

**UNITED  
NATIONS**

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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

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Case No. IT-95-5/18-PT  
Date: 4 February 2009

**IN TRIAL CHAMBER III**

**Before:** Judge Iain Bonomy, Presiding  
Judge Christoph Flügge  
Judge Michèle Picard

**Acting Registrar:** Mr. John Hocking

**THE PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

**PUBLIC**

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**PROSECUTION REPLY TO "RESPONSE TO MOTION TO  
AMEND INDICTMENT"**

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**The Office of the Prosecutor:**

Mr. Alan Tieger  
Mr. Mark B. Harmon  
Ms. Hildegard Uertz-Retzlaff

**The Accused:**

Mr. Radovan Karadžić

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**Case No. IT-95-5/18-PT**

**THE PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

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**PROSECUTION REPLY TO “RESPONSE TO MOTION TO  
AMEND INDICTMENT”**

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1. This reply is filed in accordance with the Trial Chamber’s “Order on Prosecution’s Request for Leave to Reply to the Accused’s Response to the Motion to Amend the Indictment” of 2 February 2009.
2. Rule 50 of the Rules allows the Prosecution to seek leave to amend an indictment. The decision whether to grant a motion to amend an indictment is a discretionary one, if the Chamber is satisfied that there is evidence supporting the amendment that establishes a *prima facie* case against the accused. Under Rule 50, a Trial Chamber has wide discretion to allow an indictment to be amended.<sup>1</sup> Although there are no express limits on the exercise of the discretion contained in Rule 50, when viewing the Statute and Rules as a whole, that discretion must be exercised with regard to the right of an accused to a fair trial.<sup>2</sup> In

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<sup>1</sup> *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-PT, Decision on Amendment of the Indictment and Application of Rule 73 bis (D) , 12 December 2006, para. 10; *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT and IT-05-88/1-PT, Decision on Further Amendments and Challenge to the Indictment, 13 July 2006, para. 8.

<sup>2</sup> *Prosecutor v. Bošković and Tarčulovski*, Case No. IT-04-82-PT, Decision on Prosecution’s Motion to Amend the Indictment and Submission of Proposed Second Amended Indictment and Submission of Pre-Trial Brief, 26 May 2006, para. 10; *Prosecutor v. Prlić et al.*, Case No. IT-04-79-PT, Decision on Prosecution Application for Leave to Amend the Indictment and on Defence Complaints on Form of Proposed Amended Indictment, 18 October 2005, para. 16; *Prosecutor v. Beara*, Case No. IT-02-58-PT, Decision on Prosecution Motion to Amend the Indictment, 24 March 2005, p. 2; *Prosecutor v. Mejakić et al.*, Case No. IT-02-65-PT, Decision on the Consolidated Indictment, 21 November 2002, p. 3; *Prosecutor v. Ljubičić*, Case No. IT-00-41-PT, Decision on Motion for Leave to Amend the Indictment, p. 3; *Prosecutor v. Brdanin and Talić*, Case No. IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 50; *Prosecutor v. Naletilić and*

determining whether to grant leave to amend an indictment, a Trial Chamber may take the following factors into consideration: the interests of justice; judicial economy; the likely prejudice to an accused's right to a fair and expeditious trial; the existence of newly discovered evidence that was unknown to the Prosecution at the time the initial indictment was drafted and confirmed; the nature and scope of the proposed amendment; and whether the proposed changes more accurately describe the totality of the criminal conduct of the accused.<sup>3</sup> The Prosecution, in its Motion to Amend the First Amended Indictment ("Motion"), has clearly set out the factual and legal basis to support its request.

3. In his "Response to Motion to Amend Indictment" ("Response"), the Accused Radovan Karadžić ("Accused") suggests he would be prejudiced by the proposed Second Amended Indictment ("Proposed Indictment") because it "joins four distinct events": (1) events in municipalities within Bosnia and Herzegovina ("BiH") claimed as Bosnian Serb territory; (2) events in connection with the siege of the city of Sarajevo; (3) events in the enclave of Srebrenica in 1995; and (4) the taking of hostages in 1995.<sup>4</sup> These components are pled within the First Amended Indictment. They are not new to the Proposed Indictment. The amendments proposed by the Prosecution merely seek to narrow and clarify the Prosecution's allegations, update the legal and factual pleadings, and provide more precise notice of the Prosecution's case to the Accused.<sup>5</sup> Moreover, the Proposed Indictment reduces the number of municipalities by approximately one-third.<sup>6</sup>
4. The Accused offers two general factors to be considered when evaluating prejudice,<sup>7</sup> namely, (1) whether the Accused is given an adequate opportunity to prepare an effective defence; and (2) whether granting the amendment will result in undue delay. However, to challenge a proposed amendment on the basis of unfair prejudice, it is incumbent upon the Accused to point to the specific amendment, and show how it would cause him unfair prejudice. The Accused has failed to do this.

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*Martinović*, Case No. IT-98-34-PT, Decision on Vinko Martinović's Objection to the Amended Indictment and Mladen Naletilić's Preliminary Motion to the Amended Indictment, 14 February 2001, pp. 4-7.

<sup>3</sup> *Prosecutor v. Rukundo*, Case No. ICTR-2001-70-PT, Decision on the Prosecutor's Request for Leave to File an Amended Indictment, 28 September 2006, para. 7.

<sup>4</sup> Response, paras. 7; *see also* paras. 10, 22, 24.

<sup>5</sup> *See* Motion.

<sup>6</sup> *See* Motion, para. 17.

<sup>7</sup> Response, para. 22.

5. Contrary to the Accused's suggestion, Rule 50 is not the appropriate mechanism to achieve a reduction in the scope of the Proposed Indictment. The Accused relies on a decision of the Trial Chamber in *Prosecutor v. Milutinović et al.* ("*Milutinović et al.*") to support his argument.<sup>8</sup> The Accused mischaracterizes the basis of this decision. The modifications ordered by the Trial Chamber in *Milutinović et al.* were responsive to issues relating to the form of the indictment, not challenges to its scope.<sup>9</sup> The decision does not provide a basis or rationale under Rule 50 to impose limits on the scope of an indictment.
6. Rather than address the specific amendments proposed by the Prosecution, the Accused uses his response as a platform to advocate for a broad reduction in the scope of the Proposed Indictment. The Accused justifies such a reduction by drawing a parallel between the scope of the Proposed Indictment and the scope of the entire case against Slobodan Milošević.<sup>10</sup> This exercise mischaracterizes the scope of the Proposed Indictment which, in terms of its crime base, is comparable to the component of the Slobodan Milošević case covering BiH.<sup>11</sup> The Accused also alludes to the duration of a number of related trials including *Prosecutor v. Krajišnik*, *Prosecutor v. Brđanin*, *Prosecutor v. Galić*, *Prosecutor v. Blagojević and Jokić*, and *Prosecutor v. Popović et al.*<sup>12</sup> The Accused's implicit suggestion that the duration of his trial will encompass the duration of these related trials is not properly informed. An accurate assessment of the scope of the Prosecution's case-in-chief must be informed by the number of witnesses the Prosecution intends to present, the expected duration and mode of witness testimony, and the extent to which the Prosecution will be able to rely upon adjudicated facts. These factors are only available at a later stage of the proceedings, which have certain procedural mechanisms.<sup>13</sup> Thus, the relief sought by the Accused does not fall within the ambit of Rule 50.

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<sup>8</sup> Response, para. 23.

<sup>9</sup> See *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Joinder Indictment, 22 March 2006; see also *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Order of Pre-Trial Judge Arising from Status Conference, 1 September 2006, p. 5, noting an agreement "that any challenges to the form of the indictment [...] will be made a part of [the Defence] responses to the Motion to Amend".

<sup>10</sup> Response, paras. 6-7, 11-20, 35.

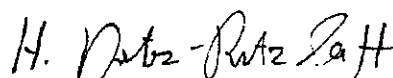
<sup>11</sup> The component of the Slobodan Milošević case covering BiH concerned events in municipalities claimed as Bosnian Serb territory, events in connection with the siege of the city of Sarajevo, and events in the enclave of Srebrenica in 1995.

<sup>12</sup> Response, paras. 7-9.

<sup>13</sup> See Rule 73 *bis*.

7. The relief which the Accused seeks to obtain through Rule 50 is inconsistent with the principle of a fair trial.<sup>14</sup> It would deny justice to victims of the crimes charged and unduly intrude upon the Prosecution's authority under Articles 16(1) and 16(2) of the Statute to determine the case which the Accused must answer.
8. For the foregoing reasons, the Prosecution respectfully requests the Trial Chamber to deny the relief requested in the Response, and to allow the Prosecution to amend the First Amended Indictment as set out in the Proposed Indictment.

Word Count: 1,361



Hildegard Uertz-Retzlaff  
Senior Trial Attorney

Dated this 4<sup>th</sup> day of February 2009  
At The Hague, The Netherlands

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<sup>14</sup> *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.4, Decision on Prosecution Appeal Concerning the Trial Chamber's Ruling Reducing Time for the Prosecution Case, 6 February 2007, para. 14; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal of Admissibility of Evidence, 16 February 1999, para. 25; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision Denying Prosecution's Request for Certification of Rule 73 bis Issue for Appeal, 30 August 2006, para. 10.