

**UNITED  
NATIONS**



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-04-75-PT  
Date: 14 March 2012  
Original: English

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**IN THE TRIAL CHAMBER**

**Before:** Judge Guy Delvoie, Presiding  
Judge Burton Hall  
Judge Antoine Kesia-Mbe Mindua

**Registrar:** Mr. John Hocking

**Decision:** 14 March 2012

**PROSECUTOR**

v.

**GORAN HADŽIĆ**

**PUBLIC**

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**DECISION ON MOTION FOR LEAVE TO AMEND  
THE FIRST AMENDED INDICTMENT**

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**The Office of the Prosecutor:**

Mr. Douglas Stringer

**Counsel for Goran Hadžić:**

Mr. Zoran Živanović

Mr. Christopher Gosnell

1. **THIS TRIAL CHAMBER** 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 the “Motion for Leave to Amend the First Amended Indictment”, filed on 27 January 2012 (“Motion”). Goran Hadžić (“Hadžić”) filed the “Defence Response to the Prosecution Motion for Leave to Amend the First Amended Indictment” on 8 February 2012 (“Response”). The Prosecution filed the “Prosecution Request for Leave to Reply and Reply to ‘Defence Response to the Prosecution Motion for Leave to Amend the First Amended Indictment’” on 15 February 2012 (“Reply”).

#### A. Background

2. On 27 April 2004, the Office of the Prosecutor (“Prosecution”) filed a “Motion for Confirmation of an Indictment under Seal” before Judge Amin El Mahdi.<sup>1</sup> On 21 May 2004, the Prosecution filed an addendum to this motion<sup>2</sup> and, on 28 May 2004, submitted a revised indictment (“Original Indictment”).<sup>3</sup> On 4 June 2004, Judge El Mahdi issued a “Decision on Review of Indictment and Order for Non-disclosure”, confirming the Original Indictment.<sup>4</sup>

3. On 1 June 2011, the Prosecution sought leave to amend the Original Indictment<sup>5</sup> and separately filed a proposed amended indictment.<sup>6</sup> On 19 July 2011, a “Decision on Prosecution Motion for Leave to Amend the Indictment” was issued, which ordered the Prosecution to file the “First Amended Indictment” subject to the orders in that decision.<sup>7</sup> The First Amended Indictment was filed on 22 July 2011.<sup>8</sup>

#### B. Submissions

4. In the Motion, the Prosecution requests leave to amend the First Amended Indictment pursuant to Rule 50(A)(i)(c) of the Rules of Procedure and Evidence of the Tribunal (“Rules”).<sup>9</sup> The Prosecution submits that the amendments it proposes do not result in unfair prejudice to Hadžić

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<sup>1</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-I, Motion for Confirmation of an Indictment Under Seal (confidential and *ex parte*), 27 April 2004.

<sup>2</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-I, Addendum to Motion for Confirmation of an Indictment (confidential and *ex parte*), 21 May 2004.

<sup>3</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-I, Indictment, 28 May 2004 (“Original Indictment”).

<sup>4</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-I, Decision on Review of Indictment and Order for Non-disclosure (*ex parte* and under seal), 4 June 2004.

<sup>5</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-I, Prosecution Motion for Leave to Amend the Indictment (confidential), 1 June 2011.

<sup>6</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-I, Proposed First Amended Indictment (confidential), 1 June 2011.

<sup>7</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-I, Decision on Prosecution Motion for Leave to Amend the Indictment, 19 July 2011 (“Decision on First Amended Indictment”), para. 53.

<sup>8</sup> *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-I, First Amended Indictment, 22 July 2011 (“First Amended Indictment”).

<sup>9</sup> Motion, para. 1.

because they provide him with greater notice and a more particularised statement of the Prosecution’s theory of the case, thereby enhancing his ability to prepare his defence.<sup>10</sup> The Prosecution further asserts that the proposed amendments do not affect Hadžić’s right to be tried without undue delay, do not add new charges, and do not impact the anticipated commencement or length of the trial.<sup>11</sup> According to the Prosecution, the proposed amendments clarify the First Amended Indictment by maintaining consistency in the description of victims, pleading with greater specificity the acts and omissions that entail Hadžić’s individual criminal responsibility, and correcting minor typographical and structural errors.<sup>12</sup> The Prosecution did not submit additional supporting material because it asserts that the proposed amendments do not amount to material or factual changes. The Prosecution submits that previously filed supporting material satisfies the *prima facie* requirement for the First Amended Indictment and the proposed amendments.<sup>13</sup>

5. Hadžić responds that the amendments proposed by the Prosecution materially change the forcible transfer, deportation, and persecution charges against him, as well as his alleged participation in the joint criminal enterprise and the description of victims, which in turn result in the addition of new charges to the First Amended Indictment.<sup>14</sup> Hadžić submits that the proposed amendments are not *prima facie* established, are prejudicial to him, and would require a delay in the commencement of the trial.<sup>15</sup> Hadžić requests that the Trial Chamber dismiss the Motion.<sup>16</sup>

6. The Prosecution replies that its proposed amendments comport with the current formulation of the First Amended Indictment<sup>17</sup> and that it has not expanded the territorial scope of the case.<sup>18</sup> The Prosecution requests that the Trial Chamber allow the filing of the Reply and grant the Motion.<sup>19</sup>

### **C. Applicable Law**

7. Rule 50(A)(i)(c) of the Rules provides that the Prosecutor may amend an indictment “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.”

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<sup>10</sup> Motion, paras 2, 4.

<sup>11</sup> Motion, para. 2.

<sup>12</sup> Motion, para. 3.

<sup>13</sup> Motion, para. 6.

<sup>14</sup> Response, paras 8, 24.

<sup>15</sup> Response, paras 28-32.

<sup>16</sup> Response, para. 33.

<sup>17</sup> Reply, paras 3-4.

<sup>18</sup> Reply, para. 5.

<sup>19</sup> Reply, para. 6.

8. A Trial Chamber, or Judge, enjoys wide discretion to grant leave to amend an indictment as long as the requested amendment meets two cumulative criteria: (a) it must not result in unfair prejudice to the accused when viewed in light of the circumstances of the case as a whole; and (b) if the proposed amendment is material, it must be supported by documentation or other evidence meeting the *prima facie* standard set forth in Article 19 of the Statute of the Tribunal (“Statute”).<sup>20</sup> The materiality of a particular fact depends upon the nature of the Prosecution’s case and the alleged criminal conduct with which the accused is charged.<sup>21</sup> Supporting material must provide “a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge.”<sup>22</sup>

9. In determining whether granting an amendment would cause unfair prejudice to an accused, the Trial Chamber, or the Judge, must ensure that the amendment does not deprive the accused of an adequate opportunity to prepare an effective defence, and second, it must not adversely affect the accused’s right under Article 21 of the Statute to be tried without undue delay.<sup>23</sup> In assessing whether there is unfair prejudice, the Trial Chamber, or Judge, will examine whether the accused is provided with sufficient notice of the scope and nature of the new allegations against him.<sup>24</sup>

10. Article 18(4) of the Statute and Rule 47(C) of the Rules both provide that an indictment shall contain a concise statement of the facts of the case and the crimes with which the accused is charged under the Statute. Article 21(4)(a) of the Statute states that an accused is entitled to be informed of the nature and cause of the charge against him, and Article 21(4)(b) of the Statute entitles an accused to adequate time and facilities for the preparation of his defence. These entitlements translate into an obligation on the part of the Prosecution to plead the material facts underpinning the charges in the indictment with sufficient detail to inform the accused clearly of the charges against him so that he can adequately prepare his defence.<sup>25</sup>

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<sup>20</sup> See, e.g., Decision on First Amended Indictment, para. 6; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-I, Decision on Amendment of Indictment, 27 May 2011 (“*Mladić* Decision”), para. 13; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Prosecution Motion to Amend the First Amended Indictment, 16 February 2009 (“*Karadžić* Decision”), para. 29.

<sup>21</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-PT, Decision on Motion Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006, para. 5.

<sup>22</sup> *Karadžić* Decision, para. 35; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-PT & IT-05-88/1-PT, Decision on Further Amendments and Challenges to the Indictment, 13 July 2006 (“*Popović* Decision”), para. 36.

<sup>23</sup> See, e.g., Decision on First Amended Indictment, para. 7; *Mladić* Decision, para. 13; *Karadžić* Decision, para. 30; *Popović* Decision, paras 9-10.

<sup>24</sup> Decision on First Amended Indictment, para. 7, citing *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-PT, Decision on Prosecutor’s Motion Seeking Leave to Amend Indictment, 17 December 2004, para. 23; *Popović* Decision, para. 21.

<sup>25</sup> Decision on First Amended Indictment, para. 8; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 19 July 2004 (“*Blaškić* Appeal Judgement”), para. 209, citing *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Judgement, 23 October 2001, para. 88.

## **D. Discussion**

### 1. Amendments to the description of alleged victims

11. The Prosecution proposes that alleged victims be described as “Croats and other non-Serbs, including civilians and persons not taking active part in hostilities” in the chapeau paragraph of each count, and as “Croats” and/or “other non-Serbs” in the subordinate paragraphs of each count.<sup>26</sup>

The Prosecution argues that the proposed changes give consistent effect to the First Amended Indictment through the implementation of a single formulation in relation to the description of victims, reflect Appeals Chamber jurisprudence, and do not allege different or additional victims.<sup>27</sup>

12. Hadžić responds that the proposed amendments to the description of victims obfuscate their characteristics because the term “Croats and non-Serbs” “encompasses all Croats and non-Serbs, including those who take active part in hostilities.”<sup>28</sup> According to Hadžić, the expansiveness of the term “Croats and non-Serbs” adds new victims to the charges set out in the First Amended Indictment.<sup>29</sup> Hadžić asserts that the Prosecution’s proposed reference to “civilians not taking active part in hostilities” is superfluous because such allegations are implied by Tribunal jurisprudence.<sup>30</sup>

13. The Trial Chamber finds that the proposed revision of the description of victims in chapeau paragraphs 19, 23, 40, 44, and 47 do not constitute material changes. The requested formulation of the description of victims currently exists in the chapeau paragraph of counts 5 to 9 in the First Amended Indictment.<sup>31</sup> The requested formulation does not allege different or additional victims, but rather reflects Appeals Chamber jurisprudence and clearly and consistently sets out a single formulation for describing victims. The Appeals Chamber has held that, “[u]nder Article 5 of the Statute, a person *hors de combat* may [...] be a victim of an act amounting to a crime against humanity, provided that all necessary conditions are met”.<sup>32</sup> Consequently, the Prosecution’s description of victims is consistent with the position adopted by the Appeals Chamber in relation to persons *hors de combat* and with charges under Article 5 of the Statute.

14. The Trial Chamber finds that the revisions to the description of victims in subordinate paragraphs 19, 20-21, 24-29, 33-37, 41, and 45 do not constitute material changes. They are only stylistic changes that provide a short-hand for referring to the victims. This short-hand does not

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<sup>26</sup> Motion, paras 7-9, 11.

<sup>27</sup> Motion, para. 9.

<sup>28</sup> Response, para. 25.

<sup>29</sup> Response, para. 26.

<sup>30</sup> Response, para. 27.

<sup>31</sup> First Amended Indictment, para. 41.

exclude persons *hors de combat* and is therefore consistent with the proposed formulation in the chapeau paragraphs. In the same vein and contrary to Hadžić's contentions,<sup>33</sup> this short-hand reference is not intended to include and does not include (deceased) combatants in the category of victims as contained in the proposed formulation in the chapeau paragraphs.

15. There is no unfair prejudice to Hadžić as a result of the proposed revisions to the description of victims in the First Amended Indictment. Taken together, these revisions provide further specificity and clarification as to the category of victims of the crimes charged in the First Amended Indictment, thereby informing Hadžić clearly of the nature and cause of the charges and enabling him to adequately prepare a defence.

2. Proposed amendments that further specify Hadžić's alleged acts and omissions entailing his individual criminal responsibility

(a) Amendments relating to Hadžić's participation in a joint criminal enterprise

16. The Prosecution argues that its proposed amendments to paragraphs 13(g) and 13(h) do not constitute material changes because the amendments are already encompassed in the current formulation of the First Amended Indictment and merely provide further clarification and specification of the conduct by which Hadžić is alleged to have significantly contributed to the joint criminal enterprise.<sup>34</sup> In respect to paragraph 13(g), the Prosecution argues that it seeks only to expressly state, out of an abundance of caution, what is otherwise implied or reflected in the First Amended Indictment.<sup>35</sup> In respect to paragraph 13(h), the Prosecution argues that it seeks to further specify and provide notice that Hadžić's alleged legal duties arising from his position of governmental authority entail obligations to at least two groups: detainees and inhabitants. The Prosecution maintains that the First Amended Indictment already pleads the relevant material facts in relation to these obligations.<sup>36</sup>

17. Hadžić does not challenge these amendments.

18. Paragraph 13(g) of the First Amended Indictment reads as follows with the proposed amendments (in italics):

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<sup>32</sup> *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Judgement, 8 October 2008, para. 313; *see also Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Judgement, 5 May 2009 ("*Mrkšić and Šljivančanin* Appeal Judgement"), paras 29-33.

<sup>33</sup> Response, para. 26.

<sup>34</sup> Motion, para. 14.

<sup>35</sup> Motion, para. 15.

<sup>36</sup> Motion, paras 16-17.

Goran HADŽIĆ openly espoused, encouraged *and/or condoned* persecutory policies, discriminatory violence *and criminal acts charged in this indictment and committed by SAO SBWS/RSK authorities and/or Serb Forces* in furtherance of the objective of the joint criminal enterprise, *including his failure to investigate, denounce, punish or otherwise intervene in relation to such conduct.*<sup>37</sup>

19. The proposed addition of “condoning” and “failure to investigate, denounce, punish or otherwise intervene in relation to such conduct” in paragraph 13(g) further specifies that Hadžić’s participation in the joint criminal enterprise included failures to act. The fact that both acts and omissions are alleged in relation to Hadžić’s individual criminal responsibility is not a material change because paragraph 14 already expressly refers to “acts and omissions described in paragraph 13”. The changes therefore do not constitute a new charge because they do not introduce into the First Amended Indictment a basis for conviction that is factually and/or legally distinct from any already alleged. In the Trial Chamber’s view, there is no unfair prejudice to Hadžić as a result of this addition because it provides further specificity regarding the alleged omissions that supposedly underlie his participation in the joint criminal enterprise, thereby informing him clearly of the nature and cause of the charges and enabling him to adequately prepare a defence.

20. In addition, the Prosecution’s proposed references to “criminal acts” and to “SAO SBWS/RSK authorities and/or Serb Forces” in paragraph 13(g) do not constitute material changes because non-discriminatory criminal acts are currently charged in counts 2 to 14 and SAO SBWS/RSK authorities and/or Serb Forces are referenced in paragraphs 11 and 13. Consequently, the proposed additions are covered by the current formulation of the First Amended Indictment. There is no unfair prejudice to Hadžić as a result of these additions because they provide further specificity in relation to the “persecutory policies, discriminatory violence and criminal acts” that Hadžić is alleged to have openly espoused, encouraged, and/or condoned, thereby informing him with further clarity of the nature and cause of the charges and enabling him to adequately prepare a defence.

21. Paragraph 13(h) reads as follows with the proposed amendments (in italics):

Goran HADŽIĆ failed to uphold his legal *duties* arising from his position of governmental authority to ensure respect for the law *in relation to detainees in the facilities listed in paragraph 41 of the this indictment and/or inhabitants of the territories described in paragraph 7 of this indictment.*<sup>38</sup>

22. The Trial Chamber finds that the proposed additions to paragraph 13(h) do not constitute a material change because they simply give content to the general legal duty already identified in that paragraph and do not charge Hadžić through any new modes of responsibility. The changes

<sup>37</sup> Motion, Annexes A and B (emphasis highlights proposed changes).

<sup>38</sup> Motion, Annexes A and B (emphasis highlights proposed changes).

therefore do not constitute a new charge because they do not introduce into the First Amended Indictment a basis for conviction that is factually and/or legally distinct from any already alleged. Moreover, in relation to legal duties to protect detainees held in detention facilities subject to the Detaining Power's authority, such obligations have been recognised by Appeals Chamber jurisprudence,<sup>39</sup> and the material facts underpinning the alleged failure to respect the law in relation to detainees and inhabitants are currently set out in the First Amended Indictment.<sup>40</sup> There is no unfair prejudice to Hadžić as a result of these additions because they provide further specificity in relation to an existing allegation, thereby informing him with further clarity of the charges and enabling him to adequately prepare his defence in relation to this allegation.

(b) Amendments to paragraph 14 relating to Hadžić's alleged planning, ordering, and aiding and abetting

23. The Prosecution seeks to (a) reference paragraph 13(g) as a means by which Hadžić is alleged to have planned, pursuant to Article 7(1) of the Statute, the crimes charged in the First Amended Indictment, (b) specify that paragraphs 13(a)-(h) are the acts and omissions charged against Hadžić for the purpose of aiding and abetting, (c) delete reference to paragraph 13(h) as a means by which Hadžić is alleged to have ordered the crimes charged in the First Amended Indictment, and (d) add a reference to "omissions" in relation to planning.<sup>41</sup> The Prosecution argues that these proposed amendments are minor typographical and structural errors.<sup>42</sup>

24. Hadžić does not challenge these proposed amendments.

25. The Trial Chamber considers that, because paragraphs 13(a)-(h) and the modes of liability of planning and aiding and abetting are explicitly set out in the First Amended Indictment,<sup>43</sup> the proposed additional reference to 13(g) in relation to planning and reference to paragraphs 13(a)-(h) in relation to aiding and abetting do not constitute material changes. These amendments do not provide bases for conviction that are factually and/or legally distinct from any already alleged. There is no unfair prejudice to Hadžić as a result of these changes because they provide further specificity in relation to the means by which he is alleged have planned and/or aided and abetted the crimes charged in the First Amended Indictment, thereby clearly informing him of the charges and enabling him to adequately prepare his defence.

<sup>39</sup> See, e.g., *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004, paras 609, 620; *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001, paras 320-322, 328, 379; *Mrkšić and Šljivančanin* Appeal Judgement, paras 73, 74; *Blaškić* Appeal Judgement, para. 663.

<sup>40</sup> See First Amended Indictment, paras 2-4, 6-12, 21, 24-29, 31-38, 42, 44-45, 47.

<sup>41</sup> Motion, para. 20.

<sup>42</sup> Motion, para. 20.

<sup>43</sup> See Motion, para. 14.

26. The Trial Chamber finds that the deletion of reference to paragraph 13(h) as a means by which Hadžić is alleged to have ordered the crimes charged in the First Amended Indictment corrects the erroneous charging of ordering by means of an omission.<sup>44</sup> The Trial Chamber has reviewed this change carefully and finds that it corrects a ministerial error and clarifies the First Amended Indictment. There is no unfair prejudice to Hadžić as a result of this change. Hadžić remains clearly informed of the charges and can adequately prepare his defence.

27. The Trial Chamber notes that the additional reference to “omissions” in relation to planning comports with the First Amended Indictment’s inclusion of paragraph 13(h) as a means by which Hadžić is alleged to have planned, pursuant to Article 7(1) of the Statute, the crimes charged in the First Amended Indictment. There is no unfair prejudice to Hadžić as a result of this change, which clearly informs him of the charges and enables him to adequately prepare his defence.

### 3. Amendments to the pleaded localities

28. In paragraph 44, relating to counts 10 to 11 (deportation and forcible transfer), the Prosecution seeks to remove the phrase “in the territories of SAO SBWS” and replace it with the phrase “in the territories described in paragraph 7 of this indictment”.<sup>45</sup> In relation to count 1 (persecution), the Prosecution seeks to add in paragraph 19 reference to “in the territories described in paragraph 7 of this indictment and/or in the facilities listed in paragraph 41 of this indictment” and in paragraph 20 reference to “RSK authorities”.<sup>46</sup> The Prosecution argues that these proposed amendments are not material changes and simply clarify the First Amended Indictment by providing consistency in the pleading of localities.<sup>47</sup>

29. Hadžić responds that the amendments proposed by the Prosecution materially change the deportation, forcible transfer, and persecution charges against him, which in turn result in the addition of new charges to the First Amended Indictment.<sup>48</sup> In relation to deportation and forcible transfer, Hadžić argues that the First Amended Indictment charges him with deportation and forcible transfer in the territory of the SAO SBWS only<sup>49</sup> and that the proposed amendments to paragraph 44 expand the charges to undefined locations beyond the SAO SBWS.<sup>50</sup> In relation to persecution, Hadžić contends that the proposed amendments extend the charges against him by setting out his responsibility for acts of persecution committed by not only local SAO SBWS

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<sup>44</sup> Motion, para. 20

<sup>45</sup> Motion, para. 10.

<sup>46</sup> Motion, para. 20.

<sup>47</sup> Motion, para. 10.

<sup>48</sup> Response, paras 8, 24.

<sup>49</sup> Response, paras 12-14.

<sup>50</sup> Response, paras 9-11, 15.

authorities, but local RSK authorities as well.<sup>51</sup> According to Hadžić, the First Amended Indictment limits the charge of persecution and his alleged participation in the joint criminal enterprise to territories of the SAO SBWS.<sup>52</sup> Hadžić argues that, by expanding the locations pleaded in relation to persecution, forcible transfer, and deportation, the Prosecution alleges the existence of new victims who are not included in the First Amended Indictment and thereby adds new charges to the First Amended Indictment.<sup>53</sup>

30. The Prosecution replies that the First Amended Indictment charges Hadžić with deportation and forcible transfer from SAO SBWS and SAO Krajina, both later known as RSK.<sup>54</sup> The Prosecution argues that the specifically pleaded localities in paragraph 21(h) constitute a non-exhaustive list that does not restrict the scope of the deportation and forcible transfer charge under count 1 (persecution) or counts 10 to 11 (deportation and forcible transfer) to territories of the SAO SBWS.<sup>55</sup> The Prosecution submits that it is not its position that the territorial scope of the case is limited to SAO SBWS.<sup>56</sup>

31. The Trial Chamber notes that the new formulation of pleaded localities in paragraph 44 mirrors the localities already pleaded in relation to deportation and forcible transfer as underlying acts of persecution in paragraph 21(h). Because paragraph 21(h) cross-references paragraph 44, the proposed change to paragraph 44 is not a material change and Hadžić has been on notice that the localities pleaded in relation to deportation and forcible transfer include the territories listed in paragraph 7 of the First Amended Indictment. No unfair prejudice therefore results from this proposed amendment of paragraph 44. The proposed addition ensures consistency in the pleading of the crimes of deportation and forcible transfer throughout the First Amended Indictment, thereby clearly informing Hadžić of the charges and enabling him to adequately prepare his defence.

32. The amendments to paragraphs 19 and 20 relate to count 1 (persecution). The Trial Chamber finds that the proposed reference to “territories described in paragraph 7 of this indictment and/or in the facilities listed in paragraph 41 of this indictment” in paragraph 19 ensures consistency with the localities pleaded in relation to the acts underlying the persecution charge<sup>57</sup> and is substantively similar to the phrase “SAO SBWS/RSK”, which the Prosecution seeks to replace. Moreover, the additional reference to “RSK authorities” in paragraph 20 conforms to the fact that RSK territories are already referred to in the current formulation of that paragraph and

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<sup>51</sup> Response, paras 19-21.

<sup>52</sup> Response, paras 16-18.

<sup>53</sup> Response, paras 22-24.

<sup>54</sup> Reply, paras 3-4, *referring to* First Amended Indictment, paras 7, 21(h).

<sup>55</sup> Reply, para. 4.

<sup>56</sup> Reply, para. 5.

<sup>57</sup> First Amended Indictment, para. 21.

paragraph 19 as well.<sup>58</sup> The Trial Chamber does not find these changes to be material. There is no unfair prejudice to Hadžić as a result of these additions.

33. The Trial Chamber finds that the proposed amendments do not expand the localities pleaded in the First Amended Indictment in relation to the charges of deportation, forcible transfer, and persecution; consequently, the proposed amendments also do not add new victims.

#### 4. Amendments related to minor stylistic changes

34. The remaining proposed additions relate to stylistic changes.<sup>59</sup> The Trial Chamber has reviewed these changes carefully and finds that they are minor changes that only clarify the First Amended Indictment. There is no unfair prejudice to Hadžić as a result of these changes.

#### 5. Impact of the motion upon the length of proceedings

35. Having considered the Motion and each of the proposed amendments to the First Amended Indictment, the Trial Chamber finds that they do not have an impact upon the date for the commencement of the trial or the length of proceedings, especially due to the fact that they do not constitute new charges.

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<sup>58</sup> See First Amended Indictment, para. 20 (referring to territories described in paragraph 7, which include the RSK).

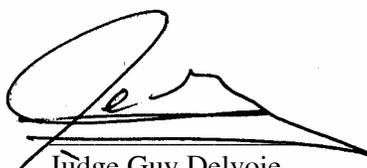
<sup>59</sup> Motion, Annex B (in relation to paragraphs 21(d) and 33).

**E. Disposition**

36. Accordingly, pursuant to Articles 18, 19, and 21 of the Statute and Rules 47, 50, and 126 *bis* of the Rules, the Trial Chamber hereby **GRANTS** leave to the Prosecution to file the Reply, **GRANTS** the Motion, and **ORDERS** the Prosecution to file a “Second Amended Indictment” in accordance with this decision as the operative indictment in this case by 22 March 2012.

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

Done this fourteenth day of March 2012,  
At The Hague,  
The Netherlands.



Judge Guy Delvoie  
Presiding

[Seal of the Tribunal]