

**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-04-75-PT
Date: 10 November 2011
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 10 November 2011

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON DEFENCE MOTION ALLEGING DEFECTS IN
FORM OF FIRST AMENDED INDICTMENT**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for the accused:

Mr. Zoran Živanović

1. **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 a “Defence Motion on Behalf of Goran Hadžić Alleging Defects in the Form of the First Amended Indictment”, filed on 7 October 2011 (“Motion”).

A. Background

2. In the Motion, Hadžić argues that the indictment is vague in respect of the allegations that he is individually criminally responsible for crimes pursuant to Articles 7(1) and 7(3) of the Statute of the Tribunal (“Statute”),¹ in respect of the allegation that he significantly contributed to a joint criminal enterprise to remove non-Serbs from large areas of Croatia by means of his participation in international meetings and negotiations,² and in respect of other acts through which he is said to be criminally responsible.³ Hadžić requests the Chamber to order the Prosecution to make the necessary changes to the indictment or, in the alternative, to remove the allegations that remain insufficiently particularised and file a further amendment indictment.⁴

3. In its Response, the Prosecution requests that the Motion be dismissed.⁵ The Prosecution submits that Hadžić’s arguments do not concern the material facts that must be pleaded, but instead raise evidentiary issues and challenges to the application of the law, which are matters that will be addressed during trial.⁶ The Prosecution avers that the indictment sets out the material facts with sufficient detail to inform Hadžić of the charges against him so that he can prepare a defence.⁷ The Prosecution points out that the Tribunal’s jurisprudence distinguishes between material facts in an indictment and the evidence by which those material facts are to be proved at trial.⁸ Material facts depend upon the nature of the case, the scale of the crimes, and the proximity of the accused to the events charged.⁹ The Prosecution states that the indictment alleges crimes committed on a large scale and is sufficiently focused and detailed with respect to Hadžić’s acts and *mens rea*.¹⁰ Consistent with the Tribunal’s practice, evidence supporting these material facts will be provided to

¹ Motion, paras 10-34.

² Motion, para. 35.

³ Motion, paras 36-42.

⁴ Motion, para. 43.

⁵ Prosecution Response to Defence Motion on Behalf of Goran Hadzic Alleging Defects in the Form of the First Amended Indictment, 21 October 2011 (“Response”), paras 1, 21.

⁶ Response, para. 1.

⁷ Response, para. 1.

⁸ Response, para. 2.

⁹ Response, para. 2.

¹⁰ Response, para. 3.

Hadžić through the procedures set out in the Statute and the Rules of Procedure and Evidence of the Tribunal (“Rules”).¹¹

4. In his Reply to the Response, Hadžić takes issue with the Prosecution’s characterisation of many of his arguments as relating not to defects in the form of the indictment, but rather to evidentiary issues that are to be left to trial.¹² He avers that the Prosecution’s Response augments the confusion of the indictment in relation to the identification of members of the joint criminal enterprise.¹³ Finally, he contests specific arguments of the Prosecution in relation to the identification of members of the “Serb Forces”, the JNA, the TO, and the police and volunteer units over which it is said that he had superior responsibility.¹⁴

B. Applicable Law

5. The form of an indictment is governed by Articles 18 and 21 of the Statute and Rule 47(C) of the Rules.¹⁵ Pursuant to Article 18(4) of the Statute, the indictment must set out a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. Article 21(2) of the Statute provides that, in the determination of charges against him, the accused shall be entitled to a fair hearing. Article 21(4)(a) and (b) of the Statute provides that the accused shall be entitled to the following minimum guarantees, in full equality: to be informed promptly and in detail in a language he understands of the nature and cause of the charge against him and to have adequate time and facilities for the preparation of his defence. Rule 47(C) of the Rules provides 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.

6. The Prosecution therefore has an obligation to plead in the indictment the material facts underpinning the charges.¹⁶ The pleadings in an indictment will be sufficiently particular when they concisely set out the material facts of the Prosecution case with enough detail to inform an accused clearly of the nature and cause of the charges against him, enabling the accused to prepare a defence.¹⁷ The Prosecution is not required to plead the evidence by which it intends to prove the

¹¹ Response, para. 3.

¹² Defence Motion Seeking Permission to Reply and Reply to the Prosecution’s Response to Defence Motion on Behalf of Goran Hadžić Alleging Defects in the Form of the First Amended Indictment, 25 October 2011 (“Reply”), paras 6-11.

¹³ Reply, paras 12-13.

¹⁴ Reply, paras 6-11, 15-16.

¹⁵ *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Judgement, 23 October 2001 (“*Kupreškić* Appeal Judgement”), para. 88.

¹⁶ *Kupreškić* Appeal Judgement, para. 88; *Prosecutor v. Hadžihasanović et al.*, Case No. IT-01-47-PT, Decision on Form of Indictment, 7 December 2001 (“*Hadžihasanović* Indictment Decision”), para. 8.

¹⁷ See *Kupreškić* Appeal Judgement, para. 88.

material facts.¹⁸ The materiality of a particular fact is dependent upon the nature of the Prosecution case.¹⁹

7. If the indictment, as the primary accusatory instrument, fails to plead with sufficient specification the material aspects of the Prosecution case, it suffers from a material defect.²⁰ In applying that principle to challenges to indictments based upon vagueness, the ICTY and ICTR Appeals Chambers have taken a strict approach to the degree of specification of material facts that should be pleaded in an indictment and have applied that approach to the averment of the acts and conduct of the accused upon which the Prosecution will rely to prove his criminal responsibility. In *Prosecutor v. Kvočka et al.*, the Appeals Chamber took the view that whether a fact is material depends upon the proximity of the accused person to the events for which that person is alleged to be criminally responsible. It stated that, “[a]s the proximity of the accused person to those events becomes more distant, less precision is required in relation to those particular details, and greater emphasis is placed upon the conduct of the accused person himself upon which the Prosecution relies to establish his responsibility as an accessory or a superior to the persons who personally committed the acts giving rise to the charges against him.”²¹

8. Where the charge is of individual criminal responsibility under Article 7(1) of the Statute, the material facts to be pleaded will vary according to the particular form of Article 7(1) averred.²² Where the accused is alleged to have committed the crimes in question by participating in a joint criminal enterprise, the existence of the enterprise is a material fact that must be pleaded.²³ In addition, the indictment must specify a number of matters, which were identified by the Trial Chamber in *Prosecutor v. Krnojelac* as follows: (a) “the nature or purpose of the joint criminal enterprise”; (b) “the time at which or the period over which the enterprise is said to have existed”; (c) “the identity of those engaged in the enterprise—so far as their identity is known, but at least by reference to their category as a group”; and (d) “the nature of the participation by the accused in

¹⁸ *Ibid.*

¹⁹ *Kupreškić* Appeal Judgement, para. 89.

²⁰ *Kupreškić* Appeal Judgement, para. 114.

²¹ *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005 (“*Kvočka et al.* Appeal Judgement”), para. 65, citing *Prosecutor v. Galić*, Case No. IT-98-29-AR72, Decision on Application by Defence for Leave to Appeal, 30 November 2001 (“*Galić* Decision on Leave to Appeal”), para. 15.

²² See, e.g., *Kupreškić* Appeal Judgement, para. 89 (holding that, in a case where the Prosecution alleges that an accused personally committed the criminal acts, the material facts, such as the identity of the victim, the time and place of the events, and the means by which the acts were committed, have to be pleaded in detail); *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 (“*Brdanin and Talić* 26 June 2001 Decision”), paras 21-49 (discussing the material facts that have to be pleaded for joint criminal enterprise liability); *Blaškić* Appeal Judgement, para. 213 (holding that, “where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, then the Prosecution is required to identify the ‘particular acts’ or ‘the particular course of conduct’ on the part of the accused which forms the basis for the charges in question”).

²³ *Kvočka et al.* Appeal Judgement, para. 42.

that enterprise.”²⁴ Moreover, “[w]here any of these matters is to be established by inference, the Prosecution must identify in the indictment the facts and circumstances from which the inference is sought to be drawn.”²⁵

9. As far as responsibility pursuant to Article 7(3) of the Statute is concerned, the Appeals Chamber held in the *Blaškić* case the following:

218. In accordance with the jurisprudence of the International Tribunal, the Appeals Chamber considers that in a case where superior criminal responsibility pursuant to Article 7(3) of the Statute is alleged, the material facts which must be pleaded in the indictment are:

(a) (i) that the accused is the superior of (ii) subordinates sufficiently identified, (iii) over whom he had effective control—in the sense of a material ability to prevent or punish criminal conduct—and (iv) for whose acts he is alleged to be responsible;

(b) the conduct of the accused by which he may be found to (i) have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates, and (ii) the related conduct of those others for whom he is alleged to be responsible. The facts relevant to the acts of those others for whose acts the accused is alleged to be responsible as a superior, although the Prosecution remains obliged to give all the particulars which it is able to give, will usually be stated with less precision, because the detail of those acts are often unknown, and because the acts themselves are often not very much in issue; and

(c) the conduct of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.²⁶

10. With respect to the identity of perpetrators for whose acts an accused is charged without being charged of committing the crimes personally, it is sufficient to identify perpetrators by category or group.²⁷

11. Whether the identity of the alleged victims, as well as the place and approximate date of the alleged criminal acts, are “material” depends upon the nature of the Prosecution case and is to be determined on a case-by-case basis, considering, *inter alia*, (a) whether the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity and (b) the proximity of the accused to the alleged events.²⁸

²⁴ *Prosecutor v. Krnojelac*, Case No. IT-97-25-PT, Decision on Form of Second Amended Indictment, 11 May 2000 (“*Krnojelac* Decision on Form of Second Amended Indictment”), para. 16.

²⁵ *Ibid.*

²⁶ *Blaškić* Appeal Judgement, para. 218 (footnotes omitted).

²⁷ *Prosecutor v. Mladić*, Case No. IT-05-88-PT, Decision on Defence Preliminary Motion Objecting to the Form of the Second Amended Indictment, 13 October 2011, para. 4, citing *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006 (“*Popović* Decision on Motions Challenging Indictment”), para. 40; *Brdanin and Talić* 26 June 2001 Decision, para. 59; *Prosecutor v. Krnojelac*, Case No. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999 (“*Krnojelac* 24 February 1999 Decision”), para. 46.

²⁸ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on Six Preliminary Motions Challenging Jurisdiction, 28 April 2009, para. 36, citing *Prosecutor v. Gotovina*, Case No. IT-06-90-AR73.3, Decision on Joint Defence

12. In light of the foregoing legal principles, the Trial Chamber will now turn to the specific, alleged defects in the indictment raised by Hadžić in his Motion.

C. Discussion

1. Alleged defects regarding Article 7(1) responsibility

(a) Membership of the joint criminal enterprise

13. Hadžić argues that the indictment does not properly put him on notice of the persons who are alleged to have been members of the joint criminal enterprise, of which he is said to have been a member. He argues that the named members of the joint criminal enterprise in paragraph 10 are alleged to have been members of the category of persons belonging to the “Serb Forces” in paragraph 11 of the indictment and that this causes ambiguity.²⁹

14. The Prosecution responds that Hadžić mischaracterises the indictment in claiming that the term “Serb Forces” in paragraph 11 of the indictment includes the named members of the joint criminal enterprise in paragraph 10 of the indictment.³⁰ The Prosecution explains that the indictment does not state that all the members of the joint criminal enterprise in paragraph 10 were part of the “Serb Forces”, but rather that, in addition to the individuals identified in paragraph 10, the joint criminal enterprise included “others referred to collectively as Serb Forces” and, in the alternative, that some or all of the individuals described in paragraph 11 were used as tools by the members of the joint criminal enterprise.³¹

15. In reply, Hadžić argues that the Prosecution’s Response adds additional confusion to the indictment in respect of the identification of the members of the joint criminal enterprise.³²

16. The Chamber recalls that paragraph 10 of the indictment sets out a list of the named members of the joint criminal enterprise, namely, Slobodan Milošević, Milan Martić, Milan Babić, Jovica Stanišić, Franko Simatović, Vojislav Šešelj, Radovan Stojičić, Veljko Kadijević, Blagoje Adžić, Radmilo Bogdanović, Mihalj Kertes, and Željko Ražnatović. Paragraph 11 alleges that *other members* of the joint criminal enterprise included political leaders of the (Socialist) Federal Republic of Yugoslavia and the Republic of Serbia, members of the Croatian Serb and Bosnian

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; *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-A, Judgement, 3 May 2006, para. 24; *Blaškić* Appeal Judgement, para. 210; *Kupreškić* Appeal Judgement, paras 89-90.

²⁹ Motion, paras 11-13.

³⁰ Response, para. 8.

³¹ Response, para. 8.

³² Reply, paras 12-13.

Serb leadership, and others referred to collectively as “Serb Forces”. The indictment then, in seven sub-paragraphs, describes the specific forces that constituted “Serb Forces”. In paragraph 12 of the indictment, the Prosecution alleges that the members of the joint criminal enterprise implemented the objective of the enterprise by personally committing the crimes or, alternatively, that some or all of the individuals described in paragraph 11 were not members of the joint criminal enterprise, but rather were used by members of the enterprise to carry out crimes committed in furtherance of its objective.

17. The Chamber finds that the indictment clearly sets out who the members of the joint criminal enterprise are alleged to have been. After identifying some of the members by name in paragraph 10, the indictment then states in paragraph 11 who the “[o]ther members” (emphasis added) were, including persons who belonged to the “Serb Forces”. The fact that some of the named members of the joint criminal enterprise may belong to the Serb Forces does not create any ambiguity. Moreover, the alternative formulation—that some of the individuals designated as “Serb Forces” in paragraph 11 were not members of the joint criminal enterprise, but rather were tools used by the members to implement the objective of the enterprise—does not create any ambiguity in the indictment. On the contrary, it precisely sets forth the Prosecution’s position in relation to who was a member of the joint criminal enterprise, while also alleging that, if some of the members are found not to have been members, they were nevertheless tools of the members. The Chamber therefore finds that the indictment provides Hadžić with enough detail to inform him clearly of the nature and cause of the charges against him and enables him to prepare a defence.

(b) Significant contribution to the joint criminal enterprise

18. Hadžić argues that the indictment is vague as to whether he significantly contributed to the objective of the joint criminal enterprise—the permanent removal of non-Serbs from large areas of Croatia through the commission of crimes—through mere representation of the SAO SBWS/RSK in international meetings and negotiations or through his acts or omissions.³³

19. The Prosecution responds that the indictment sufficiently pleads the material facts in relation to Hadžić’s contribution to the joint criminal enterprise, including through his representation of the SAO SBWS/RSK in international meetings and negotiations.³⁴ In the view of the Prosecution, Hadžić’s request for further particulars concerns the evidence that will be used to support this material fact.³⁵ In respect of whether he contributed through his acts or omissions, the Prosecution avers that paragraph 13 of the indictment makes it clear that his representation at

³³ Motion, para. 35.

³⁴ Response, para. 17.

international meetings and negotiations formed a part of all of this conduct by which he contributed to the joint criminal enterprise, both through his acts and omissions.³⁶

20. The Chamber has considered paragraph 13(a) of the indictment, in which it is alleged that Hadžić, in his various capacities, significantly contributed to the joint criminal enterprise by formulating, promoting, participating in, and coordinating and/or encouraging the development and implementation of SAO SBWS/RSK governmental policies intended to advance the objective of the joint criminal enterprise. Moreover, it is alleged that, during 1991, 1992, and 1993, he attended and contributed to meetings with the Serbian and (S)FRY leadership and/or their agents, during which these policies were defined, and represented the SAO SBWS/RSK in international meetings and negotiations. The Chamber therefore finds that the indictment provides Hadžić with enough detail to inform him clearly of the nature and cause of the charges against him and enables him to prepare a defence.

2. Alleged defects regarding Article 7(3) responsibility

(a) Yugoslav People's Army ("JNA")

21. Hadžić argues that the indictment is vague and ambiguous because it alleges that he was the superior of "members of the JNA" and because this term—"members of the JNA"—consisted of tens of thousands of persons organised into many units with their own command and hierarchy.³⁷ Moreover, only part of the JNA participated in the relevant territory of SAO SBWS.³⁸

22. The Prosecution responds that the indictment identifies by category—such as "members of the JNA" in paragraph 11(a) of the indictment—the subordinates for whose conduct Hadžić is charged with superior responsibility and that this is a sufficient basis to plead Article 7(3) liability.³⁹ Given the large-scale nature of the crimes, it is impractical to require the indictment to plead every sub-unit or individual subordinate.⁴⁰ The Prosecution points out that the more detailed information that Hadžić seeks may fall within the scope of information to be provided during the pre-trial phase, but that such detail is not required in assessing the sufficiency of the indictment itself.⁴¹ The Prosecution also observes that, where possible, the specific unit of the "Serb Forces" involved in each of the incidents in paragraphs 21 to 45 of the indictment have been specified, but that, where

³⁵ Response, para. 17.

³⁶ Response, para. 17.

³⁷ Motion, para. 14.

³⁸ Motion, paras 15-17.

³⁹ Response, paras 6, 9.

⁴⁰ Response, para. 6.

⁴¹ Response, para. 6; *see also* Response, paras 4-5.

this has not been possible, there is no defect in the indictment because the extent of their involvement in the crimes is a matter of evidence at trial.⁴²

23. In reply, Hadžić argues that the definition of “Serb Forces” does not sufficiently identify the members of the JNA over whom it is alleged he had effective control.⁴³ He therefore contends that the indictment does not set out the material facts with sufficient detail to clearly inform him of the charges so that he may prepare a defence.⁴⁴

24. The Chamber notes that paragraph 16 of the indictment alleges that Hadžić was the superior of and had effective control over Serb Forces and subordinate Croatian Serb political and government personnel. “Serb Forces” is defined in paragraph 11(a) as, *inter alia*, “[m]embers of the Yugoslav People’s Army (Jugoslovenska Narodna Armija, hereinafter ‘JNA’), later the Yugoslav Army (Vojska Jugoslavije, hereinafter ‘VJ’).” The Prosecution then goes on to include in the indictment many other specific military, police, and paramilitary units that are included in the term “Serb Forces”. The Chamber recalls that, where the accused is not alleged to have personally committed the crimes, proximity of the accused to the events in question is a relevant consideration and that it is sufficient to identify perpetrators by category or group should the identities of the perpetrators not be known.⁴⁵ The Chamber finds that the use of the category “members of the JNA” provides Hadžić with enough detail to inform him clearly of the nature and cause of the charges against him and enables him to prepare a defence. Moreover, the Prosecution, later in the indictment when alleging specific criminal incidents, provides, where possible, more detail of the specific units that allegedly perpetrated the crimes.

(b) Serb Territorial Defence Forces (“TO”), TO of the Republic of Serbia, and Paramilitary Groups

25. Hadžić argues that the indictment is vague and ambiguous because it alleges that he was the superior of Serb Territorial Defence Forces; the TO of the Republic of Serbia; and members of the Serbian, Montenegrin, and Bosnian Serb paramilitary groups (also known as “volunteer units”).⁴⁶ Hadžić elaborates his argument by stating that the TO of the Republic of Serbia consisted of thousands of members organised into individual units with their own command structure, whose task was to defend a specific part of the Republic of Serbia.⁴⁷ He also contends that the Prosecution

⁴² Response, para. 7.

⁴³ Reply, paras 7-8.

⁴⁴ Reply, paras 6-11, 15-16.

⁴⁵ *Popović* Decision on Motions Challenging Indictment, para. 40; *Brdanin and Talić* 26 June 2001 Decision, para. 59; *Krnjelac* 24 February 1999 Decision, para. 46.

⁴⁶ Motion, paras 18-21.

⁴⁷ Motion, para. 19.

is aware that the TO and other forces were subordinated to the “JNA OG South”, which had sole command over them.⁴⁸ Finally, he argues that paramilitary units refusing to subordinate themselves to the JNA were ordered to be removed from the territory.⁴⁹

26. The Prosecution responds that Hadžić is anticipating potential trial arguments, rather than identifying defects in the form of the indictment. According to the Prosecution, a motion alleging defects in the form of an indictment is not the appropriate means by which to contest the accuracy of the facts pleaded and that such evidentiary arguments should be left to trial.⁵⁰

27. In reply, Hadžić argues that the definition of “Serb Forces” does not sufficiently identify the members of the TO over whom it is alleged he had effective control. He therefore contends that the indictment does not set out the material facts with sufficient detail to clearly inform him of the charges so that he may prepare a defence.⁵¹

28. The Chamber finds that, despite Hadžić’s attempts to cast his argument in terms of vagueness and ambiguity of the indictment, he in fact is not alleging any defects in the form of the indictment in relation to his alleged superior authority over the Serb Territorial Defence Forces; the TO of the Republic of Serbia; and members of the Serbian, Montenegrin, and Bosnian Serb paramilitary groups. Rather, he raises points in his motion that would tend to undermine the accuracy of the charge that he was indeed a superior of these forces. As such, Hadžić is prematurely litigating these issues, which are ones that no doubt will be dealt with during the trial.

(c) Time period of authority over the TO

29. Hadžić argues that, based upon the time period in relation to existence of the joint criminal enterprise (no later than 1 April 1991 to at least 31 December 1995, with Hadžić’s participation beginning no later than 25 June 1991 and continuing until at least December 1993), the Prosecution must define more precisely the period when he was allegedly the *de jure* commander of the TO.⁵²

30. The Prosecution avers that the indictment sufficiently pleads the time period during which Hadžić is said to have been the *de jure* commander of the TO and that, to the extent that he disputes this allegation, it is a matter for trial.⁵³

⁴⁸ Motion, para. 20.

⁴⁹ Motion, para. 20.

⁵⁰ Response, paras 13-14.

⁵¹ Reply, paras 6-11.

⁵² Motion, para. 33.

⁵³ Response, para. 12.

31. The Chamber observes that paragraph 3 of the indictment alleges that Hadžić acted as President of the government of the SAO SBWS between 25 June and 25 September 1991 and that, on 25 September 1991, he was officially appointed President. Paragraph 4 alleges that, on 26 February 1992, Hadžić was elected President of the RSK and remained in this position until December 1993. At paragraph 6 of the indictment, it is alleged that the joint criminal enterprise came into existence no later than 1 April 1991 and continued at least until 31 December 1995, with Hadžić's participation beginning no later than 25 June 1991 and continuing until at least December 1993. Finally, paragraph 13(d) of the indictment reads as follows: "From at least 25 June 1991 to and including December 1993, Goran HADŽIĆ was the *de jure* commander of the TO forces" (some emphasis omitted). The foregoing dates provide Hadžić with consistent and clear notice of the time period for which he is said to have been the *de jure* commander of the TO forces. The Chamber therefore finds that the indictment provides Hadžić with enough detail to inform him clearly of the nature and cause of the charges against him and enables him to prepare a defence.

(d) Special Units of the Republic of Serbia's Ministry of Interior and/or DB

32. Hadžić argues that the indictment is vague, ambiguous, and contradictory because it alleges that he was the superior of the special units of the Republic of Serbia's Ministry of Interior ("MUP") and/or DB.⁵⁴ Hadžić argues that all these units had an established line of command and control.⁵⁵ For example, Hadžić states that, because the Prosecution is aware that Franko Simatović was the Commander of the Special Operation Unit of the DB ("JSO"), Hadžić must be informed whether Simatović was the Commander of the JSO with him (Hadžić) as his superior or whether he (Hadžić) was the superior of that unit.⁵⁶ Hadžić makes a similar argument in relation to Željko Ražnatović.⁵⁷ Finally, Hadžić argues that the indictment fails to inform him of which crimes were perpetrated by which special unit of the Republic of Serbia MUP and/or DB.⁵⁸

33. The Prosecution counters that Hadžić is improperly relying upon the content of indictments in other cases in order to allege defects in the form of the indictment against him.⁵⁹ According to the Prosecution, the roles played by Simatović and Ražnatović are evidentiary matters for trial.⁶⁰

34. In reply, Hadžić argues that the definition of "Serb Forces" does not sufficiently identify the members of the police and volunteer units over whom it is alleged he had effective control.⁶¹ He

⁵⁴ Motion, paras 22-23.

⁵⁵ Motion, para. 24.

⁵⁶ Motion, paras 25-26.

⁵⁷ Motion, paras 27-31.

⁵⁸ Motion, para. 32.

⁵⁹ Response, para. 15.

⁶⁰ Response, para. 15; *see also* Response, para. 10.

⁶¹ Reply, para. 8

therefore contends that the indictment does not set out the material facts with sufficient detail to clearly inform him of the charges so that he may prepare a defence.⁶²

35. The Chamber notes that paragraph 16 of the indictment states that, from at least 25 June 1991 and continuing until the end of December 1993, Hadžić was the highest civilian and political authority in the SAO SBWS and/or the RSK. The indictment then goes on to allege that, in his capacities as acting President of the Government of the SAO SBWS (between 25 June and 25 September 1991), President of the Government of the SAO SBWS (25 September 1991 until 26 February 1992), and President of the RSK (beginning on 26 February 1992), and pursuant to his *de facto* authority as the acknowledged leader of the Serbs living in Croatia, he was the superior of and had effective control over Serb Forces and subordinate Croatian Serb political and governmental personnel. Paragraph 11 of the indictment specifies that “Serb Forces” includes the special units of the Republic of Serbia MUP and/or DB, including the Special Operations Unit (“JSO” or “Jedinice za Specijalne Operacije”) and the Serbian Volunteer Guard (“SDG” or “Srpska Dobrovoljačka Guard” led by Željko Ražnatović). The Chamber finds that, contrary to the arguments of Hadžić, the indictment clearly sets forth the allegation that he was the superior of the various forces mentioned above. The existence of alleged intermediary perpetrators, such as Simatović and Ražnatović, does not render the indictment vague, ambiguous, or contradictory. In relation to Hadžić’s argument that the indictment fails to inform him of which crimes were perpetrated by which special unit of the Republic of Serbia MUP and/or DB, the Chamber recalls that it is permissible for the Prosecution to employ the use of categories of alleged perpetrators and therefore that it is sufficient for the Prosecution to state that a broader category of alleged perpetrators committed certain crimes without further differentiating between sub-units within that broader category. Moreover, the Prosecution, when alleging specific criminal incidents, provides more detail of the specific units that allegedly perpetrated the crimes, where possible. The Chamber therefore finds that the indictment provides Hadžić with enough detail to inform him clearly of the nature and cause of the charges against him and enables him to prepare a defence.

(e) Identification of forces in relation to which it is alleged that Hadžić failed to take the necessary and reasonable measures to prevent and/or punish the commission of crimes

36. Hadžić argues that, in order to prepare his defence properly, it is necessary for him to have more precise information in respect of the identity of the Serb Forces and their commanders in

⁶² Reply, paras 6-11.

relation to whose crimes it is said he should have taken the necessary and reasonable measures to prevent and/or punish.⁶³

37. The Prosecution responds that the indictment sufficiently informs Hadžić of the nature of the allegations against him, including a description of his failure to take the necessary and reasonable measures to prevent and punish crimes,⁶⁴ allowing him to prepare his defence. Moreover, the indictment is consistent with Tribunal practice, which establishes that pleading the role and/or position of an accused sufficiently identifies the basis of the superior-subordinate relationship for Article 7(3) responsibility.⁶⁵

38. The Chamber recalls the *Blaškić* Appeal Judgement, in which it was held that, in principle, the description of an accused as the commander of a particular force is a sufficient basis for asserting the material fact that he was in a position of superior authority for the purposes of an allegation under Article 7(3) of the Statute.⁶⁶ Moreover, the identification of the subordinated forces by category or group is sufficient for pleading purposes.⁶⁷ Paragraph 16 of the indictment identifies the forces in relation to which it is alleged that Hadžić failed to take the necessary and reasonable measures to prevent and/or punish the commission of crimes as “Serb Forces and subordinate Croatian Serb political and governmental personnel”. Paragraph 18 then sets forth Hadžić’s conduct that demonstrates his failure to take such necessary and reasonable measures. The Chamber does not find it necessary for the indictment to specifically link each specific unit or commander to each crime in relation to Hadžić’s alleged failure to take the necessary and reasonable measures to prevent and/or punish. The Prosecution has identified the relevant units by category and has also given the names of specific units in paragraphs 19 to 48, where possible. As such, the Prosecution has sufficiently set out in the indictment material facts identifying the subordinates over whom Hadžić is said to have had effective control in the sense of a material ability to prevent or punish their criminal conduct and for whose acts he therefore is alleged to be responsible. The Chamber finds that the indictment provides Hadžić with enough detail to inform him clearly of the nature and cause of the charges against him and enables him to prepare a defence.

⁶³ Motion, para. 34.

⁶⁴ Response, paras 4-5.

⁶⁵ Response, paras 10-11.

⁶⁶ *Blaškić* Appeal Judgement, paras 217, 227.

⁶⁷ *Id.* at para. 217.

3. Alleged defects regarding Hadžić's acts

39. Hadžić contends that the indictment is vague and ambiguous because, although the indictment describes the acts and conduct of the Serb Forces that perpetrated the crimes, it does not allege the specific acts or omissions that lead to his individual criminal responsibility.⁶⁸

40. The Prosecution counters that the indictment details the nature of Hadžić's acts and omissions by which he contributed to the joint criminal enterprise and also identifies the specific ways in which he planned, ordered, and/or aided and abetted the crimes charged in the indictment, including by means of his failure to discharge his legal duties arising from his position.⁶⁹ The Prosecution therefore asserts that the indictment sets out the material facts concerning Hadžić's conduct and that his request for further information concerns the evidence that will be used to support these material facts.⁷⁰

41. The Chamber has considered the information contained within paragraphs 13(a)-(h), detailing the conduct—both acts and omissions—of Hadžić that is said to constitute his significant contribution to the joint criminal enterprise under Article 7(1) of the Statute. The details of the information in these paragraphs may be briefly summarised as follows: his conduct in relation to the development and implementation of polices, including his participation in meetings, and his participation in international meetings and negotiations; his conduct in establishing, directing, coordinating, and maintaining the government; his conduct in creating, organising, financing, and directing the police and SNB; his conduct in ordering the SNB; his conduct in creating, organising, financing, and directing the TO and paramilitary units; his conduct in facilitating the acquisition and distribution of weapons to local Serbs in Croatia; his conduct of requesting the assistance of and/or facilitating the participation of Serb Forces to carry out operations; his conduct of openly espousing persecutory policies and/or encouraging discriminatory violence; and his conduct in failing to uphold his legal duty arising from his position of governmental authority to ensure respect for the law. Paragraph 14 of the indictment details which of the above conduct is said to fulfil the physical elements of instigating, ordering, and/or aiding and abetting under Article 7(1) of the Statute. Paragraph 16 of the indictment sets forth a list of actions that Hadžić allegedly failed to take in order to discharge his duty under Article 7(3) to take the necessary and reasonable measures to prevent the commission of crimes by his subordinates. The Chamber finds that the indictment provides Hadžić with enough detail to inform him clearly of the nature and cause of the charges against him and enables him to prepare a defence.

⁶⁸ Motion, paras 36-38.

⁶⁹ Response, para. 16.

⁷⁰ Response, para. 16.

4. Alleged defects regarding unlawful confinement or imprisonment

(a) Identification of victims

42. Hadžić argues that count 5 of the indictment—which charges him with unlawful confinement or imprisonment of members of the Croat and other non-Serb population and persons not taking an active part in the hostilities—is vague because it is unclear whether the “persons not taking an active part in the hostilities” are part of the “Croat and other non-Serb population” or whether they were a separate group.⁷¹ It is also argued by Hadžić that it is ambiguous whether the “persons not taking an active part in the hostilities” who were unlawfully confined or imprisoned include the soldiers who surrendered to or were captured by the “Serb Forces”.⁷²

43. The Prosecution responds that the plain terms of the indictment indicate that the phrase “persons not taking an active part in the hostilities” is an additional category of victims of the crimes alleged in counts 5 to 9. Moreover, the Prosecution states that any overlap or inter-relationship between categories of victims is a matter of evidence and not a material fact that must be pleaded in the indictment.⁷³ Nevertheless, the Prosecution points out in its Response that the category of victims “persons not taking an active part in the hostilities” (a) overlaps with and may be considered part of the “Croat and other non-Serb population” and (b) includes soldiers who surrendered to or were captured by “Serb Forces”.⁷⁴

44. The Chamber is of the view that the Prosecution is not obliged to plead with more specificity the phrase “members of the Croat and other non-Serb population and persons not taking an active part in the hostilities” in paragraph 40. The phrase is an adequate description of a group of victims where, as indicated by the Prosecution, there is overlap due to the fact that some of the members of the Croat and non-Serb population may have taken an active part in the hostilities and some may not have. The Chamber also notes that paragraphs 41 and 42 provide further information regarding the victims of the alleged crimes. In addition, and as is pointed out by the Prosecution, the Chamber considers that the phrase “members of the Croat and other non-Serb population and persons not taking an active part in the hostilities” would include soldiers who surrendered to or were captured by Serb Forces. The Chamber therefore finds that the indictment provides Hadžić with enough detail to inform him clearly of the nature and cause of the charges against him and enables him to prepare a defence.

⁷¹ Motion, paras 39-40.

⁷² Motion, para. 41.

⁷³ Response, para. 18.

⁷⁴ Response, para. 18.

(b) Lawfulness of the imprisonment or confinement

45. Hadžić argues that the indictment is vague with respect to whether the mere imprisonment or confinement of the victims was unlawful or whether it became unlawful due to the inhumane conditions in which they were allegedly held.⁷⁵

46. The Prosecution argues that the indictment sufficiently sets out the material facts for counts 5 to 9, including the relevant time period, the criminal acts, the victim groups, the perpetrators, the locations, and the deplorable conditions of detention.⁷⁶ According to the Prosecution, it is not required to set out further specific details in the indictment, such as identifying for each incident whether the confinement was illegal *per se* or became illegal due to the inhumane conditions. This is a matter of evidence to be addressed at trial.⁷⁷

47. The Chamber considers that paragraph 40 of the indictment alleges that, from at least 25 June 1991 until the end of December 1993, Hadžić committed in concert with others, planned, instigated, ordered, and/or aided and abetted the unlawful confinement or imprisonment under inhumane conditions of members of the Croat and other non-Serb population and persons not taking an active part in the hostilities in the territories listed in paragraph 7 of the indictment, namely the SAO Krajina and the SAO SBWS, noting that, after 19 December 1991, the SAO Krajina became known as the RSK and that, on 26 February 1992, the SAO SBWS joined the RSK. The indictment, at paragraph 40, also alleges that Hadžić is responsible as a superior for some, but not all, of the incidents of confinement listed in the next paragraph. In paragraph 41 of the indictment, the Prosecution alleges that Serb Forces—including the JNA, local Serb TO, and special units of the Republic of Serbia MUP and/or DB acting in cooperation with local and Serbian police staff and local SAO SBWS authorities and authorities of Serbia—arrested and detained thousands of Croats and other non-Serbs, including civilians and persons not taking an active part in the hostilities, in the following short- and long-term detention facilities: (a) Stajićevo agricultural farm in Serbia, approximately one thousand and seven hundred detainees; (b) agricultural complex in Begejci in Serbia, approximately two hundred and sixty detainees; (c) military barracks in Zrenjanin in Serbia, dozens of detainees; (d) military prison in Sremska Mitrovica in Serbia, hundreds of detainees; (e) military prison in Šid in Serbia, approximately one hundred detainees; (f) police buildings and the hangar near the railway station in Dalj in SAO SBWS, hundreds of detainees; (g) territorial defence training centre in Erdut in SAO SBWS, approximately 52 detainees; (h) Vukovar Hospital and the JNA Vukovar Barracks in SAO SBWS, at least three hundred detainees; (i) Ovčara farm, near

⁷⁵ Motion, para. 42.

⁷⁶ Response, para. 19.

⁷⁷ Response, para. 20.

Vukovar, in SAO SBWS, approximately three hundred detainees; (j) Velepomet facility near Vukovar in SAO SBWS, hundred of detainees; (k) police station in Opatovac in SAO SBWS, dozens of detainees; (l) stable or workshop in Borovo Selo in SAO SBWS, approximately 92 detainees; and (m) *Zadruga* building in Lovas, dozens of detainees. In paragraph 42, the Prosecution alleges that the living conditions in these detention facilities were inadequate and characterised by inhumane treatment; overcrowding; starvation; forced labour; inadequate medical care; and constant physical and psychological assault, including mock executions, torture, beatings, and sexual assault.

48. The Chamber is of the view that the foregoing information provides Hadžić with sufficient notice of the basis for counts 5 to 9 of the indictment and that it is not necessary for the Prosecution to provide additional information regarding whether the mere imprisonment or confinement of the victims was unlawful or whether it became unlawful due to the inhumane conditions in which the victims were allegedly held. The Chamber finds that the indictment provides Hadžić with enough detail to inform him clearly of the nature and cause of the charges against him and enables him to prepare a defence.

D. Disposition

49. Pursuant to Articles 18 and 21 of the Statute and Rules 47, 54, 72, and 126 *bis* of the Rules, the Trial Chamber hereby GRANTS leave to Hadžić to file the Reply and DENIES the Motion.

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

Done this tenth day of November 2011,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]