

**UNITED
NATIONS**

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-95-5/18-PT

Date: 3 April 2009

IN THE TRIAL CHAMBER

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

Acting Registrar: Mr. John Hocking

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION RESPONSE TO PRELIMINARY MOTION
ALLEGING DEFECT IN FORM OF THE INDICTMENT –
JOINT CRIMINAL ENTERPRISE MEMBERS AND NON-
MEMBER PARTICIPANTS**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-95-05/18-PT

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION RESPONSE TO PRELIMINARY MOTION ALLEGING
DEFECT IN FORM OF THE INDICTMENT – JOINT CRIMINAL
ENTERPRISE MEMBERS AND NON-MEMBER PARTICIPANTS**

I. OVERVIEW

1. The Prosecution opposes Karadžić's Preliminary Motion concerning joint criminal enterprise (JCE) "members and non-members" (Motion).¹ In accordance with Rule 47 (C), the Third Amended Indictment (Indictment) provides a concise summary of the case against Karadžić and sets out the material facts concerning the members of the JCEs and persons used by them. While Karadžić may be entitled to more details about individual JCE members to the extent that the Prosecution knows them, this information need not be pleaded in the Indictment. Other aspects of the pre-trial process, including the Interim Pre-Trial Brief, the Final Pre-Trial Brief, witness lists and exhibit lists are the appropriate mechanisms for providing Karadžić with further information about the identities of JCE members and persons used by them.

¹ Preliminary Motion Alleging Defect in Form of the Indictment – Joint Criminal Enterprise Members and Non-Member participants, 20 March 2009 (Motion).

II. THE INDICTMENT CONTAINS THE NECESSARY MATERIAL FACTS

A. Given the nature of the case against Karadžić, the level of detail in the Indictment is sufficient

2. Karadžić is charged with crimes of vast scope, committed through JCEs involving an extensive network of people from political, military, police and other structures within Bosnia and Herzegovina and Serbia. It is not necessary or feasible for the Prosecution to list in the Indictment the many individual JCE members and persons used by them.

3. Tribunal case-law emphasises the “summary nature” of an indictment, the purpose of which is to “very succinctly demonstrate [...] that the accused allegedly committed a crime”.² The case-law also emphasises that the determination of what is a material fact for inclusion in the Indictment depends on the nature of the case and, in particular, the scale of the crimes and the proximity of the accused to the events.³

4. Having regard to the nature of the case against Karadžić – in particular the scale of the crimes, Karadžić’s high level position and the vast numbers of people involved in the JCEs – the Indictment adequately sets out the material facts concerning the JCE members and persons used by them. For example, provided Karadžić has notice of the structures allegedly used by the JCE members to commit the crimes, he can commence preparations for his defence without knowing the identities of the thousands of individuals on the ground who physically committed the crimes. The identities of these individuals is more properly characterised as a matter of evidence, to be dealt with *via* pre-trial disclosure mechanisms.

² *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, Decision on Motion by the Accused Zejnir Delalić Based on Defects in the Forms of the Indictment, 2 October 1996, para.19 (citing Đukić Preliminary Motions Decision).

³ *Prosecutor v Gotovina et al.*, Case No. IT-06-90-AR73.3, Decision on Joint Defence Interlocutory Appeal Against Trial Chamber’s Decision on Joint Defence Motion to Strike the Prosecution’s Further Clarification of Identity of Victims, 26 January 2009, para.17 (citations omitted). *See also*, *Prosecutor v Kupreškić et al.*, Case No. IT-95-16-A, Judgement, 23 October 2001, paras.89-90; *Prosecutor v Krnojelac*, Case No. IT-97-25-PT, Decision on Preliminary Motion on Form of Amended Indictment, 11 February 2000, para.18.

5. To provide the level of detail in the Indictment that Karadžić seeks in the Motion would transform the Indictment from a concise summary into something akin to a pre-trial brief; indeed, a pre-trial brief vastly expanded beyond its current scale in the practice directive. Furthermore, it is not reasonable to expect that the Indictment should be amended every time a new piece of information becomes available about the identity of an individual JCE member or person used by a JCE member. This highlights the impracticality of the approach that Karadžić advocates.

6. There are other mechanisms for ensuring that Karadžić has adequate information about the evidentiary basis of the JCEs alleged against him.⁴ As the *Naletilić* Pre-Trial Chamber emphasised,

the defendant's preparation for trial may begin with the indictment, but it does not end there. While it is clear that 'the indictment must contain certain information which permits the accused to prepare his defence,' it need not contain *all* of the information to which the accused will ultimately be entitled under the Rules. The primary focus at this stage must be on whether the indictment contains a concise, but complete, statement of the facts on which the charges are based.⁵

7. The approach taken in the Indictment meets this requirement. Karadžić is informed of the names of many key JCE members and he is further informed of the categories or groups to which the large numbers of other JCE members or persons used by them belonged. This provides him with detailed knowledge of the contours of the Prosecution's case against him and puts him in a position to commence meaningful preparations for his defence.

B. The Indictment contains a detailed description of the members of the JCEs and the persons used by them

8. The Indictment provides Karadžić with a significant amount of detail about the members of the four alleged JCEs and those who were used by the JCE members to carry out the crimes.

⁴ *Below*, paras.15-17.

⁵ *Prosecutor v Naletilić & Martinović*, Case No. IT-98-34-PT, Decision on Defendant Vinko Martinović's Objection to the Indictment, 15 February 2000 (Martinović Indictment Decision), para.18 (citations omitted).

9. Regarding the JCE to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian-Serb claimed Territory, the Indictment names the following 11 JCE members, in addition to Karadžić:

- Momičilo Krajišnik;
- Ratko Mladić
- Slobodan Milošević;
- Biljana Plavšić;
- Nikola Koljević;
- Mićo Stanišić;
- Momčilo Mandić;
- Jovica Stanišić;
- Franko Simatović;
- Željko Ražnatović (aka “Arkan”);
- Vojislav Šešelj.⁶

10. Further, the Indictment also lists the following four groups or categories of individuals as other members of the JCE or, alternatively, persons who were used by members of the JCE to carry out the JCE crimes:

- Members of the Bosnian Serb leadership;
- Members of SDS and Bosnian Serb government bodies at the republic, regional, municipal, and local levels, including Crisis Staffs, War Presidencies, and War Commissions (Bosnian Serb Political and Governmental Organs);

⁶ Indictment, para.11.

- Commanders, assistant commanders, senior officers, and chiefs of units of the Serbian Ministry of Internal Affairs, the Yugoslav People's Army (JNA), the Yugoslav Army (VJ), the army of the Serbian Republic of BiH, later the army of the RS (VRS), the Bosnian Serb Ministry of Internal Affairs (MUP) and the Bosnian Serb Territorial Defence (TO) at the republic, regional, municipal and local level;
- Leaders of Serbian and Bosnian Serb paramilitary forces and volunteer units.⁷

11. Regarding the JCE to spread terror in Sarajevo, the Indictment names seven individuals, in addition to Karadžić, who were members of the JCE:

- Momčilo Krajišnik;
- Ratko Mladić;
- Biljana Plavšić;
- Nikola Koljević;
- Stanislav Galić;
- Dragomir Milošević; and
- Vojislav Šešelj.⁸

12. Further, the Indictment also lists the following five groups or categories of individuals as other members of the JCE relating to Sarajevo or, alternatively, persons who were used by members of the JCE to carry out the JCE crimes:

- Members of the Bosnian Serb leadership;
- Republic-level members of Bosnian Serb Political and Governmental Organs;
- Regional, municipal and local level members of Bosnian Serb Political and Governmental Organs with responsibility in or for the Sarajevo area;

⁷ Indictment, para.12.

⁸ Indictment, para.16.

- Commanders, assistant commanders, senior officers, and chiefs of JNA, VRS, TO and MUP units whose areas of responsibility included the Sarajevo area; and
- Leaders of Serbian and Bosnian Serb paramilitary forces and volunteer units operating in or with responsibility over the Sarajevo area.⁹

13. Regarding the JCE to eliminate Bosnian Muslims from Srebrenica, the Indictment names Karadžić and Ratko Mladić as members of the JCE.¹⁰ Further, the Indictment also lists the following four groups or categories of individuals as other members of the JCE relating to Srebrenica or, alternatively, persons who were used by members of the JCE to carry out the JCE crimes:

- Republic-level members of Bosnian Serb Political and Governmental Organs;
- Regional, municipal and local level members of Bosnian Serb Political and Governmental Organs with responsibility in or for the Srebrenica, Vlasenica, Bratunac and/or Zvornik areas;
- Commanders, assistant commanders, senior officers and chiefs of the VRS and MUP operating in or with responsibility over territory within the Drina Corps area of responsibility and/or Trnovo municipality;
- Members of a Serbian MUP unit called the Scorpions.¹¹

14. Regarding the JCE to take hostages, the Indictment names Karadžić and Ratko Mladić as members of the JCE.¹² Further, the Indictment also lists the following two groups or categories of individuals as other members of the JCE to take hostages or, alternatively, persons who were used by members of the JCE to carry out the JCE crimes:

- Members of Bosnian Serb Political and Governmental Organs; and

⁹ Indictment, para.17.

¹⁰ Indictment, para.21.

¹¹ Indictment, para.22.

¹² Indictment, para.26.

- Commanders, assistant commanders, senior officers and chiefs of the VRS and MUP.¹³

III. DETAILS OF THE EVIDENCE CONCERNING THE JCE MEMBERS AND PERSONS USED BY THEM HAS BEEN AND WILL CONTINUE TO BE PROVIDED BY WAY OF PRE-TRIAL MATERIALS OTHER THAN THE INDICTMENT

15. Although, in this case, further details of the JCE members and persons used by them are not material facts that must be pleaded in the Indictment, the Prosecution accepts that Karadžić is entitled to disclosure of additional details about the individual JCE members if the Prosecution has them.¹⁴ This can take place through a variety of means, including pre-trial briefs and on-going disclosures given by way of witness lists, exhibit lists and other forms of disclosure. The expeditious manner in which the pre-trial phase of the case is proceeding will ensure that Karadžić has timely notice of the evidentiary basis underpinning the Prosecution's JCE allegations.

16. The Interim Pre-Trial Brief, for example, is a mechanism for providing Karadžić with additional details about the JCE members and persons used by them. As the Presiding Judge stated when he ordered the Prosecution to file the Brief, it is a procedure specifically designed to amplify the Prosecution's approach to the trial at the earliest opportunity.¹⁵ This enables the Karadžić to undertake the necessary investigations to prepare his case. More information will be given to Karadžić on 18 May 2009 when the Prosecution's final Pre-Trial Brief is filed. Further information about the evidentiary basis underpinning the JCE allegations is being provided to Karadžić on a continuous basis by way of pre-trial disclosure.

17. If, notwithstanding the pre-trial disclosure and Rule 65ter materials, Karadžić would like additional information, he can ask the Prosecution for further particulars of the crimes charged against him. The case-law of the Tribunal recognises that, even

¹³ Indictment, para.27.

¹⁴ *E.g. Prosecutor v Pavković et al*, Case No. IT-03-70-PT, Decision on Vladimir Lazarević's Preliminary Motion on Form of Indictment, 8 July 2005, para.26. *See generally, Prosecutor v Gotovina et al*, Case No. IT-06-90-AR73.3, Decision on Joint Defence Interlocutory Appeal against Trial Chamber's Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims, 26 January 2009, para.18.

when an indictment is not defective, it may be appropriate for an accused to request further particulars to assist in the preparation of his defence and to “avoid prejudicial surprise”.¹⁶ The case-law also sets out the requisite procedure for making such a request.¹⁷

IV. CONCLUSION

18. For the reasons given above, the Motion should be dismissed.

Word Count: 1,998



Alan Tieger
Senior Trial Attorney

Dated this 3rd day of April 2009
At The Hague, The Netherlands

¹⁵ T.119, 120,122 (20/2/09).

¹⁶ *Martinović* Indictment Decision, para.17; *Prosecutor v. Delalić et al*, Case No. IT-96-21-T, Decision on the Accused Mucić’s Motion for Particulars, 26 June 1996 (*Delalić* Particulars Decision), paras.7-9.

¹⁷ *Martinović* Indictment Decision, para.17; *Delalić* Particulars Decision, paras.7-9; *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Defence Motion on the Form of the Indictment, 14 November 1995, para.8; *Prosecutor v. Delalić et al*, Case No.IT-96-21-T, Decision on Motion by the Accused Zejnil Delalić Based on Defects in the Forms of the Indictment, 2 October 1996, para.21.