

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**Case No. IT-06-90-T**

**BEFORE TRIAL CHAMBER I**

**Before: Judge Alphons Orie, Presiding  
Judge Uldis Ķinis  
Judge Elisabeth Gwaunza**

**Registrar: Mr. John Hocking**

**Date: 31 December 2009**

**THE PROSECUTOR**

**v.**

**ANTE GOTOVINA, IVAN CERMAK AND MLADEN MARKAC**

***PUBLIC***

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**GOTOVINA DEFENCE RESPONSE TO PROSECUTION'S SUBMISSION ON  
AN INVESTIGATOR'S INVOLVEMENT IN THE EVENTS THAT ARE THE  
SUBJECT OF A WITNESS STATEMENT**

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THE INTERNATIONAL CRIMINAL TRIBUNAL  
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**Introduction**

1. The Prosecution claims that OTP Investigator Joakim Robertsson "has no obvious interest in the outcome of these proceedings."<sup>1</sup> To the contrary, Mr. Robertsson as a Swedish military intelligence officer had a very strong interest in the outcome of these proceedings, which caused him to manipulate the testimony of Alain Forand, as evidenced in Exhibit D339. This misconduct, which the Prosecution unfortunately now attempts to justify, amounts to Rule 77 contempt of the Tribunal.

**Discussion**

*(a) Mr. Robertsson as a Swedish military intelligence officer had an interest in ensuring that allegations of indiscriminate shelling of Knin were "proven" by the Office of the Prosecutor*

2. With the rank of Major, Mr. Robertsson was an intelligence officer in the Swedish Army while he was working for UNPF. While not disputing this

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<sup>1</sup> Prosecution's Submission On an Investigator's Involvement In the Events That Are The Subject of a Witness Statement, 18 December 2009 ("Prosecution Submission"), at paragraph 32.

fact,<sup>2</sup> the Prosecution confirms that Robertsson worked in Zagreb from June 1994 to August 1995 (i.e. during Operation Storm),<sup>3</sup> and that he began to work for OTP on 1 September 1995 shortly after Operation Storm's conclusion.<sup>4</sup>

3. At the same time, Sweden's top diplomat, Carl Bildt, was deeply embroiled in an international controversy. Before anyone had been given an opportunity to investigate or even to visit Knin, Mr. Bildt had already publicly concluded that the shelling of Knin was indiscriminate, and that President Tudjman was to be held responsible for it. Mr. Bildt was personally pushing for an ICTY investigation into the shelling of Knin.
4. The evidence concerning Mr. Bildt's conduct is undisputed. On 4 August 1995 by 14:00, Mr. Bildt had already issued a press statement claiming that, "it is difficult to see any difference between the rocket attack by RSK forces on Zagreb in May and the bombardment of Knin which President Tudjman must be held responsible for."<sup>5</sup> On 6 August 1995, when Mr. Bildt met with Croatian Foreign Minister Granic in Geneva, Granic "was pressed to explain the shelling of civilian areas in Knin and was told in no uncertain terms that that involved war crimes, a matter falling within the province of the international tribunal in The Hague."<sup>6</sup>
5. After the conclusion of the Geneva meeting, Mr. Bildt addressed the assembled international media as follows:

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<sup>2</sup> Prosecution's Corrigendum To Its 18 December 2009 Submission and Response to Gotovina's 17 December 2009 Submission ("Prosecution Response").

<sup>3</sup> Prosecution Submission, at paragraph 32.

<sup>4</sup> Prosecution Submission, at footnote 38. It is unclear whether Robertsson became an employee of the United Nations, or whether he was seconded to the OTP by Sweden and therefore continued to be paid by the Swedish government while working for OTP.

<sup>5</sup> Exhibit D62.

<sup>6</sup> Exhibit D63.

We have a very strong position on any sort of military activity that goes against the innocent civilians and the shelling of cities is among those, and the shelling of Knin, I think, is a very, very grave thing. And I've said to them that if they want to have that clarified, the legal position of that, if they are interested in it *it should be taken to the Court to judge whether that was in conformity with the --with the laws of war that are there or not.* And they answered and said that it was not a matter for individual governments to bring that up but that the Court was free to take it up and I took that as -- *that they were prepared to accept a verdict from the International Court concerning the shelling of Knin.*<sup>7</sup>

6. As a result of his behavior, Croatia declared Mr. Bildt *persona non grata* on 8 August 1995, despite the fact that Mr. Bildt was the European Union's top peace envoy.<sup>8</sup> By 17 August 1995, both Bosnia and Croatia were refusing to meet with the EU's top negotiator.<sup>9</sup>
7. As of 1 September 1995, the date Robertsson took up his new duties in OTP, Mr. Bildt remained *persona non grata* in both Croatia and Bosnia.<sup>10</sup> This resulted in Mr. Bildt himself, Sweden and the European Union being on the negotiating sidelines while the United States took the lead in bringing an end to hostilities.<sup>11</sup>
8. Given this context, it is self-evident that the government of Sweden, Mr. Bildt and Mr. Robertsson all had a very strong interest in ensuring that Mr. Robertsson "successfully proved" that Knin had been indiscriminately shelled. The Prosecution's claim that Robertsson had "no obvious interest in the outcome of these proceedings," does not withstand scrutiny. As a Swedish military intelligence officer, he had an interest in vindicating his country's top

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<sup>7</sup> Exhibit D745. Mr. Bildt made similar comments on the BBC the following day, see Exhibit D746.

<sup>8</sup> Exhibit D747.

<sup>9</sup> See article attached as Annex A.

<sup>10</sup> See article attached as Annex B.

<sup>11</sup> See Annex B, which states: "The EU peace envoy, the former Swedish prime minister Carl Bildt, has been declared *persona non grata* in Zagreb because of his criticism of the Croatian offensive to regain control of Krajina. It has been the US assistant secretary of state, Richard Holbrooke, who has secured the crucially important agreement under which Serbia's president, Slobodan Milosevic, will represent the Bosnian Serbs in future peace talks."

diplomat, Mr. Bildt. Moreover, as more fully set forth below, this context also explains why Mr. Robertsson went to such lengths to manipulate the testimony of General Forand by, *inter alia*, systematically deleting Rule 68 material from the OTP Statement written by Mr. Robertsson.

***(b) Exhibit D339 demonstrates that Robertsson manipulated evidence and committed contempt of the Tribunal***

9. Exhibit D339 demonstrates that Robertsson manipulated evidence in order to suppress exculpatory evidence and to secure indictments in this case. Exhibit D339 is a red line comparison of (i) Exhibit P330 (the “Robertsson Statement”), which is an alleged witness statement taken by Robertsson of Alain Forand on 19-20 August 1996, and (ii) Exhibit P401 (the “Forand Presentation”), which is a presentation on the fall of the RSK prepared personally by Forand only six weeks prior to Exhibit P330, on 26 June 1996.
10. The Forand Presentation, prepared by Forand personally before he ever gave a statement to anyone from OTP, contains significant exculpatory information. Forand testified that everything in the Forand Presentation was accurate to the best of his knowledge, including the exculpatory information.<sup>12</sup> Exhibit D339 reveals how Robertsson in preparing the Robertsson Statement systematically removed the highly pertinent exculpatory information.
11. During General Forand’s testimony, Presiding Judge Orié noted the “striking resemblance of major portions of your August 1996 statement compared to the 24<sup>th</sup> of June presentation...[m]any lines just the same, apparently portions taken out, portions added.”<sup>13</sup> Furthermore, under Judge Orié’s questioning, General Forand explained that “in all likelihood, if it was provided, I would

<sup>12</sup> See 2008 Forand Witness Statement, Exhibit P333 at paragraph 17.

<sup>13</sup> Tr. 4356:9-14. The Prosecution Response at paragraph 7 wrongly asserts that it was the Gotovina Defence which claimed there were “striking similarities.” In fact, the Gotovina Defence was only paraphrasing Judge Orié’s comment during General Forand’s testimony.

have given them [the OTP investigators] also an electronic copy.”<sup>14</sup> Given the “striking resemblance” between the two documents, Robertsson clearly had the Forand Presentation in his possession when he wrote the Robertsson Statement. With no explanation as to how the “striking resemblance” between the Forand Presentation and the Robertsson Statement could have occurred, the Prosecution’s alternative suggestion that “General Forand was not sure if the Prosecution even had a copy of P401 at the time the Prosecution typed his statement P330,” is disingenuous.<sup>15</sup>

*i. Robertsson manipulated and altered General Forand’s testimony on the cause of the departure of the Krajina Serbs*

12. In noting that the HV’s “use of artillery was excellent,”<sup>16</sup> General Forand concluded in the Forand Presentation that he believed that the departure of the Krajina Serb population was caused by the RSK leadership’s evacuation order issued on 4 August:

The results may have been quite different had the ARSK not stripped some of its resources to undertake the Bihać offensive, or had not taken the decision on 4 Aug to order the withdrawal of the civilian population from Sector South. By this last action, the RSK appeared to be giving up and *inevitably initiated the general retreat that followed*.<sup>17</sup>

13. General Forand explained that the withdrawal order was passed down “through an existing and well developed Civil Defence organization,” in which “everyone had a block warden, a designated survival area, evacuation route, etc.”<sup>18</sup>

<sup>14</sup> Tr. 4356:22 to 4357:2.

<sup>15</sup> Prosecution Response, paragraph 9.

<sup>16</sup> D339, page 4. Again, General Forand confirmed the accuracy of these statements at Exhibit P333, paragraph 17.

<sup>17</sup> D339, page 4, emphasis added. General Forand at trial testified that this passage was accurate, i.e. that the evacuation order “was certainly a great factor” in initiating the general retreat that followed. Tr.4353:23 to 4354:4.

<sup>18</sup> D339, page 9.

14. General Forand also expressed disbelief that the RSK would issue such an evacuation order:

Given this relatively stable situation and even with the two penetrations that could have been blocked or at least tried to be contained, one must ask himself why the RSK decided to order the civilian population to flee - unless it was already a foregone decision?<sup>19</sup>

15. All of this exculpatory Rule 68 material was deleted from the Robertsson Statement. In their place, Robertsson advanced a new theory: that the Krajina Serbs had departed due to the HV's indiscriminate shelling. Thus, Robertsson, not Forand, wrote that, "the shelling into Knin during the 4 and 5 August was indiscriminate directed against the civilian population to create mass panic."<sup>20</sup> Moreover, "the shelling was not, in my view, a military necessity. As an officer, I would call this very deplorable, however obviously the Croatian authorities reached their aim with the shelling – to get the civilian population out of the town and thereby collapse the frontlines."<sup>21</sup> Furthermore, whereas in the Forand Presentation the HV use of artillery was simply "excellent," the Robertsson Statement changes that as follows:

Their use of artillery was excellent when being used against military targets, however the artillery was to a large extent used against villages and towns like Knin and not against targets in the Zone of Separation. This shelling created mass panic among the population and forced it to flee.<sup>22</sup>

16. Without any question, the new explanation for the departure of the Krajina Serbs contained in the Robertsson Statement was fabricated by Joakim Robertsson. There is no other viable explanation, given that the positions set forth in the Forand Presentation and the Robertsson Statement are irreconcilable:

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<sup>19</sup> D339, page 7.

<sup>20</sup> D339, page 22.

<sup>21</sup> Id.

<sup>22</sup> D339, page 4.

- How could General Forand claim that the HV use of artillery was “excellent,” if in fact he really believed that the shelling was “not a military necessity and thus very deplorable,” was “indiscriminate and had as its aim to create mass panic,” and had “as its aim to drive the civilian population out”?
- Why on 26 June 1996 did General Forand have to “ask himself why the RSK decided to order the civilian population to flee - unless it was already a foregone decision,” if in fact General Forand believed that the HV had shelled civilians indiscriminately so as to create mass panic and force civilians to flee?
- Why on 26 June 1996 would Forand say that the RSK evacuation order “inevitably initiated the general retreat that followed,” if in fact he felt that the general retreat was initiated by a preconceived HV plan to use artillery to create mass panic and force civilians to flee?

General Gotovina submits that the evidence is clear. Robertsson deliberately deleted exculpatory evidence in preparing the Robertsson Statement, despite Forand’s assertions to this day that the exculpatory information is accurate to the best of his knowledge. In its place, Robertsson fabricated evidence that supported the positions Robertsson personally wanted to advance.

***ii. Robertsson suppressed exculpatory testimony on psychological operations***

17. In the Forand Presentation, General Forand wrote that, “there was an orchestrated psychological campaign of troop and equipment movements, by the Croatian forces, *calculated to keep the ARSK on edge and to mislead them as to their future intentions.*”<sup>23</sup> General Forand confirmed at trial that this

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<sup>23</sup> D339, page 2.

statement was accurate, i.e. that the psychological campaign of the HV was directed at the RSK Army.<sup>24</sup>

18. In drafting the Robertsson Statement, however, Robertsson deleted the exculpatory portion of the sentence. In its place, the Robertsson Statement suggests that the psychological campaign was directed at RSK Army and civilians alike.<sup>25</sup>
19. Once again, there is no conceivable justification for Robertsson to have deleted this portion of Forand's evidence, which is clearly Rule 68 material given that Forand twice told the Trial Chamber that the deleted portions were in fact true and accurate.<sup>26</sup>

***iii. Robertsson suppressed exculpatory testimony on the ARSK Defence of the so-called "Krajina"***

20. General Forand told the Trial Chamber that when he had arrived in Sector South, he had been briefed that certain defensive positions had been set up by the ARSK.<sup>27</sup> However, Robertsson manipulated General Forand's testimony in order to create the impression that the "Krajina" was undefended.<sup>28</sup>
21. In the Forand Presentation, General Forand wrote, "we saw only a small increase of military traffic towards the border, no new defensive positions erected, nor blocking positions created. A very strange reaction or lack of reaction, given the overall situation."<sup>29</sup>

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<sup>24</sup> Tr. 4337:11-14.

<sup>25</sup> D339, page 2. This is consistent with the allegation at paragraph 28 of the Joinder Indictment that the Joint Criminal Enterprise began with the use of psychological operations *prior to Operation Storm*.

<sup>26</sup> See 2008 Forand Witness Statement, Exhibit P333 at paragraph 17, and Tr. 4337:11-14.

<sup>27</sup> Tr. 4348:6-19.

<sup>28</sup> This alteration would support the allegation at paragraph 32 of the Joinder Indictment that there was "minimal and in many cases non-existent SVK resistance."

<sup>29</sup> Exhibit D339, at page 3. Emphasis added.

22. Robertsson then changed the sentences to make it appear that the RSK was undefended: “We saw no defensive position erected, no blocking positions created. A very strange reaction given the overall situation.” By deleting the word “new,” Robertsson changed Forand’s testimony from “we saw no new defensive positions,” to “we saw no defensive positions.” Given that Forand testified that the version of the sentence contained in the Forand Presentation was accurate, there is no conceivable justification for Robertsson’s deletion of the word “new,” other than to intentionally turn exculpatory evidence into inculpatory evidence.

***iv. Robertsson suppressed exculpatory testimony of Forand concerning the legitimacy of Croatia’s decision to launch Operation Storm***

23. In the Forand Presentation, General Forand wrote that the RSK leadership’s hard-line negotiating tactics as well as their decision to attack the Bihac pocket gave Croatia a “valid argument” to launch Operation Storm.<sup>30</sup> At trial, General Forand confirmed that this indeed was his “interpretation and impression.”<sup>31</sup>
24. Robertsson removed the word “valid” in preparing the Robertsson Statement and thereby altered the exculpatory nature of General Forand’s testimony and made it neutral. Once again, Robertsson intentionally manipulated Forand’s testimony to turn exculpatory evidence into inculpatory evidence through the deletion of a single word.

***(c) Robertsson’s manipulation of the testimony of General Forand amounts to Rule 77 contempt of Tribunal under the ICTY’s jurisprudence***

25. The Appeals Chamber has already convicted individuals pursuant to Rule 77 for attempting to manipulate the testimony of potential witnesses. In *Tadic*,

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<sup>30</sup> D339, page 3. Emphasis added.

<sup>31</sup> Tr. 4349:23 to 4350:6. See also Exhibit P333 at paragraph 17.

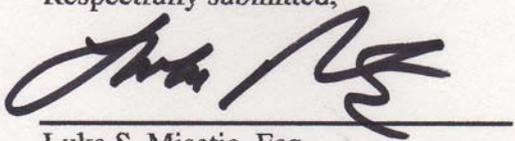
prior Defence Counsel Milan Vujin was accused of manipulating the testimony of potential witnesses by instructing them to avoid any identification of persons who may have been responsible for the crimes for which Tadic had been convicted.<sup>32</sup> The Appeals Chamber found that “manipulation of witness testimony” was in fact a crime punishable under Rule 77, and convicted Vujin on this basis after finding beyond reasonable doubt that Vujin had in fact manipulated witness testimony. Quite clearly, General Gotovina submits that the evidence here *prima facie* supports the conclusion that Robertsson manipulated the evidence of General Forand.

### Conclusion

26. To compound these transgressions, the Prosecution in its Response has attempted to justify Robertsson’s misconduct. Given the Prosecutor’s position, one must ask rhetorically what other Rule 68 material has been secreted between and among the lines of witness statements and documents prepared by the OTP and presented to the Trial Chamber as credible. To any objective observer, Mr. Robertsson manipulated General Forand’s evidence to further his own positions and the positions of the Prosecution while excluding relevant exculpatory evidence critical for an Accused to defend himself.

Word Count: 2947

Dated: 31 December 2009

Respectfully submitted,  
  
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 Gregory W. Kehoe

Defence Counsel for Ante Gotovina

<sup>32</sup> Prosecutor v. Dusko Tadic, Case No. IT-94-1-A-R77, Judgement on Allegation of Contempt Against Prior Counsel Milan Vujin, 31 January 2000, at paragraphs 139-160.

# ANNEX A



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Reuters News

August 17, 1995 Thursday

**LENGTH:** 419 words

**HEADLINE:** EU envoy Bildt gets cold shoulder in Bosnia.

**BYLINE:** By Kurt Schork

**BODY:**

SARAJEVO, Aug 17 (Reuter) - Senior Bosnian government officials refused to meet European Union peace envoy Carl Bildt on Thursday, saying the peace process he represented was dead.

The neighbouring republic of Croatia has also said it will have no more dealings with Bildt. Both governments are involved in a new peace plan advanced by the United States.

"Mr Bildt is the European Union mediator for a peace process that is dead and therefore it was not deemed necessary to meet with him," said a Bosnian government official who asked not to be identified.

An outspoken former Swedish prime minister, Bildt angered Croatia by criticising its military offensive against rebel Serbs and warning President Franjo Tudjman he could be held responsible for human rights abuses committed by troops.

He is also certain to have upset Bosnian and Croatian leaders by meeting a senior Bosnian Serb separatist leader, Momcilo Krajisnik, in Geneva this week.

Washington has said it will exclude the Bosnian Serbs, who control about 70 percent of the territory in Bosnia, from their peace process until the separatists show they want to negotiate a settlement to the three-year-old war.

"The Americans have a peace plan of their own and Bildt came to Sarajevo because he thought this is where he could jump on the peace train. We gave him the cold shoulder partly out of solidarity with Croatia, where he's persona non grata, and partly for our own reasons," the Bosnian official said.

EU envoy Bildt gets cold shoulder in Bosnia. Reuters News August 17, 1995 Thursday

Bildt is not officially "persona non grata" in Croatia but Tudjman has said his government will have no more dealings with the EU envoy.

Sarajevo was already unhappy with Bildt for advocating the lifting of international sanctions against rump Yugoslavia on terms that the Bosnian government believed were too generous.

U.S. envoy Richard Holbrooke is on a tour of the capitals of Croatia, Serbia and Bosnia to present a new land-for-peace initiative, which also carries a threat of military action.

Bosnian officials did meet Spanish Foreign Minister Javier Solana, current president of the EU Council of Ministers, and the EU's Commissioner for External Affairs, Hans van den Broek. The two men were on a visit separate from Bildt's.

Government sources said Solana did not insist on Bildt's attendance when he met Bosnian officials, including President Alija Izetbegovic and Foreign Minister Muhamed Sacirbey.

With doors shut in Bosnia and Croatia, a shadow has been cast over Bildt's role as a EU mediator in former Yugoslavia.

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**LOAD-DATE:** January 5, 2005

**ANNEX B**



FOCUS - 2 of 16 DOCUMENTS

Copyright 1995 Guardian Newspapers Limited  
The Guardian (London)

September 1, 1995

**SECTION:** THE GUARDIAN FOREIGN PAGE; Pg. 11

**LENGTH:** 1240 words

**HEADLINE:** 'PEACE WINDOW' OPENING;  
Hopes of Bosnia breakthrough as Contact Group prepares to agree common line behind US plan

**BYLINE:** John Palmer In Brussels And Jonathan Steele

**BODY:**

SERIOUS negotiations to end the Bosnian war are closer now than for months, despite the defiant response of the Bosnian Serb leaders to the military action of the past few days, the United States and its European Union allies believe.

EU governments accept that the American peace plan offers the best prospect of a breakthrough, and that they may have to play more of a back seat role in future.

The EU peace envoy, the former Swedish prime minister Carl Bildt, has been declared persona non grata in Zagreb because of his criticism of the Croatian offensive to regain control of Krajina. It has been the US assistant secretary of state, Richard Holbrooke, who has secured the crucially important agreement under which Serbia's president, Slobodan Milosevic, will represent the Bosnian Serbs in future peace talks.

The Contact Group of Britain, France, Germany, Russia and the US will meet in Bonn tomorrow to co-ordinate a common line in support of the US plan. But EU countries differ on whether any agreement should involve large exchanges of territory between the Bosnian government and the Bosnian Serbs.

The US plan was initially seen as implying the surrender of the mainly Muslim enclave of Gorazde in eastern Bosnia to the Bosnian Serbs in return for more territory around Sarajevo.

But speaking after a meeting with the Bosnian prime minister, Haris Silajdzic, in Bonn yesterday, the German foreign minister, Klaus Kinkel, said there could only be "minor corrections" to existing proposals for dividing Bosnia between the Muslim-Croat confederation and Bosnian Serbs.

Both the British and French governments seem readier to accept that an agreed exchange of territory may have to involve handing over Gorazde to the Bosnian Serbs, to produce what one British official described yesterday as "a more logical map" of post-war Bosnia.

Although the US government refuses to admit it has produced any maps showing a new carve-up of Bosnia, British

'PEACE WINDOW' OPENING; Hopes of Bosnia breakthrough as Contact Group prepares to agree common line behind US plan The Guardian (London) September 1, 1995

diplomats say the US has given them "a brief sight of some maps illustrating a series of possible divisions of territory".

The latest American initiative closely resembles the Contact Group's earlier plan, which was largely brokered by the EU. Ironically, the US plan was accepted in broad outline by the Bosnian Serbs and Belgrade before the military reprisals taken after the massacre in Sarajevo last week.

All the warring parties are being offered a set of concessions which they may prefer on balance to accept. For the mainly Muslim Bosnian government, the plan offers recognition of Bosnia's sovereignty and territorial integrity, and would oblige both Croatia and Serbia to abjure formally any intent to absorb parts of Bosnia into their own states.

The Americans want to keep discussion about possible territorial maps off the agenda for as long as possible. But the proposed 51-49 per cent split of Bosnia with the Pale Serbs does open the way for mutually agreed land exchanges, and would allow the Bosnian Serbs the same kind of loose confederal links with Serbia proper which the Bosnian Croats have with Croatia.

The Bosnian government is reportedly divided between those led by the president, Alija Izetbegovic, who appear ready to settle for a rump Muslim statelet, probably dependent on Croatia, and those around Mr Silajdzic who champion the cause of a multi-ethnic but united Bosnia.

"Never forget the thousands of Serbs, Croats, Jews and others who have fought for an independent and united Bosnia with their Muslim fellow Bosnians. They would be the biggest losers if Bosnia is forced to become a kind of Muslim bantustan," a senior Bosnian diplomat said yesterday.

Supporters of the US plan say that large scale economic aid could help Bosnia - and in particular, Sarajevo - recover as an economic magnet for the region, encouraging Bosnian Serbs to look to Bosnia rather than Serbia for future prosperity. On the other hand, the US plan offers President Milosevic the prospect of an end to all international economic sanctions if Belgrade recognises both Bosnia and Croatia.

Among the many other questions which the US plan will have to answer are whether Muslims and others "ethnically cleansed" from their homes will have the right to return, whether the planned trials of war criminals will go ahead, and what kind of guarantee the international community will have to put behind a settlement, including an international force of peacekeepers and human rights monitors.

**LOAD-DATE:** September 1, 1995