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UNITED
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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

Case No.: IT-95-5/18-T

Date: 30 September 2014

Original: English

**IN THE TRIAL CHAMBER**

**Before:** **Judge O-Gon Kwon, Presiding Judge**
**Judge Howard Morrison**
**Judge Melville Baird**
**Judge Flavia Lattanzi, Reserve Judge**

**Registrar:** **Mr. John Hocking**

**Decision of:** **30 September 2014**

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

*PUBLIC*

# DECISION ON ACCUSED'S MOTION FOR RELIEF FROM DEFECTS IN THE INDICTMENT

**Office of the Prosecutor**

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

**The Accused**

Mr. Radovan Karadžić

**Standby Counsel**

Mr. Richard Harvey

**THIS TRIAL CHAMBER** of the 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 ("Tribunal") is seised of the Accused's "Motion for Relief from Defects in the Indictment", filed on 28 August 2014 ("Motion"), and hereby issues its decision thereon.

## I. Background and Submissions

1. In March 2009, during the pre-trial phase of this case, the Accused filed two motions challenging the Third Amended Indictment ("Indictment")[1] and six motions challenging the jurisdiction of the Tribunal to try him.[2] With respect to the six motions arguing lack of jurisdiction, the Chamber in its "Decision on Six Preliminary Motions Challenging Jurisdiction", issued on 28 April 2009 ("Decision"), decided that they were in fact alleging defects in the Indictment and proceeded to dispose of them on that basis.[3]

2. One of the challenges the Accused mounted at that time related to Count 3 (persecution), where he argued, *inter alia*, that paragraph 60(k) of the Indictment lacked specificity thus making it impossible for him to prepare a defence.[4] The Chamber dismissed this claim, holding that in light of the large scale and long duration of the alleged persecutory campaign, the Accused's high ranking position, and the fact that he is not alleged to be a physical perpetrator, the Office of the Prosecutor ("Prosecution") had, in all the circumstances of the case, given adequate notice to the Accused of the case he had to meet. It also held that the acts listed in paragraph 60(k), together with the indication elsewhere in the Indictment that persecutions occurred within the listed municipalities and during the Indictment period, were sufficient to inform the Accused of the charges against him.[5]

3. In the Motion, the Accused submits that in the course of preparing his final trial brief, he "determined that parts of the Third Amended Indictment are vague and defective and failed to

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[1] *See* Preliminary Motion Alleging Defect in Form of Indictment – Multiple Joint Criminal Enterprises, 19 March 2009; Preliminary Motion Alleging Defect in Form of the Indictment – Joint Criminal Enterprise Members and Non-Member Participants, 20 March 2009.

[2] *See* Preliminary Motion to Dismiss Paragraph 60(k) for Lack of Jurisdiction, 10 March 2009 ("Motion to Dismiss Paragraph 60(k)"); Preliminary Motion to Dismiss Joint Criminal Enterprise III – Foreseeability, 16 March 2009; Preliminary Motion to Dismiss Count 11 for Lack of Jurisdiction, 18 March 2009; Preliminary Motion on Lack of Jurisdiction concerning Omission Liability, 25 March 2009; Preliminary Motion to Dismiss JCE III – Special-Intent Crimes, 30 March 2009; and Preliminary Motion on Lack of Jurisdiction: Superior Responsibility, 30 March 2009.

[3] Decision, paras. 27–33.

[4] *See* Motion to Dismiss Paragraph 60(k), para. 6.

[5] Decision, para. 44.

properly inform him of the nature and scope of the charges against him".[6] Accordingly, he moves, pursuant to Rule 73 of the Tribunal's Rules of Procedure and Evidence ("Rules"), for an order precluding consideration of those allegations by the Trial Chamber in its deliberations or, in the alternative, that the Indictment be amended and that he be allowed to re-open his case to defend against the newly specified allegations.[7] The Accused also explains that the defects he alleges have become apparent as a result of evidence offered by the Prosecution during the trial and therefore were not included in the preliminary motions to dismiss for defects on the face of the Indictment which he filed in 2009.[8]

4. Turning to the alleged defects, in relation to Count 1 (genocide) the Accused submits that the Indictment is defective as it fails to state the material facts underpinning the allegation that he had a genocidal intent.[9] Further, the Indictment outlines the alleged *mens rea* only with respect to the joint criminal enterprise underpinning Count 1, and does not allege his *mens rea* for any other forms of liability, nor does it provide any material facts that purport to demonstrate that *mens rea*.[10] Accordingly, he claims that the Prosecution has failed to put him on notice of the material facts it intended to prove to establish genocide and that he was prejudiced as a result.[11] With respect to Count 2 (genocide in Srebrenica), the Accused argues that the Indictment fails to allege "many of the material facts" concerning his contribution to and knowledge of the alleged genocide in Srebrenica.[12] He also claims that the Prosecution does not outline any material facts by which he is believed to have instigated, planned, ordered, aided and abetted, and committed genocide.[13]

5. In relation to Count 3 (persecutions), the Accused submits that the fact that persecution is a so-called "umbrella" crime does not mean that the Indictment should not specifically plead the material facts with the same detail as for other crimes.[14] According to him, Count 3 includes

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[6] Motion, para. 1.

[7] Motion, paras. 1, 37.

[8] Motion, footnote 2.

[9] Motion, para. 3.

[10] Motion, paras. 3–4.

[11] Motion, paras. 5–7. The Accused argues that he was prejudiced because during Rule 98 *bis* proceedings the Prosecution used the evidence of witnesses Herbert Okun and Milan Lesić, as well as the video footage of one of the Accused's speeches, to show that he possessed genocidal intent. However, according to the Accused, the Prosecution never pleaded this evidence in the Indictment. Motion, paras. 7–9.

[12] Motion, para. 10.

[13] Motion, paras. 11–17. With respect to commission, the Accused submits that the Indictment makes no mention of the ways in which he significantly contributed to the joint criminal enterprise alleged in relation to Count 2. Motion, para. 17.

[14] Motion, paras. 18–19.

a "laundry list of acts of persecution for which no material facts whatsoever are alleged", including dates, locations, or identification of victims and perpetrators.[15]

6. With respect to Count 4 (extermination), the Accused notes that it is "lumped together with Counts Five and Six, which charge murder", and with underlying acts described in Schedules A, B, C, and E to the Indictment.[16] Thus, the Accused claims, since there is no clear-cut numerical threshold for extermination, the Indictment "completely fails to inform" him which of the incidents in those schedules are charged as extermination.[17] As for Counts 5 and 6 (both murder), the Accused argues that Schedules A, B, E, F, and G, which list 124 killing incidents, do not include any information as to the identity of the perpetrators. Instead, those perpetrators are described using only "generic descriptions" such as "members of the Serb [F]orces and Bosnian Serb Political and Governmental Organs", which include tens of thousands of individuals and thus fail to provide adequate notice to him.[18]

7. In relation to Count 7 (deportation), the Accused notes that it is "lumped together" with Count 8 (forcible transfer), the result of which is that the Indictment fails to identify any incidents where victims were displaced across a border.[19] As for Count 8, the Accused claims that the schedules to the Indictment do not specify the location from which or to which forcible transfers took place as a result of which he did not have adequate notice of the specific incidents of forcible transfer.[20] In addition, he claims that the Indictment fails to charge forcible transfer of the column of men who left Srebrenica in July 1995 and thus cannot be a basis for a conviction.[21]

8. With respect to Counts 9 (terror) and 10 (unlawful attacks on civilians), the Accused notes that they allege attacks on civilians in Sarajevo which were indiscriminate and disproportionate and the specific instances of which are listed in Schedules F and G as "illustrative examples". According to the Accused, he cannot be convicted "based upon generalised notions of indiscriminate and disproportionate attacks" and argues that incidents not specified in the Indictment cannot be the basis for a conviction.[22]

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[15] Motion, paras. 19–21.
[16] Motion, para. 22.
[17] Motion, para. 23.
[18] Motion, paras. 24–25.
[19] Motion, para. 26.
[20] Motion, paras. 27–28.
[21] Motion, para. 29.
[22] Motion, paras. 30–32.

9. Finally, with respect to Count 11 (taking of hostages), the Accused argues that the Indictment fails to plead the threats made against hostages even though those are material facts that must be pleaded.[23]

10. On 11 September 2014, the Prosecution filed the "Prosecution Response to Motion for Relief from Defects in the Indictment" ("Response"), in which it argues that the Accused's late challenge to the Indictment should be dismissed.[24] The Prosecution submits that the Accused has waited until a late stage in the proceedings to file the Motion even though the alleged defects should have been apparent to him on the face of the Indictment. Accordingly, he now bears the burden of demonstrating that those alleged defects caused him prejudice.[25] However, according to the Prosecution, the Accused argues prejudice only in relation to the alleged defects in Count 1, and thus the Motion should be summarily dismissed on that basis alone.[26]

11. As for specific arguments relating to Count 1, the Prosecution notes that the Indictment does plead the *mens rea* for other forms of liability under Count 1[27] and that the Accused was in any event not prejudiced because the evidence he cites to in order to show the alleged prejudice arose well before he started his defence case.[28] The Prosecution also claims that the Accused incorrectly asserts that the Indictment fails to allege relevant conduct for superior responsibility in relation to Count 2 and that it makes no mention of his contribution to the joint criminal enterprise relevant to that Count.[29] He makes the same incorrect assertion in relation to Count 8 and the forcible transfer of the column of men who left Srebrenica.[30]

12. With respect to Count 3, the Prosecution contends that the Accused simply repeats the same arguments he made in pre-trial, without asking for reconsideration of the Decision cited above in paragraph 2.[31] In addition, according to the Prosecution, while the ruling in the Decision concerned Count 3, it applies equally to Counts 1, 2, 5, 6, 8, and 11 as it acknowledges that the Indictment is broad in scope and concerned with an accused who is not a physical perpetrator, thus requiring a lesser degree of specificity.[32] Therefore, according to the Prosecution, the Accused's submissions in relation to Counts 1, 2, 3, 5, 6, 8, and 11 confuse

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[23] Motion, paras. 33–36.

[24] Response, para. 1.

[25] Response, para. 2.

[26] Response, paras. 3–4.

[27] Response, para. 3, citing paras. 14 and 31 of the Indictment.

[28] Response, para. 3. According to the Prosecution, the Accused mounted a detailed defence to Count 1 and to all the other charges as illustrated by his final trial brief, demonstrating that he had ample notice in relation to all of them. Response, para. 4, footnote 6.

[29] Response, footnote 4, relying on paras. 14, 24, and 32–34 of the Indictment.

[30] Response, footnote 4, relying on para. 68 of the Indictment.

[31] Response, paras. 5, 7.

material facts—which the Prosecution has pleaded—with the evidence it has led in support of those material facts.[33]

13. As for Count 4, the Prosecution submits that the Accused fails to show that any alleged vagueness in the Indictment has caused him prejudice because his defence—denial of liability for each killing—is equally applicable to both murder and extermination.[34] With respect to Count 7, the Prosecution notes that the only factor that distinguishes it from Count 8 is whether the victims crossed the border or not and that the Accused has mounted defences to deportation where evidence showed that victims crossed the border and to forcible transfer where it showed that they did not. Thus, he fails to show how any prejudice was caused to him.[35] Finally, with respect to Counts 9 and 10, the Prosecution submits that the Accused erroneously conflates "unscheduled" incidents with "uncharged incidents" and that the Indictment puts him on notice that he has been charged with terror and unlawful attacks in Sarajevo between April 1992 and November 1995.[36]

## **<u>II. Applicable Law</u>**

14. Article 18(4) of the Tribunal's Statute ("Statute") provides that the Prosecution shall prepare an indictment "containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute". According to Article 21(4)(a) of the Statute, the accused shall be informed promptly and in detail of the nature and cause of the charge against him. Finally, Rule 47 of the Rules provides, in paragraph (C), that the indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged. The Appeals Chamber has repeatedly held that the Prosecution's obligation under Article 18(4) of the Statute and Rule 47(C) of the Rules to set out in the indictment a concise statement of the facts of the case and the crimes charged, must be interpreted in conjunction with the rights of the accused set out in Article 21(2) and Article 21(4)(a) and (b) of the Statute.[37] Thus, the principal function of the indictment is to

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[32] Response, paras. 6, 8.

[33] Response, para. 9.

[34] Response, para. 10.

[35] Response, paras. 11–12.

[36] Response, para. 13.

[37] *See*, *e.g.*, *Prosecutor v. Naletilić et al.*, Case No. IT-98-34-A, Judgement, 3 May 2006 ("*Naletilić* Appeal Judgement"), para. 23; *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005, ("*Kvočka* Appeal Judgement"), para. 27; *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaškić* Appeal Judgement"), para. 209; *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Judgement, 23 October 2001 ("*Kupreškić* Appeal Judgement"), para. 88.

notify the accused in a summary manner of the nature of the crimes for which he is charged and to present the factual basis for those accusations.[38]

15. The Prosecution is under an obligation to plead the material facts underpinning the charges in the indictment.[39] Whether a particular fact is a material one depends on the nature of the Prosecution's case. The decisive factor for the degree of specificity with which the Prosecution is required to plead material facts is the nature and scale of the alleged criminal conduct charged, including the proximity of the accused to the relevant events.[40] No conviction against the accused can be entered on the basis of material facts omitted from the indictment or pleaded with insufficient specificity, unless the Prosecution has cured the defect in the indictment by provision to the accused of "timely, clear and consistent information detailing the factual basis underpinning the charges against him or her".[41]

16. When the defence is of the view that the Prosecution has introduced evidence of material facts of which it had no notice, it can object to the admission of such evidence for lack of notice.[42] If the Trial Chamber then agrees with the objection made, it should exclude the challenged evidence in relation to the unpleaded material facts, require the Prosecution to amend the indictment, grant an adjournment to allow the defence adequate time to respond to the additional allegations, or take other measures to preserve the rights of the accused to a fair trial.[43]

17. In terms of the timeliness of the challenges to indictments, Rules 72 and 73 of the Rules provide, in relevant parts, as follows:

**Rule 72**
**Preliminary Motions**

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[38] *Prosecutor v. Blaškić*, Case No IT-95-14, Decision on the Defence Motion to Dismiss the Indictment Based upon Defects in the Form Thereof (Vagueness/Lack of Adequate Notice of Charges), 4 April 1997, para. 10; *Prosecutor v. Krnojelac*, Case No. IT-97-25-PT, Decision on Preliminary Motion on Form of Amended Indictment, 11 February 2000, para. 17; *Prosecutor v Brđanin*, Case No IT-99-36-PT, Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001, para. 18.

[39] *Prosecutor v. Hadžihasanović*, Case No. IT-01-47-PT, Decision on Form of Indictment, 7 December 2001, para. 12; *Kupreškić* Appeal Judgement, para. 88.

[40] *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; *Naletilić* Appeal Judgement, para. 24; *Kvočka* Appeal Judgement, para. 28; *Blaškić* Appeal Judgement, para. 210, *Kupreškić* Appeal Judgement, para. 89; *Prosecutor v Deronjić,* Case No. IT-02-61-PT, Decision on Form of the Indictment, 25 October 2002, para. 5.

[41] *Kupreškić* Appeal Judgement, para. 114; *Kvočka* Appeal Judgement, para. 33; *Naletilić* Appeal Judgement, para. 26; *Prosecutor v. Bagosora et al.*, Case No ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006 ("*Bagosora* Decision"), para. 17.

[42] *Bagosora* Decision, para. 18.

[43] *Bagosora* Decision, para. 18. *See also Naletilić* Appeal Judgement, para. 25; *Kvočka* Appeal Judgement, para. 31; *Kupreškić* Appeal Judgement, para. 92.

> (A) Preliminary motions, being motions which
>
> (ii) allege defects in the form of the indictment;
> […]
> shall be in writing and be brought not later than thirty days after disclosure by the Prosecutor to the defence of all material and statements referred to in Rule 66(A)(i) and shall be disposed of not later than sixty days after they were filed and before the commencement of the opening statements provided for in Rule 84. […]

**Rule 73**
**Other Motions**

> (A) After a case is assigned to a Trial Chamber, either party may at any time move before the Chamber by way of motion, not being a preliminary motion, for appropriate ruling or relief. Such motions may be written or oral, at the discretion of the Trial Chamber.

18. The Appeals Chamber has also held that defence objections to the Indictment based on lack of notice should be timely in that they should be raised either at the pre-trial stage (in a motion challenging the indictment) or at the time the evidence of a new material fact is introduced.[44] When an objection based on lack of notice is raised at trial but after the evidence of a new material fact was adduced, the Trial Chamber should determine whether the objection was so untimely as to consider that the burden of proof on whether the accused's ability to defend himself has been materially impaired has shifted to the defence.[45] In doing so, the Trial Chamber should take into account factors such as whether the defence has provided a reasonable explanation for its failure to raise its objection at the time the evidence was introduced and whether the defence has shown that the objection was raised as soon as possible thereafter.[46]

## III. Discussion

19. As noted above, the Appeals Chamber has held that if challenges alleging defects to the Indictment and lack of notice are not timely, the burden will shift to the Accused, who will have to show that his ability to defend himself has been materially impaired due to those alleged defects.[47] Accordingly, the Chamber must first examine the timeliness of the Motion before it can rule on its substance.

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[44] *Bagosora* Decision, para. 46.
[45] *Bagosora* Decision, para. 45.
[46] *Bagosora* Decision, para. 45.
[47] *See supra* para. 18.

## (A) Timeliness of the Motion

20. The present Motion was filed very late in the proceedings, a few days shy of the closing arguments in the case, and thus pursuant to Rule 73 of the Rules rather than Rule 72. In the Motion, the Accused addresses the issue of timeliness, but only in passing and in a footnote, submitting that he could not have filed the Motion during pre-trial because the defects alleged therein became apparent to him only as a result of the evidence offered by the Prosecution during trial.[48] However, barring his submissions on Count 1, the Accused does not point to any such evidence or any new material facts led by the Prosecution which would have prevented him from filing the Motion during pre-trial and/or would have impaired his ability to defend himself. Indeed, the defects he alleges in relation to Counts 2 to 11 of the Indictment do not seem to be related to any evidence led by the Prosecution and are of such nature that they could and should have become apparent to him already back in pre-trial when he filed his motions challenging the Indictment.[49]

21. As for Count 1, the Accused refers to certain Prosecution evidence which he claims was led without having been pleaded in the Indictment as material facts and thus caused him prejudice.[50] However, he fails to explain why he did not raise these issues both at the time the evidence was led and also, later, after the Prosecution outlined its case during the Rule 98 *bis* proceedings.[51] Instead, he waited not only for the defence case to come to an end but for months after that before he filed the present challenge to Count 1 of the Indictment.

22. Accordingly, based on all the reasons above, the Chamber considers that the Motion, together with all its challenges, is untimely and that the Accused has failed to provide a reasonable explanation for his failure to raise these challenges either in pre-trial or at the time the evidence was introduced, or as soon as possible thereafter. Accordingly, the Accused must now bear the burden of demonstrating that the alleged defects materially impaired his ability to defend himself.

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[48] Motion, footnote 2. In addition, at no point does the Accused address the issue of why he did not raise the present challenges at any point after the relevant evidence was led by the Prosecution or even during his defence case.

[49] For example, the Accused's argument that Counts 4, 5, and 6 have been "lumped together" in the Indictment, thus introducing lack of clarity and providing inadequate notice with respect to charges of extermination under Count 4, could have been made during pre-trial. Furthermore, in relation to Count 3, the Accused simply repeats the same arguments he has already made in pre-trial and which were dismissed by the Chamber in the Decision. *See* Decision, paras. 4, 9, 44.

[50] *See* Motion, paras. 7–9.

**(B) Alleged Defects in the Indictment**

23. As correctly pointed out by the Prosecution, with respect to Counts 2 to 11, the Accused makes no attempt to show how the alleged defects in fact materially impaired his ability to defend himself or caused him any prejudice, despite the fact that the burden to do so lies with him. Instead, with respect to each challenge, he simply explains why in his view the Indictment is defective on its face. He then proceeds to ignore his entire defence case, including the question of how, if at all, those alleged defects impacted on it.

24. However, the Chamber notes that the Accused has mounted a large defence case, calling over 240 witnesses and tendering thousands of exhibits. He was able to do so despite now challenging each and every Count in the Indictment on the basis that he lacked notice of the allegations against him. Further, as illustrated by his final trial brief, the Accused has in fact led evidence on the very issues he claims he had no notice of, thus mounting specific defences to the relevant charges.[52] Accordingly, given the Accused's failure to discharge his burden in relation to Counts 2 to 11 and given the expansive nature of the Accused's defence case, the Chamber does not consider that his ability to defend himself has been materially impaired.

25. In any event, in light of the Appeals Chamber's jurisprudence that a high degree of specificity is not required for indictments in cases such as this one, where the crime base is of a large scale and long duration and where the Accused is a high ranking politician who is not alleged to be a physical perpetrator or proximate to many of the events alleged,[53] the Chamber is of the view that the Indictment is not defective and that Counts 2 to 11 have been pleaded with sufficient specificity.

26. As for Count 1, the Accused argues that it is defective as it does not plead material facts related to his alleged intent to commit genocide. He then points to what he claims were material facts that should have been pleaded in the Indictment, namely: (i) the evidence of Herbert Okun about the Accused's statements that the Serbs had been the victims of genocide in World War II which the Accused is said to have used to exhort his followers to commit genocide, (ii) the evidence of Milan Lesić about Ratko Mladić's genocidal intent, which was then used to show that the Accused selected a military commander who shared his genocidal intent, and (iii) the

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[51] While Count 1 was not part of the Indictment in the period after the Trial Chamber issued its Rule 98 *bis* decision on 28 June 2012 and until Count 1 was reinstated in the Indictment by the Appeals Chamber on 11 July 2013, the Accused could have nevertheless raised these issues soon thereafter.

[52] *See, e.g.,* Defence Final Trial Brief, filed confidentially on 29 August 2014, paras. 1377–1814 (Counts 3, 4, 5, 6, and 8), paras. 2772–2784 (Count 3), paras. 2785–2796 (Count 4), paras. 2797–2961 (Counts 5, 6, 7, and 8), para. 2801 (Count 7), paras. 3001–3302 (Count 2), paras. 2402–2448, 3308–3350 (Count 8, forcible transfers relating to Srebrenica), paras. 1904–2395 (Counts 9 and 10), paras. 2725–2726, 3353–3373 (Count 11).

[53] *See Naletilić* Appeal Judgement, para. 24.

speeches and telephone conversations in which the Accused allegedly expressed his genocidal intent. He also claims that when these material facts were elicited he was not on notice that they would be used to show his genocidal intent.[54]

27. The Chamber first notes that contrary to the Accused's submission, the Indictment does plead with sufficient specificity his *mens rea* in relation to Count 1, through all forms of liability, and that it also specifies the material facts by which that *mens rea* will be shown.[55] Those material facts include the alleged dissemination of propaganda to Bosnian Serbs intended to engender fear in Bosnian Serbs including that they were in jeopardy of genocide,[56] and the Accused's alleged participation in the establishment of the Bosnian Serb army through which the objective of the joint criminal enterprise (which included genocide) was implemented.[57] Moreover, even if there were defects of this kind in the Indictment, the Chamber notes that already in 2009, in its pre-trial brief and its opening statement, the Prosecution explained how it would prove the Accused's genocidal intent. It did so by referring to the Accused's speeches and conversations, the Accused's tendency to refer to World War II and genocide committed against the Serbs, and the evidence that other alleged members of the joint criminal enterprise, whom he selected, allegedly shared his genocidal intent.[58] Accordingly, as far as Count 1 and the alleged genocidal intent is concerned, the Chamber considers that the Indictment is not defective and that the Accused was on notice of both the material facts and the evidence to be used to prove those facts already in 2009.

28. For all the reasons above, the Chamber is of the view that the Motion should be dismissed.

[54] *See* Motion, paras. 7–9.

[55] Indictment, paras. 9–10, 14, 30–31.

[56] Indictment, para. 14(c).

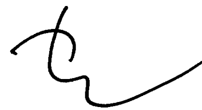
[57] Indictment, para. 14(b).

[58] Prosecution's Submission Pursuant to Rule 65 *ter* (E)(i)–(iii), 18 May 2009, paras. 16, 18, 22–23, 27–31. *See also* T. 513–514, 518, 531–532, 557 (27 October 2009).

## IV. Disposition

29. Accordingly, the Trial Chamber, pursuant to Articles 18 and 24 of the Statute and Rule 54 of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this thirtieth day of September 2014
At The Hague
The Netherlands

**[Seal of the Tribunal]**