



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-05-88/2-PT

Date: 22 December 2008

Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. Hans Holthuis

Decision of: 22 December 2008

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON PROSECUTION'S MOTION SEEKING LEAVE TO FILE
A SECOND AMENDED INDICTMENT**

Office of the Prosecutor

Mr. Peter McCloskey

The Accused

Zdravko Tolimir

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 “Prosecution’s Motion Seeking Leave to File a Second Amended Indictment to Correct Mistaken Paragraph References and to Drop Two Crime Incidents, with Appendices”, filed on 16 October 2008 (“Motion”),¹ and hereby renders its decision thereon.

I. PROCEDURAL BACKGROUND

1. The Accused Zdravko Tolimir was originally charged in the same indictment with the accused Radivoje Miletić and Milan Gvero.² On 28 August 2006, the Prosecution filed a separate indictment against the Accused.³ On 11 June 2007, the Prosecution filed an amended indictment correcting the 28 August 2006 indictment.⁴ On 3 July 2007, the Pre-trial Judge orally granted the Prosecution’s request for leave to amend the indictment⁵ pursuant to Rule 50(A)(i)(c) of the Rules of the Procedure and Evidence (“Rules”)⁶ and the proposed amended indictment became the operative indictment in this case (“Indictment”).⁷

2. On 30 October 2007, within the time-limit prescribed by the Pre-Trial Judge, the Accused submitted a motion in accordance with Rule 72 challenging the Tribunal’s lack of jurisdiction, the defects in the form of the Indictment, and the severance of certain counts from the Indictment.⁸ The Trial Chamber denied it on 14 December 2007 (“14 December 2007 Decision”).⁹ On 28 July 2008, the Accused submitted another motion challenging the jurisdiction of the Tribunal and the form of the Indictment (“Second Preliminary Motion”).¹⁰ The Trial Chamber denied this motion by decision of 1 October 2008 (“1 October 2008 Decision”).¹¹

¹ The Motion attaches two appendices: Appendix A, Second Amended Indictment with Attachments A to E (“Appendix A”) and Appendix B, “Track Change” version of Second Amended Indictment and Attachment C (“Appendix B”).

² *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-I, Indictment, 8 February 2005.

³ *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-I, Decision on Motion of the Prosecution to Further Vacate the Order for Non-disclosure, 25 February 2005.

⁴ *Prosecutor v. Tolimir*, Case No. IT-05-88/2-I, Indictment, 28 August 2006.

⁵ Prosecution’s Submission of Amended Indictment with Attached Annexes A, B and C, 12 June 2007.

⁶ Further Appearance, T. 21–22 (3 July 2007).

⁷ *Prosecutor v. Tolimir*, Case No. IT-05-88/2-I, Amended Indictment, 12 June 2007.

⁸ Preliminary Motions on the Indictment in Accordance with Rule 72 of the Rules, 30 October 2007 (BCS version), 7 November 2007 (English version).

⁹ Decision on Preliminary Motions on the Indictment Pursuant to Rule 72 of the Rules, 14 December 2007.

¹⁰ Preliminary Motion Pursuant to Rule 72 (A) (i), (ii) with a Request for Clarification of the Meaning of Certain Allegations in the Indictment, with Annexes I and II, 28 July 2008 (BCS version), 8 August 2008 (English version).

¹¹ Decision on Second Preliminary Motion on the Indictment Pursuant to Rule 72 of the Rules, 1 October 2008.

3. On 16 October 2008, the Prosecution filed the Motion. The Accused responded on 24 November 2008 (“Response”).¹² On 5 December 2008, the Prosecution filed a request for leave to reply and its reply to the Response (“Reply”).¹³

II. SUBMISSIONS OF THE PARTIES

A. Motion

4. The Prosecution requests the Trial Chamber to grant leave to file a second amended indictment (“second proposed indictment”).¹⁴ It proposes the following “non-substantive changes” to the Indictment: (i) the second reference to “areas” in paragraph 5 is deleted; (ii) the reference to Sandići Meadow being “approximately 18 kilometres west of Bratunac” is corrected to “approximately 12 kilometres west of Bratunac” (at paragraph 21.4.1); (iii) six mistaken references to other paragraphs within the Indictment are corrected (at paragraphs 21.5, 28, 29(a), 34, 60 and 61);¹⁵ and (iv) the *mens rea* requirement for forcible transfer and deportation is corrected (at attachment C to the Indictment).¹⁶

¹² Response by Zdravko Tolimir to the Prosecution’s Motion Seeking Leave to File a Second Amended Indictment, 24 November 2008 (BCS version), 28 November 2008 (English version).

¹³ Request for Leave to Reply and Reply to Response by Zdravko Tolimir to the Prosecution’s Motion Seeking Leave to File a Second Amended Indictment, 5 December 2008.

¹⁴ Motion, para. 10.

¹⁵ The Prosecution’s proposed amendment at paragraph 21.5 is to add paragraph number 21.15.1 to a note which is inserted after paragraph 21.5, which reads: “Note: The sites described below in paragraph 21.6 through 21.15.1 were located within the Zvornik Brigade’s zone of responsibility”; the proposed amendment at paragraph 28 is to replace the reference to paragraph numbers 48–50 with “34.” The proposed paragraph thus reads in part: “[...] it was foreseeable to Zdravko Tolimir [...] that individual opportunistic killings and persecutory acts, such as those described in paragraphs 22 and 34 of the Indictment, would be carried out by VRS and MUP forces during and after the Joint Criminal Enterprise”; the proposed amendment at paragraph 29 is to replace the reference to paragraph numbers 61–64 with “47–50”. The proposed paragraph thus reads: “[Tolimir] assisted in and facilitated the forcible transfer and deportation of the Muslim population of Srebrenica, as described in paragraphs 47–50 of this Indictment”; the proposed amendment at paragraph 34 is to replace the reference to paragraph numbers 25–28 with “18 to 22”, and 54 with “57”. Thus, the proposed paragraph reads: “As described in paragraph 18 to 22, and 36–57 of this Indictment, the crime of Persecutions were perpetrated, executed and carried out by and through the following means”; the proposed amendment at paragraph 60 is to replace the reference to paragraph number 34 with “35”. Thus the proposed paragraph reads in part: “Zdravko Tolimir [...] committed acts in furtherance of the Joint Criminal Enterprise as described in paragraphs 35 to 57 of this Indictment [...]”; the proposed amendment at paragraph 61 is to replace the reference to paragraph number 40 with “22”, and 48–50 with “34”. Thus the proposed paragraph reads in part: “It was foreseeable to Zdravko Tolimir [...] that individual criminal acts, such as individual opportunistic killings and persecutory acts as described in paragraphs 22 and 34 of this Indictment, would be carried out by Serb forces during the Joint Criminal Enterprise to forcibly transfer and deport the populations of the Srebrenica and Žepa enclaves.” See Appendix B, pp. 8–9, 18, 21, 27–28.

¹⁶ Motion, para. 7.

5. With reference to the “substantive change” to the Indictment, the Prosecution submits that two crime incidents included as instances of opportunistic killings at paragraph 22.1(b) and (c) be dropped.¹⁷

B. Response

6. At the outset, the Accused requests the Trial Chamber to refrain from ruling on the Motion until his soon-to be lodged appeal against the 1 October 2008 Decision has been disposed of by the Appeals Chamber. He argues that should the Trial Chamber fail to do so, his right to a fair trial would suffer a prejudice.¹⁸ He submits that he has not been given the opportunity to lodge an appeal against the 1 October 2008 Decision because, as it is the case for the 14 December 2007 Decision, neither of these decisions has been translated into the “language that he understands.”¹⁹ Noting that both decisions dismiss his arguments *in toto*, the Accused claims that pursuant to Rule 72(B)(ii) he is entitled to seek leave to file an appeal against those parts of the decisions concerning defects in the form of the Indictment.²⁰

7. With regard to the Motion, the Accused argues that the Prosecution erred in terms of procedure because the proposed amendments have been submitted at a late stage of the pre-trial proceedings regardless of the fact that the Prosecution had ample time to examine the Indictment; and that the proposed amendments are neither immaterial nor minor.²¹ Given that the Trial Chamber previously found that the Indictment did not contain formal defects, argues the Accused, the proposed amendments should be rejected, or “the Trial Chamber would be indirectly admitting that the Indictment contained formal defects, [and] it would correct them not at the request of the accused, but only of the Prosecution, thereby placing the parties in an unequal position.”²²

8. The Accused does not raise any objection to the following proposed amendments to the Indictment: (i) a correction to paragraph 5 of the Indictment; (ii) the dropping of the two crime incidents as instances of opportunistic killings alleged at paragraphs 22.1(b) and (c) of the Indictment; and (iii) the change of another paragraph number referred to at paragraph 60 of the Indictment.²³ Yet, he opposes all of the remaining Prosecution’s amendments.²⁴ In short, he argues that: (i) the proposed amendment at paragraph 21.4.1 is of substantial character as it concerns the

¹⁷ *Ibid.*, para. 8.

¹⁸ Response, para. 7. *See also ibid.*, para. 46.

¹⁹ *Ibid.*, paras. 4, 6.

²⁰ *Ibid.*, para. 5.

²¹ *Ibid.*, paras. 9–10.

²² *Ibid.*, para. 11.

²³ *Ibid.*, paras. 12–13, 46 (2).

²⁴ *Ibid.*, paras. 46 (3) and (4).

identification of the precise location of the Sandići Meadow;²⁵ (ii) the amendment at paragraph 21.5 is redundant so long as the paragraph 21.15.1 already contains the reference that the alleged crimes had been committed at a location in the Zvornik Brigade's zone of responsibility;²⁶ (iii) the amendment at paragraph 28 would prejudice the result of the appeal,²⁷ and regardless of the result of the appeal "new confusion is created in the Indictment and changes are being requested which will essentially lead to an extension of the scope of the third category of joint criminal enterprise ['JCE']";²⁸ (iv) by amending this paragraph the Prosecution "prejudges the decision of the Appeals Chamber and qualifies the request to amend as 'minor' and 'immaterial'" and that the amendment would put the Accused in "an unequal position in relation to the Prosecution whose amendments are granted, while clear indications to the defects in the Indictment by the accused are denied";²⁹ (v) as to the change in paragraph 34 referring to paragraph 57,³⁰ paragraph 57 contains a statement not included in Count 6 of the Indictment (Persecutions), "which in the context of this count makes the charges against the accused substantially more serious";³¹ and (iv) the amendment to paragraph 61 is "a substantial amendment to the Indictment [and] will make the further preparation of defence much more complex and demanding in terms of time because of the characteristic nature of the third category of the JCE."³²

9. Finally, with regard to the Prosecution's correction to the *mens rea* requirement for forcible transfer and deportation, the Accused argues that the deletion of the term "permanent" from the *mens rea* requirement places him "in a significantly more unfavourable position and delays the trial [and] will significantly extend the time necessary to prepare the trial and the presentation of evidence refuting the allegations of the Prosecution."³³

²⁵ *Ibid.*, paras. 16–17.

²⁶ *Ibid.*, para. 20. The Accused further argues that this amendment only creates "an erroneous impression that the other amendments are minor and immaterial." *Ibid.*

²⁷ *Ibid.*, para. 23.

²⁸ *Ibid.*, para. 24. *See also ibid.*, 26–28. The Trial Chamber makes note that the Accused mistakes the Prosecution's requested amendment at paragraph 28, arguing that it intends to replace the reference to paragraph number 22 with 32. The Prosecution does not ask for such an amendment. *See fn. 15.*

²⁹ *Ibid.*, paras. 29–32 (quotation at para. 32).

³⁰ The Accused does not oppose to the deletion of references to paragraphs 25–28 from paragraph 34. *See ibid.*, para. 35.

³¹ *Ibid.*, para. 36.

³² *Ibid.*, para. 40. *See also ibid.*, para. 42. The Accused argues that the Prosecution "would extend the scope of the third category of the JCE, which now includes not only the capture of Srebrenica (as in paragraph 40 that contains the description, but not the charges) and paragraphs 48–50 (forcible removal of the Muslim population from Srebrenica), but all the allegations from paragraph 22 (opportunistic murders) and 34 (which if amended would refer to paragraphs 18–22 and 36–57 and all the acts the Prosecution qualifies as acts of persecution). From the current Indictment, it can be concluded that [the Accused] is indicted for the other acts based on the first category of the JCE, to which paragraph 61 of the current Indictment does not refer". *Ibid.*, para. 39.

³³ *Ibid.*, para. 43.

10. In view of the foregoing, the Accused moves for the dismissal of the Prosecution's amendments (except for those he does not object to). He also requests that should this submission be denied *in toto* or in part, the Trial Chamber qualify the proposed amendments to the Indictment "as substantial and apply Rule 50(B) and (C) of the Rules".³⁴

C. Reply

11. The Prosecution asks for leave to file a reply,³⁵ and argues that the Response should be disregarded.³⁶ It submits that the Trial Chamber may dispose of the Motion without causing any prejudice to the Accused since the proposed amendments do not alter the scope or nature of the charges against him.³⁷ In this regard, the Prosecution concedes that while the Indictment fully characterises the case against the Accused, inaccurate cross-references to certain paragraph numbers create understandable confusion.³⁸ These errors were due to the use of the joint indictment in *Popović et al.*, as the model for the Indictment against the Accused.³⁹ It argues that the proposed amendments are not to expand the case against the Accused but to correct these "formatting errors" so that the Indictment is internally consistent.⁴⁰ At the present stage of proceedings, when a date has not been set for the start of the trial, there is no prejudice to the Accused caused by the proposed amendments, submits the Prosecution, since the Accused and his legal advisers have sufficient notice to review the second proposed indictment and prepare a full defence.⁴¹

12. The Prosecution argues that the proposed amendments to paragraphs 21.4.1, 21.5, 28, 29, 34, 61 do not affect the case the Accused has to answer.⁴² It asserts that: (i) the correct distance of the Sandići Meadow from Bratunac in paragraph 21.4.1 will remove any ambiguity about the location in question;⁴³ (ii) the inclusion of the reference to paragraph 21.15.1 in the note after paragraph 21.5 will be helpful for ease of reference;⁴⁴ (iii) regarding paragraph 28, the Accused mistakenly argues that the Prosecution proposes to replace the reference to paragraph 22 with a reference to paragraph 32; and paragraph 28 clearly indicates the references to other paragraphs as

³⁴ *Ibid.*, para. 46(5).

³⁵ Reply, para. 1.

³⁶ *Ibid.*, paras. 1, 19.

³⁷ *Ibid.*, para. 2.

³⁸ *Ibid.*, para. 3.

³⁹ *Ibid.*, para. 3. The Prosecution adds that the Indictment in this case and the joint indictment in *Popović et al.* have different numbering and paragraph references which were correct in the latter but which no longer correspond to the correct paragraphs in the Indictment. *Ibid.*, para. 7.

⁴⁰ *Ibid.*, paras. 3, 7.

⁴¹ *Ibid.* para. 4

⁴² *Ibid.*, paras. 8–17.

⁴³ *Ibid.*, para. 8. The Prosecution adds that it will present at trial documentary, photographic, and video evidence as well as witness testimony that the Prosecution hopes will leave no confusion about this location. *Ibid.*

⁴⁴ *Ibid.*, para. 9.

examples of the broader categories of foreseeable individual opportunistic killings and persecutory acts;⁴⁵ (iv) paragraph 29 states that the relevant act committed by the Accused was assisting and facilitating the forcible transfer and deportation of the Muslim population of Srebrenica, as described at paragraphs 47–50; and the amendment is proposed in order to provide the clarification requested by the Accused;⁴⁶ (v) the correction of the paragraph references at paragraph 34 to include paragraphs 36–57 merely cross-references the description of the forcible transfer and deportation, and the events described thereof are already charged as persecutory acts under Count 6 as set out at paragraph 34(e);⁴⁷ and (vi) paragraph 61 clearly identifies the references to the other paragraphs as examples of the broader category of foreseeable individual criminal acts under the third form of JCE; and citing paragraphs 22 and 34 corresponds to the subject-matter of paragraph 61 (and paragraph 28), which are the paragraphs concerning opportunistic killings and persecutory acts.⁴⁸

13. Finally, the Prosecution argues with reference to paragraphs 93–94 that the proposed amendments to delete the reference to “permanent” in the *mens rea* descriptions for forcible transfer and deportation reflects the Prosecution’s understanding of the correct legal test to be applied.⁴⁹

III. APPLICABLE LAW

14. In accordance with the jurisprudence of the Tribunal,⁵⁰ under Rule 50,⁵¹ a Trial Chamber has wide discretion to allow an indictment to be amended, even in the late stages of pre-trial proceedings, or even after trial has already begun.⁵² Yet, such leave will not be granted unless the amendment meets both of the following conditions: (i) it must not result in unfair prejudice to the accused when viewed in light of the circumstances of the case as a whole; and (ii) if the proposed

⁴⁵ *Ibid.*, para. 11.

⁴⁶ *Ibid.*, para. 13.

⁴⁷ *Ibid.*, para. 15.

⁴⁸ *Ibid.*, para. 17.

⁴⁹ *Ibid.*, para. 18.

⁵⁰ See, e.g., *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Decision on Further Amendments and Challenges to the Indictment, 13 July 2006 (“*Popović et al.* July 2006 Pre-Trial Decision”), paras. 5–11, 20–36. The law on this subject has been endorsed since the issuance of that decision. See, e.g., *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-PT, Decision on Motion to Amend the Amended Indictment, 12 July 2007, p. 4.

⁵¹ Rule 50(A) 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 6 2, 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 7 2 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.”

amendment is material, 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.⁵³

15. The jurisprudence also dictates that in assessing whether a given amendment will cause unfair prejudice to the accused, the following two crucial elements need to be considered: (i) the amendment must not deprive the accused of an adequate opportunity to prepare an effective defence; 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; and (ii) the amendment must not adversely affect the accused's right to be tried without undue delay; 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. A Trial 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 (C).⁵⁴

IV. DISCUSSION

16. The Trial Chamber first addresses the Accused's submission that that his right to a fair trial would be curtailed should the Trial Chamber rule upon the Motion before he has appealed the 1 October 2008 Decision. As a matter of procedure, for challenges on the form of the Indictment addressed in this decision, pursuant to Rule 72(B)(ii) and (C) the Accused is first required to request certification from the Trial Chamber to appeal this decision.⁵⁵ In the present case where the Accused has chosen to defend himself, he is allowed to submit such requests when the translation of the decision is filed in BCS. The Trial Chamber is aware that the 1 October 2008 Decision was filed in BCS on 2 December 2008 and that by error, the 14 December 2007 Decision is currently in the process of being translated into BCS. However, it is the Trial Chamber's view that given the nature of the proposed amendments, there is no reason to delay a decision on this motion pending any possible appeal on the earlier decisions related to objections to the indictment. The amendments

⁵² *Popović et al.* July 2006 Pre-Trial Decision, para. 8.

⁵³ *Ibid.* Article 19 ("Review of the indictment"), paragraph 1 reads: "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."

⁵⁴ *Popović et al.* July 2006 Pre-Trial Decision, paras. 9–10.

⁵⁵ For challenges on the Tribunal's jurisdiction addressed in the 1 October 2008 Decision, the Accused is allowed to file an appeal without requesting for certification pursuant to Rule 72(B)(i).

proposed would not prejudice any such appeal or the results thereof even if the Appeals Chamber were to overturn the 14 December 2007 Decision and the 1 October 2008 Decision as the current amendments do not address the issues of substance determined by those rulings.

17. The Trial Chamber disagrees with the Accused's claim that the Prosecution's proposed amendments have been submitted at a late stage of the pre-trial proceedings. Under Rule 50, the Trial Chamber is vested with broad discretion to determine whether an indictment should be amended "even in the late stages of pre-trial proceedings." What instead needs to be assessed by this Chamber is whether the Motion satisfies the requirements for such amendments to be made.

18. To begin with, the Trial Chamber notes that the Accused has not opposed the proposed amendments to the Indictment referred to in paragraph 8 *supra*.⁵⁶ As the unchallenged amendments are consistent with the requirements provided by Rule 50(A), the Trial Chamber will grant them.

19. Regarding the Prosecution's request to correct the reference to the location of the Sandići Meadow in paragraph 21.4.1 of the Indictment, the Trial Chamber considers that, despite the Accused's objection, the effect of this amendment is to clarify the precise location where the Prosecution alleges Bosnian Muslim prisoners were held before being taken for execution. Contrary to the Accused's argument that the amendment to paragraph 21.5 is unnecessary, the Trial Chamber considers that this amendment gives more specificity to the Prosecution's case on this particular allegation which is ultimately to the benefit, as opposed to the prejudice, of the Accused.

20. As to the amendments concerning paragraphs 28, 29, 34 (in part regarding the inclusion of paragraph 57), and 61, the Trial Chamber takes note of the Prosecution's acknowledgement that the mistaken cross-references contained in each of these paragraphs are due to formatting carried across from the indictment in the *Popović et. al.* case. Evidently, this can cause confusion for the reader and, even more importantly, for the Accused. Thus, these amendments are necessary to rectify the error and eliminate any possible confusion arising from the imprecise references. It follows that the amendments at paragraphs 28 and 61 do not in any way expand the third category of JCE; rather they are helpful for a clearer understanding of the allegations against the Accused.

21. As to the challenge that the Trial Chamber previously dismissed the Accused's motions on defects in the form of the Indictment on the ground that the Indictment was unambiguous and did not contain formal defects, the Trial Chamber observes that there is a difference between defects in

⁵⁶ The proposed amendments that were not opposed are: (i) a correction to paragraph 5 of the Indictment; (ii) the dropping of the two crime incidents as instances of opportunistic killings alleged at paragraphs 22.1(b) and (c) of the Indictment; and (iii) the change of another paragraph number referred to at paragraph 60 of the Indictment. Response, paras. 12–13, 46 (2).

the Indictment that concern issues that are fundamental to the clarification of the content of an Indictment and those points of an Indictment that only require a more refined clarification. All of the proposed corrections will assist to ensure that the real issues in the Prosecution case will be determined. They are not material changes and no prejudice to the Accused will result.

22. Finally, the Prosecution's proposed correction to the *mens rea* requirement simply reflects its position as to the requisite elements for the *mens rea* for forcible transfer and deportation. It remains open to the Accused to make submissions as to his view concerning the legal requirements for these particular crimes and it will be for the Trial Chamber to make a determination in its judgement. As such, no prejudice results from this amendment and it will have no effect on the timing of the trial.


23. In conclusion, the Trial Chamber is of the view that the proposed amendments are consistent with the criteria set out in Rule 50(A). Given that the commencement of his trial has not yet been scheduled at this stage, the Accused will have an adequate opportunity to prepare an effective defence. Moreover, contrary to his argument, the amendments proposed do not result in the addition of new charges against him and, therefore, do not justify triggering the procedural mechanism provided for under Rules 50(B) and (C).

V. DISPOSITION

For these reasons, pursuant to Rule 50(A) of the Rules, the Trial Chamber hereby

- (1) **GRANTS** the Prosecution leave to file the Reply;
- (2) **GRANTS** the Motion; and
- (3) **DECIDES** the second proposed indictment henceforth be the operative indictment in this case.

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



O-Gon Kwon
Judge

Dated this twenty-second day of December 2008
At The Hague
The Netherlands

[Seal of the Tribunal]