

IT-06-90-T  
D36153-D36097  
26 July 2010

36153  
SMS



International Tribunal for the  
Prosecution of Persons Responsible for  
Serious Violations of International  
Humanitarian Law Committed in the  
Territory of the Former Yugoslavia  
since 1991

Case No. IT-06-90-T  
Date: 26 July 2010  
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding  
Judge Uldis Ķinis  
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 26 July 2010

PROSECUTOR

v.

ANTE GOTOVINA  
IVAN ČERMAK  
MLADEN MARKAČ

*PUBLIC*

DECISION ON PROSECUTION'S APPLICATION FOR AN ORDER PURSUANT TO  
RULE 54 *BIS* DIRECTING THE GOVERNMENT OF THE REPUBLIC OF  
CROATIA TO PRODUCE DOCUMENTS OR INFORMATION

Office of the Prosecutor

Mr Alan Tieger

Republic of Croatia

Counsel for Ante Gotovina

Mr Luka Mišetić  
Mr Gregory Kehoe  
Mr Payam Akhavan

Counsel for Ivan Čermak

Mr Steven Kay, QC  
Ms Gillian Higgins

Counsel for Mladen Markač

Mr Goran Mikuličić  
Mr Tomislav Kuzmanović

## SUMMARY OF PROCEDURAL HISTORY

1. On 13 June 2008, the Prosecution requested that the Chamber order the Republic of Croatia (“Croatia”), *inter alia*, to produce certain documents and grant leave to exceed the word limit (“Motion”).<sup>1</sup> On 24 and 26 June 2008, respectively, the Gotovina and the Markač Defence responded, requesting that the Motion be dismissed and other relief as the Chamber deems appropriate.<sup>2</sup> On 26 June 2008, the Prosecution requested leave to reply.<sup>3</sup> On the same day, the Chamber granted the parties a further opportunity to be heard orally on the matter on 30 June 2008, which was conveyed by an informal communication. On that day, the Prosecution and the Gotovina and the Markač Defence made further oral submissions.<sup>4</sup>

2. On 1 July 2008, the Chamber decided that the Motion should not be rejected *in limine* pursuant to Rule 54 *bis* (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).<sup>5</sup> The Prosecution filed further submissions on 18 July 2008, containing *inter alia* a report by Croatia dated 14 July 2008 in Appendix A.<sup>6</sup> On the same day, the Chamber held a hearing pursuant to Rule 54 *bis* (D) (i) of the Rules, in which representatives of the Government of Croatia, the Prosecution, and the Gotovina and the Markač Defence participated.<sup>7</sup> At this hearing, Croatia requested that the Chamber dismiss the Motion and asked to be allowed to continue its investigation into the whereabouts of the outstanding documents.<sup>8</sup> On 23 and 28 July 2008 respectively, the Prosecution and Croatia filed documents concerning this hearing.<sup>9</sup>

---

<sup>1</sup> Prosecution’s Application for an Order Pursuant to Rule 54 *bis* Directing the Government of the Republic of Croatia to Produce Documents or Information, 13 June 2008; Corrigendum to Prosecution’s Application for an Order Pursuant to Rule 54 *bis* Directing the Government of the Republic of Croatia to Produce Documents or Information, 19 June 2008.

<sup>2</sup> Defendant Ante Gotovina’s Motion for Leave to Respond to Prosecution’s Application for an Order Pursuant to Rule 54 *bis* Directing the Government of the Republic of Croatia to Produce Documents or Information, 24 June 2008; Defendant Ante Gotovina’s Response to Prosecution’s Application for an Order Pursuant to Rule 54 *bis* Directing the Government of the Republic of Croatia to Produce Documents or Information, 24 June 2008; Defendant Mladen Markač’s Joinder to Defendant Ante Gotovina’s Response to Prosecution’s Application for an Order Pursuant to Rule 54 *bis* Directing the Government of the Republic of Croatia to Produce Documents or Information, 26 June 2008.

<sup>3</sup> Prosecution’s Application to Reply to Gotovina’s Response to Prosecution’s Application for an Order Pursuant to Rule 54 *bis*, 26 June 2008.

<sup>4</sup> T. 5383-5406.

<sup>5</sup> Order Scheduling a Hearing, 1 July 2008, p. 3.

<sup>6</sup> Prosecution’s Further Submissions Relating to Its Application for an Order Pursuant to Rule 54 *bis* Directing the Government of the Republic of Croatia to Produce Documents or Information, 18 July 2008.

<sup>7</sup> Order Scheduling a Hearing, 1 July 2008, p. 3; T. 6755-6810.

<sup>8</sup> T. 6766.

<sup>9</sup> Prosecution’s Submission of Two Documents Relating to the 18 July 2008 Hearing Held Pursuant to Rule 54 *bis*, 23 July 2008; Letter of the Embassy of the Republic of Croatia, 28 July 2008.

3. On 16 September 2008, the Chamber deferred its decision on the Motion and granted Croatia's request to allow further investigations ("16 September 2008 Order").<sup>10</sup> It further ordered Croatia to intensify and broaden its investigation, and to provide the Prosecution with all requested documents that it may find during the investigation.<sup>11</sup> The Chamber further ordered Croatia to supply a detailed report by 20 October 2008, specifying its investigative efforts and including, where possible, any information on the chain of custody with regard to the sought documents.<sup>12</sup> On 20 October 2008, Croatia submitted a report as requested, dated 14 October 2008 ("Croatia's First Report").<sup>13</sup> On the same day, the Gotovina Defence alleged that the Prosecution had previously disclosed to it some of the requested documents.<sup>14</sup> On 7 and on 27 November 2008, respectively, Croatia filed two more reports confidentially and *ex parte*, dated 6 ("Croatia's Second Report") and 20 November 2008 ("Croatia's Third Report").<sup>15</sup> Their status was changed to *inter partes* on 5 December 2008.<sup>16</sup>

4. Also on 5 December 2008, a fourth report, dated 28 November 2008, was filed ("Croatia's Fourth Report").<sup>17</sup> Croatia filed two further reports in response to the 16 September 2008 Order, one on 8 January 2009 (dated 8 and 10 December 2008, "Croatia's Fifth Report"), and one on 22 January 2009 (dated 9 January 2009, "Croatia's Sixth Report").<sup>18</sup>

5. Upon the Chamber's oral invitation of 12 January 2009, the parties filed further submissions regarding how to proceed with the pending Motion.<sup>19</sup> On 6 February 2009,

<sup>10</sup> Order in Relation to the Prosecution's Application for an Order Pursuant to Rule 54 *bis*, 16 September 2008, paras 16-19.

<sup>11</sup> *Ibid.*, para. 17.

<sup>12</sup> *Ibid.*, para. 18.

<sup>13</sup> Letter of the Embassy of the Republic of Croatia, 20 October 2008 (accompanying two identical sets of documents in boxes, *i.e.* Croatia's First Report); Order to Change Status of Four Filings, 5 December 2008 ("Order to Change Status"), Appendix A (containing Croatia's First Report, excluding appendices).

<sup>14</sup> Defendant Ante Gotovina's Disclosure to the Trial Chamber Concerning Its Order of 16 September 2008 to the Republic of Croatia, 20 October 2008.

<sup>15</sup> Submission by Croatia, 7 November 2008; Submission by Croatia, 27 November 2008.

<sup>16</sup> Order to Change Status, disposition, no. 1.

<sup>17</sup> Order to Change Status, p. 2, Appendix B, p. 137.

<sup>18</sup> Submission by Croatia, 8 January 2009; Submission by Croatia, 22 January 2009.

<sup>19</sup> T. 14123-14124; Defendant Ante Gotovina's Submission Pursuant to the Trial Chamber's Invitation of 12 January 2009, 19 January 2009; Prosecution's Submission in Relation to Croatia's Reports Pursuant to the Chamber's Rule 54 *bis* Order, 19 January 2009 ("Prosecution's Submission as to How to Proceed", *inter alia* requesting leave to exceed the word limit); Defendant Mladen Markač's Joinder to Ante Gotovina's Submission Pursuant to the Trial Chamber's Invitation of 12 January 2009, 20 January 2009; Defendant Ante Gotovina's Request to Reply to the Prosecution's Submission in Relation to Croatia's Reports Pursuant to the Chamber's Rule 54 *bis* Order, 22 January 2009 ("Gotovina Defence's Request to Reply to the Prosecution's Submission as to How to Proceed"); Prosecution's Additional Request for Leave to Reply to Gotovina's Submissions on Croatia's Request for Protective Measures over Material Provided Pursuant to Rule 54 *bis* [*sic*], 23 January 2009 ("Prosecution's Request to Reply to Gotovina Defence's Submission as to How to Proceed"); Prosecution's

following further litigation, the Chamber denied Croatia's application for protective measures pursuant to Rule 70 (B) and Rule 54 *bis* of the Rules for Croatia's First through Sixth Reports.<sup>20</sup> Nevertheless, the Chamber maintained the confidentiality of these reports and allowed for a future decision on protective measures on other grounds.<sup>21</sup>

6. On 9 and 25 February and 5 May 2009, Croatia filed further Rule 54 *bis* reports, dated 29 January ("Croatia's Seventh Report"), 23 February ("Croatia's Eighth Report") and 29 April 2009 ("Croatia's Ninth Report") as confidential filings, the former two also *ex parte*.<sup>22</sup> On 2 March 2009, the Prosecution filed a notice of points of understanding reached between Croatia and the Prosecution concerning 23 "key" artillery documents ("Points of Understanding").<sup>23</sup>

7. On 4 June 2009, in a letter dated 2 June 2009, Croatia requested that the Chamber decide the Motion.<sup>24</sup> Upon an invitation by the Chamber, the Prosecution responded on 19 June 2009, requesting the Chamber to reject Croatia's claims concerning the non-existence of artillery documents and conclude that most of these documents existed; the Prosecution further requested that the Chamber order Croatia to continue its investigation, dismiss Croatia's claims of misconduct in the Prosecution's reporting to the Security Council, and, if applicable, grant leave to exceed the word limit.<sup>25</sup> On 29 September 2009, Croatia submitted a further report, dated 25 September 2009 ("Croatia's Tenth Report").<sup>26</sup>

---

Further Submission in Relation to Croatia's Reports Pursuant to the Chamber's Rule 54 *bis* Order, 26 January 2009, filed confidentially and *ex parte*.

<sup>20</sup> Decision on the Status of Croatia's Reports in Response to the Chamber's Order of 16 September 2008, 6 February 2009 ("Decision on Status of Croatia's Rule 54 *bis* Reports"), especially paras 9 and 19. For further procedural history in this respect *see also* *ibid*, paras 3-6, 8; Decision on Gotovina Defence Request for a Certificate to Appeal the Pittman Letter of 19 December 2008, 6 February 2009, para. 5.

<sup>21</sup> Decision on Status of Croatia's Rule 54 *bis* Reports, para. 27.

<sup>22</sup> Submission by Croatia, 9 February 2009 (second part 13 February 2009); Submission by Croatia, 25 February 2009 (second part 5 March 2009); Order to Change Status of Filings in Relation to Rule 54 *bis* Proceedings, 25 March 2009 (lifting the *ex parte* status of the filings of 9, 13 and 25 February and 5 March 2009); Submission by Croatia, 5 May 2009 (excluding accompanying documentation); Order to the Prosecution to Disclose the Documentation Accompanying Croatia's Report of 5 May 2009 to the Defence, 8 May 2009.

<sup>23</sup> Prosecution's Notice of Points of Understanding between Croatia and the Prosecution, 2 March 2009, filed confidentially and *ex parte*; [Prosecution's] Notice of Filing of more Legible Version of Appendix A to Prosecution's Notice of Points of Understanding between Croatia and the Prosecution, 9 March 2009, filed confidentially and *ex parte*; [Prosecution's] Request to Lift the *Ex Parte* Status of Prosecution's Notice of Points of Understanding between Croatia and the Prosecution, 10 March 2009, filed confidentially and *ex parte*; Order to Change Status of Filings in Relation to Rule 54 *bis* Proceedings, 25 March 2009 (lifting the *ex parte* status of the three latter filings).

<sup>24</sup> Submission by Croatia, 4 June 2009.

<sup>25</sup> T. 18526-18527; Prosecution's Response to Croatia's 2 June 2009 Request, 19 June 2009. On 15 June 2009, the Chamber granted a request for a one-day extension for filing the Prosecution's response and informed the parties thereof through an informal communication.

<sup>26</sup> Submission by Croatia, 29 September 2009.

8. On 11 September 2009, the Chamber's Acting Senior Legal Officer ("Acting SLO") responded to Croatia's communications dated 8 September 2009 which had inquired into the current status of its request of 2 June 2009 *inter alia* to urgently resolve the Motion.<sup>27</sup> The Acting SLO letter asserted, *inter alia*, that it was not possible to give any estimates as to when the matter would be resolved, and that the 16 September 2008 Order would remain in force.<sup>28</sup> On 13 October 2009, the Gotovina Defence requested that the Chamber further clarify whether this Acting SLO letter created obligations for Croatia, or whether obligations arose out of the 16 September 2008 Order; this request prompted further litigation.<sup>29</sup> The Chamber addressed this request in a separate decision.<sup>30</sup> On 7 December 2009, upon an invitation by the Chamber of 3 December 2009 which was conveyed by an informal communication, the Prosecution filed all documents listed in Appendix C of its Motion in English translation that it had received from Croatia.<sup>31</sup> The filing further contained four documents that Croatia had submitted as falling within certain categories sought by the Prosecution, which the Prosecution does not accept as such.<sup>32</sup>

9. On 9 December 2009, Croatia filed a report dated 9 November 2009 ("Croatia's Eleventh Report").<sup>33</sup> On 11 December 2009, the Prosecution submitted correspondence between itself and Croatia in preparation for a hearing scheduled for 16 December 2009.<sup>34</sup> Croatia filed further such correspondence.<sup>35</sup> The Chamber held a hearing on 16 December 2009 and working meetings on 22 and 28 January and 4 and 5 February 2010. On these occasions, representatives of Croatia, the Prosecution and the Defence teams were given the

<sup>27</sup> Urgent Request for a Decision in Relation to the Prosecution's Application for an Order pursuant to Rule 54 *bis*, 4 June 2009; Letter of Acting SLO of Trial Chamber I, 11 September 2009 (with correspondence from Croatia dated 8 September 2009 annexed).

<sup>28</sup> Letter of Acting SLO of Trial Chamber I, 11 September 2009.

<sup>29</sup> Letter of Acting SLO of Trial Chamber I, 11 September 2009; Defendant Ante Gotovina's Request for Clarification of the Trial Chamber's Correspondence with Croatia Dated 11 September 2009, 13 October 2009; Prosecution's Response to Gotovina's Request for Clarification of the Trial Chamber's Correspondence with Croatia Dated 11 September 2009, 27 October 2009; Gotovina Defence Request to Reply to Prosecution's Response to Gotovina's Request for Clarification of the Trial Chamber's Correspondence with Croatia Dated 11 September 2009, 29 October 2009.

<sup>30</sup> T. 28981-28983.

<sup>31</sup> Prosecution's Submission of Missing Artillery Documents Received from Croatia, 7 December 2009; Prosecution's Corrigendum to Submission of Missing Artillery Documents Received from Croatia, 9 December 2009 (together "Prosecution's Received Documents").

<sup>32</sup> *Ibid.*

<sup>33</sup> Submission by Croatia, 9 December 2009.

<sup>34</sup> Order Scheduling a Hearing, 26 November 2009; Prosecution's Submission of Correspondence Relevant to the Missing Artillery Documents, 11 December 2009.

<sup>35</sup> Submission by Croatia, 31 December 2009.

opportunity to further elaborate on their respective positions concerning the sought artillery documents.<sup>36</sup>

10. Through informal communications, on 19 January 2010 the Prosecution responded to an invitation by the Chamber by clarifying which documents it still sought in preparation for the upcoming working meetings. The Prosecution did so by indicating the numerical position in which each appears on the list of Appendix C to the Motion. At the working meetings, the participants discussed whether the Motion and the 16 September 2008 Order encompassed the 23 “key” artillery documents identified in the Points of Understanding between the Prosecution and Croatia.<sup>37</sup> The Chamber answered this question in the affirmative at the working meeting of 4 February 2010, with the understanding that reasons would follow. On 5 February 2010, following the Chamber’s request, the Prosecution submitted the English translation of two official notes of interviews conducted by Croatia in the course of its investigation.<sup>38</sup>

11. Croatia filed further reports: on 18 January 2010 (report dated 7 December 2009, “Croatia’s Twelfth Report”); on 19 February 2010 (report dated 12 February 2010, “Croatia’s Thirteenth Report”); on 26 February 2010 (report dated 22 February 2010, “Croatia’s Fourteenth Report”); on 9 March 2010 (report dated 4 March 2010, “Croatia’s Fifteenth Report”); on 16 April 2010 (report dated 12 April 2010, “Croatia’s Sixteenth Report”); on 8 June 2010 (report dated 10 May 2010, “Croatia’s Seventeenth Report”); and on 15 June 2010 (undated, “Croatia’s Eighteenth Report”).<sup>39</sup> The Chamber notes that Croatia referred in several reports to material that it seized from members or former members of the Gotovina Defence as part of its investigation into the missing artillery documents.<sup>40</sup> This material was placed under seal pursuant to orders by the Chamber to protect information possibly under

<sup>36</sup> Order Scheduling a Hearing, 26 November 2009; Letter of SLO of Trial Chamber I, 4 December 2009; Letter by Croatia, 14 December 2009; T. 26345-26421; Letters of SLO of Trial Chamber I, 22 and 24 December 2009; Order Scheduling a Preparatory Meeting, 13 January 2010; Letter by Croatia, 21 January 2010; Letter by Croatia, 27 January 2010; Letter by Croatia, 3 February 2010.

<sup>37</sup> Submission by Croatia, 28 January 2010; Prosecution’s Submission of Position on 23 “Key” Missing Artillery Documents, 29 January 2010; Gotovina Defence Submission Regarding 23 Artillery Documents, 3 February 2010; Supplement to Prosecution’s 28 January 2010 Submission of Position on 23 “Key” Missing Artillery Documents, 5 February 2010 (“Prosecution’s Supplemental Filing as to 23 “Key” Missing Artillery Documents”).

<sup>38</sup> Prosecution’s Submission of Notes of Interviews, 5 February 2010.

<sup>39</sup> Submission by Croatia, 18 January 2010; Submission by Croatia, 19 February 2010; Submission by Croatia, 26 February 2010; Submission by Croatia, 9 March 2010; Submission by Croatia, 8 June 2010; Submission by Croatia, 15 June 2010.

<sup>40</sup> E.g. Croatia’s Thirteenth Report, p. 9; Croatia’s Seventeenth Report, pp. 2-3.

lawyer-client privilege.<sup>41</sup> This material is still under seal pending the decision on appeal of these orders.<sup>42</sup> On 22 April 2010, the Chamber denied the Gotovina Defence's motion of 1 April 2010, which requested that the Chamber issue a decision on, *inter alia*, the Prosecution's Motion, by 30 April 2010.<sup>43</sup> On 14 June 2010, the Prosecution clarified that the close of the evidence at this stage of the proceedings does not constitute any implicit waiver in connection with the Motion, after the Gotovina Defence had made allegations in this respect in a notice of 9 June 2010.<sup>44</sup> On 22 June 2010, the Gotovina Defence submitted, with regard to Croatia's Eighteenth Report, that it "strongly condemn[ed] Croatia's attempts to manipulate, distort and conceal evidence for the purpose of creating 'reasonable suspicions' against the Gotovina Defence" and requested leave to exceed the word limit.<sup>45</sup> The Chamber found that it was not in a position to explore the veracity of Croatia's assertions nor of the Gotovina Defence's reciprocations, and therefore makes no findings nor determinations on these issues. Additionally, the Chamber notes that since the filing of the Motion, Croatia has repeatedly reported on investigative and prosecutorial efforts directed against those it suspects of being illegally in possession of archival material. To the extent these efforts are not related to the artillery documents requested in the Motion, the Chamber does not deem it necessary to consider them.

### SUBMISSIONS OF THE PARTIES

12. In the Motion the Prosecution primarily requests the Chamber to issue an order directing Croatia to provide the documents listed in the request for artillery documents of 15 May 2007 and the request for special police documents of 27 June 2007 ("RFA" 739), contained in the

<sup>41</sup> Croatia's Thirteenth Report, p. 9; T. 26160-26161; Decision on Requests for Temporary Restraining Orders Directed to the Republic of Croatia and Reasons for the Chamber's Order of 11 December 2009, 18 December 2009; Decision on Requests for Permanent Restraining Orders Directed to the Republic of Croatia, 12 March 2010.

<sup>42</sup> Decision on Defence Request for Certification to Appeal the Trial Chamber Decision of 12 March 2010, 21 April 2010.

<sup>43</sup> Defendant Ante Gotovina's Motion Requesting the Trial Chamber to Issue Decisions on Certain Motions by No Later than 30 April 2010, 1 April 2010; Prosecution's Response to Defendant Ante Gotovina's Motion Requesting the Trial Chamber to Issue Decisions on Certain Motions by No Later than 30 April 2010, 15 April 2010; Croatia's Response to the Motion by Ante Gotovina's Defence Team of 1 April 2010, 16 April 2010; Decision on Gotovina Defence Motion to Have Certain Motions Decided by 30 April 2010, T. 28634-28635.

<sup>44</sup> Ante Gotovina's Notice to the Prosecution and Trial Chamber Concerning Prosecution's Waiver of Rule 54*bis* Motion, 9 June 2010; Prosecution's Notice of Non-Waiver in Relation to the Prosecution's Rule 54*bis* Motion, 14 June 2010.

<sup>45</sup> Defendant Ante Gotovina's Response to the Submission of the Republic of Croatia Dated 14 June 2010, 22 June 2010, paras 35-36.

Motion's confidential Appendices D and E, respectively.<sup>46</sup> Following Croatia's production of special police documents, the Prosecution clarified on 19 January 2009 that it no longer pursues its request for special police documents.<sup>47</sup> While the Prosecution deems that the 23 "key" artillery documents were included in the Motion's request and the 16 September 2008 Order, Croatia and the Gotovina Defence contest this.<sup>48</sup>

13. The arguments of the parties as reproduced in the 16 September 2008 Order remain valid, unless modified by later submissions.<sup>49</sup> The Chamber has considered the detailed submissions of Croatia and of the parties, advanced in their extensive written filings, at two hearings, and four working meetings. Rather than summarizing them in this section, the Chamber will refer to the parties' and Croatia's main considerations when discussing each individual artillery document still being sought in the discussion part, below. The Chamber has considered the submissions with regard to each document particularly in light of the Prosecution's submissions on the "Efforts by the Croatian Authorities to Hide Documents from the ICTY", in particular set out in paragraphs 43-53 of the Motion. In this respect the Chamber notes that Croatia's Eighteenth Report refers to Croatia's continued efforts to determine the circumstances in more detail and clarify some open issues with regard to Croatian intelligence actions, including 'Operation Haag', which were "directed to help the defence of the indicted Croats from Bosnia and Herzegovina", related to Operation Storm documents.<sup>50</sup> The Chamber does not come to any conclusions about the scope or implementation of any of these programmes, including 'Operation Haag'. At the same time, the Chamber acknowledges that in the report Croatia also describes the future actions it intends to take in this regard.<sup>51</sup>

14. Addressing the Gotovina Defence's Request to Reply to the Prosecution's Submission as to How to Proceed, the Gotovina Defence asserted it wished to address the Prosecution's direct allegations against the Gotovina Defence and to explain why the Chamber lacks the

<sup>46</sup> Motion, paras 15, 61.

<sup>47</sup> Prosecution's Submission in Relation to Croatia's Reports Pursuant to the Chamber's Rule 54 *bis* Order, 19 January 2009, para. 2.

<sup>48</sup> Submission by Croatia, 28 January 2010, p. 2; Prosecution's Submission of Position on 23 "Key" Missing Artillery Documents, 29 January 2010; Gotovina Defence Submission Regarding 23 Artillery Documents, 3 February 2010, Appendix A; Supplement to Prosecution's 28 January 2010 Submission of Position on 23 "Key" Missing Artillery Documents, 5 February 2010, para. 1.

<sup>49</sup> 16 September 2008 Order, paras 6-7.

<sup>50</sup> Croatia's Eighteenth Report, p. 7.

<sup>51</sup> *Ibid.*, p. 8.



authority to issue a Rule 54 *bis* order.<sup>52</sup> In regard to the Prosecution's Request to Reply to Gotovina Defence's Submission as to How to Proceed, the Prosecution wishes to address the Gotovina Defence's allegation that the "Prosecution made material misrepresentations of fact to the Trial Chamber" regarding Harry Konings's expert report, and the allegation that the Prosecution acted in bad faith by filing the addendum to that report.<sup>53</sup>

#### APPLICABLE LAW

15. Article 29 of the Statute of the Tribunal ("Statute") provides that States have an obligation to co-operate with the investigations of the Tribunal and shall comply without undue delay with any request for assistance.

16. Rule 54 of the Rules provides that a Judge or a Chamber may issue orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial at the request of either party or *proprio motu*.

17. Rule 54 *bis* (A) of the Rules provides that a party applying to the Chamber for an order under Rule 54 of the Rules for a State to produce documents or information shall (i) identify as far as possible the documents or information to which the application relates; (ii) indicate how they are relevant to any matter in issue and necessary for the fair determination of that matter; and (iii) explain the steps that have been taken to secure the State's assistance. The moving party is not under an obligation to prove the existence of the requested documents but only to make a reasonable effort to demonstrate their existence, for requiring the former would be unreasonable and could impinge upon the right to a fair trial.<sup>54</sup> However, any decision to issue an order to produce documents or information is within the discretion of the Chamber.<sup>55</sup>

<sup>52</sup> Gotovina Defence's Request to Reply to the Prosecution's Submission as to How to Proceed, para. 2.

<sup>53</sup> Prosecution's Request to Reply to Gotovina Defence's Submission as to How to Proceed, para. 2.

<sup>54</sup> *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR108bis.2, Decision on Request of the United States of America for Review, 12 May 2006, para. 23 ("*Milutinović Appeals Decision*").

<sup>55</sup> *Milutinović Appeals Decision*, para. 6, citing, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-AR108bis, Decision on the Request of the Republic of Croatia for Review of a Binding Order, 9 September 1999; *Prosecutor v. Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002.

18. Rule 126 *bis* of the Rules provides that a reply to a response, if any, shall be filed within seven days of the filing of the response, with the leave of the relevant Chamber.

## DISCUSSION

### *Preliminary matters*

19. Regarding the Gotovina Defence's and the Prosecution's requests to reply to each other's submissions as to how to proceed, as mentioned in paragraph 14 above, the Chamber finds that it does not require further submissions in order to make a determination on this issue and therefore denies these requests for leave to reply. Considering the complexity of the matter, the Chamber grants the Prosecution's requests for exceeding the word limits for its Motion dated 13 June 2008, its submission dated 19 January 2009, and its response, dated 19 June 2009. For the same reasons, the Chamber further grants the Gotovina Defence's request for exceeding the word limit for its submission dated 22 June 2010.

20. In its submission dated 2 June 2009, Croatia raised a number of matters related to the Prosecutor's authority and role once a Trial Chamber had been seized of a Rule 54 *bis* motion.<sup>56</sup> Croatia sought no remedy other than a decision on the Motion.<sup>57</sup> In its response of 19 June 2009, the Prosecution requested the Chamber to "dismiss Croatia's claims of prosecutorial misconduct".<sup>58</sup> In its Decision on Motion for Non-Disclosure Order Directed to Prosecutor Serge Brammertz of 1 December 2009 the Chamber dealt with the matters raised by Croatia and it will therefore not further consider them in the present decision.<sup>59</sup>

### *Special police documents*

21. The Chamber notes the Prosecution's submission that in the wake of the 16 September 2008 Order Croatia provided almost all of the missing special police documents, and that it therefore no longer seeks any relief in this regard.<sup>60</sup> The Chamber understands that the part of the Motion regarding special police documents has been withdrawn.

---

<sup>56</sup> Submission by Croatia, 4 June 2009, paras 18-21.

<sup>57</sup> *Ibid.*, para. 22.

<sup>58</sup> Prosecution's Response to Croatia's 2 June 2009 Request, 19 June 2009, para. 25.

<sup>59</sup> Decision on Motion for Non-Disclosure Order Directed to Prosecutor Serge Brammertz, 1 December 2009.

<sup>60</sup> Prosecution's Submission as to How to Proceed, para. 2.

*Artillery documents*

22. The Chamber considered that the Prosecution's request for artillery documents, as set out in the Motion,<sup>61</sup> encompasses all documents sought in its request for assistance of 15 May 2007 ("Artillery Document Request"), as annexed in Appendix D to the Motion. Accordingly, the Chamber's 16 September 2008 Order referred to documents included in the Artillery Document Request.<sup>62</sup> The Chamber notes that some of the "key" artillery documents whose existence the Prosecution and Croatia jointly acknowledged in their February 2009 Points of Understanding are not included in the Artillery Document Request. The Chamber considers that this can mainly be accounted for by the development of the long-term discussion between the Prosecution and Croatia, in particular by Croatia's argument that certain documents do not exist and were not supposed to have been drafted, but that other documents were drafted containing the requested information in their place. Accordingly, the Chamber clarified in its decision, announced at a working meeting on 4 February 2010, that the 23 "key" artillery documents fall within the ambit of the request of the Motion.

23. As to the remaining scope of its artillery documents request, the Prosecution informally indicated on 19 January 2010 that certain documents were still being sought from the list in Appendix C to the Motion, as reproduced in Appendix A to this decision. Appendix C provided an estimate of the sought documents in the Artillery Document Request.<sup>63</sup> While the list of the 23 "key" artillery documents to a great extent overlaps with Appendix C, it contains 9 surplus documents that the Prosecution still seeks.

24. The Chamber considers that the Prosecution in its Motion and subsequent filings has indicated the type and nature of the requested documents with sufficient certainty and specificity, so that the first prong of Rule 54 *bis* (A) of the Rules is fulfilled.

25. The Chamber notes that the requested artillery documents relate to the planning and execution of artillery operations as part of Operation Storm, which is a matter at issue before this Chamber in the present case. Hence the Prosecution has sufficiently demonstrated their relevance for the purpose of its document request. The Chamber notes that some documents requested do not relate to the indictment area. However, they still contain information regarding the hierarchy and the reporting system of the artillery of the Croatian Army (*Hrvatska Vojska*, "HV"), involved in Operation Storm, and therefore in this regard are

---

<sup>61</sup> Motion, paras 15, 61.

<sup>62</sup> 16 September 2008 Order, paras 5-6, 16-18.

<sup>63</sup> Cf. Prosecution's Filing as to 23 "Key" Missing Artillery Documents, paras 2-3.

relevant to the case before the Chamber. Considering the Prosecution's continued efforts (discussed in the following paragraph) and elaborate submissions to demonstrate the existence of the requested documents, the Chamber is satisfied that the Prosecution's efforts in this respect were reasonable. Therefore, the Chamber finds that the requirements of Rule 54 *bis* (A) (ii) of the Rules are satisfied.

26. The Prosecution's efforts to secure Croatia's assistance have been set out in great detail in the Motion, particularly in its Appendix A, which lists numerous and enduring efforts of the Prosecution to obtain access to Ministry of Defence archives and to discuss the missing artillery documentation with Croatian authorities. The various steps the Prosecution undertook in this regard satisfy the Chamber that the requirement under Rule 54 *bis* (A) (iii) of the Rules is met.

27. In sum, the Chamber is satisfied that the Prosecution's request for an order under Rule 54 fulfils the requirements of Rule 54 *bis*. The Chamber may issue such an order under Rule 54 as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.<sup>64</sup>

28. The Chamber notes that the Motion for an order to produce documents was filed during the Prosecution's case and was aimed at facilitating the Prosecution's preparation of its case. To best assist the Prosecution in this regard, the Chamber ordered further investigations and engaged in continuing consultations with Croatia and the parties to further explore crucial issues related to the requested documents. As a result, the Chamber only now issues a final decision on the Motion. Under these circumstances, in the Chamber's view, the close of the presentation of evidence in this case would not render the requested order for the production of documents unnecessary *per se* in the meaning of Rule 54.

29. The Chamber notes that if it establishes that a document does not currently exist or its whereabouts are unascertainable, no purpose would be served by issuing an order for the production of that document. In that vein, when deciding whether to issue an order for the requested document, the Chamber will consider, *inter alia*, whether it is sufficiently certain that the document was created, it still exists, and its whereabouts are ascertainable. The Chamber will return to this subject in paragraph 135.

30. For the purpose of facilitating further discussion at the 16 December 2009 hearing and the subsequent working meetings, the Chamber placed the requested documents in groups

---

<sup>64</sup> See *Milutinović Appeals Decision*, para. 6.

based on either their similar nature or the similar arguments the participants applied to them. Furthermore, the Chamber assigned a number to each document indicating its numerical position in Appendix C to the Motion, if it appears there. The discussion here will follow this same outline.

31. When outlining the submissions of the parties and Croatia in regard to each document discussed below, the Chamber puts an emphasis on the arguments of the participants as summarized by the Chamber and as further discussed at the 16 December 2009 hearing and the working meetings on 22 and 28 January and 4 and 5 February 2010. This enables the Chamber to grasp the issues that remain contested in this continuously developing discussion. The working meetings were not transcribed but audio-recorded. While they, together with the 16 December 2009 hearing, are the main focus of the Chamber in deciding the Motion, they are for practical reasons not specifically referenced in the discussion below.

32. With regard to terminology describing the military's organization and hierarchy, the discussion below will occasionally and for practical reasons refer to the Split Military District ("MD") as the first and highest level, the Operation Groups ("OG") as the second level, the Artillery Rocket Groups and Rocket Groups ("TRS" and "TS") as the third level, and their subordinate batteries as the fourth and lowest level.

*Group 1:*

33. This group consists of the following outstanding documents:<sup>65</sup>

Document #	Title	Alleged Sender	Alleged Addressee
# 68	Regular Report 4 August 1995 a.m.	TRS-1	OG North
# 69	Regular Report 4 August 1995 p.m.	TRS-1	OG North
# 78	Regular Report 5 August 1995 a.m.	TRS-1	OG North
# 79	Regular Report 5 August 1995 p.m.	TRS-1	OG North
# 88	Regular Report 6 August 1995 a.m.	TRS-1	OG North
# 89	Regular Report 6 August 1995 p.m.	TRS-1	OG North

34. At the 16 December 2009 hearing, the Prosecution accepted Croatia's explanation that TRS-1 sent a regular report to OG North only once a day; hence it confirmed that three of the

<sup>65</sup> T. 26354-26359.

documents of group 1 are no longer sought.<sup>66</sup> It also confirmed that it had received the three other documents.<sup>67</sup> The requests for documents in this group have thus become moot.

*Group 2:*

35. Group 2 consists of the following outstanding documents:<sup>68</sup>

Document #	Title	Alleged Sender	Alleged Addressee
# 70	Regular Report 4 August 1995 a.m.	TRS-2	OG North
# 71	Regular Report 4 August 1995 p.m.	TRS-2	OG North
# 80	Regular Report 5 August 1995 a.m.	TRS-2	OG North
# 81	Regular Report 5 August 1995 p.m.	TRS-2	OG North
# 90	Regular Report 6 August 1995 a.m.	TRS-2	OG North
# 91	Regular Report 6 August 1995 p.m.	TRS-2	OG North

36. At the 16 December 2009 hearing, Croatia referred with regard to these documents, in addition to earlier submissions, to an official note of Tomislav Alajica, TRS-2 commander, where Alajica implied that he had not drafted written reports about the activities of his artillery rocket group but reported orally to brigadier Željko Glasnović by phone.<sup>69</sup> In addition, Croatia referenced an official note of Dražen Vukelja, member of TRS-2, who said that he could not remember if Alajica had written reports.<sup>70</sup> Vukelja further reported that before Alajica went to briefings at the command that he - Vukelja - would inform the commander about orders received on that particular day, activities undertaken, the amount of ammunition spent, time of operation, and the targets, which Alajica in turn would write in his notebook and report from accordingly at the briefings.<sup>71</sup>

37. At the hearing and through earlier submissions,<sup>72</sup> the Prosecution pointed out that the official notes referred to by Croatia are inconclusive and therefore do not resolve the issue of whether the documents in the table above were created or not. The Prosecution added that this

<sup>66</sup> T. 26354-26355.

<sup>67</sup> T. 26355; Prosecution's Received Documents, tabs 15 (p. 171), 18 (p. 182), 21 (p. 192).

<sup>68</sup> T. 26359-26368.

<sup>69</sup> T. 26362-26363; Official Note of interview with Tomislav Alajica, Croatia's Eighth Report, p. 3.

<sup>70</sup> T. 26364; Official Note of interview with Dražen Vukelja, Croatia's Eighth Report, p. 40.

<sup>71</sup> T. 26364-26365; Official Note of interview with Dražen Vukelja, Croatia's Eighth Report, p. 40.

<sup>72</sup> See e.g. Prosecution's Submission as to How to Proceed, confidential Appendix B, nos 70-71.

matter had not been raised or clarified in any other interview with Alajica.<sup>73</sup> The Prosecution further stated that according to Split MD Artillery Chief Rajčić, the TRS/TSs were supposed to compile reports twice a day, and that reports from TRS-2 were indeed received.<sup>74</sup> The Prosecution added that Croatia's assertion that oral information was transmitted and immediately written down supports the Prosecution's position that the reports must have been recorded in writing.<sup>75</sup>

38. As noted above, Croatia claimed that Alajica stated he did not draft written reports. However, the Chamber finds explicit support in the referenced official note of Alajica for this only in relation to Operation Summer.<sup>76</sup> In relation to Operation Storm, this is only implied through Alajica stating that he reported orally to Gotovina and Rajčić after Operation Storm, and that he mentioned details of the operation to Rajčić, which Rajčić would note down in his notebook.<sup>77</sup> Nevertheless, the submissions before the Chamber in this respect are inconclusive. Therefore, the Chamber is unable to determine with sufficient certainty whether the documents of group 2 were created.

*Group 3:*

39. The following outstanding documents belong to this group:<sup>78</sup>

Document #	Title	Alleged Sender	Alleged Addressee
# 76	Regular Report 4 August 1995 a.m.	TS-5	OG Zadar
# 77	Regular Report 4 August 1995 p.m.	TS-5	OG Zadar
# 86	Regular Report 5 August 1995 a.m.	TS-5	OG Zadar
# 87	Regular Report 5 August 1995 p.m.	TS-5	OG Zadar
# 96	Regular Report 6 August 1995 a.m.	TS-5	OG Zadar
# 97	Regular Report 6 August 1995 p.m.	TS-5	OG Zadar

40. The Prosecution referred to Rajčić's statement that two daily reports were required from the TRS/TS. Croatia responded that this related to reporting in general, not specifically to TS-

<sup>73</sup> T. 26363, 26365.

<sup>74</sup> T. 16347, 26361, 26367, 26370, 26372, 26373-26377; Prosecution's Submission as to How to Proceed, confidential Appendix D, tab 12, p. 4.

<sup>75</sup> T. 26365.

<sup>76</sup> Official Note of interview with Tomislav Alajica, Croatia's Eighth Report, p. 3.

<sup>77</sup> Official Note of interview with Tomislav Alajica, Croatia's Eighth Report, pp. 3-4.

<sup>78</sup> T. 26369-26386.

5.<sup>79</sup> It further emphasized that Rajčić said that *for the most part* the TRS/TS commanders compiled written reports.<sup>80</sup> The Prosecution further referred to Rajčić's official note that Kardum had compiled written reports and forwarded them through the chief of artillery of OG Zadar, Marijan Firšt.<sup>81</sup> Croatia, however, claimed that these documents were not created and relied on three official notes of Ante Kardum, TS-5 commander.<sup>82</sup> Kardum stated that he did not consider it necessary to write reports because he entered important information in his notebook which he transmitted orally each evening at briefings with Mladen Fuzul at the OG command.<sup>83</sup>

41. The Prosecution further noted that if Kardum gave oral reports at the briefings to the OG command, this information would need to be transferred upward through the chain of command.<sup>84</sup> Hence, the Prosecution argued that the OG Zadar war diary should contain information on this reporting, which in fact it did not.<sup>85</sup> The Prosecution inferred from this omission that written reports were used as the common method of conveying information.<sup>86</sup> Croatia claimed while TRS-1 and TS-4 drafted written reports, TS-5 did not, and accounted for that distinction by highlighting the differences between these groups' strengths and reporting capabilities.<sup>87</sup> Croatia also pointed to the specific personnel situation within TS-5 and OG Zadar, where Rajčić from the MD level had delegated command of TS-5 by the MD to his assistant, Firšt, who was also chief of artillery of OG Zadar.<sup>88</sup> In conclusion, Croatia contended that submitting reports from TS-5 to OG Zadar would essentially be the same as submitting the reports directly to the MD level.<sup>89</sup> The Prosecution pointed out that Croatia's conclusion about the reporting system is drawn solely from sources illustrating the chain of

<sup>79</sup> T. 26369.

<sup>80</sup> T. 26380.

<sup>81</sup> T. 16347, 26360, 26369-26377; Official Note of interview with Marko Rajčić, Prosecution's Submission as to How to Proceed, confidential Appendix D, tab 12, p. 4; see also T. 26375, 16336-16358.

<sup>82</sup> T. 26359-26360, 26369-26370, 26378-26379, 26381; Official Note of interview with Ante Kardum, Croatia's Eighth Report, pp. 16-18; Official Note of interview with Ante Kardum, Prosecution's Submission as to How to Proceed, confidential Appendix D, tab 5, pp. 3-4; Official Note of interview with Ante Kardum, Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix C, p. 4.

<sup>83</sup> T. 26360, 26370, 26381; Official Note of interview with Ante Kardum, Croatia's Eighth Report, pp. 17-18; Official Note of interview with Ante Kardum, Prosecution's Submission as to How to Proceed, confidential Appendix D, tab 5, pp. 3-4.

<sup>84</sup> T. 26373.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> T. 26381-26382. See also the Gotovina Defence's submissions with regard to the small size of TS-5 parts of which moved on to assist the special police, T. 26386.

<sup>88</sup> T. 26382-26385.

<sup>89</sup> T. 26385.



command.<sup>90</sup> Croatia stressed that after comprehensive archival searches, Croatia had not found any indication that reports from TS-5 existed.<sup>91</sup>

42. The Chamber noted previously at the 16 December 2009 hearing that the participants' submissions are contradictory and that Croatia's submissions are inconclusive.<sup>92</sup> However, the Chamber notes that on the subject of reporting from TS-5 through Firšt, the submissions from Croatia and the Prosecution are in agreement. Irrespective of whether this amounts to direct reporting having been passed from the third to the first level, as Croatia alleges, the Chamber presumes that these documents are of interest to the Prosecution. However, Croatia reported that it was unable to locate these documents. Thus, the Chamber is unable to determine with sufficient certainty their whereabouts and therefore whether they are accessible to Croatia.

*Group 4:*

43. The following documents belong to group 4:<sup>93</sup>

Document #	Title	Alleged Sender	Alleged Addressee
# 72	Regular Report 4 August 1995 a.m.	TS-3	OG North
# 73	Regular Report 4 August 1995 p.m.	TS-3	OG North
# 82	Regular Report 5 August 1995 a.m.	TS-3	OG North
# 83	Regular Report 5 August 1995 p.m.	TS-3	OG North
# 92	Regular Report 6 August 1995 a.m.	TS-3	OG North
# 93	Regular Report 6 August 1995 p.m.	TS-3	OG North

44. At the 16 December 2009 hearing, Croatia claimed that TS-3 did not need to report to OG North, but rather directly to the forward command post of the Split MD in Sajkovići.<sup>94</sup> Croatia accounted for this by explaining that Rahim Ademi was both commander of OG North and chief of staff of the Split MD and that the OG North command was at the same location as the forward command post of the Split MD.<sup>95</sup> Croatia also referred to an official note of Goran Mamić, commander of TS-3, in which he stated that he did not write any daily

<sup>90</sup> T. 26385-26386.

<sup>91</sup> T. 26381.

<sup>92</sup> T. 26380, 26385.

<sup>93</sup> T. 26386.

<sup>94</sup> T. 26386-26388. See also the similar submissions by the Gotovina Defence, T. 26392-26393.

<sup>95</sup> T. 26387.

reports nor was he aware of anybody else writing such reports.<sup>96</sup> It further referred to Živko Erak, a member of the same rocket group, who stated that he would report back to Sajković after relaying an order to the artillery positions and would then make a note of the order in the operational diary.<sup>97</sup> Croatia claimed that Erak should have known about such reports being written as it was Erak, Mamić's deputy, and not Mamić, who stayed at the artillery group positions while the latter was at the observation post during Operation Storm.<sup>98</sup>

45. At the 16 December 2009-hearing, the Prosecution expressed doubts as to the credibility of Mamić, since he apparently was not able to remember that he had been the commander of TS-3 even after reports, written and signed by him in this capacity before Operation Storm, were shown to him during the interview. He then claimed to see them for the first time.<sup>99</sup> Croatia argued that these reports were informal and in handwriting, without any reference or class number, and that Mamić had accepted that he wrote them but not in relation to Operation Storm.<sup>100</sup> The Chamber cannot find support for the latter claim in the referenced interview. In regard to Mamić's credibility, the Prosecution further pointed to a passage in another official note in which Mamić stated that he was a witness for the Gotovina Defence.<sup>101</sup> Mamić also stated that prior to his interview he had conversations with Ivanović who told him that he could not give away the operation commanders and other details that could be detrimental to "the Generals" and therefore would answer questions selectively.<sup>102</sup> The Prosecution likewise doubted the credibility of Erak, who in his interview allegedly did not remember who the commander of TS-3 was.<sup>103</sup> In addition, the Prosecution opined that his official note was not at all conclusive with regard to the contended issue.<sup>104</sup>

46. Even if one would doubt Mamić's and Erak's credibility, as the Prosecution suggests, on the basis of the submissions before it, especially those about the particular geographical and personnel situation of TS-3, the Chamber is unable to determine with sufficient certainty whether the documents of this group were created.

<sup>96</sup> T. 26388; Official Note of interview with Goran Mamić, Croatia's Eighth Report, p. 12.

<sup>97</sup> T. 26388; Official Note of interview with Živko Erak, Croatia's Eighth Report, p. 8.

<sup>98</sup> T. 26390-26391.

<sup>99</sup> T. 26388-26389; Official Note of interview with Goran Mamić, Croatia's Eighth Report, p. 12.

<sup>100</sup> T. 26390.

<sup>101</sup> T. 26391.

<sup>102</sup> T. 26391. The Gotovina Defence contested this, stating that he was only advised by the Gotovina Defence not to divulge the defence's work product, T. 26394-26395.

<sup>103</sup> T. 26389, 26392; Official Note of interview with Živko Erak, Croatia's Eighth Report, p. 7.

<sup>104</sup> T. 26392.

*Group 5:*

47. This group consists of one document:<sup>105</sup>

Document #	Title	Alleged Sender	Alleged Addressee
# 95	Regular Report 6 August 1995 p.m.	TS-4	OG Šibenik

48. At the 16 December 2009 hearing, the parties and Croatia agreed that the regular report of TS-4 to OG Šibenik of 6 August 1995 for the first part of the day had been provided to the Prosecution (in addition to two daily reports for 4 and 5 August 1995), and that the report for the second half of the same day had not been created.<sup>106</sup> This is because TS-4 relocated on that day in the afternoon.<sup>107</sup> The request for this document is therefore moot.

*Group 6:*

49. The following documents belong to group 6:<sup>108</sup>

Docu-ment #	Title	Alleged Sender	Alleged Addressee
# 27	Order 5 August 1995	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	
# 29	Order 6 August 1995	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	
# 134	Regular Report 4 August 1995 a.m.	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD
# 135	Regular Report 4 August 1995 a.m./p.m.	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD
# 136	Regular Report 4 August 1995 p.m.	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD
# 137	Daily Report 4 August 1995	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD
# 142	Regular Report 5 August 1995 a.m.	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD
# 143	Regular Report 5 August 1995 a.m./p.m.	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD
# 144	Regular Report 5 August 1995 p.m.	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD

<sup>105</sup> T. 26396-26397.

<sup>106</sup> T. 26396-26398.

<sup>107</sup> T. 26397.

<sup>108</sup> T. 26399-26400.

# 145	Daily Report 5 August 1995	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD
# 150	Regular Report 6 August 1995 a.m.	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD
# 151	Regular Report 6 August 1995 a.m./p.m.	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD
# 152	Regular Report 6 August 1995 p.m.	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD
# 153	Daily Report 6 August 1995	11 <sup>th</sup> Anti-Tank Artillery Rocket Battalion	Split MD

50. At the 16 December 2009 hearing, the Prosecution informed the Chamber that the documents of this group were no longer sought, because the Prosecution accepted that the unit was split up and the documents were thus not created.<sup>109</sup> The request for these documents is therefore moot.

*Group 7:*

51. The following documents belong to this group:<sup>110</sup>

Document #	Title	Alleged Sender	Alleged Addressee
# 98	Regular Report 4 August 1995 a.m.	OG North	Split MD
# 99	Regular Report 4 August 1995 a.m./p.m.	OG North	Split MD
# 100	Regular Report 4 August 1995 p.m.	OG North	Split MD
# 108	Regular Report 5 August 1995 a.m.	OG North	Split MD
# 109	Regular Report 5 August 1995 a.m./p.m.	OG North	Split MD
# 110	Regular Report 5 August 1995 p.m.	OG North	Split MD

<sup>109</sup> Ibid.

<sup>110</sup> T. 26400-26408.

# 118	Regular Report 6 August 1995 a.m.	OG North	Split MD
# 119	Regular Report 6 August 1995 a.m./p.m.	OG North	Split MD
# 120	Regular Report 6 August 1995 p.m.	OG North	Split MD
# 125	Daily Report 6 August 1995 a.m./p.m.	OG Zadar	Split MD

52. At the 16 December 2009 hearing, the Prosecution and the Gotovina Defence clarified that the report originating from OG Zadar, **document # 125**, was no longer sought, as in fact it had been provided.<sup>111</sup> The request for this document is therefore moot.

53. With regard to the reports from OG North to the Split MD, Croatia submitted that the OG North and the Split MD shared a single command at one location.<sup>112</sup> It also submitted that Rahim Ademi held a dual function as chief of staff of the Split MD and commander of OG North.<sup>113</sup> Therefore it opined that it would not have been necessary for OG North to create the sought reports.<sup>114</sup> The Prosecution criticized Croatia for not having further explored this matter with Ademi.<sup>115</sup> In response to this criticism, Croatia pointed at its then latest report containing the notes of an interview with Ademi, according to which the latter explicitly stated that “regular reports from OG North to the Split MD [...] were not compiled for the above-mentioned reason with which he explained that the commands of OG North and the Split MD were one and the same”.<sup>116</sup> Considering that the Prosecution did not make further submissions in this regard at the 16 December 2009 hearing, the Chamber announced, on the same occasion, that it assumed that these submissions from Croatia provide for the clarifications with Ademi that the Prosecution had asked for.<sup>117</sup>

54. On the basis of the submissions before it, in particular considering the particular geographical and personnel situation of OG North, the Chamber is unable to determine with sufficient certainty whether the documents in this group were created. The Chamber notes that

<sup>111</sup> T. 26400-26401.

<sup>112</sup> T. 26401, 26405.

<sup>113</sup> T. 26401-26402, 26406.

<sup>114</sup> T. 26405. For similar submissions by the Gotovina Defence see T. 26404.

<sup>115</sup> T. 26402-26404.

<sup>116</sup> T. 26406; Official Note of interview with Rahim Ademi, Croatia’s Twelfth Report, p. 77.

<sup>117</sup> T. 26406, 26408.

Croatia’s explanation for the non-existence of these reports by OG North implies that other reports were created by the TRS/TS (third level) and directly sent to the MD. However, such reports have neither been requested by the Prosecution nor provided by Croatia to support its reconstruction of artillery reporting.

*Group 8:*

55. This group consists of the following documents:

Document #	Title	Alleged Sender	Alleged Addressee
# 1	Order for Attack	OG North	TRS-1
# 3	Order for Attack	OG North	TS-3
# 4	Artillery Attachment to the Order for Attack	OG North	TRS-1, TRS-2, TS-3
# 11	Order to Continue Attack	OG North	TRS-1, TRS-2, TS-3
# 44	Map of Disposition of the Artillery	OG North	

56. With regard to all of these documents, Croatia argues that the command of OG North shared its location with the Sajkovići forward command post of the Split MD, which, according to Croatia, should render the production of documents from OG level to TRS/TS level redundant. According to Croatia, these documents were therefore not produced.

57. The Chamber notes that Croatia has provided document # 2 to the Prosecution. Like **documents # 1 and 3**, document # 2 is an Order for Attack by OG North to a TRS, namely TRS-2. At the 22 January 2010 meeting, the participants discussed the Sajkovići forward command post delivery log which Croatia later provided. The Chamber found that this log indicated that document # 2 was sent on 2 August 1995 but does not refer to documents # 1 and 3 as being delivered to TRS-1 and TS-3, even taking into account these units’ contemporary names.<sup>118</sup> Therefore, and in light of the submissions before the Chamber, the Chamber is unable to determine with sufficient certainty whether documents # 1 and 3 were created.

58. The Chamber notes that the same considerations that apply to documents # 1 and 3, which are Orders for Attack by OG North to TRS-1 and TS-3, must also apply to **document**

<sup>118</sup> At a working meeting, it was asserted that TRS-1 and TS-3 at the relevant time did not bear these names, but rather that TRS-1 was part of the HVO artillery and TS-3 was called TRS-1.

# 4, which is an Artillery Attachment to the Order for Attack by OG North to TRS-1, TRS-2 and TS-3. Therefore, the Chamber is also unable to determine with sufficient certainty whether document # 4 was created, at least as far as the part of the document relating to TRS-1 and TS-3 is concerned. Croatia provided the Artillery Attachment to the Order for Attack by OG Zadar to TS-5 (document # 8) to the Prosecution.<sup>119</sup> The Chamber notes that documents # 4 and 8 are similar types of documents. As demonstrated by the discussion on the previous two documents (documents # 1 and 3), drawing parallels on a purely theoretical level might not generate correct results. For this reason, the Chamber is unable to determine with sufficient certainty whether document # 4 in its entirety was created.

59. In regard to the Order to Continue Attack by OG North to TRS-1, TRS-2 and TS-3 (**document # 11**), Croatia alleges that there was no requirement to draft such a document. Furthermore, it maintains that the information sought by the Prosecution in this document is actually contained in the tabular and textual parts of the plan of artillery action of the Split MD's chief of artillery, Marko Rajčić. Croatia asserts that it has submitted the handwritten portion of the textual part.<sup>120</sup> The Prosecution does not accept that this is a substitute for document # 11, considering it instead a preparatory document rather than an anticipatory order to continue the attack. While the Prosecution argues in greater detail that TS-3 would have needed an additional order, it fails to establish that such an order had to originate from OG North.<sup>121</sup> The Chamber also recalls the considerations, above, that applied to documents # 1 and 3 (Orders for Attack by OG North to TRS-1 and TS-3) and made it impossible for it to determine with sufficient certainty whether these documents were created. For these reasons, the Chamber is likewise unable to determine with sufficient certainty whether document # 11 was created.

60. The Prosecution alleges that **document # 44** - Map of Disposition of the Artillery of OG North - should have been created because a similar document, the Map of Disposition of the Artillery of OG Zadar (document # 46), was provided by Croatia to the Prosecution. According to Croatia, the fact that document # 46 was drafted does not mean that there was an obligation to draft document # 44. Rather, Croatia maintains that according to military doctrine, document # 44 need not have been drafted. Based on the parties' submissions,

---

<sup>119</sup> Prosecution's Submission as to How to Proceed, confidential Appendix B, no. 8.

<sup>120</sup> Croatia's Eleventh Report, pp. 81-84 (Handwritten Portion).

<sup>121</sup> Prosecution's Submission as to How to Proceed, confidential Appendix B, nos 11, 21.

despite extensive discussion, the Chamber is unable to determine with sufficient certainty whether document # 44 was created.

*Group 9:*

61. This group consists of the following outstanding documents:

Document #	Title	Alleged Sender	Alleged Addressee
# 6	Artillery Attachment to the Order for Attack	OG Šibenik	TS-4
# 10	Artillery Attachment to the Order for Attack	OG Sinj	
# 13	Order to Continue Attack	OG Zadar	TS-5

62. The Chamber considers, with regard to **document # 6**, that both the Prosecution and Croatia assert that the OG Šibenik Order for Attack (document # 5, provided<sup>122</sup>) explicitly refers to an artillery attachment. Croatia, however, maintains that the relevant document with regard to document # 6 is Rajčić's artillery attachment no. 4 from the Split MD which contains all the relevant information in addition to a training document from July 1995 titled "Artillery attachment OG Šibenik". Croatia submitted both of these documents. It disagrees with the Prosecution's claim that the discrepancies between the July 1995 training document and the realities of Operation Storm are significant enough to make it unsuitable for use as an operational document. Despite numerous submissions on this issue, the Prosecution did not clearly establish that the discrepancies are so significant as to necessitate the creation of an additional document. The Chamber is therefore unable to determine with sufficient certainty whether document # 6 was created.

63. In regard to the Artillery Attachment to the Order for Attack by OG Sinj (**document # 10**), Croatia has provided what it claims is a substitute document, a "Proposal of the chief of artillery of OG Sinj", but the Prosecution disputes Croatia's claim because, *inter alia*, the OG Sinj Commander did not sign the document.<sup>123</sup> In support of their positions, both Croatia and the Prosecution refer to different official interview notes taken by Croatia in the course of its investigation into missing artillery documents.<sup>124</sup> The Chamber accepts, as a result of the

<sup>122</sup> Prosecution's Received Documents, pp. 24, 34.

<sup>123</sup> Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix A, para. 31.

<sup>124</sup> Official Note of interview with Marko Rajčić, Croatia's Eleventh Report, p. 79; Official Note of interview with Ante Kotromanović (chief of artillery), Croatia's Eighth Report, p. 35; Official Note of interview with Roko Mijić, Prosecution's Submission of Notes of Interviews, p. 3.



submissions made at the working meetings, that the document Croatia provided was signed by Ante Kotromanović (OG Sinj chief of artillery<sup>125</sup>) and stamped by Roko Mijić on Ante Kotromanović's (OG Sinj commander<sup>126</sup>) behalf and thus was approved. Based on the submissions before it, the Chamber considers it plausible that this "proposal" thus became the artillery attachment. It finds merits in Roko Mijić's explanation that the word "proposal" was used intentionally, in agreement with the commanders of the subordinate units, to indicate that orders should be executed to the extent possible given possibly limited weapons and ammunition.<sup>127</sup> The Chamber is therefore unable to determine with sufficient certainty whether a document that fits the description of document # 10, other than the "proposal" Croatia provided to the Prosecution, was created.

64. As regards the Order to Continue Attack by OG Zadar to TS-5 (**document # 13**), Croatia asserts that the order does not exist because TS-5 as the corps artillery received sufficient information from the Split MD level in the tabular and textual part of Rajčić's plan of artillery action to enable it to continue the attack. The Prosecution rejects this argument and Croatia's argument that the order would - if created - only address the manoeuvring units and not the artillery support units such as TS-5. But the Prosecution conceded at the working meetings that a certain level of uncertainty prevails as to whether document # 13 ever existed. Hence, the Chamber is also unable to determine with sufficient certainty whether document # 13 was created.

*Group 10:*

65. Group 10 consists of the following requested documents:

Document #	Title	Alleged Sender	Alleged Addressee
# 30	Map Enclosed with the Order for Attack	OG North	TRS-1, TRS-2, TS-3
# 31	Map Enclosed with the Order for Attack	OG Šibenik	TS-4
# 32	Map Enclosed with the Order for Attack	OG Zadar	TS-5
# 33	Map Enclosed with the Order for Attack	OG Sinj	

<sup>125</sup> Both the OG Sinj Artillery Chief and the OG Sinj Commander were named Ante Kotromanović. Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix A, note 39.

<sup>126</sup> See previous footnote.

<sup>127</sup> Official Note of interview with Roko Mijić, Prosecution's Submission of Notes of Interviews, pp. 3-4.

# 34	Artillery Action Plan	OG North	TRS-1, TRS-2, TS-3
# 35	Artillery Action Plan	OG Šibenik	TS-4
# 36	Artillery Action Plan	OG Zadar	TS-5

66. Regarding the maps enclosed with the orders for attack by the OGs North, Šibenik, and Zadar (**documents # 30-32**), Croatia maintains that the map artillery deployment plan for the attack from Rajčić is the relevant document. The Prosecution contests this claim because it assumes a three-tiered hierarchy of the chain of command of the HV artillery. The Prosecution is correct that the respective orders for attack from the OGs (documents # 2, 5, 7, all provided) refer on their cover pages to certain maps.<sup>128</sup> At the working meetings, however, Croatia clarified that even if an order contains the word “map” on its cover, indicating its scale and the sections that it shows, that does not necessarily mean that the map is attached. Rather, such information served only to brief the subordinates on the sections that should be visible on the map in order to enable the subordinates to prepare and draw up their own maps based on the place names that featured in the textual part of the order. The Prosecution failed to refute Croatia’s explanation that maps did not need to be attached to the orders. Furthermore, Ante Kardum, TS-5 commander, corroborated Croatia’s account in his interview when he described the same procedure outlined by Croatia.<sup>129</sup> For the foregoing reasons, the Chamber is unable to determine with sufficient certainty whether documents # 30-32 were created.

67. Croatia’s Sixteenth Report of 16 April 2010 contained an attached map in electronic format as **document # 33** (Map Enclosed with the Order for Attack by OG Sinj). The Prosecution has not called the identity of the document into question. Under these circumstances, the Chamber considers the request for this document moot.

68. In regard to the Artillery Action Plans of OG North to TRS-1, TRS-2 and TS-3 (document # 34), of OG Šibenik to TS-4 (document # 35), and of OG Zadar to TS-5 (document # 36), Croatia asserts that these documents were not produced for the TRS/TSs. Croatia asserts that the relevant documents are instead the map and tabular and textual parts of the plan of artillery action from Rajčić.

<sup>128</sup> Prosecution’s Received Documents, pp. 5, 24, 79.

<sup>129</sup> Official Note of interview with Ante Kardum, Croatia’s Eighth Report, pp. 16-17.

69. The discussions at the working meetings clarified that the participants considered several documents not responsive to the Prosecution's request for **document # 35**, which is the OG Šibenik artillery action plan. The participants agreed that neither the "reinterpreted"<sup>130</sup> maps in Gotovina's book on military operations, nor a map forwarded by the Gotovina Defence to Croatia in March 2009, and in turn forwarded to the Prosecution, fulfilled the Prosecution's request for document # 35.

70. The participants also discussed the statement of Milan Perin, Chief of Artillery of OG Šibenik, that he saw a map, which according to its description could have been at least a part of the requested OG Šibenik artillery action plan, in the Gotovina Defence's office in July 2007.<sup>131</sup> According to the Gotovina Defence, the document in its possession did not bear the inscription "for history or court" and was signed by Ivan Beneta, the prior commander of OG Šibenik. The Gotovina Defence asserts that Beneta had already left his post at the time the Prosecution alleges the requested document was produced. It further maintains that it had already provided this document to Croatia, and that Croatia had informed the Prosecution about its existence. At a working meeting, the Prosecution, without having seen this document but judging from the Gotovina Defence's description, denied that it was the requested document. It stated that it would notify the Chamber if it changed its position after reviewing the document. Not having received such notice, the Chamber accepts that this document is not the OG Šibenik artillery action plan.

71. The Prosecution argues, based on Perin's account, that a plan of artillery action of OG Šibenik more recent than the document discussed in the previous paragraph must exist. Perin stated in an interview that he saw a map with an inscription, signed by him and approved by Ivan Vukić (OG Šibenik commander during Operation Storm) at the Gotovina Defence's office. He added that he had put the inscription on the document himself.<sup>132</sup> The Chamber notes that in another interview Perin stated that he did not remember such an inscription on his map and categorically stated that at his only meeting with the Gotovina Defence the Defence did not show him his working map from Operation Storm.<sup>133</sup>

72. The Prosecution further bases its argument for the existence of a plan of artillery action of OG Šibenik other than the document signed by Beneta and discussed in paragraph 70, on

---

<sup>130</sup> The Chamber asked the participants at the meeting of 5 February 2010 about the meaning of the term "reinterpreted" but did not receive a clear answer.

<sup>131</sup> Official Note of interview with Milan Perin, Croatia's Eighth Report, p. 10.

<sup>132</sup> Official Note of interview with Milan Perin, Croatia's Eighth Report, p. 10.

<sup>133</sup> Official Note of interview with Milan Perin, Croatia's Eleventh Report, p. 70.

an interview with Marijan Firšt. Firšt stated that he and Rajčić compiled plans for the chief of artillery and therefore for the entire MD including the OG Šibenik. However, he also stated that he was unsure whether the OG Šibenik artillery plan was completed and whether it was sent to the OG Šibenik.<sup>134</sup> Moreover, Perin, did not report making a map or plan of artillery action for the use of TS-4.<sup>135</sup> For the above reasons, the Chamber is unable to determine with sufficient certainty whether a document that fits the description of document # 35, other than the July 1995 document signed by Beneta, was created.

73. In the previously discussed interview, Firšt stated that he and Rajčić together created the Artillery Action Plan of OG Zadar for TS-5 (document # 36), but he did not mention that he created an OG North plan for TRS-1, TRS-2 and TS-3 (**document # 34**). Rather, he stated that to plan for TRS-1 and TRS-2, Rajčić cooperated with the commanders of these groups in the field.<sup>136</sup> Therefore, the Chamber is unable to determine with sufficient certainty whether document # 34 was created.

74. Although Firšt mentioned that he made an Artillery Action Plan of OG Zadar (**document # 36**), he stated that he did so as Rajčić's assistant (first level) and not as OG Zadar Chief of Artillery (second level), a position he only assumed at a later time.<sup>137</sup> He also stated that the OG Zadar artillery plan merely reproduced the sections from the MD artillery plan that were relevant for the area of the OG.<sup>138</sup> The Chamber notes that there is some uncertainty as to whether this plan created on the MD level was meant to be sent as an OG document down the line or to be used at the OG level itself. Croatia clarified at the working meetings, referring to different interviews, that Firšt brought the document at issue to the OG Zadar headquarters in the village of Poličnik, left it there on the wall, and saw it again, also hanging on a wall, on 8 August 1995 in the village of Srb at the later joint command post of the OGs Zadar and Šibenik.<sup>139</sup> He recognized the plan in part by his handwriting and the

<sup>134</sup> Official Note of interview with Marijan Firšt, Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix C, pp. 2-3.

<sup>135</sup> Official Note of interview with Milan Perin, Croatia's Eighth Report, pp. 9-10; cf. Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix B, statement of reasons no. 16.

<sup>136</sup> Official Note of interview with Marijan Firšt, Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix C, pp. 2-4.

<sup>137</sup> Official Note of interview with Marijan Firšt, Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix C, pp. 2, 4; cf. Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix B, no. 36.

<sup>138</sup> Official Note of interview with Marijan Firšt, Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix C, p. 3.

<sup>139</sup> Official Note of interview with Marijan Firšt, Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix C, pp. 3-4; Official Note of interview with Marijan Firšt, Croatia's Eleventh Report, pp. 30-31.

textual sections attached to it.<sup>140</sup> However, according to Croatia, the requested plan that supposedly was sent on together with the other OG Zadar material to the command post in Knin after 8 August 1995 could not be retrieved.<sup>141</sup> In light of these submissions, although it seems likely that document # 36 was created, the Chamber is unable to determine with sufficient certainty the whereabouts of document # 36 and therefore whether it is currently accessible to Croatia.

### Group 11

75. Group 11 consists of the following documents:

Document #	Title	Alleged Sender	Alleged Addressee
# 14	Order for Attack	TRS-1	subordinate batteries
# 15	Order for Attack	TRS-2	subordinate batteries
# 16	Order for Attack	TS-3	subordinate batteries
# 17	Order for Attack	TS-4	subordinate batteries
# 18	Order for Attack	TS-5	subordinate batteries

76. The Prosecution argues that **documents # 14-17** exist since, *inter alia*, they should have been created according to the HV rules.<sup>142</sup> At the working meetings Croatia asserted that the orders requested as documents # 14-17 were issued orally, mainly because of the small size of the subordinate units. In support of its assertion, Croatia relied on several official notes of interviews.<sup>143</sup> Under these circumstances, the Chamber is unable to determine with sufficient certainty whether documents # 14-17 were created.

77. In regard to the Order for Attack by TS-5 to subordinate batteries (**document # 18**), Croatia has submitted a document to the Prosecution. TS-5 commander Ante Kardum has

<sup>140</sup> Official Note of interview with Marijan Firšt, Croatia's Eleventh Report, p. 31.

<sup>141</sup> Official Note of interview with Ivan Matulić, Croatia's Eleventh Report, p. 62.

<sup>142</sup> Prosecution's Submission as to How to Proceed, confidential Appendix C, nos 14-17.

<sup>143</sup> E.g. Official Note of interview with Stipe Gotovac, Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix C, p. 2; Official Note of interview with Tomislav Alajica, Croatia's Eighth Report, p. 3; Official Note of interview with Zlatko Iživkić, Croatia's Eighth Report, p. 14; Official Note of interview with Goran Mamić, Croatia's Eighth Report, p. 11; Official Note of interview with Bruno Milin, Croatia's Eighth Report, p. 20.

confirmed he drafted this document as an order to his subordinate batteries.<sup>144</sup> The Prosecution does not accept this as the sought document, because the information in it allegedly differs in several respects, including with regard to the tasking of the artillery, from the information contained in the “superior orders”. Croatia accepts that there are such discrepancies, and stresses, however, that the document submitted would correspond with most of the information in the artillery attachment of the Split MD, especially as to the position of artillery pieces. What keeps the Prosecution and Croatia apart, therefore, is whether these discrepancies are of such a nature that the document submitted could not have functioned as the relevant order during the operation. The submissions before the Chamber did not make it sufficiently clear that the discrepancies were indeed of such a nature to disqualify the document. Based on the above, the Chamber is unable to determine with sufficient certainty whether any other document fitting the description of document # 18, other than the document provided to the Prosecution, was created.

*Group 12*

78. This group consists of the following two documents:

Document #	Title	Alleged Sender	Alleged Addressee
# 21	Order to Continue Attack	TS-3	subordinate batteries
# 22	Order to Continue Attack	TS-4	subordinate batteries

79. In regard to both sought **documents # 21 and 22**, Croatia asserts that it is the manoeuvring units and not the TSs that are addressed in the order to continue the attack coming from level 1. According to Croatia, the order for attack by the MD would contain all the necessary information for the subordinate units. Croatia asserts in particular, that Rajčić’s tabular and textual part of the artillery action plan contained information for the continuation of the attack as it assigned further artillery positions to TS-3. The Prosecution argues that even if the plan of action provided for the prospect of relocation and further movement, this would nevertheless require a further order depending on the future developments, in particular for TS-3 that was supposed to provide support to manoeuvring units and therefore had to move to new firing positions. Croatia concedes the need for such further orders, but asserts

<sup>144</sup> Official Note of interview with Ante Kardum, Prosecution’s Response to Croatia’s 2 June 2009 Request, p. 2.

that the TSs issued such orders orally. For TS-3, it points in particular to an official note of an interview with Živko Erak (member of TS-3) who reported that he received direct orders from Rajčić about artillery engagements for TS-3, which Erak would convey via the field telephone to the positions which were supposed to fire.<sup>145</sup>

80. According to another official note, to which Croatia refers, TS-4 commander Bruno Milin stated that the relevant information was contained in the order for attack by the MD, hence there was no need to write his own order.<sup>146</sup> Milin further asserted that TS-4 was the size of a battery and that he therefore issued his orders to the subordinate units orally. The Prosecution refers to the existence of written orders from level 1 and 2 for the continuation of the attack and the subsequent relocation of TS-4.<sup>147</sup> These references indeed support the fact that relocation was completed as ordered, but are inconclusive as to the form of the order from TS-4 to the subordinate units. Therefore, and in light of the submissions before it, the Chamber is unable to determine with sufficient certainty whether documents # 21 and 22 were created.

### *Group 13*

81. Group 13 consists of the following documents.

Document #	Title	Alleged Sender	Alleged Addressee
# 154	Duty/Communications Logbook or War/Operations Diary	TRS-1	
# 155	Duty/Communications Logbook or War/Operations Diary	TRS-2	
# 158	Duty/Communications Logbook or War/Operations Diary	TS-5	

82. In regard to the Duty/Communications Logbook or War/Operations Diary of TRS-1 (**document # 154**), Branko Matić stated in one of his interviews with Croatian authorities that he had destroyed it to avoid its falling into the hands of the Tribunal. However, Matić later

<sup>145</sup> Official Note of interview with Živko Erak, Croatia's Eighth Report, p. 8.

<sup>146</sup> Official Note of interview with Bruno Milin, Croatia's Eighth Report, p. 20.

<sup>147</sup> Prosecution's Received Documents, pp. 105-106; P2533 (War diary of TS-4, August 1995), p. 7.

retracted this statement, saying that he had never seen the document nor had it in his possession.<sup>148</sup> Croatia asserts that it searched Matić's home on 11 December 2009 without locating any relevant document, and that it had not found the sought document in any archive. Considering the submissions made at the working meetings, it appears plausible that Matić had changed his position in the later interview because he feared criminal prosecution for destroying archival material. Based on the foregoing, the Chamber considers it likely that this document was created. At the same time, the Chamber considers it possible that it was later destroyed. The Prosecution asked the Chamber to consider the possibility that the account of the destruction is intended to conceal the existence of the document and withhold it from the Tribunal. Even if the document had not been destroyed, and considering that it was not located when Matić's home was searched, the Chamber is still unable to determine with sufficient certainty whether the document is currently accessible to Croatia.

83. While the commander of TRS-2 stated that the Duty/Communications Logbook or War/Operations Diary of TRS-2 (**document # 155**) had been created, a member of this TRS stated that a TRS-2 war diary had been burnt in the boiler room in the Đakovo barracks.<sup>149</sup> The Prosecution doubts that this document was burnt and provides several reasons for its doubts. Firstly neither Dražen Vukelja nor Tihomir Krampelj, members of TRS-2, referred in their interviews to the official war diary kept by Jure Jerković as being burnt; secondly, there was no list of which documents were burnt; and thirdly, the persons involved stated that only surplus documents were burnt, not official documents. The Prosecution further refers to the indication given by Matić in relation to document # 154 that he allegedly tried to keep documents from falling into the hands of the Tribunal. It asks the Chamber to consider a similar intention behind the information provided by the other interviewed persons. It further urges the Chamber to keep in mind the alleged official efforts to collect and conceal official documentation related to Operation Storm. Croatia asserts it has searched all archives for this document, to no avail. Based on the foregoing, the Chamber considers it likely that this document was created. At the same time, the Chamber considers it possible that it was later destroyed. Even if the document had not been destroyed, and considering that the investigations conducted by Croatia did not locate the document, the Chamber is still unable to determine with sufficient certainty whether the document is currently accessible to Croatia.

<sup>148</sup> Official Note of interview with Branko Matić, Croatia's Twelfth Report, p. 110.

<sup>149</sup> Official Note of interview with Tomislav Alajica, Croatia's Eighth Report, p. 3; Official Note of interview with Dražen Vukelja, Croatia's Eighth Report, pp. 40-41; *cf.* Official Note of interview with Tihomir Krampelj, Croatia's Eighth Report, p. 43.



84. According to Croatia, the Duty/Communications Logbook or War/Operations Diary of TS-5 (**document # 158**), should have been, but was not, drafted. In this respect, it refers to the official note of Kardum who stated that he did not keep a journal but reported orally from his personal agenda at the meetings in the OG command every evening.<sup>150</sup> Croatia adds that it has searched all archives, but could not locate this document. The Prosecution submits that Kardum's credibility is low. Even considering this, on the basis of the submissions before it, the Chamber is unable to determine with sufficient certainty whether document # 158 was created.

#### *Group 14*

85. Group 14 consists of the following documents:

Document #	Title	Alleged Sender	Alleged Addressee
# 37	Plan of Action	TRS-1	subordinate batteries
# 38	Plan of Action	TRS-2	subordinate batteries
# 39	Plan of Action	TS-3	subordinate batteries
# 40	Plan of Action	TS-4	subordinate batteries
# 41	Plan of Action	TS-5	subordinate batteries

86. In arguing that documents # 37-41 were created, the Prosecution relies on the rules according to which they should have been created and on Rajčić's statement that each commander of a TRS/TS was obliged to draw up maps containing all basic elements, regardless of whether they were technically called plans of action or any other name.<sup>151</sup>

87. In regard to the Plan of Action from TRS-1 to subordinate batteries (**document # 37**), Croatia refers to a statement by Stipe Gotovac, TRS-1 commander.<sup>152</sup> The Chamber considers that a plan of action comprises three elements, a map, and a textual and tabular part.<sup>153</sup> According to an official note, he stated that such a document, i.e. a map, had not been drawn

<sup>150</sup> Official Note of interview with Ante Kardum, Croatia's Eighth Report, pp. 17-18; Official Note of interview with Ante Kardum, Prosecution's Submission as to How to Proceed, confidential Appendix D, tab 5, pp. 3-4.

<sup>151</sup> Official Note of interview with Marko Rajčić, Croatia's Eleventh Report, p. 80.

<sup>152</sup> Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix B, no. 37.

<sup>153</sup> Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix B, nos 34-36.

up, while of the tabular and textual part of the plan only the tabular part as well as a list of targets was drawn up together with Rajčić.<sup>154</sup> Stipe Gotovac's statement with regard to the plan of action is to some extent contradictory or at least unclear as to whether it relates to a plan *from* or *for* the TRS. However, the Chamber considers that this statement means that such a plan from the TRS was not written and the order was conveyed orally to the subordinate units for the reason Gotovac states, "because he did not know how to make an action plan and written orders since he was not a trained artillery man but a maths teacher".<sup>155</sup> Therefore, on the basis of the submissions before it, the Chamber is unable to determine with sufficient certainty that document # 37 was created.

88. As regards the Plan of Action from TRS-2 to subordinate batteries (**document # 38**), Croatia refers to an official note of an interview with TRS-2 commander Tomislav Alajica, who mentions a map he had from before TRS-2 took up its positions. He stated that on this map he drew key points after reconnaissance with Rajčić and the latter's deputy before Operation Storm.<sup>156</sup> The Prosecution refers to the same statement in support of its claim that this document exists. The Prosecution argues that Alajica describes what appears to be the plan of action even if he does not call it that.<sup>157</sup> Croatia further asserts that the actual strength of TRS-2 was so low that the document did not have to be drafted. The Chamber observes that the official note of Alajica refers to a map, on which Alajica drew artillery related information, but that there is no mention that this map became part of a plan of action for the subordinate batteries. On the contrary, Alajica stated when describing the operation carried out by TRS-2, that "they did not have artillery preparations", nor does the operation described appear to make such preparation necessary.<sup>158</sup> On the basis of the foregoing, the Chamber is unable to determine with sufficient certainty whether document # 38 was created.

89. With regard to the Plan of Action from TS-3 to subordinate batteries (**document # 39**), Croatia references an official note of an interview with Goran Mamić, (deputy) commander of TS-3.<sup>159</sup> Mamić stated that on the eve of Operation Storm Rajčić came to the positions of TS-

<sup>154</sup> Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix B, no. 37; Official Note of interview with Stipe Gotovac, Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix C, p. 2.

<sup>155</sup> Official Note of interview with Stipe Gotovac, Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix C, p. 2.

<sup>156</sup> Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix B, no. 38; Official Note of interview with Tomislav Alajica, Croatia's Eighth Report, p. 3.

<sup>157</sup> Official Note of interview with Tomislav Alajica, Croatia's Eighth Report, p. 3.

<sup>158</sup> Official Note of interview with Tomislav Alajica, Croatia's Eighth Report, p. 3.

<sup>159</sup> Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix B, no. 39.

3 and instructed “each commander separately”.<sup>160</sup> Similarly, in relation to the Plan of Action from TS-4 to subordinate batteries (**document # 40**), Croatia points to a statement by Bruno Milin, TS-4 commander.<sup>161</sup> Milin reported that two or three days before Operation Storm Rajčić came to their positions and Milin thought that Rajčić then supplied them with the order for attack to which no maps were attached.<sup>162</sup> In the Chamber’s interpretation, the “positions” that Rajčić visited were of the subordinate batteries. As regards document # 40, Croatia further asserts that the actual strength of these artillery groups was so low that the documents did not have to be drafted.

90. Based on the above, the Chamber accepts that, at least to some extent, artillery preparation appears to have been carried out directly from level 1 (MD) to level 4 (subordinate batteries). A plan of action (including the tabular and textual part) originating from training, that Milin refers to in his official note, appears to have been in use for TS-4, but there is no mention that this document became the plan of action for the subordinate batteries.<sup>163</sup> On the basis of the foregoing, the Chamber is unable to determine with sufficient certainty whether documents # 39 and 40 were created.

91. Croatia indicated at the working meetings that in November 2009 it had sent the Prosecution a list of documents that it was willing to provide, among them **document # 41** (Plan of Action from TS-5). Given the willingness of Croatia to provide this document, the Chamber does not deem it necessary to further consider this matter.

#### *Group 15*

92. Group 15 consists of the following documents:

Document #	Title	Alleged Sender	Alleged Addressee
# 58	List of Targets	TRS-1	subordinate batteries

<sup>160</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix B, no. 39; Official Note of interview with Goran Mamić, Croatia’s Eighth Report, p. 11.

<sup>161</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix B, no. 40.

<sup>162</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix B, no. 40; Official Note of interview with Bruno Milin, Croatia’s Eighth Report, p. 19.

<sup>163</sup> Official Note of interview with Bruno Milin, Croatia’s Eighth Report, pp. 19-20.

# 59	List of Targets	TRS-2	subordinate batteries
# 60	List of Targets	TS-3	subordinate batteries
# 61	List of Targets	TS-4	subordinate batteries
# 62	List of Targets	TS-5	subordinate batteries
# 63	Textual and Tabular Part of the Plan of Action	TRS-1	subordinate batteries
# 64	Textual and Tabular Part of the Plan of Action	TRS-2	subordinate batteries
# 65	Textual and Tabular Part of the Plan of Action	TS-3	subordinate batteries
# 66	Textual and Tabular Part of the Plan of Action	TS-4	subordinate batteries
# 67	Textual and Tabular Part of the Plan of Action	TS-5	subordinate batteries

93. In regard to these documents, a good portion of Croatia's and the parties' arguments at the working meetings referred to documents *to* the TRS/TSSs, rather than *from* the TRS/TSSs *to* the subordinate batteries. Croatia referred to an interview with Rajčić who stated that "lists of targets, that is tabular textual parts for batteries or platoons subordinate to artillery groups and artillery rocket groups, were not drawn up as separate documents".<sup>164</sup> Croatia further asserts that these documents do not exist because they were not supposed to have been drafted and that the tabular and textual part of the Split MD artillery action plan (of which a small handwritten portion is provided<sup>165</sup>) is in fact the relevant document.<sup>166</sup>

94. In regard to the lists of targets from the TRS/TSSs to subordinate batteries, Croatia expressed its position at the working meetings that only TS-3 and TS-4 should have received a copy of this tabular and textual part. Croatia further stated that other lists of targets were used as auxiliary documents to Rajčić's tabular and textual part, such as a list of groups of targets in Knin (which has been provided to the Prosecution<sup>167</sup>, and is allegedly document # 60 relating to TS-3), a list of targets "potop" (which also has been provided to the

<sup>164</sup> Official Note of interview with Marko Rajčić, Prosecution's Submission of Notes of Interviews, p. 1.

<sup>165</sup> Croatia's Eleventh Report, pp. 81-84 (Handwritten Portion).

<sup>166</sup> Prosecution's Response to Croatia's 2 June 2009 Request, confidential appendix B, nos 58-67 and statements of reasons no. 20; Official Note of interview with Marko Rajčić, Prosecution's Submission of Notes of Interviews, p. 1.

<sup>167</sup> P1272.

Prosecution<sup>168</sup>, and is allegedly document # 61 relating to TS-4) or “jagoda” (which has been provided to the Prosecution<sup>169</sup>, and is allegedly document # 62 relating to TS-5).<sup>170</sup>

95. In regard to **documents # 58 and 63** (list of targets and textual and tabular part of the plan of action from TRS-1), at a working meeting, the Prosecution referred to an interview of Gotovac, TRS-1 commander, who according to the official note asserted that he indeed had created a list of targets and a tabular portion of a plan of action. The Chamber considers that although Gotovac’s statement is contradictory and inconclusive to some extent, it should be understood as referring to the target list and tabular portion of an action plan that Gotovac created with Rajčić *for* TRS-1, rather than documents originating *from* TRS-1 to its subordinate batteries.<sup>171</sup> The Chamber bases this on Gotovac’s statement that “he did not know how to make an action plan and written orders since he was not a trained artillery man but a maths teacher”.<sup>172</sup> On the basis of the foregoing, the Chamber is unable to determine with sufficient certainty whether documents # 58 and 63 were created.

96. With regard to **document # 59** (list of targets from TRS-2), the Chamber notes that both the TRS-2 commander and a target analyst of this artillery rocket group suggest that information on each individual target was communicated orally by military wire telephone from the TRS-level.<sup>173</sup> In regard to **document # 64**, the textual and tabular part of the plan of action from TRS-2 to subordinate batteries, the Chamber recalls its considerations with regard to document # 38 for which it was unable to determine with sufficient certainty whether a plan of action of TRS-2 to the subordinate batteries was created.<sup>174</sup> In light of the foregoing, the Chamber is unable to determine with sufficient certainty whether documents # 59 and 64 were created.

97. In regard to **documents # 60 and 65** (list of targets and textual and tabular part of the plan of action from TS-3), Mamić, TS-3 commander, and Erak, member of TS-3, both stated

<sup>168</sup> D974.

<sup>169</sup> D1447.

<sup>170</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential appendix B, nos 58-67, statement of reasons, no. 20.

<sup>171</sup> Official Note of interview with Stipe Gotovac, Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix C, p. 2.

<sup>172</sup> Official Note of interview with Stipe Gotovac, Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix C, p. 2.

<sup>173</sup> Official Note of interview with Tomislav Alajica, Croatia’s Eleventh Report, p. 10; Official Note of interview with Dražen Vukelja, Croatia’s Eleventh Report, p. 89.

<sup>174</sup> See above, para. 88.

in their most recent interviews<sup>175</sup> that they recognized the copy shown to them of the list of targets in Knin (which was provided to the Prosecution<sup>176</sup>). According to them, it “should” be the list of targets used by TS-3 during the operation. The Chamber recalls Rajčić’s statement, referred to above, that before the commencement of Operation Storm he personally gave the TS-3 commander and subordinate commanders “all relevant information that related to their artillery group, more precisely, what they would target in artillery preparation and what the planned targets were for supporting the attack”.<sup>177</sup> The Chamber considers Croatia’s assertion that the table of targets in Knin was used as an auxiliary document to the tabular and textual part of the plan of action of Rajčić. It further recalls Croatia’s position that TS-3 had received a copy of this tabular and textual part. The Chamber considers Rajčić’s statement that information on artillery planning was conveyed directly from the first (MD) to the fourth level (subordinate batteries) and simultaneously from the first (MD) to the third level (TS). In light of the foregoing, the Chamber considers it possible that the list of targets in Knin provided by Croatia fulfils the request for document # 60 to some extent, and that the tabular and textual part of the plan of MD level or a copy thereof served as a list of targets and tabular and textual part of the plan from TS-3 to the subordinate batteries (i.e. documents # 60 and 65). The Chamber notes however that the latter document appears to be unavailable to Croatia, except for a small handwritten portion that was submitted. Based on the submissions before it, the Chamber is unable to determine with sufficient certainty whether documents that fit the description of documents # 60 and 65 were created, aside from the two documents mentioned.

98. In regard to **documents # 61 and 66** (list of targets and textual and tabular part of the plan of action from TS-4), Croatia asserted at a working meeting that the target list “potop” was also available for TS-4’s subordinate units. The Prosecution accepted this, but added that this is not the exhaustive list of targets, and that there are indications that TS-4 received other target lists as well. The Chamber notes that an official note of Rajčić indeed suggests that there were other such lists of targets in addition to the training document “potop”. However, this relates to target related information relayed from Rajčić to Milin, which is from MD-level (first level) to TS-level (third level), and not from the third (TS) to the fourth level (subordinate batteries).<sup>178</sup> On the basis of the foregoing, the Chamber is unable to determine with sufficient certainty whether documents that fit the description of documents # 61 and 66

---

<sup>175</sup> Official notes read out at working meeting, 4 February 2010; Croatia’s Thirteenth Report, pp. 2, 6.

<sup>176</sup> P1272.

<sup>177</sup> Official Note of interview with Marko Rajčić, Croatia’s Eleventh Report, p. 76.

<sup>178</sup> Official Note of interview with Marko Rajčić, Croatia’s Eleventh Report, pp. 76, 78; cf. Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential appendix B, statement of reasons, no. 20.

were created, aside from the “potop” list that was submitted to the Prosecution and, possibly, the tabular and textual part of Rajčić’s plan of artillery action. The latter reportedly could not be found despite Croatia’s efforts, except for a small handwritten portion.

99. In regard to **documents # 62 and 67** (list of targets and textual and tabular part of the plan of action from TS-5), Kardum, the TS-5 commander, stated that he drew up his own order on the basis of an attack order issued by OG Zadar and that he described the tasks for each gun, and handed the order to his commanders with maps.<sup>179</sup> Kardum referred to a plan of artillery action on a map, which he distinguished from the aforementioned maps, and stated that he kept it for his own use.<sup>180</sup> Kardum did not mention that he conveyed or intended to convey this document to the subordinate batteries. On the basis of the foregoing, the Chamber is unable to determine with sufficient certainty whether documents # 62 and 67 were created, or whether the “jagoda” target list was conveyed as a target list from TS-5 to subordinate batteries.

#### *Group 16*

100. The following documents belong to group 16:

Document #	Title	Alleged Sender	Alleged Addressee
# 53	Tabular and Textual Part of Plan of Action	OG North	TRS-1
# 54	Tabular and Textual Part of Plan of Action	OG North	TRS-2
# 55	Tabular and Textual Part of Plan of Action	OG North	TS-3
# 56	Tabular and Textual Part of Plan of Action	OG Šibenik	TS-4
# 57	Tabular and Textual Part of Plan of Action	OG Zadar	TS-5

101. For the documents sought in this group, the Prosecution refers to Rajčić’s official note that “[t]he chiefs of artillery in the Operation Groups, in accordance with the formed groups, will draw up plans of use and plans of artillery action, each for its own TS – TRS”.<sup>181</sup> Croatia

<sup>179</sup> Official Note of interview with Ante Kardum, Prosecution’s Submission as to How to Proceed, confidential appendix D, tab 5, p. 3; Official Note of interview with Ante Kardum, Croatia’s Eighth Report, pp. 16-17.

<sup>180</sup> Official Note of interview with Ante Kardum, Croatia’s Eighth Report, p. 17.

<sup>181</sup> Official Note of interview with Marko Rajčić, Croatia’s Eleventh Report, pp. 73-74, 79.

asserts that these documents do not exist because they were not supposed to have been drafted and that the tabular and textual part of the plan of artillery action of the Split MD is the “relevant” document.<sup>182</sup> It refers *inter alia* to another official note of Rajčić, that a tabular and textual part was produced on the level of the MD for all TRS and TS.<sup>183</sup>

102. In regard to **document # 53** (tabular and textual part of the plan of action from OG North to TRS-1), Gotovac (commander of TRS-1) stated, as pointed out by Croatia, that he and Rajčić created the tabular part of an action plan together.<sup>184</sup> At the working meetings, Croatia referred to Matić’s official note that he had destroyed the document. Considering this and the submissions made *inter alia* at the working meetings, the Chamber posits it likely that document # 53 was created, but possibly later destroyed. Even if the document had not been destroyed, and considering that it was not located when Matić’s home was searched, the Chamber is still unable to determine with sufficient certainty whether the document is currently accessible to Croatia

103. In regard to **document # 54** (the tabular and textual part of the plan of action from OG North to TRS-2), Croatia refers to a statement by Firšt that Rajčić (first level) and Alajica, TRS-2 commander (third level), prepared the activities in the field together before the commencement of the TRS-2 operation.<sup>185</sup> This would mean that the OG (second level) was not involved. The Chamber notes that in a later statement, Firšt denies having heard of a person called Alajica.<sup>186</sup> However, considering the positions of Firšt and Alajica at the time, the Chamber does not find this latter statement credible. Considering the submissions before it, the Chamber is unable to determine with sufficient certainty whether document # 54 was created.

104. In relation to **document # 55** (tabular and textual part of the plan of action from OG North to TS-3), the Chamber notes that Croatia asserted at a working meeting that the coded map of the 7th guards brigade which bore the code name “Ivančica” was used in Operation Storm for the operation of TS-3. In this respect the Chamber recalls that an action plan

<sup>182</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix B, nos 53-57.

<sup>183</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix B, nos 53-57, referring to nos 48-52; Official Note of interview with Marko Rajčić, Prosecution’s Submission of Notes of Interviews, p. 1.

<sup>184</sup> Official Note of interview with Stipe Gotovac, Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix C, p. 2.

<sup>185</sup> Official Note of interview with Marijan Firšt, Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix C, p. 3.

<sup>186</sup> Official Note of interview with Marijan Firšt, Croatia’s Eleventh Report, p. 32.



comprises three elements: a graphical part drawn on a map, and a tabular and textual part.<sup>187</sup> The Chamber considers that the map “Ivančica” may form a part of OG North’s artillery action plan to TS-3. However, Croatia’s assertion, mentioned above, does not address the existence of document # 55, which is the *tabular and textual part* of this plan of action from OG North to TS-3. Considering the submissions before it, the Chamber is unable to determine with sufficient certainty whether document # 55 was created.

105. In relation to **documents # 56 and 57** (tabular and textual parts of the plans of action from OG Šibenik and OG Zadar) the Chamber notes that Croatia also refers to the interview with Firšt who stated that he as Rajčić’s assistant drafted plans of action for OG Šibenik and OG Zadar with Rajčić.<sup>188</sup> Firšt also stated that he was not certain whether the plan of action of OG Šibenik was completed or whether it was sent to this OG, whereas he confirmed that the OG Zadar plan of action had been created and that it contained a tabular and textual part.<sup>189</sup> For these reasons, and those mentioned above in relation to document # 35 (plan of action from OG Šibenik),<sup>190</sup> the Chamber is unable to determine with sufficient certainty whether document # 56 – tabular and textual part of the plan of action from OG Šibenik – was created. Several of the considerations referred to above with regard to document # 36 (plan of action from OG Zadar) are relevant for document # 57 as well.<sup>191</sup> According to Croatia, it was able to ascertain parts of the chain of custody of this document # 57, which according to Firšt was attached as tabular and textual parts to document # 36 (plan of action from OG Zadar), without being able to retrieve it.<sup>192</sup> In light of these submissions, the Chamber considers that document # 57 likely was created but it is unable to determine with sufficient certainty the current whereabouts of document # 57 and therefore whether it is currently accessible to Croatia.

<sup>187</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix B, nos 34-36.

<sup>188</sup> Official Note of interview with Marijan Firšt, Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix C, p. 2.

<sup>189</sup> Official Note of interview with Marijan Firšt, Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix C, p. 3.

<sup>190</sup> See above, para. 72.

<sup>191</sup> See above, para. 74.

<sup>192</sup> Official Note of interview with Marijan Firšt, Croatia’s Eleventh Report, p. 30.

## Group 17

106. The following documents belong to group 17:

Document #	Title	Alleged Sender	Alleged Addressee
# 48	List of Targets	OG North	TRS-1
# 49	List of Targets	OG North	TRS-2
# 50	List of Targets	OG North	TS-3
# 52	List of Targets	OG Zadar	TS-5

107. In regard to the documents in the table above, Croatia asserts that they do not exist because they were not supposed to have been drafted. It refers to other documents as “relevant”, such as: the tabular and textual part of the plan of artillery action of the Split MD; a list of groups of targets in Knin (which has been provided to the Prosecution<sup>193</sup> and is allegedly responsive to the requests of documents # 50 and 60 relating to TS-3); and a list of targets “jagoda” (which has been provided to the Prosecution<sup>194</sup> and is allegedly responsive to the requests of documents # 52 and 62 relating to TS-5).<sup>195</sup> In regard to group 17, the Prosecution and Croatia advance similar arguments as they did in addressing group 16 (tabular and textual parts of the plans of action from the OGs).<sup>196</sup> Furthermore, Rajčić stated in the official note that Croatia referred to, that “the list of targets that a certain TS or TRS received or was supposed to receive [...] formed part of a tabular textual part drawn up on the level of the MD for all TS and TRS [and] indicated which artillery pieces could fire at each particular target [...]”.<sup>197</sup>

108. In regard to **document # 48** (list of targets OG North to TRS-1), Gotovac (commander of TRS-1) confirmed, according to an official note referenced by Croatia, the existence of a

<sup>193</sup> P1272.

<sup>194</sup> D1447.

<sup>195</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential appendix B, nos 48-52.

<sup>196</sup> See above, para. 101.

<sup>197</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential appendix B, nos 48-52; Official Note of interview with Marko Rajčić, Prosecution’s Submission of Notes of Interviews, p. 1.

list of targets for TRS-1 that he created with Rajčić (Chief of Artillery of MD).<sup>198</sup> This suggests that the list of targets did not originate with OG North. Therefore, the Chamber is unable to determine with sufficient certainty that a document that fits the description of document # 48 was created. If such a list had been created at the MD level, the Chamber notes that the Prosecution has not asked for such a list as a substitute. As far as the Chamber is aware, such a document has not been provided by Croatia to the Prosecution.

109. In relation to **document # 49** (list of targets OG North to TRS-2), the Chamber considers the official note of Tomislav Alajica (TRS-2 commander) to which Croatia refers.<sup>199</sup> The note is unclear as to what extent Rajčić conveyed planning information, including documents, during a visit to Alajica's TRS immediately before Operation Storm. However, the official note explicitly mentions that Alajica received a list of possible targets from Željko Glasnović (HVO commander of the forward command post OG North), whose unit the TRS was designated to support. According to an official note, Vukelja stated that he burned lists of targets that TRS-2 had received, either in the barracks in Đakovo or earlier.<sup>200</sup> Based on the foregoing, the Chamber considers it likely that document # 49 was created, but possibly later destroyed. Even if the document was not destroyed, under the present circumstances the Chamber is unable to determine with sufficient certainty whether the document is currently accessible to Croatia.

110. At the working meeting, the Prosecution clarified that it continues to seek **document # 52** (list of targets OG Zadar to TS-5). Concerning this document, Kardum (TS-5 commander) stated that he received the "jagoda" list (which has been provided to the Prosecution<sup>201</sup>) from Firšt.<sup>202</sup> Croatia asserts that this is the target list for TS-5. The discussion at the working meetings revolved around the question of whether this document contained too many targets and therefore an additional document was missing with a selection of targets to actually fire upon. At the working meetings, Croatia asserted that no further document was necessary. Croatia distinguished between artillery preparation and artillery support. For the former, in Croatia's view, the only important document would be the tabular and textual part

<sup>198</sup> Prosecution's Response to Croatia's 2 June 2009 Request, confidential appendix B, nos 48-52; Official Note of interview with Stipe Gotovac, Prosecution's Response to Croatia's 2 June 2009 Request, confidential appendix C, p. 2.

<sup>199</sup> Prosecution's Response to Croatia's 2 June 2009 Request, confidential appendix B, nos 48-52; Official Note of interview with Tomislav Alajica, Croatia's Eighth Report, p. 3.

<sup>200</sup> Official Note of interview with Dražen Vukelja, Croatia's Eleventh Report, pp. 89-91.

<sup>201</sup> D1447.

<sup>202</sup> Official Note of interview with Ante Kardum, Prosecution's Response to Croatia's 2 June 2009 Request, confidential appendix C, p. 3.

of the plan of artillery action or Firšt's tabular and textual plan of OG Zadar.<sup>203</sup> For the latter, the "jagoda" list would be sufficient. This list would merely be an auxiliary document, not meant to provide for a selection of the actual targets but to facilitate the processing of orders on artillery fire. In support for this, Croatia referred to the operations logbook of OG Zadar which mentioned the "jagoda" list in one of the entries.

111. In regard to the artillery preparation of TS-5, at a working meeting, the Gotovina Defence added that a part of TS-5 was assigned to the special police in their advance to Gračac. The Gotovina Defence further mentioned that the "jagoda" list was printed on 30 July 1995, before this relocation, implying that this was an additional reason why further communication in relation to artillery preparation would have been necessary.

112. Based on the submissions advanced, and considering the distinction between artillery planning and artillery support, the Chamber is unable to determine with sufficient certainty whether a document that fits the description of a target list of category # 52 was created, aside from the "jagoda" list, providing for artillery support and the following documents providing for target selection and therefore artillery preparation: the tabular and textual part of the plan of action from OG Zadar (document # 57, discussed above<sup>204</sup>) and the tabular and textual part of the artillery action plan of the Split MD.

113. In regard to **document # 50** (list of targets OG North to TS-3), at the working meetings, the Prosecution accepted the list of targets in Knin (which has been provided to the Prosecution<sup>205</sup>) as a list of possible targets which was recognized by Mamić (TS-3 commander) and Erak as a list of targets used by TS-3 during Operation Storm.<sup>206</sup> However, the Prosecution contended that a list of designated targets existed and continued to request submission of the document. The Prosecution asserted that Mamić made this distinction between possible and designated targets himself.<sup>207</sup> The Chamber recalls the arguments advanced in relation to document # 52 (in particular the distinction between artillery preparation and artillery support), and its earlier considerations as to document # 55, that is the tabular and textual part of the plan of action from OG North,<sup>208</sup> where it was unable to determine with sufficient certainty whether this document was created. Based on these

<sup>203</sup> Official Note of interview with Marijan Firšt, Prosecution's Response to Croatia's 2 June 2009 Request, confidential appendix C, pp. 2-3.

<sup>204</sup> See above, para. 105.

<sup>205</sup> P1272.

<sup>206</sup> See above, para. 97.

<sup>207</sup> Official Note of interview with Goran Mamić, Croatia's Eighth Report, p. 12.

<sup>208</sup> See above, para. 104.

considerations, and on Croatia's submissions, it follows that artillery preparation would make a further document necessary to designate targets from what Croatia asserts is the list of possible targets for TS-3. Although Croatia did not explicitly argue why it did not provide document # 50, Croatia's submissions imply that Croatia considers the tabular and textual part of the artillery action plan of the Split MD to be the relevant artillery planning document. In light of the foregoing, the Chamber is unable to determine with sufficient certainty whether a document that fits the description of a target list of category # 50 was created, aside from the list of targets in Knin (which has been provided to the Prosecution<sup>209</sup>), providing for artillery support, and the tabular and textual part of the artillery action plan of the Split MD, providing for target selection and therefore artillery preparation. The Chamber notes that of the latter, only a small handwritten portion was submitted and the remaining portions could not be retrieved.<sup>210</sup>

*Group 18*

114. Group 18 consists of the following documents:

Document #	Title	Alleged Sender	Alleged Addressee
# 45	Artillery Deployment Map	OG Šibenik	
# 47	Artillery Deployment Map	OG Sinj	

115. These documents are related to document # 44 (artillery deployment map from OG North, discussed above as part of group 8) and document # 46 (artillery deployment map from OG Zadar, which has been provided to the Prosecution<sup>211</sup>). Croatia asserted at the working meetings that military doctrine does not include any obligation to create such documents as part of the planning documentation for a combat operation. It asserted that information on the artillery deployment could be found on other maps, specifically the operational map of the chief of artillery of the MD, which was made shortly before Operation Storm (which has been

<sup>209</sup> P1272.

<sup>210</sup> Croatia's Eleventh Report, pp. 81-84 (Handwritten Portion).

<sup>211</sup> Prosecution's Received Documents, Appendix A, tab 13, pp. 2, 160-164.

provided to the Prosecution<sup>212</sup>), and the map of the Split MD artillery deployment plan (which has been provided to the Prosecution<sup>213</sup>). Croatia remarked that this latter map is identical to document # 46 (artillery deployment map from OG Zadar, which has been provided to the Prosecution<sup>214</sup>) with regard to many of its elements bearing in mind that document # 46 relates to the narrower area of OG Zadar. According to Croatia, the fact that document # 46 was created, does not mean that documents # 45 and 47, likewise artillery deployment maps from OGs, needed to be created. It asserted at the working meetings, that the artillery deployment map from OG Zadar was created specifically in this situation for the purpose of deploying artillery that had been placed under UN control pursuant to the Zagreb agreement.<sup>215</sup>

116. Croatia had initially stated that **document # 45** (artillery deployment map from OG Šibenik) had been created because an artillery plan and map were listed as attachment in the OG Šibenik order.<sup>216</sup> However, it added that further processing led to the conclusion that the map listed as an attachment was not an artillery deployment map for that OG.<sup>217</sup> Croatia asserted at the working meetings that, according to Perin, only one document, the artillery plan, was created. Hence, it believed that the documents attached under number 3 to the OG Šibenik order (“*artillery plan ... and a map*”) are in fact only one document, an artillery plan, i.e. a map. It believed this map to be the one on the back of which Perin said he wrote “for court or for history”. Croatia further asserted, without providing further references, that Perin, Rajčić and Firšt confirmed that the OG Šibenik artillery deployment map was not created.

117. At the working meetings, the Gotovina Defence provided an explanation for how the OG Šibenik order came into existence. Vukić, the commander of OG Šibenik, who took up his post on 2 August 1995, updated a draft order prepared by his predecessor, Beneta, on 4 July 1995, by adding some handwritten changes and crossing out Beneta’s signature and inserting his own. The Gotovina Defence concedes that this leaves the question open as to whether the map actually attached to the order is the map to which Perin had referred.

<sup>212</sup> p2322.

<sup>213</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix B, no. 45, statement of reasons no. 18.

<sup>214</sup> Prosecution’s Received Documents, Appendix A, tab 13, pp. 2, 160-164.

<sup>215</sup> Cf. Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix B, no. 45, statement of reasons no. 18.

<sup>216</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix B, no. 45; Prosecution’s Received Documents, Appendix A, tab 2, pp. 2, 34.

<sup>217</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix B, no. 45.

118. Considering the aforementioned submissions, the Chamber is not able to determine with sufficient certainty whether document # 45 was created.

119. At the working meetings, the Prosecution stated that it would be satisfied if it received the map OG Sinj artillery chief Ante Kotromanović mentioned in his interview (the OG Sinj artillery action plan, further discussed as document XVIII in group 19, below<sup>218</sup>). In that case, it would not press further to obtain **document # 47**.

120. The Prosecution further stated that the chief of artillery of OG Sinj could not have used Rajčić's working map as a substitute for document # 47 as implied by Croatia.<sup>219</sup> The Chamber notes that the Prosecution's objection relates only to one of the two suggested substitute documents. The Prosecution left the other, being a map of the Split MD artillery deployment plan, without comment.<sup>220</sup> On the basis of all of the above submissions, the Chamber is not able to determine with sufficient certainty whether document # 47 was created.

#### *Group 19*

121. Group 19 consists of documents that among others appear on the "key" documents list as filed on 5 February 2010,<sup>221</sup> but do not appear on the list of documents sought in Appendix C to the Motion. They were not numbered on the Prosecution submission and so are labelled herewith with Roman numerals reflecting their position on the "key" documents list.

Document #	Title	Alleged Sender	Alleged Addressee
# XV	Plan of Action of Artillery (Map)	Split MD	
# XVI	Tabular and Textual Part of the Plan of Action of Artillery	Split MD	

<sup>218</sup> See below, para. 124.

<sup>219</sup> Prosecution's Submission as to How to Proceed, confidential Appendix B, no. 47.

<sup>220</sup> The Chamber notes a possible contradiction in Croatia's submissions with regard to this document. In the Prosecution's Submission as to How to Proceed, confidential Appendix B, no. 44, statement of reasons no. 18, Croatia indicates that the Split MD artillery deployment map has been provided to the Prosecution. However, Croatia has throughout the discussion claimed that this document is not currently available except for a small handwritten portion of the textual part. The Chamber considers the claim that the document was provided may have been made in error.

<sup>221</sup> Prosecution's Supplemental Filing as to 23 "Key" Missing Artillery Documents, p. 6.

# XVII	Working Map of the Chief of Artillery	OG Zadar	
# XVIII	Plan of Action of Artillery (Map)	OG Sinj	
# XIX	Tabular and Textual Part of the Plan of Action of Artillery	OG Sinj	
# XX	Working Map of the Commander	TRS-1	
# XXI	Working Map of the Commander	TRS-2	
# XXII	Working Map of the Commander	TS-3	
# XXIII	Working Map of the Commander	TS-4	

122. In regard to **documents # XV and # XVI**, plan of artillery action of the MD and its tabular and textual part, Croatia states that the former document could not be found.<sup>222</sup> It further refers to the statement of Rajčić who said that the “reinterpreted” map published in Gotovina’s book was identical to the original and that this was the map that had been provided.<sup>223</sup> The Prosecution referred back to the earlier discussion during the working meetings about the reinterpretation as to document XV and the number of copies of document XVI that would have been created if Croatia’s theory of the hierarchy of HV’s artillery were correct. In regard to document XVI, Croatia asserted that it was never found, except for a small handwritten portion of the textual part.<sup>224</sup> In light of these submissions, the Chamber is unable to determine with sufficient certainty the current whereabouts of documents # XV and XVI, which were likely to have been created, and therefore whether they are accessible to Croatia, except for the handwritten portion of document XVI which was already provided. In regard to document XV, the Chamber is not able to assess whether the “reinterpreted” map in the book is an identical copy of the sought document.

123. In regard to **document # XVII** (working map of the chief of artillery of OG Zadar), Croatia and the Prosecution made the following submissions. Croatia changed its initial position and argued that the document had not been created, which it based on Firšt’s statement that he had used the Zadar plan of action in the place of the Zadar OG artillery chief’s working map.<sup>225</sup> Although the Prosecution in general accepted this as a possible

<sup>222</sup> Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix B, e.g. nos 34-36.

<sup>223</sup> Official Note of interview with Marko Rajčić, Croatia’s Eleventh Report, p. 74.

<sup>224</sup> Croatia’s Eleventh Report, pp. 81-84 (Handwritten Portion).

<sup>225</sup> Official Note of interview with Marijan Firšt, Prosecution’s Response to Croatia’s 2 June 2009 Request, confidential Appendix C, p. 3; Official Note of interview with Marijan Firšt, Croatia’s Eleventh Report, pp. 30-31.



explanation, it argued that as long as the Zadar plan of action has not been provided, the Prosecution will be unable to verify whether it could have served the same purpose as the working map. Based on the above, the Chamber is not able to determine with sufficient certainty whether document # XVII was created.

124. In regard to **documents # XVIII and XIX**, plan of action of artillery (Map) of OG Sinj and its tabular and textual part, Croatia refers to artillery chief Kotromanović's two statements in support of its claim that document XIX does not exist.<sup>226</sup> The Prosecution asserted at the working meetings that Kotromanović's statements are unclear in this regard and that they merely state that a proposal was drafted for the use of artillery that included a map and a list of targets. The Prosecution does not consider this to be a denial that the tabular and textual part was drafted. On the contrary, it asserts that, given Kotromanović's responsibility and coordinating role in particular over a variety of forces as well as his commanding role, indeed a tabular and textual part would have been necessary. At the working meetings, Croatia asserted that document XVIII could not be found in the central archive, even though its existence was confirmed by Kotromanović.<sup>227</sup> He stated that he had compiled a proposal for the use of artillery during the attack that contained a map he had drawn himself.<sup>228</sup> Croatia asserted that it could not obtain the plan of action of OG Sinj, even though it had searched all documents at the disposal of the command of the 126th home guards regiment, all military archives to which this document should have been sent, all materials of OG Sinj as well as private homes. In light of the foregoing, the Chamber is not able to determine with sufficient certainty whether document XIX was created. The Chamber is further not able to determine with sufficient certainty the current whereabouts of document # XVIII, which likely was created, and therefore whether it is accessible to Croatia.

125. At the working meetings, Croatia confirmed that the four working maps of the commanders of TRS-1, TRS-2, TS-3 and TS-4 were considered as included in the Prosecution's request and became a priority in Croatia's investigation into the missing artillery documents. Croatia assumed that the four maps were created, and added the following submissions. In regard to **document # XX**, working map of the commander of TRS-1, Croatia refers to similar reasons as were discussed above in relation to documents # 37 (plan of action from TRS-1 to subordinate batteries), 48 (list of targets for TRS-1), and 154

---

<sup>226</sup> Ante Kotromanović (chief of artillery), Croatia's Eighth Report, p. 35; Ante Kotromanović (chief of artillery), Croatia's Eleventh Report, p. 53.

<sup>227</sup> Official Note of interview with Ante Kotromanović (chief of artillery), Croatia's Eighth Report, p. 35.

<sup>228</sup> Official Note of interview with Ante Kotromanović (chief of artillery), Croatia's Eighth Report, p. 35.

(duty/communications logbook or war/operations diary TRS-1). It refers to Gotovac's statement in which he said that the map was created, and to Matić's statement where he said that the document was destroyed.<sup>229</sup> Croatia submits that it had searched several archives but without success. In regard to the assessment of Matić's statements, the Chamber has already made observations above. On the basis of the submissions before it, the Chamber is not able to determine with sufficient certainty whether document # XX, which was likely to have been created, still exists. Even if the document had not been destroyed, and considering that it was not located when Matić's home was searched, the Chamber is still unable to determine with sufficient certainty whether the document is currently accessible to Croatia.

126. In regard to **document # XXI**, working map of the commander of TRS-2, Croatia refers to similar reasons as discussed above in relation to documents # 49 (list of targets for TRS-2) and 155 (duty/communications logbook or war/operations diary TRS-2). Alajica stated that he created a working map and Vukelja said that he destroyed it by burning.<sup>230</sup> Croatia further asserts that it has conducted multiple archive searches for this document without success. Therefore, on the basis of the submissions before it, the Chamber is not able to determine with sufficient certainty whether document # XXI, which was likely to have been created, still exists. Even if the document had not been destroyed, and considering that the multiple archives searches remained without result, the Chamber is still unable to determine with sufficient certainty whether the document is currently accessible to Croatia.

127. In regard to **document # XXII**, working map of the commander of TS-3, Croatia refers to Erak's statement who confirms the existence of this document and that it was passed on to Slavko Vlahov, his commander of the 14th artillery battalion.<sup>231</sup> Croatia was unable to interview the latter about the map's whereabouts because he had passed away. Its searches of the archived material of this battalion and the private premises of the commander of TS-3, Mamić, were reportedly without success. Based on the above, the Chamber is not able to determine with sufficient certainty the whereabouts of document # XXII, which was likely to have been created, and therefore whether it is currently accessible to Croatia.

---

<sup>229</sup> Official Note of interview with Stipe Gotovac, Prosecution's Response to Croatia's 2 June 2009 Request, confidential Appendix C, p. 2.

<sup>230</sup> Official Note of interview with Tomislav Alajica, Croatia's Eighth Report, p. 3; Official Note of interview with Dražen Vukelja, Croatia's Eighth Report, pp. 40-41.

<sup>231</sup> Official Note of interview with Živko Erak, Croatia's Eighth Report, p. 8; Official Note of interview with Živko Erak, Croatia's Eleventh Report, p. 29.

128. In regard to **document # XXIII**, working map of the commander of TS-4, Croatia refers to Milin's (commander of TS-4) statement who confirms its existence.<sup>232</sup> The former commander of the 658th brigade/20th howitzer battalion, parts of which belonged to TS-4 during Operation Storm, handed over parts of the wartime documentation to the new commander of the 658th brigade/20th howitzer battalion in 2003.<sup>233</sup> Milin further stated that parts of the material remained in the Bribirski/Knezovi barracks, but that he did not know its further fate.<sup>234</sup> Reportedly, Croatia's search in the relevant archives, especially that of the 658th brigade, did not yield any results. In light of these submissions, the Chamber is not able to determine with sufficient certainty the whereabouts of document # XXIII, which was likely to have been created, and therefore whether it is currently accessible to Croatia.

#### *Final observations*

129. Before arriving at the disposition of this decision, the Chamber wishes to make some general remarks on the basis of the submissions it has received and the hearings and working meetings it has held.

130. The search for documents by the Prosecution was initiated through RFAs and then followed up by the litigation on the Motion. Whilst in some areas, such as the special police, documents were finally produced to the satisfaction of the Prosecution, in other areas, documents surfaced only gradually and many requested documents were not produced.

131. The assessment of the reliability of information relevant for the requested production of documents remains, as in the past, not without problems. It appears from some of the interviews conducted by the Croatian authorities that the information provided by interviewees was at times ambiguous or not fully consistent. It is at the same time clear that the Croatian government in recent years has taken a proactive approach and made substantial efforts to intensify the search for the documents.

132. The submissions before the Chamber suggest that more operational information in terms of orders, reports and other data on targets may have been used in Operation Storm than is contained in the documents that were until now produced. Various explanations were given

---

<sup>232</sup> Official Note of interview with Bruno Milin, Croatia's Eighth Report, pp. 19-20.

<sup>233</sup> Official Note of interview with Bruno Milin, Croatia's Eighth Report, p. 21.

<sup>234</sup> *Ibid.*

for this. Sometimes explanations were of a factual character, such as that orders and detailed data on targets were given orally or that documents were destroyed in the past. The sought-after documents would therefore not, or no longer, exist. Sometimes explanations were based on what would be logical in the existing structures of the armed forces.

133. The validity of the explanations given depends on the reliability of the underlying material. The probative value of the official notes of interviews that were produced depends among other factors on the reliability and credibility of the statements contained therein. Testing that evidence was possible to only a very limited extent, if only for the reason that most of the interviewees were not called as witnesses during the present case. While there are no indications that the statements would be generally unreliable or incredible, some instances have caused doubts in this respect.<sup>235</sup>

134. The explanations on the basis of the existing structures of the armed forces were at times either more or less convincing. In sum, a number of questions remain without definitive answers.

135. In light of the Chamber's discussion in paragraph 29, the Chamber considers that the present decision is issued after lengthy and intense litigation which lasted over two years, and considers it of no avail to just issue orders where, in particular, the documented position of Croatia would leave it to still be doubted whether Croatia could comply.

136. Following on from this, the Chamber emphasizes that this decision is without prejudice to Croatia's obligation to co-operate with the Tribunal in regard to the present matter pursuant to Article 29 of the Tribunal's Statute. The Chamber notes in this respect that new information is received on an ongoing basis. The present decision is taken on the basis of the submissions presently before it and the Chamber refers to Rule 54 *bis* (H) of the Rules, according to which the rejection of an application under Rule 54 *bis* of the Rules shall not preclude a subsequent application by the requesting party in respect of the same documents or information if new circumstances arise.

137. Having considered the uncertainties discussed above regarding creation, continued existence and/or whereabouts of the documents requested by the Prosecution, the Chamber finds that it would not be appropriate to issue an order under Rule 54 of the Rules to produce these requested documents.

---

<sup>235</sup> E.g. *supra* paras 45, 82.

**DISPOSITION**

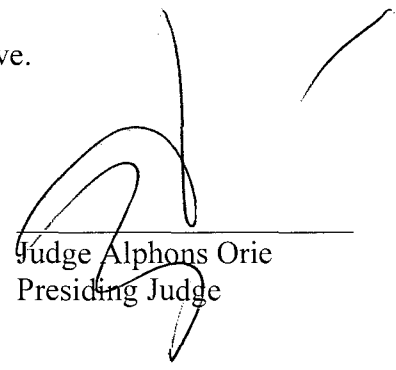
129. For the foregoing reasons, pursuant to Article 29 of the Statute and Rules 54 and 54 *bis* of the Rules, the Chamber

**DENIES** the Prosecution's Motion for an order under Rule 54 of the Rules as requested in relation to the sought artillery documents;

**GRANTS** the requests to exceed the word limit of 13 June 2008, 19 January 2009, 19 June 2009 and 22 June 2010; and

**DENIES** the Gotovina Defence's Request to Reply to the Prosecution's Submission as to How to Proceed of 22 January 2009 and the Prosecution's Request to Reply to Gotovina Defence's Submission as to How to Proceed of 23 January 2009.

Done in English and French, the English version being authoritative.



Judge Alphons Orie  
Presiding Judge

Dated this the twenty-sixth day of July 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

**Appendix A:**  
**Artillery Documents Sought by the Prosecution as of**  
**19 January 2010**

**Artillery Documents Sought by the Prosecution as of 19 January 2010**

##	Description
1	Order for Attack of OG North for TRS-1
3	Order for Attack of OG North for TRS-3
4	Attachment for Artillery to the Order for Attack of OG North
6	Attachment for Artillery to the Order for Attack of OG Sibenik for
10	Attachment for Artillery to the Order for Attack of OG Sinj
11	Order to continue attack of OG North to TS-1, TRS-2 and TS-3.
13	Order to continue attack of OG Zadar
14	Order for Attack of TRS-1 to subordinate batteries
15	Order for Attack of TRS-2 to subordinate batteries
16	Order for Attack of TS-3 to subordinate batteries
17	Order for Attack of TS-4 to subordinate batteries
18	Order for Attack of TS-5 to subordinate batteries
21	Order to continue attack of TS-3
22	Order to continue attack of TS-4
30	Map attached to Order for Attack of OG North
31	Map attached to Order for Attack of OG Sibenik
32	Map attached to Order for Attack of OG Zadar
33	Map attached to Order for Attack of OG Sinj
34	Plan of Action of Artillery of OG North to TRS-1, TRS-2, TRS-3
35	Plan of Action of Artillery of OG Sibenik to TS-4
36	Plan of Action of Artillery of OG Zadar to TS-5
37	Plan of Action from TRS-1 to subordinate batteries
38	Plan of Action from TRS-2 to subordinate batteries
39	Plan of Action from TS-3 to subordinate batteries
40	Plan of Action from TS-4 to subordinate batteries
41	Plan of Action from TS-5 to subordinate batteries
44	Map of disposition of the artillery of OG North
45	Map of disposition of the artillery of OG Sibenik
47	Map of disposition of the artillery of OG Sinj
48	List of Targets for TRS-1

##	Description
49	List of Targets for TRS-2
50	List of Targets for TS-3
52	List of Targets for TS-5
53	Textual and Tabular part of the Plan of Action for TRS-1
54	Textual and Tabular part of the Plan of Action for TRS-2
55	Textual and Tabular part of the Plan of Action for TS-3
56	Textual and Tabular part of the Plan of Action for TS-4
57	Textual and Tabular part of the Plan of Action for TS-5
58	List of Targets for batteries subordinate to TRS-1
59	List of Targets for batteries subordinate to TRS-2
60	List of Targets for batteries subordinate to TS-3
61	List of Targets for batteries subordinate to TS-4
62	List of Targets for batteries subordinate to TS-5
63	Textual and Tabular part of the Plan of Action for batteries subordinate to TRS-1
64	Textual and Tabular part of the Plan of Action for batteries subordinate to TRS-2
65	Textual and Tabular part of the Plan of Action for batteries subordinate to TS-3
66	Textual and Tabular part of the Plan of Action for batteries subordinate to TS-4
67	Textual and Tabular part of the Plan of Action for batteries subordinate to TS-5
70	Regular report from TRS-2 to OG North (am)
71	Regular report from TRS-2 to OG North (pm)
72	Regular report from TS-3 to OG North (am)
73	Regular report from TS-3 to OG North (pm)
76	Regular report from TS-5 to OG Zadar (am)
77	Regular report from TS-5 to OG Zadar (pm)
80	Regular report from TRS-2 to OG North
81	Regular report from TRS-2 to OG North
82	Regular report from TS-3 to OG North



##	Description
83	Regular report from TS-3 to OG North
86	Regular report from TS-5 to OG Zadar
87	Regular report from TS-5 to OG Zadar
90	Regular report from TRS-2 to OG North
91	Regular report from TRS-2 to OG North
92	Regular report from TS-3 to OG North
93	Regular report from TS-3 to OG North
96	Regular report from TS-5 to OG Zadar
97	Regular report from TS-5 to OG Zadar
98	Regular report from OG North to the Split MD
99	Regular report from OG North to the Split MD
100	Regular report from OG North to the Split MD
108	Regular report from OG North to the Split MD
109	Regular report from OG North to the Split MD
110	Regular report from OG North to the Split MD
118	Regular report from OG North to the Split MD
119	Regular report from OG North to the Split MD
120	Regular report from OG North to the Split MD
154	Duty Logbook/Operations Diary of TRS-1
155	Duty Logbook/Operations Diary of TRS-2
158	Duty Logbook/Operations Diary of TS-5