



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

IT-95-14-A  
A20045-A20034  
26 MAY 2003

20045AT

Case No. IT-95-14-A  
Date: 23 May 2003  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Fausto Pocar  
Judge David Hunt  
Judge Mehmet Güney  
Judge Asoka de Zoyka Gunawardana

**Registrar:** Mr. Hans Holthuis

**Decision of:** 23 May 2003

**PROSECUTOR**

v.

**TIHOMIR BLAŠKIĆ**

**DECISION ON "PROSECUTION'S PRELIMINARY RESPONSE  
AND MOTION FOR CLARIFICATION REGARDING  
DECISION ON JOINT MOTION OF HADŽIHASANOVIĆ,  
ALAGIĆ AND KUBURA OF 24 JANUARY 2003"**

**Counsel for the Prosecutor:**

Mr. Norman Farrell

**Counsel for the Appellant:**

Mr. Anto Nobilo  
Mr. Russell Hayman

**Counsel for the Applicants:**

Ms. Edina Rešidović and  
Mr. Stéphane Bourgon,  
for Enver Hadžihasanović  
Ms. Fahrudin Ibrišimović  
and Mr. Rodney Dixon,  
for Amir Kubura

## I. INTRODUCTION

1. On 27 January 2003, the Appeals Chamber rendered a decision on a joint motion for access to all confidential material, transcripts and exhibits in the case of *Prosecutor v. Blaskić* (“Decision I”), filed by the accused Enver Hadžihasanović, Mehmed Alagić, and Amir Kubura (“Applicants”) in the present appeal. The Applicants’ trial is yet to commence. Decision I partly granted the joint motion filed by the Applicants, and ordered:

(a) the Prosecution to seek the consent of the providers before disclosing to the Applicants the non-public material which falls under Rule 70(C) as identified by the Prosecution and the Appellant Blaskić in their confidential submissions filed before the Appeals Chamber;

(b) the Registry to grant the Applicants access to all non-public documents, materials and exhibits from the *Blaskić* case including non-public post-trial submissions, appellate briefs, and motions pursuant to Rule 115 of the Rules, filed in the *Blaskić* appeal until the date of the issuing of this decision, only if and when the consent of the providers has been obtained by the Prosecution in accordance with the directions under paragraph (a) above - with the exception of (1) the “Appellant’s Third Motion to Admit Additional Evidence on Appeal Pursuant to Rule 115” filed on 10 June 2002, (2) any submissions related to the said motion, (3) the “Prosecution’s Rebuttal Evidence and Arguments in Response to Additional Evidence Admitted on Appeal” filed on 7 January 2003, and (4) any *ex parte* motions and decisions which have been filed in the present appeal.

Decision I also indicated certain protective measures in respect of the non-public materials to which the Applicants were to have access.

2. On 21 February 2003, the Prosecution filed the “Prosecution’s Preliminary Response and Motion for Clarification regarding Decision on Joint Motion of Hadžihasanović, Alagić and Kubura of 24 January 2003” (“Motion for Clarification”). The Prosecution indicates that it has taken steps to comply with Decision I but seeks clarification from the Appeals Chamber on two issues which are concerned with Point (a) and Point (b) of the Disposition of Decision I, cited above. Further, the Prosecution asks for guidance from the Appeals Chamber regarding the appropriate procedure governing the increasing number of access motions being filed “before this Tribunal”.<sup>1</sup>

3. On 21 March 2003, the Applicants jointly filed a response (“Response”). On 26 March 2003, the Prosecution filed its reply (“Reply”).

4. By its order of 21 March 2003, the relevant Trial Chamber terminated the proceedings against the accused Mehmed Alagić, having been notified of his death on 7 March 2003.

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<sup>1</sup> Motion for Clarification, par 2.

## II. WHETHER THE MOTION FOR CLARIFICATION IS ADMISSIBLE

5. The Applicants submit that the Motion for Clarification was filed almost a month after Decision I,<sup>2</sup> and that they have been in contact with the Registry to make necessary arrangements to ensure that the non-public materials can be obtained as expeditiously as possible for the purposes of preparing for trial.<sup>3</sup> They argue that “it is not an accepted practice for a party to *respond* to a decision of a Chamber”, and that Decision I “is clear and falls to be implemented”.<sup>4</sup> They add that the Prosecution has no basis under the Statute, the Rules of Procedure and Evidence (“Rules”), and Practice Directions of the International Tribunal, or Decision I itself, to respond to Decision I,<sup>5</sup> and that the Motion for Clarification will only cause delays.<sup>6</sup> They submit that the points for clarification “are either clear from the Appeals Chamber’s Decision, or can be resolved amongst the parties without further involving the Chamber at this stage”.<sup>7</sup> They also point out that the Motion for Clarification was filed out of time, because any submission seeking to reverse or to reconsider Decision I “with a view to obtaining different orders, must be filed pursuant to the rules normally governing appeals against decisions, other than preliminary motions for judgements, namely Rule 73”.<sup>8</sup> The Prosecution replies that Decision I did not set deadlines for the Prosecution to comply with that decision, and that it has taken steps to comply with the decision.<sup>9</sup> It argues that it is not attempting to delay access, but seeks clarification as to fundamental guarantees of protection and confidentiality given to witnesses and other entities which have participated or co-operated in proceedings before this Tribunal.<sup>10</sup> It points out that the Applicants have had access to voluminous, public materials from the *Blaskić* case, and that their trial date “is still many months away”.<sup>11</sup> The Prosecution argues that “without clarifications of the issues raised, compliance is somewhat difficult or problematic”, and that “to the extent feasible the Prosecution has complied with the Appeals Chamber decision”.<sup>12</sup>

6. With regard to the Motion for Clarification, the Appeals Chamber considers that, if the terms of Decision I were in need of clarification, as argued by the Prosecution, a decision of clarification would be in the interests of both parties to the case. As to the Applicants’ concern with delays in the proceedings against them, it is noted that Decision I does not set any time limit within

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<sup>2</sup> Response, par 2.

<sup>3</sup> *Ibid.*, par 3.

<sup>4</sup> *Ibid.*, par 4.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, par 5.

<sup>7</sup> *Ibid.*, par 7.

<sup>8</sup> *Ibid.*, par 8.

<sup>9</sup> Reply, par 4.

<sup>10</sup> *Ibid.*, par 5.

<sup>11</sup> *Ibid.*, par 6.

<sup>12</sup> *Ibid.*, par 8.

which disclosure is to be completed. The Prosecution has also taken steps to disclose materials in accordance with Decision I, and there is no proof that, by seeking clarification, the Prosecution is attempting to delay the proceedings. Moreover, it is not appropriate to see the Motion for Clarification as a filing under Rule 73. The procedure of interlocutory appeal does not extend to a decision by the Appeals Chamber, because there is no resort to appeal therefrom under either the Statute or Rules. The Motion for Clarification is therefore admissible before the Appeals Chamber insofar as it is seeking clarification from the Appeals Chamber. The test which the Appeals Chamber will apply in its consideration of the motion is whether a point raised for clarification is indeed vague in the light of the terms of Decision I. If it is, clarification will be provided.

7. The Appeals Chamber also observes that in some of the submissions made in the Motion for Clarification, reconsideration of Decision I is what is actually sought by the Prosecution. In this regard, the Appeals Chamber recalls that a Chamber “may reconsider a decision, and not only when there has been a change of circumstances, where the Chamber has been persuaded that its previous decision was erroneous and has caused prejudice.”<sup>13</sup> It further emphasizes that “whether or not a Chamber does reconsider its decision is itself a discretionary decision”.<sup>14</sup> With these principles in mind, the Appeals Chamber turns to the submissions of the parties.

### III. POINT (A) OF THE DISPOSITION OF DECISION I

#### A. Whether Point (a) includes pre-trial, trial, and post-trial confidential material

8. The Prosecution indicates that its understanding is (1) that the Applicants are seeking access to confidential materials (transcripts and exhibits) in the entire *Blaškić* case, including the appeal; and (2) that Decision I grants access to confidential materials in the entire *Blaškić* case, including the appeal.<sup>15</sup> It asks the Appeals Chamber to clarify for both parties and the Registry that the obligations set out in Point (a) of the Disposition of Decision I cover pre-trial, trial, and post-trial confidential material. The Applicants respond that Decision I is clear on this point, and that they are entitled to obtain access to all non-public materials, including pre-appeal pleadings and decisions, from the Registry.<sup>16</sup>

9. Decision I uses the expression “non-public material which falls under Rule 70 (C)” in Point (a) of the Disposition. Rule 70 (C) of the Rules provides:

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<sup>13</sup> *Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21-Abis, Judgment on Sentence Appeal, 8 April 2003, Appeals Chamber, par 49.

<sup>14</sup> *Ibid.*

<sup>15</sup> Motion for Clarification, par 6.

<sup>16</sup> Response, par 13.

If, after obtaining the consent of the person or entity providing information under this Rule, the Prosecutor elects to present as evidence any testimony, document or other material so provided, the Trial Chamber, notwithstanding Rule 98, may not order either party to produce additional evidence received from the person or entity providing the initial information, nor may the Trial Chamber for the purpose of obtaining such additional evidence itself summon that person or a representative of that entity as a witness or order their attendance. A Trial Chamber may not use its power to order the attendance of witnesses or to require production of documents in order to compel the production of such additional evidence.

By its title, Decision I deals with a motion of the Applicants “for access to all confidential material, transcripts and exhibits” in the *Blaškić* case. This expression is repeated in Point (b) of the Disposition. The context in which the non-public material is referred to in Decision I is clear as to what constitutes the material. The Appeals Chamber considers that there is no indication in Rule 70 that the rule applies only to the pre-appeal stage in a case. By its nature, the material envisaged in Rule 70 (C), and therefore necessarily in Rule 70, may arise at the pre-trial, trial, or appeal stage. The Appeals Chamber considers, therefore, that the expression of “non-public material which falls under Rule 70 (C)” applies to material falling under Rule 70 and introduced into the proceedings at all stages of the case, including the appeal.

#### **B. Rule 70 (C) material produced on behalf of the Appellant Tihomir Blaškić**

10. The Prosecution submits that, while it is in a position to contact the providers of Rule 70 (C) material used in the Prosecution’s case, “it is not in a position to do so on behalf of the Appellant *Tihomir Blaškić*”.<sup>17</sup> The Applicants respond that “the point is self-evident”.<sup>18</sup> The Prosecution replies that clarification is necessary, because Decision I “does not address the question of Rule 70 material used in the *Blaškić* Defence case”.<sup>19</sup>

11. It appears that the parties are in agreement that consent for disclosing Rule 70 material in the possession of the Appellant *Blaškić* has to be sought by the counsel for the Appellant. The Appeals Chamber notes that Rule 70 is not limited to relevant information in the possession of the Prosecution. Rule 70 (F) states clearly that:

The Trial Chamber may order upon an application by the accused or defence counsel that, in the interests of justice, the provisions of this Rule shall apply *mutatis mutandis* to specific information in the possession of the accused.<sup>20</sup>

12. If, in the *Blaškić* case, there exists material in the possession of the Appellant *Blaškić* which falls under Rule 70, Point (a) of the Disposition of Decision I shall apply to the Appellant *Blaškić* (through his counsel).

<sup>17</sup> Motion for Clarification, par 8.

<sup>18</sup> Response, par 11.

<sup>19</sup> Reply, par 19.

<sup>20</sup> Effective as of 25 July 1997. The trial in the *Blaškić* case started on 24 June 1997.

### C. The role of the Registry in relation to Point (a) of the Disposition

13. The Prosecution submits that, while the parties will identify Rule 70 (C) material in their cases, “it is the Registry who should ‘disclose’ the Blaškić trial and appeal record to the Applicants, not the Prosecution”.<sup>21</sup> It adds that “it is desirable for all material to which the Applicants are entitled to be provided by one source in order to avoid confusion and unintended violations of protective measures of redactions that may be ordered”.<sup>22</sup> It recognises that the language of Point (b) of the Disposition of Decision I is clear, but that of Point (a) of the Disposition is not.<sup>23</sup> The Applicants respond that the point that the Registry must provide Rule 70 material once the parties have obtained the necessary consent “has never been disputed by any party”, and that they have already contacted the Registry to obtain access to all non-public materials.<sup>24</sup>

14. The disclosure of “all non-public documents, materials, and exhibits from the *Blaškić* case” is to be implemented by the Registry in accordance with Point (b) of the Disposition.<sup>25</sup> Under Rule 70, the consent to disclosure of providers of Rule 70 material is to be obtained by the parties. The disclosure of the material after consent is given can be conducted by either party if it possesses the material, or the Registry at the request of a party and after the party has indicated to it that the providers of the material have consented to its disclosure in another case before the International Tribunal. The choice between these two methods of disclosure can be made by the relevant party subject to the provisions of Rule 70. But, in the present case, the terms of Point (b) of the Disposition make the choice unnecessary: it is for the parties to seek the consent from providers of Rule 70 material, but access to the material after consent is obtained is to be sought through the Registry.

## IV. CLARIFICATION SOUGHT IN RELATION TO POINT(B) OF THE DISPOSITION

### A. Whether *inter partes* pleadings and Trial Chamber decisions prior to appeal are covered

15. The Prosecution submits that the Appellants’ motion for access filed previously in this case “only refers to *witness transcripts and exhibits*, as reflected in the title of the Applicants’ Motion”, and that “their request for access does not expressly identify pre-trial or trial filings as part of the material for which access is requested”.<sup>26</sup> It adds that, if Decision I were to be deemed to include

<sup>21</sup> Motion for Clarification, par 10.

<sup>22</sup> *Ibid.*, par 11.

<sup>23</sup> *Ibid.*, par 10.

<sup>24</sup> Response, par 12.

<sup>25</sup> Decision I, p.5.

<sup>26</sup> Motion for Clarification, par 15.

all confidential pleadings and Trial Chamber decisions, “the Prosecution will need additional time to review the confidential pleadings and decisions prior to the appeals proceedings”.<sup>27</sup> The Applicants respond that Decision I is clear in this respect, that the Prosecution has no basis to inform the Appeals Chamber that it is proceeding on the understanding that only transcripts and exhibits prior to the appeal will be disclosed, and that they are entitled to obtain access to all non-public materials, including pre-appeal pleadings and decisions from the Registry.<sup>28</sup> However, they recognise that certain materials have been excluded from disclosure by Decision I, including *ex parte* pleadings and decisions.<sup>29</sup> The Prosecution replies that the Applicants did not respond to its arguments and that clarification is necessary in this regard.<sup>30</sup>

16. Point (b) of the Disposition of Decision I states that the Registry shall grant the Applicants access to all non-public “documents, materials and exhibits” including, among others, appellate briefs and motions for additional evidence, subject to exceptions. The decision is not confined to transcripts and exhibits filed at the pre-appeal stage. The Applicants’ original motion, which was the subject of Decision I, may have included in its title the expression, “all confidential material—transcripts and exhibits”, but the relief sought in that motion was more explicit, in that the Applicants requested:

1. An order to the Registrar to disclosure of all confidential material in the *Prosecutor v. Blaškić* obtained until the day of this Motion to the defence counsel in Hadžihasanović and others case, and access to and usage of all non-public documents, materials and exhibits under the same conditions applied to the defence counsel in that case, as well (as) all other exhibits tendered during the procedure against general Blaškić.

2. An order to the Registrar to forward to the defence counsel in the Hadžihasanović and others case all public and confidential transcripts and exhibits from the *Prosecutor v. Blaškić*.

3. An order to (the) Registrar to continue providing the defence counsel in the Hadžihasanović and others case all materials described in 1 and 2 until the completion of the appeals phase in the case of the *Prosecutor v. Blaškić*.<sup>31</sup>

The relief sought leaves no doubt that the Applicants seek more than just the material from the pre-trial and trial stages. Decision I has dealt with all three forms of relief sought by the Applicants. Even the Prosecution saw that earlier motion as one that dealt with “all confidential material, transcripts and exhibits”.<sup>32</sup>

<sup>27</sup> *Ibid.*, par 18.

<sup>28</sup> Response, par 13.

<sup>29</sup> *Ibid.*

<sup>30</sup> Reply, par 12.

<sup>31</sup> Joint Motion of Enver Hadžihasanović, Mehmed Alagić, and Amir Kubura for access to all confidential material—transcripts and exhibits from *Prosecutor v. Tihomir Blaškić* IT-95-14-T, 28 May 2002.

<sup>32</sup> Response of the Prosecution, filed confidentially on 12 July 2002.

17. It is not clear why the Prosecution will need more time to review pre-appeal motions or decisions if access to them is granted to the Applicants. Those documents, filed *inter partes* in the *Blaškić* case and with the Registry, will be disclosed by the *Registry* to the Applicants pursuant to Point (b) of the Disposition of Decision I and as part of the record on appeal (which includes the trial record).<sup>33</sup> That process of providing access will be subjected to certain protective measures indicated in Decision I, in addition to existing protective measures indicated by the Trial Chamber. Further, Decision I was rendered by the Appeals Chamber following the referral by the President of the International Tribunal of the Applicants' motion to the Appeals Chamber pursuant to Rule 75 (D) as amended on 28 December 2001.<sup>34</sup> This is not, therefore, a case where disclosure is sought from the Prosecution. This part of the argument by the Prosecution is rejected.

**B. Whether *ex parte* filings and Trial Chamber decisions prior to the appellate proceedings are covered by Decision I**

18. The Prosecution notes that Point (b) of the Disposition of Decision I denies the Appellants access to "any *ex parte* motions and decisions which have been filed in the present appeal", and it submits that this denial of access should be applied to similar filings from the pre-appeal stage.<sup>35</sup> It intends to proceed in this case on that basis.<sup>36</sup> Otherwise, it needs additional time to review such filings to determine whether there is a need to apply for any additional protective measures in relation to the filings.<sup>37</sup> There is no particular response from Applicants, except that Point (b) of the Disposition is clear.<sup>38</sup>

19. The Appeals Chamber considers that the terms of Point (b) of the Disposition are clear in this regard, and that no clarification is necessary. Further, Point (b) relates only to the action of the Registry in granting the Applicants access to materials expressly defined in Decision I. The Prosecution is not ordered to provide the access requested by the Applicants. Consequently, as to the additional time requested by the Prosecution to review *ex parte* filings from the pre-appeal stage, the Appeals Chamber rejects that request.

**C. Additional protective measures for witnesses**

20. The Prosecution submits that

<sup>33</sup> See the Certificate on the Trial Record, filed by the Registry pursuant to Rule 109 (A), 13 April 2000.

<sup>34</sup> Ordonnance de Président relative à la requête de la défense aux fins d'autotiser l'accès à des pièces confidentielles de l'affaire *le Procureur c/Tihomir Blaškić*, Case No. IT-95-14-A, President of the Tribunal, 28 May 2002.

<sup>35</sup> Motion for Clarification, par 19.

<sup>36</sup> *Ibid.*, par 20.

<sup>37</sup> *Ibid.*, par 21.

<sup>38</sup> Response, par 13.



in case parties are granted access to confidential witness transcripts (a) that the witnesses should be contacted to ascertain whether they have additional security concerns justifying additional protective measures and (b) that any reference in the transcripts to the witnesses' identity which would reveal that these witnesses have testified before the Tribunal, should be redacted.<sup>39</sup>

The Prosecution makes this submission because "there is a danger of inconsistency of treatment of confidential witnesses as a result of recent decisions on access",<sup>40</sup> with particular reference to an order regarding access which was rendered by the Appeals Chamber in the *Kordić and Čerkez* appeal ("Ljubičić Order").<sup>41</sup> The Prosecution then submits that the same regime of protection as indicated in the Ljubičić Order should be applied in relation to the Applicants' motion for access to the confidential material in the *Blaškić* case.<sup>42</sup>

21. In more detailed terms, the Prosecution submits that the witnesses who have testified confidentially in the *Blaškić* trial, as well as any government or other entity which may have consented to giving confidential testimony, should be contacted by the Victims and Witnesses Section of the International Tribunal ("VWS") to ascertain their views on the provision of access to these materials to the Applicants.<sup>43</sup> Further, it submits that, for those witnesses from whom consent is obtained, the Applicants should be granted access to the relevant materials only when the Registry has redacted them to remove any reference to the witnesses' identity that would reveal that the witnesses testified before this Tribunal.<sup>44</sup> The Prosecution also submits that the VWS is most appropriately placed to contact the Defence, Prosecution, and Court witnesses.<sup>45</sup> The Prosecution further suggests that the responsibility for redacting the relevant materials rests with the Registry, and that removing any reference to the identity of the witnesses does not require any particular knowledge or familiarity with the proceedings.<sup>46</sup> The Prosecution adds that, in respect of witnesses who refuse to give consent for disclosure of their transcripts in any form, the Prosecution suggests that the VWS should contact the witnesses to inform them of the Appeals Chamber's decision in this regard, and that their transcripts "should then be redacted to remove any reference to their identity (where necessary) prior to being made available to the Applicant", who will have to provide cogent reasons as to why disclosure of the transcripts in unredacted form is warranted.<sup>47</sup>

22. The Prosecution then submits that, were the Appeals Chamber to decide that, as a general principle, the material should be made available to the Applicants in unredacted form from the

<sup>39</sup> Motion for Clarification, par 24.

<sup>40</sup> *Ibid.*, par 25.

<sup>41</sup> Order on Paško Ljubičić's motion for Access to Confidential Supporting Material, Transcripts and Exhibits in the *Kordić and Čerkez* Case, Case No. IT-95-14/2-A, 19 July 2002, Appeals Chamber.

<sup>42</sup> *Ibid.*, par 31.

<sup>43</sup> *Ibid.*, par 33.

<sup>44</sup> *Ibid.*, par 34.

<sup>45</sup> *Ibid.*, par 36.

<sup>46</sup> *Ibid.*, par 40.

<sup>47</sup> *Ibid.*, par 41.

outset, the Prosecution would need more time to review all of the Prosecution witnesses' testimony and exhibits in order to determine whether additional protective measures are necessary.<sup>48</sup> If the Applicants apply for a variation of the protective measures governing these access matters, seek the removal of redactions or request permission to contact witnesses, the Prosecution asks to be notified of this application and to be given an opportunity to respond.<sup>49</sup>

23. The Applicants respond that seeking consent of confidential witnesses, consideration of additional protective measures, and redaction of identifying features, "are new proposals that were not put forward by the Prosecution before the Appeals Chamber rendered its Decision".<sup>50</sup> They note that the Prosecution has not identified any witness for additional protective measures in the Motion for Clarification.<sup>51</sup> They argue that the Ljubičić Order only concerns access to materials in respect of the accused Ljubičić.<sup>52</sup> They also consider that whether the Registry is best placed to undertake redactions or whether the VWS should be asked to contact witnesses are issues that go beyond the scope of the present proceedings, and that such "internal procedures and practicalities must be organised and streamlined as between the organs of the ICTY concerned, and the parties."<sup>53</sup>

24. The Prosecution replies that it agrees that its proposals are new, as they were "never addressed by the parties at any time prior to" the Motion for Clarification.<sup>54</sup> It concedes that previous filings "were solely concerned with the Applicants' entitlement to access and the appropriate scope of that access", and that "questions of witness protection were not canvassed".<sup>55</sup> It also argues that, at this juncture, it is highly desirable for the Appeals Chamber to introduce some consistency of approach in access cases generally, which should not vary from accused to accused.<sup>56</sup>

25. The Appeals Chamber considers, and the parties have agreed, that the submissions of the Prosecution have gone beyond a request for clarification. Clarification is directed at the terms of Decision I if they are vague or confusing. Suggestions that are not covered by the decision because the parties did not plead them before the decision was made should have been the subject of a separate motion.

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<sup>48</sup> *Ibid.*, par 42.

<sup>49</sup> *Ibid.*, par 43.

<sup>50</sup> Response, par 14. The "Decision" means Decision I.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*, par 16.

<sup>53</sup> *Ibid.*, par 17.

<sup>54</sup> Reply, par 17.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

26. The Appeals Chamber considers that the ultimate concern behind a more elaborate regime of access, as illustrated by the Ljubičić Order, is the same as the one that underpins the Disposition of Decision I: namely, to strike a reasonable balance between the rights of the accused (or appellant) and the protection of witnesses and victims. That concern can be addressed through protection of different degrees, but the measures employed to achieve such protection do not have to be identical. In the present case, the measures of protection indicated in Decision I are in addition to existing protective measures indicated by the Trial Chamber in the light of the circumstances of the *Blaškić* case. In the view of the Appeals Chamber, this combination of protective measures, currently in force in the *Blaškić* appeal, is sufficient to protect confidential witnesses from having their identity revealed to the public or third parties as defined by Decision I. In any event, the combination of protective measures indicated so far remains in place and effect until varied by the Appeals Chamber at the request of the parties. As the Prosecution realises,<sup>57</sup> it is not likely that the refusal of confidential witnesses to give consent to have their testimony disclosed to the Applicants can prevent such testimony from being disclosed at the expense of the rights of the accused. This is because the testimony once given in court becomes part of the trial record, thus part of the record of the Tribunal. The use of such record in other proceedings before the Tribunal, or its possible use, if any, outside of the Tribunal, is subject to, and only subject to, existing protective measures indicated by the Chambers pursuant to the Rules and having considered the legitimate concerns of the witnesses prior to their testimony. Those existing protective measures, however, can be varied under Rule 75 to safeguard the rights of the accused before the International Tribunal.

27. The suggestions of the Prosecution that go beyond the scope of Point (b) of the Disposition of Decision I are rejected.

## **V. PROPOSED PROCEDURE FOR DEALING WITH ACCESS MOTIONS GENERALLY**

28. The submissions of the Prosecution under this ground are an expansion of those it makes in the previous ground, section C. The Prosecution submits that the procedure it suggests might assist in the formulation of a common procedure for all access cases in order to foster consistency and to avoid the confusion that might result in unintentional disclosure of material without adequate protective measures. The Applicants respond that the new procedure would require “numerous decisions to be set aside and substantially revised”.<sup>58</sup> They add that Decision I is clear and through

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<sup>57</sup> Motion for Clarification, par 41.

<sup>58</sup> Response, par 18.

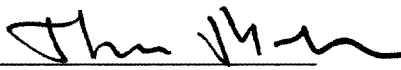
the Registry, is in the process of being implemented.<sup>59</sup> They ask the Appeals Chamber to dismiss the Motion for Clarification.

29. In respect of the proposal of the Prosecution, the Appeals Chamber considers that it may not be appropriate for it to promulgate a practice that is applicable in all cases. The endorsement by the Appeals Chamber of a practice in one appeal is always given in the light of the circumstances of the appeal. Therefore, the Appeals Chamber declines to consider the proposal of the Prosecution any further.

## VI. CONCLUSION

30. For the foregoing reasons, the Motion for Clarification is granted to the extent that clarification is necessary for the implementation of Decision I.

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

  
Judge Theodor Meron  
Presiding

Dated this twenty-third day of May 2003,  
At The Hague,  
The Netherlands

[Seal of the Tribunal]

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<sup>59</sup> *Ibid.*