

## A KARADŽIĆ-HOLBROOKE DEAL OF 1996: MYTH OR REALITY?<sup>1</sup>

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**Abstract:** The purpose of this paper is to examine the currently public and accessible evidence on the alleged 1996 immunity deal between Richard Holbrooke and Radovan Karadžić. Using primarily archival materials of the International Criminal Tribunal for the former Yugoslavia in the case of Radovan Karadžić, this paper seeks to shed light on how the alleged agreement featured in the trial. While Karadžić claimed that Holbrooke promised him immunity in exchange for withdrawing from public life in 1996, the American diplomat steadfastly rejected such a notion. The issue dogged Holbrooke for years. After Karadžić's arrest in July 2008, the former Bosnian Serb leader put forth several motions in The Hague claiming that the alleged deal protected him from prosecution. This paper will review the archival documents filed before the tribunal in The Hague and cross-reference them with other sources. In doing so, this paper will try to offer insights into what transpired in July 1996.

**Keywords:** Richard Holbrooke, Radovan Karadžić, Alleged Immunity, Yugoslavia, Balkans

**Apstrakt:** Cilj ovog rada je istražiti trenutno javno dostupne arhive o navodnom sporazumu između Richarda Holbrookea i Radovana Karadžića iz 1996. godine. Koristeći arhivsku građu Međunarodnog krivičnog tribunala

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za bivšu Jugoslaviju u slučaju Radovan Karadžić, ovaj rad će nastojati da objasni kako je optuženi pokušao navodni sporazum koristiti pred Haškim tribunalom. Dok je Karadžić tvrdio da mu je Holbrooke obećao da neće biti procesuiran ako se povuče iz javnog života 1996, američki diplomata je tu tvrdnju odlučno odbacivao. Ta tvrdnja o navodnom imunitetu pratila je Holbrooka sve do njegove smrti. Nakon Karadžićevog hapšenja u julu 2008. on je nekoliko puta pred Haškim tribunalom pokrenuo pitanje navodnog sporazuma. Ovaj rad će analizirati njegove podneske pred Haškim tribunalom i izvršiti poređenje sa drugim izvorima. Na taj način će se pokušati saznati više o tome šta se dogodilo u julu 1996. godine.

**Ključne riječi:** Richard Holbrooke, Radovan Karadžić, Navodni sporazum, Jugoslavija, Balkan

On 21 July 2008, media outlets across the world reported that the former Bosnian Serb leader Radovan Karadžić was arrested. He was arrested in Belgrade thirteen years after being indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY). The Hague tribunal charged Karadžić with genocide, crimes against humanity and violations of the laws or customs of war in Bosnia and Herzegovina.<sup>2</sup> However, for thirteen years he had been evading justice, supported by a network of enablers within the Serbian state.

Karadžić led the Bosnian Serb separatists through a statelet – officially known as Republika Srpska – who committed genocide and other major crimes in Bosnia and Herzegovina. Along with his military commander Ratko Mladić, Karadžić is responsible for spearheading mass atrocities and destruction across Bosnia and Herzegovina from 1992 until 1995.<sup>3</sup> The war ended with the Dayton Peace Accords in November 1995.

Soon after this arrest, Karadžić was transferred to the ICTY. He refused to enter a plea and his trial began in late October 2009. The Trial Chamber

<sup>2</sup> Julian Borger, “Radovan Karadzic, Europe’s most wanted man, arrested for war crimes”, *The Guardian*, 22 July 2008, <https://www.theguardian.com/world/2008/jul/22/warcrimes.internationalcrime>

<sup>3</sup> See Edina Bećirević, *Genocide on the Drina River*, New Haven – London: Yale University Press, 2014; Hikmet Karčić, *Torture, Humiliate, Kill: Inside the Bosnian Serb Camp System*, Ann Arbor: University of Michigan Press, 2022.

handed down its judgment on 24 March 2016 finding Karadžić guilty of genocide, crimes against humanity and violations of the laws or customs of war. He was sentenced to 40 years in prison.<sup>4</sup> Following the appeal, Karadžić's sentence was changed to life imprisonment.<sup>5</sup>

## **An Immunity Deal?**

Before the trial began, one intriguing allegation surfaced which captured the attention in the Balkans and beyond. Though rumours persisted for some time, Karadžić alleged in 2008 that he stepped down from politics and public life back in 1996 in exchange for an immunity agreement that was promised to him by US diplomat Richard Holbrooke. He was adamant that the pledge was made and he claimed that the alleged agreement protected him from prosecution in the ICTY. The essence of his argument was that he abided by the deal by withdrawing from public life while Holbrooke failed to uphold his promise. The former US diplomat steadfastly rejected such claims which dogged him until his death in 2010.<sup>6</sup> Karadžić persisted in making this claim which then generated media coverage and, in turn, generated widespread interest in the Balkans and beyond as to what actually transpired.

Responding to Karadžić's allegations, the State Department issued a statement on 31 July 2008 stating: "Ambassador Holbrooke and we have repeatedly made clear that no agreement was ever made in which Radovan Karadžić was provided immunity from prosecution or arrest. Ambassador Richard Holbrooke and other U.S. officials engaged in Balkan negotiations have re-affirmed this on numerous occasions. In July 1996, U.S. officials

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<sup>4</sup> Case Information Sheet: Radovan Karadžić, Case No.: IT-95-5/18, International Criminal Tribunal for the former Yugoslavia, [https://www.icty.org/x/cases/karadzic/cis/en/cis\\_karadzic\\_en.pdf](https://www.icty.org/x/cases/karadzic/cis/en/cis_karadzic_en.pdf)

<sup>5</sup> Julian Borger, "Radovan Karadžić war time sentence increased to life in prison", *The Guardian*, 20 March 2019, <https://www.theguardian.com/law/2019/mar/20/radovan-karadzic-faces-final-verdict-in-bosnia-war-crimes-case>

<sup>6</sup> Joshua Keating, "What did Holbrooke tell Karadzic?", *Foreign Policy*, 23 March 2009, <https://foreignpolicy.com/2009/03/23/what-did-holbrooke-tell-karadzic/>

negotiated with Serb leaders to obtain Karadžić's signed pledge to withdraw from politics and public life. No commitments granting Karadžić immunity were offered in return.”<sup>7</sup>

Now that Karadžić's trial and the appeal process have ended, the ICTY's archive is open for research. As for the alleged Karadžić-Holbrooke agreement, two questions arise: (i) What do the publicly accessible documents say? And (ii) How has a historical distance of 22 years shaped our knowledge of the events from 1996?

This paper will seek to analyse The Hague tribunal's archive pertaining to the alleged agreement and compare it with other sources now accessible for research. Based on primary and secondary sources related to the 1990s, this paper will attempt to shed light on the alleged agreement and how it featured in the Karadžić trial. Finally, the paper will offer two possible explanations as to what happened in 1996.

### **Karadžić's Motions**

Once in The Hague tribunal, Karadžić set about claiming that an alleged immunity deal protected him from prosecution. He filed a series of motions in 2008 and 2009 seeking to prove that such a deal existed. For the purpose of this paper, a chronology and a description of the most significant motions filed by Karadžić and Trial Chamber decisions will be provided.

On 6 August 2008, Radovan Karadžić filed an “Official submission regarding my first appearance and my immunity agreement with the USA” to Pre-Trial Chamber. Karadžić wrote that “In 1996, in the name of the USA, Richard Holbrooke made the statesmen and ministers who were my authorized representatives an offer which I will outline in brief... The offer was as follows: I must withdraw not only from public but also from party offices and completely disappear from the public arena, not give interviews

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<sup>7</sup> Statement of ICTY Fugitive Radovan Karadzic to Withdraw From Public Life, Press Statement Sean McCormack, Washington, DC, July 31, 2008, <https://2001-2009.state.gov/r/pa/prs/ps/2008/07/107615.htm>

and not even publish literary works, in a word, become invisible long enough for the Dayton agreement to be implemented in full... In the name of the USA, Holbrooke promised that the Serbian Democratic Party would not be prohibited from taking part in the elections and that no more of our officials would be removed from the electoral lists... As for me, Mr. Holbrooke undertook on behalf of the USA that I would not be tried before this Tribunal and that I should understand that for a while there would be very sharp rhetoric against me so that my followers would not hamper the implementation of the Dayton agreement. The USA kept its promise to ease the pressure on the SDS and Mr. Holbrooke himself boasted in the press that he had persuaded me to withdraw not only from public but also from party offices.”<sup>8</sup>

Karadžić stated that the agreement has been breached and that he now sought to challenge the legality of the proceedings in The Hague. He asked the Pre-Trial Chamber to order “that Richard Holbrooke appear before you and declare under oath whether or not there was such an agreement and whether the USA complied with its obligations from that agreement”. Karadžić requested that the Pre-Trial Chamber consider this motion before proceeding further.<sup>9</sup>

On 20 August 2008, the Prosecution filed its response to Karadžić’s submission regarding the alleged immunity agreement. The Prosecution opposed Karadžić’s submission: “Even if it existed (and the Prosecution does not accept that it does), the alleged agreement between Karadžić and Holbrooke (on behalf of the USA) granting Karadžić immunity from this Tribunal (“alleged agreement”) would be devoid of legal effect before this Tribunal because (1) the alleged agreement would violate a peremptory norm of international law; (2) any grant of immunity purportedly made by the USA could not bind this Tribunal; (3) the only body with the power

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<sup>8</sup> ICTY, “Official Submission Concerning My First Appearance and My Immunity Agreement with the USA”, 6 August 2008, IT-95-5/18-I, Exhibit no.: D11370-D11364, <https://www.icty.org/x/cases/karadzic/custom1/en/080805.pdf>

<sup>9</sup> Ibid.

to limit prosecutions is the Security Council, which has never exempted Karadžić from Prosecution.”<sup>10</sup>

The Prosecution further stated in B. (8): “Even if the USA had purported to enter into an international agreement granting Karadžić immunity from prosecution before this Tribunal, it had no power to do so. Accordingly, any such undertaking by the USA could not bind this Tribunal.” It added that (10) “The USA cannot enter into international agreements that impose obligations on third parties, such as other UN member states, a collection of such states or the Security Council. At most, the USA could confer upon Karadžić immunity from prosecution within its own jurisdiction.” The Prosecution further added in C. (12) that “the Security Council of the United Nations (UN) is the only body that has the power to limit the Tribunal’s jurisdiction. However, the Security Council has never specified that Karadžić, or any other named individual, will be exempted from prosecution by this Tribunal.” The Prosecution then noted that “In his Submission, Karadžić does not claim that the Security Council exempted him from prosecution. He relies exclusively on his allegation that the USA granted him immunity before this Tribunal. That argument is of no legal relevance to this Tribunal’s capacity to prosecute him.”<sup>11</sup>

On 6 October 2008, Karadžić filed a Motion for Inspection and Disclosure: Immunity Issue requiring the prosecution to disclose “(A) all information in the possession of the prosecution concerning the agreement made with Radovan Karadžić on or about 18–19 July 1996 by Richard Holbrooke, (B) all information in the possession of the prosecution between July 1996 and the present concerning requests that the prosecution of Radovan Karadžić not be pursued, (C) all information in the possession of the prosecution concerning the failure to arrest Radovan Karadžić after

<sup>10</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-I, Prosecution’s Response to Karadžić’s Submission Regarding Alleged Immunity Agreement, 20 August 2008, <https://www.icty.org/x/cases/karadzic/custom1/en/080820.pdf>

<sup>11</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-I, Prosecution’s Response to Karadžić’s Submission Regarding Alleged Immunity Agreement, 20 August 2008, <https://www.icty.org/x/cases/karadzic/custom1/en/080820.pdf>

18 July 1996 and/or the reasons therefore.” In his motion, Karadžić stated that “the documents described above are material to the preparation of this defence. It is part of his defence that (1) he was promised on 18–19 July 1996 by Richard Holbrooke that he would not have to face prosecution in The Hague if he agreed to withdraw completely from public life; and (2) that this promise is attributable to the ICTY because it was made on behalf of, or in consultation with the member States of the United Nations Security Council, or was reasonably believed to be made so.” He added that the purpose of this request was “In order to pursue a motion to dismiss the indictment on these grounds.”<sup>12</sup> On 9 October 2008, the Trial Chamber handed down its decision in response to Karadžić’s 6 October motion. The Trial Chamber dismissed and denied the motion.<sup>13</sup>

Then on 6 November 2008, Karadžić filed a motion in Trial Chamber for inspection and disclosure of an alleged Holbrooke agreement. He specifically requested “all information in the possession of the prosecution concerning the agreement made with Radovan Karadžić on or about 18–19 July 1996 by Richard Holbrooke including ... (3) any contemporaneous notes, recordings or memoranda or correspondence reflecting what took place during the meeting on 18-19 July 1996 in Belgrade among Richard Holbrooke, Slobodan Milošević and others (4) any other document or recording which tends to show the existence of a promise, representation, or suggestion that Radovan Karadžić not be arrested, transferred or prosecuted at the ICTY.” He further requested (B) all information in the possession of the prosecution concerning the actual or apparent authority of Richard Holbrooke to make representations to Radovan Karadžić on behalf of the international community on 18–19 July 1996. Karadžić also requested (C) all information in the possession of the prosecution showing the relationship between the United

<sup>12</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Motion for Insection and Disclosure: Immunity Issue, 6 October 2008, <https://www.icty.org/x/cases/karadzic/custom1/en/080923b.pdf>

<sup>13</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Accused Motion For Inspection and Disclosure, 9 October 2008, <https://www.icty.org/x/cases/karadzic/tdec/en/081009.pdf>

States of America and the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia as of 18–19 July 1996.”<sup>14</sup>

The Trial Chamber handed down its decision on 17 December 2008. The Trial Chamber noted that Karadžić put forth the new motion to the Chamber after his direct request to the Prosecution to share documents on the alleged 1996 deal with Holbrook was rejected. The 6 November motion was Karadžić’s effort to seek an order from the Trial Chamber to the Prosecution to share the aforementioned documents arguing that these were crucial for his defense. The Trial Chamber decided to order the Prosecution to disclose to Karadžić “any written agreement made at the alleged meeting in Belgrade on 18–19 July 1996, and any notes taken or recordings made on 18–19 July 1996 of proceedings at the alleged meeting in Belgrade on those days which are within the custody or control of the Prosecution”. The Trial Chamber rejected all other aspects of the motion.<sup>15</sup>

After this decision, Karadžić filed an “Appeal of Decision Concerning Holbrooke Agreement Disclosure” on 28 January 2009. In the twenty-three page document, Karadžić contested the Trial Chamber’s 17 December 2008 decision and put forth his appeal.<sup>16</sup> On 6 April 2009, the Appeals Chamber dismissed Karadžić’s appeal entirely.<sup>17</sup>

The following month, on 25 May 2009, Karadžić filed a “Holbrooke Agreement Motion”. The objective of this motion was to “dismiss the indictment on the grounds that the Tribunal lacks jurisdiction, or, alternatively,

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<sup>14</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Motion for Inspection and Disclosure: Holbrooke Agreement, 6 November 2008, <https://www.icty.org/x/cases/karadzic/custom1/en/081106.pdf>

<sup>15</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Accused’s Second Motion For Inspection and Disclosure: Immunity Issue, 17 December 2008, <https://www.icty.org/x/cases/karadzic/tdec/en/081217.pdf>

<sup>16</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18- AR73.1, Appeal of Decision Concerning Holbrooke Agreement Disclosure, 28 January 2009, <https://www.icty.org/x/cases/karadzic/acdec/en/090128.pdf>

<sup>17</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.1, Decision on Appellant Radovan Karadžić’s Appeal Concerning Holbrooke Agreement Disclosure, 6 April 2009. <https://www.icty.org/x/cases/karadzic/acdec/en/090406.pdf>



should decline to exercise jurisdiction, as a result of the agreement made with Richard Holbrooke that Dr. Karadžić would not face prosecution at this Tribunal”. Karadžić repeated his earlier claims that he relinquished all his political positions and withdrew from public life in exchange for immunity. He claimed that Holbrooke refused to put his own commitment to paper. Karadžić requested the Trial Chamber to establish facts by calling witnesses. He claimed that Momčilo Krajišnik and Aleksa Buha represented Republika Srpska at the meeting with Holbrooke and that they testified that Holbrooke made the representation that Karadžić would not be prosecuted. However, Holbrooke refused to make this pledge in writing.

In this motion, Karadžić asked that the Trial Chamber hold an evidentiary hearing to establish the facts about the Holbrooke-Karadžić agreement. At the end of the sixteen page document signed by Karadžić, he stated “it is respectfully requested that the Trial Chamber hold an evidentiary hearing and, after such a hearing, dismiss the indictments 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. Karadžić would not face prosecution at this Tribunal.” He attached a number of annexes to this motion purporting to prove the existence of the alleged agreement including statements by Momčilo Krajišnik and Aleksa Buha.

It is interesting that several former high-ranking Bosnian Serb and Serbia’s officials refused to meet Karadžić’s counsel and back up his client’s case. Milan Milutinović’s counsel replied to Karadžić’s lawyer Peter Robinson on 16 April 2009 stating that Milutinović stated that the document on Karadžić’s withdrawal from politics bears his name but he claimed that he was not present in negotiations and was therefore unable to confirm the existence of an alleged agreement. Biljana Plavšić who in 2009 was serving her sentence refused to meet Karadžić’s counsel. Lawyers for Jovica Stanišić stated that their client was seeking medical treatment and was unavailable for an interview with Karadžić’s counsel.<sup>18</sup>

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<sup>18</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Holbrooke Agreement Motion, 25 May 2009.

After this May 2009 motion was filed, several media outlets reported on this motion and this again generated public interest in the alleged deal.<sup>19</sup> The State Department released public documents from that period showing that the US supported the trial of Karadžić at the ICTY. Daniel Serwer, who worked on America's Bosnia policy in the 1990s, stated: "I am delighted to see these documents, which clarify the US Government's position in 1996 and refute Karadžić's 'immunity' claims."<sup>20</sup>

In a letter from then-Secretary of State Warren Christopher to Slobodan Milošević in August 1996, Christopher wrote that there are "indications that Karadžić is still maintaining contacts with the SDS and is otherwise intent on clinging to power. Such developments raise doubts about Pale's commitment to the July 18 agreement. Ultimately Karadžić must leave Bosnia and face trial before The Hague tribunal."<sup>21</sup> A cable from the US embassy in Belgrade to Washington, DC at the time summarized the conversations of Stanišić, Holbrooke and others in the wake of Karadžić signing the document on stepping down. The cable states that "Holbrooke conveyed our appreciation of Stanišić's efforts in this process, but underlined that we remained convinced that both Karadžić and Mladić must leave the country, as well as power, destination being The Hague where their legal rights will be protected."<sup>22</sup> The letter and the cable indicated that the US remained committed to seeing Karadžić face trial at the ICTY.

Two months earlier, *The New York Times* reported that a new study published by Purdue University in the US and co-edited by Charles W. Ingrao found that three senior officials of the State Department and several

<sup>19</sup> "Former Bosnian Serb leader Radovan Karadzic immune from prosecution, claim lawyers", *The Guardian*, 25 May 2009, <https://www.theguardian.com/world/2009/may/25/karadzic-claims-immunity-deal>

<sup>20</sup> New State Department Documents Refute Karadzic Claims, US Institute of Peace, 26 June 2009, <https://www.usip.org/publications/2009/06/new-state-department-documents-refute-karadzic-claims>

<sup>21</sup> Secretary's Letter to President Milosevic on Karadzic Follow-Through, Public Documents Regarding Radovan Karadzic's May 25, 2009 Filing before the ICTY, <https://2009-2017.state.gov/documents/organization/126020.pdf>

<sup>22</sup> Serbian Security Service on Karadzic and Holbrooke Agreement, Public Documents Regarding Radovan Karadzic's May 25, 2009 Filing before the ICTY, <https://2009-2017.state.gov/p/eur/rls/or/c31889.htm>

others told him that Holbrooke did in fact make such a promise back in July 1996. In interviews conducted by *The New York Times* with two sources cited in the study, both spoke on the condition that they remain anonymous. Both had knowledge of Holbrooke's activities and confirmed that such a promise was made. The anonymous State Department official was quoted as saying "Holbrooke told the Serbs, 'You can give him my word he won't be pursued,' but Holbrooke refused to sign anything". Holbrooke vigorously denied making such a deal with Karadžić.<sup>23</sup> This study was cited in the motion filed by Karadžić as purporting to prove his claims about the deal.

On 8 July 2009, the Trial Chamber handed down its decision and denied the motion.<sup>24</sup> Soon thereafter, Karadžić filed an Appeal of the Decision on the Holbrooke Agreement on 27 July 2009. On 12 October 2009, the Appeals Chamber handed down its decision in which it found that "even if the alleged Agreement were proved, it would not limit the jurisdiction of the Tribunal, it would not otherwise be binding on the Tribunal, and it would not trigger the doctrine of abuse of process." The Appeals Chamber dismissed Karadžić's appeal.<sup>25</sup>

In its judgement in the case of Karadžić handed down on 24 March 2016, the Trial Chamber found that: "For the purpose of sentencing, the Chamber is only concerned with the established fact that the Accused indeed resigned from all public and party offices as of 19 July 1996 and that he refrained from making public appearances from then on. The reason or reasons behind his decision to step down and withdraw from public life are not relevant. What is relevant is the fact that his decision had a positive influence on the establishment of peace and stability in

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<sup>23</sup> Marlise Simons, "Study Backs Bosnian Serb's Claim of Immunity", *The New York Times*, 21 March 2009; Charles Ingrao – Thomas A. Emmert (eds) *Confronting the Yugoslav Controversies: A Scholars' Initiative*, West Lafayette, Indiana: Purdue University Press, 2009, 187.

<sup>24</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on the Accused's Holbrooke Agreement Motion, 8 July 2009, <https://www.icty.org/x/cases/karadzic/tdec/en/090708.pdf>

<sup>25</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.4, Decision on Karadžić's Appeal on Trial Chamber's Decision on Alleged Holbrooke Agreement, 12 October 2009, <https://www.icty.org/x/cases/karadzic/acdec/en/091012.pdf>

BiH and the region in the wake of the Dayton Agreement. The Chamber, therefore, considers the decision of the Accused to resign from public and party offices in July 1996 to be a mitigating factor in determining the sentence to be imposed.”<sup>26</sup>

In appealing his sentence, Karadžić once again raised the alleged Holbrooke agreement. He filed his appeal on 23 December 2016. Karadžić claimed, among others, that the Trial Chamber erred when rejecting mitigating circumstances for violation of his rights arising from the alleged agreement with Holbrooke. He repeated, as in previous motions, that he resigned in exchange for the non-prosecution agreement. “He complied with this agreement, and had a reasonable expectation that it would be honoured. In prosecuting him regardless, and breaching its terms, President Karadžić’s rights were violated, warranting a remedy,” stated Karadžić in his appeal.<sup>27</sup>

The Appeals Chamber found that the Trial Chamber made no error in its deliberations. It held that the Trial Chamber “correctly did not take into account any purported non-prosecution agreement when assessing the mitigating factors. The Appeals Chamber finds that Karadžić does not demonstrate any error on the part of the Trial Chamber in this respect.”<sup>28</sup>

## American Sources

While Karadžić kept insisting on the alleged deal from his arrest in 2008 through his appeal in 2016, what is Holbrooke’s version of what happened on 18–19 July 1996? What do other currently accessible US sources say on this?

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<sup>26</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement Issued on 26 March 2016, [https://www.icty.org/x/cases/karadzic/tjug/en/160324\\_judgement.pdf](https://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf)

<sup>27</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Radovan Karadžić’s Appeal Brief, 23 December 2016, <https://www.irmct.org/sites/default/files/casedocuments/mict-13-55/appeal-briefs/en/karadzic-radovan-karadzics-appeal-brief.PDF>

<sup>28</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Judgement, 20 March 2019, <https://www.irmct.org/sites/default/files/casedocuments/mict-13-55/appeals-chamber-judgements/en/190320-judgement-karadzic-13-55.pdf>

In the literature on the US policy in the Balkans in 1990, the alleged immunity deal is not mentioned.<sup>29</sup> Memoirs of top figures in the Clinton Administration similarly do not mention this.<sup>30</sup>

In *To End a War*, Holbrooke recalled that he was called back by the Clinton Administration and asked to visit the Balkans. “The Administration’s goal was to remove Karadžić from power or significantly weaken him through diplomatic pressure...” Before departing Holbrooke met with Deputy National Security Adviser Sandy Berger. Holbrooke recalls that there was no appetite in Washington for the threat of reintroduction of sanctions on Bosnian Serbs or Serbia. “Just go out there and do what you can. We know you will make it sound better than it is,” Berger told Holbrooke. In a telephone conversation, Deputy Secretary of State Strobe Talbott told Holbrooke “Just use that old creative ambiguity.”<sup>31</sup>

Holbrooke recalled negotiations with Milošević in Belgrade starting at 4 pm on 18 July 1996. These talks lasted for ten hours. Holbrooke recalls presenting Milošević with a draft document declaring Karadžić’s resignation from the posts of President of Republika Srpska and as president of the SDS. He recalls the presence of Krajišnik and Buha as Karadžić’s representatives. Holbrooke further recalls that after much negotiations, Bosnian Serbs signed a document which pledged Karadžić’s withdrawal from “all public and private activities”. These included any activities in the run-up to the September 1996 elections. Biljana Plavšić would become the president of Republika Srpska and Aleksa Buha acting chief of SDS. Holbrooke further recalled that Milošević sent his spy chief Jovica Stanišić by helicopter to Pale to get Karadžić’s signature on the document. Holbrooke

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<sup>29</sup> Samantha Power, *“A Problem From Hell”: America and the Age of Genocide*, New York: Harper Perennial, 2002; Ivo H. Daalder, *Getting to Dayton: The Making of America’s Bosnia Policy*, Washington, DC: Brookings Institution Press, 2000; David Halberstam, *War in a Time of Peace: Bush, Clinton, and the Generals*, New York: Scribner, 2001.

<sup>30</sup> Warren Christopher, *Chances of a Lifetime: A Memoir*, New York: Scribner, 2001; Strobe Talbott, *The Russia Hand*, New York: Random House, 2003; Wesley K. Clark, *Waging Modern War*, New York: Public Affairs, 2001.

<sup>31</sup> Richard Holbrooke, *To End a War*, New York: The Modern Library, 1998, 340-343.

recalls that all the negotiators met again at 2 am the next day after Stanišić returned from Pale with the document bearing Karadžić's signature.<sup>32</sup>

Apart from Holbrooke's account, an alleged deal is not mentioned in a recent biography of Holbrooke by George Packer. A staff writer at *The Atlantic*, Packer unpacked the former diplomat's life and career and unearthed how Holbrooke had bluffed and used falsehoods including in the Balkans in the mid-1990s. Yet, he makes no mention of the July 1996 meeting nor of any deal with Karadžić. For a biography that deconstructs Holbrooke on several levels, Packer makes no mention of the one issue that dogged Holbrooke until his death – the alleged deal with Karadžić.<sup>33</sup>

### What Do We Know?

Based on different accounts – that of Holbrooke and Karadžić – what do we know about the 18–19 July 1996 meeting? Both concur that there was a meeting in Belgrade between a US delegation led by Holbrooke and Milošević. Bosnian Serbs Momčilo Krajišnik and Aleksa Buha were present. Holbrooke's objective was the removal of Karadžić from public life before the Bosnian elections that were scheduled for September 1996. After intense negotiations, Krajišnik and Buha signed a document. Then, Jovica Stanišić took the document by helicopter to Pale to get Karadžić's signature.

Where the two accounts differ is on the *quid pro quo*. Holbrooke does not mention it and has consistently denied there was a *quid pro quo*. On the other hand, Karadžić insisted that he decided to withdraw from politics and public life precisely in exchange for immunity. He alleges that this immunity was represented by Holbrooke.

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<sup>32</sup> Ibid.

<sup>33</sup> George Packer, *Our Man Richard Holbrooke and the End of the American Century*, New York: Knopf, 2019.

## **Karadžić's Allegation**

Radovan Karadžić's allegation was vehemently denied by Holbrooke until his death in 2010. Holbrooke was a skilled diplomat adept at using creative ambiguity. He was seasoned enough not to commit anything controversial to paper. Since the minutes of the 18–19 July, 1996 meeting are unavailable, it is impossible to surmise the exact wording used by Holbrooke in the negotiations. It is possible that the Bosnian Serb officials may have read into Holbrooke's expressions what they thought they were hearing. And, this could have been different from what Holbrooke was saying. But, the essence of the allegation that there was an immunity deal is Karadžić's version of the story supported by his associates Krajišnik and Buha.

## **The Case Against a Deal**

There are several factors that disprove the existence of the alleged Karadžić-Holbrooke deal.

First, no written agreement bearing Holbrooke's signature has been unearthed nor is likely to be. This was conceded by Karadžić's counsel Peter Robinson in one of his client's filings.

Second, Karadžić had a pattern of outright lies in the 1990s. As his rebel forces committed the worst crimes across Bosnia, Karadžić denied them. He consistently denied the genocide in Bosnia and the brutal siege of Sarajevo that his henchmen conducted. Why should Karadžić be a credible source on the alleged immunity deal?

Third, several key former Bosnian Serb and Serbian officials refused to issue statements in May 2009. This included Biljana Plavšić, Milan Milutinović and Jovica Stanišić. They refused to support Karadžić's claim.

Fourth, US officials have steadfastly rejected Karadžić's claims. No US official – current or former – is on the record as confirming the existence of such a deal.

Fifth, George Packer's extensive biography of Holbrooke uncovered a number of less savoury aspects of the diplomat's life and career. However, Packer does not mention the allegations or the alleged agreement.

Sixth, Holbrooke had many political rivals but none brought this up in an effort to bring him down.

In sum, based on the currently accessible archival materials, there is no evidence to prove Karadžić's claim that an alleged deal was reached in July 1996.

## Conclusion

Though twenty-two years have passed since the alleged deal was hammered out, public interest in the issue persists.

The key question remains: was there, and if so, what was the *quid pro quo* for Karadžić stepping down?

Karadžić's defence was clinging to an alleged unwritten pledge. The alleged immunity deal was brought up by Karadžić throughout 2008 and 2009 in an attempt to claim that (i) he should not have been arrested and (ii) that the proceedings before the ICTY were unfounded. He filed a series of motions arguing that the alleged deal was breached. The Trial Chamber and the Appeals Chamber rejected Karadžić's motions. In handing down its verdict in 2016, the Trial Chamber found that Karadžić's withdrawal from politics and public life in 1996 was a mitigating factor in its sentencing. However, the motive behind his decision to step down was deemed irrelevant. Karadžić also referred to the alleged deal in his appeal of the 2016 verdict. This, too, was rejected by the Appeals Chamber in its 2019 verdict.

The essence of the decisions handed down by the Trial Chamber and the Appeals Chamber was that even if the deal existed, it had no relevance for the legal proceedings against Karadžić. In other words, no private individual or official could have made a pledge or a promise that would be binding on the ICTY. Unlike 1995, Holbrooke was no longer US Assistant Secretary of State for European and Eurasian Affairs in July 1996. He was a private citizen.



Perhaps more light will be shed on what transpired on 18–19 July, 1996 in the years ahead as more archives become open for research and additional documents are declassified. Direct participants in the negotiations and individuals with direct knowledge of the talks may come forward to share their recollections.

Finally, the issue of the alleged deal raises an obvious but neglected question: should the public believe a convicted *genocidaire* known for a pattern of outright lies or a diplomat who brought peace to the Balkans?

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## DOGOVOR KARADŽIĆ-HOLBROOKE IZ 1996: MIT ILI STVARNOST?

### Sažetak

U ovom radu je istražena arhiva Haškog tribunala u vezi s tvrdnjom Radovana Karadžića da je 1996. godine postigao dogovor s Richardom Holbrookom. Nakon hapšenja 2008. godine, Karadžić je Haškom tribunalu uložio nekoliko podnesaka tvrdeći da je prekršen navodni dogovor s nekadašnjim američkim diplomatom. Karadžić je tvrdio da se povukao iz političkog i javnog života 1996. te da mu je zauzvrat obećano da neće biti procesuiran. On je nastojao da na taj način ospori nadležnost Haškog tribunala.

U presudi Karadžiću iz 2016. godine, Sudsko vijeće je navelo da razlozi za Karadžićevo povlačenje iz politike i javnog života nisu relevantni. U presudi Apelacionog vijeća iz 2019. godine potvrđeno je da Sudsko vijeće nije napravilo grešku. Karadžićeva tvrdnja o navodnom sporazumu s Holbrookeom ostala je samo to – tvrdnja.