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International
Criminal Tribunal
for the Former
Yugoslavia

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D 32448

CASE/AFFAIRE NO. IT-95-5/18-T (R. KARADŽIĆ) **DATE** 11 March 2010

FROM/DE RAM DORAISWAMY, COURT OFFICER *Cliffen*

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-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: 11 March 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

SUBMISSION ON REQUEST
TO GOVERNMENT OF FRANCE

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadzic

1. On 24 August 2009, Dr. Radovan Karadzic filed his *Motion for Binding Order: Government of France*. He requested the following documents:

- (1) All reports or memoranda concerning the suspected delivery of arms at Tuzla, Bosnia in February 1995 and the efforts to conceal those deliveries, including reports made by French personnel serving in Bosnia.
- (2) Reports from General De Lapresle to UN Special Representative Akashi dated 14 February 1995 (UNPROFOR Z-0257 entitled "Unidentified fix winged aircraft flight to Tuzla") and 15 February 1995 (UNPROFOR Z-0268) concerning shipments of arms at Tuzla
- (3) All correspondence or notes or memoranda of communications between the government of France and the United Nations or any of its bodies concerning shipments of arms to Tuzla in February 1995
- (4) All correspondence or notes or memoranda of communications between the governments of France and the United States concerning shipments of arms to Tuzla in February 1995
- (5) All reports, minutes, or notes of the meetings of Ministers of Defence of UK, France, and Germany and US Secretary of Defence at Key West, Florida on 3-5 March 1995 concerning arms supplies to Bosnia.
- (6) All reports, memoranda or correspondence indicating the presence of French military or intelligence agency personnel in Bosnia between April 1992 and August 1995 including the placement of any such individuals in UNPROFOR, UNMO, UNHCR or other UN organizations or NGOs, when such personnel were in fact reporting to the French government, including the *Direction du Renseignement Militaire* (DRM).
- (7) All reports, memoranda, or correspondence concerning the use of UNPROFOR, UNMO, UNHCR, or NGO personnel in Bosnia between April 1992 and August 1995 to provide arms, ammunition, or military equipment to the Bosnian Muslims,
- (8) All reports, memoranda, or correspondence concerning the use of UNPROFOR, UNMO, UNHCR, or NGO personnel in Bosnia between April 1992 and August 1995 to perform acts of a military or intelligence nature for their own governments or for NATO
- (9) All reports of intelligence or security services or UNPROFOR members from France concerning the explosions at the *Markale* market in Sarajevo on 5 February 1994 and 28 August 1995.

- (10) All reports of the Gendarmerie special intervention team or other French agencies or departments which tend to indicate that Bosnian Muslims in Sarajevo killed their own people between April 1992 and December 1995.
- (11) All reports, transcripts, or notes of statements made by Radovan Karadzic between 9 July and 4 August 1995 about the Srebrenica events including information from signals and human intelligence.

2. On 7 December 2009, the government of France produced one document responsive to item (5), above.

3. On 7 January 2010, Dr. Karadzic provided more specific information to assist the French government in supplying the information requested in item (10). A copy of that information, in the form of a news article, is attached to this submission as Annex A.

3. On 3 March 2010, the Trial Chamber requested Dr. Karadzic to indicate whether the prosecution has produced any of the documents requested from the government of France.¹ Dr. Karadzic represents that the prosecution has produced the documents requested in item (2), above.

4. Therefore, Dr. Karadzic hereby withdraws items (2) and (5) from his *Motion for Binding Order*. He maintains his request to the government of France for the other items.

5. Because of France's known intelligence capabilities in Bosnia, including the use of signals intercept techniques, and its presence as the largest contingent of UNPROFOR in Bosnia, Dr. Karadzic believes that the government of France is likely to have a wealth of information concerning items (1), (3), (4), (6), (7), (8), and (11) and of Dr. Karadzic's *Motion for Binding Order*. However, the items requested in items (9) and (10) of the *Motion* are certainly in the possession of the government of France and should be ordered to be produced.

6. A review of the prosecution disclosure concerning the responsibility of the Bosnian Muslim Army for the shelling and sniping incidents in Sarajevo, including the incidents at Markale market indicates that the prosecution has disclosed the report of the French UNPROFOR officers dated 12 February 1994 concerning the Markale incident. Therefore, the government of France need not produce that report. However, as far as

¹ *Order for Response* (3 March 2010)

can be determined, the prosecution has not produced any other documents relating to the government of France concerning items (9) and (10).

7. Evidence which Dr. Karadzic has obtained to date indicates that the French government has received information on several occasions that indicates that the Bosnian Muslims were shelling and sniping their own citizens in order to blame the Bosnian Serbs and provoke international armed intervention on their behalf in Bosnia.

8. For example, a study commissioned by the government of The Netherlands reported that the French gendarmerie's special intervention team determined that some sniper fire came from ABiH soldiers, who deliberately fired on their own civilian population to be able to blame the Bosnian Serbs.²

9. With respect to the shelling of the Markale market on 5 February 1994, the French contingent of UNPROFOR took the lead in the initial international investigation of the blast. It was reported that based in part on the investigation by the French military team, Lord Owen had written a letter to the European Commission indicating that the Bosnian Muslims were believed responsible for the shelling.³

10. With respect to the shelling of the Markale market on 28 August 1995, engineers from the French battalion of UNPROFOR once again took a significant part in the international investigation of the incident. Although the official UNPROFOR position was that the Bosnian Serbs were responsible for this shelling, and NATO air strikes were ordered as a result, strong evidence exists that those participating in the actual investigation did not believe this to be the case.

11. For example, a UNPROFOR team used firing tables to establish all the possible firing locations and then went to those locations on Bosnian Serb-held territory, taking photographs of these locations. The team concluded that it was not possible to fire from any of them. In three of these firing positions, there were stones in the ground making it impossible to secure a plate at these locations, while the fourth location was in a wooded area through which the shell could not have passed.⁴

² Wiebes, *Intelligence and the War in Bosnia* @ 211

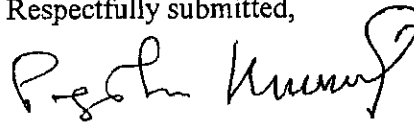
³ Yugoslav daily survey, No 542, 15 March 1994; 11 March 1994, TF1, a French television station, broadcast a news report where it was stated that it had in its possession the confidential report made by Lord David Owen

⁴ *Prosecutor v D. Milosevic*, No. IT-98-29/1-T, *Judgement* at para. 709

12. Therefore, Dr. Karadzic has ample reason to believe that the French government is in possession of information which can help him to establish that he and the Bosnian Serbs are not responsible for the shellings and snipings charged in the indictment, and that the Bosnian Muslims were killing their own people and falsely accusing the Serbs to provoke international intervention on their behalf. He therefore requests that the Trial Chamber enforce the request for binding order against France.

Word count: 1263

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', with a large, stylized flourish at the end.

Radovan Karadzic

ANNEX "A"

CONFLICT IN THE BALKANS: IN SARAJEVO; Investigation Concludes Bosnian Government Snipers Shot at Civilians

By MIKE O'CONNOR

Published: Tuesday, August 1, 1995

French peacekeeping troops in the United Nations unit trying to curtail Bosnian Serb sniping at civilians in Sarajevo have concluded that until mid-June some gunfire also came from Government soldiers deliberately shooting at their own civilians.

After what it called a "definitive" investigation, a French marine unit that patrols against snipers said it traced sniper fire to a building normally occupied by Bosnian soldiers and other security forces.

A senior French officer said, "We find it almost impossible to believe, but we are sure that it is true."

The officer insisted on anonymity, saying the findings are politically sensitive. Six French peacekeepers in the anti-sniping unit who took part in the investigation were interviewed and were willing to be identified by name, but their commander, Gen. Herve Gobilliard, insisted that their names be withheld to avoid putting them at risk.

The spokesman for President Alija Izetbegovic of Bosnia dismissed the results of the investigation as preposterous on their face.

The spokesman, Kemal Muftic, said any investigation that concluded that the Bosnian military was aiming at its own people was intended to allow the United Nations to escape responsibility for not preventing war crimes by Bosnian Serb forces.

"Instead of doing its duty, the United Nations wishes to blame both sides equally," Mr. Muftic said. "By doing so, the United Nations can justify remaining impassive."

Referring to the Bosnian Serb shelling of Sarajevo, which during an interview killed four civilians within half a block of his office, he asked, "Is there anyone who thinks we have to add to what the Serbs are already doing?"

A senior Bosnian general, Mustafa Hajrulahovic, whose responsibilities include the security of Sarajevo, said the accusations were part of a French effort to help Bosnian Serb forces by damaging the Bosnian Government's reputation.

"My wife and my two children walk the streets of this city; the French are saying I have ordered that they be shot by snipers," he said. "Their conclusions are ridiculous."

French officers who conducted the investigation adamantly defend their findings.

They say the sniper fire from the Government position stopped in mid-June, when, after several months of suspicion that the building was being used by snipers, a gunman was seen firing from the building. The officers say they notified the Bosnian Army that the sniper was about to be shot by French troops, as they are authorized to do.

"We were going to kill him just as we shoot Serb snipers," said a French officer involved in the investigation.

The Bosnian Army protested that it knew nothing about the gunman, but firing from the building immediately stopped, the officer said.

Sniper fire against civilians, like indiscriminate artillery shelling, is a tactic used by Bosnian Serb nationalists since they began besieging Sarajevo more than three years ago. The sniping has killed hundreds.

The scenes of civilians cut down on the street have helped build support for the Bosnian cause. News photographers often wait near areas most vulnerable to sniper fire.

Officers in the anti-sniping unit said they were inclined to believe that renegade elements in the Bosnian military were also shooting at civilians in an attempt to generate news coverage that increased international sympathy for the Bosnian Government. But they emphasized that this was only their best hypothesis.

"We know who is responsible, for certain," a French officer said. "But we are not sure of the reason."

Some diplomats say they believe that there are small rogue groups within the Bosnian military that benefit from the Government's instability, either politically or through control of commerce on the black market. But the diplomats acknowledge that they have no hard evidence to support this conclusion.

The results of the French investigation were not officially reported to upper-level United Nations officials here, and no report was written, a senior French officer said. He said that the matter had been handled informally because the sniping from the Government-controlled building stopped.

A top-level United Nations military officer said he had not heard of the investigation. "All we have ever had on the issue of the Bosnian Government sniping its own people is rumors," he said.

One benefit of not making the matter official -- thereby risking that it would become public -- is to avoid a dispute between the Bosnian Government and the United Nations when the role and even the future of peacekeeping here are under intensive review.

Members of the United Nations anti-sniping unit, who said they are equipped with infrared and thermal viewing devices to watch suspected snipers' nests, said they began

their investigation after studying the trajectory of bullets striking near central Sarajevo. They concluded that some of the shooting was coming from the former Parliament building. "It was the only place where some of the snipers could be," said a soldier on the investigating team.

The building, about 40 stories high, was badly damaged in fighting in 1992 and is now a position manned by the Bosnian Army and security forces.

It is used by Bosnian Army snipers to fire on areas held by Serbs, said a foreign military officer who has inspected the building several times, and other foreign officers who monitor sniper incidents.

General Hajrulahovic said the Bosnian snipers stationed there fire only on Bosnian Serb military positions.

But the building is in a line between buildings from which Bosnian Serb snipers often fire, and areas of Sarajevo where many people have been shot. French officers said they came to believe that the same Bosnian soldiers who shot at Serbs also fired at Bosnian civilians.

To test their suspicions, they said, they set a trap. Beginning on June 8, they put one of their armored vehicles near the buildings used by Bosnian Serb snipers, while other vehicles were hidden on either side of the former Parliament building.

For the next week, officers said, there were many times when no firing was heard from the Bosnian Serb positions, while shots were heard coming from the former Parliament building.

Then for three days, for several hours at a time, a United Nations armored personnel carrier was stationed so it could be clearly seen from the building. While it was there, no sniper bullets were recorded hitting in the areas of Sarajevo monitored by the anti-sniping unit. When the armored personnel carrier was withdrawn, firing directed toward those areas resumed, French officers said.

Finally, the French said, they began to examine the building with what they described as very sophisticated optical enhancement devices that they have only recently received. That was when the gunman was seen, they said.

Though they said they do not keep records of victims of snipers, the marines said they recall at least two civilians who were hit by bullets they believe were fired from the former Parliament building during their investigation.

They said that in the same period they saw bullets fired from the building strike very close to a number of other civilians, as well as other bullets that hit United Nations vehicles.