

**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: 17 December 2009

THE PROSECUTOR

v.

ANTE GOTOVINA, IVAN CERMAK AND MLADEN MARKAC

PUBLIC

**GOTOVINA DEFENCE SUBMISSION IN RESPONSE TO THE
TRIAL CHAMBER'S INVITATION OF 9 DECEMBER 2009**

For the Prosecution:

Mr. Alan Tieger
Mr. Stefan Waespi

For Ante Gotovina:

Mr. Gregory W. Kehoe
Mr. Luka S. Misetic
Mr. Payam Akhavan

For Ivan Cermak:

Mr. Steven Kay QC
Mr. Andrew Cayley
Ms. Gillian Higgins

For Mladen Markac:

Mr. Goran Mikulicic
Mr. Tomislav Kuzmanovic

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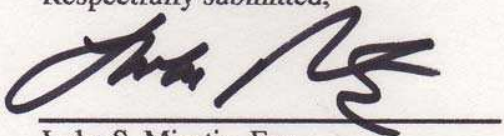
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**GOTOVINA DEFENCE SUBMISSION IN RESPONSE TO THE
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1. On 9 December 2009, the Trial Chamber invited the parties to make written submissions on whether it was appropriate for persons who may have played a role in the events described in the Joinder Indictment (the "Investigators") to be used as investigators by the parties.
2. The Gotovina Defence submits that as long as there is full transparency concerning the presence of the Investigators at witness interviews, there is nothing which is improper in utilizing such persons. Opposing parties are free to cross-examine on the role of such Investigators during the taking of the witness statement and to challenge the credibility of the statement.
3. If the Trial Chamber is concerned that Investigators could taint the testimony of other witnesses by suggesting answers to them, the Gotovina Defence submits that this is always a concern regardless of whether the person questioning the witness was or was not involved in the events in question. For example, OTP investigators have openly suggested answers and theories to witnesses even though the OTP investigator was not personally involved in the events in question.¹

¹ See, for example, the OTP interview of Josko Moric at D1842, pages 211-214.

4. The Gotovina Defence furthermore submits that OTP's lead investigator on this case from September 1995 up to 1998 was Joakim Robertsson, who was personally involved in Operation Storm working as an "information officer" (i.e. intelligence officer) for UNPF in Zagreb during Operation Storm.² The Trial Chamber is well aware of the role of the UNPF and UNCRO in disseminating many of the false claims made about the shelling of Knin. Less than one month after the completion of Operation Storm, Mr. Robertsson moved from UNPF Zagreb to the ICTY to become OTP's investigator in this case.³ Many of the witness statements and other materials admitted into evidence in this case were taken by Mr. Robertsson.⁴
5. The Gotovina Defence submits that there is *prima facie* evidence in Exhibit D339 that Mr. Robertsson interfered with the testimony of General Alain Forand, by manipulating the evidence of General Forand to suit the purposes of OTP. The Gotovina Defence submits that exhibit D339 provides *prima facie* evidence that, for purposes of Rule 77, Mr. Robertsson interfered with the administration of justice, and "otherwise interfered with" a witness pursuant to Rule 77(A)(iv).

Respectfully submitted,


 Luka S. Misetić, Esq.


 Gregory W. Kehoe

Defence Counsel for Ante Gotovina

Word Count: 577

Dated: 17 December 2009

² See Annex A (at line 15) and Annex B.

³ See Annex C.

⁴ See D748, D274, P214, P545, P799, D109, D110, P924, P428, P1283, D695, P330, P291, P980.

Furthermore, exhibits P925 and P60 were taken by Mr. Robertsson alone outside the presence of any other OTP investigator.

ANNEX A

MILITARY INFORMATION BRANCH

1	CMIO	COL	SVENSSON	SWE	A 109	3018
2	SO/CMIO	LTCOL	LJUNGGREN	SWE	A 001d	3219
3	CLERK	SGT	SCHULMAN	SWE	A 003	2259

MILITARY INFORMATION SECTION

4	SMIO	CDR	MORGAN	USA	A 003	2605
5	MIO 1	MAJ	ANDERSEN	DEN	A 003	2259
6	MIO 2	MAJ	ABDEL WAY	EGY	A 001d	
7	MIO 3	MAJ	KITUKU	KEN	A 001d	2928
8	MIO 4	CAPT	ABDALABEH	JOR	A 001d	2317
9	MIO 5	MAJ	RAYAMAJHI	NEP	A 001d	2313
10	MIO 6	MAJ	BOURGONDIEN	NL	A 001d	2317
11	MIO 7	MAJ	YUSOFF NAJIB	MAL	A 001d	2928
12	MIO 8	FLT LT	MILLER	UK	A 001D	2314
13	INFO OP 1	SGT	FEIRENDACH	UK	A 001D	3217
14	INFO OP 2	SGT	JEANDEL	FRA	A 001d	2313

ASSESSMENT DESK

15	MILO	MAJ	ROBERTSSON	SWE	A 001D	2774
16	MILO ASSIST	CAPT	DUPETY	FRA	A 001d	2928

ANNEX B

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2/26



UNPF

United Nations Peace Force
HQ Zagreb

ANNEX B

INTEROFFICE MEMORANDUM
MILITARY INFORMATION BRANCH

Date:

To: G3 PLAN

From: G2

Drafter: MAJ JOAKIM ROBERTSSON

Subject: UN INTERPOSITION SECTOR WEST

1. THREE LEVELS OF HV SUCCESS COULD BE USED:

a) HV WILL BE ABLE TO CAPTURE THE AREA AROUND OKUCANI (XL 7314), JASENOVAC, 1-2KM INTO THE SECTOR FROM THE WEST AND THE PAKRAC-LIPIK AREA IN THE NORTH. THIS WOULD LEAVE ARSK FORCES STILL IN CONTROL OF THE CENTRE PART OF THE HIGHWAY, THE TOWN OF OKUCANI AND THE HIGH GROUND IN THE NORTHERN PART OF THE ARSK HELD AREA.

COMMENTS; THE HV WILL MOST LIKELY NOT GIVE UP TAKEN GROUND. THEREFORE INTERPOSITIONING WOULD BE IN AND AROUND OKUCANI, THE CENTRE PART OF THE HIGHWAY, ON THE EAST SIDE OF THE ROAD BETWEEN THE BOS. GRADISKA BRIDGE AND OKUCANI AND FROM JASENOVAC-THE WEST PART OF THE HIGHWAY. THREAT; THE THREAT TO THE OPERATION COULD COME FROM;

- CROSS FIRE WHEN INTERPOSITIONING,
- MINES IN THE AREA, ESPECIALLY LAID DOWN BY ARSK SINCE THE ARSK ARE THE DEFENDERS,
- SNIPERS, WHICH CAN BE USED TO KEEP THE TENSION HIGH;

INDIRECT FIRE FROM;

- THE HV DEFENDING CONCURRED TERRITORY OR WHEN TRYING TO HARASS ARSK TROOP MOVEMENTS OR DEFENSIVE/OFFENSIVE PREPARATIONS. THIS FROM THE AREAS NOVA GRADISKA, NORTH OF NOVA GRADISKA AND FROM THE AREA AROUND NOVSKA.
- THE ARSK WITH ASSETS AROUND THE HIGHWAY, IN OKUCANI AND FROM LOCATIONS SOUTH OF THE SAVA RIVER.
- ARSK UNITS OR UNCONTROLLED ELEMENTS WHICH IS EITHER TRYING TO REDEPLOY FROM THE NORTH HELD AREA THROUGH THE HIGHWAY OR ARE DISAPPOINTED OF THE SOLUTION OF INTERPOSITIONING AND OF THE "LACK" OF PROTECTION THAT THE UN GAVE THE ARSK DURING THE HV OPERATION.

b) THE HV TAKES CONTROL OF THE HIGHWAY AREA AND SOUTH OF THE HIGHWAY.
THREAT; SAME AS UNDER PARA a, EXCEPT MAIN THREAT FROM

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INDIRECT FIRE WILL BE FROM ARSK UNITS FROM THE SOUTH OF THE SAVA RIVER AND FROM ARSK UNIT NORTH OF THE HIGHWAY, THE HV UNITS WILL LIKELY RESIST ANY INTERPOSITIONING THAT COULD ENDANGER THE HV TROOPS ALONG THE HIGHWAY,

c) THE HV TAKES CONTROL OF THE WHOLE SECTOR, THE SAME AS ABOVE EXCEPT; ARSK THREAT MAINLY FROM SOUTH OF THE SAVA RIVER, ESPECIALLY USING INDIRECT FIRE.

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CCG-583 27/20

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G2

MILITARY INFORMATION BRANCH
UNPF - HQ

Draft

INTEROFFICE MEMORANDUM

TO : COS
INFO : G3 LAND, G2 UNCRO, MIO/UNMO HQ
FROM : G2
DRAFTER : Capt R. THEUNENS
DATE : 08 May 95
SUBJECT : UPDATED COURSES OF ACTION CROATIA
ANNEX : FORCE RATIOS

UPDATED COURSES OF ACTION OF THE WARRING FACTIONS IN CROATIA

INTRODUCTION

1. The successful HV attack on Sector WEST has created a new situation, which could have far reaching consequences for the other disputed areas.
2. Whereas the Croatian side feels confident and belligerent, the mood in the RSK is characterised by disarray and fear. Tension in all Sectors has sharply risen as the warring factions have reinforced their positions (troops, heavy weapons) in various hot spots in and close to the ZOS. There is a high risk for the outbreak of small scale fire fights, which could include the use of heavy weapons.
3. Although it is assessed that, at least for the time being, none of the warring factions wants to provoke an escalation, due to the high tension, an overall resumption of the hostilities cannot be ruled out.

DISCUSSION

4. This paper describes the main courses of action for a flare-up of the hostilities in and around the disputed areas. Taking into account the current situation on the terrain, the

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PAGE 1

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scenario for a resumption of hostilities in Sector EAST has been fully described. For the other areas, a summary is provided.

5. Resumption of hostilities in Sector EAST

a. Objectives for the warring factions

(1) HV : The martyr city of VUKOVAR has a high symbolic value for the Croatian population. An operation to recover VUKOVAR will be supported by the majority of the Croats, even if this requires important sacrifices. The DELETOVCI oilfields and the fertile agricultural lands in the EASTERN SLAVONIJA area could be secondary objectives. Military operations could also be aimed at pushing the ARSK back from population and industrial centres OSIJEK and VINKOVCI, in order to make them less exposed to retaliatory shelling from the ARSK. The most likely approaches are EAST SLAVONIJA, particularly the VINKOVCI-VUKOVAR road, and the bridgehead EAST of OSIJEK, where the new bridge over the DRAVA allows the quick deployment of mechanized forces. The flat and open terrain highly favours the use of armour. A combined HV-HVO-BiH operation to cut the POSAVINA corridor can also be imagined.

(2) ARSK: The primary objective for the ARSK would be, in cooperation with the BSA, and possibly the JA, to capture the terrain between the current Sector limit and the POSAVINA corridor. This would imply the elimination of the HV/HVO-held ORASJE pocket; the terrain EAST of the pocket being reportedly heavily mined. By achieving this, the ARSK/BSA would seriously relieve the pressure on the vital POSAVINA corridor. Theoretically, OSIJEK and VINKOVCI could be objectives too. The most likely approach is the VUKOVAR- VINKOVCI-ZUPANJA road.

b. Capabilities of the warring factions (Detailed Force ratio : ANNEX A)

(1) HV : OZ OSIJEK (60 Tk, 18 Arty, 14000 Tp) The HV can immediately dispose of two professional (Guards) Brigades located in VINKOVCI and OSIJEK (2500-3000 troops and 30 tanks each) and 2 independent (Commando) infantry battalions ZUPANJA and OSIJEK). The Guard brigades are well-trained and, compared to the ARSK, dispose of modern equipment. Another important factor is the presence of 4 Home Defence Regiments. These units, which are made up of highly motivated refugees originating from the Sector, can be mobilised in a few Hr. Reinforcements of other areas (for example 1 Guards Bde ZAGREB, 16 Arty Brigade BJELOVAR) can be sent rapidly.

(2) ARSK : SLAVONIJA BARANJA Corps (87 Tk, 65 Arty, 8000 Tp) Numerically, the ARSK appears to be stronger than the HV. In the SOUTHERN part of the Sector, approx 70 tanks are available. However, most of the equipment is obsolete (T-34 against M-84). During the past months there have been reports

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PAGE 2

C 26-583

2/20

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on the deployment of more advanced equipment like T-55 and (unconfirmed) M-84 tanks. The local command has maintained a high state of readiness of the armed forces, with regularly mobilisations and exercises. The light armed, but well-trained para-military groups can be used for pin point actions or ambushes. If the JA gets involved in the conflict, reinforcements can be easily brought in via the three bridges over the DANUBE (BATINA, ERDUT, ILOK), ferries and pontoon bridges or ferries, and by land via the SOUTH (BELGRADE-LIPOVAC-ZAGREB highway).

(3) BiH/HVO : Estimated : 25 Tk, 32-45 Arty and 15200-21500 Tp of the 2 (BiH) Corps and the HVO in the ORASJE pocket can be brought to bear. The ORASJE pocket is well-defended and supplied by ferries from CROATIA.

(4) BSA : Estimated 40-70 Tk of the BSA are already in the corridor. A total of 123-141 Tk, 57-65 Arty and 12500-15700 troops could be deployed, by withdrawing forces from other areas.

(5) JA : 12 NOVI SAD Corps . 3 mechanized Brigades. 3 Infantry Brigades (180 MBT, 300 Arty, 40.000 troops)

b. Assessment

(1) HV: Taking into account the close ties between Sector EAST and SERBIA, it is assessed to be unlikely that the HV will launch offensive operations against Sector EAST. Sector EAST is the only area where the JA (Yugoslav Federal Army) and/or Serb or Montenegrin para-military groups can directly intervene. However, depending on the existence of a tacit agreement between CROATIA and SERBIA on the non intervention of the JA, ARSK provocations (shelling of VINKOVCI or OSIJEK), or the fear of an ARSK offensive, CROATIA could launch offensive operations against the sector. If the HV launches offensive operations, the ARSK will most likely react by retaliatory shelling on ZAGREB, VINKOVCI and OSIJEK.

A coordinated operation with the Federation aimed at cutting the POSAVINA corridor is assessed to be unlikely. Such an operation would provoke massive retaliation against TUZLA, GRADACAC and BiH-held cities elsewhere, as well as against the ORASJE pocket. Taking into account the importance the corridor has for both the BSA and the ARSK, targeting of Croatian cities and industrial centres cannot be ruled out.

(2) ARSK : Based on the force ratio in the area, it is assessed that a combined operation of the ARSK/BSA to widen the POSAVINA corridor via Croatian territory can only be successful if there is a major (at least 1 mechanized Corps) involvement of the JA. In the present circumstances this appears to be extremely

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PAGE 3

C 26-693

23/20

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unlikely. Major JA involvement in a BSA/ARSK offensive would signify for the FRY to get involved in an all out war with CROATIA. It would also be counterproductive for the attempts with the FRY to get reintegrated in the international community and have the sanctions lifted. Without JA involvement, the ARSK has not sufficient forces available to launch simultaneously a large scale attack to the SE, defend its NORTHERN flank during the attack and defend the Sector. The BSA is in a similar situation. An operation to eliminate the ORASJE pocket requires the redeployment of a considerable number of forces and heavy weapons. Due to the shortage in manpower, this would mean that the BSA would have to thin out lines in other areas. This would be an ideal signal for the BiH/HVO to start offensive operations in those thinned out areas.

If the ARSK/BSA do launch an attack, the HV will enter the Sector and strike the rear areas of the ARSK. Due to the high tension and the close localisation of the warring factions in the other areas, there will be a spill over to the other disputed areas, particularly SLANA PETRINJA (Sector NORTH), OTOCAC-MEDAK (SECTOR SOUTH) and LIVANSKO POLJE.

c. Threat towards UNPROFOR

An outbreak of hostilities in Sector EAST will increase the threat towards UNPROFOR. The most exposed will be OP and CP located close to or in approaches for possible offensive operations. (OSIJEK, the bridgehead, the area of VINKOVCI, EAST of OTOK). Similar to sector WEST, the WF are likely to confiscate UN vehicles and use them during operations. It can be expected that they will take UN personnel hostage and use them as human shields. In this regard, the presence of para-military groups on the RSK side represents a supplementary danger. The warring factions will want to express their frustrations towards UN forces. RUSBAT is likely to be targeted by HV units: the ARSK and the civilian population could take revenge for the events in Sector WEST against BELBAT (and to a lesser extent RUSBAT).

6. Resumption of hostilities in the other areas

a. HV offensive operations against Sector NORTH

(1) HV: Primary objective is to push SOUTH and collapse the ARSK frontline far enough to force the withdrawal of ARSK heavy weapon assets that are within range of ZAGREB and other populated and/or industrialized areas like SISAK and KARLOVAC. A secondary objective could be to effect a corridor through the KRAJINA into BH (OTOCAC-KORENICA), although this looks unlikely.

Main approaches include SISAK-GLINA, KARLOVAC, OGULIN-SLUNJ/PLASKI.

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PAGE 4

20/20

UN RESTRICTED

(2) ARSK. In response, the ARSK will likely target populated and industrial centres such as ZAGREB, KARLOVAC, SISAK, OSIJEK, VINKOVCI, GOSPIC, ZADAR and SPLIT. They may also attempt to launch strong defensive operations combined with counter-attack options including, diversionary attacks out of Sector SOUTH, and possibly feints out of Sector EAST, forcing the HV to redirect assets to meet these new ARSK thrusts.

b HV offensive operations against Sector SOUTH

(1) HV: Primary objectives will be to secure the MASLENICA/ZADAR area and to ensure the consolidation of the coastal highway. Subsequent objectives will be to ultimately pressure KNIN into further concessions. The HV/HVO can use their positions in the LIVANSKO POLJE to target KNIN. Main approaches include: GOSPIC-GRACAC, ZADAR-Coastal highway-ZEMUNJK-BENKOVAC, DRNIS-VRONIK KNIN. Like scenario A, it is assessed that this operation can be conducted without a general mobilisation. Only the IIDR will have to be called up, what can be done in less than 6 Hr, and units of professional

(2) ARSK: The response of the ARSK will be similar to the one described under scenario a. The fall of KNIN will be a major psychological blow, although it is assessed to be unlikely that in a first stage, it will have a decisive influence on the will of the ARSK to continue to fight.

c HV general offensive against Sector NORTH and Sector SOUTH

(1) HV: the IIV will initiate a general offensive campaign against KRAJINA. This will once again focus on capturing key areas such as the MASLENICA and BENKOVAC areas in Sector SOUTH and SISAK and KARLOVAC areas in Sector NORTH. This operation will necessitate a general mobilisation.

(2) ARSK: A strong defence is likely, however the ARSK may become overextended and unable to commit any mobile reserve to exploit any localized counter-attack successes. As long as possible, the ARSK will try to target Zagreb with long range systems, as well as the other populated and industrial centres. Once again they will try hard to keep Knin.

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PAGE 5

ANNEX C

ICTY

United Nations - International Criminal Tribunal for the former Yugoslavia
 Ujedinjeni Narodi - Meunarodni krivični sud za bivšu Jugoslaviju

Liaison Office
 c/o UNPF Hqs., Zagreb

Ured za vezu
 c/o UNPF, Zagreb

Tel.: 385 1 180 011 ext. 3099, 3100, 3210
 Fax.: 385 1 180 277

TELEFAX MESSAGE

6 September 1995

TO: Mr. Cees Hindriks, Mr. Bill Stuebner, Mr. Villy Boegelund, JJ Du Toit and Mr. Joakim Robertsson	FROM: Todd Cleaver Acting Head of Office c/o UNPF Hqs., Zagreb
FAX No.: 19 31 70 426 5300	Out No.: 928
Drafter: T. Cleaver	Page 1 of 11.
SUBJECT: Housing and population.	

Please find attached copies of UNMO and CIVPOL information regarding the demand and supply of accommodation in Sector North and South.

Tersa.

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File: UN General