



Tužilaštvo-Tužiteljstvo Bosne i Hercegovine
Тужилаштво Босне и Херцеговине
Poseban odjel za organizirani kriminal, privredni kriminal i korupciju
Посебан одјел за организовани криминал, привредни криминал и корупцију

Special Department for Organized Crime, Economic Crimes and Corruption
Prosecutor's Office of Bosnia and Herzegovina

Date: 23 June 2005

Ref # *KT-H -1/04 (Prosecutor v. Abduladhim Maktouf)*

To: The Court of Bosnia and Herzegovina – Trial Panel
Adil Lozo and Ismet B. Mehic Defense counsel for Abduladhim
Maktouf

AMENDED INDICTMENT

Pursuant to the Bosnia and Herzegovina Criminal Procedure Code, Article 227 and 275, the BiH State Prosecutor hereby amends the indictment at the main trial:

(A) Name of the Court

Court of Bosnia Herzegovina

(B) Name and Personal Data of Accused

Abduladhim Maktouf -- Born on 3 January 1959 in Basra, Iraq to
Mohamed and Sabina (nee Saber).

(C) Legal Name of the Criminal Offense

ACCESSORY TO WAR CRIMES AGAINST CIVILIANS¹

¹ The Republic of Bosnia and Herzegovina Criminal Code, formerly the Socialist Federal Republic of Yugoslavia SFRY Criminal Code (hereafter: Adopted SFRY CC) Articles 142 and 24. (See Decree with

(D) Description of the Legal Elements

On or about 19² October 1993, in Travnik, Bosnia and Herzegovina, during the war in Central Bosnia, and in violation Article 3(1)(b) of *The Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War*³ Abduladhim Maktouf, a member of the Army of BiH, intentionally helped Abu Dzafer and other Al Mujahid soldiers take the following Croat civilians hostage: [REDACTED]

1. Intentionally Helping the Taking of Hostages

On or about 19 October 1993, at about 8:00 p.m. Abduladhim Maktouf, who was then a member of the Army of BiH, drove his green Volkswagen van to the building known as the "Amerikanka" building on Hadzi Ali Bega Hasanpasica Street in Travnik.⁴ In the van were Abu Dzafer and other Al Mujahid soldiers.

Once they arrived at the Amerikanka building, Abduladhim Maktouf remained waiting in the van while Abu Dzafer and the other Al Mujahid soldiers left the van. Some of the Al Mujahid soldiers, armed with long barrelled rifles and a sabre, entered the Amerikanka building and went to [REDACTED] second floor apartment. Other Al Mujahid soldiers kept guard on the building's stairwell and the adjoining street.

Upon entering [REDACTED] apartment, the Al Mujahid soldiers found [REDACTED] and [REDACTED]. Both men were civilians; at the time, they were wearing civilian clothes, and not carrying weapons. By force and threat of force the Al Mujahid fighters took [REDACTED] from his apartment to the waiting van. There they forced him into the van.

the Force of Law Adopting the SFRY Criminal Code, Official Gazette of RBiH 2/92, 8/92, 10/92, 16/92), and the Criminal Code of Bosnia and Herzegovina (hereafter: BiH CC) Article 173 (1)(E) and 31. All references in this indictment to the BiH CC and the Adopted SFRY CC codes are to the following gazette editions: BiH Official Gazette 3/03, 32/03, and 37/03 and SFRY Official Gazette 44/76, and 36/77, respectively.

² The evidence indicates that this incident occurred on 18 or 19 October 1993. Throughout the indictment the date 19 October 1993 refers to on or about 19 October 1993, which should be understood to also include 18 October 1993.

³ Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949. Entered into force: 21 October 1950.

⁴ The street names mentioned in this section are the street names used in 1993.

Next, the Al Mujahid soldiers took [REDACTED], by force and threat of force, to the waiting van. Al Mujahid fighters then forced [REDACTED] into the van.

Al Mujahid soldiers also took [REDACTED] by force and threat of force, from his apartment in what is commonly referred to as the "Glista" building, on Trg Republike Street to the van. The Glista building is a few hundred meters from the Amerikanka building.

While [REDACTED] were taken from their apartment and forced into the van, **Abduladhim Maktouf** waited in the van's driver's seat. Once all three civilian hostages were in the van, **Abduladhim Maktouf** turned on the engine and drove the hostages to an Al Mujahid camp in the village of Orasac. On the way, Abu Dzafer sat next to **Abduladhim Maktouf**. During the drive, the hostages, at gunpoint, were blindfolded and ordered to lie down.

That night two other civilians – [REDACTED] and [REDACTED] – were taken to the Orasac camp.

At the camp, the Al Mujahid beat and mistreated all five civilian men. The beatings reached their apex with the beheading of [REDACTED].

The other four men were eventually released: [REDACTED] was released on approximately 23 October 1993. On that night, **Abduladhim Maktouf** came to the Orasac camp, asked to see the prisoners, entered the building where all the prisoners were housed, and removed [REDACTED]. **Abduladhim Maktouf** then drove a blindfolded [REDACTED] back to Travnik.

Two weeks later, on 6 November 1993, [REDACTED] and [REDACTED] were released. A few weeks later [REDACTED] was released.

2. International Conflict

Travnik is in Central Bosnia. From 6 June 1993 to 18 March 1994, and at all times relevant to this indictment, there was an international conflict as defined by international law in Central Bosnia.

3. Violation of the Rules of International Law

Taking civilian hostages violated the rules international law in October 1993. *The Geneva Convention Relative to the Protection of Civilian Persons in Time of War*⁵ in Article 3(1)(b) prohibits hostage taking. Article 3 proclaims as follows:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) **taking of hostages;**

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) The passing of sentences and carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

The text of Article 3 is repeated in all four Geneva Conventions, and is known as common Article 3. It represents a codification of customary international law and applies to international and national conflicts. The International Court of Justice found that Article 3 articulates “fundamental general principles of humanitarian law.”⁶ The ICTY has also confirmed this finding in several opinions.⁷

Article 5 of *The European Convention on Human Rights*,⁸ also outlaws the taking of civilians hostage during war. The Bosnian-Herzegovinan Human Rights Chamber has explained that Article 5 of the *European Convention on Human Rights* prohibits

⁵ Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949. Entered into force: 21 October 1950.

⁶ *Military and Paramilitary Activities in and Against Nicaragua* 1986 I.C.J. 14, par 218-219 (June 27).

⁷ See, e.g., ICTY Case No. IT-94-1, *Tadic Jurisdiction Decision*, paras. 116, 134, *Tadic Trial Judgment*, para 609; ICTY Case No. IT-98-30/1, *Kvočka Trial Judgment*, para. 124; ICTY Case No. IT-96-23 & 23/1, *Kunarac Trial Judgment*, para. 406.

⁸ Adopted November 4, 1950 and entered into force September 3, 1953.

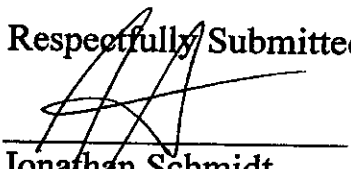
taking people for the “purpose of “exchanging” them with “prisoners held by others’ Thus in *Cegar v. Federation of Bosnia and Herzegovina*, a case involving an arbitral arrest and detention of a RS citizen by the Bosnian Croat Police, the Chamber explained that:

It is to be recalled that Article 5 paragraph 1 [of the European Convention on Human Rights] intended to guarantee freedom from arbitrary detention. The enumeration therein given of grounds, which may justify deprivation of liberty, is exhaustive . . . and arrest or detention for the purpose of exchange is not found there. That is sufficient for the Chamber to find that the applicant’s detention was contrary to Article 5 paragraph 1 of the convention.¹⁰

4. Conclusion

The accused **Abdulahim Maktouf** by (1) permitting the Al Mujahid, to use his van, (2) driving the van to the Amerikanka building, (3) waiting while the Al Mujahid took the civilian hostages, and (4) driving the hostages to the Al Mujahid camp intentionally helped the Al Mujahid take civilians hostage, and violated Article 3 of Geneva Convention; he thereby violated adopted SFRY Criminal Code Articles 142, and 24, BiH Criminal Code Articles 173 (1)(E), and 31 -- accessory to war crimes against civilians.

Respectfully Submitted


Jonathan Schmidt
International Prosecutor

⁹ BiH Human Rights Chamber case no. CH/96/21, *Cegar v. Federation of Bosnia and Herzegovina* (6 April 1998) Decision On The Merits, para. 35; see also *R.G. and Matkovic v. Federation of Bosnia and Herzegovina* (9 June 2000) Decision On Admissibility and Merits, paras. 138-139 (same).

¹⁰ para. 35