



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 Nos.: IT-05-88-PT
IT-05-88/1-PT

Date: 13 July 2006

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IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost

Registrar: Mr. Hans Holthuis

Decision of: 13 July 2006

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVČANIN
ZDRAVKO TOLIMIR
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PROSECUTOR v. MILORAD TRBIĆ

**DECISION ON FURTHER AMENDMENTS AND
CHALLENGES TO THE INDICTMENT**

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TRIAL CHAMBER II 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 number of Defence submissions in relation to the Prosecution’s purported implementation, in the Second Consolidated Amended Indictment filed on 14 June 2006 (“SCAI”),¹ of the Trial Chamber’s “Decision on Motions Challenging the Indictment pursuant to Rule 72 of the Rules” (“May 2006 Decision”): the “Response on Behalf of Vujadin Popović to Prosecution Submission pursuant to the Trial Chamber’s Decision on the Motion Challenging Indictment Pursuant to Rule 72 of the Rules”, filed confidentially on 23 June 2006 (“Popović Response”);² the “Preliminary Motion [on Behalf of Vujadin Popović] Objecting the Form of the Second Consolidated Amended Indictment”, filed on 30 June 2006 (“Popović Motion”); the “Borovčanin Defence Preliminary Motion on the Form of the Second Consolidated Amended Indictment”, filed on 30 June 2006 (“Borovčanin Motion”); and the “Response on Behalf of the Defence of Vinko Pandurević pursuant to Rule 72 to the Prosecution Submission of the Second Consolidated Amended Indictment”, filed on 30 June 2006 (“Pandurević Motion”). Furthermore, for reasons discussed below,³ the Chamber also considers itself seised, by virtue of the motion accompanying the SCAI (“Prosecution Motion”), of an implicit request by the Prosecution for leave to amend the Consolidated Amended Indictment of 11 November 2005 (“CAI”). The Trial Chamber hereby renders its decision on these submissions.

¹ See generally *Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Tolimir, Miletić, Gvero, Pandurević, and Trbić*, Case No. IT-05-88-PT (“*Popović et al.*”), [Partly Confidential] Prosecution’s Submission pursuant to the Trial Chamber’s Decision on Motions Challenging the Indictment pursuant to Rule 72 of the Rules, 14 June 2006, Annex A.

² The Trial Chamber notes that the Popović Response does not contain any information of a sensitive nature, and the Accused Popović has shown no good cause for filing it confidentially. The Chamber will accordingly order the Registry to lift the confidentiality of the Popović Response. Cf. *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, Decision on Stanišić Defence’s Motion for Temporary Modification of Provisional Release Conditions, 8 February 2006, p. 3 (noting the Trial Chamber’s previous holding that “submissions relating to the Accused’s ill health and requesting substantive relief shall be made in public unless good cause is shown for filing them confidentially” and ordering the Registry to lift the confidentiality of a submission that had been filed confidentially); *Prosecutor v. Simić, Tadić, and Zarić*, Case No. IT-95-9-T, Order, 24 September 2002, p. 2 (considering that “proceedings must be in public unless good cause is shown for filings to be made on a ‘confidential’ basis”). Accord Article 20(4) of the Statute; Rule 78 of the Rules.

³ See *infra* para. 6.

I. THE INDICTMENT AND RELATED PROCEDURAL BACKGROUND

1. After considering a number of preliminary motions of the respective Accused challenging the CAI pursuant to Rule 72 of the Rules, the Trial Chamber ordered the Prosecution to make several changes to that Indictment.⁴ On 14 June 2006, the Prosecution filed the Prosecution Motion, attaching to it the SCAI, to which Vujadin Popović (“Accused Popović” or “Popović”) filed the Popović Response on 23 June 2006. In compliance with an Order of the Pre-Trial Judge issued on 22 June 2006,⁵ the Popović Motion, the Borovčanin Motion, and the Pandurević Motion, all of which allege defects in the form of the SCAI pursuant to Rule 72 and challenge certain of the Prosecution’s proposed amendments as impermissible “new charges”, were submitted in a timely manner on 30 June 2006. None of the other Accused has filed a response to the Prosecution Motion or a motion challenging the SCAI.

2. On 3 July 2006, the Prosecution filed its “Consolidated Reply and Response to Defence Responses and Motions Pursuant to Rule 72 to the Prosecution’s Submission of the SCAI” (“Prosecution Response”), in which it addresses the arguments made in the Popović Response, the Popović Motion, the Borovčanin Motion, and the Pandurević Motion (collectively, “Defence Motions”). While several of the assertions contained in this submission address the substance of the Popović Response, and although the Prosecution has styled this submission as a “Consolidated Reply and Response”, the Prosecution has not requested leave to reply to the Popović Response pursuant to Rule 126 *bis* of the Rules. In the Prosecution Response, the Prosecution contends that the Defence Motions fail to identify any defects in the SCAI, save for some minor ambiguities that have either already been clarified or ruled on by the Trial Chamber, and that no new charges against the relevant Accused are contained within the proposed amendments. The Prosecution requests additionally that it be allowed to correct a few typographical errors in the SCAI.⁶

3. On 4 July 2006, Ljubomir Borovčanin (“Accused Borovčanin” or “Borovčanin”) filed an application for leave to reply to the Prosecution Response, attaching to it his “Defence Reply to Prosecution’s ‘Consolidated Reply and Response to Defence Responses and Motions Pursuant to Rule 72 to the Prosecution’s Submission of the Second Consolidated Amended Indictment’” (“Borovčanin Reply”). Borovčanin agrees to the amendments proposed by the Prosecution in paragraphs 16, 18, and 22 of the Prosecution Response, but otherwise maintains the position set out

⁴ See May 2006 Decision, para. 122.

⁵ *Popović et al.*, Order on Request for Clarification and Guidance concerning Prosecution’s Submission of the Second Consolidated Amended Indictment, 22 June 2006 (“*Popović et al.* 22 June 2006 Order”), p. 3.

⁶ Prosecution Response, paras 24–25.

in the Borovčanin Motion, in particular with regard to the argument that the Prosecution exceeded the orders set forth in the May 2006 Decision without seeking leave to do so.⁷ The Trial Chamber considers that its decision is aided by consideration of the Prosecution Response and the Borovčanin Reply, and therefore grants leave under Rule 126 *bis* of the Rules for both submissions to be filed, although it reminds the Prosecution of its obligation to comply with Rule 126 *bis* when filing replies in the future.

II. GENERAL PLEADING PRINCIPLES

4. The Trial Chamber recalls the general pleading principles that were outlined in paragraphs 4 and 5 of the May 2006 Decision, and considers that they are equally applicable to the present Decision. It is therefore unnecessary to reproduce them here.

III. AMENDMENT OF THE CONSOLIDATED AMENDED INDICTMENT

A. The Law on Amendment of an Indictment

5. In the May 2006 Decision, the Trial Chamber ordered the Prosecution to make a number of amendments to the CAI.⁸ With respect to most of these orders, the Trial Chamber left it up to the Prosecution to determine how to properly implement them in order to eliminate the identified defect, with the understanding that the Chamber would subsequently review any amendments made to determine whether they complied with the May 2006 Decision.

6. In this regard the Chamber notes that Rule 50 of the Rules, which governs the amendment of an indictment, must be adhered to regardless of whether a proposed amendment is made on the initiative of the Prosecution or in response to an order of the Trial Chamber.⁹ When a Chamber grants “leave” to amend an indictment,¹⁰ it gives its final approval to the proposed amendment in question. However, by merely ordering the Prosecution to make certain changes in an attempt to resolve identified defects in an indictment, the Chamber does not thereby give its prospective approval to whatever language the Prosecution may produce. Accordingly, as correctly pointed out

⁷ Borovčanin Reply, paras 6–7. *Accord* Borovčanin Motion, para. 24.

⁸ See May 2006 Decision, para. 122.

⁹ See *Popović et al.*, Oral Order, T. 193–194 (6 July 2006) (“*Popović et al.* 6 July 2006 Order”); *Prosecutor v. Delić*, Case No. IT-04-83-PT, Decision on the Prosecution’s Submission of Proposed Amended Indictment and Defence Motion Alleging Defects in Amended Indictment, 30 June 2006 (“*Delić* May 2006 Pre-Trial Decision”), para. 12; *Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, Đorđević, and Lukić*, Case No. IT-05-87-PT, Decision on Motion to Amend the Indictment, 11 May 2006 (“*Milutinović et al.* May 2006 Pre-Trial Decision”), paras. 10–11.

¹⁰ See Rule 50(A) of the Rules (referring to a Trial Chamber’s granting of “leave” to amend an indictment).

by both the Accused Popović¹¹ and the Accused Borovčanin,¹² the Prosecution Motion should have contained an express application for leave to amend the CAI in the manner proposed in the SCAI, even for those amendments purportedly put forth in ministerial compliance with specific orders in the May 2006 Decision.¹³ In spite of this oversight and in light of the proximity of trial, however, the Chamber will regard the Motion as implicitly containing an application for leave to amend, and will proceed to evaluate whether the proposed amendments comply with the requirements of Rule 50.

7. Rule 50 of the Rules provides, in relevant part, as follows:

(A) (i) The Prosecutor may amend an indictment:

...

(c) after the assignment of the case to a Trial Chamber, with the leave of that Trial Chamber or a Judge of that Chamber, after having heard the parties.

(ii) Independently of any other factors relevant to the exercise of the discretion, leave to amend an indictment shall not be granted unless the Trial Chamber or Judge is satisfied there is evidence which satisfies the standard set forth in Article 19, paragraph 1, of the Statute to support the proposed amendment.

...

(B) If the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges.

(C) The 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 and, where necessary, the date for trial may be postponed to ensure adequate time for the preparation of the defence.

8. Under Rule 50, a Trial Chamber has wide discretion to allow an indictment to be amended, even in the late stages of pre-trial proceedings, or indeed even after trial has already begun.¹⁴ Nevertheless, while a Trial Chamber will generally grant leave to make a particular amendment

¹¹ See Popović Response, para. 10.

¹² See Borovčanin Motion, para. 24; Borovčanin Reply, para. 7.

¹³ Cf. *Delić* May 2006 Pre-Trial Decision, *supra* note 9, paras. 12–13.

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* December 2005 Pre-Trial Decision”), para. 62. See also *Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on the Prosecution’s Motion to Request Leave to File a Corrected Amended Indictment, 13 December 2002, para. 21 (“Rule 50 of the Rules neither provides any parameters as to the exercise of discretion by a Chamber when seized [of] a Motion to grant leave to amend an indictment nor does it contain any express limits of such discretion.”); *Prosecutor v. Milošević*, Case No. IT-02-54-T, Order Granting Leave to Amend the Croatia Indictment, 4 November 2002, p. 3 (granting Prosecution motion seeking leave to amend the Croatia Indictment some nine months after the start of trial).

where it may help to “ensure that the real issues in the case will be determined”,¹⁵ such leave will not be granted unless the amendment meets both of the following conditions: it must not result in unfair prejudice to the accused when viewed in light of the circumstances of the case as a whole;¹⁶ and, if the proposed amendment is material,¹⁷ it must be supported by documentation or other material meeting the *prima facie* standard set forth in Article 19 of the Statute of the Tribunal.¹⁸ Therefore, while the Trial Chamber will grant leave to the Prosecution to make most of the minor, non-substantive amendments proposed in the SCAI,¹⁹ it must examine the other proposed changes in light of these two conditions before it can grant leave to make such changes.

9. Among the factors to be considered when assessing whether a given amendment will cause unfair prejudice to the accused, two stand out in the jurisprudence of the Tribunal as having particular importance. First, the amendment must not deprive the accused of an adequate

¹⁵ *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001 (“*Brđanin and Talić* Pre-Trial Decision”), para. 50. *Accord Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-PT, Decision on Prosecution’s Motion to Amend the Indictment and Submission of Proposed Second Amended Indictment and Submission of Amended Pre-Trial Brief, 26 May 2006 (“*Boškoski and Tarčulovski* Pre-Trial Decision”), paras. 10, 13–14.

¹⁶ *Delić* May 2006 Pre-Trial Decision, *supra* note 9, para. 20; *Boškoski and Tarčulovski* Pre-Trial Decision, *supra* note 15, para. 10; *Milutinović et al.* May 2006 Pre-Trial Decision, *supra* note 9, para. 10; *Prosecutor v. Halilović*, Case No. IT-01-48-PT, Decision on Prosecutor’s Motion Seeking Leave to Amend the Indictment, 17 December 2004 (“*Halilović* Pre-Trial Decision”), para. 22; *Brđanin and Talić* Pre-Trial Decision, *supra* note 15, para. 50.

¹⁷ *Delić* May 2006 Pre-Trial Decision, *supra* note 9, para. 78; *Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, Đorđević, and Lukić*, Case No. IT-05-87-PT, Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Joinder Indictment, 22 March 2006 (“*Milutinović et al.* March 2006 Pre-Trial Decision”), para. 30 (holding that “it would be inaccurate to say that supporting material must in all cases be provided for every single proposed amendment, no matter how minor”, and requiring supporting material only for “every material proposed amendment”). *Accord Popović et al.* 6 July 2006 Order, *supra* note 9, T. 193 (endorsing the standard set forth in *Delić* and *Milutinović* and ordering the Prosecution to produce new supporting documentation for certain proposed amendments to the CAI).

¹⁸ *Delić* May 2006 Pre-Trial Decision, *supra* note 9, paras. 17, 45; *Boškoski and Tarčulovski* Pre-Trial Decision, *supra* note 15, para. 10; *Prosecutor v. Beara*, Case No. IT-02-58-PT, Decision on Prosecution Motion to Amend the Indictment, 24 March 2005 (“*Beara* Pre-Trial Decision”), p. 2; *Prosecutor v. Brđanin*, Case No. IT-99-36-PT, Decision on Motion to Dismiss Indictment, 5 October 1999, para. 22. *See also* Article 19(1) of the Statute (“The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a *prima facie* case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.”).

¹⁹ These are the following amendments identified in Annex C of the SCAI as having been made in accordance with paragraph 122(8) of the May 2006 Decision, and which appear on the following pages and paragraphs of the SCAI: p. 1; paras. 10, 11, 13, 14, 15, 16, 18, 19, 22, 24, 25, 26(b), 27, 28, 30, 30.5, 30.6 (heading), 30.8, 30.10, 30.11, 30.12, 30.14, 30.15, 30.16, 31, 31.1, 31.1(b), 31.2(d), 31.4, 32, 33, 34, 35, 36, 37, 38, 38(a), 38(b), 39, 39(a), 39(b), 39(c), 39(c)(ii), 39(c)(iii), 39(c)(iv), 39(c)(v), 39(c)(vi), 40, 40(a)(i), 41, 41(a), 41(a)(i), 42, 42(a), 43, 43(a), 43(a)(i), 43(a)(ii), 43(a)(iii), 44, 44(a), 44(a)(i), 44(a)(ii), 44(a)(iii), 45, 46, 47, 48, 48(a), 48(e), 51, 52, 53, 54, 56, 57, 58, 60, 61, 62, 65, 67, 69, 72(e), 73(b), 74, 74(a)(i), 74(e), 74(e)(ii), 75, 75(a)(i), 75(c), 76, 76(b)(i), 76(d), 77, 77(a)(i), 77(b), 77(b)(i), 78, 78(a), 78(a)(i), 78(a)(i)–(iv), 79, 79(a), 79(a)(i), 80, 80(a), 80(b)(iii), 81, 81(a)(i), 81(b), 81(b)(i), 81(b)(ii), 81(b)(iii), 82, 82(a), 82(a)(i), 83, 84, 86, 87, 88 (heading), 89, 90, 91, 92, 93, 95; Attachment A, paras 2, 3; Attachment B, paras 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14; Attachment C, paras a, b, c, d, e, f, g. *See also infra* para. 65 (Disposition).

opportunity to prepare an effective defence.²⁰ Where an amendment clarifies the Prosecution's case and provides further notice to the accused of the charges against him, a Trial Chamber is more likely to hold that the accused has not been deprived of an adequate opportunity to prepare his defence.²¹

10. Second, the amendment must not adversely affect the accused's right under Article 21 of the Statute to be tried without undue delay.²² The possibility of delay in proceedings must be weighed against the benefits to the accused and the Trial Chamber that the amendment may bring, such as the simplification of proceedings, a more complete understanding of the Prosecution's case, and the avoidance of possible challenges to the indictment or evidence presented at trial.²³ A Chamber is more likely to grant leave to make a certain amendment where its inclusion in the indictment does not result in the addition of a new charge against the accused, as the addition of a new charge risks delaying the start of trial by triggering the procedural consequences of Rules 50(B) and 50(C) of the Rules.²⁴ The time required to realise the procedures provided for under these Rules, when considered in the circumstances of a given case, could amount to undue delay causing unfair prejudice to the accused.²⁵

²⁰ *Delić* May 2006 Pre-Trial Decision, *supra* note 9, para. 20; *Boškoski and Tarčulovski* Pre-Trial Decision, *supra* note 15, para. 10; *Milutinović et al.* May 2006 Pre-Trial Decision, *supra* note 9, para. 10; *Halilović* Pre-Trial Decision, *supra* note 16, para. 23.

²¹ *Prosecutor v. Karemera, Ngirumpatse, Nzirodera, and Rwamakuba*, Case No. ICTR-98-44-AR73, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003 ("*Karemera et al.* Appeal Decision"), para. 13; *Beara* Pre-Trial Decision, *supra* note 18, p. 2; *Halilović* Pre-Trial Decision, *supra* note 16, para. 23.

²² *Karemera et al.* Appeal Decision, *supra* note 21, para. 13; *Delić* May 2006 Pre-Trial Decision, *supra* note 9, para. 20; *Boškoski and Tarčulovski* Pre-Trial Decision, *supra* note 15, para. 10; *Milutinović et al.* May 2006 Pre-Trial Decision, *supra* note 9, para. 10; *Prosecutor v. Čermak and Markač*, Case No. IT-03-73-PT, Decision on Prosecution Motion Seeking Leave to Amend the Indictment, 19 October 2005, para. 35; *Beara* Pre-Trial Decision, *supra* note 18, p. 2; *Halilović* Pre-Trial Decision, *supra* note 16, para. 23. *See also* Article 21(4)(c) of the Statute ("In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to ... be tried without undue delay.").

²³ *Karemera et al.* Appeal Decision, *supra* note 21, para. 15 ("The Appeals Chamber finds that a clearer and more specific indictment benefits the accused ... because the accused can tailor their preparations to an indictment that more accurately reflects the case they will meet, thus resulting in a more effective defence."); *Delić* May 2006 Pre-Trial Decision, *supra* note 9, para. 21; *Boškoski and Tarčulovski* Pre-Trial Decision, *supra* note 15, para. 12.

²⁴ *Halilović* Pre-Trial Decision, *supra* note 16, para. 24.

²⁵ *Delić* May 2006 Pre-Trial Decision, *supra* note 9, para. 22; *Halilović* Pre-Trial Decision, *supra* note 16, para. 24. In the circumstances of the present case, however, the delaying effects of the procedural consequences of Rules 50(B) and 50(C) would be significantly mitigated if the Trial Chamber were to hold that the proposed amendments contained new charges. First, the Accused have already been given the opportunity to file their Rule 72 challenges in respect of any new charges that may be contained in SCAI, and three of the Accused have taken advantage of this opportunity. *See Popović et al.* 22 June 2006 Order, *supra* note 3, p. 3 (ordering the Accused to file any Rule 72 challenges to the SCAI by 30 June 2006); *Popović* Motion, paras. 9–15; *Borovčanin* Motion, paras. 25–32; *Pandurević* Motion, paras. 10–11, 15. Second, all the Accused will already be present at the Pre-Trial Conference on 13 July 2006, and little extra time would therefore need to be expended in having them plead to any new charges.

11. The Trial Chamber endorses the holding of the Trial Chamber in *Halilović* as to what constitutes a new charge for purposes of Rule 50 of the Rules:

When considering whether a proposed amendment results in the inclusion of a “new charge”, it is ... appropriate to focus on the imposition of criminal liability on a basis that was not previously reflected in the indictment. In the opinion of the Trial Chamber the key question is, therefore, whether the indictment introduces a basis for conviction that is *factually and/or legally distinct* from any already alleged in the indictment.²⁶

The introduction of a form of responsibility not previously reflected in the indictment amounts to the inclusion of a new charge because it introduces a basis for conviction that is legally distinct from those already alleged; since the accused could ultimately be found responsible for a criminal act on the basis of this new form of responsibility alone, and acquitted on the basis of all the forms of responsibility alleged for that act in the original indictment, he must be given the opportunity to enter a plea in respect of the new form of responsibility. For the same reason, the introduction of a factual allegation not previously reflected in the indictment also amounts to the inclusion of a new charge, but only where such allegation exposes the accused to an additional basis for conviction. Thus, where an amended indictment alleges, for example, that the accused bears liability for the murder of a certain victim that is nowhere alleged in the original indictment, such murder constitutes a new charge and the accused must be permitted to enter a plea on it pursuant to Rule 50(B) of the Rules.

B. Arguments of the Parties

1. Accused Popović

12. The Accused Popović objects to certain amendments made to the CAI on two different grounds. First, he claims that these amendments contain several new charges alleging his individual criminal responsibility, and that the affected paragraphs of the SCAI accordingly exceed the scope of the May 2006 Decision even though the Prosecution has not requested leave to do so.²⁷ He objects in particular to a number of paragraphs that charge him with assisting Ljubiša Beara (“Accused Beara” or “Beara”) in organising, coordinating, and facilitating the detention, transportation, summary execution, and burial of 15 Bosnian Muslim victims murdered at Jadar

²⁶ *Halilović* Pre-Trial Decision, *supra* note 16, para. 30 (emphasis added). See also *ibid.*, para. 34 (holding that “where the new allegation could be the sole action or omission of the Accused that justifies his conviction, that amendment is a ‘new charge’ for purposes of Rule 50”). Accord *Delić* May 2006 Pre-Trial Decision, *supra* note 9, para. 54 (endorsing the *Halilović* definition); *Milutinović et al.* March 2006 Pre-Trial Decision, *supra* note 17, para. 24 (same); *Beara* Pre-Trial Decision, *supra* note 18, p. 2 (same). It is each charge, therefore, that holds the potential of exposing the accused to individual criminal liability. The counts in an indictment, by contrast, merely reflect the way in which the Prosecution chose to organise the charges in relation to the crimes allegedly committed.

²⁷ Popović Response, paras. 2, 5–6, 8, 10, 12; Popović Motion, para. 5.

River; 150 at Cerska Valley; 130 at Nova Kasaba; over 1,000 at the Kravica Warehouse; ten to 15 at Sandići Meadow; 25 at Luke School; approximately 1,000 at the Dam near Petkovci;²⁸ hundreds at Orahovac;²⁹ approximately 500 at the Ročević School;³⁰ approximately 1,200 at the Kula School near Pilica;³¹ approximately 500 at Kozluk;³² a number at the Branjevo Military Farm;³³ and approximately 500 at the Pilica Cultural Centre.³⁴ Popović similarly challenges paragraphs charging him, ostensibly for the first time, with supervising and coordinating the detention of a number of Bosnian Muslim prisoners in the Vuk Karadžić School, in various trucks and buses in Bratunac,³⁵ in the Petkovci School,³⁶ and in the Kravica Market;³⁷ and with ordering the execution of 11 Bosnian Muslim prisoners removed from the Milići Hospital.³⁸ Second, Popović argues that neither the existing supporting material to the CAI nor the Prosecution's Pre-Trial Brief contain sufficient evidence establishing the requisite *prima facie* case with respect to these proposed amendments,³⁹ and that the Trial Chamber should therefore reject the cited proposed amendments in their entirety.⁴⁰

13. The Prosecution responds that the passages complained of by the Accused Popović "are not new charges; rather, they represent precisely the detailed listing ordered by the ... May 2006 Decision".⁴¹ It argues that Popović has always been charged with participation in a JCE to murder over 7,000 Bosnian Muslim men and boys from the Srebrenica enclave, and through the new language he "faces neither new charges nor any 'additional' number of victims."⁴² With reference to the claim that the Prosecution has not yet offered evidence establishing a *prima facie* case in support of these proposed amendments, the Prosecution argues that "[i]t is well-settled that a

²⁸ Popović Response, paras. 6–7; Popović Motion, para. 5 (both referring, respectively, to paragraphs 30.2, 30.3, 30.3.1, 30.4, 30.4.1, 30.5, 30.8 of the SCAI).

²⁹ *Ibid.* (referring to paragraph 30.6 of the SCAI).

³⁰ *Ibid.* (referring to paragraph 30.8.1 of the SCAI).

³¹ *Ibid.* (referring to paragraph 30.9 of the SCAI).

³² *Ibid.* (referring to paragraph 30.10 of the SCAI).

³³ *Ibid.* (referring to paragraph 30.11 of the SCAI).

³⁴ *Ibid.* (referring to paragraph 30.12 of the SCAI).

³⁵ *Ibid.* para. 7; Popović Motion, para. 5 (both referring to paragraph 31.2(e) of the SCAI).

³⁶ *Ibid.* para. 5 (referring to paragraph 30.7 of the SCAI).

³⁷ *Ibid.* (referring to paragraph 31.3 of the SCAI).

³⁸ *Ibid.* (referring to paragraph 30.15 of the SCAI). The Accused Popović contends that, as a result of these new allegations, "he is additionally charged with [the] execution of approximately 2,335 men." Popović Response, para. 7.

³⁹ *Ibid.* paras. 13–16.

⁴⁰ *Ibid.* para. 17.

⁴¹ Prosecution Response, para. 5 (citing, in particular, paragraphs 119 and 122(i) of the May 2006 Decision).

⁴² *Ibid.*

motion on the form of an Indictment is not the proper vehicle for resolving such factual disputes, and that these arguments are therefore properly reserved until the completion of the trial.”⁴³

2. Accused Borovčanin

14. Like the Accused Popović, the Accused Borovčanin also claims that the amendments made to the CAI fail to properly address all the orders contained in the May 2006 Decision, and that the Prosecution has exceeded the scope of the May 2006 Decision without requesting leave.⁴⁴ He argues specifically that paragraph 30.4.1 of the SCAI, explicitly alleging for the first time that a number of Bosnian Muslim prisoners were executed at Sandići Meadow, “brings in a new charge against Mr Borovcanin ... without seeking a leave to do so under Rule 50 of the Rules”.⁴⁵ The Trial Chamber should therefore order the Prosecution to strike paragraph 30.4.1 from the SCAI, along with the reference to Sandići Meadow in paragraph 63.⁴⁶ Borovčanin also argues that “a different allegation” has been made against him in paragraph 92 of the SCAI which, in his submission, suggests for the first time that his duty to protect extends to over 1,000 alleged victims, as opposed to “prisoners who remained alive at the execution site”, as was alleged in the previous Indictments against him. He further submits that paragraph 92 is in contradiction with paragraphs 30.4 and 43(a)(iii) of the SCAI, which both refer to “hundreds of Muslim prisoners”.⁴⁷

15. Borovčanin contends additionally that, by withdrawing the limitation of his individual criminal responsibility in Count 1 to “aiding and abetting genocide”, the Prosecution did not simply clarify “under which form or forms of responsibility Ljubomir Borovčanin is charged under Count 1”,⁴⁸ but instead introduced an entirely different and previously uncharged form of criminal responsibility against him—joint criminal enterprise (“JCE”).⁴⁹ Invoking the Tribunal’s jurisprudence on amendments to an indictment, Borovčanin alleges that this proposed change is prejudicial to him, as it comes very late in the proceedings and thereby deprives him of the opportunity to effectively prepare his defence.⁵⁰ He thus requests that the Prosecution be ordered to

⁴³ *Ibid.* para. 7.

⁴⁴ Borovčanin Motion, para. 24; Borovčanin Reply, para. 7.

⁴⁵ Borovčanin Motion, para. 33. *Accord ibid.* para. 35.

⁴⁶ *Ibid.* para. 36.

⁴⁷ *Ibid.* para. 31.

⁴⁸ May 2006 Decision, para. 98.

⁴⁹ Borovčanin Motion, para. 38.

⁵⁰ *Ibid.* para. 39 (invoking *Halilović* Pre-Trial Decision, *supra* note 16, paras. 28–34).

reinstate language alleging that he is only charged in Count 1 with aiding and abetting genocide, and not with participation in a JCE.⁵¹

16. The Prosecution responds that the new allegations relating to executions at Sandići Meadow do not contain a new charge against the Accused Borovčanin, as they are neither factually nor legally distinct from the other large-scale and systematic murders described throughout paragraph 30 of the SCAI;⁵² these allegations merely add detail concerning the executions in accordance with the Trial Chamber's order for greater specificity in the May 2006 Decision.⁵³ Moreover, these executions and Borovčanin's responsibility for them were alleged in the individual indictment against him before his case was joined into Case No. IT-05-88.⁵⁴ With regard to Borovčanin's complaint in relation to paragraph 92 of the SCAI, the Prosecution rejoins that, by indicating that Borovčanin's duty to protect extended to all prisoners at the execution site and not simply to those who remained alive at the execution site, it has complied fully with paragraph 122(7)(v) of the May 2006 Decision.⁵⁵

17. The Prosecution also contends that the proposed amendment to paragraph 33 of the SCAI complies with the order contained in the May 2006 Decision to clarify under which form or forms of responsibility Borovčanin is charged in Count 1, and that he will not suffer any prejudice as a result of the striking of the "aiding and abetting genocide" language, since the underlying charge against him remains unchanged.⁵⁶

3. Accused Pandurević

18. Vinko Pandurević ("Accused Pandurević" or "Pandurević") also argues that the Prosecution has made proposed amendments to the SCAI that exceed the scope of the May 2006 Decision without seeking leave to do so.⁵⁷ Specifically, he complains that paragraph 30.8.1 of the SCAI, which did not appear in the CAI, contains "an entirely new allegation so far as Pandurevic is concerned, and in particular, it is alleged in the text of this new allegation that Pandurevic bears command and control responsibility for those who committed crimes at Rocevic."⁵⁸ Pandurević contends that the Prosecution has not sought leave to make this new allegation; he claims further

⁵¹ *Ibid.* para. 40.

⁵² Prosecution Response, para. 20.

⁵³ *Ibid.* para. 19 (referring to paragraphs 122(7)(g), 122(7)(i), and 122(7)(j) of the May 2006 Decision); *ibid.* para. 20.

⁵⁴ *Ibid.* para. 19.

⁵⁵ *Ibid.* para. 17.

⁵⁶ *Ibid.* para. 21 (referring to paragraph 122(7)(u) of the May 2006 Decision).

⁵⁷ Pandurević Motion, para. 12 (referring specifically to certain amendments made to paragraphs 30 and 31 of the CAI).

that the Prosecution has failed to amend paragraph 94—which alleges that Pandurević is responsible for the criminal acts of his subordinates described in a number of previous paragraphs—to include reference to the paragraph concerning Ročević.⁵⁹ Pandurević argues in addition that paragraph 30.15.1 of the SCAI “is a wholly new allegation” and that “[n]o explicit allegation is made that these killings were committed by any of the accused in this indictment, or that any of them bore any indirect liability under Article 7(1), nor that any accused had command responsibility for those who committed the crimes under Article 7(3).”⁶⁰ Moreover, like the Ročević allegation, no mention of Snagovo is made in paragraphs 94 and 95 of the SCAI, and there is accordingly “no *prima facie* case that these 6 killings are in any way the responsibility of any of the accused on this indictment under any form of criminal liability.”⁶¹ Furthermore, according to Pandurević, paragraph 77 of the SCAI, which describes his acts in furtherance of the JCE to forcibly transfer the Muslim population of Srebrenica and Žepa, impermissibly incorporates “a new allegation of substance”, in that it seeks to hold him responsible as a JCE participant for an omission—that is, his failure to ensure the safety and welfare of the people in the Municipality of Zvornik.⁶² The addition of a new form of responsibility exceeds the scope of the Trial Chamber’s order in the May 2006 Decision “to list as exhaustively as possible the acts performed by the Accused in furtherance of the two alleged JCEs”,⁶³ and this form of responsibility is in any event “unsustainable in law” because participation in a JCE cannot occur through an omission.⁶⁴

19. The Prosecution responds that the allegations concerning Ročević are not new, in that paragraph 39(b) of the CAI already made reference to Ročević; paragraph 30.8.1 merely particularises the description of the Ročević events, as ordered in the May 2006 Decision, and does not add a new allegation or charge.⁶⁵ It argues further the Accused Pandurević is incorrect in claiming that paragraph 94 of the SCAI has not been amended to make reference to paragraph 30.8.1, as it contains a reference to “paragraphs 30.6–30.15”.⁶⁶ The Prosecution contends that paragraph 30.15.1 of the SCAI, describing the executions at Snagovo “which were unknown to the Prosecution at the time of the filing of the Consolidated Amended Indictment”, is in compliance

⁵⁸ *Ibid.* para. 13.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.* para. 14.

⁶¹ *Ibid.*

⁶² *Ibid.* para. 16.

⁶³ See May 2006 Decision, para. 122(7)(i).

⁶⁴ Pandurević Motion, paras. 17–18.

⁶⁵ Prosecution Response, para. 12 (referring to paragraph 122(7)(b) of the May 2006 Decision).

⁶⁶ *Ibid.*

with the Trial Chamber's order in the May 2006 Decision to enumerate as exhaustively as possible the alleged detention and execution sites.⁶⁷ Finally, the Prosecution argues that paragraph 77 of the SCAI does not in fact introduce a new form of responsibility in respect of Pandurević: as both that Indictment and the predecessor CAI begin with the words "[b]y their acts and omissions", it is clear that Pandurević is alleged to be responsible both for his acts and for his culpable omissions pursuant to Articles 7(1) and 7(3) of the Statute.⁶⁸

C. Discussion

20. The Trial Chamber recalls that a Chamber enjoys wide discretion in granting leave to amend an indictment, and will typically grant such leave where the amendment in question has the prospect of helping "to ensure that the real issues in the case will be determined".⁶⁹ The Chamber has examined the amendments proposed in the SCAI and considers that, on the whole, they serve to clarify the scope of the charges against the respective Accused. It is accordingly inclined to grant the proposed amendments as drafted, provided that they do not contain impermissible defects in their form, and that they comply with the two conditions identified above: a given amendment must not result in unfair prejudice to the accused when viewed in light of the circumstances of the case as a whole; and, unless it seeks merely to rectify minor, non-substantive errors, the amendment must be supported by documentation or other material meeting the *prima facie* standard set forth in Article 19 of the Statute.⁷⁰ The Trial Chamber will proceed to examine the Defence arguments relating to the proposed amendments having regard to these two conditions, and will address the question of defects in form in a subsequent section of this Decision.⁷¹

a. Do the proposed amendments result in unfair prejudice to the Accused?

21. One of the two key factors to consider when determining the prejudicial effect of a proposed amendment is whether it provides the accused with sufficient notice of the scope and nature of the new allegations against him, or whether it provides insufficient notice and thus deprives him of an adequate opportunity to prepare an effective defence.⁷² The closer to trial the Prosecution proposes a given amendment, the more likely it is that a Trial Chamber will reject the amendment on the ground that its introduction would cause unfair prejudice to the accused by depriving him of

⁶⁷ *Ibid.* para. 13 (referring to paragraph 122(7)(g) of the May 2006 Decision).

⁶⁸ Prosecution Response, para. 15.

⁶⁹ *Brđanin and Talić* Pre-Trial Decision, *supra* note 15, para. 50. *See also supra* para. 8.

⁷⁰ *See supra* para. 8.

⁷¹ *See infra* paras. 37–64.

⁷² *See supra* para. 9.

adequate notice.⁷³ The other key factor to consider is whether the proposed amendment will result in undue delay.⁷⁴

22. Most of the proposed amendments complained of in the Defence Motions concern how the Prosecution chose to implement five sub-paragraphs in the disposition of the May 2006 Decision. In those sub-paragraphs, the Trial Chamber ordered the Prosecution

- a. “to enumerate as exhaustively as possible the detention and execution sites, as discussed in paragraph 76 [of the May 2006 Decision]”;⁷⁵
- b. “to list as exhaustively as possible the acts performed by the Accused in furtherance of the two alleged JCEs, as discussed in paragraph 80 [of the May 2006 Decision]”;⁷⁶
- c. “to list as exhaustively as possible in paragraphs 94 and 95 [of the SCAI] ‘the criminal acts of subordinates’ for which each Accused is alleged to be liable, as discussed in paragraph 81 [of the May 2006 Decision]”;⁷⁷
- d. “to clarify under which form or forms of responsibility Ljubomir Borovčanin is charged in Count 1, as discussed in paragraph 98 [of the May 2006 Decision]”;⁷⁸ and
- e. “to provide clarification as to the alleged detention site called Ročević in paragraphs 40(a)(ii), 41(a)(iii), 42(a)(i), 44(a)(i), 78(a)(ii), 79(a)(iii), 80(b)(ii), and 82(a)(i) of the Indictment, as discussed in paragraphs 111, 119, and 120 [of the May 2006 Decision]”.⁷⁹

23. The SCAI contains a number of general paragraphs describing the criminal conduct for which the Accused are charged through various forms of responsibility, and this language has remained largely unchanged from the CAI. Paragraphs 10 to 18 of the SCAI, for instance, describe the respective positions and functions of the Accused in the military and police hierarchy of Republika Srpska, including the forces over which each of them exercised superior authority. Paragraphs 26 to 30 (excepting the sub-paragraphs of paragraph 30), 31 (excepting the sub-paragraphs), and 39 to 43 describe in a broad manner the role and actions of the Accused Pandurević, Popović, Borovčanin, Beara, and Drago Nikolić (“Nikolić”) in the furtherance of the alleged JCE and conspiracy to murder the able-bodied Muslim men of Srebrenica. Paragraphs 72 to 73, 75 to 81, and 83 similarly describe the role and actions of the Accused Pandurević, Popović, Borovčanin, Beara, Nikolić, Radivoje Miletić, and Milan Gvero in the furtherance of the alleged

⁷³ See *Delić* December 2005 Pre-Trial Decision, *supra* note 14, para. 62; *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, Decision on Prosecution’s Motion for Leave to Amend the Indictment, 27 May 2005, para. 5.

⁷⁴ A Trial Chamber is more likely to reject an amendment where it incorporates a new charge against the accused, as the accused would have to make a further appearance to plead to the new charge, and would have an additional period of 30 days to challenge the new charge pursuant to Rule 72 of the Rules. See *supra* para. 10.

⁷⁵ May 2006 Decision, para. 122(7)(g).

⁷⁶ *Ibid.* para. 122(7)(i).

⁷⁷ *Ibid.* para. 122(7)(j).

⁷⁸ *Ibid.* para. 122(7)(u).

⁷⁹ *Ibid.* para. 122(7)(bb).

JCE to forcibly remove the Muslim population from Srebrenica and Žepa. Paragraphs 88 through 92—alleging responsibility for planning, instigating, ordering, and aiding and abetting along with responsibility through participation in a JCE—also describe the contribution of the various Accused to the criminal conduct alleged. Moreover, paragraphs 93 to 95 allege the superior responsibility of the Accused Pandurević and Borovčanin for certain criminal acts of subordinates, making cross-reference to the paragraphs of the Indictment describing those subordinate acts.

24. The SCAI also contains several paragraphs describing, in a rather broad and prefatory way, the alleged murder and forcible-transfer operations, and alleging the death or transfer of thousands of unnamed and unspecified victims. For example, paragraph 25 alleges that, by November 1995, “the entire Muslim population” from the area of Srebrenica and Žepa had been removed or had fled, and “over 7000 Muslim men and boys from Srebrenica had been murdered by VRS and MUP forces.”⁸⁰ Paragraph 28 describes the separation of over 1,000 able-bodied Muslim men from their families and their transportation to Bratunac. Paragraph 29 describes the surrender or capture of over 6,000 able-bodied Muslim men and their removal to Bratunac and Kravica, and paragraph 30 (excepting the sub-paragraphs) sets forth the general allegation that these men were murdered, leaving the description of specific incidents of murder to the sub-paragraphs of paragraphs 30 and 31. Paragraphs 61 and 62 describe the transportation of thousands of Bosnian Muslim women, children, and elderly out of Potočari.

25. In the May 2006 Decision, the Trial Chamber held that several of the allegations in the CAI were insufficiently precise to satisfy the requirements of the Tribunal’s jurisprudence on the form of the indictment. These included the specific criminal activities said to have occurred in the course of carrying out the plans to murder and forcibly transfer the populations of Srebrenica and Žepa—and particularly those alleged in the sub-paragraphs of paragraphs 30 and 31—as well as the specific contribution of the Accused to those activities.⁸¹

26. Upon examination of the amendments proposed by the Prosecution, and notwithstanding the arguments to the contrary in the Defence Motions, the Trial Chamber is of the view that the Prosecution has not in fact inserted new charges against the Accused for any criminal activities through any form of responsibility for which they did not already face liability in the CAI. The added passages alleging executions—including those contained in entirely new paragraphs, that is,

⁸⁰ SCAI, para. 25.

⁸¹ May 2006 Decision, paras. 76, 80–81.

the executions at Nova Kasaba,⁸² Sandići Meadow,⁸³ Ročević School,⁸⁴ and Snagovo⁸⁵—merely provide greater detail to the previous general allegation that over 6,000 men and boys were killed in the Srebrenica, Bratunac, and Zvornik municipalities. In other words, while the added passages specify how and where certain of those thousands of persons died, they do not add a single victim to the total number of deaths for which the Accused were previously said to be liable. In this regard, the Trial Chamber recalls the following observation made by the Trial Chamber in *Halilović* when elaborating on its definition of “new charge” for purposes of Rule 50 of the Rules:

This understanding of “new charge” ... is neither overbroad nor underinclusive: it would not make new charges out of new allegations that carry no additional risk of conviction by themselves, and would include new allegations that are clearly new charges based on the prior practice of this Tribunal. For example, an amendment seeking to replace a vague reference to an unknown number of victims with a specific number of victims is merely a new factual allegation, not a new charge, because it does not expose the Accused to an additional risk of conviction.⁸⁶

In the same vein, the added passages detailing the contribution of the various Accused to the realisation of the alleged criminal activities do not charge any of them with a form of responsibility through which they were not already charged, albeit in a manner that the Trial Chamber deemed insufficiently precise under the Tribunal’s form-of-indictment jurisprudence. Accordingly, none of the proposed amendments introduces a basis for conviction that is factually or legally distinct from any already alleged in the CAI.⁸⁷

27. This conclusion holds true even in respect of the Accused Borovčanin and Pandurević, each of whom argues that the Prosecution has now alleged his responsibility through a previously uncharged form of responsibility. With reference to the contention of the Accused Borovčanin that the SCAI charges him, for the first time, with participation in a JCE, the Trial Chamber recalls paragraph 98 of the May 2006 Decision. There the Chamber opined that, in addition to the allegation against Borovčanin in Count 1 for aiding and abetting genocide, “reading the Indictment as a whole, and in particular paragraphs 36, 37, 43, 49, 61 to 63, 81, 88, 90, and 91, it would appear that Ljubomir Borovčanin is also charged as a participant in the two alleged JCEs”.⁸⁸ The Trial Chamber accordingly ordered the Prosecution to “clarify in the Indictment under which form or

⁸² SCAI, para. 30.3.1.

⁸³ *Ibid.* para. 30.4.1.

⁸⁴ *Ibid.* para. 30.8.1.

⁸⁵ *Ibid.* para. 30.15.1.

⁸⁶ *Halilović* Pre-Trial Decision, *supra* note 16, para. 35.

⁸⁷ *See ibid.* para. 30. *See also supra* para. 11.

⁸⁸ May 2006 Decision, para. 98.

forms of responsibility Ljubomir Borovčanin is charged under Count 1”,⁸⁹ and the Prosecution did so by deleting the phrase “limited to Aiding and Abetting Genocide” from the Indictment. The Chamber considers that the resulting language of Count 1 removes the ambiguity in relation to Borovčanin’s alleged responsibility for genocide, and appropriately reflects the fact that he is charged now, as he was in the CAI, with participation in the two JCEs to commit genocide. The amended language of Count 1 does not, therefore, contain a basis for conviction that is factually or legally distinct from any already alleged in the CAI.

28. The Accused Pandurević contends that paragraph 77 of the SCAI impermissibly exposes him to a new basis for conviction by charging him with JCE responsibility for his failure to ensure the safety and welfare of the people in the municipality of Zvornik,⁹⁰ and that this allegation is in any event “unsustainable in law” because participation in a JCE cannot occur through an omission.⁹¹ The Trial Chamber recalls that, under the Tribunal’s jurisprudence on the elements of JCE, in order to fulfil the element that the accused “participate” in the JCE, the accused need not have physically committed any part of the *actus reus* of any crime,⁹² and he need not even have performed an overt physical act; as held by the Appeals Chamber in *Kvočka*, “it is sufficient for the accused to have committed an act or an omission which contributes to the common criminal purpose.”⁹³ Nevertheless, for the reasons described in paragraph 26 above, the Trial Chamber holds that the proposed amendment in paragraph 77 of the SCAI does not expose Pandurević to a new factual or legal basis for conviction, but merely provides greater specificity as to his alleged responsibility for participating in the JCE to forcibly transfer the Muslim populations of Srebrenica and Žepa, which is described in general terms in the remainder of that paragraph. The Chamber also notes that the omission allegation complained of by Pandurević was already alleged in paragraph 39(c)(vii) of the CAI, detailing his alleged acts in furtherance of the JCE to murder the Muslim men of Srebrenica, and remains unchanged in that paragraph of the SCAI.

29. With respect to Borovčanin’s complaints concerning paragraph 92 of the SCAI, the Trial Chamber is of the view that the additions made to that paragraph merely reflect the Prosecution’s

⁸⁹ *Ibid.* Accord *ibid.* para. 122(7)(u).

⁹⁰ Pandurević Motion, para. 16.

⁹¹ *Ibid.* paras. 17–18.

⁹² *Prosecutor v. Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006, para. 64 (“This participation need not involve the commission of a specific crime under one of the provisions (for example, murder, extermination, torture or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose.”); *Prosecutor v. Kvočka, Radić, Žigić, and Prcać*, Case No. IT-98-30/1-A, Judgement, 28 February 2005, para. 99 (“A participant in a joint criminal enterprise need not physically participate in any element of any crime, so long as the requirements of joint criminal enterprise responsibility are met.”).

⁹³ *Ibid.* para. 187 (emphasis added).

interpretation of Borovčanin's duty to protect. The Prosecution is not seeking to allege new facts or introduce new information; it is simply specifying "whether Ljubomir Borovčanin's alleged duty to protect is meant, in the Prosecution's submission, to be limited to "the prisoners *who remained alive* at the execution site."⁹⁴ The Trial Chamber therefore holds that this amendment does not result in the addition of any new charges against Borovčanin. The Chamber similarly rejects Borovčanin's submission that the SCAI is inconsistent as regards the number of victims allegedly under his duty to protect. Indeed, paragraph 30.4 of that Indictment first mentions that MUP Special Police Forces under the command and control of Borovčanin *captured* hundreds of Muslim men from Srebrenica. According to the SCAI, these hundreds of captured men only constituted a part of the "over 1000 Bosnian Muslim men" eventually summarily *executed* in the Kravica Warehouse by VRS and/or MUP forces under Borovčanin's command and control. Further, he is only alleged to have been *present during the execution* of hundreds of Muslim prisoners. Paragraph 43(a)(ii) focuses on Borovčanin's role in the furtherance of the JCE and conspiracy to summarily execute and bury the able-bodied men of Srebrenica. The "hundreds of able-bodied Muslim men" mentioned therein are those *executed in the presence of Borovčanin*. As such, paragraph 30.4 of the SCAI, on the one hand, and paragraphs 43(a)(ii) and 43(a)(iii), on the other, are not inconsistent with one another. The "over 1000 Muslim prisoners held at the Kravica Warehouse" referred to in paragraph 92 of the SCAI are, in conjunction with paragraph 30.4 of that Indictment, identified as those captured by the MUP Special Forces, in addition to those captured by others; all of these prisoners are said to have been executed at the Kravica Warehouse, but not all in the presence of Borovčanin. In that respect, paragraph 92 is consistent with paragraphs 30.4 and 43(a)(iii) of the SCAI.

30. The Trial Chamber concludes that, as none of the proposed amendments introduces a basis for conviction that is factually or legally distinct from any already alleged in the CAI, no new charges are contained in the SCAI. The procedural consequences of Rules 50(B) and 50(C) of the Rules, with their concomitant delays, have therefore not been triggered: no further preliminary motions pursuant to Rule 72 of the Rules will be filed, and the Accused will not be required to make a further appearance to enter any additional pleas. As the Chamber can foresee no other reason why the start of trial would be delayed as a result of the inclusion of the proposed amendments in the Indictment, it now turns to an examination of whether such inclusion nonetheless provides the Accused with insufficient notice, thereby depriving them of the opportunity to prepare an effective defence.

⁹⁴ May 2006 Decision, para. 99 (emphasis in original). *Accord ibid.* para. 122(7)(v).

31. The Accused have been aware of most of the Prosecution's basic allegations with regard to the proposed amendments since at least 11 November 2005, when the CAI was filed, although most of these allegations were made with far less precision in that Indictment than they are in the current one. Moreover, the Prosecution has since provided the Accused with much greater specificity in relation to these allegations in its Pre-Trial Brief, which also contains substantial discussions of three of the four new alleged execution sites complained of specifically in the Defence Motions: Nova Kasaba,⁹⁵ Sandići Meadow,⁹⁶ and Ročević School.⁹⁷

32. However, the Prosecution has made no mention in its Pre-Trial Brief of the fourth new alleged execution site, referred to as "the woods near the town of Snagovo" and appearing in paragraph 30.15.1 of the SCAI. The Prosecution itself admits that this execution site was unknown at the time of the filing of the CAI.⁹⁸ Having regard to the imminent start date for trial, the Trial Chamber has the duty to ensure that this event is not only reflected in the Prosecution's Proofing Chart, but also that the Accused will have adequate time to prepare their respective cases in relation to it. As a consequence, the Trial Chamber instructs the Prosecution not to lead evidence in relation to this event earlier than six months after it gives its opening statement at trial. As long as this order is complied with, the Chamber is of the view that the Accused will have been provided with sufficient notice.

33. The Trial Chamber has already expressed the view that, on the whole, the proposed amendments in the SCAI serve to clarify the scope of the charges against the respective Accused.⁹⁹ Because these allegations state the Prosecution's case with greater clarity as regards the alleged killing sites, the Accused's alleged acts in furtherance of the JCEs, and the criminal acts of subordinates and physical perpetrators for which the Accused are alleged to be responsible, the Chamber is of the view that this "clearer and more specific indictment" will allow the Accused to "tailor their preparations to an indictment that more accurately reflects the case they will meet, thus resulting in a more effective defence."¹⁰⁰ The Trial Chamber therefore holds that the inclusion of the proposed amendments does not deprive the Accused of their ability to adequately prepare an effective defence.

⁹⁵ *Popović et al.*, [Confidential] Prosecution's Filing of Pre-Trial Brief pursuant to Rule 65 *ter* and List of Exhibits pursuant to Rule 65 *ter* (E)([iii]), 28 April 2006, paras. 51–53.

⁹⁶ *Ibid.* para. 59.

⁹⁷ *Ibid.* paras. 83–84.

⁹⁸ Prosecution Response, para. 13.

⁹⁹ *See supra* para. 20.

¹⁰⁰ *Karemera et al.* Appeal Decision, *supra* note 21, para. 15.

34. In light of this holding and the holding above that none of the proposed amendments contains new charges,¹⁰¹ the Trial Chamber concludes that the Accused will not be unfairly prejudiced by the inclusion of all the proposed amendments in the SCAI. The Chamber will now proceed to examine whether the Prosecution has provided documentation in support of these remaining proposed amendments satisfying the *prima facie* standard of Article 19 of the Statute and Rule 50 of the Rules.

b. Are the proposed amendments supported by documentation meeting the *prima facie* standard?

35. In an oral decision issued at the Status Conference of 6 July 2006, the Trial Chamber held that the Prosecution must provide supporting documentation for every “material proposed amendment” to an indictment,¹⁰² and ordered the Prosecution to provide the Trial Chamber with supporting documentation, or to identify where in the items already in the Chamber’s possession such documentation can be found, for new language contained in several paragraphs of the SCAI.¹⁰³ The Prosecution submitted the requested documentation in a timely manner on 10 June 2006.¹⁰⁴

36. Under the jurisprudence of this Tribunal, the test for determining whether a *prima facie* case has been established by the Prosecution in accordance with Article 19(1) of the Statute and Rule 50(A)(ii) of the Rules obliges the Trial Chamber to inspect the supporting documentation submitted with the indictment in order to determine whether it provides “a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge.”¹⁰⁵ The Trial Chamber has examined the material proposed amendments in the SCAI having regard to the supporting documentation that accompanied the CAI of 11 November 2005, as well as the

¹⁰¹ See *supra* para. 30.

¹⁰² *Popović et al.* 6 July 2006 Order, *supra* note 9, T. 193 (endorsing *Delić* May 2006 Pre-Trial Decision, *supra* note 9, para. 78; *Milutinović et al.* March 2006 Pre-Trial Decision, *supra* note 17, para. 30).

¹⁰³ *Popović et al.* 6 July 2006 Order, *supra* note 9, T. 194 (referring to paragraphs 30.3.1, concerning Nova Kasaba; 30.4.1, concerning Sandići Meadow; 30.8.1, concerning Ročević School; 30.15.1, concerning Snagovo; and 52, where it alleges that the Bratunac Brigade deliberately targeted civilian areas of Srebrenica with artillery fire on 25 May 1995). See also *Milutinović et al.* March 2006 Pre-Trial Decision, *supra* note 17, para. 30 (“To comply with Rule 50(A)(ii), the Prosecution must identify supporting documentation only for proposed amendments that are new; material information contained in a prior confirmed or amended indictment is presumed to possess the requisite evidentiary support.”).

¹⁰⁴ See *Popović et al.*, Prosecution’s Motion to Provide and/or Indicate Supporting Materials concerning Proposed Amendments to the Second Consolidated Amended Indictment pursuant to the Trial Chamber’s 6 July 2006 Oral Order, 10 July 2006; *Popović et al.*, [Confidential and *Ex Parte*] Supplement to Prosecution’s Motion to Provide and/or Indicate Supporting Materials concerning Proposed Amendments to the Second Consolidated Amended Indictment pursuant to the Trial Chamber’s 6 July 2006 Oral Order, 11 July 2006.

¹⁰⁵ *Prosecutor v. Kordić, Blaškić, Čerkez, Šantić, Skopljak, and Aleksovski*, Case No. IT-95-14-I, 10 November 1995, p. 3 (quoting Report of the International Law Commission on the Work of Its 46th Session, UN GAOR, 49th Sess., p. 95, UN Doc. A/49/10 (1994)). *Accord Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, Decision on

additional items submitted by the Prosecution on 10 July 2006, and finds that they establish, in the aggregate, a *prima facie* case for all material proposed amendments. The requirements of Article 19 of the Statute and Rule 50 of the Rules have therefore been met, and the Trial Chamber rejects the arguments to the contrary in the Popović Response and the Pandurević Motion.¹⁰⁶ Bearing in mind the Chamber's holding that the proposed amendments will not cause unfair prejudice to the Accused,¹⁰⁷ and subject to the considerations expressed below regarding the remaining defects in the form of the SCAI,¹⁰⁸ the Chamber accordingly grants leave to the Prosecution to make the amendments proposed.

IV. THE FORM OF THE SECOND CONSOLIDATED AMENDED INDICTMENT

A. The Law on Defects in the Form of an Indictment

37. The Trial Chamber recalls its observation that Rule 50(C) of the Rules allows the filing of further preliminary motions pursuant to Rule 72 only in respect of new charges that have been inserted into an indictment and approved by the Trial Chamber.¹⁰⁹ In light of the scheduled start date for trial of 14 July 2006, and considering the need to proceed to trial with an accusatory instrument upon which no further challenges are pending,¹¹⁰ on 22 June 2006 the Pre-Trial Judge ordered the Accused to file any preliminary motions in respect of new charges that might be contained in the SCAI by 30 June 2006.¹¹¹ As indicated in paragraph 30 above, the Trial Chamber's analysis of the changes made to the CAI has led it to conclude that there are in fact no new charges contained in the SCAI; there is consequently no right on the part of the Accused under Rule 50(C) to file further preliminary motions challenging the SCAI. Nevertheless, in the interests of "ensur[ing] that the real issues in the case [are] determined"¹¹² by having as clear and precise an

Defence Requests for Certification to Appeal Decision Granting Prosecution Leave to Amend the Amended Indictment, 8 February 2006, p. 3.

¹⁰⁶ See Popović Response, paras. 13–16; Pandurević Motion, paras. 14, 18. See also *supra* para. 12 (discussing Popović's arguments in this regard).

¹⁰⁷ See *supra* paras. 32, 34.

¹⁰⁸ See *infra* paras. 37–64.

¹⁰⁹ See *supra* para. 10.

¹¹⁰ Cf. *Prosecutor v. Halilović*, Case No. IT-01-48-PT, Separate and Concurring Opinion of Judge Iain Bonomy in the Decision on Prosecution Request for Certification for Interlocutory Appeal of "Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment", 14 January 2005, para. 4 (opining that "[i]t is not appropriate for a trial to commence while there remains outstanding a question over the terms of the Indictment").

¹¹¹ Popović *et al.* 22 June 2006 Order, *supra* note 3, pp. 2–3.

¹¹² Brđanin and Talić Pre-Trial Decision, *supra* note 15, para. 50.

indictment as possible,¹¹³ the Chamber will proceed to evaluate the submissions of the Accused challenging the form of the SCAI.

38. The Trial Chamber recalls the principles that were outlined in the May 2006 Decision concerning the law on the form of the indictment, and in particular those in paragraphs 25, 35, 37, 40, 55, 61, 65, and 104 of that Decision. These principles are equally applicable here, and it is therefore unnecessary to reproduce them.

B. Arguments of the Parties and Discussion

1. Accused Popović

a. Challenge to paragraphs 27 and 30.2 to 30.12 of the SCAI

39. The Accused Popović submits that the allegation that he assisted the Accused Beara in organising, co-ordinating, and facilitating the detention, transportation, summary execution, and burial of the Bosnian Muslim victims,¹¹⁴ and that he supervised, facilitated and oversaw the executions detailed in paragraphs 30.2 to 30.12 of the Indictment,¹¹⁵ is unclear.¹¹⁶ In particular, he argues that the acts of perpetration and assistance performed by him should be explained in clearer terms.¹¹⁷

40. In the Prosecution Response, the Prosecution submits that the Indictment properly places Popović on notice that he both assisted Beara, and supervised, facilitated, and oversaw executions himself.¹¹⁸

41. In this respect, the Trial Chamber recalls paragraph 117 of the May 2006 Decision, which already ruled on the question of demarcation between the acts of the Accused Beara and those of the Accused Popović. The Chamber held that “the respective paragraphs clearly allege that the troops were acting under the supervision of both Vujadin Popović and Ljubiša Beara.”¹¹⁹ It further

¹¹³ See *Karemera et al.* Appeal Decision, *supra* note 21, para. 15 (“The Appeals Chamber finds that a clearer and more specific indictment benefits the accused, ... because the accused can tailor their preparations to an indictment that more accurately reflects the case they will meet, thus resulting in a more effective defence.”); *Boškoski and Tarčulovski* Pre-Trial Decision, *supra* note 15, para. 14 (considering that “a clear and understandable indictment is likely to have a beneficial impact on future proceedings”).

¹¹⁴ SCAI, para. 27.

¹¹⁵ *Ibid.* paras. 30.2–30.12.

¹¹⁶ Popović Motion, para. 11.

¹¹⁷ *Ibid.* para. 12.

¹¹⁸ Prosecution Response, para. 8.

¹¹⁹ May 2006 Decision, para. 117.

held that “[t]he question of whether and how much the presence of Ljubiša Beara influenced Vujadin Popović’s alleged supervisory role and responsibility is a matter to be dealt with at trial.”¹²⁰ The Chamber therefore rejects this submission of the Accused Popović.

b. Challenges to alleged participation in the JCE to forcibly remove the Bosnian Muslim population from Srebrenica and Žepa

42. Popović further submits that the SCAI does not sufficiently detail his acts in respect of the Žepa enclave while charging him with participation in a JCE to forcibly remove the Muslim population from Srebrenica and Žepa. In addition, he alleges that paragraphs 65 to 71 of the SCAI, which deal with the forcible transfer of the Muslim population from Žepa, do not mention Vujadin Popović.¹²¹

43. In response, the Prosecution recalls paragraph 55 of the May 2006 Decision, in which the Trial Chamber held that in order to contribute to the alleged JCE, the Accused need not “have performed any specific acts in relation to the Žepa enclave”, but that “acts performed in relation to the Srebrenica enclave could also have furthered the alleged common purpose”.¹²² The Trial Chamber agrees with this reading of paragraph 55 of the May 2006 Decision, and thus rejects this submission of the Accused Popović.

c. Challenge to paragraph 30 of the SCAI

44. In addition, Popović challenges the use of the phrase “including but not limited to” in paragraph 30 of the SCAI, dealing with the underlying acts of the “large-scale and systematic murder of Muslim men from Srebrenica from 13 July ... through July 1995”.¹²³ In this regard, Popović submits that he should be put on notice as to whether the allegations contained in the SCAI are exhaustive or not.¹²⁴

45. The Prosecution argues that it amended the CAI in accordance with paragraph 122(7)(g) of the May 2006 Decision, which ordered the Prosecution to enumerate as exhaustively as possible the detention and execution sites, as discussed in paragraph 76 of that Decision, in order for the

¹²⁰ *Ibid.*

¹²¹ Popović Motion, para. 13.

¹²² Prosecution Response, para. 9 (referring to May 2006 Decision, para. 55, in which the Trial Chamber further held that “the Indictment does not need to plead any such acts”).

¹²³ SCAI, para. 30.

¹²⁴ Popović Motion, paras 14–15.

Accused to be put as fully on notice as possible of the criminal conduct for which he is charged to be responsible.¹²⁵

46. The Trial Chamber has acknowledged above that the Prosecution, in enumerating as exhaustively as possible the detention and execution sites, added four locations.¹²⁶ The Chamber thus understands the SCAI to contain the fixed and exhaustive list of alleged detention and execution sites upon commencement of trial proceedings in this case. Consequently, the Trial Chamber does not find the use of the phrase “including but not limited to” appropriate, and orders the Prosecution to withdraw it from paragraph 30 of the SCAI.

2. Accused Pandurević

a. Challenge to paragraph 94 of the SCAI

47. The Accused Pandurević alleges that the Prosecution failed to comply with the May 2006 Decision in not listing as exhaustively as possible the criminal acts of his subordinates in paragraph 94 of the SCAI. More specifically, he submits that the Prosecution simply added the following *pro forma* sentence at the end of existing allegations in paragraphs 30 and 31 of the Indictment, which he deems to be superfluous: “At all times on 14 and 15 July, Drago Nikolić, Milorad Trbić, and other Zvornik Brigade personnel were under the command and control of their commander, Vinko Pandurević.” However, according to Pandurević, the Prosecution failed to list the alleged subordinates, name them where possible, and provide brief details of the criminal acts they committed, in paragraph 94 of the SCAI.¹²⁷

48. The Prosecution responds that, contrary to Pandurević’s contentions, it amended paragraph 94 of the SCAI in accordance with paragraphs 122(7)(i) and 122(7)(j) of the May 2006 Decision. According to the Prosecution, paragraph 94 “now lists 19 paragraphs that ‘explicitly plead the acts of the Accused’s subordinates and that they were acting under the command and control of the ... Accused’”.¹²⁸

49. The Trial Chamber recalls paragraph 81 of the May 2006 Decision, in which it ordered that paragraph 94 of the CAI “should refer back to the paragraphs of the Indictment that explicitly plead the acts of the Accused’s subordinates and that they were acting under the command and control of

¹²⁵ Prosecution Response, para. 10.

¹²⁶ See *supra* paras. 26, 31–32.

¹²⁷ Pandurević Motion, paras 8–12.

¹²⁸ Prosecution Response, para. 11.

the two Accused.”¹²⁹ As a consequence, the Chamber ordered the Prosecution to amend paragraph 94 accordingly, and to list as exhaustively as possible “the criminal acts of subordinates” for which each Accused is alleged to be liable.¹³⁰ Paragraph 94 was in fact amended by the Prosecution and now lists “as exhaustively as possible” the criminal acts of Pandurević’s subordinates for which he is allegedly responsible under Article 7(3) of the Statute by referring back to the respective paragraphs detailing the acts.¹³¹ The Trial Chamber therefore holds that paragraph 94 of the SCAI complies with paragraph 122(j) of the May 2006 Decision read together with paragraph 81 of that Decision. However, because it understands the Indictment to be the fixed and exhaustive list of acts of Pandurević’s subordinates upon commencement of trial proceedings in this case, the Chamber does not find the use of the phrase “include but are not limited to” appropriate, and therefore orders the Prosecution to withdraw it from paragraph 94 of the SCAI. For the same reason, the Trial Chamber orders the Prosecution to withdraw “include but are not limited to” from paragraph 95 of the Indictment as well. The Trial Chamber further understands paragraphs 38 to 44 and paragraphs 74 to 82 of the SCAI to provide the fixed and exhaustive list of acts of the Accused in furtherance of the two JCEs, in compliance with paragraph 122(i) of the May 2006 Decision. The Chamber therefore orders the Prosecution to also withdraw “including but not limited to” from these paragraphs.

b. Challenge to paragraph 30.15.1 of the SCAI

50. In addition, the Accused Pandurević challenges paragraph 30.15.1 of the SCAI insofar as it relates to the killings of six men by MUP forces near Snagovo, for which no specific acts of any of the Accused have been alleged, and which are not referred to in paragraphs 94 and 95 of the SCAI dealing with the criminal responsibility of him and the Accused Borovčanin under Article 7(3) of the Statute.¹³²

51. The Prosecution responds that this additional paragraph was inserted to comply with paragraph 122(7)(g) of the May 2006 Decision, which ordered the Prosecution to enumerate as exhaustively as possible the alleged detention and execution sites.¹³³

¹²⁹ May 2006 Decision, para. 81.

¹³⁰ *Ibid.* para. 122(7)(j).

¹³¹ Paragraph 94 of the CAI only contained a general reference to paragraphs 39 and 77.

¹³² Pandurević Motion, para. 14.

¹³³ Prosecution Response, para. 13.

52. The Trial Chamber has already held that this proposed allegation concerning executions near Snagovo does not constitute a new charge, and that its insertion in the Indictment will not deprive the Accused of the ability to effectively prepare their respective cases, as long as evidence relating to this event is presented no earlier than six months after the Prosecution gives its opening statement at trial.¹³⁴ With regard to the submission of Pandurević set forth in paragraph 50 above, the Chamber notes that paragraph 30.15.1 of the SCAI is merely the description of an underlying act committed in furtherance of the alleged JCE to murder the able-bodied Bosnian Muslim men of Srebrenica. There is thus no reason why paragraphs 94 and 95 of the SCAI, dealing with the criminal responsibility of Pandurević and Borovčanin under Article 7(3) of the Statute, should refer to paragraph 30.15.1 of the SCAI. This submission of Pandurević is accordingly rejected.

c. Challenge to paragraph 32 of the SCAI

53. The Accused Pandurević also challenges the last sentence of paragraph 32 of the SCAI, which the Prosecution inserted in order to clarify the participation of the respective Accused in the reburial operation in accordance with paragraph 122(7)(y) of the May 2006 Decision.¹³⁵

54. The Prosecution responds that adding that “Vujadin Popović, Vinko Pandurević, Drago Nikolić and Milorad Trbić assisted in this massive effort at concealment by supervising, facilitating and overseeing all aspects of the reburial operation” properly reflects those Accused’s participation in the reburial operation in the precise language the Trial Chamber instructed to insert following the May 2006 Decision.¹³⁶

55. The Trial Chamber recalls paragraph 106 of the May 2006 Decision, in which it held as follows:

[T]he Prosecution proposes to amend the Indictment by adding in paragraph 32 the following language: “Vujadin Popović, Vinko Pandurević, Drago Nikolić and Milorad Trbić assisted in this massive effort at concealment by supervising, facilitating and overseeing all aspects of the reburial operation.” The Trial Chamber holds that the proposed amendment provides sufficient information as to the alleged “knowledge” and “assistance” of the Accused. The Trial Chamber therefore directs the Prosecution to amend the [CAI] as proposed.¹³⁷

In light of this holding, the Trial Chamber holds that paragraph 32 of the SCAI fully complies with the May 2006 Decision, and accordingly rejects Pandurević’s submission in this respect.

¹³⁴ See *supra* paras. 32, 34.

¹³⁵ Pandurević Motion, para. 15.

¹³⁶ Prosecution Response, para. 14.

¹³⁷ May 2006 Decision, para. 106. *Accord ibid.* para. 122(7)(y).

3. Accused Borovčanin

a. Challenge to paragraph 43(a)(iv) of the SCAI

56. Borovčanin challenges his identification as “Commander of MUP forces in the area” in paragraph 43(a)(iv) of the SCAI insofar as it is imprecise and implies that he commanded all MUP forces in the area.¹³⁸

57. The Prosecution rejoins that the scope of the MUP units under the command of Borovčanin and referred to in paragraph 43(a)(iv) of the SCAI is self-evident from that paragraph’s plain language, as well as the references in paragraphs 43(a)(i) and 43(a)(ii) to paragraph 18 of the SCAI. To avoid confusion, however, the Prosecution proposes to include a reference to paragraph 18 in paragraph 43(a)(iv) of the SCAI as well.¹³⁹

58. In the Borovčanin Reply, the Accused Borovčanin welcomes the Prosecution’s proposal.¹⁴⁰ The Trial Chamber thus orders the Prosecution to amend paragraph 43(a)(iv) of the SCAI accordingly.

b. Challenge to paragraph 92 of the SCAI

59. The Accused Borovčanin challenges the insertion of the term “others” into paragraph 92 of the SCAI, claiming that it extends his duty to protect the prisoners from his own MUP troops to other troops.¹⁴¹

60. The Prosecution submits that paragraph 92 is sufficiently precise. However, it is prepared to further clarify it by adding the phrase “including at least one member of the Bratunac Brigade Red Berets” following the term “others”.¹⁴²

61. In the Borovčanin Reply, the Accused Borovčanin welcomes the Prosecution’s proposal.¹⁴³ Although it does not find this insertion necessary, the Trial Chamber grants leave to the Prosecution to amend paragraph 92 of the SCAI accordingly.

¹³⁸ Borovčanin Motion, paras 25–28.

¹³⁹ Prosecution Response, para. 16.

¹⁴⁰ Borovčanin Reply, para. 6.

¹⁴¹ Borovčanin Motion, para. 32.

¹⁴² Prosecution Response, para. 18.

¹⁴³ Borovčanin Reply, para. 6.

c. Challenge to paragraph 43 of the SCAI

62. Finally, the Accused Borovčanin seeks the correction of a typographical error in paragraph 43 of the SCAI.¹⁴⁴

63. In response, the Prosecution notes a number of typographical errors it wishes to correct, including that raised in the Borovčanin Motion.¹⁴⁵

64. For the sake of clarity, the Trial Chamber grants leave to the Prosecution to amend these typographical errors, and further enjoins it to (1) change the term “Cerska Valley” to “Sandići Meadow” in the two sentences where it is mentioned at the end of paragraph 30.4.1 of the SCAI; and (2) change “Assistant Commander” in paragraphs 15, 41(a)(v), and 79(a)(iv) of the SCAI to “Chief of Security” in order to make these references to the position of the Accused Popović consistent with the reference in paragraph 27 of that Indictment.

¹⁴⁴ Borovčanin Motion, para. 41.

¹⁴⁵ Prosecution Response, paras. 22–23.

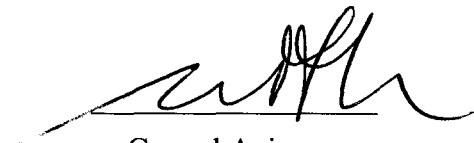
V. DISPOSITION

65. For the reasons discussed above, pursuant to Article 19 of the Statute and Rules 50, 54, 72, and 126 *bis* of the Rules, the Trial Chamber hereby **ORDERS** as follows:

- a. The Prosecution is granted leave to file the Prosecution Response.
- b. The Accused Borovčanin is granted leave to file the Borovčanin Reply.
- c. Subject to the orders in sub-paragraphs (d) and (e) below, the Prosecution is granted leave to make all amendments as proposed in the SCAI. The Prosecution shall not present evidence on the alleged executions near Snagovo, as described in paragraph 30.15.1 of the SCAI, until at least six months after it gives its opening statement at trial in this case.
- d. The Defence Motions are granted in part, and the Prosecution is ordered to amend the SCAI as follows:
 - i. to strike the phrase “including but not limited to” from paragraphs 30, 38 to 44, 74 to 82, 94, and 95 of the SCAI, as described in paragraphs 46 and 49 above;
 - ii. to add a reference to paragraph 18 of the SCAI after the phrase “as Commander of MUP forces in the area” in paragraph 43(a)(iv) of the SCAI, as described in paragraph 58 above;
 - iii. to add the phrase “including at least one member of the Bratunac Brigade Red Berets” after the term “others” in paragraph 92 of the SCAI, as described in paragraph 61 above; and
 - iv. to replace “Ljubiša” with “Ljubomir” in the references to Ljubomir Borovčanin in paragraph 43 of the SCAI and in Attachment A, as described in paragraph 64 above.
- e. The Prosecution shall correct typographical errors in the SCAI, and is ordered to correct the following errors and ambiguities unless the language in question is to be changed in accordance with another order contained in this Decision:
 - i. The reference to “Assistant Commander” in paragraphs 15, 41(a)(v), and 79(a)(iv) of the SCAI shall be changed to “Chief of Security”, as described in paragraph 64 above.
 - ii. The language of paragraph 18 of the SCAI shall be clarified to state clearly to what the dates “11 July 1995 through about 18 July 1995” refer.
 - iii. The reference to “Cerska Valley” in the two sentences at the end of paragraph 30.4.1 of the SCAI shall be changed to “Sandići Meadow”, as described in paragraph 64 above.
 - iv. The reference to “Dragan Nikolić” in paragraph 88 of the SCAI shall be replaced with “Drago Nikolić”.

- v. For ease of future reference, the numbering of the paragraphs in the Indictment shall continue uninterrupted through the paragraphs of Attachment A, Attachment B, and Attachment C.
 - vi. The order of the names of the Accused on page 1 of the Indictment in Case No. IT-05-88 shall follow that given to the case in the “Decision on Motion for Joinder” of 21 September 2005: Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Boročanin, Zdravko Tolimir, Radivoje Miletić, Milan Gvero, Vinko Pandurević.
- f. The Registry shall lift the confidentiality of the Popović Response.
- g. The Prosecution shall file a new version of the SCAI implementing the above orders by no later than Friday, 4 August 2006, having full regard to the orders contained in paragraphs 3 to 5 of the disposition of the “Decision on Severance of Case against Milorad Trbić” of 26 June 2006. Along with this new version of the Indictment, the Prosecution shall file the following:
- i. a table describing all proposed changes and, where such changes were prompted by an order contained in this Decision, the paragraph or paragraphs of this Decision containing the relevant order; and
 - ii. a “red-line” or “track changes” version of this new Indictment.
66. The Defence Motions are denied in all other respects.

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



Carmel Agius
Presiding

Dated this thirteenth day of July 2006
At The Hague
The Netherlands

[Seal of the Tribunal]