UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991

Case No.: IT-95-5/18-T

Date: 4 November 2015

Original: English

IN THE TRIAL CHAMBER

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

Registrar: **Mr. John Hocking**

Decision of: **4 November 2015**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S 102ND AND 103RD DISCLOSURE VIOLATION MOTIONS

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 ("Tribunal") is seised of the Accused's "102nd Motion for Finding of Disclosure Violation and for Remedial Measures", filed publicly with confidential annexes on 30 September 2015 ("102nd Motion") and the "103rd Disclosure Violation Motion", filed publicly by the Accused on 5 October 2015 ("103rd Motion") (together "Motions"), and hereby issues its decision thereon.

I. Submissions

A. 102nd Motion

1. In the 102nd Motion, the Accused argues that the Office of the Prosecutor ("Prosecution") violated Rule 68 of the Tribunal's Rules of Procedure and Evidence ("Rules") by failing to disclose exculpatory material.[1] The Accused refers to four documents which in his submission are exculpatory but were only disclosed by the Prosecution in May, June, and September 2015.[2]

2. The first document is a transcript of testimony of Ranko Mijić in October 2010 before the BiH Court ("Transcript"), which in the Accused's submission demonstrates that the killings at Korićanske Stijene happened without the knowledge of the Prijedor Police Chief, Simo Drljača and shows that the incident was not carried out by persons acting under a joint criminal enterprise.[3] The Accused submits that he was prejudiced by this disclosure violation as he would have attempted to call Mijić as a witness or sought the admission of the Transcript pursuant to Rule 92 *bis*.[4] The Accused further notes that the Chamber denied (i) his motion to subpoena Mijić to testify as a witness in his case; and (ii) his motion to admit an interview with Mijić pursuant to Rule 92 *bis*.[5] The Accused submits that had the Prosecution disclosed the Transcript earlier he would have demonstrated that Mijić possessed information which was not available from other witnesses and also prioritised his efforts to interview him prior to the deadline for the filing of Rule 92 *bis* motions.[6]

[1] 102nd Motion, para. 1.
[2] 102nd Motion, paras. 2, 15, 21.
[3] 102nd Motion, paras. 2–5.
[4] 102nd Motion, para. 6.
[5] 102nd Motion, paras. 7–12 referring to Decision on Accused's Motion to Subpoena Ranko Mijić, 11 January 2015 and Decision on Accused's Motions for Admission of Evidence Pursuant to Rule 92 *bis*, 18 March 2014.
[6] 102nd Motion, para. 13.

3. The Accused seeks a finding that the Prosecution violated its disclosure obligations by the late disclosure of the Transcript.[7] He also requests that the Chamber (i) allow the case to be re-opened and issue a subpoena for the testimony of Mijić; alternatively (ii) admit the Transcript pursuant to Rule 92 *bis*; or (iii) draw an adverse inference on the issue affected by the disclosure violation.[8]

4. The second document is a report with respect to the situation in Banja Luka in December 1992 ("Report").[9] The Accused submits that the report is exculpatory as it suggests that the authorities in Pale were not in control of independent units which were more extreme and operating in Banja Luka.[10] The Accused submits that he was prejudiced by this late disclosure as he could have impeached Prosecution witnesses who testified about the Accused's control during this period and in addition he could have sought the admission of the Report.[11]

5. The Accused seeks a finding that the Prosecution violated its disclosure obligations by the late disclosure of the Report.[12] He also requests that the Chamber (i) allow the case to be re-opened to hear the testimony of the author of the Report; alternatively (ii) admit the Report from the bar table; or (iii) draw an adverse inference on the issue affected by the disclosure violation.[13]

6. The third and fourth documents referred to in the motion are letters written by the Prosecution to national authorities to provide assistance in terms of housing or to request the deferral of repatriation for six Prosecution witnesses who testified in this case ("Letters").[14] The Accused submits that the Letters are relevant to the credibility of these witnesses and should have been disclosed pursuant to Rule 68 of the Rules.[15] The Accused notes that the Chamber had previously ordered that such material relating to a witness requesting or receiving a benefit from being a Prosecution witness had to be disclosed by 13 December 2011.[16]

[7] 102nd Motion, para. 14.
[8] 102nd Motion, para. 14.
[9] 102nd Motion, para. 15.
[10] 102nd Motion, paras. 16–17.
[11] 102nd Motion, para. 18.
[12] 102nd Motion, para. 19.
[13] 102nd Motion, para. 19.
[14] 102nd Motion, para. 20. The Letters pertain to Izet Redžić, KDZ044, Rajif Begić, KDZ052, KDZ310 and Ahmet Zulić.
[15] 102nd Motion, para. 22.
[16] 102nd Motion, para. 23, referring to Decision on Accused's Sixtieth, Sixty-First, Sixty-Third, and Sixty-Fourth Disclosure Violation Motions, 22 November 2011, para. 36 ("November 2011 Decision").

7. The Accused submits that he was prejudiced by the late disclosure of the Letters because he was unable to question the relevant witnesses by reference to the benefits they received.[17] For 92 *bis* witnesses, the Accused submits that he was deprived of information he needed to request that they be called for cross-examination.[18]

8. The Accused seeks a finding that the Prosecution violated its disclosure obligations by the late disclosure of the Letters.[19] He also requests that the Chamber (i) recall or call the affected witnesses for cross-examination; or (ii) admit the Letters from the bar table.[20]

9. The Accused also seeks an evidentiary hearing with respect to the Prosecution's repeated violations of its Rule 68 disclosure obligations and further requests that if the Chamber imposes a sentence in its final judgement, that the sentence be accordingly reduced as a remedy and sanction.[21]

10. On 14 October 2015, the Prosecution filed the "Prosecution Response to One Hundred Second Motion for Finding of Disclosure Violation and for Remedial Measures" ("102nd Response") publicly with a confidential appendix, in which it opposes the 102nd Motion.[22]

11. The Prosecution contends that the Transcript is not exculpatory and therefore its late disclosure does not amount to a disclosure violation.[23] The Prosecution argues that contrary to the Accused's submission, the Transcript does not confirm that the Korićanske Stijene killings happened without the knowledge of Drljača and that in any event its case does not depend on Drljača's prior knowledge of the incident.[24] The Prosecution points to portions of the Transcript which are in its submission "highly inculpatory".[25] The Prosecution further notes that even if the Transcript had some exculpatory value, the Accused already possessed "substantially the same evidence" given that a 2008 witness statement of Mijić had been disclosed to the Accused in February 2011 and this rendered "baseless his claims of prejudice".[26]

12. The Prosecution notes that the Report had already been disclosed to the Accused in April 2011 under a different ERN.[27] It argues that this demonstrates that the Accused's submissions

[17] 102nd Motion, para. 24.
[18] 102nd Motion, para. 20.
[19] 102nd Motion, para. 25.
[20] 102nd Motion, para. 25.
[21] 102nd Motion, paras. 25–26.
[22] 102nd Response, para. 1.
[23] 102nd Response, paras. 1–3.
[24] 102nd Response, paras. 2–4.
[25] 102nd Response, para. 4.
[26] 102nd Response, para. 5.
[27] 102nd Response, paras. 1, 6.

about how he would have used the Report are not genuine and that his request for remedies are unfounded.[28]

13. The Prosecution acknowledges that the Letters should have been previously disclosed pursuant to Rule 68 of the Rules and expresses its regret for this late disclosure, which it blames on an administrative error.[29] It argues however, that the Accused was not prejudiced because the information was either duplicative of materials available to the Accused or of negligible probative value.[30]

14. The Prosecution notes that the Chamber has already issued a number of decisions on similar or identical material to that found in the Letters with respect to five of the six witnesses referred to in the 102nd Motion.[31] The Prosecution notes that in each of those cases the Chamber had rejected similar arguments raised with respect to these disclosure violations and that the Accused has again failed to show any substantial deviations or inconsistencies in the content of the evidence of these witnesses which can be attributed to the Letters.[32] In this regard the Prosecution refers to the multiple times the witnesses have testified and the number of statements they have given.[33] For example, the Prosecution submits that another version of one of the Letters had already been disclosed to the Accused, and the Chamber had ruled that the late disclosure of that document did not cause prejudice with respect to Ahmet Zulić and KDZ052.[34] It argues that the 102nd Motion should therefore be dismissed as moot with respect to these two witnesses and that the Accused's attempt to re-litigate this material is a waste of resources.[35]

15. Given the failure of the Accused to show prejudice, the Prosecution concludes that the requested remedial measures should be denied.[36]

B. 103rd Motion

16. In the 103rd Motion the Accused argues that the Prosecution violated Rules 66(A)(ii), 66(B), and 68 of the Rules with respect to three documents.[37] The first document is a statement

[28] 102nd Response, paras. 1, 6.
[29] 102nd Response, paras. 1, 9.
[30] 102nd Response, paras. 1, 8, 10.
[31] 102nd Response, para. 10, referring to the March 2012 Decision; Decision on Accused's Eighty-Third Disclosure Violation Motion, 21 November 2013 (confidential) and Decision on Accused's Sixty-Fifth Disclosure Violation Motion, 12 January 2012.
[32] 102nd Response, paras. 11–15.
[33] 102nd Response, paras. 11–14.
[34] 102nd Response, para. 8, referring to Decision on Accused's Sixty-Seventh and Sixty-Eighth Disclosure Violation Motions, 1 March 2012 (confidential) ("March 2012 Decision"), paras. 33–35.
[35] 102nd Response, para. 8.
[36] 102nd Response, paras. 1, 15.
[37] 103rd Motion, para. 1.

of Prosecution witness, Asim Egrlić ("Statement") which was only disclosed to the Accused on 30 September 2015, in contravention of the Chamber's order to disclose all Rule 66(A)(ii) statements by 7 May 2009.[38] The Accused requests that Egrlić's evidence be excluded as a sanction for the violation and argues that no prejudice is required to support such a sanction for a breach which is contrary to the administration of justice, for example in cases of contempt.[39]

17. The Accused also refers to a letter written by Manojlo Milovanović in April 1993 ("Milovanović Letter"), which he submits is exculpatory and was only disclosed on 15 September 2015.[40] The Milovanović Letter reports that residents of Srebrenica wanted to leave the enclave but were prevented from doing so by Bosnian Muslim forces.[41] In the Accused's submission this is exculpatory as it shows that the population in Srebrenica wanted to leave and their departure in July 1995 was voluntary and did not constitute forcible transfer as charged.[42] The Accused submits that he was prejudiced by this disclosure violation as he was unable to use it during the testimony of Milovanović or to tender it into evidence.[43]

18. The Accused further submits that the late disclosure of the Milovanović Letter also violated Rule 66(B) given that he had requested to be provided with all documents authored by Prosecution witnesses prior to their testimony.[44] The Accused seeks a finding that the Prosecution violated its disclosure obligations under Rules 66(B) and 68 of the Rules by the late disclosure of the Milovanović Letter.[45] He also requests that the Chamber (i) allow the case to be re-opened to allow the Accused to recall Milovanović; (ii) admit the Milovanović Letter from the bar table; or (iii) draw an adverse inference on the issue affected by the disclosure violation.[46]

19. The third document referred to in the 103rd Motion is a report of a 1995 interview by the Prosecution with Milan Dimitrijević concerning events in Brčko in 1992 ("Interview"), which was only disclosed to the Accused on 22 September 2015.[47] The Accused submits that the Interview is exculpatory as it refutes the Prosecution's case that he had effective control over the paramilitaries who were committing crimes in Brčko in 1992.[48] The Accused submits that he

[38] 103rd Motion, para. 2.
[39] 103rd Motion, paras. 4–6.
[40] 103rd Motion, paras. 7–9.
[41] 103rd Motion, para. 7.
[42] 103rd Motion, para. 9.
[43] 103rd Motion, para. 10.
[44] 103rd Motion, para. 11.
[45] 103rd Motion, para. 12.
[46] 103rd Motion, para. 12.
[47] 103rd Motion, paras. 13–14.
[48] 103rd Motion, paras. 15–16.

was prejudiced by this late disclosure as he could have interviewed Dimitrijević and called him as a defence witness.[49]

20. The Accused seeks a finding that the Prosecution violated its disclosure obligations by the late disclosure of the Interview.[50] He also requests that the Chamber (i) allow the case to be re-opened to hear the testimony of Dimitrijević; or (ii) draw an adverse inference on the issue affected by the disclosure violation.[51]

21. The Accused also repeats his request for an evidentiary hearing to determine why material continues to be disclosed by the Prosecution in violation of its disclosure obligations.[52]

22. On 19 October 2015, the Prosecution filed the "Prosecution Response to 103rd Disclosure Violation Motion" ("103rd Response"), in which it argues that the 103rd Motion should be denied.[53] The Prosecution acknowledges that the Statement had been in its possession since April 2010 and should have been disclosed earlier pursuant to Rule 66(A)(ii) and expresses its regret for this failure.[54] The Prosecution notes however, that the Accused has not even attempted to establish that he was prejudiced.[55] It argues that the Accused's submissions that "no prejudice is required to support a sanction" or that the late disclosure of Rule 66(A)(ii) material is an offence "against the administration of justice" is unsupported and ignores the Chamber's instruction to focus on disclosure violation motions where there is "demonstrable prejudice".[56] The Prosecution further notes that there is no suggestion by the Accused that the Prosecution deliberately withheld the Statement and this undermines his argument that this is analagous to contempt.[57]

23. The Prosecution argues that there was no violation of Rule 68 with respect to the disclosure of the Milovanović Letter or the Interview as they were not exculpatory.[58] With respect to the Milovanović Letter, the Prosecution argues that it does not show that it was reasonable for the VRS or the Accused to believe that the departure of the population from

[49] 103rd Motion, paras. 15–16.
[50] 103rd Motion, para. 18.
[51] 103rd Motion, para. 18.
[52] 103rd Motion, para. 19.
[53] 103rd Response, para. 1.
[54] 103rd Response, paras. 1–4. The Prosecution explains that there was a failure to process the Statement and include it in its evidence collection and was only discovered during a search carried out during the *Mladić* case.
[55] 103rd Response, para. 1.
[56] 103rd Response, paras. 5–6 referring to multiple decisions of the Chamber including most recently the Decision on Accused's Ninety-Eighth and Ninety-Ninth Disclosure Violation Motions, 8 June 2015, para. 18 ("June 2015 Decision").
[57] 103rd Response, para. 6.
[58] 103rd Response, paras. 1, 8.

Srebrenica in July 1995 was voluntary.[59] It explains that the Milovanović Letter about the wishes of the inhabitants in April 1993 "says little if anything about their wishes two years later" and in any event does not imply that their desire to leave even in 1993 was voluntary.[60] In addition the Prosecution notes that even if the Milovanović Letter had some exculpatory value the Accused suffered no prejudice given that similar information was already available to him and admitted into evidence in this case.[61]

24. With respect to the Interview, the Prosecution argues that remarks of the witness about the difficulties in gaining control over paramilitary formations in Brčko are consistent with its case and thus not exculpatory.[62] The Prosecution points to information contained in the Interview which is inculpatory and indicates that involvement of Serb Forces in "ethnic cleansing" and the removal of the Bosnian Muslim population from the municipality.[63] It also notes that given the witness did not know who the paramilitary units reported to, the Interview does not refute the Prosecution's case with respect to effective control.[64]

25. In any event the Prosecution concludes that even if the Interview had some exculpatory value, the Accused suffered no prejudice given the "marginal and duplicative" nature of the evidence.[65] In this regard the Prosecution points to the equivocal nature of the answers given by the witness and further notes that the Prosecution's allegations with respect to Brčko are limited to crimes committed at Luka camp and the witness had limited knowledge about this facility.[66] It also notes that the Accused ignores evidence already led in this case on the subject of control over paramilitaries in Brčko.[67]

26. In any event the Prosecution argues that the Accused has shown no prejudice with respect to this disclosure which is duplicative of material already in evidence and of negligible probative value.[68] In the absence of prejudice to the Accused, the Prosecution contends that the Accused's requested remedies should be denied.[69]

[59] 103rd Response, para. 9.
[60] 103rd Response, para. 9.
[61] 103rd Response, para. 10.
[62] 103rd Response, paras. 11–13.
[63] 103rd Response, para. 13.
[64] 103rd Response, paras. 14, 16.
[65] 103rd Response, para. 15.
[66] 103rd Response, para. 15.
[67] 103rd Response, para. 16.
[68] 103rd Response, para. 1.
[69] 103rd Response, paras. 1, 7, 16.

II. Applicable Law

27. Rule 66(A)(ii) of the Rules requires the Prosecution (within a time-limit prescribed by the Chamber or pre-trial Judge) to make available to the Defence "copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial, and copies of all transcripts and written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, and Rule 92 *quater*". The applicable deadline for the disclosure of all material falling within Rule 66(A)(ii) in this case was 7 May 2009.[70]

28. Rule 66(B) of the Rules requires that "the Prosecutor shall, on request, permit the Defence to inspect any books, documents, photographs and tangible objects in the Prosecutor's custody or control" which (i) are material to the preparation of the defence, or (ii) are intended for use by the Prosecutor as evidence at trial, or (iii) were obtained from or belonged to the accused. In accordance with the language of the Rule, the Accused should first direct any request for inspection to the Prosecution and only refer the matter to the Chamber when such request has failed.[71]

29. Rule 68 of the Rules imposes a continuing obligation on the Prosecution to "disclose to the Defence any material which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence". In order to establish a violation of this obligation by the Prosecution, the Accused must "present a *prima facie* case making out the probable exculpatory or mitigating nature" of the materials in question.[72]

30. Rule 68 *bis* provides that a Trial Chamber may, *proprio motu* or at the request of either party, decide on sanctions to be imposed on a party which fails to comply with its disclosure obligations under the Rules. In determining the appropriate remedy (if any), the Chamber has to examine whether or not the accused has been prejudiced by the relevant breach.[73]

[70] Order Following Status Conference and Appended Work Plan, 6 April 2009, para. 7.

[71] Decision on Accused's Seventy-Fourth Disclosure Violation Motion, 6 November 2012, para. 8 ("Seventy-Fourth Decision") referring to Decision on Accused Motion for Inspection and Disclosure, 9 October 2008, para. 4.

[72] *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004 ("*Kordić and Čerkez* Appeal Judgement"), para. 179.

[73] *Kordić and Čerkez* Appeal Judgement, para. 179; *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004, para. 268.

III. Discussion

A. 102nd Motion

31. Having reviewed the Transcript, the Chamber finds that contrary to the Accused's submissions it is not potentially exculpatory with respect to the alleged killings at Koričanske Stijene. On the contrary, the Transcript contains material which is consistent with the Prosecution's case with respect to this incident. The Chamber therefore finds that there was no disclosure violation with respect to Transcript and the requested remedies are denied.

32. The Chamber notes that the Report was already disclosed to the Accused in April 2011 and therefore there was no disclosure violation with respect to this document. The fact that this document was already in the Accused's possession and he failed to use it during his case illustrates that the Accused exaggerated the significance of the Report in the 102nd Motion and the prejudice which in his submission he suffered by its late disclosure. This is yet another example of the Accused ignoring the Chamber's instruction that he should focus on disclosure violation motions which relate to documents where there is demonstrable prejudice and not view this as a purely numerical exercise.

33. Having reviewed the Letters, the Chamber finds that they involve the Prosecution writing to relevant authorities to provide assistance in terms of housing or to request the deferral of repatriation for witnesses who testified in this case. The Chamber has previously held that this kind of assistance is something which could affect the credibility of a witness and should therefore be disclosed pursuant to Rule 68.[74] The Chamber therefore finds that the Prosecution violated Rule 68 of the Rules by failing to disclose the Letters as soon as practicable. However, the Chamber does not find that the Accused was prejudiced by this late disclosure. In reaching that conclusion the Chamber notes that with respect to two of the witnesses, Ahmet Zulić and KDZ052, the Chamber had already ruled that the disclosure of similar material caused no prejudice to the Accused.[75] The 102nd Motion is therefore dismissed with respect to these two witnesses. With respect to the remaining witnesses, the Accused has failed to show any deviations or inconsistencies in the content of their evidence which could be attributed to the timing or provision of the letters. The Chamber therefore finds that the Letters were not of such significance that the Accused was prejudiced by their late disclosure. In the absence of prejudice to the Accused, the requested remedies and sanctions are denied.

[74] November 2011 Decision, para. 23.

A. 103rd Motion

34. At the outset the Chamber expresses its disappointment with respect to the material included by the Accused in the 103rd Motion. The Chamber sees no reason why this material was not included in the 102nd Motion, given that the documents in question were disclosed to the Accused on or before 30 September 2015, which is the date the Chamber ordered the Accused could file his next disclosure violation motion. The Accused, if necessary could have delayed filing the 102nd Motion to allow this material to be included. The Chamber views this as another indicator that the Accused persists with filing disclosure violation motions as a numerical exercise as opposed to furthering his case. The Chamber will nevertheless consider the merits of the 103rd Motion but notes that the Accused's failure to consolidate this material in the 102nd Motion amounts to a waste of judicial resources.

35. With respect to the Statement, the Chamber finds that given that it had been in the possession of the Prosecution since April 2010, it should have been disclosed earlier and that therefore the Prosecution violated Rule 66(A)(ii) of the Rules by its late disclosure. However, the Accused has failed to even argue that he was prejudiced by this late disclosure. There is no suggestion that the Prosecution deliberately withheld the Statement. Under these circumstances, the Chamber sees no basis for the Accused's argument that this disclosure violation warrants a sanction. This is another indicator that the Accused has failed to focus on disclosure violation motions where there is demonstrable prejudice.

36. Having reviewed the Milovanović Letter, the Chamber does not consider that it contains material which is potentially exculpatory. Evidence which suggests that in April 1993 thousands of residents of Srebrenica wanted to leave but were prevented from doing so by Bosnian Muslim forces is not potentially exculpatory with respect to the events which are alleged to have taken place there in July 1995. The Chamber therefore finds that the Prosecution did not violate Rule 68 of the Rules with respect to the disclosure of the Milovanović Letter.

37. The Chamber has previously held that "that given the language of Rule 66(B), there can only be a violation of the Rule if the Prosecution refused to permit the Accused to inspect the material identified therein. In this case while the Prosecution failed to adhere to the deadline […], it cannot be said to have violated the terms of Rule 66(B) given that the Accused was given access to the material he requested, albeit belatedly."[76] The Chamber considers that the situation

[75] March 2012 Decision, paras. 33–35.
[76] Seventy-Fourth Decision, para. 11

to be the same here and finds that there was no violation of Rule 66(B) of the Rules with respect to the Milovanović Letter.

38. With respect to the Interview, the witness states that he did not know who the paramilitaries reported to in Brčko and he did not know who was responsible for calling them to the municipality. He also expressed his belief that "it may have been difficult to stop the paramilitary groups". The Chamber does not consider these qualified statements and equivocal opinions to be potentially exculpatory. On the contrary, the Interview actually includes material which is potentially inculpatory with respect to the treatment of Bosnian Muslims in Brčko. The Chamber further recalls that the Prosecution's allegations with respect to Brčko are limited to alleged crimes committed at Luka Camp, and the witness only visited the camp once and did not know who commanded the facility. This again demonstrates the failure by the Accused to focus on significant material which has a genuine impact on his case or which late disclosure caused him prejudice.

39. The Motions are yet another reminder of the Accused's failure to pay regard to the Chamber's repeated instruction that the filing of disclosure violation motions should not be a purely numerical exercise and that he should instead focus on disclosure violations where there is demonstrable prejudice.[77] Having regard to these factors and given that the trial phase of the case had ended, the Chamber instructs the Accused, that unless an urgent remedy is sought, a disclosure violation motion should not be filed before 1 February 2016.

IV. Disposition

40. For the foregoing reasons, the Chamber, pursuant to Rules 54, 66(A)(ii), 66(B), 68, 68 *bis* and 89 of the Rules, hereby**:**

(a) **GRANTS** by majority, Judge Kwon dissenting,[78] the Motions in part and finds that the Prosecution violated Rule 68 of the Rules with respect to its later disclosure of the Letters and violated 66(A)(ii) of the Rules with respect to its late disclosure of the Statement; and

[77] June 2015 Decision, para. 18; Decision on Accused's Second Motion for New Trial for Disclosure Violations, 14 August 2014, para. 15.

[78] Judge Kwon refers to his Partially Dissenting Opinion in the Decision on Accused's Thirty-Seventh to Forty-Second Disclosure Violation Motions with Partially Dissenting Opinion of Judge Kwon, 29 March 2011. While Judge Kwon agrees with the majority that there has been a violation of Rule 68 of the Rules, in the absence of prejudice to the Accused, he considers that the Motions should be dismissed in their entirety.

(b) **DENIES** the remainder of the Motions.

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

Judge O-Gon Kwon
Presiding

Dated this fourth day of November 2015
At The Hague
The Netherlands

[Seal of the Tribunal]