

# Croatian war criminals released after appeal by Western military chiefs

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In April 2011, the International Criminal Tribunal for Yugoslavia (ICTY) found Croatian general Ante Gotovina and Assistant Interior Minister Mladen Markac guilty of war crimes committed during 1995's Operation Storm military offensive and sentenced them to 24 years' and 18 years' imprisonment, respectively.

The two leaders were accused of involvement in a "Joint Criminal Exercise" (JCE), led by late Croatian president Franjo Tudjman, aimed at "the permanent removal of the Serb population from the Krajina region by force, fear or threat of force, persecution, forced displacement, transfer and deportation, appropriation and destruction of property or other means". More than 150 Croatian Serbs died, hundreds disappeared and 200,000 fled in what was described as the biggest act of ethnic cleansing in the Balkan Wars. Half of the refugees have still not returned to their former homes.

In January 2012, 12 US, Canadian and British military experts, three of whom had served as judge advocate generals (senior military lawyers) and one as the top legal adviser to the US Army, launched an appeal to overturn the convictions. They argued that the court was wrong to use a "200-metre standard" by which artillery bomb craters located more than 200 metres from a legitimate military target were deemed evidence of unlawful indiscriminate attacks on civilians. If the standard became enshrined in international law, they declared, future Western military operations would be put in jeopardy and commanders would run the risk of being hauled in front of human rights courts accused of war crimes.

The appeal document concluded with a letter from General Ronald H. Griffith, vice chief of staff, the second highest officer in the US Army, from 1995 to 1997 and current executive vice president of the private military company Engility, formerly known as Military Professional Resources Inc. (MPRI). Griffith declared, "Should the standard of review adopted by the Trial

Chamber gain traction as a controlling interpretation of international law it will ultimately expose commanders who have conducted military operations in compliance with accepted doctrinal principles and in a morally responsible manner to the threat of being brought before some international court and charged, as was General Gotovina, with war crimes."

Last month, the ICTY Appeals Court overturned the convictions of Gotovina and Markac, declaring that the original court had "erred" by using the "200-metre standard". The rest of the charges against the two war criminals fell like dominos. By a 3-to-2 majority, the court declared that the mass exodus of Serb civilians "cannot be qualified as deportation" and the existence of a JCE "cannot be sustained" and ordered Gotovina and Markac to be released.

Two of the five judges dissented from the majority opinion. Maltese judge Carmel Agius said that he "strongly disagreed" with almost all of the conclusions reached by the majority and was "distancing himself" from their decision. Italian judge Fausto Pocar insisted that the judgement "contradicts any sense of justice".

Former ICTY chief prosecutor Carla del Ponte declared, "I am shocked, very surprised and astonished because it is absolutely unbelievable what happened after ruling the sentence of 24 years in prison to general Ante Gotovina." Current chief prosecutor Serge Brammertz said that "those affected by crime committed in connection with Operation Storm are not satisfied by the outcome and feel their suffering has not been acknowledged". He hoped the Croatian authorities would use the evidence his office had gathered to prosecute those responsible.

Brammertz's plea was quickly forgotten. After flying back to Croatia, Gotovina and Markac received a hero's welcome from a crowd of 100,000 in the capital, Zagreb. President Ivo Josipovic welcomed the verdict, and other government figures and officials declared the men's

release was proof that no ethnic cleansing had occurred in Croatia. Gotovina declared that the “Homeland War is now clean, it belongs to our history, it is a basis on which we build our future.” Media reports suggest he will stand in the next presidential elections.

Serbian president Tomislav Nikolic denounced the Appeal Court’s decision as “scandalous,” declaring that it “will not contribute to stabilisation of the situation in the region but will reopen all wounds.” Russian United Nations ambassador Vitaly Churkin declared, “In its work, the ICTY demonstrates neither fairness nor effectiveness.”

The two have been released in the first instance because the Croatian army acted as Washington’s proxy against Serbian president Slobodan Milosevic, with President Bill Clinton’s special envoy Richard Holbrooke describing them as his “junkyard dogs”. In November 1994, MPRI was contracted to train the Croatian army at the time of a UN-monitored ceasefire. Photographs show Gotovina with US military personnel in front of a computer screen showing “Battle Staff Training Program” and “Welcome to Training Center Fort Irwin”. Franjo Tudjman’s son Miro, head of Croatian intelligence at the time, claims the Croatian and US governments enjoyed a “de facto partnership”.

In 2002, Henry Hyde, chairman of the House Committee on International Relations, was already warning that the ICTY could investigate officials who were “formulating and carrying out US government policy” in connection with Operation Storm. The *Washington Times* repeated Hyde’s warning and attacked the concept of command responsibility as a threat “to US national interests” and “Washington’s ability to project its power around the world.”

Such concerns also lay behind the release, a few days after that, of Gotovina and Markac, of Kosovo Liberation Army commander and former prime minister Ramush Haradinaj and others accused of being members of a JCE involved in the torture and murder of Kosovo Serbs, Roma and Egyptians in a KLA compound in the village of Jabllanicë in 1998. A partial re-trial had been ordered because the original trial was surrounded by allegations that witnesses were subjected to systematic harassment and intimidation. Del Ponte was also forced to complain to the United Nations Security Council and UN secretary-general Kofi Annan about the UN Mission in Kosovo (UNMIK) and its chief, Soren Jessen-Petersen, who, she said, protected Haradinaj. She asked, “How can the rule of law be implemented if UNMIK chiefs so openly

support a person who is accused of some of the gravest crimes in international law?”

Both the Croatian and Kosovan Albanian leaders played a key role in ensuring US hegemony within the Balkan region. The US had been intent on preserving a unitary Yugoslav state as a bulwark against a Soviet thrust into the Mediterranean, but this changed with the collapse of the USSR and the reunification of Germany in 1991. When German imperialism, anxious to flex its political muscle, promoted secession in Slovenia and Croatia and rushed to extend recognition, both the US and the other western European powers reversed their previous opposition.

It was inevitable, given the history and politics of Yugoslavia, that the break-up of the federation would lead to civil war. The secession of provinces would suddenly deprive ethnic minorities of the constitutional protections they had enjoyed under the federation. The creation of new nation-states based upon ethnic nationalism whipped up by ex-Stalinist bureaucrats and nationalist demagogues in order to divert social opposition to the destruction of jobs and living standards led to “ethnic cleansing.”

Within months, Serbs, who dominated the west of Croatia, declared the independent Serb Republic of Krajina. Operation Storm was designed to bring the region back under Croat control. The US became the chief sponsor of Bosnian and then Kosovan independence and targeted Serbia, which defended the unitary state as its most powerful component. Washington opposed ethnic cleansing only when the Serbs carried it out.



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