



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-03-69-PT

Date: 12 April 2006

Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 12 April 2006

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

**DECISION ON DEFENCE MOTIONS REGARDING DEFECTS IN THE FORM OF
THE SECOND AMENDED INDICTMENT**

Office of the Prosecutor

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I. Introduction

1. This Trial Chamber is seized of a (1) “Defence Motion Regarding Defects in the Form of the Second Amended Indictment with Confidential Annex” filed by the Defence of Jovica Stanišić (“Stanišić Defence”) on 9 March 2006 (“Stanišić Motion”) and a (2) “Defence Preliminary Motion on the Second Amended Indictment” filed by the Defence of Franko Simatović (“Simatović Defence”) on 10 March 2006 (“Simatović Motion”) pursuant to Rule 72 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”).¹ The Stanišić Defence and Simatović Defence (collectively, “Defence”) allege various defects in the Second Amended Indictment (“Indictment”) and request that the new charges in the Indictment be dismissed or that more specificity regarding the new charges be provided by the Office of the Prosecutor (“Prosecution”).² The Prosecution filed a (1) “Prosecution Response to Stanišić’s ‘Defence Motion Regarding Defects in the Form of the Second Amended Indictment with Confidential Annex’” on 23 March 2006 (“Response to Stanišić Motion”) and a (2) “Prosecution Response to Simatović’s ‘Defence Preliminary Motion on the Second Amended Indictment’” on 24 March 2006 (“Response to Simatović Motion”). The Prosecution argues that there are no defects in the Indictment and that the Stanišić Motion and Simatović Motion (collectively, “Motions”) should be dismissed. On 30 March 2006, the Defence filed a (1) “Defence Reply to Prosecution Response Regarding Defects in the Form of the Second Amended Indictment” (“Stanišić Reply”); and a (2) Defence Request for Leave to File a Reply and Reply to the Prosecution’s Response to Defence Preliminary Motion on the Second Amended Indictment” (“Simatović Reply”) in which the Defence repeated the relief requested in the Motions.³

II. The Indictment, New Charges, and Related Procedural Background

2. On 1 May 2003, Judge Carmel Agius confirmed an indictment against Jovica Stanišić and Franko Simatović (collectively, “Accused”) and ordered that there be no public disclosure of the materials submitted by the Prosecution in support of the indictment.⁴ On 30 May 2003, the President of the International Tribunal assigned the case to this Trial Chamber.⁵

¹ See “Defence Notification on Lifting up the Confidentiality of the Preliminary Motion on the Second Amended Indictment”, 17 March 2006.

² See “Decision on Prosecution Motion for Leave to Amend the Amended Indictment”, 16 December 2005 (in which the Trial Chamber granted the Prosecution’s motion for leave to amend the amended indictment) and “Prosecution’s Submission of Second Amended Indictment”, 20 December 2005.

³ Leave to file a reply was only requested by the Simatović Defence.

⁴ “Decision on Review of Indictment”, 1 May 2003.

⁵ “Order Assigning a Case to a Trial Chamber”, 30 May 2003.

3. On 14 November 2003, the Trial Chamber ordered the Prosecution to file an amended indictment pursuant to Rule 72 of the Rules.⁶ The Prosecution filed an amended indictment on 9 December 2003 and the Trial Chamber ordered that it was the operative indictment against the Accused.⁷
4. On 16 December 2005, the Trial Chamber granted the Prosecution leave to amend the amended indictment by adding new charges related to crimes allegedly committed in the Srebrenica area.⁸ Subsequently, on 20 December 2005, the Prosecution filed the Indictment.⁹ In the Decision of 16 December 2005, the Trial Chamber noted that Rule 50(C) of the Rules provided that “[t]he accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges.”¹⁰
5. The Indictment charges the Accused with five counts - persecution as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; deportation as a crime against humanity; and inhumane acts (forcible transfer) as a crime against humanity - under Articles 3 and 5 of the Statute of the International Tribunal (“Statute”). The Accused are charged on the basis of their individual criminal responsibility, pursuant to Article 7(1) of the Statute, while they held various positions in the State Security Service of the Ministry of Internal Affairs of the Republic of Serbia.
6. In holding the Accused responsible pursuant to Article 7(1) of the Statute for having planned, ordered, committed or otherwise aided and abetted in the planning, preparation and execution of the crimes described, the Indictment pleads that the use of the term “committed” does not refer to the Accused’s physical commission of the crimes, but includes participation in a joint criminal enterprise. The Accused are alleged to have participated in the joint criminal enterprise by (1) participating in the formation, financing, supply and support of the special units of the Republic of Serbia DB; (2) directing members and agents of the DB who participated in the perpetration of the crimes in this Indictment; and (3) providing arms, funds, training, logistical support and other substantial assistance or support to special units of the Republic of Serbia DB that were involved in the commission of crimes in Croatia and BiH between 1 August 1991 and 31 December 1995. The objective of this joint criminal enterprise, which was in existence no later than 1 August 1991 and

⁶ “Decision on Defence Preliminary Motion”, 14 November 2003.

⁷ “Decision on Submission of Amended Indictment; Defence Preliminary Motion (Jovica Stanišić); and Motion on Defect in the Amended Indictment (Franko Simatović)”, 29 January 2004.

⁸ See *supra*, note 2.

⁹ *Ibid.* See “Decision on Defence Requests for Certification to Appeal Decision Granting Prosecution Leave to Amend the Amended Indictment”, 8 February 2006 (in which the Trial Chamber denied the Defence request for certification).

¹⁰ See *supra*, note 2.

continued until at least 31 December 1995, is alleged to have been the forcible and permanent removal of the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina. The participants of this joint criminal enterprise allegedly included the Accused, Slobodan Milošević; Veljko Kadijević; Blagoje Adžić; Ratko Mladić, Radmilo Bogdanović; Radovan Stojičić; Mihalj Kertes; Milan Martić; Radovan Karadžić, Biljana Plavšić; Željko Ražnatović; Vojislav Šešelj; and other members of the JNA (later the VJ), the VRS and VRSK; the Serb TO of Croatia, BiH, Serbia and Montenegro; local police forces and Serbian MUP, including the DB of Serbia and Martić's Police; and members of Serbian, Montenegrin and Bosnian Serb paramilitary forces units. The crimes are alleged to have been committed as part of the joint criminal enterprise or to have been the natural and foreseeable consequences of the execution of the objective of the joint criminal enterprise.¹¹

7. With respect to the new charges related to crimes allegedly committed in the Srebrenica area, the Indictment included the following paragraphs:¹²

SREBRENICA

55. On 12 May 1992, at the 16th session of the Bosnian Serb Assembly, KARADŽIĆ had announced the six strategic objectives of the Serb people in BiH. In essence, these strategic goals constituted a plan to seize and control territory, establish a Bosnian Serb state, defend defined borders and separate the ethnic groups within BiH.
56. On 8 April 1993 the International Court of Justice issued an order to the Federal Republic of Yugoslavia to take all immediate measures within its power to prevent the commission of the crime of genocide in BiH. On 16 April 1993, the United Nations Security Council issued Resolution 819 which reaffirmed the order of the International Court of Justice as well as the sovereignty, territorial integrity and political independence of the Republic of BiH. In Resolution 819 the Security Council recognising that the continued Bosnian Serb military operations against Srebrenica and in Eastern Bosnia involved unlawful attacks on civilians made several demands. The Security Council demanded that the attacks stop and further that "the Federal Republic of Yugoslavia (Serbia and Montenegro) immediately cease the supply of military arms, equipment and services to the Bosnian Serb paramilitary units in the Republic of Bosnia and Herzegovina."
57. On 8 March 1995, Radovan Karadžić, as the Supreme Commander of the VRS, issued Operational Directive 7, which directed the VRS to eliminate the Muslim enclaves of Srebrenica and Zepa, in furtherance of the "six strategic objectives" of 12 May 1992.
58. On 6 July 1995, the VRS and other Bosnia Serb forces under the command and control of General Ratko Mladić attacked the Srebrenica enclave. The attack on the enclave continued until 11 July 1995, when General Ratko Mladić and the VRS and other Bosnia Serb forces under Mladić's command and control entered Srebrenica.
59. Special units of the Republic of Serbia DB under the control of STANIŠIĆ and SIMATOVIĆ, including Red Berets and Scorpions participated in this attack by the VRS on the enclaves of Srebrenica and Zepa. Several weeks before the VRS attack, the Accused ordered the Scorpions to travel from their base in Delotić in Croatia to Serb controlled area near Sarajevo. The Scorpions then based themselves in the village of Trnovo, under Treskavica Mountain, near Sarajevo. They were under the command of SIMATOVIĆ who was running a joint Serbian MUP/DB command post from Jahorina.

¹¹ Indictment, paras. 8–13.

¹² The terms "Scorpions" and "Srebrenica" were included in paragraphs 3, 7, 23 and 68 of the Indictment.

60. Before the VRS attack on Srebrenica, the Scorpions and the other special units attacked ABiH forces near Sarejevo in a co-ordinated move to draw units of the ABiH from Srebrenica and Zepa to Sarejevo by leaving open a land corridor between Srebrenica and Sarejevo. The ABiH responded by moving units to Sarejevo, thus making it easier for VRS forces to take control of Srebrenica.
 61. Between 12 July and about 20 July 1995, thousands of Bosnian Muslim men were captured by, or surrendered to, Bosnia Serb forces under the command and control of General Ratko Mladić.
 62. The Bosnian Serb forces then distributed the Bosnian Muslim prisoners to different Serb and Serbian units for the purpose of murdering them. One bus full of prisoners was taken to the base of the Scorpions at Treskavica, from which about fifteen male prisoners were taken from the bus for execution by members of the Scorpions. Members of the Scorpions took six of the prisoners by truck to a secluded rural area several kilometres from their base. Under the command of Slobodan Medić (Boca), the Scorpions murdered the prisoners by shooting them. Slobodan Medić (Boca) had these murders videotaped.
 63. Over 7,000 Bosnian Muslim prisoners captured in the area around Srebrenica were summarily executed from 13 July to 19 July 1995 and thereafter many were buried in mass graves.
 64. From about 1 August 1995 through 1 November 1995, VRS units under the command and control of General Ratko Mladić participated in an organised and comprehensive effort to conceal the killings by reburying, in isolated locations, bodies exhumed from their original mass graves. From July 1995 onwards, approximately 25,000 Bosnian Muslim civilian women, children and elderly men were forcibly transferred by the VRS from Potočari and other areas surrounding Srebrenica to Kladanj and other non-Serb areas of BiH.
 65. These crimes were committed as part of the joint criminal enterprise described in paragraphs 8 to 14 of this indictment involving VRS personnel, members of the Republika Srpska police and some political leaders from both the FRY and the RS. The videotaped murder of the six Muslim Bosnian prisoners by members of the special units of the Serbian DB was a part of this joint criminal enterprise.
8. At the initial and further appearance before the International Tribunal on 2 June 2003, 13 June 2003, and 16 March 2006, the Accused pleaded not guilty to all five counts in the Indictment.¹³

III. General Pleading Principles

9. Pursuant to Article 18(4) of the Statute and Rule 47(C) of the Rules, an indictment must contain a concise statement of the facts of the case and the crime or crimes with which the accused is charged. These provisions should be interpreted in conjunction with the rights of the accused pursuant to Article 21(2) and Article 21(4)(a) and (b) of the Statute, which provide for the right of an accused to be informed of the nature and cause of the charges against him and to have adequate time and facilities for the preparation of his defence. This right translates into an obligation on the part of the Prosecution to plead the material facts underpinning the charges against the Accused. The pleadings in an indictment are sufficiently particular when they concisely set out the material facts with enough detail to inform the accused clearly of the nature and cause of charges against him, thereby enabling

¹³ The initial appearance was held on 2 June 2003 and 13 June 2003 for Franko Simatović and Jovica Stanišić, respectively. The further appearance was held on 16 March 2006 via video link for the Accused. See "Order Scheduling Further Appearance", 6 March 2006, and "Order Re-scheduling Further Appearance", 14 March 2006.

him to prepare a defence effectively and efficiently. The Prosecution is, however, not required to plead the evidence by which such material facts are to be proven.¹⁴

10. The materiality of a particular fact—such as the identity of the victim, the time and place of the offence, and the means by which the offence was committed—depends on the nature of the Prosecution case. In this respect, the Trial Chamber notes that the Appeals Chamber has recently been seized of challenges to indictments based on the vagueness of their terms, and has strictly applied the requirement that the acts and conduct of the accused on which the Prosecution relies to establish criminal responsibility are material facts to be pleaded in an indictment.¹⁵
11. Where the state of mind with which the accused carried out his alleged acts is relevant, the Prosecution must plead either (i) the relevant state of mind as a material fact, in which case the facts by which that state of mind is to be established are ordinary matters of evidence, and need not be pleaded, or (ii) the facts from which the relevant state of mind is to be inferred.¹⁶

IV. Submissions of the Parties

12. The Stanišić Defence submits that defects in the Indictment arise from (1) “the ambiguity of the new charge and the lack of particularization”¹⁷ particularly in light of paragraphs 58 through 62 of the Indictment and (2) the lack of relevance with respect paragraphs 63 and 64 of the Indictment.¹⁸ Specifically, it argues that the ambiguity arises because the Indictment (i) “appears to suggest that the accused allegedly is not only responsible for the murder of the six prisoners at Treskavica but also for alleged crimes within the Srebrenica enclave”,¹⁹ and (ii) “fails to detail the factual allegations which form the specifics of their case in relation to the capture and execution of the 6 Muslim prisoners.”²⁰ With respect to paragraphs 63 and 64 of the Indictment,²¹ the Stanišić Defence submits that their relevance to the case against the Accused is unclear since they refer to the capture and execution of 7,000 Bosnian Muslim prisoners in the Srebrenica area; the effort of the VRS, under the

¹⁴ *Prosecutor v. Delić*, Case No. IT-04-83-PT, “Decision on Defence Motion Alleging Defects in the Form of the Indictment and Order on Prosecution Motion to Amend the Indictment”, 13 December 2005 (“Delić Trial Decision”), para. 6 (citing *Prosecutor v. Perišić*, Case No. IT-04-81-PT, Decision on Preliminary Motions, 29 August 2005 (“Perišić Trial Decision”)).

¹⁵ Delić Trial Decision, para. 7 (citing *Perišić* Trial Decision, para. 6).

¹⁶ Delić Trial Decision, para. 9 (citing *Perišić* Trial Decision, para. 9).

¹⁷ Stanišić Motion, para. 10.

¹⁸ See *supra*, para. 7 for the reading of these paragraphs.

¹⁹ Stanišić Motion, para. 12.

²⁰ Stanišić Motion, para. 14.

²¹ See *supra*, para. 7 for the reading of these paragraphs.

command and control of General Ratko Mladić, to conceal these killings; and the forcible transfer of approximately 25,000 Bosnian Muslim civilian women, children and elderly men.²²

13. The Simatović Defence submits that defects in the Indictment arise from the lack of specificity in that: (1) it is unclear “if Franko Simatović is charged as a participant in the attack on the enclaves of Srebrenica and Žepa, and whether he is charged for the murder of 7000 Bosnian Muslim prisoners captured and executed from 13-19 July 1995, or whether all allegations of the Second Amended Indictment contained in paragraphs 55-65, except for the allegation concerning the event in Trnovo, are just a background of that event”;²³ (2) it “does not mention the time of the murder of six Muslim prisoners in Trnovo, which accounts for a defect in the form of the Indictment and disallows the Accused to prepare his defence,” and does not include the names of the six Bosnian Muslim prisoners;²⁴ and (3) the supporting material does not support the allegations in the Indictment.²⁵
14. The Prosecution responds, *inter alia*, to the Defence that “it is not alleging that the Accused were a party to the planning of the mass-murders in Srebrenica, only that the units of the Serbian DB participated in the murder of six Muslim prisoners after the capture of the Srebrenica enclave” and that the new charge regarding the murder of six Bosnian Muslim prisoners is “similar in nature (...) to that of the murder of at least sixteen non-Serb detainees near Bosanski Šamac (paragraph 47) by members of the Serbia DB special units, pursuant to the same joint criminal enterprise pleaded at paragraph 9.”²⁶ With respect to the material facts regarding the capture and execution of the six Bosnian Muslim prisoners, the Prosecution submits that they have been sufficiently pleaded in the Indictment and that the Prosecution intends to prove at trial, through direct and circumstantial evidence, the allegation of their capture and execution.²⁷ Further, the Prosecution responds that it is alleging that the murders of the six Bosnian Muslim prisoners were committed pursuant to the joint criminal enterprise to persecute Bosnian non-Serbs or were the direct and foreseeable consequence of the joint criminal enterprise, and that the Accused participated in the joint criminal enterprise as pleaded in paragraphs 8 through 11 and 13 of the

²² Stanišić Motion, paras 19-20. The Stanišić Defence additionally submits that, in paragraph 65 of the Indictment, the Prosecution appears to be alleging that the events in paragraphs 63 and 64 of the Indictment were part of the alleged joint criminal enterprise involving VRS personnel, members of the Republika Srpska police and some political leaders from both the FRY and the RS, and that the Prosecution should identify some of the members of the joint criminal enterprise in light of the extensive litigation at the Tribunal regarding the events in Srebrenica and the Prosecution should, at the very least, “expressly specify whether or not the accused was part of this joint criminal enterprise”. Stanišić Motion, para. 21.

²³ Simatović Motion, para. 14. See *supra*, para. 7 for the reading of these paragraphs.

²⁴ Simatović Motion, paras. 14-15.

²⁵ Simatović Motion, paras. 9, 16-17.

²⁶ Response to Stanišić Motion, para. 10-11; Response to Simatović Motion, para. 11, 13.

Indictment.²⁸ Finally, the Prosecution responds to the Simatović Defence that whether or not the supporting materials support the allegations in the Indictment is irrelevant for purposes of a preliminary challenge pursuant to Rule 72(A)(ii) of the Rules.²⁹

15. The Defence in their respective replies argue that the Prosecution's responses are unsatisfactory and that the Indictment remains defective.³⁰ Additionally, the Stanišić Defence appears to be suggesting that the Prosecution should not be permitted to link the "very discrete case" concerning the murder of the six Bosnian Muslim prisoners to the alleged joint criminal enterprise.³¹

V. Discussion

16. The Trial Chamber shall proceed to address the submissions under the headings Clarification of New Charges; Pleading of Material Facts; and Support of the Charges in the Indictment.

Clarification of New Charges

17. The Prosecution has unequivocally indicated in its submissions that the new charges related to the Srebrenica area pertain specifically to the murder of six Bosnian Muslim prisoners, and that these murders were committed pursuant to the joint criminal enterprise or were the natural and foreseeable consequences of the joint criminal enterprise.³² However, it is not evident from the Indictment that the new charges pertain only to the events related to the murder of the six Bosnian Muslim prisoners referred to in paragraph 62 of the Indictment because (i) paragraph 62 of the Indictment makes reference to a "bus full of prisoners" taken to the Scorpions base "for the purpose of murdering them"; (ii) paragraph 63 of the Indictment makes reference to 7,000 Bosnian Muslim prisoners captured and summarily executed; (iii) paragraph 64 of the Indictment makes reference to the concealment of their bodies and the forcible transfer of women, children and elderly men; and (iv) paragraph 65 of the Indictment reads "*These* crimes were committed as part of the joint criminal enterprise (...)."³³ Accordingly, the Trial Chamber finds that the Indictment is defective in that it is unclear from the Indictment that the new charges related to the Srebrenica area pertain only to the murder of the six Bosnian Muslim prisoners.

²⁷ Response to Stanišić Motion, paras. 12–13; Response to Simatović Motion, para. 19–20.

²⁸ Response to Stanišić Motion, paras. 14–18; Response to Simatović Motion, para. 14.

²⁹ Response to Simatović Motion, paras. 16–17.

³⁰ Stanišić Reply, para 6; Simatović Reply, paras 7–16.

³¹ Stanišić Reply, paras 7–9.

³² See *supra*, note 26–28.

³³ Emphasis added. See *supra*, para. 7 for the reading of these paragraphs.

18. For the foregoing reasons, the Defence requests are granted and the Prosecution will be ordered to clarify that the new charges pertain only to the murder of the six Bosnian Muslim prisoners.
19. With regard to the issue of new charges, the Trial Chamber is aware that the Prosecution, in response to a question from the pre-trial judge, indicated that the new charges related to the Srebrenica pertain only to Counts 1 through 3 - persecution as a crime against humanity; murder as a crime against humanity; and murder as a violation of the laws or customs of war- and not Counts 4 and 5 - deportation as a crime against humanity and inhumane acts (forcible transfer) as a crime against humanity.³⁴ However, the Indictment does not reflect this fact as the reference to the new charges related to the Srebrenica area is included under *all* five counts in the Indictment; paragraph 68 of the Indictment, which is the relevant paragraph under Counts 4 and 5, includes Srebrenica:³⁵

68. From on or about May 1991 until 31 December 1995 Jovica STANIŠIĆ and Franko SIMATOVIĆ acting alone or in concert with members of the joint criminal enterprise, planned, committed or otherwise aided and abetted the planning, preparation or execution of the unlawful forcible transfer or deportation of thousands of Croats, Bosnian Muslims, Bosnian Croats and other non-Serb civilians from their legal domiciles in [...] Srebrenica [...] to other countries or other areas outside their home municipalities.

Accordingly, the Trial Chamber finds that the Indictment is defective in that paragraph 68, which is a paragraph pertaining to Counts 4 and 5, refers to Srebrenica.

20. For the foregoing reasons, the Trial Chamber, *proprio motu*, will order the Prosecution to delete this reference in paragraph 68 of the Indictment.³⁶

Pleading of Material Facts

21. In the present Indictment, the Prosecution has pleaded the purpose of the joint criminal enterprise, the identity of the participants, and the nature of the Accused's participation in the enterprise in paragraphs 9 through 13 of the Indictment.³⁷ With respect to the alleged murder of the six Bosnian Muslim prisoners, the Prosecution has pleaded, *inter alia*, that "[s]pecial units of the Republic of Serbia DB under the control of [the Accused], including the Red Berets and Scorpions, participated in this attack by the VRS on the enclaves of Srebrenica and Žepa"; that "[b]efore the VRS attack on Srebrenica, the Scorpions and other

³⁴ Further Appearance (16 March 2006), T. 546-548. Accordingly, the Accused pled only to counts 1 through 3 with respect to the new charges.

³⁵ There is further confusion in that paragraph 64 of the Indictment refers to the forcible transfer of approximately 25,000 Bosnian Muslim civilian women, children, and elderly men. *See supra*, para. 7 for the reading of this paragraph.

³⁶ The Simatović Defence raised this issue in its Reply. *See Simatović Reply*, paras 17-18.

³⁷ *See Perišić Trial Decision*, para 7 (citing *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Appeal Judgement, 29 July 2004, para. 212 and *Prosecutor v. Kvočka et al.*, Case IT-98-30/1-A, "Appeals Judgement", 28 February 2005, para. 28).

special units attacked the ABiH forces near Sarajevo” in order to draw ABiH units from Srebrenica and Žepa to Sarajevo, “thus making it easier for VRS forces to take control of Srebrenica”; that “[b]etween 12 July and about 20 July 1995, thousands of Bosnian Muslim men were captured by, or surrendered to, Bosnia Serb forces under the command and control of General Ratko Mladić”; that these forces “then distributed the Bosnian Muslim prisoners to different Serb and Serbian units for the purpose of murdering them”; that “[o]ne bus full of prisoners was taken to the base of the Scorpions at Treskavica”; that from these prisoners, six were taken to a secluded rural area and murdered by members of the Scorpions under the command of Slobodan Medić; and that the murder of these men was taped.³⁸

22. In light of the above, the Trial Chamber finds that the Accused have been given sufficient notice to prepare their defence relating to the new charges since the pleadings have clearly informed them of the nature and cause of the new charges. The facts requested by the Defence, such as the identity of the six Bosnian Muslim prisoners or the Bosnian Serb forces which distributed the prisoners,³⁹ are not necessary for the purposes of pleadings in the Indictment. Whether the Prosecution can prove that the Accused are indeed responsible for any of the alleged murders of the six Bosnian Muslim prisoners is a matter of evidence at trial.

23. For the foregoing reasons the Defence requests are denied.

Support of the Charges in the Indictment

24. With respect to the submissions that there is no support for the Indictment, the Trial Chamber emphasises that, after leave is granted to add new charges upon the Trial Chamber being satisfied that a *prima facie* case has been made by the Prosecution, a challenge to the form of the indictment pursuant to Rule 72(A)(ii) is not an exercise in evaluating the Prosecution’s evidence to determine whether it indeed can support the Indictment. Any inconsistency between the Prosecution’s evidence, such as its witness statements, is a matter which should be presented and argued during trial. Moreover, whether the Prosecution is able to link the “very discrete case” concerning the murder of the six Bosnian Muslim prisoners to the alleged joint criminal enterprise is a matter for trial.

25. For the foregoing reasons, the Defence requests are denied.

PURSUANT TO Rules 50, 72 and 126 *bis* of the Rules,

³⁸ Indictment, paras. 59–62. See *supra*, para. 7 for the reading of these paragraphs. This videotape is part of the supporting material disclosed to the Defence.

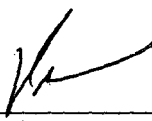
³⁹ See Stanišić Motion, para. 14; Simatović Motion, para. 15. The Trial Chamber is aware that the identity of two of these victims has been disclosed to the Defence through the supporting materials.

HEREBY ORDERS as follows:

- (1) **GRANTS** the Defence to file their respective Stanišić Reply and Simatović Reply;
- (2) **GRANTS** the Stanišić Motion and the Simatović Motion in part; and
- (3) **ORDERS** the Prosecution to file, no later than Monday, 15 May 2006, a revised Indictment which
 - (i) clarifies that the new charges pertain only to the murder of the six Bosnian Muslim prisoners; and
 - (ii) deletes the reference to Srebrenica in paragraph 68 of the Indictment.

The Stanišić Motion and the Simatović Motion are **DENIED** in all other respects.

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



Judge Patrick Robinson

Dated this twelfth day of April 2006
At The Hague
The Netherlands

[Seal of the Tribunal]