THE INHERENT POWERS OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA TO ISSUE "*SUBPOENA DUCES TECUM*" TO A SOVEREIGN STATE

by

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I

Before the Trial Chamber II of the International Criminal Tribunal for the former Yugoslavia, it was pending, in the case Tihomir Blaskic (IT-95-14-PT), the question of the validity of a *suboena duces tecum* issued by Judge Gabrielle Kirk McDonald to the Republic of Croatia and its Defence Minister. The Government of the Republic of Croatia had challenged the legal power and authority to issue this compulsory order to States and high government officials. On the 18 July 1997, the Trial Chamber has decided on the objection reinstating the *subpœna duces tecum* and ordering the Republic of Croatia and Croatian Defence Minister to comply with the *suboena duces tecum* within thirty days of the date of this decision.

Taking into account the nature and purposes of the Tribunal, the Trial Chamber has founded that the International Tribunal has "the inherent power to compel the production of documents necessary for a proper execution of its judicial function. To hold the contrary would prevent the International Tribunal from effectively redressing serious violations of international humanitarian law, its

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very *raison d'être*" (Decision on the Objection of the Republic of Croatia to the issuance of a *subpoena duces tecum*, Tihomir Blaskic Case N° IT-95-14-PT, par. 41).

The Trial Chamber has concluded that the issuance of a *subpoena duces tecum* to a State for the production of government documents is nothing more than an order compelling the production of those documents, and that the International Tribunal has the inherent power and express authority to issue such orders, which effectuates the duty of States and individuals to comply with orders of the International Tribunal.

Therefore, the Trial Chamber has decided that a Judge or Trial Chamber of the International Criminal Tribunal has the authority and power to issue orders to States and individuals, including high government officials, for the production of documents required for the preparation or conduct of a trial. These orders may properly be termed *subpoena duces tecum* and, as such, there is a clear obligation of both States and their officials to comply fully with their terms. Moreover, the Trial Chamber has declined to invalidate the mechanism of *subpoenas* provided for in Rule 54 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia.

II

As a general rule for orders and warrants, Rule 54 provides that

> "At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpœnas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial".

The term *subpoenas* was inserted into Rule 54 in January 1995, when the Rules were amended at the Fifth plenary session. The Second Annual Report of the ICTFY states that this was "to improve the clarity, consistency and completeness of the rules". Given that the word *subpoenas* appears beside orders, summonses, warrants and tranfer orders, it would seem that Rule 54 was intended to confer a general power. The term also appears in Article 54 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda. Furthermore, Article 26 (3) of the International Law Commission Draft Statute for an International Criminal Court foresees the possibility of issuing *subpoenas*. Therefore, it seems clear that in the field of developing rules of international criminal procedure the term is generally accepted as an expression for orders to obtain evidence, and it was not until after the International Law Commission has adopted the Draft Statute, providing for the issuance of *subpoenas*, that Rule 54 was amended to add the term.

As it appears in Rule 54 the expression *subpoena duces tecum* must be interpreted. The definition of the term in Anglo-Saxon law is a writ requiring a person to be present at a specified place under a penalty and, especially, requiring a witness to attend in court and also to bring with him certain documents in his posession specified in the *subpoena*. However, the French version of the Rules contains no allusion to the term *"peine"* (penalty) since the third word in the list in question is, in French, *"assignation"*.

In common law jurisdictions the term *subpoena duces tecum* is used for a court order commanding the production of documents ; the word *subpoena* carries with it the threat of sanction. This legal concept which is not known in Roman-Germanic law by this name, nor in this exact form, has the peculiarity of addressing the order to the recipient *"sub poena"* ; at least terminologically, the term *subpoena* is a rather cœrcive form of "request of assistance" or "order".

Emanating from both common law and civil law systems, the Judges of the International Criminal Tribunal for the former Yugoslavia were responsible for the drafting of the Rules of Procedure and Evidence of the International Tribunal. In adopting the Rules, the Judges were guided by the nature of, and purposes for, the establishment of the International Tribunal as reflected in its Statute in order to give effect to the highest standards of justice. However, since it was the first institution ot its kind, little guidance was available from existing international legal instruments. The Judges recognized procedures from both common law and continental legal systems, but considered that they were bound by neither, although the Statute - and thus, the Rules - tends towards the adversarial system in many respects. Accordingly, terminology utilized which originates in one or another domestic legal system dœs not convey its full meaning in the International Tribunal´s context.

Since Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia embrace elements of the inquisitorial and the adversarial Anglo-American traditions of criminal procedure, the legal concepts incorporated in the Rules are severed from their origin in one specific legal culture and must be interpreted within the specific framework of the tasks and purposes of the Tribunal. The Rules are designed to capture the essence of the term - that is, the essential power to compel the attendance of witnesses and the production of evidence. It is this essence that the Trial Chamber has found characterizing several domestic legal systems from both the common and civil law traditions ; while not perhaps using the term *subpoena*, national systems do generally provide for the compulsory attendance of witnesses and acquisition of evidence in criminal proceedings, a power as necesary for the proper functioning of the International Tribunal as it is for domestic criminal courts (Decision on the Objection of the Republic of Croatia to the issuance of a *subpoena duces tecum*, Tihomir Blaskic Case N° IT-95-14-PT, paras. 59 and 61, *in fine*).

III

Judge Gabrielle Kirk McDonald, President Judge of Trial Chamber II, seemed to consider that Rule 54 of the Rules of Procedure and Evidence was a sufficient legal basis for the *subpoena duces tecum* issued by her. However, this is not a sufficient justification: the provision must be in conformity with the Tribunal's Statute.

The Government of the Republic of Croatia held that grounds for *subpoena duces tecum* are explicitly denied under the provisions of the Statute of the International Criminal Tribunal for the former Yugoslavia, the Rules of Procedure and Evidence of the Tribunal and in general international law. Article 29 paragraph 2 of the Statute only empowers the Tribunal to issue *"request for assistance"* and *"orders"*. Since the Tribunal only derives its powers from the Statute the question must be raised whether Article 29, para. 2, encompasses a power of the Tribunal to issue, on the basis of its Rules of Procedure, an order in the form of a *subpoena duces tecum*.

During its oral submissions, the Prosecution emphasized that, as the Security Council clearly intended that the International Tribunal would effectively discharge the responsibility assigned to it, the principle of effectiveness must apply whenever there arises a question of its competence in a particular area. Croatia, however, argued that the Prosecution was seeking a form of compulsory process that is unprecedented in international law, and where such a departure from the general practice is intended, the constitutive instrument - namely the Statute - must provide so expressly.

As a sovereign State the Republic of Croatia held that the said order was inappropriate and beyond the scope of cooperation with the International Criminal Tribunal. For the Republic of Croatia, international law gives no valid examples for issuing *subpoena* to the States or its officials. If the Security Council, upon establishing the International Criminal Tribunal for the former Yugoslavia, has intended to depart from practice, the possibility to issue *subpoena duces tecum* would have been contemplated *expressis verbis* in the Statute of the Tribunal which, for the Government of the Republic of Croatia, was not the case. It was the contention of Croatia that the Security Council only intended that individuals could be subjects of orders from the International Tribunal and not States ; the competence of the International Tribunal dœs not extend to States and, therefore, to issue a *subpoena* to a State would break with accepted norms of international law and constitute an illegitimate extension of the International Tribunal's mandate.

However, Croatia recognized that it was not disputable that all States are bound to provide the requested assistance and cooperate with the Tribunal, and that this duty is discharged upon due execution. Hence, its challenge was not founded on a preclusion under general principles of international law, but rather involved a statutory limit of the Tribunal's powers ; further, Croatia admitted during oral submission that there would be no violation of international law is the word *subpoena* were inserted into the Statute.

IV

The heart of the question concerned the International Tribunal's authority and power to issue binding compulsory orders. Hence, the Trial Chamber has rightly considered that a discussion on whether or not the International Tribunal inherently possesses this power or has been expressly granted this authority was required. Although there is no doubt that the Tribunal is responsible for ruling on this point, there is also no doubt that the Tribunal has the duty to do so in response to the motion whether its own Rules conform to its Statute. This was precisely what the objections of Croatia were attempting to make clear.

In classical inter-state legal proceedings, it is the parties' own responsibility to provide to submit to the Court the necessary evidence in order to avoid a procedural disadvantage. However, international tribunals frequently ask the parties to provide documentary evidence ; the duty to comply with such orders generally derives from the parties' duty to cooperate arising from the consent of the proceedings (Article 49 of the Statute of the International Court of Justice ; relevant provisions of the three protocols of the Statute of the Court of Justice of the European Communities ; Article 28 (a) of the European Convention on Human Rights, and article 53, 2, of the Rules of Procedure of the European Commission of Human Rights ; Article 24, para. 3 of the UNCITRAL Rules governing the procedure of the Iran-United States of America Claims Tribunal).

The power of the European Commission of Human Rights to request evidentiary material from the parties has been confirmed by the European Court of Human Rights. When the Commission pointed out in its Article 31 report in the case of the Republic of Ireland against the United Kingdom that the defendant Government had not always afforded it the desirable assistance, the Court, in paragraph 148 of its judgment of 18 January 1978, regretted this attitude and stressed the "fundamental importance of the principle, enshrined in Article 28, sub-paragraph (a) *in fine,* that the Contracting States have a duty to cooperate with the Convention's institutions".

In the case of the International Criminal Tribunal for the former Yugoslavia, States are not parties before the Tribunal nor are they in any other way directly involved in the proceedings. This illustrates the fundamental difference between an international tribunal adjudicating a dispute between States, or where a State is one of the parties against whom an allegation has been made, and the circumstances in which the International Criminal Tribunal operates: States are not parties before the Tribunal and yet it must rely on their assistance in order to fulfil its function. The prosecutor cannot obtain any piece of evidence without the assistance of States, i. e. of parties not involved in the proceedings ; therefore, the tribunal could not fulfil its functions if it did not have the authority to oblige States to submit the material necessary to evaluate the case.

Accordingly, the International Tribunal requires a power different and broader in scope than those of any other international judicial institution, since in its effective functioning the Tribunal is dependent on the assistance by States which, while not parties to the proceedings, are involved with the International Tribunal by virtue of their duty of cooperation with it. As stated in paragraph 4 of resolution 827, the Security Council decided that all States shall cooperate fully with the International Tribunal and that consequently all States shall take any measures necessary under their law to implement the provisions of the Statute, including the obligation to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute.

Pursuant to Articles 2, paragraphs 2 and 5, and 25 and 41 of the United Nations Charter, States are obliged to respect these obligations. Furthermore, the Federation of Bosnia and Herzegovina, the Republic of Croatia, Republika Srpska and the Federal Republic of Yugoslavia (Serbia and Montenegro) reiterated their commitment to cooperate with the International Criminal Tribunal in the Dayton-Paris Agreements. Taking into account all these facts, and acting within the scope of Chapter VII once again, the Security Council summarised exactly the obligations of all States in its resolution 1031 (1995) ; paragraph 1, point 4 of this resolution reads:

> "Reaffirming its resolutions concerning compliance with international humanitarian law in the former Yugoslavia, reaffirms also that all States shall cooperate with the International Criminal Tribunal for the former Yugoslavia and its organs in accordance with the provisions of resolution 827 (1993) of 25 May 1993 and the Statute of the International Tribunal and shall comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute (...)".

Article 29 of the Tribunal's Statute disposes expressly that States shall cooperate without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

> "(a) the identification and location of persons ;
> (b) the taking of testimony and the production of evidence ;
> (c) the service of documents ;
> (d) the arrest or detention of persons ;
> (e) the surrender ot the transfer of the accused to the International Tribunal".

Thefore it is beyond doubt that under the Statute the Prosecutor, the Judge reviewing the indictment, and the competent Chamber have the power to draw up a whole series of acts relating to the trial, from its commencement to its conclusion, which are binding upon the addressees.

V

The Statute dœs not expressly confer upon the International Tribunal the capacity to address *subpoenas* orders ; however, the Tribunal must be deemed under international law to have those powers which, though not expressly provided in the Statute, *are conferred upon it by necessary implication as being essential to the performance of its duties.*

This principle of law was applied by the Permanent Court of International Justice to the International Labour Organization in its Advisory Opinion Nº 13 of July 23rd, 1926 (*Series* B, Nº 13, p. 18). In this Advisory Opinion the Court interpreted Part XIII of the Treaty of Versailles in favor of the competence of the Organization to regulate, incidentally, the work of employers. It referred, in addition, not only to a corresponding "contemporaneous practical interpretation made by the High Contracting Parties of the scope of that competence", but also to the subsequent practice of the Organization confirming the Court´s interpretation.

The International Court of Justice has applied the doctrine of implied powers in interpreting the United Nations Charter. In the *Reparation for Injuries Suffered in the Service of the United Nations* case, the Court observed in its Advisory Opinion that :

> "the rights and duties of an entity such as the Organization must depend upon its purpose and functions as specified or implied in its constituent documents and developed in practice" (*ICJ Reports* 1949, at p. 180).

The International Court of Justice has also held that a capacity to establish a tribunal to do justice between the Organization and staff members "arises by necessary intendment out of the Charter", there being no express provision in this regard (*Effects of Awards of Compensation made by the United Nations Administrative Tribunal, ICJ Reports* 1954, at pp. 56-57).

In its Advisory Opinion *Jugdments of the Administrative Tribunal of the International Labour Organization,* the Court held that in order to decide on the competence of the Administrative Tribunal, it was necessary to consider the contracts with the complaining official not only by reference to their wording but also in the light of the fact that there had developed in this matter a body of practice in a manner transcending the strict wording of the contract (*ICJ Reports,* 1956, p. 91).

Furthermore, in the *Certain Expenses of the United Nations* case, the Court effected a negative presumption that if a constitutive instrument dœs not deny a power, the relevant organization is to have it (*ICJ Reports,* 1962, pp. 164 and 167).

The teaching of the Court is, in fact, that for the interpretation of the Charter account must be taken of its fundamental purposes, and it must be recognized that the organization has powers which are necessary to achieve them by necessary implication. When the issue of interpretation relates to the constitution of an organization, a flexible and effective approach is undoubtedly justifiable. On the basis of the teleological principle - according to which action in accordance with the stated purposes of an organization is *intra vires* or at least is presumed to be so -, judicial interpretation may lead to an expansion of the competence of an organization.

Therefore, the International Court seems to give a great weight to the subsequent practice of organs. There are even passages which may give the impression that the Court dœs not consider itself free to disregard such practice: thus it said in the *Reparation for Injuries* case that the rights and duties of the Organization "must depend upon its purposes and functions as developed in practice".

In the United Nations each organ must determine its own jurisdiction. When an organ adopts a resolution there must arise at least a strong *prima facie* presumption of validity. Consequently, it must be acknowledged that States Members of the United Nations, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.

Furthermore, an evolutionary interpretation was already envisaged during the San Francisco Conference. The Commission report IV/2 to the United Nations Conference of May 12, 1945, on the subject *Interpretation of the Charter* reads as follows:

> "In the course of the operations from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable to its particular functions. This process is inherent in the functionning of any body which operates under an instrument defining its functions and powers" (*UNCIO, Selected Documents*, Department of State ed., 1946, at p. 879).

I recognize that the principle of implied powers and effectiveness must be related to Article 2(1) of the Charter and also to Article 2 (7) ; but it should not be forgotten neither the reference to Chapter VII in paragraph 7 of Article 2, nor Article 2 (5) which states that:

> "All Members shall give *the United Nations* every assistance in any action *it* takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which *the United Nations* is taking preventive or enforcement action" (italics added).

The language of many articles of the United Nations Charter - as, for example, Article 2 (5) and Article 56 - is difficult to reconcile with any other view but that of the framers of the Charter regarded the Organization as possessing an international corporate capacity on its own, separate and distinct from that of the individual Members or of the plurality of its Members. Article 56 states that "All Members pledge themselves to take joint and separate action *in co-operation with the Organization* [not "in co-operation with each other" or "with other Members"] for the achievement of (...)" (italics added).

The reference to implied powers may be linked to a *principle of institutional effectiveness*. In my opinion, a proper interpretation of a constitutional instrument such as the Statute of the International Criminal Tribunal for the former Yugoslavia, must take into account not only the formal wording of the original instrument but also its operation in actual practice and in the light of the revealed tendencies in international law.

The need to ensure the effective work of the International Criminal Tribunal is in my opinion a relevant consideration in the interpretation of the Statute and the Rules, which assists in carrying out its "object and purpose". This is the reason why the European Court of Human Rights has relied upon the principle of effectiveness when interpreting the European Convention on Human Rights (*Airey v. Ireland*, A 32, 1979 ; *Artico v. Italy*, A 37, para. 33, 1980). The Court has relied also upon the said principle in other cases when interpreting positive obligations (*Klass v. FRG*, A 28, para. 34, 1978) ; in other contexts, the Court has emphasized the need to ensure the effectiveness of the Convention when interpreting the term "victim" in Article 25 (*Marckx v. Belgium*, A 31, 1979) and when giving the Convention extra-territorial reach under Article 3 (*Sœring v. United Kingdom*, A 161, par. 86, 1989).

The spirit of cooperation and commitment of the States to cooperate with the International Criminal Tribunal cannot be theoretical or illusory, but practical and effective. The allegation of the domestic law requirements, or the interests of the national security of States, cannot avoid the legal obligation of individuals, nor that of the States, to obey the orders and warrants issued by a Judge or a Trial Chamber of the International Criminal Tribunal for the former Yugoslavia which are necessary for the purposes of an investigation.

Furthermore, should the concept of State sovereignty be allowed to be raised successfully against human rights, it would be a betrayal of the universal need for justice. Dating back to a period when sovereignty stood as a sacrosant and unassailable attribute of statehood, recently this concept has suffered progressive erosion in the field of human rights. As I have said in my *General Course on Public International Law* at the Hague Academy of International Law, it seems to me that with the human rights

> "Le droit international pénètre au cœur même de la souveraineté: dans les rapports de l'Etat avec ses nationaux et, plus généralement, entre l'appareil de l'Etat et la population, donc entre deux éléments constitutifs de l'Etat (...) *tous ces développements du droit international ont remodelé le visage de la souveraineté*" (*RCADI*, tome 257 (1996), p. 70).

As stated by the Institute of International Law in its Resolution on *The protection of human rights and the principle of non-intervention in internal affairs* (Session of Santiago de Compostela, 1989), the obligation of States to ensure the observance of human rights derives from the recognition of the dignity of the human person as proclaimed in the Charter of the United Nations and in the Universal Declaration of Human Rights. Moreover, this international obligation, as expressed by the International Court of Justice, is *erga omnes* ; it is incumbent upon every State in relation to the international community as a whole, and every State has a legal interest in the protection of human rights. Further, this obligation implies a duty of solidarity among all States to ensure the effective protection of human rights throughout the world. Hence, the plea of domestic jurisdiction is no longer a justification in case of violation of human rights.

VI

The International Criminal Tribunal for the former Yugoslavia was created as a subsidiary organ of the Security Council within the terms of Article 29 of the Charter, which provides that the Council "may establish such subsidiary organs as it deems necessary for the performance of its functions".

In creating the Tribunal, the Security Council was acting to deal with a specific urgent situation presenting a serious threat to the peace. Hence, the Security Council specifically decided in Resolution 827 that:

> "in the particular circumstances of the former Yugoslavia the establishment as an *ad hoc* measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace".

Therefore, the Security Council has resorted to the establishment of a judicial organ in the form of an international criminal tribunal as an instrument for the exercise of its own principal function of maintenance of peace and security, i.e., as a measure contributing to the restoration and maintenance of peace in the former Yugoslavia. In adopting Resolution 827, the Security Council established a Tribunal with the stated purpose of bringing to justice persons responsible for serious violations of international humanitarian law in the former Yugoslavia, thereby deterring future violations and contributing to the re-establishment of peace and security in the region.

On the other hand, it should not be forgotten that the concept of a subsidiary organ is flexible and amorphous, and, as stated rightly by Santiago Torres Bernárdez,

> "subsidiary organs are actually instrumentalities at the disposal of the international organizations: devices which respond ultimately to the principles of functional necessity, effectiveness, specialization and decentralization" ("Subsidiary Organs", in R.J. Dupuy (ed): *Manuel sur les Organisations Internationales*, Nijhoff 1988, at p. 144).

Furthermore, the creation of the Tribunal by the Security Council was not inconsistent with the sovereignty of States under the Charter. In my opinion, the International Criminal Tribunal was created pursuant to a treaty - the United Nations Charter - to which all the relevant States are parties. This acceptance of the Charter system was an exercise of the sovereignty of Member States and not an infringement upon it.

Moreover, the relevant law and precedents for the offenses in question - genocide, war crimes and crimes against humanity - clearly contemplate international as well as national action against the individuals responsible. Proscription of these crimes has long since acquired the status of customary international law, binding all States. As said by the *Cour de Cassation* of France, in the *Barbie* case,

> "En raison de leur nature, les crimes contre l'humanité (...) ne relèvent pas seulement du droit interne français, mais encore d'un ordre répressif international auquel la notion de frontière et les règles extraditionnelles qui en découlent sont fondamentalement étrangères" (88 *Revue Générale de Droit international public*, 1984, p. 509).

Furthermore, criminal responsibility for those acts was a part of the law of the former Yugoslavia at the time the offenses were committed ; hence, the Security Council has simply created an international mechanism for the trial of crimes that were already the subject of international responsibility.

VII

As an independent international court created under the terms of Chapter VII of the United Nations Charter to bring justice, to contribute to the restoration and maintenance of peace in the former Yugoslavia and to deter further violations of international humanitarian law, the International Criminal Tribunal for the former Yugoslavia is, primarily, a criminal judicial institution with jurisdiction over individuals charged with the most serious offences. The Tribunal is also an international institution, whose jurisdiction is such that the tangible evidence required for proof of the guilt or innocence of those persons appearing before it will often be in the possession of States. Well now, many of the crimes listed in Articles 2, 3 and 5 of the Statute relate to the conduct of military operations and therefore records of those operations may constitute vital evidence in a case before the Tribunal ; on the other hand, the fact that these are government documents should not automatically bar their production.

A fundamental prerequisite for the fair and effective functioning of the International Criminal Tribunal, as a subsidiary organ of a judicial nature, is its capacity to act autonomously. The power of the Tribunal to require the production of evidence is part of the inherent powers of a judicial organ, as such powers are necessary and essential for the effective administration of justice. Therefore, the Trial Chamber II has followed in its decision of 18 July 1997 a different approach of that adopted by the Appeals Chamber in its decision of 2 October 1995 on the Defence motion for Interlocutory Appeal on Jurisdiction, and has rightly founded that the absence of an express grant of power *"does not negate the existence of such a power if it can be considered to be inherent or implied"*.

The application of the teleological principle to the interpretation of Article 2 of the Statute of the Tribunal, was adopted by Judge Georges Abi-Saab in his Separate Opinion on the Jurisdiction Decision in order to bring the acts committed in internal conflicts within the reach of the grave breaches regime in the Geneva Conventions. However, the Appeals Chamber, after having examined different methods of interpretation in its *Jurisdiction Decision*, appears to rely more on a literal interpretation rather than on a teleological one (Appeals Chamber, Decision of 2 October 1995).

This is, in my view, the main development introduced by the Trial Chamber's conclusion at paragraph 30 of its decision of 18 July 1997: the

International Tribunal power to issue a *subpoena duces tecum* to a State *may be implied if it is necessary in order to fulfil its fundamental purposes and to achieve its effective functioning*. Taking into account the nature and purposes of the Tribunal, the Trial Chamber has founded that the International Tribunal has "*the inherent power to compel the production of documents necessary for a proper execution of its judicial function*" (para. 41 of the Decision). To hold the contrary would prevent the International Tribunal from effectively redressing serious violations of international humanitarian law, its very *raison d'être*.

The Trial Chamber has rightly concluded that the issuance of a *subpoena duces tecum* to a State for the production of government documents is nothing more than an order compelling the production of those documents, and that the International Tribunal has the inherent power and express authority to issue such orders, which effectuates the duty of States and individuals to comply with orders of the International Tribunal. These orders may properly be termed *subpoena duces tecum* and, as such, there is a clear obligation of both States and their officials to comply fully with their terms.

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