

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Date: 18 December 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Public and Confidential Annexes

85th MOTION FOR FINDING OF DISCLOSURE
VIOLATION AND FOR REMEDIAL MEASURES
(DECEMBER 2013)

The Office of the Prosecutor:

Mr. Alan Tieger

Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves for a finding that the prosecution has once again violated Rule 68 by failing to timely disclose four exculpatory documents. The prosecution has confirmed these documents have been in its possession since the beginning of the trial in 2009, but were not disclosed until 9 December 2013 when they were discovered in consultation with another trial team.¹

Document #1

2. The first document is a report of UN Special Representative Yasushi Akashi dated 18 January 1994 concerning his first meeting with President Milosevic.² Dr. Karadzic was astounded to learn that this document was not disclosed to him prior to trial, and certainly prior to the testimony of Mr. Akashi.

3. In the report, Mr. Akashi reports that President Milosevic explained to him that the situation in Sarajevo was not a “siege” but that the Serbs were defending those parts of Sarajevo where they had lived for centuries. He said that the Serbs were only returning fire from the Bosnian Muslims in Sarajevo.³

4. The exculpatory nature of this document is that President Milosevic told Mr. Akashi in January 1994 exactly what Dr. Karadzic has been trying to tell the court since his trial opened—that the shelling and sniping in Sarajevo were not directed at civilians or indiscriminate, but was the result of legitimately returning fire.

5. Dr. Karadzic has been prejudiced by the late disclosure of this document because he could have used the information in his cross examination of prosecution witnesses David Harland and Anthony Banbury and his direct examination of Mr. Akashi. There are no more witnesses scheduled to testify at the trial from whom this information can be elicited.

Document #2

6. The second document is a statement of a Muslim resident of Zvornik given to the ICTY on 17 September 1997.⁴ The resident described an event on 22 May 1992 in which he tried to cross into Mali Zvornik, Serbia from Zvornik town with a permit and was stopped by a soldier who tore up the permit. When he reported this to the Serb

¹ A copy of the letter of disclosure is attached as Confidential Annex “B” There were 29 documents disclosed under Rule 68 at this time.

² A copy of this document is Annex “A”

³ para. 6

⁴ A copy of the statement is attached as Confidential Annex “C”.

authorities in Zvornik, they accompanied him to the border with four vehicles, 12 armed soldiers, and a commander. They asked him to point out the soldier who tore up the permit. Thereafter, the armed soldiers ensured that he was able to safely cross the bridge.

7. The exculpatory nature of this document is that the conduct of the Serb officials contradicts the allegation that there was a policy or joint criminal enterprise to commit violent acts against Muslims and to destroy the Muslims as a group. This incident is a microcosm of how Serb authorities had the opportunity to destroy and kill Muslims in their areas, yet chose not to do so. It is clear evidence that there was no genocidal intent in Zvornik, contrary to the allegations of Count One.

8. Dr. Karadzic has been prejudiced by the late disclosure of this document because he could have used the information in his cross examination of prosecution witnesses from Zvornik and could have investigated the incident so that he could bring defence witnesses to testify about it. There are no more Zvornik-related witnesses scheduled to testify at the trial.

Documents #3 and #4

9. The third and fourth documents are statements from witnesses who directly contradict the evidence of prosecution Rule 92 *bis* witness Srecko Acimovic. Mr. Acimovic was Commander of the 2nd Infantry Battalion of the Zvornik Brigade in July 1995.⁵ He testified he received a coded telegram from the Zvornik brigade requesting a platoon of soldiers to be detached for executions.⁶ He claimed to have discussed the telegram with the Duty Officer, the battalion command assistants and the company commanders, and thereafter it was agreed that his unit would not be sent.⁷

10. The third document is a report of an interview by the ICTY Office of the Prosecutor in 2007 with an assistant to the battalion commander.⁸ The assistant said that they never received, nor was he aware of an telegram arriving to his command or his commander, Mr. Acimovic, in regards to the Muslim prisoners or any execution.

⁵ Exhibit P342, pp.12930-31

⁶ Exhibit P342; *Popović* testimony (20 June 2007) at pp.12945-51

⁷ Exhibit P342; *Popović* testimony (20 June 2007) at pp.12946, 48; Exhibit P342; *Popović* testimony (22 June 2007) pp.13069-70

⁸ A copy of this statement is attached as Confidential Annex "D".

11. The fourth document is a proofing note for a defence witness for Drago Nikolic dated 2008 who was a communications officer for Mr. Acimovic's battalion.⁹ He stated that no such telegram was received and they did not even have the means to receive and read coded telegrams.

12. The exculpatory nature of these documents is that they directly contradict the testimony of a prosecution witness.

13. Dr. Karadzic has been prejudiced by the late disclosure of this document because he could have used the information to request that Mr. Acimovic be called for cross examination and could have called the two officers as defence witnesses. It is important for him to show that there were no communications in writing from which it could be learned that prisoners were being executed.

Remedy

14. It is respectfully requested that the Trial Chamber make a finding that the prosecution has violated Rule 68 by failing to timely disclose these documents.

15. These violations demonstrate that the prosecution had not disclosed all of the exculpatory information in its possession despite repeated admonitions by the Trial Chamber and despite all of the mechanisms it claimed to have put in place to detect and disclose exculpatory material.

16. Additional violations are expected to be uncovered since this disclosure was missed by the prosecution trial team in our case and there can be no assurance that other exculpatory material has been missed.

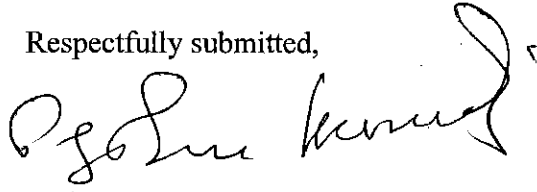
17. Dr. Karadzic further requests that he be granted an additional 4 hours for his defence case to remedy the prejudice by the non-disclosure, that Mr. Acimovic be called for cross examination, and that the report of the Akashi-Milosevic meeting be admitted as an exhibit.

18. Finally, Dr. Karadzic renews his request that the Trial Chamber order that the defence be given open-file disclosure, as the violations of the prosecution's disclosure obligations continue to be uncovered. Only full disclosure can ensure a fair trial.

⁹ A copy of this statement is Confidential Annex "E".

Word count: 1202

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic

PUBLIC
ANNEX "A"

CODE RESTRICTED

OUTGOING CODE CABLE

UNPROFOR COMMUNICATIONS

*CZG-050
CZM-064
P1/5*

'94 JAN 18 19:14

IMMEDIATE NO DISTRIBUTION

TO: ANNAN, UNATIONS, NEW YORK ONLY - *1420Z*

INFO: STOLTENBERG, GENEVA ONLY - *OK 1432Z*

FROM: AKASHI, UNPROFOR, ZAGREB *Y. Akashi*

DATE: 18 JANUARY 1994

NUMBER: UNPROFOR-Z- *071*

SUBJECT: Meeting with Serbian President Milosevic

Attached for your information please find the minutes of my meeting with Serbian President Milosevic.

Date: 19/1-94

ORSG: _____

ORSG: _____

CA: _____

DIR: _____

DIR: BA

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UNPROFOR COMMUNICATIONS

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Minutes of the Meeting between
H.E. Mr. Slobodan Milosevic, President of Serbia, and
the Special Representative of the Secretary-General for the
former Yugoslavia, Mr. Yasushi Akashi

Belgrade, 13 January 1994

Present:

H.E. Mr. Slobodan Milosevic	Mr. Yasushi Akashi
H.E. Mr. Jovanovic, Minister for Foreign Affairs	Mr. Andreev
2 Aides	Mr. Welch
	Mr. Chuanseng
	Mr. Schmitz
	Ms. Nakamitsu
	Col. Ngurukie

1. Mr. Milosevic welcomed Mr. Akashi and expressed his hope that Mr. Akashi would be able to frequently visit from Zagreb. Mr. Milosevic said he had a very cordial relationship with Mr. Stoltenberg and was looking forward to working in that way with Mr. Akashi.

2. Mr. Akashi explained that with the separation of responsibilities, Mr. Stoltenberg was now able to concentrate fully on the negotiations in Geneva. Mr. Akashi was going to concern himself with the improvement of the United Nations civilian and military activities on the ground and the implementation of present and future mandates of UNPROFOR. He agreed to the need to exchange views with President Milosevic as often as possible.

3. Mr. Akashi, referring to his meeting with FRY Prime Minister Radoje Kotic, said that the issues discussed included UNPROFOR's vacating the base in Pancevo; the deployment of the remaining equipment of the Nordic Battalion via Split; simplified visa procedures for UNHCR personnel when crossing into Bosnia and Herzegovina; and Russian gas transiting the FRY to Sarajevo.

4. Mr. Akashi pointed out that the international community was impatiently waiting for the three parties in Bosnia and Herzegovina to come to a peace agreement. The international community stood ready to assist in the implementation of a peace agreement, but President Milosevic and the other key leaders had to make up their mind. Mr. Stoltenberg had expressed a certain degree of optimism that the remaining issues could be resolved. Mr. Akashi said that in his talks with the Bosnian Government he had pointed to the growing impatience of the international community. Already countries such as Canada, France, Spain and the United Kingdom had indicated their unwillingness to continue their contribution to UNPROFOR in the absence of a peace agreement.

5. With reference to the recent NATO summit statement, Mr. Milosevic said that a peace agreement was now in the hands of those who encouraged the Muslim side to go to war. At the Foreign Minister's meeting in Brussels, the European Union had

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insisted that 33.3 % of the territory be given to the Bosnian Muslims, Sarajevo be put under United Nations administration, and that the Muslim republic be given access to the sea. Mr. Milosevic pointed out that the Bosnian Serbs had made the first two concessions, and President Tudjman had made appropriate offers in regard to the latter. It was now time for the international community to live up to its promise to suspend the sanctions since the required conditions had been met by the Bosnian Serbs. Moreover, only a lifting of the sanctions against the FRY would make President Izetbegovic sign the peace agreement. The Muslims believed that the sanctions were tying the hands of the Bosnian Serbs and gave them a tactical advantage for military operations. The Bosnian Muslims also seemed to believe that somebody else would win the war for them.

6. Mr. Akashi said he had advised Dr. Karadzic that besieging and shelling Sarajevo was counterproductive for his own cause. The media were exclusively focussing on events in Sarajevo, and, as a result, the international community was not inclined to give them a fair hearing. Mr. Milosevic should use his influence and advise the Bosnian Serbs to exercise restraint. Mr. Milosevic said that the term "siege" was not an accurate description of the situation. In fact, the Bosnian Serbs were defending those parts of Sarajevo and environs where they had been living for centuries. Although he realized that the Serbs had lost the media war, it had been the Muslims who had triggered off retaliatory shelling in response to their attacks. He acknowledged Mr. Akashi's advise, but pointed out that what was going on was not a game with set rules but war. A soldier who was fired at could not be prevented from defending himself. Mr. Akashi emphasized that the soldiers had to be disciplined in order to prevent the situation from getting out of hand.

7. Mr. Milosevic continued that the Bosnian Muslims had decided to continue the war. This was apparent from their behaviour at the negotiations. Many among the Bosnian Muslims were gaining from the war in terms of high-ranking positions and money. Moreover, there were some 6,000 Mujahideen fighting for what they perceived to be a Muslim cause. They were completely uncontrolled, engaging in drug smuggling and extortion, and were creating total disorder. Mr. Izetbegovic and his followers had no regard for the suffering of the people, the majority of whom wanted peace. There was a clear alternative to President Izetbegovic, Mr. Fikre Abdic. He had actually received the majority of votes during the presidential elections, but had stepped aside to look after his business interests.

8. Mr. Milosevic said that the international community should help the Bosnian Muslim leadership to come to a decision. It appeared that they were hesitant to sign an agreement out of fear to be blamed of not having achieved the best possible result. At the recent talks in Geneva, for example, the question of access to Gorazde had been discussed. First President Izetbegovic agreed to a route jointly controlled by the two parties and the United Nations. When the Serb side agreed, Mr. Siladzic suddenly insisted that the (8) had to be a corridor under

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Muslim control - in an area that traditionally belonged to Bosnian Serbs. It was obvious that the Bosnian Muslim negotiators were not assured enough to sign any agreement.

9. Mr. Milosevic continued that he was not opposed to the creation of a Muslim state. However, such a state should not be created on territory which traditionally belonged to the Bosnian Serbs. It was incomprehensible why the Bosnian Muslims insisted on a continuation of the war. The present package on the table in Geneva was already putting them at an advantage. With 33 percent of the territory, four main cities, the major chemical and steel industries the Muslim republic envisaged in the peace plan already was a viable entity. He was afraid of going to Geneva, Mr. Milosevic said, because he did not know what the Muslim side was going to demand next.

10. Turning to the statement of the NATO summit, Mr. Milosevic wondered whether its effect on the Muslim attitude at negotiations had been considered. Mr. Akashi said that he was carefully looking into the matter and that he did not want to solve one problem by creating others. It was unfortunate that the media were exclusively focussing on the question of air strikes. The question of the Dutch deployment and the opening of Tuzla airport could much easier be resolved by quiet diplomacy. At the same time, the NATO statement should be considered in its entirety. In paragraph 23, for example, there was a firm commitment to NATO's participation in the implementation of a peace agreement. Mr. Milosevic said that with regard to Srebrenica, the Bosnian Serbs had agreed to a presence of UNPROFOR in May 1993. They should not have questioned the replacement of the Canadian by Dutch troops in the first place, since it was up to UNPROFOR to decide which troops to deploy. The issue was artificial and he did not see any problems with the deployment going ahead. The situation in Tuzla was different as there was a deep rooted suspicion of the airport being abused for military purposes.

11. With regard to the aspirations of the Bosnian Muslims in Central Bosnia, Mr. Milosevic said they wanted to take the Vitez - Travnik line and even establish control over Mostar, a majority Croat city which had been earmarked to become the capital of the Croat republic of the Union. The Muslims felt that they could continue their offensive with impunity since they had the support of the international community. The Bosnian Croats were in a militarily disadvantageous position, particularly since President Tudjman could not provide support for fear of sanctions being imposed on Croatia.

12. Asked for his assessment of the situation in the UNPAs in Croatia, Mr. Milosevic said that the situation was complicated because of the internal pressure President Tudjman was facing. It was important to come to a modus vivendi which could only be achieved by first agreeing on an overall cease-fire. As a second step, lines of communication should be opened such as roads, water, and electricity. Only if people's lives had become more

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normal as a result of renewed economic activity, could the question of the political status of the UNPAs be addressed.

13. President Tudjman's main problem were his generals who, before the offensive on 22 January 1993, had boasted that they could take Knin within four days, Mr. Milosevic continued. In fact, they took 4 km of front line and 4,000 casualties. President Tudjman was willing to come to an arrangement with the Serb leadership in Knin, but he had difficulties to deliver. What later became known as the "Erdut agreement", had actually been negotiated in Belgrade. However, President Tudjman could not publicly admit to that and the agreement had been signed in Erdut and Zagreb. It turned out that President Tudjman had not been powerful enough to convince his military to withdraw from the areas concerned within 24 hours as provided for in the agreement. Mr. Milosevic admitted that the "RSK" had made the mistake to shell the Maslenica bridge immediately after the deadline had expired instead of allowing President Tudjman some time to honour his commitment. Despite this episode, Mr. Milosevic emphasized that President Tudjman was honest in his undertakings. The FRY has every interest in normalizing relations with Croatia. Only the previous day, a group of Croatian terrorist had been returned to Croatia. These elements had been sent by the Croatian Army to undermine stability in the FRY. Mr. Milosevic said that he had ordered their release as gesture of goodwill as he had every interest to come to terms with Croatia.

1. Asked as to the likely outcome of the presidential elections in Knin, Mr. Milosevic said it was difficult to tell. Irrespective of the outcome, he was confident that the "RSK" was willing to negotiate a peaceful solution. It was no secret that he did not support Mr. Babic. Mr. Babic had been opposed to the Vance Plan. Mr. Milosevic had made his misgivings about Mr. Babic known in an open letter. Even if Mr. Babic, who was a radical, won the election, he would not be in a position to spoil a normalization of the relationship between the "RSK" and Croatia.

Peter Schmitz
16 January 1994



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