

UNITED STATES  
OF  
AMERICA

}  
}  
} **D-016**  
} **Ruling on Defense Motion to Dismiss Specification**  
} **2 of Charge IV for Multiplicity and Unreasonable**  
} **Multiplication of Charge**

**14 March 2008**

v }  
}  
} **OMAR AHMED KHADR** }  
} a/k/a "Akhbar Farhad" }  
} a/k/a "Akhbar Farnad" }  
} a/k/a "Ahmed Muhammed Khahi" }  
}

1. The commission has considered the defense motion and the government response. The defense did not submit a reply.
2. Charge IV and its specifications are reproduced below:

**CHARGE IV: VIOLATION 10 U.S.C. §950v(b)(25), PROVIDING MATERIAL SUPPORT FOR TERRORISM**

Specification 1 : In that Omar Ahmed Khadr, a person subject to trial by military commission as an alien unlawful enemy combatant, did, in or around Afghanistan, from at least June 2002 through on or about July 27, 2002, intentionally provide material support or resources to wit: personnel, himself, to al Qaeda, an international terrorist organization founded by Usama bin Laden, in or about 1989, and known by the accused to be an organization that engages in terrorism, said al Qaeda having engaged in hostilities against the United States, including attacks against the American Embassies in Kenya and Tanzania in August 1998, the attack against the USS COLE in October 2000, the attacks on the United States on September 11, 2001, and further attacks, continuing to date against the United States; said conduct taking place in the context of and associated with armed conflict.

The accused provided material support or resources to al Qaeda including, but not limited to, the following:

1. In or about June 2002, Khadr received approximately one month of one-on-one, private al Qaeda basic training from an al Qaeda member named "Abu Haddi," consisting of training in the use of rocket propelled grenades, rifles, pistols, hand grenades, and explosives.

2. In or about June 2002, Khadr conducted surveillance and reconnaissance against the U.S. military in support of efforts to target U.S. forces in Afghanistan.
3. In or about July 2002, Khadr attended one month of land mine training.
4. In or about July 2002, Khadr joined a group of al Qaeda operatives and converted land mines to improvised explosive devices and planted said improvised explosive devices in the ground where; based on previous surveillance, U.S. troops were expected to be traveling.
5. On or about July 27, 2002, Khadr engaged U.S. military and coalition personnel with small arms fire, killing two Afghan Militia Force members.
6. Khadr threw and/or fired grenades at nearby coalition forces resulting in numerous injuries.
7. When U.S. forces entered the compound upon completion of the firefight, Khadr threw a grenade, killing Sergeant First Class Christopher Speer.

Specification 2: In that Omar Ahmed Khadr, a person subject to trial by military commission as an alien unlawful enemy combatant, did, in Afghanistan, from at least June 2002 through on or about July 27, 2002, intentionally provide material support or resources to wit: personnel, himself, to be used in preparation for, or carrying out an act of terrorism, that the accused knew or intended that the material support or resources were to be used for those purposes, and that the conduct of the accused took place in the context of and was associated with an armed conflict.

The accused provided material support or resources in support of acts of terrorism including, but not limited to, the following:

1. In or about June 2002, Khadr received approximately one month of one-on-one, private al Qaeda basic training from an al Qaeda member named "Abu Haddi," consisting of training in the use of rocket propelled grenades, rifles, pistols, hand grenades, and explosives.
2. In or about June 2002, Khadr conducted surveillance and reconnaissance against the U.S. military in support of efforts to target U.S. forces in Afghanistan.
3. In or about July 2002, Khadr attended one month of land mine training.
4. In or about July 2002, Khadr joined a group of Al Qaeda operatives and converted land mines to improvised explosive devices and planted said improvised explosive devices in the ground where; based on previous surveillance, U.S. troops were expected to be traveling.

5. On or about July 27,2002, Khadr engaged U.S. military and coalition personnel with small arms fire, killing two Afghan Militia Force members.
  6. Khadr threw and/or fired grenades at nearby coalition forces resulting in numerous injuries.
  7. When U.S. forces entered the compound upon completion of the firefight, Khadr threw a grenade, killing Sergeant First Class Christopher Speer.
3. The relevant provisions and discussion of Rule for Military Commission 907 are:

**RMC 907(b)(3)**

(3) *Permissible grounds.* A specification may be dismissed upon timely motion by the accused if:

(A) The specification is so defective that it substantially misled the accused, and the military judge finds that, in the interest of justice, trial should proceed on remaining charges and specifications without undue delay; or

(B) The specification is multiplicitious with another specification, is unnecessary to enable the prosecution to meet the exigencies of proof through trial, review, and appellate action, and should be dismissed in the interest of justice.

**Discussion**

A specification is multiplicitious with another if it alleges the same offense, or an offense necessarily included in the other. A specification may also be multiplicitious with another if they describe substantially the same misconduct in two different ways. For example, assault and disorderly conduct may be multiplicitious if the disorderly conduct consists solely of the assault. *See also* R.M.C. 1003(b)(1)(C).

Ordinarily, a specification should not be dismissed for multiplicity before trial unless it clearly alleges the same offense, or one necessarily included therein, as is alleged in another specification. It may be appropriate to dismiss the less serious of any multiplicitious specifications after findings have been reached. Due consideration must be given, however, to possible post-trial or appellate action with regard to the remaining specification.

4. Part IV, paragraph 6(25) of the Manual for Military Commissions provides the following:

**Paragraph 6(25), Part IV, MMC**

**(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM.**

a. *Text.* “Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in paragraph (24)), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.”

b. *Elements.* The elements of this offense can be met either by meeting (i) all of the elements in A, or (ii) all of the elements in B, or (iii) all of the elements in both A and B:

- A. (1) The accused provided material support or resources to be used in preparation for, or in carrying out, an act of terrorism (as set forth in paragraph (24));
- (2) The accused knew or intended that the material support or resources were to be used for those purposes; and
- (3) The conduct took place in the context of and was associated with an armed conflict.

*or*

- B. (1) The accused provided material support or resources to an international terrorist organization engaged in hostilities against the United States;
- (2) The accused intended to provide such material support or resources to such an international terrorist organization;
- (3) The accused knew that such organization has engaged or engages in terrorism; and
- (4) The conduct took place in the context of and was associated with an armed conflict.

c. *Definition.* “Material support or resources” means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation, except medicine or religious materials.

d. *Maximum Punishment.* Confinement for life.

5. The specifications of the Charge allege violations of the Charge in two separate methods. Specification 1 alleges provision of support or resources to an international terrorist organization. Specification 2 alleges provision of support or resources to be used in carrying out an act of terrorism. Both of these specifications allege a separate offense.

6. Having reviewed the specifications and the requirements of RMC(b)(3), the commission does not find the interests of justice require dismissal of either specification or the merger of the specifications prior to the presentation of evidence.

7. The defense request to dismiss Specification 2 of Charge IV on grounds of multiplicity is denied. The defense may have grounds to raise the issue again after evidence has been presented.

Peter E. Brownback III  
COL, JA, USA  
Military Judge