


UNITED NATIONS **NATIONS UNIES**
International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

OR: ENG

Before: Judge Lloyd George Williams, Presiding
 Judge Yakov Ostrovsky
 Judge Pavel Dolenc

Registrar: Dr. Agwu Ukiwe Okali

Decision of: 29 September 1999

THE PROSECUTOR
 v.
LAURENT SEMANZA


Case No. ICTR-97-20-I

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**DECISION ON THE DEFENCE "MOTION SEEKING DISMISSAL OF
 THE COUNTS OF VIOLATIONS OF ARTICLE 3 COMMON TO THE
 GENEVA CONVENTIONS FOR LACK OF EVIDENCE"**

The Office of the Prosecutor:
 David Spencer
 Frédéric Ossogo

Counsel for Laurent Semanza:
 André Dumont

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM:	AMINATTA L.R. N'GUM
SIGNATURE:	 DATE: 04/10/99

Case No. ICTR-97-20-I

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("TRIBUNAL")

SITTING as Trial Chamber III, composed of Presiding Judge Lloyd George Williams, Judge Yakov Ostrovsky, and Judge Pavel Dolenc ("Trial Chamber III");

NOTING the Indictment dated 16 October 1997 and filed on 21 October 1997 by the Prosecutor against Laurent Semanza (the "Indictment");

NOTING that on 23 October 1997 Judge Lennart Aspegren confirmed the Indictment and that at his initial appearance on 16 February 1998 Laurent Semanza entered a plea of not guilty on all seven counts contained in the Indictment;

NOTING that on 31 May 1999 the Prosecutor moved for leave to amend the Indictment to add seven new counts;

NOTING that on 18 June 1999 a Trial Chamber composed of Presiding Judge William Sekule, Judge Yakov Ostrovsky, and Judge Pavel Dolenc, designated by the President to sit in place of Judge Tafazzal H. Khan whose mandate from the Security Council has expired (the "Trial Chamber"), heard the parties' submissions on the Prosecutor's motion to amend the Indictment and, on that date, orally granted leave to the Prosecutor to amend the Indictment as proposed, subject to an order to the Prosecutor to put more information in the statement of concise facts contained in the Indictment, in particular information supporting the new charges based on Article 3 Common to the Geneva Conventions of 1949 ("Common Article 3") and the 1977 Protocol II Additional to the Geneva Conventions of 1949 ("Additional Protocol II");

NOTING that on 23 June 1999 the Prosecutor filed the First Amended Indictment (the "First Amended Indictment") which in each count dealing with the alleged violations of Common Article 3 and Additional Protocol II refers to paragraph 3.6, which paragraph the Prosecutor amended by including a statement that Laurent Semanza "used his influence and authority as an agent of the government to advance its war effort";

NOTING that on 24 June 1999 Laurent Semanza made an initial appearance before Trial Chamber III on the First Amended Indictment and that he entered a plea of not guilty on all fourteen counts contained therein;

NOTING that on 2 July 1999 the Prosecutor filed the Second Amended Indictment which is the current charging document (the "Second Amended Indictment" or the "Indictment, as amended");

NOTING that on 1 September 1999 the Trial Chamber issued a written Decision on the Motion by the Office of the Prosecutor for Leave to Amend the Indictment which reflected the 18 June 1999 oral Decision to grant the Prosecutor's motion for leave to amend the Indictment "with the understanding that the Prosecutor will provide greater specificity as to facts relating to the new charges";

BEING NOW SEIZED OF a Defence Motion Seeking Dismissal of the Counts of Violations

of Article 3 Common to the Geneva Conventions for Lack of Evidence, filed on 16 August 1999 (the "Motion");

HAVING HEARD the arguments of the parties on 23 September 1999.

PLEADINGS BY THE PARTIES

Defence Submissions

The Defence submits that by failing to provide greater specificity as to facts relating to the charges based on Common Article 3, the Prosecutor did not respond to the direction of the Trial Chamber to comply with Rule 47(C).

The Defence moves that Trial Chamber III dismiss the counts charging serious violations of Common Article 3 that are not supported by a concise statement of the facts of the case and of the crimes with which the suspect is charged.

Prosecutor's Response

The Prosecutor responds that the omission with respect to facts supporting the Common Article 3 counts has been remedied in the First Amended Indictment.

DELIBERATIONS

1. Rule 47(C) provides that "[t]he indictment shall set forth ... a concise statement of the facts of the case and of the crime with which the suspect is charged." In order for an indictment to be adequate in view of Rule 47(C), it must contain a statement of facts sufficient to allege that the accused person committed acts amounting to the crimes with which he is charged. That is to say that the alleged facts must make out the elements of the crimes charged.
2. Counts 7, 9, and 13 of the Indictment, as amended, charge Laurent Semanza with serious violations of Common Article 3 and Additional Protocol II. In *Prosecutor v. Kayishema and Ruzindana*, the Tribunal said that "in order for an act to breach Common Article 3 and Protocol II, a number of elements must be shown." Judgement at para. 169. These elements include, *inter alia*, a requirement that the armed conflict be of a non-international character, that there be a link between the accused and the armed forces, and that there be a nexus between the crime and the armed conflict. *See id.*
3. The First Amended Indictment that the Prosecutor submitted with her Motion for Leave to Amend the Indictment (the "Draft First Amended Indictment") based counts 7, 9, and 13, that is the counts alleging serious violations of Common Article 3 and Additional Protocol II, on events described in paragraphs 3.9, 3.12, 3.15, 3.16, 3.17, and 3.18 thereof. The events described in those paragraphs do not satisfy the elements of war crimes under Common Article 3 and Additional Protocol II. In particular, what is missing from the Draft First Amended Indictment is a statement of facts indicating a link between Laurent Semanza and the Rwandan armed forces and a statement of facts indicating a

nexus between the crimes Laurent Semanza allegedly committed and the non-international armed conflict then taking place in Rwanda.


4. With the First Amended Indictment, the Prosecutor corrected the first deficiency: the failure to indicate a link between Laurent Semanza and the Rwandan armed forces. In the First Amended Indictment, the Prosecutor added references to paragraph 3.6 thereof to each count alleging serious violations of Common Article 3 and Additional Protocol II. The Prosecutor amended paragraph 3.6 by including therein a statement that Laurent Semanza “used his influence and authority as an agent of the government to advance its war effort.” Addition of this sentence goes to establishing a link between the accused and the armed forces, *see Prosecutor v. Kayishema and Ruzindana*, Judgement at para. 175; *Prosecutor v. Akayesu*, Judgement at para. 631, and therefore satisfies one of the elements of war crimes under Common Article 3 and Additional Protocol II.
5. Additionally, in the First Amended Indictment, the Prosecutor added references to paragraph 3.4 thereof to each count alleging serious violations of Common Article 3 and Additional Protocol II. Paragraph 3.4 of the First Amended Indictment is identical to paragraph 3.4 of the Draft First Amended Indictment; the paragraph posits that at the time of the events alleged in the Indictment there was a non-international armed conflict in Rwanda. This statement goes to the non-international armed conflict element of war crimes under Common Article 3 and Additional Protocol II.
6. The First Amended Indictment fails, however, to indicate a nexus between the crimes the accused allegedly committed and the non-international armed conflict then taking place in Rwanda. Such a nexus is one of the elements of war crimes under Common Article 3 and Additional Protocol II. *See Kayishema and Ruzindana*, Judgement at paras. 169, 185-189. Indeed, the Tribunal in the *Kayishema and Ruzindana* case said: “The nexus requirement between the offence and the armed conflict is of crucial significance, taking into account that Common Article 3 and Protocol II are designed to protect the victims of the armed conflict.” *Id.* at para. 189.
7. Without setting out facts sufficient to indicate the nexus between the crimes Laurent Semanza allegedly committed and the non-international armed conflict in Rwanda, the Indictment, as amended, fails to make out the claim that Semanza’s conduct amounted to the war crimes with which the Prosecutor charges him in counts 7, 9, and 13. This omission contravenes Rule 47(C) which specifies that “[t]he indictment shall set forth ... a concise statement of the facts of the case and of the crime with which the suspect is charged.”
8. As noted above, rather than, as the Defence claims, “not in any way respond[ing]” to the 18 June 1999 oral Decision on the Prosecution’s Motion to Amend the Indictment, the Prosecutor did attempt to correct the shortcomings of the Draft First Amended Indictment in the First Amended Indictment. Because of the generality of the order made in the oral Decision of 18 June 1999, the Prosecutor could have misunderstood the intent of the Trial Chamber. This Chamber is therefore of the opinion that the Prosecutor should have an opportunity to correct the flaws in the Indictment, as amended.

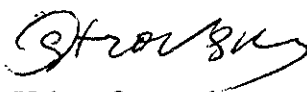
FOR THESE REASONS, THE TRIBUNAL


DENIES the Defence motion to dismiss the counts of violations of Common Article 3; and

DIRECTS the Prosecutor to amend the Second Amended Indictment within fourteen calendar days from the date of this Decision as follows: to provide in paragraphs 3.4, 3.6, 3.9, 3.15, 3.16, 3.17, and 3.18 thereof such information as would support the charges made in counts 7, 9, and 13 contending that the acts Laurent Semanza allegedly committed amount to war crimes under Common Article 3 and Additional Protocol II, and, in particular, to provide a concise statement of facts indicating the nexus between the crimes the accused allegedly committed and the non-international armed conflict in Rwanda.

Arusha, 29 September 1999.


Lloyd George Williams
Presiding Judge


Yakov Ostrovsky
Judge


Pavel Dolenc
Judge

