to The Hague.[35]

46. One week later, Holbrooke resigned from the United States Department of State. [36]

47. Meanwhile, in the spring of 1996, the international community began to prepare for the elections in Bosnia called for by the Dayton Agreement.

48. The international community deemed it essential for political reasons to ensure that Dr. Karadzic was removed from power. On 27 March 1996, High Representative Carl Bildt visited President Milosevic in Belgrade. He threatened the re-imposition of UN sanctions if Dr. Karadzic remained as President of Republika Srpska.[37] The United Nations Security Council once again provided its full support for the efforts of the High Representative.[38]

49. Over the following months, Bildt repeatedly called for Dr. Karadzic to step down.[39] He repeatedly threatened President Milosevic with the re-imposition of UN sanctions.[40] The ICTY worked hand-in-hand in this effort. In June, 1996, at an international conference on the implementation of the Dayton accords, ICTY President Antonio Cassese called for the arrest of Karadzic before the elections in Bosnia.[41]

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[34] UNSC Resolution 1035 (21 December 1995)
[35] Holbrooke, *To End a War* (Modern Library 1998) at p. 332-33
[36] Holbrooke, *To End a War* (Modern Library 1998) at p. 334
[37] Bildt, *Peace Journey*, at p. 210
[38] UNSC Statement (4 April 1996)
[39] Bildt, *Peace Journey*, at p. 209-10
[40] Bildt, *Peace Journey*, at p. 221, 224, 230-32
[41] Hazan, *Justice in a Time of War: The True Story behind the International Criminal Tribunal for the former Yugoslavia* (2004) at 107-08

50. In early June, private citizen Richard Holbrooke wrote to President Clinton that the peace process would fail unless Karadzic did not continue to thwart the Dayton powers. He wrote:

> "History is replete with examples of small issues leading to the unraveling of larger ones. The question of Radovan Karadzic is such an issue...Our goal should be Karadzic's removal, not only from his presidential post, but from power...We wrote into Dayton the ability to re-impose sanctions if necessary. This is our strongest remaining leverage...I would suggest Milosevic to be given a clear message."[42]

51. Thus, Holbrooke advocated the United States reassume its role of speaking for the Security Council in negotiating Karadzic's removal using the UN sanctions as its bargaining chip.

52. The obsession of the political removal of Dr. Karadzic from office in Republika Srpska continued into the summer of 1996. At a 10 July 1996 meeting of Contact Group in London , there was considerable discussion of the "Karadzic issue". After that meeting, the US government pressed Holbrooke back into its service to resume his role as negotiator and see if he could get Dr. Karadzic removed.[43]

53. Holbrooke arrived in Sarajevo on 16 July 1996 and held consultations with High Representative Bildt and Bosnian Muslim leader Alija Itzebegovic. Both urged the removal of Dr. Karadzic.[44] Itzebegovic told Holbrooke, "If you can get Karadzic out of power, I think it is much better to let them [SDS part] run. I can work with Krajisnik. I know how to deal with him."[45] He told the news media that the Muslims would boycott the elections if Karadzic remained the leader of the SDS party.[46]

54. Holbrooke also met President Milosevic in Belgrade and threatened UN sanctions if they did not get an agreement to get Karadzic "out of power and out of the country". [47]

55. On 18-19 July 1996, the Holbrooke agreement was consummated.

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[42] Holbrooke, *To End a War* (Modern Library 1998) at p. 340
[43] Bildt, *Peace Journey*, at p. 237
[44] Holbrooke, *To End a War* (Modern Library 1998) at p. 341-42; Bildt, *Peace Journey*, at p. 237
[45] Holbrooke, *To End a War* (Modern Library 1998) at p. 342
[46] Vecernje novosti", Belgrade (17 July 1996)
[47] Holbrooke, *To End a War* (Modern Library 1998) at p. 341-42

ANNEX "AC"

DEF: 09-0010

Statement of Ambassador Lawrence Butler

I, LAWRENCE BUTLER, do hereby state the following:

1. I am currently Political Adviser to the Supreme Allied Commander - Europe (SACEUR). On 18 July 1996, I was Acting Chief of Mission for the United States Embassy to the Federal Republic of Yugoslavia (FRY) in Belgrade.

2. On that date, I attended a meeting at a villa of the Ministry of Foreign Affairs in Belgrade, Federal Republic of Yugoslavia (FRY).

3. In addition to myself, the other United States government representatives at this meeting were Richard Holbrooke, Roberts Owen, Philip Goldberg, Tom Longstreth (Office of the Secretary of Defence), LTC John Feeley (National Security Council) and Colonel Doug Lute (J5 department of Joint Chiefs of Staff).

4. The representatives of Republika Srpska who attended the meeting were Momcilo Krajisnik and Aleksa Buha. Those present at the meeting on behalf of the FRY were President Slobodan Milosevic, Foreign Minister Milan Milutinovic, Vice President Nikola Sainovic, Jovica Stanisic, and Milosevic's aide named Goran. The translator was provided by Milosevic.

5. I have been shown a copy of the document bearing #R1117620 by Peter Robinson, Legal Advisor to Radovan Karadzic, and I identified it as the agreement which had been signed at the conclusion of the 18-19 July 1996 meeting in Belgrade.

6. The goal of the United States at the beginning of the meeting was the withdrawal of Radovan Karadzic from public life and that goal was accomplished. I have no recollection of The Hague being mentioned at all during the meeting. It did not come up as a topic of discussion. No promise or representation was made by the Americans that Karadzic would not be arrested or face prosecution in The Hague.

7. I took no notes during the meeting. I did not write any cable, memoranda, or report of this meeting, apart from a detailed cable reporting post-meeting discussions with Stanisic when he returned to Belgrade from Pale with the signed document.

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Def: 89-0010

8. I am not aware of any report or memorandum of the 18 July 1996 meeting having been prepared by anyone. I have not seen any such document.

DATED:

May 27, [illegible]

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IT-95-5/18-PT
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19 June 2009

~~20442~~
~~PvK~~

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

Registrar: Mr. John Hocking

Date: 19 June 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

FIRST SUPPLEMENT TO HOLBROOKE AGREEMENT MOTION

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

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic hereby supplements his *Holbrooke Agreement Motion* with the declarations of three men who were present in his office in Pale on the evening of 18 July 1996 and who can confirm that he believed that he had been promised by Richard Holbrooke that he would not be prosecuted in The Hague.[1]

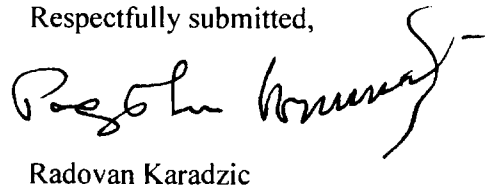
2. These witnesses came forward and contacted Dr. Karadzic's legal advisor after learning about the filing of the motion concerning the Holbrooke Agreement through the news media. Therefore, their statements were not available at the time the motion was filed.

3. This now brings to 18 the total number of witnesses who can corroborate the existence of the Holbrooke Agreement.

4. Further supplements may be filed by Dr. Karadzic depending on the outcome of interviews with Minister Carl Bildt of Sweden,[2] Lt. General Douglas Lute and Colonel John Feeley of the United States,[3] and review of documents from the United Nations[4] and the Office of the Prosecutor (Wesley Clark statements).[5]

Word count: 331

Respectfully submitted,



Radovan Karadzic

[1] Their declarations are corroborated by Dr. Karadzic's appointment diary for 18 July 1996 which lists "Punisa Lucic and guests" as being present in his office that evening. See Annex C to *Holbrooke Agreement Motion.*

[2] *Order Pursuant to Rules 54 and 70* (18 June 2009)

[3] *Motion for Subpoena to Lt. Gen Douglas Lute and Colonel John Feeley (Ret)--United States of America* (17 June 2009)

[4] *Motion for Request for Cooperation to United Nations: Holbrooke Agreement* (21 May 2009)

[5] Letter to Office of the Prosecutor containing additional information from Florence Hartmann (15 June 2009)

ANNEX AD

IT-95-5/18-PT 25849

Thursday, June 11, 2009
Haifa,
Fax: 00 1 208 694 61 61

STATEMENT

Under full moral and legal responsibility, I the undersigned, Victor Ben-Cnaan, born on May the 7th, 1946, in Walbrzych, Poland, citizen of Israel, ID number 06504449-7, state the following:

During 1996 I was the director of "GLOBE HOLDINGS INTERNATIONAL" Registered Office in Pale, Republika Srpska. On a number of occasions, my co-worker Mr. Punisa Lucic and I were invited to discuss several business proposals with the President of Republika Srpska, at that time, Dr. Radovan Karadžić.

On July the 18th, 1996, we; Mr. Punisa Lucic, I myself, Mr. Eric Kaplan, Mr. Walter Hein of Power Trading Ltd. 88 Emily Ave. Elmont, New York 11003-4201, U.S.A. phone: 516 352 96 22, fax: 516 225 94 99, (the two latter American citizens) have had a meeting with Dr. Karadžić at 20:00 hours. The meeting continued for almost two hours. The topics discussed were:

- The erection of an international airport – at Sokolac
- Building of 2-3 hydroelectric power stations on the Drina River
- Constructing of 70 km long railway, in order to connect Republika Srpska to the European net
- Renovation of bauxite mine – at Milici
- Reconstruction of crude oil refinery – Bosanski Brod
- Export of logs and timber... and more...

Amidst that meeting Dr. Karadžić left us at the conference room and went to his (attached) Presidential office. After some time Dr. Karadžić came back. When he entered the conference room he appologized, saying that he has had tough negotiations with Mr. Holbrooke. Dr. Karadžić then went on to say that he has agreed to retire from the position of the President of Republika Srpska and the position of party leadership, as well as all other public and political duties in Republika Srpska.

....
Victor Ben-Cnaan Walter Hein

We were shocked and further inquired on the details. Dr. Karadžić told us that the negotiations were led between him, Mr. Richard Holbrooke and Mr. Slobodan Milošević, by then the President of Jugoslavija. In return for his retirement, Mr. Richard Holbrooke, who was by then US emissary supervising negotiations and implementations of the Dayton Peace Agreement in Bosnia, provided him with strong guarantees that he would not be prosecuted by any legal court under their jurisdiction, including the International War Crimes Tribunal in Hague. We asked if these gentlemen could be trusted, and Dr. Karadžić replied that he would have never accepted the deal if he was not presented with truly serious and strong guarantees.

The President told us that, inter alia, he has agreed to the following:

Not to;

- appear on T/V
- give interviews to any public media
- run for Presidency
- present his candidacy for any political party
- give public speech

Right after that Dr. Karadžić told us that he will not be able to continue working on our business project and that he asked Prof. Biljana Plavšić to relieve him. He has asured all of us that he'll recommend us to her and that there is no reason why she won't continue working with us.

Dr. Karadžić has kept his promise and Prof. Biljana Plavšić has attended the second meeting of ours at which all four of us (Walter, Eric, Punisa and I) were introduced to her.

I agree to the release of this statement to any legal court, including the International War Crimes Tribunal in Hague.

Eye witness to the described events

.....

Victor Ben-Cnaan
22(a) Gershon Shofman str.
34987 Haifa
Israel
Phones: +972 54 620 5857 or +7920 425 2200

.....

Walter Hein
88 Emily Ave. Elmont
New York 11003-4201
U.S.A.
Phones: +1 516 352 96 22

ANNEX AE

STATEMENT

Under full moral and legal responsibility, I Puniša Lučić, born on September 28th 1957 in Sarajevo, municipality Centar, currently living in Pale, Bosnia and Herzegovina, reachable at the address Trebevićka 100 Pale, state the following:

During 1996 I was the employee of "GLOBE HOLDINGS INTERNATIONAL" Registered Office in Pale, Republika Srpska. On a number of occasions, my co-worker Mr. Victor Ben-Cnaan and I were invited to discuss business with the President of Republika Srpska, at that time, Mr. Radovan Karadžić.

In the evening of July 18th 1996, Mr. Victor Ben-Cnaan and I, with our American business partners Mr. Walter Hein, Mr. Eric Kaplan, had a meeting set with Mr. Karadžić. During the meeting, which took place in the Presidential conference room, Mr. Karadžić was interrupted and went to his office. After fifteen or twenty minutes Mr. Karadžić came back. He appologized for the interruption, saying that he was called to close the negotiations with Mr. Holbrooke. Mr. Karadžić then went on to say that he has agreed to retire from the position of the President of Republika Srpska and the position of party leadership, as well as all other public and political duties in Republika Srpska. We were shocked and further inquired on the details. Mr. Karadžić told us that the negotiations were led between him, Mr. Richard Holbrooke and Mr. Slobodan Milošević. In return for his retirement, Mr. Holbrook, who acted as the representative of US administration and the person authorized to speak for the International Contact Group and UN Security Council, provided him with strong guarantees that he would not be prosecuted by any legal court under their jurisdiction, including the International War Crimes Tribunal in Hague. We asked if this could be a trap and Mr. Karadžić replied that he would never accept the deal if he was not presented with truly serious and strong guarantees. Then Mr. Karadžić told us that he will be unable to continue working on our business project and that he asked Ms. Biljana Plavšić to continue working with us.

I agree to the release of this statement to any legal court, including the International War Crimes Tribunal in Hague.

Puniša Lučić
Trebevićka 100, 71420 Pale
Phone: +387 65 52 63 03

IF 95-5/18-PT 25845

IT-95-5/18-AR73.4
A139 - A121
17 August 2009

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-AR73.4

IN THE APPEALS CHAMBER

Before: An Appeals Chamber

Registrar: Mr. John Hocking

Date: 17 August 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

FIRST MOTION FOR ADMISSION OF ADDITIONAL MATERIAL:
HOLBROOKE AGREEMENT APPEAL

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

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic hereby moves, pursuant to Rule 115(A), to present a report of interview with Minister Carl Bildt as additional material on appeal.[1]

2. Rule 115(A) provides that:

> A party may apply by motion to present additional evidence before the Appeals Chamber. Such motion shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed, and must be served on the other party and filed with the Registrar not later than thirty days from the date for filing of the brief in reply, unless good cause or, after the appeal hearing, cogent reasons are shown for a delay. Rebuttal material may be presented by any party affected by the motion. Parties are permitted to file supplemental briefs on the impact of the additional evidence within fifteen days of the expiry of the time limit set for the filing of rebuttal material, if no such material is filed, or if rebuttal material is filed, within fifteen days of the decision on the admissibility of that material.

3. The Appeals Chamber has held that Rule 115 applies to interlocutory appeals as well as appeals from final judgement.[2]

Information from Minister Carl Bildt

4. The 13 August 2009 interview with Minister Carl Bildt by Dr. Karadzic's legal advisor demonstrates that the representation made by Richard Holbrooke that Dr. Karadzic would not be prosecuted at the ICTY was the culmination of a concerted and cohesive effort by the international community to get Dr. Karadzic to resign from office and withdraw from public life ahead of the 1996 Bosnian elections. As such, it lends support to Dr. Karadzic's position that Holbrooke possessed the apparent authority to make such a representation.

5. Minister Bildt was the High Representative for Bosnia during these events and spearheaded the effort to get Dr. Karadzic to resign. He revealed that those efforts began in the spring of 1996 and were taken in close consultation with the United Nations and the interested permanent member States of the U.N. Security Council, which sat on the Steering Board of the Peace Implementation Council, the oversight body of the Office of

[1] The report of interview is attached as Annex A. Minister Bildt's assent that it may be used in these proceedings is attached as Annex B.

[2] *Prosecutor v Haradinaj et al*, No. IT-04-84-AR65.1, *Decision on Motion for Clarification of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings and for an Extension of Time* (22 November 2005)

High Representative, and the Contact Group, responsible for Bosnia policy. As High Representative, Bildt reported to the UN Security Council.[3]

6. Minister Bildt revealed that he had consulted with the Steering Board, including representatives of the United Nations, the Contact Group, NATO, President Chirac of France, Prime Minister Major of the United Kingdom, U.S. Secretary of Defence William Perry, and Holbrooke, and had obtained their support for his efforts to force Dr. Karadzic to resign.[4]

7. Minister Bildt revealed that by the end of June 1996, after protracted negotiations, he had succeeded in negotiating, on behalf of the international community, the resignation of Dr. Karadzic as President of Republika Srpska. He did this by threatening to impose UN sanctions if Dr. Karadzic did not resign.[5]

8. This, however, did not turn out to be enough to satisfy the international community. Robert Frowick, the OSCE Elections Czar from the United States, decided that Dr. Karadzic must also resign as President of the SDS party. Therefore, additional negotiations were required with Dr. Karadzic.[6]

9. The matter was discussed at considerable length in a meeting of the interested permanent member States of the UN Security Council and other countries who made up the Contact Group at their meeting in London on 10 July 1996. It was decided to send Richard Holbrooke to continue the negotiations about Dr. Karadzic's future.[7]

10. When Holbrooke came to the Balkans on 16 July, he first stopped in Sarajevo and was briefed by High Representative Bildt, who brought him up to date on the negotiations. Having taken the handoff from the international community's representative in Bosnia, Holbrooke then proceeded to Belgrade. There he held the fateful meeting at which he obtained Dr. Karadzic's resignation as President of the SDS party and

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[3] Annex A at pages 1-2. See also Dayton Agreement, Annex 10, Article 1, para. 2: "In view of the complexities facing them, the Parties request the designation of a High Representative, to be appointed consistent with relevant United Nations Security Council resolutions, to facilitate the Parties' own efforts and to mobilize and, as appropriate, coordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement by carrying out, as entrusted by a U.N. Security Council resolution, the tasks set out below..."
[4] Annex A at page 2
[5] Annex A at page 2
[6] Annex A at page 3
[7] Annex A at page 3

withdrawal from public life by allegedly representing that Dr. Karadzic he would not be prosecuted at the ICTY.[8]

11. Bildt was not present at this meeting and Holbrooke later denied to him that he had made such a promise.[9] Nevertheless, the report of his interview demonstrates that the circumstances under which Holbrooke came to negotiate Dr. Karadzic's fate led Dr. Karadzic, and would lead a reasonable person, to believe that Holbrooke was acting on behalf of the international community and had the apparent authority to make such a representation.

12. Indeed, Bildt himself said that he did not know in what official capacity Holbrooke came back to the Balkans in July 1996, nor did it matter to him, since it was clear that Holbrooke was coming *de facto* in the same capacity as he had when he led the talks.[10] It was reasonable for Dr. Karadzic to have this same belief. Holbrooke no more spoke for only the United States than Bildt spoke only for Sweden.

Unavailability before the Trial Chamber

13. A party seeking to admit additional material on appeal is required to establish that the material itself was not available during the proceedings before the Trial Chamber, and could not have been discovered through the exercise of due diligence.[11]

14. Dr. Karadzic made every effort to interview Minister Carl Bildt since March 2009. He commenced proceedings before the Trial Chamber to compel the interview and the Trial Chamber obtained the assurance of Minister Bildt that he would make himself available for an interview. However, much to the chagrin of Dr. Karadzic and the Trial Chamber, Minister Bildt never found time in his busy schedule to submit to an interview until 13 August 2009.

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[8] Annex A at page 3
[9] Annex A, pages 3-4
[10] Annex A, page 3
[11] *Prosecutor v Galic*, No. IT-98-29-A, *Decision on Defence Second Motion for Admission of Additional Evidence Pursuant to Rule 115* (21 March 2005) at para. 9; *Prosecutor v Galic*, No. IT-98-29-A *Decision on First and Third Rule 115 Defence Motions to Present Additional Evidence before the Appeals Chamber* (30 June 2005) at para 13; *Prosecutor v Natelic and Martinovic*,, No. It-98-34-A, *Decision on Natelic's Amended Second Rule 115 Motion and Third Rule 115 Motion to Present Additional Evidence* (7 July 2005) at para. 11; *Prosecutor v Mejakic et al*, No. IT-02-65-AR11*bis*.1, *Decision on Joint Defence Motion to Admit Additional Evidence Before the Appeals Chamber Pursuant to Rule 115* (16 November 2005) at para. 8; *Prosecutor v Nikolic*, No. IT-02-60-1/A, *Decision on Motion to Admit Additional Evidence* (9 December 2004) at para. 21

15. The circumstances of the efforts to interview Minister Bildt were set forth in the *Motion for Extension of Time* (23 July 2009) and supplemented in Confidential Annex B to the *Reply Brief: Appeal of Decision on Holbrooke Agreement Motion* (10 August 2009), which are incorporated by reference herein.

16. The Trial Chamber itself, in the Impugned Decision, declined to wait for Minister Bildt to submit to an interview, but recognized that the information obtained from him might be used in the appeal from its decision.[12]

17. Therefore, Dr. Karadzic has demonstrated that the interview report of Minister Carl Bildt was not available before the Trial Chamber and could not have been obtained through the exercise of due diligence.

Substantive Requirements for Admission of Additional Material

18. The Appeals Chamber has held that a party seeking to admit additional material on appeal must (1) identify each ground of appeal to which the additional material relates; (2) clearly describe the relationship of the material to the respective ground of appeal; (3) identify with precision the ruling of the Trial Chamber to which the additional material relates: and (4) demonstrate the impact of the additional material on the Trial Chamber's ruling.[13]

19. Dr. Karadzic can satisfy each of those requirements.

Identification of Grounds of Appeal

20. The additional material relates to the following grounds of appeal:

(A) in refusing to hold an evidentiary hearing, professing to accept the facts proferred by Dr. Karadzic as true, but then discounting them.

(C) in failing to take into account relevant considerations such as (1) manifestations of the U.N. Security Council granting authority to Holbrooke; (2) the fact that it was the Dayton Agreement provision prohibiting an ICTY fugitive from holding public office that was the basis for the agreement; (3) the fact that Holbrooke was threatening the imposition of U.N. Security Council sanctions if Dr. Karadzic did not resign; and (4) the fact that Holbrooke was back in the region with the

[12] *Decision on the Accused's Holbrooke Agreement Motion* (8 July 2009) at para. 90

[13] *Prosecutor v Natelic and Martinovic*,, No. It-98-34-A, *Decision on Natelic's Amended Second Rule 115 Motion and Third Rule 115 Motion to Present Additional Evidence* (7 July 2005) at para. 15; *Prosecutor v Mejakic et al*, No. IT-02-65-AR11*bis*.1, *Decision on Joint Defence Motion to Admit Additional Evidence Before the Appeals Chamber Pursuant to Rule 115* (16 November 2005) at para. 10

blessing of the Contact Group, comprised of the permanent members of the U.N. Security Council.

(E) in making errors as to the facts that (1) Dr. Karadzic's agents did not believe that Holbrooke was acting on behalf of the U.N. Security Council; and (2) Holbrooke had resigned from the Department of State following Dayton and had not been involved in Bosnian matters since.

Relationship of the Material to the Ground of Appeal

21. The interview report of Minister Bildt relates to the Trial Chamber's error in denying the motion without an evidentiary hearing (Ground A) because it provides facts which lend credence to Dr. Karadzic's reasonable belief that Richard Holbrooke had the apparent authority to represent that Dr. Karadzic would not be prosecuted at the ICTY.

22. The interview report of Minister Bildt relates to the Trial Chamber's error in failing to take into account relevant considerations such as (1) manifestations of the U.N. Security Council granting authority to Holbrooke; (2) the fact that it was the Dayton Agreement provision prohibiting an ICTY fugitive from holding public office that was the basis for the agreement; (3) the fact that Holbrooke was threatening the imposition of U.N. Security Council sanctions if Dr. Karadzic did not resign; and (4) the fact that Holbrooke was back in the region with the blessing of the Contact Group, comprised of the permanent members of the U.N. Security Council (Ground C) because it provides further evidence in support of each of these points.

23. Specifically, Minister Bildt's interview report revealed the close links between the UN Security Council and its member States and the efforts to get Dr. Karadzic to resign—the culmination of which was the meeting with Holbrooke.[14] Minister Bildt confirmed that it was the Dayton provision prohibiting an ICTY fugitive from holding public office that was the basis for the demand that Dr. Karadzic resign.[15] He also confirmed that both he and Holbrooke threatened the imposition of U.N. Security Council sanctions if Dr. Karadzic did not resign.[16] Finally, his interview report confirmed that Holbrooke was back in the region with the blessing of the Contact Group, comprised of the interested permanent members of the U.N. Security Council.[17]

[14] Annex A at pages 2-3
[15] Annex A at page 2
[16] Annex A at pages 2-3
[17] Annex A at page 3

24. The interview report of Minister Bildt also relates to the Trial Chamber's factual error in finding that Holbrooke had resigned from the Department of State following Dayton and had not been involved in Bosnian matters since. (Ground E) Minister Bildt indicated that he met with Holbrooke in June 1996 in Toronto, Canada at which they tried to persuade U.S. Secretary of Defence William Perry to take military action to arrest Dr. Karadzic and other ICTY fugitives in Bosnia.[18]

25. Therefore, Dr. Karadzic has satisfied the requirement that the additional material relate to his grounds of appeal.

Identification of Findings to Which Additional Material Relates

26. The additional material sought to be admitted relates to the following matters in the Impugned Decision:

> --refusing to hold an evidentiary hearing because assuming all those facts were true, the motion could not succeed as a matter of law.[19]
>
> --the requirements of the doctrine of apparent authority were not met[20]
>
> -- Dr. Karadzic's reliance on Holbrooke's earlier involvement in Dayton as a basis for his apparent authority was "questionable" considering that Holbrooke had resigned from the Department of State following Dayton and had since then not been involved in Bosnian matters until July 1996[21]
>
> --given all the circumstances, it cannot be said that the Accused could reasonably believe that Holbrooke had any authority to grant him immunity from prosecution by this Tribunal[22]
>
> -- Dr. Karadzic had failed to show that Holbrooke acted with the apparent authority of the UNSC in July 1996.[23]

Impact of the Additional Material on the Impugned Decision

27. The interview report of Minister Bildt provides further support for Dr. Karadzic's position that the Trial Chamber erred in failing to hold an evidentiary hearing and in concluding that the requirements of the doctrine of apparent authority were not met.

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[18] Annex A at page 2
[19] Impugned Decision at para 46
[20] Impugned Decision at para. 69
[21] Impugned Decision at para 71
[22] Impugned Decision at para. 74
[23] Impugned Decision at para 79

28. The information provided by Minister Bildt demonstrates that, considering the circumstances, Dr. Karadzic was reasonable in believing that Holbrooke had the apparent authority to represent that Dr. Karadzic would not be prosecuted at the ICTY.

29. First, Minister Bildt confirmed that the source of Dr. Karadzic's obligation to resign was his ICTY indictment. Therefore, it was reasonable for Dr. Karadzic to believe that those seeking to enforce this obligation also had the authority to negotiate on the subject of that indictment.

30. Second, Minister Bildt confirmed that the enforcement of Dr. Karadzic's obligation to resign was through United Nations Security Council sanctions, which Bildt expressly threatened to trigger, and which he had the actual authority to trigger. Therefore, it was reasonable for Dr. Karadzic to believe that those seeking to impose UN sanctions also had the authority to negotiate on the UN's indictment.

31. Third, Minister Bildt confirmed the close coordination among UN Security Council permanent members and the effort to get Dr. Karadzic to resign. During his efforts to obtain Dr. Karadzic's resignation, he worked closely with UN Security Council member States, which controlled bodies such as the Steering Board and Contact Group, as well as the UN personnel in Bosnia such as Special Representative Iqbahl Riza. Therefore, it was reasonable for Dr. Karadzic to believe that those seeking his resignation had the authority to speak for the UN Security Council.

32. Fourth, Minister Bildt confirmed that Holbrooke's *de facto* authority had nothing to do with his title or absence of permanent employment with the United States Department of State, but stemmed from his position as head of the Dayton talks. Those talks resulted in a number of agreements which committed the UN Security Council to take certain actions, which it dutifully did. Therefore, it was reasonable for Dr. Karadzic to believe that Holbrooke's lack of formal title did not diminish his authority to enter into agreements which would be honored by the Security Council.

33. In sum, the information from Minister Bildt has a direct impact on the central issue decided by the Trial Chamber—the apparent authority of Richard Holbrooke.

Second Motion for Admission of Additional Material

34. As indicated in his reply brief, Dr. Karadzic is in the process of obtaining additional material from the United Nations, has identified material which is relevant to

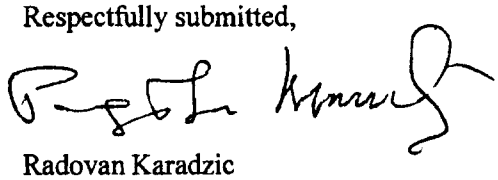
his appeal, and intends to file a motion for admission of additional material as soon as he has possession of that material and permission to use it.

35. On 14 August 2009, Dr. Karadzic was notified by the United Nations that the remainder of the relevant material was now available for review by his defence team, and that the material for which copies had already been requested was being processed by the relevant UN sections.[24]

36. Dr. Karadzic's legal advisor is now scheduled to inspect the remaining material on 26-27 August in New York. Dr. Karadzic intends to file his Second Motion for Admission of Additional Material as soon thereafter as possible. He requests that the Appeals Chamber refrain from deciding this appeal until he has had the opportunity to file his motion to admit the material from the UN archives.

Word count: 2974

Respectfully submitted,



Radovan Karadzic

[24] A copy of the communication from UN headquarters is attached as Annex C.

ANNEX "A"

No. IT-95-5/18-AR73.4

PETER ROBINSON
International Criminal Law
P.O. Box 1844
Santa Rosa, California 95402
USA
1 (707) 575-0540
E-mail: peter@peterrobinson.com

REPORT OF INTERVIEW

CARL BILDT, Foreign Minister of Sweden, was interviewed by telephone on 13 August 2009 at 1400 hours by Peter Robinson, legal advisor for Radovan Karadzic, pursuant to Rule 70 of the ICTY Rules of Procedure and Evidence.

BILDT advised that the Office of High Representative for Bosnia was established as part of Dayton Agreement in November 1995 and he was officially appointed to that position at Peace Implementation Conference in London in early December, 1995.

BILDT said that the United Nations Security Council endorsed both the creation of the post and his appointment.

BILDT said that during his tenure as High Representative he worked very closely with representatives of the international community. In fact, it was his role to coordinate the activities of the various primarily civilian international entities with an interest in Bosnia.

BILDT advised that he reported to the UN Security Council and worked very closely with UN personnel in Bosnia, including the Special Representative of the Secretary General Iqbahl Riza.

BILDT advised that the High Representative also worked closely with the Steering Board of the Peace Implementation Council for Bosnia. That Board included representatives of all permanent Security Council members except China, as well as some other countries. The United Nations also participated in the Steering Board meetings.

BILDT advised that the Contact Group also continued to function during this time, although not as actively as it had done prior to Dayton. While he was High Representative, he met with the Contact

Group, which included representatives of all of the permanent Security Council representatives except China, as well as some other countries.

BILDT advised that the Dayton Agreement contained a provision which prevented a person indicted by ICTY from holding public office. In the spring of 1996, particularly after Radovan Karadzic deposed Kasagic as Prime Minister of Republika Srpska, he began taking steps to enforce this provision and force Karadzic to resign as President of Republika Srpska.

BILDT advised that he did not take this action unilaterally, but had done so in close consultation with international community. He confirmed, as he had noted in his book, that he had consulted the Steering Board in April 1996 and obtained their support for this strategy.

BILDT also confirmed the account in his book that he had enlisted the support of Janvier Solana of NATO, the members of the Contact Group, President Chirac of France, Prime Minister Major in this effort. He recalled a breakfast meeting in Toronto in June 1996 at which he and Richard Holbrooke had attempted to urge U.S. Secretary of Defence William Perry to undertake military operations to arrest ICTY fugitives like Karadzic.

BILDT said that as High Representative, he had power to trigger UN sanctions in the event of non compliance with Dayton Agreement—and that those sanctions would take effect automatically unless acted upon by Security Council. He threatened to use this power if Karadzic did not resign by end of June 1996.

BILDT confirmed that Karadzic did ultimately provide a letter at the end of June 1996 in which he resigned as President of RS and transferred all powers and duties to Biljana Plavsic. He recalled his comment to the news media that Karadzic could call himself emperor of China or Donald Duck so long as he no longer carried out the functions of the job.

BILDT said that he had tried to persuade Karadzic to voluntarily surrender to the ICTY in talks that he held with Momcilo Krajisnik around that time, but that it never came to fruition. He said that the option of arresting Karadzic was not available because of Mogadishu—the military feared being drawn into a violent confrontation during an arrest operation.

BILDT said that in consultation with the international community it had been decided that a step-by-step approach would be taken in which Karadzic would first be required to resign from office and not participate in the elections.

BILDT said that after he had arranged for Karadzic to resign as President of Republika Srpska, Robert Frowick announced that he would not allow the SDS party to participate in the September elections unless Karadzic resigned as President of the party. BILDT said that the Dayton Agreement could be interpreted in different ways on this point, and that he himself did not take a position on that. Nevertheless, it created a problem that had to be sorted out.

BILDT advised that he attended a meeting of the Contact Group in London on 10 July. As he described in his book, there was considerable discussion of the Karadzic problem. It was decided by Washington that Holbrooke would return to the Balkans.

BILDT said that he did not know in what official capacity Holbrooke came back to the Balkans in July 1996, nor did it matter to him, since it was clear that Holbrooke was coming de facto in the same capacity as he had when he led the talks.

BILDT recalled meeting with Holbrooke in Bildt's office in Sarajevo in July 1996 before Holbrooke went on to meet Milosevic. He briefed Holbrooke on the details of what had been done up until then. He was not aware of the specific discussions Holbrooke had in Washington prior to his arrival about whether he was authorized to threaten the imposition of UN sanctions in meetings with Milosevic. However, knowing Holbrooke, he would not be surprised if he would have used the sanctions anyway to pressure Milosevic into pressuring the Bosnian Serbs.

BILDT advised that he worked closely with Holbrooke and that they had a common strategy and goals as far as Karadzic was concerned. In the absence of any military will to arrest Karadzic, both he and Holbrooke were willing to use the step-by-step approach to get Karadzic out of office and political functions.

BILDT advised that he was not present for Holbrooke's other meetings in Sarajevo, such as with President Izetbegovic.

BILDT said that he was not present with Holbrooke in Belgrade on 18-19 July 1996 when the agreement with Karadzic was made, nor

was he consulted by telephone during the meeting. He believes that he first heard of the agreement from the public announcement that Holbrooke made after the agreement had been reached in Belgrade.

BILDT advised that he does not recall speaking with Holbrooke in detail about the meeting. When asked how he thought Holbrooke was able to manage to get Karadzic to resign as President of SDS and withdraw completely from public life when he had not been able to get such an agreement, BILDT said that he believed that Holbrooke had applied heavy pressure on Milosevic.

BILDT said that he did not really suspect that Holbrooke had promised Karadzic something more. Holbrooke has always denied that he promised Karadzic that he would not be prosecuted in The Hague. BILDT noted that he and Holbrooke around this time had several conversations on how to get political agreements in key capitals for a military operation to arrest Karadzic.

BILDT had been sent the 22 July 1996 telegram of Ambassador Menzies to review prior to our interview, and he indicated that he had had an opportunity to read it. When asked what might have been said at Holbrooke meeting that would have led Krajisnik and Buha to believe that Hague would disappear, BILDT replied that this position had from time to time been expressed by the Bosnian Serbs, and even Milosevic, and represented a position that they had occasionally talked themselves into.

BILDT noted that while he had met with Krajisnik very frequently during this period, as well as with Milosevic, neither of them had ever mentioned any agreements with Karadzic along the lines alleged.

BILDT had also been sent the statement of Bosnian Ambassador Muhamed Sacirbey to review prior to our interview, and he indicated that he had an opportunity to read it. When asked what might have led Ambassador Frowick to tell Sacirbey on the night of 19 July that Holbrooke had agreed that Karadzic would not be prosecuted at ICTY, BILDT noted that relations between Holbrooke and Frowick had been frosty and that Frowick may have been upset with Holbrooke for taking the glory in that situation.

BILDT could not recall when he first heard of the allegation that Holbrooke had promised Karadzic that he would not be prosecuted at ICTY. He believed that it was after he left Bosnia, but certainly well before Karadzic had been arrested. He recalled that there were stories

about it in the media, most of them originating with Ambassador Sacirbey as he recalled.

BILDT said that although he speaks with Holbrooke frequently now that Holbrooke is dealing with Pakistan and Afghanistan, and in fact spoke with him yesterday, he does not recall any conversation with Holbrooke since Karadzic's arrest concerning Karadzic's allegations that Holbrooke promised that he would not be prosecuted at the ICTY.

BILDT was asked about the June 1997 visit by United States Secretary of State Madeline Albright to Bosnia and her request to Biljana Plavsic to persuade Karadzic to leave Republika Srpska at that time. He indicated that he vaguely recalled that event, as he described it in his book, but that he believes that he was out of the country when Albright visited and did not meet with her directly.

BILDT indicated that he had re-read a few pages of the Swedish version of his book this morning to refresh his memory of these events, and that the Swedish version is slightly more detailed than the English version. I thanked Minister Bildt for taking the time to do that and for his cooperation during the interview. In response to his question, I told him I was satisfied that the interview over the telephone had accomplished my purposes.

BILDT was advised that I would be writing a summary of what he had said during the interview and would send it to him for his review and, if he consented, to be used in the Karadzic proceedings. He agreed to receive the summary and let me know.

The interview concluded at approximately 14:30, taking about one-half hour.

ANNEX "B"

14 August 2009

Dear Mr Robinson,

Here your summary back with some minor changes and additions from my side. I have no objections to you filing it in an official public filing with ICTY.

Yours,

Carl Bildt

---

13 August 2009

> Dear Minister Bildt,
>
> Thank you for your time and courtesy to me this afternoon.
>
> I have drafted a summary of what I understood you to tell me during
> our conversation. I would appreciate it if you could review it, make
> any changes you think are appropriate, and let me know if I have your
> consent to submit it to the ICTY in an official public filing in
> connection with the Holbrooke Agreement motion. It is not necessary
> for you to sign it if you just send me an accompanying e-mail with
> your changes, if any, and your OK.
>
> I did this immediately after our conversation because I know you will
> soon start traveling again and will get very busy. So if you could
> turn your attention to this before the deluge resumes, you will no
> longer have to be bothered with the Radovan Karadzic case.
>
> Yours truly,
>
> Peter Robinson
> Legal Advisor for Radovan Karadzic

ANNEX "C"

4 August 2009

Dear Remi,

Thank you again for all your help to me during my review of the archives last week.

I am attaching a letter Dr. Karadzic sent to Patricia O'Brien for your information. Please note that he is requesting that the copies be processed without waiting for me to return to inspect the remaining documents.

I would like to return the week of 24 August to review the Secretary General's documents and spend more time on the documents already available for review. Can you please try and get the approval for me to look at the Secretary General's documents as soon as you can?

Also, the inventory I was provided listed a folder called "Holbrooke Negotiations" in accession #1999/0098. However, the file was missing, That is of much importance to Dr. Karadzic and I would appreciate it if you could revert to the contributing office and ask them to find that file.

Thank you very much for all your help and I look forward to seeing you soon.

Yours truly,

Peter Robinson
Legal Advisor for Radovan Karadzic

---

14 August 2009

Dear Mr. Robinson,

In reference to your email below, I wish to inform you that the relevant archives of the former Secretary-General are ready for inspection and you may consult them during your proposed visit on 24 August 2009. As per your request, you may also further consult the DPA and DPKO documents that were already made available to you during your prior visit. Please note that the missing file named "Holbrooke Negotiations" has been retrieved and will be available for your consultation.

Finally, the relevant substantive Offices have commenced the process of reviewing the copies of the documents you have identified for disclosure. As soon as the review is completed we will be able to proceed with the release of the documents, subject to the conditions set out in the Legal Counsel's letter to Mr. Karadzic dated 18 June 2009.

Kind regards,

Bianca E. Suciu
Legal Officer
Office of the Legal Counsel

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-AR73.4

IN THE APPEALS CHAMBER

Before: Judge Mehmet Guney
Judge Fausto Pocar
Judge Liu Daqun
Judge Andresia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Date: 5 October 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

SECOND MOTION FOR ADMISSION OF ADDITIONAL MATERIAL: HOLBROOKE AGREEMENT APPEAL

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

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic hereby moves, pursuant to Rule 115(A), to present information obtained from the United Nations Archives as additional evidence on appeal.[1]

2. Rule 115(A) provides that:

> A party may apply by motion to present additional evidence before the Appeals Chamber. Such motion shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed, and must be served on the other party and filed with the Registrar not later than thirty days from the date for filing of the brief in reply, unless good cause or, after the appeal hearing, cogent reasons are shown for a delay. Rebuttal material may be presented by any party affected by the motion. Parties are permitted to file supplemental briefs on the impact of the additional evidence within fifteen days of the expiry of the time limit set for the filing of rebuttal material, if no such material is filed, or if rebuttal material is filed, within fifteen days of the decision on the admissibility of that material.

3. The Appeals Chamber has held that Rule 115 applies to interlocutory appeals as well as appeals from final judgement.[2]

Information from the United Nations Archives

4. On 1 October 2009, Dr. Karadzic received a set of documents from the United Nations Archives.[3] These documents demonstrate that the United Nations played an important role in the events leading up to the Holbrooke Agreement. The activities of U.N. representatives led Dr. Karadzic to reasonably believe that when Richard Holbrooke arrived as the latest interlocutor to negotiate Dr. Karadzic's resignation, he had the apparent authority of the United Nations.

Unavailability before the Trial Chamber

5. A party seeking to admit additional material on appeal is required to establish that the material itself was not available during the proceedings before the Trial Chamber, and could not have been discovered through the exercise of due diligence.[4]

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[1] The documents are attached as annexes to this motion.

[2] *Prosecutor v Haradinaj et al*, No. IT-04-84-AR65.1, *Decision on Motion for Clarification of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings and for an Extension of Time* (22 November 2005)

[3] The transmittal letter is attached as Annex L

[4] *Prosecutor v Galic*, No. IT-98-29-A, *Decision on Defence Second Motion for Admission of Additional Evidence Pursuant to Rule 115* (21 March 2005) at para. 9; *Prosecutor v Galic*, No. IT-98-29-A *Decision on First and Third Rule 115 Defence Motions to Present Additional Evidence before the Appeals Chamber*

6. Dr. Karadzic made every effort to obtain the documents from the United Nations since May 2009. The circumstances of the efforts to obtain the documents were set forth in the *Motion for Extension of Time* (23 July 2009)[5], supplemented in Confidential Annex B to the *Reply Brief: Appeal of Decision on Holbrooke Agreement Motion* (10 August 2009)[6], *First Motion for Admission of Additional Material: Holbrooke Agreement Appeal* (17 August 2009)[7], *Reply Brief: Motion for Admission of Additional Material: Holbrooke Agreement Appeal* (31 August 2009)[8], and *Request for Delay in Decision Pending Second Motion for Admission of Additional Material: Holbrooke Agreement Appeal* (30 September 2009), which are incorporated by reference herein.

7. The delay was attributable to the procedures of the United Nations is approving Dr. Karadzic's access to the documents, collecting them from its various organs, making them available for inspection, reviewing the documents for which copies were requested, providing clearance for their disclosure, and finally transmitting the copies to Dr. Karadzic.

8. The Trial Chamber itself, in the Impugned Decision, declined to wait for receipt of the documents, but recognized that the information obtained might be used in the appeal from its decision.[9]

9. Therefore, Dr. Karadzic has demonstrated that the documents from the UN Archives were not available before the Trial Chamber and could not have been obtained through the exercise of due diligence.

10. Likewise, despite the best efforts of Dr. Karadzic and his defence team, the UN documents were not available during the 30 day period following the filing of Dr.

(30 June 2005) at para 13; *Prosecutor v Natelic and Martinovic,*, No. It-98-34-A, *Decision on Natelic's Amended Second Rule 115 Motion and Third Rule 115 Motion to Present Additional Evidence* (7 July 2005) at para. 11; *Prosecutor v Mejakic et al*, No. IT-02-65-AR11*bis*.1, *Decision on Joint Defence Motion to Admit Additional Evidence Before the Appeals Chamber Pursuant to Rule 115* (16 November 2005) at para. 8; *Prosecutor v Nikolic*, No. IT-02-60-1/A, *Decision on Motion to Admit Additional Evidence* (9 December 2004) at para. 21

[5] Paras. 30-33

[6] Paras 26-28

[7] Paras. 34-36

[8] Paras. 10-11

[9] *Decision on the Accused's Holbrooke Agreement Motion* (8 July 2009) at para. 90

Karadzic's reply brief, and therefore good cause exists for consideration of this motion filed after the expiration of that period.

Substantive Requirements for Admission of Additional Material

11. The Appeals Chamber has held that a party seeking to admit additional material on appeal must (1) identify each ground of appeal to which the additional material relates; (2) clearly describe the relationship of the material to the respective ground of appeal; (3) identify with precision the ruling of the Trial Chamber to which the additional material relates: and (4) demonstrate the impact of the additional material on the Trial Chamber's ruling.[10]

12. Dr. Karadzic can satisfy each of those requirements.

The Documents Sought to be Admitted

13. The following documents are sought to be admitted by this motion:

(A)	2 June 1996	Outgoing Code Cable from Geoff Beaumont, UN Civil Affairs Liaison in Pale to Special Representative of the UN Secretary General for Bosnia Iqbahl Riza ("SRSG"), concerning his meeting with Mr. Nikolic, a personal friend of Dr. Karadzic. The cable indicates that Nikolic discussed Dr. Karadzic's pending resignation with Beaumont and requested him to relay information to the UN SRSG.
(B)	4 June 1996	Report of Meeting of SRSG Riza with Momcilo Krajisnik. The report indicates that Mr. Krajisnik assessed the UN role as important and significant. The parties discussed the problems related to the ICTY's indictments against Dr. Karadzic and General Mladic.
(C)	4 June 2006	Report of Meeting of SRSG Riza with Republika Srpska Prime Minister Klickovic and Foreign Minister Buha. The report indicates that the parties discussed Dr. Karadzic's ICTY indictment and how it affected the upcoming elections.

[10] *Prosecutor v Natelic and Martinovic,*, No. It-98-34-A, *Decision on Natelic's Amended Second Rule 115 Motion and Third Rule 115 Motion to Present Additional Evidence* (7 July 2005) at para. 15; *Prosecutor v Mejakic et al*, No. IT-02-65-AR11*bis*.1, *Decision on Joint Defence Motion to Admit Additional Evidence Before the Appeals Chamber Pursuant to Rule 115* (16 November 2005) at para. 10

(D)	18 June 2006	Report of Meeting of UN Liaison Beaumont with Republika Srpska Prime Minister Klickovic and Foreign Minister Buha The report indicates that the parties discussed Karadzic's influence on the upcoming elections and the devolvement of his power as RS President as well as he effect of the ICTY indictments.
(E)	5 July 1996	Report of Meeting of UN Liaison Beaumont with Republika Srpska Foreign Minister Buha The report indicates that the parties discussed Karadzic's position as President of RS, and a "deal" whereby Karadzic would "stand down".[11]
(F)	10 July 1996	Report of Meeting of UN Liaison Beaumont with Republika Srpska Vice Premier Velibor Ostojic. The report indicated that the Vice Premier requested the UN to protect the RS from attempts to remove Karadzic as President of SDS party and discussed the consequences of continued pressures against Karadzic.[12]
(G)	10 July 1996	Press Release by Contact Group after meeting in London in which they called for the removal of Karadzic from power and influence. This was the meeting at which it was decided that Holbrooke would return to the Balkans to negotiate Karadzic's future.
(H)	12 July 1996	Outgoing Code Cable from Riza to Koffi Annan concerning "Karadzic" This document indicates that the UN had publicly stated on 9 July that Karadzic could not participate in any role in the upcoming elections. It also confirms the UN's role as "part of the overall international political engagement."[13]
(I)	13 July 1996	Report of Meeting of UN Liaison Beaumont with Karadzic Adviser John Zametica.

[11] Paras 14 and 17
[12] Paras 6 and 8
[13] Paras 2 and 5

The report indicates they discussed a deal between Karadzic and ICTY in which Karadzic might go into "exile".

(J) 13 July 1996 Report of Meeting of UN Liaison Beaumont with Republika Srpska Foreign Minister Buha

The report discussed the outcome of the Contact Group meeting in London and a possible resolution of the issue concerning Karadzic's resignation. The report indicated that "the RS leadership had asked him to convey their views to the SRSG."[14]

(K) 29 July 1996 Memorandum of Legal Advisor Peter Robinson to Radovan Karadzic concerning review of documents at UNHQ Archives

This memorandum describes a document which was requested for disclosure, but not included by the UN in the copies provided to Dr. Karadzic, perhaps inadvertently.[15]

The document is a report of Meeting of UN Liaison Beaumont with Republika Srpska Foreign Minister Buha on 29 July 1996 in which Buha alluded to an oral agreement with Holbrooke about The Hague. Buha said something to the effect that Bildt and some others claimed to act on behalf of the international community, but it was only Holbrooke who was able to deliver on his promises.

Identification of Grounds of Appeal

14. The additional material relates to the following grounds of appeal:

(A) in refusing to hold an evidentiary hearing, professing to accept the facts proferred by Dr. Karadzic as true, but then discounting them.

(C) in failing to take into account relevant considerations such as (1) manifestations of the U.N. Security Council granting authority to Holbrooke; (2) the fact that it was the Dayton Agreement provision prohibiting an ICTY fugitive from holding public office that was the basis for the agreement; (3) the fact that Holbrooke was threatening the imposition of U.N. Security Council sanctions if Dr. Karadzic did not

[14] Paras 1,2,and 12

[15] Should the Appeals Chamber find it important to obtain the original document, it is respectfully requested to issue a request for its production to the United Nations pursuant to Rule 54 *bis* and Article 29. Because of the delay in transmitting the documents to Dr. Karadzic, it was too late for Dr. Karadzic to make follow-up inquiries to locate this document before a decision by the Appeals Chamber on the appeal.

resign; and (4) the fact that Holbrooke was back in the region with the blessing of the Contact Group, comprised of the permanent members of the U.N. Security Council.

(E) in making errors as to the facts that (1) Dr. Karadzic's agents did not believe that Holbrooke was acting on behalf of the U.N. Security Council; and (2) Holbrooke had resigned from the Department of State following Dayton and had not been involved in Bosnian matters since.

Relationship of the Material to the Ground of Appeal

15. The UN documents relate to the Trial Chamber's error in denying the motion without an evidentiary hearing (Ground A) because it provides facts which lend credence to Dr. Karadzic's reasonable belief that Richard Holbrooke had the apparent authority to represent that Dr. Karadzic would not be prosecuted at the ICTY.

16. The UN documents relate to the Trial Chamber's error in failing to take into account relevant considerations such as (1) manifestations of the U.N. Security Council granting authority to Holbrooke; (2) the fact that it was the Dayton Agreement provision prohibiting an ICTY fugitive from holding public office that was the basis for the agreement; (3) the fact that Holbrooke was threatening the imposition of U.N. Security Council sanctions if Dr. Karadzic did not resign; and (4) the fact that Holbrooke was back in the region with the blessing of the Contact Group, comprised of the permanent members of the U.N. Security Council (Ground C) because it provides further evidence in support of each of these points.

17. Specifically, the UN documents reveal the close links between the UN and the efforts to get Dr. Karadzic to resign—the culmination of which was the meeting with Holbrooke.

18. The UN documents also relate to the Trial Chamber's factual error in finding that Dr. Karadzic's agents did not believe that Holbrooke was acting on behalf of the U.N. Security Council. (Ground E) The documents indicate that UN officials discussed the conditions of Dr. Karadzic's resignation with Prime Minister Klickovic, Foreign Minister Buha, Vice Premier Ostojic and two advisers to Dr. Karadzic. In addition, the missing 29 July 1996 report indicates that Buha viewed Holbrooke as the one representative of the international community who actually had the authority to accomplish something.

19. Therefore, Dr. Karadzic has satisfied the requirement that the additional material relate to his grounds of appeal.

Identification of Findings to Which Additional Material Relates

20. The additional material sought to be admitted relates to the following matters in the Impugned Decision:

--refusing to hold an evidentiary hearing because assuming all those facts were true, the motion could not succeed as a matter of law.[16]

--the requirements of the doctrine of apparent authority were not met[17]

--given all the circumstances, it cannot be said that the Accused could reasonably believe that Holbrooke had any authority to grant him immunity from prosecution by this Tribunal[18]

-- Dr. Karadzic had failed to show that Holbrooke acted with the apparent authority of the UNSC in July 1996.[19]

Impact of the Additional Material on the Impugned Decision

21. The UN documents provide further support for Dr. Karadzic's position that the Trial Chamber erred in failing to hold an evidentiary hearing and in concluding that the requirements of the doctrine of apparent authority were not met.

22. The information contained in the UN documents demonstrates that, considering the circumstances, Dr. Karadzic was reasonable in believing that Holbrooke had the apparent authority to represent that Dr. Karadzic would not be prosecuted at the ICTY.

23. The information demonstrates the intimate involvement of the UN in the effort to get Dr. Karadzic to resign. Therefore, it was reasonable for Dr. Karadzic to believe that those seeking his resignation, including Holbrooke, were working together and that Holbrook had the authority to speak for the UN.

24. In sum, the information from the UN documents has a direct impact on the central issue decided by the Trial Chamber—the apparent authority of Richard Holbrooke. They confirm that the Trial Chamber erred in finding, without holding an

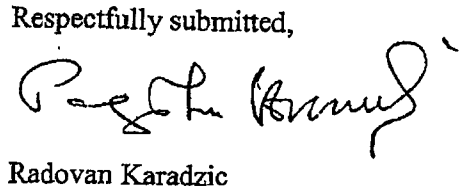
[16] Impugned Decision at para 46
[17] Impugned Decision at para. 69
[18] Impugned Decision at para. 74
[19] Impugned Decision at para 79

evidentiary hearing, that Dr. Karadzic could not reasonably believe that Holbrooke was acting with the authority of the UN when he promised that Dr. Karadzic would not be prosecuted at the ICTY.

25. Dr. Karadzic requests that the additional evidence be admitted, and that the decision of the Trial Chamber be reversed.

Word count: 2576

Respectfully submitted,



Radovan Karadzic

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ANNEX "A"

OUTGOING CODE CABLE
MOST IMMEDIATE

TO : RIZA, SRSG UNMIBH, SARAJEVO (ONLY) RSN 004

FROM : BEAUMONT, CIVIL AFFAIRS LIAISON OFFICER, PALE

NUMBER : P/009

DATE : 2 June 1996

SUBJECT : KARADZIC

'96 JUN -2 11:00 503

1. Last night at his request I met Mr. Nikolic, personal friend of Karadzic and General Manager of 'Oslobodenje.' A separate cable will be sent concerning the bulk of the conversation; this cable relates only to the current position of Karadzic.

2. Nikolic related that when Krajisnik and "others" met Milosevic in Belgrade earlier this week, tremendous pressures were exerted upon the RS leadership for Karadzic to step down. Threats apparently included total sanctions imposition by the FRY "*in the interests of all the Serb nation.*" Seemingly bowing to the inevitable, Karadzic agreed but sought written guarantees about his personal future; these were not forthcoming from Milosevic. The Belgrade meeting concluded with strained relationships ("*there was blood on the carpet*"). Nikolic felt that I should be aware, before Milosevic announced it in Geneva, that "*the big chief*" was about to step down and fully relinquish his position. He said that Karadzic would be remembered by all Serbs, not as their first president, but as the man who led them to independence and statehood.

3. After my meeting with Nikolic, he was going to meet with Karadzic and would telephone me the latest information for me to relay to SRSG. Late last night he phoned to say that the discussions were still ongoing. This morning we discussed matters again when he said, contrary to his expectations, no agreement had been reached. A number of phone calls had apparently been made to international figures, but no assurances or deal (public or otherwise) could be obtained for Karadzic. He fears that Milosevic intends to make an announcement in Geneva, not agreed by the RS or Karadzic, and thus place the onus upon the international community. For the moment, as far as the RS is concerned, the Karadzic-Plasvic relationship is still extant. He undertook to relay any developments to me.

Comment:

4. The relaying of such intimate information to me is unusual and an alternate motive should be considered. Perhaps this is an attempt to use all possible avenues to try to stave-off pressures to reimpose sanctions on the FRY and counter-pressure the international community to compromise about Karadzic. Clearly there is an attempt shift responsibility from Milosevic; in their eyes, he has done his best and the international community must bear responsibility for any *ill-considered*" action and its impact on the peace process. It was hinted that the RS would accept oral assurances that Karadzic would step down if he could be given a "*breathing-space: perhaps a year.*" What was expected at the end of the year was

2/c

not elaborated but two factors might be considered: (1) a typical Serb delaying tactic; and (2) as reported previously, the Serbs will sacrifice Karadzic in their own time and when they are ready. On balance, it is believed that there are elements of both aspects in the RS strategy. Afterall, Serbs are realists.

Best regards.

ANNEX "B"

SRSG's MEETING WITH KRAJISNIK IN PALE, 04 JUNE 1996

Summary RS protests arrest attempt. Reaffirmation of RS view on statehood. Evasive on durability of B-H. Florence representational arrangements seen as vindication of RS strategy. Acceptance of electoral rules and timings.

1. On Tuesday, 4 June 1996, SRSG accompanied by David Harland, SPAO OSRSG, and Geoff Beaumont, Liaison Officer Pale, met Mr. Krajisnik, President of the Republika Srpska National Assembly. The meeting lasted over two hours and was conducted, although Krajisnik proved evasive on some issues, in a frank and friendly atmosphere.

2. Krajisnik agreed that it was essential that SRSG and he should meet frequently, assessed the UN role as important and significant, and apologised for his late arrival. He warmly welcomed the establishment of SRSG's Liaison Officer in Pale. SRSG said that an LO Office would have been opened earlier but for a number of factors and, while he was now kept well informed both by LO Pale and IPTF, such contacts could not replace direct exchanges. SRSG then requested Krajisnik to provide a political overview and an appreciation of RS strategic aims.

3. Krajisnik first wished to explain why he was late as he saw it as being closely related to the question posed. According to Krajisnik, in the late morning IFOR had initiated a "*very unpleasant*" incident when they had attempted to arrest a popular VRS battalion commander for carrying a weapon. People had surrounded the IFOR troops and the incident could have seriously deteriorated if the soldiers had not released the individual. The RS had sent a strong protest to Admiral Smith. While Krajisnik's intervention had prevented serious consequences, he asked SRSG to ensure that key peace implementors were aware that inconsiderate actions could easily destroy what had been achieved. God forbid, he said, if "*someone*" more important had been arrested - it would have been uncontrollable. He believed that the incident was initiated by a junior commander and did not believe that Admiral Smith or General Walker had ordered the action; he asked SRSG to investigate.

4. Originally, Krajisnik related, the RS was anti-Dayton as only 49% of the territory was allocated when they had held 64%. Sarajevo rankles - it belongs to both Muslims and Serbs and represents 33% of the total value of B-H. Furthermore, there are 32% Serbs in B-H but the RS only has 22% of the infrastructure. However, Dayton was signed and the RS, its leadership, and Krajisnik himself, are fully committed to implementation. However, some elements of the international community are attempting to achieve what is not in Dayton. The RS had agreed "*the thin roof*," thus achieving limited independence, and can not now accept that it is not a real state; two entities comprise B-H. Krajisnik drew diagrams of two houses, one showing two widely-separated pillars supporting the roof, and the other a single but divided column supporting the roof. The former portrayed the RS view of the Dayton arrangements; the separate columns illustrated each entity's distinct and divided jurisdiction.

5. According to Krajisnik, the RS is worried that the international community does not wish to fully implement Dayton but aims to provoke conflict. The saga of the RS not attending the Brussels Donor's Conference was related as illustrative of attempts to destroy the limited RS independence and lay blame for non-cooperation on the Serbs. Until the elections, B-H does not have a government and is governed by the Joint Civilian and Military

Commissions. Krajisnik believed that the intransigence of the RS, over the limited sovereignty issue, had been recognised as a legitimate concern by the international community, and the (equal) representational arrangements for the forthcoming Florence Conference illustrated acceptance of the RS view of the Dayton provisions.

6. The second problem raised by Krajisnik related to the ICTY indictments. Krajisnik (smugly) believed that current moves to oust Karadzic and Mladic were counterproductive and had only increased their popularity and motivated the nation to support them. He speculated that if the aforementioned incident that morning had involved Karadzic or Mladic, it would have "*been the end of Dayton.*" Returning to the anti-RS conspiracy theme, Krajisnik said that Dayton stands a chance of being implemented, but he was not sure that all parties were equally committed to its fulfilment. He related a number of examples which he said were illustrative of RS good-will to achieve inter-entity cooperation, but had been frustrated by Muslim attempts to impede implementation and create incidents (Muslim use of Bar port; Tuzla/Kakanj/Banja Luka power line; bus route Ilidza-Grbavica; etc). Krajisnik also related a number of occasions when Muslims had prevented family visits and IFOR had allegedly stood idly by. UNMIH Commissioner Fitzgerald had actively tried to help but his powers were limited. Serbs had also been forced to leave Sarajevo and no one had helped. In his opinion, these events can only provoke a conflict and "*someone wants to do so.*"

7. The RS, Krajisnik viewed as "*rather stable.*" Buha had informed the RS Government about the outcome of the Geneva Conference (2 June) and, on behalf of the Government, Krajisnik thanked SRSG for his realistic and objective impartiality at the conference. He added that SRSG personally was highly respected by the RS leadership, particularly for his equal treatment of both entities, which was all the RS wanted.

8. In reply, SRSG thanked Krajisnik for his overview and compliments and stated that it was IFOR's responsibility to investigate the incident that morning. He agreed, as Admiral Smith is highly aware of such sensitivities, that the incident was probably initiated by a local IFOR commander. Dayton's greatest achievement, even though none of the parties are satisfied, was stopping the war. Noting that the UN was not responsible for any aspect of the Dayton accord, Mr. Riza related that the UN viewed the agreement as providing for a highly decentralised structure with a weak central government and the majority of power being delegated to the two entities. However, the UN has to accept B-H as one state and it is represented as such in the UN - but the representation should, as in many other decentralised states (Canada), be a reflection of the ethnic composition. B-H is two autonomous entities, neither of which is fully independent. However, until the elections, the transitional arrangements allow continuity of B-H institutions. Mr. Riza then countered several of Krajisnik's allegations concerning a lack of impartiality on behalf of the international community and stated that while there is close consultation with OHR, the UN assesses and adopts its own perspective.

9. Krajisnik reiterated that the RS saw B-H, in the interim, being governed by the JCC and JMC. Current BiH institutions, as the RS would not have representation until after the elections, only had authority within the Federation entity. Only after the elections would it become B-H as opposed to BiH. Although he understood Mr. Riza's viewpoint, even after the elections the RS believed there would be two states - each with limited independence. The RS accepted, in accordance with Dayton, the rights of the entities - but will not accept domination. The RS has not asked to become a UN member (but see LO Pale P/005 -

Meeting with Ostojic) and does not seek to nominate its own ambassadors; foreign affairs, after elections, lies within the competence of B-H. Again after elections, the establishment of a Central Bank will be accepted but the RS will not be forced to use the current bank. These small nuances, he said, can result in significant resistance.

10 The RS is committed to holding the elections in accordance with Dayton. The other entity is working to undermine the elections but seeking to blame the RS. The RS is not fully satisfied with the Electoral Rules but will accept and fulfil all aspects. Krajisnik believes that the elections should be held as soon as possible but has nothing against a postponement either. He saw the fulfilment of the military aspects of Dayton as the foundation for the more difficult civilian aspects.

11. SRSG agreed that the civilian aspects were the most difficult - a fact compounded by inter-entity problems as well as those between the Federation. Mr. Riza noted that although he was not a constitutional expert, he knew of no other country where the components were envisaged to be so powerful and the central authorities so weak. SRSG queried if elections will act to close or widen the gap between Krajisnik's diagrammatic 'columns;" if the trend was towards separation, would that bring the stability sought by Dayton?

12. Krajisnik "*felt inspired to be frank*" and stated that no party wanted this solution but all compromised in order to stop the war. In his personal opinion, the answer was only known to those who created Dayton. There are those who want to strengthen Bosnia and those who want to destroy the country but the third option is to establish peace. The latter can be achieved by obliging Serbs and Croats not to unite with Serbia or Croatia while the remainder should be left to the free-will of the three constituent people. Formerly, Sarajevo was a link within Bosnia and Bosnia was a link within the former Yugoslavia. Now, there are no links and B-H can not survive without some form of (previous) Yugoslavia. The forces to keep together were stronger than those to dissolve but the international community, in its haste to support the destruction of Yugoslavia and now with the dissolution of Sarajevo, hastens the destruction of a united Bosnia. Dayton envisaged two entities, but now there is a realisation that there is three. "*Bosnia will dissolve along the ethnic boundaries.*" Krajisnik did not know the answer to SRSG's question, but believed that the present arrangements could not exist for long. On balance however, he believed that economic matters could bring the entities closer together, but not adjacent. If the "roof" did not function, the drift could be in either direction.

13. Krajisnik believed that international pressures to unite Bosnia would provoke a counter-effect within the RS. Furthermore, he maintained that if Karadzic can not participate in the elections, his support will strengthen. He believed that such pressures are exerted on purpose to provoke conflict. People, not only in the RS but elsewhere, are elected for spite. He saw elections in September as being in the interest of the RS but, as a result, feared strong pressures from 'fifth columnists' not to hold them. In reply, SRSG reaffirmed the Geneva meeting commitment to hold the elections in September, and clarified and justified the establishment of ICTY and its purpose. Krajisnik felt encouraged by SRSG's words.

14. The meeting closed with mutual expressions of intent to meet again soon.

Geoff Beaumont
Liaison Officer Pale

ANNEX "C"

SRSG's MEETING WITH RS PRIME MINISTER KLICKOVIC
07 JUNE 1996, PALE

Summary Freedom of movement and return of refugees remains problematic. Determination to remain a distinct entity. Karadzic and Mladic an internal issue but "*their answer will be given in Florence.*" Mechanisms and allocation of economic assistance perceived as unjust. Izetbegovic's "liberation policy" and Federation rearming are key concerns. ICTY viewed as established in violation of UN Charter and lacking in impartiality.

1. On Friday, 7 June 1996, SRSG Mr. Riza, accompanied by David Harland, SPAO OSRSG, Ivan Bettyar, CAC Banja Luka, and Geoff Beaumont, Liaison Officer Pale, met RS Prime Minister Klickovic in Pale. Mr. Buha, RS "foreign minister," as well as Klickovic's Chef de Cabinet, were also present. Klickovic undertook to share his impressions of the peace implementation process to date, as well as to predict future prospects.

2. Today, Klickovic had been informed by Bildt that the elections will, despite certain problems, take place in September in accordance with Dayton. He maintained that the RS is ready, has already created the necessary fair and democratic climate, and will ensure that equal media access is granted to all opposition parties in order that they might air their political programmes. He underlined that the election issue and the position of Karadzic and Mladic is a matter for internal RS consideration and "*their answer will be given in Florence.*"

3. Klickovic acknowledged the freedom of movement problem, and said that only time and patience would resolve the issue. Controlled visits, in accordance with the UNHCR Guidelines, were acceptable, but adequate conditions for the return of refugees and displaced persons had not been created. He maintained that the fault lay with the international community as it had insufficiently invested in the necessary infrastructural facilities. The programme could not commence as the problem had entered the political dimension; thus people were suffering and, as a result, there could be more incidents. However, the Prime Minister then professed to believe that premature returns would be counterproductive. When repatriation did commence, he felt it should initially be to areas that had suffered minimally during the conflict, where tension would be less evident. Time would allow for healing and for an effective investment programme to be initiated.

4. Continuing his overview, Klickovic considered that inter-entity trade is currently being forced upon them. RS policy is to establish trade relations with all their neighbours in accordance with market principles and as far as the conditions are created and allow. Concerning the post-electoral/IFOR environment, Klickovic was vague and evasive. The envisaged Joint Institutions should be created, which he hoped would resolve the issues previously outlined. He claimed to be unsure about the intentions of IFOR/NATO and the international community. Concluding his overview, Klickovic stressed that the RS would implement what they had signed, as well as what had been imposed, and asked that the Federation also do so.

5. In reply, SRSG agreed that it seemed as though the elections would be held in mid-September. While expressing appreciation of the difficult conditions surrounding the return issue, it seemed that the difficulties were compounded as a consequence of policies at either national or local level. Furthermore, SRSG related that the UN perspective, which was shared

by others, was that the freedom of movement problems resulted from a deliberate RS policy to create a certain distance between the entities and not to allow closer relations. On the other hand, Mr. Riza noted RS hopes that joint institutions would be formed after the elections, and then queried the degree of both political and practical cooperation that would result.

6 Evading the wider aspects of the question, Klickovic said that the degree of cooperation would depend on the "*dynamics of economic reconstruction.*" He did not see the freedom of movement issue as a problem for IFOR. He believed that the mere organisation of bus services was not a problem, but peoples' fresh memories and inappropriate conditions were. Klickovic had no objections to small-scale visits, under the UNHCR Guidelines, and alleged that clear instructions had been issued to facilitate them in accordance with the 13 May Agreement. According to him, the problem relates to the misuse of commercial avenues and the attempts to traverse the RS without any acknowledgement of their authority. The planned service from Sarajevo to Belgrade will need RS permission. In addition, he maintained that the UNHCR buses were followed by a considerable number of private vehicles; he viewed the practice as unsafe. He queried why trans-IEBL visits could not take place simultaneously, thus placing the onus for security on each police force until the respective parties had returned safely.

7. Regarding the prospects for greater unity between the entities, Klickovic did not wish to prejudice the solution as "*it is too early to speak of a state that is yet to be formed.*" The RS priorities were to formulate their own functioning institutions, to conduct democratic elections, and to establish full freedom of movement. In his view, Dayton did not call for reintegration but for two entities. He did not, for the moment, see any possibilities for reintegration into a central state as there were too many obstacles.

8. SRSG acknowledged the suffering of the people and, at the human level, the necessity of overcoming their traumas and reaching an accommodation. On the economic plane, he had already noted the reconstruction problem and its link with World Bank policy on the allocation of funds; he asked if it was not in the interests of the RS to adopt a more open and flexible policy in order that the international community might reciprocate.

9. Buha answered that the RS will abide by the electoral rules but, if truly democratic elections are to be held, events can not proceed faster than the democratic process. He related that the essence of the Copenhagen Convention is the free-will of the people, but the people of the RS are forbidden to express their free-will. While only a theoretical question, what if the people wished to nominate Karadzic as an independent candidate? Buha then outlined RS concerns related to Izetbegovic's alleged intentions to fully liberate B-H by force, the lack of condemnation from the international community, the inequalities in the arms reduction programme, and the US plan to rearm and train the Federation; he maintained that under Dayton, all foreign instructors had to leave Dayton, including Americans.

10. On freedom of movement, Buha said that the international community is aware that such freedoms also do not exist in the Federation. The Federation has to put its own house in order, and then greater cooperation can be discussed. In the meantime, the overall RS concerns, allied with attempts to force freedom of movement, the return of refugees, and reintegration into a society where Serbs are not welcome, can only result in new incidents and tensions.

11. Buha related that the RS has 22% of the buildings (many of which are razed) and at least one-third of the population. Thus the elementary conditions for return, with 30,000 people living in Collective Centres, do not exist. It is the policy, not the unbalanced allocation of funds which is the problem. The Federation, he alleged, has received $260m while the RS has yet to receive a cent - even the promised $2m has been delayed. According to Buha, the Joint Institutions should only have authority after the elections but the allocation of funds is effectively controlled by Izetbegovic and Muratovic - "*if we could have lived together, we would not have fought the war.*"

12. In reaction to Mr. Riza outlining the multi-national, impartial and objective nature of ICTY, Buha interjected that only the General Assembly could legally form such an organisation, that the Security Council is the executive body of the UN which, under Article 29, can only establish auxiliary bodies - thus, in theory, its objectivity relied upon the Security Council. Buha underlined he was more interested in practice and referred to, in RS eyes, the injustice and partial nature of the two "kidnapped" Serb officers, as well as the numerically imbalanced total ICTY indictments. Getting into his stride, Buha observed that Izetbegovic had started the war, "*a crime sanctioned by the UN and the basis for all subsequent crimes,*" and was now being militarily equipped and politically and financially supported by the greatest world power in order that he might continue the war and become "*the president of all Bosnia.*" Disclaiming any knowledge of financial matters, Buha claimed not to understand, when internal economic, agricultural, health, education, media, and numerous other fields were the responsibility of each entity, the RS could not receive direct funding.

13. SRSG noted that four lawyers had four opinions and then reflected that Dayton's greatest achievement, although no party was fully content with the provisions, was to stop the war with the aim of achieving stability in the former Yugoslavia, indeed, the Balkans. The international community believed that such stability could only be maintained by preserving a unified Bosnia and therefore had a number of concerns about current RS policy. If the world believed that separation would bring greater stability, such a policy might be accepted.

14. Buha replied and said that it is not separation or reintegration that is the solution but what is in Dayton - B-H is two entities, the RS and the Federation with the responsibilities divided as agreed; if these arrangements are adhered to, then conflict caused by forceful reintegration or separation will be avoided. Buha believed that the current leaderships should implement what had been agreed and suggested that subsequent generations of politicians, who might be wiser, should address integration issues.

15. In reply to Ivan Bettyar's observation that the inability of voters to exercise freedom of movement and vote in person in the area of their choice resulting in no changes to the current regimes, Buha pondered the logistics of moving either the one million actual, or two million alleged, refugees to vote in the place of their choice. He also said that people can vote in absentia. Finally, he alleged that the Muslim list of war criminals would stop Serbs exercising such a right.

16. During the final farewell statements, Klickovic related that both Pale and Banja Luka would have a role to play in RS Government. If the minister is located in Pale, his deputy would be in Banja Luka, and vice versa.

ANNEX "D"

Beaumont's meeting with RS Prime Minister Klickovic and Minister Buha
(Pale, 18 June 1996)

1. Buha pleased with outcome of Florence meeting. Klickovic related RS view of BiH consisting of three nations and two entities. He believed that those delegations that saw RS as responsible for implementation problems were in the minority. Also thought that Cassesse's insulting language (allegedly that, "Karadzic pollutes the environment") embarrassed most delegations; Cassesse according to him did not once use any legal terminology. Praised Dini's firm chairmanship. PM also said that key Western delegations had clearly identified which entity was attempting to delay elections, who balked at arms agreement, and who was "prejudging the issue of reintegration." Moreover, the Conference had understood that Karadzic and Mladic will not have any influence on the elections, although Klickovic admitted that the former had only partially devolved his power. Refuted Beaumont's observation that international community was unlikely to accept RS position on this issue. PM mentioned that some infrastructure projects would not be connected to political issues.

2. Klickovic now felt more optimistic than prior to Florence. His key concerns were (a) the impetuous desire of the international community to proceed too swiftly; (b) the abrogation of Dayton through the political manipulation of the FOM issue; and (c) attempts to force reintegration via the electoral process. He viewed the pushing of this issue by UNHCR and OHR as provocative.

3. Re ICTY, Buha criticised its partiality, and the illegality of the Security Council establishing the Tribunal. Condemned Cassesse and accused him of undertaking the role of a "Muslim propagandist". Said that Rifkind and de Charette had insisted upon the necessity of separating criminality from the election issue, while the Belgians had criticised Cassesse. ICTY was a war against Serbs, according to Buha, and while it caused the death of Djukic, Blaskic resides in an apartment.

4. On Brcko, Buha confirmed the appointment of an arbitrator from the RS, and claimed that Bildt had written a letter in which the precise Dayton terminology was used to describe the purpose of the arbitration. The RS welcomed this as confirmation that only the IEBL was disputed, not the status of Brcko.

5. Re Mostar, Buha asked why Serbs should vote in the upcoming elections when nothing had been done to facilitate their return. Buha thought that the Bosniacs only wished Serbs to vote in order to form a bloc against the Croats.

6. , later, related that Bildt refused to shake hands with him, which Buha viewed as ill-mannered and distasteful. He seemed to believe that Bildt is waging a private war against the RS, and Buha himself.

ANNEX "E"

OUTGOING CODE CABLE
IMMEDIATE

TO : RIZA, SRSG UNMIBH, SARAJEVO
INFO : ALMSTROM, HCA UNMIBH, SARAJEVO
BISER, CAC REGION SOUTH, SARAJEVO
FROM BEAUMONT, CIVIL AFFAIRS LIAISON OFFICER, PALE
NUMBER : P/038
'96 JUL -6 -7 :58
DATE : 05 July 1996

SUBJECT : MEETING WITH BUHA

Summary RS seeks own foreign "service." Buha expectant of B-H foreign minister post? RS seeks 'tripartite' embassies and entity 'individualised' passports. Reiteration that join institutions should straddle IEBL. Division and separatism underlined. Karadzic's position clarified (with no surprises). Pressure, Muslim instigated through US, designed to postpone elections. 'Three-point' deal seemingly confirmed. Croats to separate first. SRSG intervention sought with General Walker.

1. Today, I my request, I had a meeting with Buha whom I had last met with Klickovic on 19 June (see my P/021). On my arrival, Buha apologised and said that the Director of OSCE Sokalac, Mr. Karakostangoulou, had also asked for a meeting; however, he invited me to attend and then we should conduct our own business. The Director did not object and so I accepted. The entire meeting lasted 2.5 hours; the Director was present for one hour. A summary of both meetings follows. Overall, Buha was in excellent humour. However, I thought he treated the Director in a rather jocular fashion.

OSCE

2. The Director related that he had recently received approval to establish ministerial level contacts with the RS Government, thanked Buha for his personal delivery of the SDS electoral candidate list to Sokalac yesterday, and looked forward to receiving the municipal list, as well as the missing from the already submitted list, by 1700 hours, Monday; he did not elaborate which data was missing. After recalling the Dayton provisions, as well as noting that the former Yugoslav Republics had certain competencies in foreign affairs, he asked Buha for his views on the development of "*his ministry*" in the context of post election B-H.

3. In return, Buha first noted that Montenegro has a foreign ministry while Serbia, although the title was different (a reference to Milosevic), also had responsibilities in foreign affairs. He then stated that he understood "*what fight*" the Director had in mind when he mentioned Dayton. He accepted that foreign affairs would lie within the competency of B-H, but its organisation was a different matter. The RS saw the B-H Presidency and Parliamentary Assembly, fully in accordance with Dayton, bearing overall responsibility. Within these institutions, the RS would have their representatives and they would receive their instructions, formed by consensus, from the RS National Assembly. Thus, he said, the RS must also have its own foreign "*service*" (not ministry). In addition, at some stage B-H

will have a Serb Foreign Minister - "*who will also be the RS 'foreign' minister and will need his own service.*"

4 Buha related that according to Dayton, for the first two years after the elections, the B-H President will be the candidate receiving most votes and this will undoubtedly be Izetbegovic. Therefore the President of the Council of Ministers and the post of foreign minister will be reserved for a Serb or a Croat and he (Buha) will be foreign minister. Thus, he underlined, while there would be a common B-H Foreign Ministry, it was essential the RS also has its own. Although he then said that he being B-H foreign minister was a joke but could be reality. I formed the impression that an agreement had been reached with the Croats.

5 Buha maintained that Dayton allowed the RS to be responsible for aspects of foreign affairs - in cultural and information fields for example. He also maintained that a German lawyer had written to offer the RS assistance in establishing consulates abroad. As regards embassies, Dayton does not specify any arrangements. The Croats and Muslims had made their own arrangements for joint embassies - now they will have to accommodate the RS. Ambassadorial posts will have to be agreed and, if done on a (fair) percentage basis, the RS should have 49%; however, as usual the RS would have to accept one-third. Then there is the matter of embassy organisation - perhaps, he suggested, on the Belgian model whereby each embassy is divided into Flemish and Walloon parts. Clearly, however, B-H embassies would have to be divided into three parts reflecting each constituent group. How could anybody from B-H, after the bitter experiences of the conflict, have any faith in a representative from other than his own ethnicity?

6. Passports can be issued by either entity as long as they are centrally registered in a B-H institution. However, he said, passport issue can not be controlled and there must be a "*dual-key, like NATO bombing*" (said with 'black' humour). Each entity must design its own passport; the RS would have "B-H" and "Republika Srpska" in cyrillic and the Croats and Muslims would use latin script.

7. OSCE queried if such complex proposals were a method of convincing the international community of the necessity of having two ministries, as well as the impossibility of the entities working in harmony. Buha once again displayed his humour and stated that it was quite the contrary, all would be united under himself as foreign minister! More seriously, he said that the RS does not care if the Federation has a foreign ministry or not, but both Muslims and Croats must consult and cooperate with the RS in this area; the RS is only limited by Dayton. Buha wanted discussions to start immediately. I asked if he was not aware that OHR had convened a meeting at 1100 hours today to discuss passports and travel papers. Buha retorted that he could not be aware, Bildt would not shake his hand, let alone discuss matters with him, but he would have to, and address him correctly, when he was *the* foreign minister. He underlined that discussions must start now in order that B-H was 'operational' in the field of foreign affairs as soon as the elections were over.

8. As in previous meetings with me, Buha stressed the need to immediately discuss

building joint government institutions straddling the IEBL, with separate access from their respective sides, in order to avoid RS representatives suffering the same fate as Silajdzic. He was sure that SDS would win the elections, that Krajisnik would thus be a member of the B-H Presidency, the SDS would thus have either the Presidency of the Council of Ministers or the post of Foreign Minister, as well as 14 members of the House of Representatives - and all, undoubtedly, will be on the Muslim secret list of Serb war criminals. The seat of the representative bodies must thus straddle the IEBL in order to provide security for RS representatives.

9. Very much 'tongue in cheek,' and perhaps indicative of a certain degree of contempt for my Greek OSCE colleague - particularly since it was their first meeting, Buha related that he really wanted B-H to survive, that Bildt had accused him of attempting to sabotage B-H, whereupon he had (allegedly) answered that such accusations were the biggest insult of his life as the Federation represents the second life of the RS; if it was not there, there would be no RS. The Federation, he maintained, is the only possibility for B-H and is the great love of his life.

10. Clearly probing old ground, OSCE queried if the RS saw its future within a wider sphere (the FRY). Buha turned serious and maintained that the future lay only within B-H, but should the world force the RS to seek independence, then they will proceed accordingly. Dayton allowed for special confederal arrangements and parallel connections. He quoted a "high-ranking" man - such a complicated state has never existed - and queried if it could function in practice or theory. After a reference to the Cyprus situation by OSCE, Buha stated that the Dayton constitutional arrangements were like oil and water, impossible to mix except by force.

11. The Director's appeal to give the arrangements a chance fell on deaf ears - "*save us that chance*" replied Buha, somewhat contemptuously, and said that the EU had tried to unite Mostar for two years, spent 200m ECU, and where was the multi-ethnic city? Serbs are totally excluded, there is no municipality for Serbs despite being 25% of the pre-war population, and in the elections only 3% voted for a party that supported multi-ethnicity; where, he scathingly asked, is Koshnik's dream model city - and even he (Koshnik) had admitted it was only for Croats and Muslims? The elections had resulted in two peoples more ethnically defined than ever. How many more have to be killed and cities and bridges destroyed before the international community realises that it is pursuing the wrong premise and admits that division is inevitable, that history is against any other solution? Buha interrupted OSCE's reply that Dayton offered the prospect of peace and discussions towards a unified Bosnia - not unified, but complex, he said.

12. OSCE addressed the position of Karadzic and asked if the transfer of power to Plavsic had influenced Buha's function. Buha maintained that the character of the state was the same, that both he and Plavsic were competent to maintain contacts with the international community. Buha quoted from Annex III to the Dayton Election provisions and asked if the authority of government should not be based upon the free-will of the people - and the RS people had so expressed their support for Karadzic. He believed that whosoever should win in the elections, including himself, could be indicted at any moment by the international

community and considered a non-legitimate representative. OSCE gave a legalistic reply which Buha, and myself, found difficulty in following. The Director concluded with the hope that no one can stop the march of progress and the inter-play of political forces, while the elections, based on the free-will of the people, should decide the outcome on an agreed, peaceful basis. Buha, I believe, was relieved to see him depart.

My Meeting

13. Approaching the matters I wished to address obliquely, I congratulated Buha on his selection as SDS first candidate for the National Assembly and expressed surprise that he was not a candidate for the B-H Presidency, due to his more cross-party, including the army, support (Plavsic is not popular with the VRS). He related that he was, along with Plavsic and Krajisnik, a candidate for the three main functions (RS Presidency, B-H, Presidency, and NA first candidate) but he had been excluded from the RS Presidency as they did not, as Bildt would not even talk to him, wish to give the international community the opportunity to ignore the RS to an even greater extent. In any case, he said, it was of no consequence as their authority was based upon collective consensus. The SDS elections had sought a regional balance, as well as a balance of experience and new blood - 60% were new names, he said and none, he emphasised, were indicted by ICTY, although whether they appeared on the Muslim list of war criminals was another matter. It was for this reason, Buha maintained, that he had tried to insist on a general amnesty, including for those indicted by ICTY, at the Florence Conference on 2 June; it was the only way to true reconciliation. I asked if, in accordance with our previous discussions, he advocated publication of both entities lists as an alternate as clearly the international community was not about to accept amnesty for those indicted by ICTY. He believed, in the absence of any meaningful amnesty, that publication represented at least a way whereby people would know if they could safely enter Federation territory. He was not aware of the OHR position, as specified in Asif Khan's memorandum dated 29 May 1996.

14. Concerning the precise definition of Karadzic's position, Buha related that: (1) he remains RS President until the elections but has devolved all powers to Plavsic (she had merely been insufficiently briefed when she stated that it was in case of his "temporary inability to exercise his powers"); and (2) he remains SDS President but has undertaken not to make any public appearances or participate in active public life. He underlined that, having consulted with Zametica (their expert on UK matters), their opinion was that party leadership, as the post is not consequent upon direct elections, can be construed as a public office - even though clearly, in view of recent "*spontaneous*" expressions of public support, it was the current will of the people that he should lead the nation. Buha viewed the current pressures as a continuation, in conjunction with other issues, of Muslim efforts to sabotage the elections through their US mouthpiece. Even though Izetbegovic started the war and is a war criminal in RS eyes, he said, the RS does not object to his candidacy for the B-H Presidency - that is a matter for the Muslim nation and the RS does not wish to delay elections over this issue. He perceived Sarajevo as acting to ensure maximal delay in the RS achieving wider legitimacy and for the Muslims to gain maximal ascendancy.

15. As in our last meeting, Buha again condemned Cassese vehemently for his Florence

statements. In particular, he attributed Cassese as saying that the court should never have been formed if Karadzic and Mladic were not to be extradited. As "others" have not complied with extradition orders. he saw this as proof that the court is only politically motivated against Serbs. As before, although he did not believe it would occur, he reiterated that if pressures on the RS do not cease, the elections will be in question and, indeed, the whole of Dayton. He did not exclude that the SDS. as a result of the Muslim inspired US views, should be excluded from the elections - in which case the whole of the Serb nation would boycott the elections and Dayton would be torn asunder.

16. The possibility of sanctions being imposed upon the RS, either by the international community or unilaterally by Milosevic, he saw as a game as Dayton implementation would stop, including all cooperation with the other side. Milosevic, he saw as being subjected to external forces as well as, for ideological motives, internal pressures. He seemed to hint that these might most emanate from Mira Markovic; wife of Milosevic and JUL party leader, and suggested that the Serbian President also had to be wary of his own forthcoming elections. He would not commit himself as to whether Milosevic was prepared to initiate meaningful sanctions or not, although he readily admitted that if he should do so, the RS would soon collapse.

17. On the subject of Karadzic seeking a deal whereby he would stand-down if the RS was to gain access to the sea, full state recognition, and Brcko be decided in favour of the RS, Buha was understandably evasive. He strongly underlined that this had been their position for some time and the RS would now, more firmly than ever, stress this view. Slightly varying his previous position. he said the RS would seek to regain the 170 square kilometres of territory lost in the post-Dayton cartographic transfer with a 70 sqKm gain at Brcko and the remainder at Molunat on the Adriatic sea; thus the Prevlaka issue would also be resolved. Regarding statehood, he said that Dayton had recognised the rights of the RS as a constituent nation and they would see the position after the elections.

18. He recalled the September 1993 Geneva Agreement, which he claimed that Izetbegovic had signed, whereby after two years each of the three entities could exercise the right to have a referendum on B-H union. He fully recognised that Dayton superseded this (unsigned) accord. but it would be irrelevant as "*Tudjman will take Herzegovina before that period.*" Asked again if there had been a deal, as described above, with Bildt, Buha merely stated that he hoped Bildt had the authority (from the US?) to fulfil his word. He also hoped that Bildt would soon be replaced.

19. Asked if the RS was prepared to have their newly established war crimes court try Karadzic and Mladic, he stressed that they would act in accordance with the RS constitution; some RS lawyers believe that any such trials are within the competency of the already established courts, others do not. The RS, he related, has frequently asked ICTY to provide evidence of Karadzic's and Mladic's guilt for them to consider - but provision had always been denied as there was no evidence; if there were evidence, then the RS courts would decide their guilt. He queried what had happened to the proofs they had provided about Izetbegovic's guilt in connection with: (1) a massacre that had occurred in May (?) 1992, under the command of Ganic, when an unarmed JNA convoy had been ambushed in

Sarajevo when withdrawing; and (2) the 400 killed JNA near Tuzla. He bemoaned the lack of a demand from Belgrade, as they wished to minimise their involvement, for an investigation. In this context, he requested if SRSG could use his good offices to encourage General Walker to reply to the RS letter wherein they had sought IFOR assistance/escorts for RS experts to investigate a (alleged) mass grave in Kazan, a suburb of Sarajevo, containing 1,000 Serbs corpses. He did not even know if Walker had received the letter but did not doubt that he would keep his word to assist - if he ever was given the letter. Finally, Buha asked what happened about Bildt's own allegation that Tudjman was a war criminal; did it not suit US purposes, he asked innocently.

20. In closing, Buha only asked that the international community fulfilled all Dayton obligations, not microscopically as on the RS, but highly visibly as with the 170 sq Km outstanding territory issue, as well as to demonstrate full understanding that the joint institutions should be established straddling the IEBL.

Comment

21. Buha was clearly in a buoyant, confident, and communicative mood which was surprising after recent events. I distinctly formed the impression that a deal has been struck with: (1) the Croats, concerning his assuming the post of B-H Foreign Minister; and (2) Bildt, concerning an arrangement over at least Brcko and access to the sea (clearly, probably not RS statehood). However, even if deals have been struck, the widening gyre of Bosnian politics can soon negate all that might have been gained. The RS clearly still has many concerns, not least continuing pressures from Sarajevo, and must tread carefully in its pursuit of separatism - a theme that Buha used every opportunity to underline as the RS goal.

Best regards.

ANNEX "F"

RSN - 078

OUTGOING CODE CABLE
IMMEDIATE

'95 JUL 10 23:42

TO : RIZA, SRSG UNMIBH, SARAJEVO
INFO : ALMSTROM, HCA UNMIBH, SARAJEVO
BISER, CAC REGION SOUTH, SARAJEVO
FROM BEAUMONT, CIVIL AFFAIRS LIAISON OFFICER, PALE
NUMBER : P/040
DATE : 10 July 1996
SUBJECT : MEETING WITH OSTOJIC

Summary SDS now subject to "collective" rule. Duplicitous cooperation with 'Finnish' project (perhaps justified?). SDS Statute proffered to justify non-public nature of RS Presidency. Alleged US/Muslim connivance to postpone elections. Dayton (again) allegedly under threat - but RS yet to formulate true response?

1 Unfortunately, when I met RS Vice Premier Ostojic early this morning, I was unaware of the formation of the 'Senate' and did not address this issue with him. As a mildly interesting aside concerning the level of centralised decision-making in the RS, the meeting started late as the new Minister for Sport, Mr. Papovic, demanded to see Ostojic to seek his intervention in obtaining an office for his ministry (the post is new)! The Vice Premier telephoned Justice Minister Arsovic and requested him to surrender a single room. The meeting was further delayed as the ABiH/RC telephoned to seek Ostojic's attendance at meetings, this coming Friday and Saturday, concerning inter-entity 'border' issues. He apologised for the interruptions, but felt the close casualness of our relationship allowed him to conduct business as usual.

2 Ostojic commenced by revealing that he is no longer General Secretary of the SDS, indeed that there is no such post under new arrangements; the Party is now subject to "*collective rule*" under the President of the Party and the Main Board. Nevertheless, Ostojic maintained that he is the second man in the Party hierarchy, due to his position as a founding member as well as his government and Party vice premierships. He revealed that the Party now has seven vice presidents, but claimed he could only name four besides himself: Buha, Slobodan Bijelic from Krajina, Boro Serdic from Banja Luka, and Goja Tadenovic (Minister of Agriculture).

3 Ostojic obviously wished to delay [illegible] the object of my visit and insisted on reiterating the history, including some [illegible] favour of the RS [illegible] project. Clearly he viewed his [illegible] with UNHCHR as a masterly [illegible] of his diplomacy; he had warned the Centre representative of Bosniac intentions to politically exploit the situation and of their intention to provide proof of war crimes to ICTY. He maintained, I believe 'tongue in cheek,' that there was no surety that the bodies were Muslim as extensive battles had taken place in the region. Displaying complete duplicity, he alleged that UNHCHR had wished to cancel the project, due to the complex [illegible] he had insisted that it proceed with certain provisions (as notified in my Daily Reports), in order that the RS could not be accused of acting unilaterally. All RS authorities, he maintained, had been ordered to cooperate unreservedly but now the Finns were attempting to renege on their 'deal.' I indicated that the UNHCHR request (letter 8 July) was reasonable and reflected the minimalist needs

of the project - I had instructed demining techniques and knew the RS was executing delaying tactics. Having explained what was needed, minimal mine clearance and a (demining) operation of a maximum of two days, he undertook to consider it favourably and reply this evening. Unfortunately, as UNHCHR has not had an office for some days, I could not communicate this to them. Subsequently, this evening I received a letter (see DR today) notifying the RS that they had given-up the exhumation phase. I passed this letter to Ostojic.

4. At last I could address the issue of Frowick's demand that Karadzic must stand-down as President of the SDS, or the party could be barred from election participation. Ostojic maintained that Milosevic, despite his public announcement supporting SDS participation irrespective of the presidency issue, only wished to destroy the SDS as a political force. He maintained that the Serbian President had only adopted this stance to placate his own people prior to his own elections, and was secretly working to achieve Frowick's aims. However, in an argument difficult to follow, Ostojic maintained that Milosevic could achieve Karadzic's downfall if he wished, but was being restrained by the US. Furthermore, that OSCE Cotti would continue to postpone the decision on the issue so as to maintain pressures upon the RS. Eventually, he alleged, at the appropriate time the Serbs would be found guilty of undermining the elections whereas it was the Federation that was continually manufacturing reasons to achieve this aim and prompting the US to act accordingly. "*The authors of Dayton are constantly and consistently acting to break what was agreed.*"

5. Ostojic strongly underlined that Karadzic is not holding any public office and his Party activity is merely a reflection of the rights of any citizen in a democracy. He reiterated a well-worn theme, that if such pressures continue and the Party Presidency is declared a public function, then cooperation and the implementation of Dayton will be severely called into question - "*even reinforced concrete has its stressed breaking-point.*" Bildt, he believed, had finally understood the delicacy of the situation and was demonstrating a new-found pragmatism - however, this was only a realisation that he had lost much standing over the Kasagic saga, that he would lose even more in any "*oral battle*" with the RS and his international reputation, at the end of his mission (which he seemed to think was not that too distant), would be that of an unsuccessful diplomat and thus result in a destroyed Swedish/European career. Bildt, he said, "*had accepted our move from self-interest and can now be a factor in the peace-process again - this is why he has become more moderate.*"

6. The Vice Premier related that he expected the United Nations to protect the RS from "*brutal pressures and vulgar attempts*" to undermine Dayton. He reiterated that pressures to make Karadzic step-down from the Party Presidency were an abrogation of citizens rights [illegible] attempt to undermine a person elected by the free-will of the people. I seized upon this point, and said that this was precisely the point, if he was directly elected he was in a public office. Ostojic immediately recanted and said that Karadzic was elected, in accordance with the SDS Statute, by secret elections within the SDS Main Board: 353 votes in favour, one invalid ballot, out of 354 present from a possible 384 votes - substantially more than 50%. He had never been elected by the people. Furthermore, the Main Board was not constituted by a direct vote either, only by secret vote at the municipal level. Finally, that Party functions in the RS can not be equated to the British system - all SDS Main Board functions are Party functions, not government.

7. Asked to prove his supposition, he provided me with an annotated copy of the SDS Statute, unfortunately in Cyrillic, and highlighted certain passages for particular attention. It is attached and I would be grateful for a translated version, when convenient.

8. Knowing that the Director of OSCE Sokalac was waiting, although I had many other issues I wished to address, I concluded by asking the consequences of continued pressures against Karadzic. His answer, typically evasive, was that it was impossible to predict, but the implementation of Dayton would be likely to cease and the whole Agreement be placed in jeopardy. He did not take kindly to my observation that such threats only had limited credibility and ever-less when constantly reiterated over issues not necessarily connected. The question whether loyalty to one man was worth such potential suffering and the loss of all that had been achieved, only provoked an emotive tirade, superficially executed, of the way Karadzic came to power and a summary of the 1992 (alleged) voting record for SDS (94% of B-H Serbs, 6% for the other parties - Socialists, Communists, Liberals, Reformists). OSCE commenced their meeting 35 minutes late as a result.

Comment

REDACTED – Confidentiality of internal operation and decision-making of UN organs

10. Ostojic, and hence the SDS, seems highly worried regarding the renewed pressures against Karadzic. Seemingly, they had fulfilled the demands of the international community (at least superficially) by Karadzic allegedly devolving power to Plavsic. However, the 'goal-posts' have been moved and it is possible that the RS has been caught unawares and has yet to formulate a coherent response to the new situation. I believe that they are currently considering their position and such a process, given their inability to decide even the office space of a new minister without vice premier intervention, is unlikely to be rapid or consensual. Furthermore, the self-interest of many SDS central figures seems evermore evident - if the leader falls, perhaps so do all the sycophants. However, as the history of the recent conflict indicates, such people are tenacious, display remarkable deviousness in clinging to power (and wealth?), and have a habit of out-manoeuvring the international community. The end-game is in sight, but perhaps now more than ever, caution is called for - Serbs do have their pride and a fragile break-point.

11. It is difficult to believe that the political demise of one man, particularly since so [illegible] in key [illegible]ions, could make such a difference to the politically neutral environment so sought. Would not his policies live on, if only out of self-interest and a desire to preserve their own power-base - or is it not the end-game and other RS 'targets' would follow to further decimate the RS leadership? One can not help but recall the SDA interview yesterday when Krajisnik was considered possibly to be a worse option than Karadzic.

Best regards,

ANNEX "G"

10/07 '96 WED 16:07 FAX 32 2 7... CECKN001F007DINF
10-JUL-1996 16:03 FROM FCO NEWS DEPT TO 9003227377408 P.01/01 001

FCO SPOKESMAN: WEDNESDAY 10 JULY

Attn. Michael Hockey only

CONTACT GROUP MEETING, LONDON; CHAIRMAN'S STATEMENT

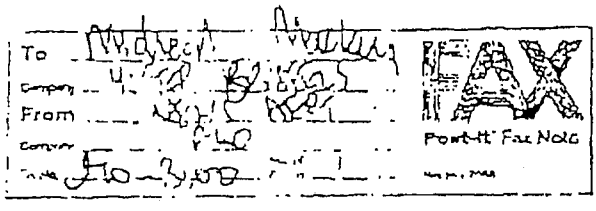
Officials from the Contact Group countries held a working meeting in London on 10 July. The High Representative Carl Bildt, the Chairman of the Provisional Election Commission Robert Frowick and the EU Presidency also attended. The Russian Federation was represented by an observer.

There was a thorough exchange of views on prospects for peace implementation in Bosnia and the forthcoming elections. The meeting agreed on the importance of the elections taking place on schedule, and with the participation of all the political parties in both the Federation and the Republika Srpska.

All agreed that, as Karadzic has been indicted for war crimes, his place is in The Hague. The prime responsibility for getting him there rests with the parties. The Contact Group and the High Representative are continuing to press Pale and Belgrade on this.

It is important to continue to marginalise Karadzic. The transfer of his state functions was a first step. But he must also be removed from power and influence. The meeting discussed proposals to bring this about.

FCO Newsroom contact: tel 0171-270 3100
fax 0171-270 3094.



ANNEX "H"

OUTGOING CODE CABLE
IMMEDIATE

TO: ANNAN, UNATIONS, NEW YORK

INFO: GOULDING, UNATIONS, NEW YORK

FROM: RIZA, UNMIBH, SARAJEVO

NUMBER: UNMIBH 0393

DATE: 12 July 1996

SUBJECT: Karadzic

1. You are aware of recent developments regarding Karadzic's position in the context of the September elections (our cables no. 0372 of 2 July and 0385 of 9 July). To recapitulate briefly, Bildt received on 30 June a letter signed by Karadzic (drafted in Bildt's office - copy attached) to the effect that Karadzic had transferred his powers to one of his deputies, Biljana Plavsic. Karadzic later announced that he would not be a presidential candidate, but was re-elected president of the SDS. Bildt declared that these arrangements were acceptable since the position of SDS president was not a public office. Steiner (Bildt's principal deputy) differed, commenting publicly that the party chairmanship was a position of power and a public office. Frowick, Head of the OSCE Mission in BH, announced that he was considering disqualifying the SDS from the September elections if Karadzic remained as party president, while Cotti (OSCE Chairman-in-Office) took the position that SDS should be allowed to participate. Yesterday, Frowick saw Plavsic but we are not aware of the outcome of the meeting.

2. In response to queries from the press, Ivanko (with my approval) stated at the press briefing on 9 July that our view was that no person indicted for war crimes could [illegible] whatsoever in the forthcoming elections. As regards Karadzic, the reality was that the position of SDS [illegible] could influence the election in the Republika Srpska and we would fully support any decision by the OSCE on this matter. In response to a specific question whether the position of SDS chairman was a private or public office, Ivanko said that it was a position of power and that he could not comment further.

3.

REDACTED – Duty of confidentiality towards third party

4. Yesterday, Barber was told by Chizhov (one of Bildt's deputies) that Frowick's position appeared to have been a change of mind since the SDS had been registered for the elections by the OSCE itself on 20 June. Chizhov added that he was "surprised" to hear that the UN apparently was endorsing Frowick's position, and that Bildt did not want a public debate on this issue Bildt's position was that, since OSCE had registered SDS, it now was up to them to deal with the case.

5. This information is being conveyed to you in the context of Bildt's projected visit to UNHQ (which now has been postponed). Bildt's "surprise" evidently relates more to the Reuter report than to Ivanko's comment, which I believe is the correct position to take. It so happens that it coincides with the OSCE position. The comment also is consistent with our insistence that the UN is in Bosnia not merely in an operational capacity but as part of the overall international political engagement and therefore holds and expresses its views on important political issues. The divergence in views in the international community here is simply another example of the lack of coordination at the political level by the High Representative.

Best regards

DISTRIBUTION; DCM, SPO, PIO

ANNEX "I"

ASN-002

OUTGOING CODE CABLE
IMMEDIATE

TO : RIZA, SRSG UNMIBH, SARAJEVO
INFO : ALMSTROM, HCA UNMIBH, SARAJEVO
BISER, CAC REGION SOUTH, SARAJEVO
FROM BEAUMONT, CIVIL AFFAIRS LIAISON OFFICER, PALE
NUMBER : P/44
DATE : 13 July 1996

TOR 001
'96 JUL 14 -9 :15

SUBJECT : MEETING WITH ZAMETICA

Summary Apparent belief in an attempt to seize Karadzic. Full SDS election participation or Serb boycott. Exile a possible compromise offer?

1. Yesterday, at my request, I had an introductory meeting with Zametica, adviser to Karadzic. Although we agreed to meet at least once a week in future, he has been granted a fortnights leave by Karadzic, commencing today. Our discussion was wide ranging and informative The main points follow.

2. Zametica was mainly concerned about the possibility of a military operation to seize his master and returned to this theme several times. While he considered it likely, he did not believe that either the British or French would participate, only the Americans. Equally, he believed that the operation would be generated from out of theatre and ARRC would only have minimal knowledge - sufficient to avoid 'own-goal' casualties. He thought the next two weeks the most likely time-frame. He said he would not burden me by describing the strength and preparedness of Karadzic's guard, but I should be aware that the operation would be very bloody. In his view, the reaction of the people would be unpredictable but was likely to be extreme. He advised that if such an operation were on the cards, we should prepare continency evacuation plans. In such an eventuality, he firmly believed that Dayton would become irrelevant and conflict of some form would be likely.

3. Apparently, Zametica was present in the recent Frowick-Plavsic meeting. He related that he found the Ambassador "ambiguous" and had no clear indication whether it was only a matter of Karadzic standing down as SDS President or, as related by Buha, it was the US intention to exclude the SDS entirely. Given Clinton's overriding need to have successful elections, he thought the latter course was unlikely and suggested that US pragmatism would result in some form of compromise, as well as pressure upon Sarajevo to ameliorate its current extreme and undemocratic position. He expected the SDS to participate fully or the [illegible] boycotted by all Serbs. On elections, he was grateful to the international community for the boost it had given [illegible] own manoeuvres to support Karadzic, Mladic and the SDS. He agreed that prior to the Kasagic saga the popularity of Karadzic and the SDS was at the lowest ebb ever; however, it was now even greater than in 1992 and he expected an overwhelming SDS election victory. Frankly, he said, they could not understand what strategy lay behind the international community's campaign.

4. He acknowledged that some form of negotiations, via a third party, had been held between ICTY and Karadzic. Although he claimed to be unsure, he thought that they might

CDSC HCA CAC/PTT CIPTF CAO COS/SMLO SPO/PO

be continuing, perhaps with a view to him accepting exile. He did not allude, despite my oblique references, to any scenario remotely related to that outlined in my P/037.

5 Examining the post-election period, much as Buha had related (see my P/043), he believed that the Croats would attempt to splinter B-H unity and the RS would await such a course. A specific time-frame was not mentioned, but not before the elections, perhaps within two years. In that eventuality, Zametica did not exclude the possibility of Izetbegovic making overtures to Milosevic and seeking some form of union or confederation which would include the RS. He thought such an arrangement might have a certain appeal to Milosevic, but underlined that it would be totally unacceptable to the RS and vehemently resisted. However, instead of seeking a political accommodation, he did not exclude that Sarajevo would forego diplomacy and merely attack the seceding entity with their freshly trained and rearmed forces. The RS would ensure it remained an innocent bystander and allow the Croats/Croatia to smash the Muslims. In the meantime, the RS allegedly has every intention of modernising its own forces

6 Discussing RS political figures, he offered to arrange a meeting with Plavsic and maintained that her hardline attitudes stemmed from twenty of her relatives being killed by "ustasha" during WW II He agreed that she was intensely loyal to Karadzic, but maintained that she had an independent streak and, as she had demonstrated on several occasions, would not necessarily follow his instructions. Kasagic, he viewed as more capable than Klickovic, but he had unfortunately followed his own course to the detriment of the RS. He believed that Klickovic, while not among the intellectual elite, was a "team player" and therefore more acceptable than his predecessor. While the RS was "satisfied" with his performance at Florence, he needed to be kept on a short-leash. Attempting to discuss Radic, Zametica refused to speculate on his current actions undercutting the prospects of a coalition between the DPB and PPU.

Comment

7 Clearly a clever man, and perhaps an expert at disinformation, our discussion largely mirrored those that I have had with Buha and others. It is unclear whether Karadzic's "exile" was being floated as a suggested compromise, or if it was merely idle discussion. However, I do not believe that Zametica says anything without carefully weighing his words. Regarding the prospects of IFOR attempting to seize Karadzic, it is possible that the RS is merely continuing its campaign to heighten the leadership's popularity with overt appeals to the [illegible] Serb nature for solidarity and unity behind the 'only' party that can protect them; [illegible] genuine concern. The manner in which he discussed Radic could be interpreted as [illegible] still acting in SDS interests, or as a [illegible] the issue and thus confuse assessments as to whether the international community should support him.

Best regards.

ANNEX "J"

13-JUL-1996 17:31 CIVIL AFFAIR PALE

RSN-013

OUTGOING CODE CABLE
IMMEDIATE

TO : RIZA, SRSG UNMIBH, SARAJEVO
INFO : ALMSTROM, HCA UNMIBH, SARAJEVO
BISER, CAC REGION SOUTH, SARAJEVO
FROM BEAUMONT, CIVIL AFFAIRS LIAISON OFFICER, PALE
NUMBER P/43
DATE : 13 July 1996
SUBJECT : MEETING WITH BUHA

'96 JUL 13 17:33

Summary Threats of election boycott, destruction of polling booths, and a people's (not army) guerilla war. Plea for compromise.

1. Buha urgently tried to see me on Thursday but, as I was engaged in the RS Symposium I was unaware. Thus, at Buha's request, I met him on Friday for two hours. It seemed clear that the RS leadership had asked him to convey their views on current concerns to SRSG. I seized the opportunity to clarify certain other issues. A summary follows.

Current Concerns

2. Buha was anxious for information on the outcome of the Contact Group meeting in London; there was little I could tell him, although I will revert on Monday as a result of discussions in your office. The particular concerns he raised were: (1) the intention of the US (throughout he carefully differentiated between the US and the international community) to rearm and train Federation forces. In the context of the OSCE Arms Reduction Agreement, he saw it as inexplicable and as an indication of Muslim aggressive intent; (2) international pressures, at the instigation of the US, not only against Karadzic and Mladic, but with "*wider intent.*" He said that "*individual destinies could be solved in some way*," but a *descent* operation would be tragic. He believed that the RS people would take to the mountains and fight a guerilla war, without instructions from the leadership, and Dayton would be dead. Furthermore, he did not believe that pressures would cease if Karadzic relinquished the SDS leadership, but would widen, in some indeterminate way, to encompass the entire SDS leadership. He felt the RS was "*being backed into a corner.*"

3. Regarding his recent meeting with Frowick, Buha believed that the Ambassador was still trying to assess the situation. However, the meeting had left the RS with the impression that the US State Department is determined to exclude Karadzic and the entire SDS party from the elections but wished to ensure exclusion appeared to be democratic. Frowick had apparently expressed uncertainty whether Karadzic could remain SDS leader or not, but the US people were pressing Congress, which was pressing Frowick, that he could not. The Ambassador, apparently maintained that while he had to decide, he was in a difficult position as he had six children to support. Buha clearly saw this as a contemptible excuse when the fate of a nation hung in the balance.

4. Buha summarised the RS perspective, as told to Frowick: (1) Dayton had been entirely fulfilled by the RS and there is no intention to renege on what had been agreed; (2) Karadzic is not in a public function, nor in a government function, only in one that any citizen might fulfil; (3) the RS has fulfilled its obligations to ICTY by asking for evidence

to be provided so that national courts could consider a trial. However, even the lawyer, Pantelic, had not been allowed access to the evidence. Extradition is not allowed under RS law. Overall, Buha saw the RS as in the same position as Luther before the Pope - "*I am standing here, I can not do it another way, God help me.*" Equally, he said, the RS is under no illusions that it faces Goliath as David, but "*we can not change course now, we are at the end, to go further means chaos.*" Should Karadzic be forced to step down, "*there is nothing, and all can go to hell: the Party will not allow such a solution.*" If Karadzic is arrested by force, the result would be the same - the people will not allow it.

5. Buha saw recent events as a form of test whereby the next steps would reveal if the US wishes peace or "*another way.*" He had informed Frowick that if, on Monday, the price of SDS election participation is Karadzic's eclipse, it proves that the US has decided that democratic elections can be held without the Party - which really means without the Serbs. Without prompts from the leadership, the elections would be boycotted and the polling booths would be destroyed by the people. He had cautioned Frowick and Lowenstein, by reference to his advice to Bildt and Steiner prior to the Serb exodus from Sarajevo, not to take his words lightly and had advised Frowick not to be embarrassed in a similar fashion. The bottom line resulting from Karadzic or SDS exclusion is, he said, "*a Serb exodus from the elections.*" Given Clinton's own imperatives, he did not understand US actions and Serb determination should not be underestimated.

6. Switching tack, Buha alleged that Lowenstein had told him that although he did not expect the Croats to separate before the elections, they surely would afterwards and then they (it was not clear if it was Croatia or Herzegovinians) would suffer international isolation and only Germany would support them. Buha wondered whether the US would seek to re-establish B-H or be content to leave the Muslims a small independent state. Quoting various personalities to Lowenstein, Buha had indicated his belief in Sarajevo's intention to fight under such circumstances, as well as Tudjman's determination "*to take his people back.*"

Other Issues

7. RS Senate: Buha related that the Senate will not exist until after the elections (if they are held) as the law or statute to establish the body and its *modus operandi* has yet to be formulated. Therefore, as Plavsic will win, there is no need for the international [illegible] to be concerned with which president the body will advise, or which will [illegible] select members. Currently, there has only been a [illegible] amendment to allow the body [illegible]. He confirmed that it will mainly consist of [illegible] academicians and renowned public figures, with ve[illegible] few from the National Assembly, have no executive powers, and will not be party-orientated.

8. Government Reshuffle: Allegedly, there is no intention of changing the government at this stage before the elections - new ministers would have insufficient time to become effective and would thus appear ineffectual and undercut election prospects. In particular, he discounted any prospect of Kijac, the Minister of Interior, being replaced.

9. Party Alliances. Buha was scathing about the Democratic Patriotic Block; he

related that they are all ex-SDS members who graduated badly from the SDS school and whose ambitions outstrip their capabilities. He maintained that even if the Block had formed a coalition with the Peace and Progress Union, SDS would still have fielded its own candidates. He did not comment on Radic seemingly acting to destroy any prospect of a coalition between the two blocks. His only comment in relation to the stillborn SDS/SPRS coalition, apparently advocated by Milosevic, was that it had led to the discovery that Vice Premier Koljevic (mooted by Belgrade as the leader of the coalition) had never been a member of SDS. However, Buha maintained, it was of little significance as 50% of the government are not formal SDS members, although in their hearts they are.

Buha's Conclusion:

10. He did not feel that Tudjman would act to separate before the elections, but would wait until adjustments to the municipal boundaries were complete, then seek to prove that Joint Institutions were ineffective and that a multi-ethnic B-H was an impossibility. He was unsure whether this would result in the US realising that a unified Bosnia was a pipe-dream.

11. Buha reiterated that the current crisis is the end-game. Assuming a compromise is found and the elections held, the international community has to decide the next steps. He warned that the Muslims are not ready to accept any form of compromise, equality or cooperation, but a Serb-Croat block would counter the Muslims in the Joint Institutions. He expected (or hoped) the international community to accuse Tudjman and Izetbegovic, if there is justice, of war crimes. Believing in the objectivity of the international community, he thought it would identify the need for a policy switch and should consider acceptance of his 2 June Geneva proposal advocating a general amnesty for all crimes in the civil war. Finally, he underlined that Serbs would not participate in the elections, if the pressures were to continue, while the forcible arrest of Karadzic or Mladic would result in armed resistance by the people, not the army.

Comment

12. Clearly, the RS leadership is highly worried about the current course of events. Having successfully restored Karadzic's flagging popularity, significantly assisted by elements of the international community, the leadership can not now back down without losing popularity and credibility - and the elections are imminent. Given the Serb psyche and [illegible] determination of the leadership to cling to power, it can not be excluded that they might act as [illegible] if the wrath of the world descends upon them. [illegible] would support them is another question; on balance, it is believed that all parts of the RS would currently do so. Perhaps this scenario has been deliberately created, but it is also seems clear that the Government would like to seek a face-saving formula for both itself and the international community. In the light of recent SDA announcements, it is difficult to identify an acceptable solution. However, if current events mark the conclusion of a process, rather than a start, and Karadzic will now be marginalised, perhaps the crisis will fade [illegible] if the SDA allow it.

Best regards.

ANNEX "K"

PETER ROBINSON
International Criminal Law
P.O. Box 1844
Santa Rosa, California 95402
(707) 575-0540
E-mail: peter@peterrobinson.com

MEMORANDUM

To: Radovan Karadzic

Re: Review of UN Archives in New York

Date: 31 July 2009

Confidential—Attorney Client Privilege

On 28-31 July 2009, I inspected various documents at the United Nations Archives in New York. I was not allowed to make any notes or have a computer with me, but could only attach a post-it to any pages which I wanted to have copied. Those documents would be reviewed by the Office of Legal Counsel and provided to us at a later date.

I have attached the inventory of boxes that I was given access to. The boxes with check marks indicate the ones I was able to review during the week.

Because of the pendency of the appeal, I concentrated on trying to find documents relevant to the Holbrooke Agreement and mostly limited my review to folders from 1996. There were many interesting files for earlier time periods that I would have liked to review on trial related issues, and I think I should go back and do that at some point.

There were some significant documents concerning the events leading up to the Holbrooke Agreement. Since I could not take any notes, and looked at hundreds of documents, it is difficult to remember exact details.

The documents revealed that the effort to get you to resign was closely coordinated with the UN. Representatives of the UN, particularly Special Representative of the Secretary General Iqbahl Riza, attended meetings of the Peace Implementation Council (PIC) at

which the strategy for getting you to resign was discussed. They also attended meetings of the Contact Group in Florence and London at which the topic was also discussed. In addition, representatives of the United States and other Contact Group countries regularly briefed the Security Council on their efforts.

There were no minutes of the 10 July 1996 London contact group meeting, although there was a statement released afterwards calling for your resignation. No reference was made to Holbrooke.

There was a private briefing on 17 July 1996 at which the US informed the council of Holbrooke's visit and that his goal was to get you put of power and out of the country. The members of the Security Council expressed support for his efforts.

The documents also reveal that UN personnel, including Riza and the Civil Affairs Liaison in Pale, whose name was Beaumont, frequently held discussions with representatives of Republika Srpska such as Buha, Krajisnik, and Velibor Ostojic and discussed the need for your resignation. This could have led to the conclusion that the international community, including the UN, was behind Holbrooke's final push to get you to resign in July 1996.

There were two important documents that I recall after 19 July. One was a letter from Ambassador Sacirbey on 22 July to the Security Council in which he cautioned that he hoped there was no deal made with you to get you to resign. This would corroborate his claim that he was told of the deal by Frowick on 19 July.

The other document was a report of a meeting with Alexa Buha by the UN Civil Affairs liaison Beaumont on 29 July. In the report, he says Buha alluded to an oral agreement with Holbrooke about The Hague. This, like the Menzies cable, is important corroboration that the participants of the meeting were led to believe that Holbrooke had promised no prosecution in The Hague.

Another part of the document was very important on the issue of apparent authority. Buha said that Bildt and some others claimed to act on behalf of the international community, but it was only Holbrooke who was able to deliver on his promises—or something to that effect.

There may be additional relevant information in the files of the Secretary General. I was told that 80-90 folders of relevant

information from the Secretary General's office had been identified, but could not be shown to me because the archives people did not have the approval of the Legal Affairs office to do so. I will follow up on that and go back and review those files when they are available.

At the conclusion of my visit, I was informed that the copies I had requested from Geneva were at the UN in New York and they would be assembled along with the copies I requested in New York. No copies would be released until I had completed review of all the documents. At that time, the entire file would be sent to the office of origin for review and then to the Office of Legal Affairs for eventual release to us.

ANNEX "L"

RTJ/HC/REC

United Nations Nations Unies
HEADQUARTERS • SIEGE NEW YORK, NY 10017
TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

16 September 2009

Dear Mr. Karadžić,

Request for United Nations Documents
The Prosecutor v Radovan Karadžić (Case No. IT-95-5/18)

I refer to your letters of 11 May 2009 and 2 June 2009, in which you requested that the Secretary-General provides you with documents considered relevant for the preparation of your preliminary motion to dismiss the indictment and for the preparation of your defence in the case against you before the International Tribunal for the former Yugoslavia.

During his visits to inspect the United Nations archives in Geneva, on 18-19 July 2009, and New York, on 28-31 July 2009, your Legal Advisor, Mr. Peter Robinson, identified 117 documents in the archives of the Department of Peacekeeping Operations (DPKO) and the Department of Political Affairs (DPA) that, in his view, fall within the scope of your requests of 11 May and 2 June 2009.

The Office of Legal Affairs, DPKO and DPA have reviewed the documents identified by Mr. Robinson to ensure that the information contained therein would not: (i) endanger the personal safety or security of current or former staff members of the United Nations or other individuals who might be identified from them; (ii) violate a duty of confidentiality which the United Nations owes to a third party; or (iii) compromise the confidentiality that is necessary for the effective operation of the internal decision-making processes of the Organization, including its political organs, such as the Security Council.

After reviewing those documents, the United Nations is pleased to confirm that it is prepared to make available to you copies of 76 documents in un-redacted form. Annex I lists these documents.

Further, the United Nations is prepared to make available to you copies of nine documents in redacted form. Annex II lists these documents and explains in each case the reason for providing the document to you in redacted form.

Mr. Radovan Karadžić
International Tribunal for the former Yugoslavia
The Hague

The nine documents listed in Annex III are either in draft form, incomplete or unsigned. Normally, the United Nations does not authorize the disclosure of such documents. However, in keeping with our policy of maximum cooperation with the *ad hoc* International Tribunals, the United Nations is prepared to disclose these documents in their present form. This entails, however, that the documents should not be presented or relied upon as official United Nations documents. Furthermore, permission is granted on the condition that if the complete or signed versions of these documents become available, you will seek the authorization of the United Nations before using them in trial.

The United Nations is not in a position to make available to you the 23 documents listed in Annex IV, for the reasons outlined in that annex.

Please note that the United Nations' preparedness to make available to you the documents enclosed with this letter should not be understood as constituting recognition of any obligation to make those documents available to you; nor is it to be understood as involving the assumption of any obligation to that effect. The United Nations' preparedness to provide documents to you is without prejudice to the immunity from legal process of the United Nations and its officials and to the inviolability of its archives.

Finally, please be advised that we are currently in the process of reviewing the documents that Mr. Robinson selected during his second visit to the United Nations archives in New York, on 24 August 2009. We will reply to you in relation to those documents as soon as practicable.

Yours sincerely,

Peter Taksøe-Jensen
Assistant Secretary-General
for Legal Affairs

cc: Mr. Le Roy
Mr. Pascoe

Annex I: Un-redacted documents

	Date	Document
1.	02.05.1994	UNPROFOR Interoffice Memorandum, Woodward to Akashi, "Analysis of General Mladic"
2.	04.04.1994	Code Cable #545 from De Lapresle to Annan: "Definition of Safe Areas"
3.	09.04.1994	Fax: Andreev to Akashi, "Meeting between Bosnian and Serb army commanders"
4.	08.04.1994	Inter-office memo, "UNPROFOR Impartiality"
5.	29.04.1995	Weekly Situation Report for 17 – 29 April 1995
6.	04.02.1995	Fax: Kirudja to Akashi and Moussalli, "Weekly Situation Report"
7.	27.01.1995	Fax: Kirudja to Akashi and Moussalli, "Weekly Situation Report"
8.	09.12.1994	Fax: Kirudja to Akashi and Moussalli, "Weekly Situation Report"
9.	02.03.1995	Fax: HQ Sector North East to BH Command Fwd, "Sitrep for Period 011700 A to 021700 A March 95"
10.	28.02.1995	Fax: HQ Sector North East to BH Command Fwd, "Sitrep for Period 271700A to 281700A Feb 95"
11.	15.02.1995	Fax: HQ Sector North East to BH Command Fwd, "Sitrep for Period 141700A to 151700A Feb 95"
12.	13.02.1995	Fax: HQ Sector North East to BH Command Fwd, "Sitrep for Period 121700A to 131700A Feb 95"
13.	13.02.1993	Letter: Morillon to Izetbegovic
14.	14.06.1996	Statement by Judge Antonio Cassese, President International Criminal Tribunal for the former Yugoslavia at the Florence Mid-Term Conference on the Implementation of the Dayton Accord, 13-14 June 1996
15.	19.07.1996	Cable #UNMIBH0412 from Barber to Sevan, "Security of UN Personnel in the Republika Srpska (RS)"
16.	02.07.1996	Code Cable #117 from Harston to Annan, "FRY Weekly Report 25 June – 1 July 1996"
17.	01.07.1996	Code Cable #1869 from Annan to Riza, "Lyon statement on Bosnia"
18.	05.07.1996	Code Cable #P/038 from Beaumont to Riza "Meeting with Buha"
19.	13.07.1996	Code Cable #P/43 from Beaumont to Riza "Meeting with Buha
20.	13.07.1996	Code Cable #P/44 from Beaumont to Riza "Meeting with Zametica"
21.	18.07.1996	Letter from the Permanent Representative of Bosnia and Herzegovina to the United Nations Addressed to the President of the Security Council
22.	14.06.1996	Chairman's Summary Conclusions of the Conference of the Peace Implementation Council, Florence
23.	08.06.1996	Code Cable #P/014 from Beaumont to Riza, "SRSG's Meeting with Klickovic"
24.	05.06.1996	Code Cable #P/011 from Beaumont to Riza, "SRSG's Meeting with Krajisnik"
25.	02.06.1996	Code Cable #P/009 from Beaumont to Riza, "Karadzic"

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26.	29.05.1996	Code Cable #P/007 from Beaumont to Riza, "Meeting with Ostojic"
27.	27.05.1996	Code Cable #P/006 from Beaumont to Riza, "Meeting with Buha"
28.	11.07.1996	Code Cable #UNMIBH0390 from Riza to Annan, "Bildt's Briefing to Council"
29.	28.05.1996	Letter: Riza to Bildt
30.	22.04.1996	Letter: from Steiner (OHR) to Muratovic (BiH)
31.	22.04.1996	Letter: Blewitt (ICTY) to Bildt (OHR)
32.	23.05.1996	Letter: OHR to Annan, "Steering Board Meeting in Paris"
33.	04.07.1996	Letter: from Chizhov (OHR) to Riza
34.	12.07.1996	Code Cable #1967 from Annan to Riza, "Letters to the Security Council"
35.	NO DATE	Republika Srpska Government Chart
36.	10.08.1996	Code Cable #P/51 from Beaumont to Riza, "Meeting with Ostojic"
37.	06.08.1996	Code Cable #P/49 from Beaumont to Riza, "Meeting with Krajisnik"
38.	13.07.1996	Code Cable #P/44 from Beaumont to Riza, "Meeting with Zametica"
39.	24.06.1996	Letter: Riza to Bildt
40.	01.07.1996	Code Cable #UNMIBH 0367 from Riza to Annan, "Position of Karadzic"
41.	02.07.1996	Code Cable #UNMIBH 0373 from Riza to Annan, "Karadzic's speech to SDS Assembly on 28 June"
42.	10.07.1996	Code Cable #P/42 from Beaumont to Riza, "Meeting with Bozanic"
43.	13.07.1996	Code Cable #P/43 from Beaumont to Riza, "Meeting with Buha"
44.	13.02.1995	Code Cable #MSC- 489 from Annan to Akashi, "Unidentified fixed wing aircraft flights in Tuzla"
45.	14.02.1995	Code Cable #Z- 257 from De Lapresle to Annan, "Unidentified Fixed Wing Aircraft Flights in Tuzla"
46.	15.02.1994	Code Cable #232 from Cot to Annan, "Investigation Report – Sarajevo Market Explosion – 5 Feb 94"
47.	11.02.1994	Code Cable #207 from Akashi to Annan, "Security Council Meeting on Situation in BiH"
48.	07.02.1994	Code Cable #181 from Akashi to Annan, "Meeting with President Milosevic"
49.	18.07.1995	Code Cable #1193 from Janvier to Annan, "Confiscation of UKRBAT Coy Equipment"
50.	23.04.1994	Code Cable # from E T Shitakha to Akashi, "Meeting in Belgrade with Bosnian Serb Civilian and Military Authorities"
51.	26.04.1994	Fax: Andreev to Annan, "Meeting with Dr. Karadzic in Pale"
52.	19.04.1994	Letter: Woodward (OSRSG, Zagreb) to Akashi, "Meeting with Milosevic"
53.	16.02.1995	Code Cable #MSC-517 from Annan to Akashi, "Unidentified Aircraft over Tuzla"
54.	02.06.1995	Letter: Goldstone (ICTY) to Annan
55.	29.08.1995	Code Cable #1540 from Akashi to Annan, "Meeting with President Milosevic"
56.	20.06.1996	Letter: Cassese (ICTY) to Elaraby (SC President)
57.	22.07.1996	Letter: Permanent Representative of Bosnia and Herzegovina to the United Nations addressed to the President of

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		the Security Council
58.	03.11.1995	Code Cable #2040 from Janvier to Kittani, "Mujahideen Activities and Freedom of Movement: Lack of Cooperation by the Bosnian Authorities in Federation Areas"
59.	08.09.1995	Code Cable #1623 from Janvier to Annan, "Mujahideen in Central Bosnia"
60.	08.01.1995	Code Cable #048 from De Lapresle to Annan, "Mujahidin Activity in Bosnia-Herzegovina"
61.	07.09.1994	Code Cable #1371 from De Lapresle to Annan, "Mujahadeen in Bosnia-Herzegovina (B-H)"
62.	05.09.1994	Fax: BH Cmd Fwd to UNPROFOR HQ, Zagreb, "Mujahadeen Involvement in BH"
63.	20.07.1992	Note: Tharoor to Goulding
64.	28.10.1992	Letter: Plavsic (RS) to all civilian and military institutions of the Republika Srpska
65.	15.09.1992	Letter: Nambiar to Mladic
66.	30.07.1992	Code Cable # from Nambiar to Goulding, " Alleged Dropping of Unknown Material in B-H"
67.	10.06.1992	Letter: Karadzic to Boutros Boutros-Ghali
68.	***16.03.1996***	***Overview of the Political Crisis in Bosnia and Herzegovina: A Personal View of its Evolution until Dayton by David Harland***[1]
69.	NO DATE	Security Council Resolutions for the Former Yugoslavia
70.	21.03.1995	Code Cable #MSC-905 from Annan to Akashi, "BiH offensive near Tuzla"
71.	22.03.1995	Code Cable #452 from Janvier to Annan, "UNNY MSC-905 dated 21 March 1995"
72.	19.03.1994	Letter: Karadzic to Akashi
73.	09.07.1996	Code Cable #CBZ-119 from Harston to Annan, "FRY Weekly Report 1-8 July 1996"
74.	23.07.1996	Code Cable #CBV-019 from Harston to Annan, "FRY Weekly Report 16-22 July 1996"
75.	25.06.1996	Code Cable #CBZ-114 from Harston to Annan, "FRY Weekly Report 17-24 June 1996"
76.	21.04.1992	Note to the Force Commander by Thornberry

[1] ***This is not a UN document and may not be presented in evidence or relied upon as such as it was drafted in the author's private capacity.***

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Annex II: Redacted documents

	Date	Document	Reasons for redaction
1.	12.04.1994	Fax: Kirudja to Akashi and De Mello, "Special Situation Report"	Document contains confidential information received from a third party.
2.	11.07.1996	Code Cable #UNMIBH0389 from Riza to Annan, "Review meeting of implementing agencies to be held in Brussels"	Document contains confidential issues related to UN internal decision-making processes.
3.	23.07.1996	Code Cable #UNMIBH 0423 from Riza to Annan, "Karadzic and Elections"	Document contains confidential information received from a third party.
4.	09.07.1996	Code Cable #CBK 010 from Harston to Riza, "Paper on Karadzic"	Document contains confidential information received from a third party.
5.	10.07.1996	Code Cable #P/040 from Beaumont to Riza, "Meeting with Ostojic"	Document contains confidential information received from a third party.
6.	12.07.1996	Code Cable #UNMIBH 0393 from Riza to Annan, "Karadzic"	Document contains confidential information received from a third party.
7.	14.04.1994	Fax: Stoltenberg to Secretary-General, "Meetings in Sarajevo and Pale"	Document contains confidential information received from a third party.
8.	27.02.1995	Code Cable #328 from Akashi to Annan, "No-Fly Zone Monitoring and Reporting"	Document contains confidential information received from a third party.
9.	16.07.1996	Code Cable #CBV-012 from Harston to Annan, "FRY Weekly Report 8 – 15 July 1996"	Document contains confidential information received from a third party.

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Annex III: Draft, incomplete and unsigned documents

	Date	Document	Explanation
1.	03.05.1996	Memo from Harland to Riza: "Dayton plus six months: drifting towards partition along the IEBL"	Document may not be presented or relied upon as an official UN document. Document is released on the condition that if the complete version of the document becomes available, the Defence will seek authorization of the United Nations before using it in trial.
2.	31.07.1996	Code Cable #2098 from Annan to Riza, "Talking Points for the Secretary-General's meeting with Mr. Bildt"	Document may not be presented or relied upon as an official UN document. Document is released on the condition that if the complete version of the document becomes available, the Defence will seek authorization of the United Nations before using it in trial.
3.	17.07.1996	Code Cable #UNMIBH 0402 from Riza to Annan, "Karadzic and elections"	Document may not be presented or relied upon as an official UN document. Document is released on the condition that if the complete version of the document becomes available, the Defence will seek authorization of the United Nations before using it in trial.
4.	06.02.1994	Letter: Boutros Boutros-Ghali to Olhaye (SC President)	Document may not be presented or relied upon as an official UN document. Document is released on the condition that if the complete version of the document becomes available, the Defence will seek authorization of the United Nations before using it in trial.
5.	15.02.1995	Code Cable #268 from Annan to De Lapresle, "Unidentified Fixed Wing Aircraft Flights in Tuzla"	Document may not be presented or relied upon as an official UN document. Document is released on

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	Date	Document	Explanation
			the condition that if the complete version of the document becomes available, the Defence will seek authorization of the United Nations before using it in trial.
6.	2.11.1995	Note to Mr. C.R. Gharekhan	Document may not be presented or relied upon as an official UN document. Document is released on the condition that if the signed version of the document becomes available, the Defence will seek authorization of the United Nations before using it in trial.
7.	5.09.1992	Note: Coblentz to Nambiar, "Draft translation of a letter by R. Mladic dated 10/09/92 re: information on sources of arms and men supply to Croat-Muslim forces in B&H and ensuing protest"	Document may not be presented or relied upon as an official UN document. Document is released on the condition that if the final version of the document becomes available, the Defence will seek authorization of the United Nations before using it in trial.
8.	7.02.1994	Report by the Secretary-General to the Security Council on the SRSG's Visit to Sarajevo (draft)	Document may not be presented or relied upon as an official UN document. Document is released on the condition that if the final version of the document becomes available, the Defence will seek authorization of the United Nations before using it in trial.
9	9.02.1994	Code Cable #196 from Akashi to Annan, Goulding and Stoltenberg, "Draft letter of the Secretary-General to President of Security Council"	Document may not be presented or relied upon as an official UN document. Document is released on the condition that if the final version of the document becomes available, the Defence will seek authorization of the United Nations before using it in trial.

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Annex IV: Documents not disclosed

	Date	Document	Explanation
1.	29.05.1996	Letter: Bildt to Riza	Document entails an UN duty of confidentiality towards a third party and cannot be disclosed.
2.	02.05.1996	Code Cable #1241 from Riza to Annan: "PIC Steering board meeting, Sarajevo"	Document entails an UN duty of confidentiality towards a third party and cannot be disclosed..
3.	12.02.1996	Code Cable #MIBH0060 from Riza to Kittani: "Holbrooke Proposal on Strengthening the IPTF Mandate"	Document entails an UN duty of confidentiality towards a third party and cannot be disclosed.
4.	20.02.1996	Note from Goulding to Aime: "Secretary-General's Visit to Washington"	Document contains confidential issues related to UN internal decision-making processes.
5.	08.05.1996	Code Cable #UNMIBH90238 from Riza to Corell, "Legality of arrangements under Dayton Agreement"	Document contains confidential issues related to UN internal decision-making processes.
6.	10.06.1996	Code Cable #UNMIBH 0320 from Riza to Annan, "Secretary-General's report"	Document contains confidential issues related to UN internal decision-making processes.
7.	18.07.1996	Interoffice Memorandum, Fitzgerland to IPTF Regional Commanders Sarajevo-Banja Luka-Tuzla, "Contingency Plan for Emergency Relocation of IPTF Personnel in Bosnia & Herzegovina"	Document entails an UN duty of confidentiality towards a third party and cannot be disclosed.
8.	23.07.1996	Code Cable #2028 from Annan to Riza, "Informal consultations of the Security Council"	Document refers to confidential informal consultations of the Security Council and cannot be disclosed.
9.	17.07.1996	Code Cable #2003 from Harston to Riza, "Informal consultations of the Security Council"	Document refers to confidential informal consultations of the Security Council and cannot be disclosed.
10.	22.05.1996	Code Cable # from Annan to Bildt, "PIC Meeting in Paris"	Document contains confidential issues related to UN internal decision-making processes and cannot be disclosed.
11.	03.06.1996	Code Cable #UNMIBH 0306 from Riza to Annan	Document entails an UN duty of confidentiality towards a third party and cannot be disclosed.
12.	24.04.1996	Bosnia: PIC Steering Board, Sarajevo	Document entails an UN duty of confidentiality towards a third party and cannot be disclosed.
13.	06.05.1996	Code Cable #UMIBH0235 from Riza to Annan,	Document contains confidential issues related to UN

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		"Contact Group and UN"	internal decision-making processes and cannot be disclosed.
14.	07.05.1996	Code Cable #1285 from Annan to Riza, "Contact Group and HighRep Meetings – UN Participation"	Document contains confidential issues related to UN internal decision-making processes and cannot be disclosed.
15.	19.07.1996	Code Cable #UNMIBH 0409 from Riza to Annan, "Karadzic does it again"	Document contains confidential issues related to UN internal decision-making processes and cannot be disclosed.
16.	03.07.1996	Code Cable #P/037 from Beaumont to Riza, "Karadzic and ICTY"	Document contains confidential issues related to UN internal decision-making processes.
17.	27.02.1995	Code Cable #MSC-606 from Annan to Akashi, "Informal Consultations of the Security Council	Document refers to confidential informal consultations of the Security Council and cannot be disclosed.
18.	23.02.1995	Code Cable #578 from Annan to Akashi, "NATO Report on Tuzla Air Violations"	Document contains confidential issues related to UN internal decision-making processes and cannot be disclosed.
19.	22.02.1995	Code Cable #566 from Annan to Akashi, "UNPROFOR Reporting on Air Violations"	Document contains confidential issues related to UN internal decision-making processes and cannot be disclosed.
20.	17.02.1995	Code Cable #284 from Akashi to Annan, "Unidentified Aircraft over Tuzla"	Document contains confidential issues related to UN internal decision-making processes and cannot be disclosed.
21.	21.02.1995	Code Cable #298 from Akashi to Annan, "NATO Report of Possible Fixed Wing Aircraft Flights at Tuzla"	Document entails an UN duty of confidentiality towards a third party and cannot be disclosed.
22.	03.03.1995	Code Cable #704 from Annan to Akashi, "Informal consultations of the Security Council"	Document refers to confidential informal consultations of the Security Council and cannot be disclosed.
23.	31.05.1996	Letter: Tharoor to Blewitt (ICTY)	Document contains confidential issues related to UN internal decision-making processes and cannot be disclosed.

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