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-04-74-T

Date: 1 April 2010

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French

IN TRIAL CHAMBER III

Before: **Judge Jean-Claude Antonetti, presiding**
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: **Mr John Hocking**

Decision of: **1 April 2010**

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

PUBLIC

DECISION ON PRALJAK DEFENCE MOTION FOR ADMISSION OF DOCUMENTARY EVIDENCE

The Office of the Prosecutor:

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Ms Senka Nožica and Mr Karim A. A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

I. INTRODUCTION

1. **TRIAL CHAMBER III** ("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 seized of "Slobodan Praljak's Motion for the Admission of Documentary Evidence", filed publicly on 26 October 2009 by Counsel for the Accused Slobodan Praljak (respectively, "Praljak Defence" and the "Accused Praljak"), annexed to which are ten confidential Annexes, designated as A to J ("Motion"), by which the Praljak Defence requests the admission of 390 documents ("Proposed Exhibit") into evidence.

II. PROCEDURAL BACKGROUND

2. By an oral decision rendered on 29 October 2009, the Chamber granted an oral request from the Office of the Prosecutor ("Prosecution") to extend the time limit within which to respond to the Motion until 16 November 2009.[1]

3. By way of an email dated 5 November 2009 from the Chamber's Legal Officer, the Chamber reminded the parties that the extension of the time limit until 16 November 2009 within which to file the responses applied to all the parties.

4. On 16 November 2009, Counsel for the Accused Bruno Stojić ("Stojić Defence") filed confidentially the "Bruno Stojić's Response to Slobodan Praljak's Motion for the Admission of Documentary Evidence" ("Stojić Response"), in which it opposed the admission of three Proposed Exhibits.

5. On 17 November 2009, the Prosecution filed publicly the "Prosecution Response to Slobodan Praljak's Motion for the Admission of Documentary Evidence", to which three confidential Annexes are attached ("Prosecution Response"), in which the Prosecution opposes the admission of 254 Proposed Exhibits.

[1] Oral Decision of 29 October 2009, Transcript of Hearing in French ("T (F)"), pp. 46224-46227 and 46264-46265.

6. During the hearing of 17 November 2009, the Prosecution informed the Chamber that the Response had been distributed to the Registry and the other parties on 16 November 2009, so as within the time limit set forth by the Chamber, and not on 17 November 2010 as was indicated on the written submission itself.[2] The Chamber took note of this information.[3]

7. During the hearing of 23 November 2009, following an oral request from the Praljak Defence for permission to reply, the Chamber rendered an oral decision in which it asked that the Praljak Defence submit a request for permission to reply by means of a written request.[4]

8. On 23 November 2009, the Praljak Defence filed publicly "Slobodan Praljak's Request for Permission to Reply to the Responses to Slobodan Praljak's Motion for the Admission of Documentary Evidence", to which one confidential Annex is attached ("Request for Permission to Reply"), in which it requests leave of the Chamber, on the one hand, to reply to the Stojić Response and the Prosecution Response and, on the other hand, to grant it an extension of the time limit within which to file its reply until 18 December 2009 at the latest.

9. On the 25 November 2009, the Prosecution filed confidentially the "Prosecution Request for Exhibit 3D 01136 to Be Placed Under Seal if it is Admitted into Evidence Pursuant to Slobodan Praljak's Motion for the Admission of Documentary Evidence" ("Request to Place under Seal"), in which the Prosecution requests that, should the Chamber decide to admit into evidence Proposed Exhibit 3D 01136, that it be placed under seal.

10. The Defence teams did not reply to the Request to Place under Seal.

11. By way of an oral decision rendered during the hearing of 30 November 2009, the Chamber partially granted the Request for Permission to Reply and authorised the Praljak Defence to file its reply by 14 December 2009 at the latest.[5]

12. During the hearing of 9 December 2009, following a request from the Praljak Defence to be given permission for a two-day extension of the time limit within which

[2] T (F), p. 46872.
[3] T (F), p. 46872.
[4] Oral Decision of 23 November 2009, T (F), pp. 47058 and 47059.
[5] Oral Decision of 30 November 2009, T (F), pp. 47392 and 47393.

to file its reply, the Chamber rendered an oral decision by way of which it authorised the Praljak Defence to file its reply by 16 December 2009 at the latest.[6]

13. On 16 December 2009, the Praljak Defence filed publicly "Slobodan Praljak's Combined Reply to the Responses to Slobodan Praljak's Motion for the Admission of Documentary Evidence", to which two confidential Annexes are attached ("Reply").

III. APPLICABLE LAW

14. As contemplated by Rule 89 (C) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), a Chamber may admit any evidence it considers to have probative value. Also, in compliance with Rule 89 (C), any decision of the Chamber involving a request to admit documentary evidence finds a proper basis in law under that rule.[7]

15. Moreover, the Chamber recalls its prior decisions in which it outlined the principles for admitting evidence, notably the "Decision on Admission of Evidence", rendered on 13 July 2006, the "Decision Amending the Decision on the Admission of Evidence dated 13 July 2006", rendered on 29 November 2006, and the "Decision Adopting Guidelines for the Presentation of Defence Evidence" ("Decision of 24 April 2008").

16. Guideline No. 9 of the Decision of 24 April 2008 ("Guideline No. 9") more specifically addresses the admissibility of documentary evidence by means of a written motion. Applying Guideline No. 9, a Defence team pleading its case may seize the Chamber of a written request seeking the admission of exhibits that have not been presented to a witness in a hearing.[8] The said motion, if properly reasoned, must, specifically, contain certain information without which it will be denied, that is to say:

1. Number, title and description of the Exhibit;

2. Origin of the Exhibit and description of the indicia of reliability;

3. References to applicable paragraphs in the Indictment;

[6] Oral Decision of 9 December 2009, T (F), p. 48074.
[7] "Decision on Jadranko Prlić's Motion to be Relieved from the Strict Application of Guideline 9 of the Decision of 24 April 2008", 23 July 2008, p. 4 ("Decision of 23 July 2008").
[8] Decision of 24 April 2008, para. 35.

4. References to witnesses who have already appeared before the Chamber and to exhibits admitted into evidence that have bearing upon the same paragraphs of the Indictment;

5. Reasons why the exhibit is not introduced through the agency of a witness; and

6. Reasons why the party considers that this exhibit is important for the adjudication of the case.[9]

IV. ARGUMENTS OF THE PARTIES

17. To support its Motion, the Praljak Defence submits that the Proposed Exhibits comply with the requirements of Guideline No. 9.[10] The Praljak Defence thus notes that it has indicated for each Proposed Exhibit contained in the confidential topical annexes numbered from A to I[11]: (1) the number, the title and the description of the exhibit[12]; (2) the origin of the exhibit, adding that all of the Proposed Exhibits present sufficient indicia of reliability[13]; (3) references to the relevant paragraphs of the Amended Indictment of 11 June 2008 ("Indictment")[14] and (4) references to the witnesses who have already appeared before the Chamber as well as the exhibits already admitted, referring back to the same paragraphs in the Indictment, with these latter references appearing in Confidential Annex J entitled "Admitted Testamentary and Documentary Evidence", attached to the Motion ("Annex J").[15]

18. The Praljak Defence likewise states that the Proposed Exhibits were not introduced through a witness in light of time constraints and the fact that it is seeking to preserve the remainder of its time to "conduct its "direct" examination" of witnesses who might be called by the other parties.[16] It states that it has exercised care

[9] Decision of 24 April 2008, para. 35.
[10] Motion, paras 7-12.
[11] Confidential Annex A entitled "Slobodan Praljak"; Confidential Annex B entitled "Joint Criminal Enterprise"; Confidential Annex C entitled "Gorni Vakuf"; Confidential Annex D entitled "Mostar"; Confidential Annex E entitled "Prozor"; Confidential Annex F entitled "ABiH"; Confidential Annex G entitled "Crimes Against Ethnic Croatians"; Confidential Annex H entitled "Miscellaneous" and Confidential Annex I entitled "Source".
[12] Motion, para. 7.
[13] Motion, para. 8.
[14] Motion, para. 9.
[15] Motion, para. 10 and Confidential Annex J.
[16] Motion, para. 11.

in selecting the most relevant exhibits, focusing on events occurring in 1992 and 1993.[17]

19. The Praljak Defence adds that it elaborated upon the rationale for its view that these Proposed Exhibits are essential to the outcome of the trial at the beginning of each topical annex, as well as the specific relevance of each one of them in Confidential Annexes A-I attached to the Motion.[18]

20. Finally, the Praljak Defence states that the conditions laid out in Rule 89 (C) of the Rules have been met for all Proposed Exhibits and it then follows that all of the Proposed Exhibits ought to be admitted.[19]

21. In the Stojić Response, the Stojić Defence disputes the admission of three Proposed Exhibits: 3D 02019 and 3D 02388 on the grounds that they lack sufficient indicia of reliability and authenticity, and 3D 02375 on the grounds that the translation into English does not match the original BCS version.[20]

22. In the Prosecution's Response, the Prosecution disputes the admission of 254 Proposed Exhibits on the grounds (1) that it considers them inadmissible for reasons of authenticity, relevance and reliability, (2) that nowhere is it specified to which portion of the Indictment they pertain, or (3) that certain Proposed Exhibits do not appear on the list of exhibits presented pursuant to Rule 65 *ter* of the Rules by the Praljak Defence ("65 *ter* List").[21] Other than these objections of a general nature, the Prosecution more specifically disputes the admission into evidence of 18 Proposed Exhibits entitled "surrogate sheets" (French: *feuilles signalétiques*).[22]

23. In the Reply, the Praljak Defence submits, on the one hand, that the general objections of the Prosecution are without merit and, on the other hand, that the 18 Proposed Exhibits entitled "surrogate sheets" are presented in order to "aid the Trial Chamber with regard to the source of the evidence submitted by the Praljak Defence"; that the use of "surrogate sheets" is not prohibited by paragraph 36 of the Decision of

[17] Motion, para. 11.
[18] Motion, para. 12.
[19] Motion, paras 13-14 and 16.
[20] Stojić Response, paras 2-12.
[21] Prosecution Response, paras 3 and 10-13 and Confidential Annex I.
[22] Prosecution Response, paras 4-9, 14-22 and Confidential Annex 2. See Proposed Exhibits 3D 03103, 3D 03104, 3D 03105, 3D 03106, 3D 03107, 3D 03108, 3D 03109, 3D 03110, 3D 03111, 3D, 03112, 3D 03113, 3D 03120, 3D 03128, 3D 03133, 3D 03134, 3D 03144, 3D 03151 and 3D 03152.

24 April 2008 and that these have been used by all of the parties.[23] The Praljak Defence is attaching two confidential annexes to the Reply, which are: Confidential Annex A, a table containing the replies to the objections of the Prosecution and the Stojić Defence, and Confidential Annex B, containing archive receipts and related documents contributing additional information about the source of the Proposed Exhibits disputed by the Prosecution and the Stojić Defence.[24]

V. DISCUSSION

24. Out of concern for clarity, the Chamber will first of all address the Proposed Exhibits for which the Praljak Defence withdrew its request for admission as well as the Proposed Exhibits admitted under different reference numbers and/or in earlier orders rendered by the Chamber. The Chamber will then address the other issues, primarily of a technical nature, that were encountered dealing with the Proposed Exhibits sought for admission by the Praljak Defence, such as missing translations, transcriptions of video or especially the Proposed Exhibits entitled "surrogate sheets". The Chamber will afterwards address the Proposed Exhibits that correspond to particular topics, such as, for example, the Proposed Exhibits related to a Defence of Alibi or the Proposed Exhibits related to the crimes committed by the BH Army against Croatian civilians from Bosnia. The Chamber will develop and examine under each of these headings the relevant arguments made by the parties.

I. Proposed Exhibits Withdrawn by the Praljak Defence

25. The Chamber takes note of the fact that, in the Reply, the Praljak Defence withdrew its request for the admission of Proposed Exhibits 3D 00015, on the ground that this document had already been admitted into evidence under reference number P 01962,[25] and 3D 01162 on the ground that this document had already been admitted into evidence under reference number P 02038.[26] Consequently, the Chamber deems as moot the initial request for the admission of these two Proposed Exhibits.

26. The Chamber also notes that in the Reply, the Praljak Defence withdrew its request for the admission of Proposed Exhibits 3D 03084, 3D 03183 and 3D 03332 on the ground that they were not on its 65 *ter* List.[27] Furthermore, in the Reply, the

[23] Reply, paras 4-6.
[24] Reply para. 2 (a) and (b), Confidential Annex A and Confidential Annex B.
[25] Reply, Confidential Annex A, p. 4.
[26] Reply, confidential Annex A, p. 42.
[27] Reply, confidential Annex A, pp. 91, 99 and 100.

Praljak Defence acknowledges that Proposed Exhibit 3D 01559 is not on its 65 *ter* List.[28] Although it does not request that this Exhibit be withdrawn, it does, however, concede that it committed an error.[29] Consequently, the Chamber dismisses as moot the initial request for the admission of these four Proposed Exhibits.

27. Subsequently, the Chamber takes note of the fact that, in the Reply, the Praljak Defence withdrew its request for the admission of Proposed Exhibits 3D 02137, 3D 02314, 3D 02856 and 3D 03144 following the objections of the Prosecution to these Exhibits[30] in its Response. As such, the Chamber dismisses as moot the initial request for the admission of these four Proposed Exhibits.

28. Finally, the Chamber notes that, in the Reply, the Praljak Defence withdrew Proposed Exhibit 3D 03027, on the ground that it is being sought for admission through the testimony of Slobodan Praljak.[31] The Chamber notes that in its "Order to Admit Evidence Relating to the Testimony of Slobodan Praljak", rendered publicly on 15 February 2010 ("Order of 15 February 2010"), it already admitted Proposed Exhibit 3D 03027. Consequently, the request for admission of Proposed Exhibit 3D 03027 is moot.

II. Proposed Exhibits Already Admitted by Previous Orders Rendered by the Chamber and/or Admitted Under Different Reference Numbers

29. The Chamber notes that Proposed Exhibits 3D 00443 and 3D 00802 were admitted by way of the Order of 15 February 2010 and that it is appropriate, therefore, to dismiss as moot the request for the admission of these two Proposed Exhibits.

30. The Chamber notes, furthermore, that Proposed Exhibits 3D 00932 and 3D 00939 were admitted by way of the "Decision on Petković Defence Motion for Reconsideration or Alternatively for Certification to Appeal Order on Admission of Evidence Regarding Witness Milan Gorjanc (3D 00932 and 3D 00939)", rendered confidentially by the Chamber on 13 January 2010. As such, the Chamber dismisses as moot the initial request for the admission of these two Proposed Exhibits.

31. The Chamber also notes that Proposed Exhibit P 00868 was admitted by way of the "Order to Admit Evidence Regarding Witness Božo Pavlović", rendered publicly

[28] Reply, confidential Annex A, p. 50.
[29] Reply, confidential Annex A, p. 50.
[30] Reply, confidential Annex A, pp. 61, 66, 86, 97 and 98.

on 19 January 2010 and that Proposed Exhibit 3D 01731 was admitted by way of the "Order to Admit Evidence Regarding Witness Filip Filipović", rendered publicly on 18 March 2010. Consequently, the initial request for the admission of these two Proposed Exhibits is moot.

32. Finally, in the Reply, the Praljak Defence specifies that Proposed Exhibit 3D 00181 is identical to a document bearing reference number 2D 00016[32], admitted into evidence by an oral decision rendered by the Chamber on 25 May 2006.[33] The Chamber thus decides that the request for the admission of Proposed Exhibit 3D 00181 is moot.

III. Proposed Exhibits Not on the Praljak Defence 65 *ter* List which it Seeks to Substitute with Another Document on the 65 *ter* List

33. First of all, in the Reply, the Praljak Defence admits, following an objection from the Prosecution in this regard,[34] that Proposed Exhibit 3D 00294 is not on its 65 *ter* List.[35] However, it submits that it is identical to a document bearing reference number 3D 00097, which is on its 65 *ter* List.[36] Consequently, in its Reply, the Praljak Defence seeks the admission of document 3D 00097 in lieu of Proposed Exhibit 3D 00294.[37]

34. The Chamber notes, first of all, that Proposed Exhibit 3D 00294 is not on the Praljak Defence 65 *ter* List. It considers, therefore, that it is not appropriate to admit it into evidence.

35. Finally, with regard to the Praljak Defence request for admission of document 3D 00097 in lieu of Proposed Exhibit 3D 00294, the Chamber notes, *in limine*, that document 3D 00097 contains only a minute excerpt of Proposed Exhibit 3D 00294 and, therefore, the two documents do not correspond. Furthermore, the Chamber notes that even if, *quod non*, the two documents were identical, the Prosecution has still not been given an opportunity to respond to the merits of the request for the admission of document 3D 00097. For all of these reasons, the Chamber denies the request for the admission of document 3D 00097.

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[31] Reply, confidential Annex A, pp. 88 and 89.
[32] Reply, confidential Annex A, pp. 9 and 10.
[33] Hearing of 25 May 2006, T (F), pp. 2669 and 2670.
[34] Prosecution Response, confidential Annex 1, p. 5.
[35] Reply, confidential Annex A, p. 12.

36. Secondly, in the Reply, the Praljak Defence also acknowledges, following an objection from the Prosecution in this regard,[38] that Proposed Exhibit 3D 03133 is not on its 65 *ter* List and argues that the latter is identical to document 3D 03179 which is on its 65 *ter* List.[39] In its Reply, it requests, consequently, the admission of document 3D 03179 in lieu of Proposed Exhibit 3D 03133.[40]

37. The Chamber notes, first of all, that Proposed Exhibit 3D 03133 is not on the Praljak Defence 65 *ter* List. It considers, therefore, that it is not appropriate to admit it into evidence.

38. Subsequently, with regard to the Praljak Defence request for the admission of document 3D 03179 in lieu of Proposed Exhibit 3D 03133, the Chamber notes that these documents are not identical insofar as Proposed Exhibit 3D 03133 is on the *e*court system as a "surrogate sheet" referring to a DVD whereas document 3D 03179 is a newspaper article, without, moreover, an English translation. Furthermore, the Chamber notes that even if, *quod non*, the two documents were identical, the Prosecution has still not been given an opportunity to respond to the merits of the request for the admission of document 3D 03197. For all of these reasons, the Chamber denies the request for the admission of document 3D 03197.

IV. Proposed Exhibits Containing Translation Errors or Inaccuracies Involving Excerpts (and Corresponding Page Numbers) Sought for Admission

39. The Chamber finds, first of all, that the English translation of Proposed Exhibits 3D 01075 and 3D 03555 as uploaded onto the *e*court system by the Praljak Defence does not correspond to the original BCS version. The Praljak Defence has not specified in the Motion which extracts (and corresponding page numbers) of the English translation of these documents it seeks for admission, despite the constant instructions from the Chamber in this regard. The Chamber is unable, therefore, to rule on the relevance, probative value and reliability of these Proposed Exhibits. Consequently, the Chamber decides to deny the request for the admission of these two Proposed Exhibits.

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[36] Reply, confidential Annex A, pp. 12 and 13.
[37] Reply, confidential Annex A, pp. 12 and 13.
[38] Prosecution Response, Confidential Annex 1, p. 97.
[39] Reply, Confidential Annex A, pp. 96 and 97.
[40] Reply, Confidential Annex A, pp. 96 and 97.

40. The Chamber also notes that the English translation of Proposed Exhibit 3D 01598 does not correspond evidently to the original BCS version, insofar as the English translation contains a considerable amount of information that is not present in the original BCS version. The Chamber is unable, therefore, to rule on the relevance, probative value and reliability of the Proposed Exhibit. Consequently, the Chamber decides to deny the request for the admission of this Proposed Exhibit.

41. The Chamber subsequently notes that only the first two pages of the original BCS version of Proposed Exhibit 3D 03011 have been translated into English. The Chamber is, therefore, unable to rule on the relevance, probative value and reliability of the un-translated part of the Proposed Exhibit. Consequently, the Chamber decides to admit only the translated part of the document, namely the first two pages of Proposed Exhibit 3D 03011.

42. The Chamber notes, moreover, that there is no English translation of Proposed Exhibit 3D 02600 and decides, therefore, to deny the request for admission with regard to this Proposed Exhibit.

43. The Chamber notes, furthermore, that following the Prosecution's objections with regard to Proposed Exhibits 3D 01195, 3D 01459, 3D 01460, 3D 01966 and 3D 02375,[41] the Praljak Defence uploaded onto the *e*court system next to an English translation, a second English translation of the said Proposed Exhibits, which differs a little from the first one.[42] The Chamber notes that the Praljak Defence did the same for Proposed Exhibits 3D 00542 and 3D 02388. The Praljak Defence, however, did not specify which of the two was the accurate translation of the original document and omitted to withdraw the inaccurate English translation from the *e*court database. For want of being able to identify the accurate English translation, the Chamber is unable to rule on the relevance, probative value and reliability of these Proposed Exhibits and decides to deny the request for their admission. However, were the Praljak Defence to present a request for reconsideration relating to the rejection of these Proposed Exhibits and provided that the Praljak Defence uploads onto the *e*court system a single and accurate translation of the original of the said documents, the Chamber would be inclined, exceptionally and solely for these seven Proposed Exhibits, to be flexible in its examination of the request. The Chamber is prepared to be flexible insofar as only minimal differences have been noted between the translations of these

[41] Prosecution Response, Confidential Annex 1, pp. 37, 38, 41, 42, 50 and 62.

Proposed Exhibits, and it is the Praljak Defence that must choose the accurate translation of the original document sought for admission. With the exception of the case of these seven Proposed Exhibits, the Chamber will consider that the absence of a single and accurate translation of the original document sought for admission on the *e*court system constitutes a technical error attributable to the requesting party.

44. Finally, the Chamber notes that the Praljak Defence requests the admission into evidence of Proposed Exhibit 3D 00320, which consists of 261 pages corresponding to chapters 1-5 of a longer book entitled "*The Truth about Bosnia and Herzegovina*".[43] Firstly, the Chamber finds that pages 183-188 and 288 of the *e*court English version were admitted by way of the Order of 15 February 2010 and that the request for the admission of these pages is thus moot. Secondly, the Chamber notes that although the Praljak Defence already made a selection of the said book, the fact remains that the request for the admission of 261 pages is unreasonable. Consequently, the Chamber denies the request for admission with regard to this Proposed Exhibit.

V. Proposed Exhibits Entitled "Surrogate Sheets"

45. In the Motion, the Praljak Defence seeks the admission of 18 Proposed Exhibits entitled "surrogate sheets": 3D 03103; 3D 03104; 3D 03105; 3D 03016; 3D 03107; 3D 03108; 3D 03109; 3D 03110; 3D 03111; 3D 03112; 3D 03113; 3D 03120; 3D 03128; 3D 03133; 3D 03134; 3D 03144; 3D 03151 and 3D 03152.[44]

46. In the Prosecution Response, both general objections to the admission of the "surrogate sheets" as well as specific objections to the admission of each of them were presented.[45] In general, the Prosecution puts forward, first of all, that the "surrogate sheets" consist of massive files containing thousands of pages of Excel spreadsheets, photographs and documents and that in so doing, the Praljak Defence has shown no regard to the obligation incumbent upon it to make a selective choice of the evidence it seeks to admit and it has thus not taken into consideration the conditions set forth in Rule 89 (C) of the Rules and those in the Guidelines.[46]

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[42] Reply, confidential Annex A, pp. 43, 47, 48, 58, 59 and 72.
[43] Motion, confidential Annex B, p. 3.
[44] Motion, confidential Annex A, p. 29; confidential Annex B, p. 19; confidential Annex D, p. 30; confidential Annex G, pp. 17 and 18 ; confidential Annex I, pp. 6 to 11.
[45] *See*, for the specific objections, confidential Annex 2 of the Prosecution Response.
[46] Prosecution Response, paras 6 to 9 and 14.

47. Subsequently, relying on the example of surrogate sheet No. 2, the Prosecution argues notably that 1) the spreadsheets and documents referred to in the surrogate sheets are not translated, 2) the documents referred to are not in *e*court, 3) the Praljak Defence has not explained why they consider that their admission into evidence is important for the determination of the case, and 4) the Praljak Defence fails to provide basic information as to the reliability, relevance and probative value of these documents.[47]

48. In particular, the Prosecution opposes the admission into evidence of surrogate sheets 3D 03103, 3D 03104, 3D 03105, 3D 03106, 3D 03107, 3D 03108, 3D 03109, 3D 03110, 3D 03111, 3D 03112, 3D 03113, 3D 03128 and 3D 03151 on the grounds that no document is attached in the Annex and that they contain no information with regard to the number of pages, type of document or relevancy of the documents sought for admission.[48]

49. In the Reply, the Praljak Defence recalls that it disclosed the disputed surrogate sheets with the sole objective of assisting the Chamber in verifying the source of the evidence sought for admission by means of the Motion.[49] It adds that all the surrogate sheets were disclosed to the Prosecution shortly after filing its 65 *ter* List.[50]

50. *In limine*, the Chamber finds that, on the one hand, it already denied in this Decision the admission of Proposed Exhibit 3D 03133 as well as its substitution by document 3D 03179[51] and, on the other hand, it had already taken note of the withdrawal of the request for the admission of Proposed Exhibit 3D 03144.[52] Consequently, the Chamber does not find it necessary to examine the admission of these two Proposed Exhibits in relation to the surrogate sheets.

51. The Chamber notes that 16 Proposed Exhibits entitled "surrogate sheets" are in the *e*court system in the form of a single page outlining their contents and referring each one to a document on a CD or DVD. However, contrary to the practice carried out by the Chamber since the beginning of the case,[53] the Praljak Defence did not

[47] Prosecution Response, paras 15-22.
[48] Prosecution Response, paras 14 to 22 and confidential Annex 1, pp. 91 to 97.
[49] Reply, p. 2 and confidential Annex A, pp. 3 and 4.
[50] Reply, confidential Annex A, pp. 3, 4 and 92 to 98.
[51] *See supra*, paras 36-38.
[52] *See supra*, para. 27.
[53] *See*, for example, confidential Annex III attached to "Jadranko Prlić's Second Motion for the Admission of Documentary Evidence", filed confidentially by Counsel for the Accused Prlić, 27 February 2009.

attach the documents in the form of a CD or DVD corresponding to the surrogate sheets sought for admission when it filed its Motion.

52. The Chamber recalls that for obvious organisational purposes, it must obtain the disclosure of the documents in the form of a CD or DVD at the same time as the requests for the admission of documentary evidence are filed, failing which they would be rejected.[54] Consequently, since the CDs or DVDs to which the said 16 Proposed Exhibits refer were not disclosed to the Chamber, it decides to deny the request for their admission.

53. Furthermore, the Chamber draws the attention of the parties in this case that, as with other documents sought for admission, the "surrogate sheets", together with the contents of documents in the form of CDs or DVDs, must be translated. Likewise, if such surrogate sheets are directed towards assisting the Chamber in verifying the source of the documents that the requesting party seeks for admission, it is the obligation of the requesting party to ensure that a clear explanation is provided on how the Chamber's work might, in this way, be expedited.

VI. Proposed Exhibits Involving the Transcription of Video Documents

54. In the Motion, the Praljak Defence requests the admission of seven documents that are in essence transcriptions of video documents: 3D 00332, 3D 00337, 3D 00877, 3D 00878, 3D 00896, 3D 00956 and 3D 00988.[55]

55. The Chamber recalls, as it did to the Prlić Defence in the "Decision on Prlić Defence Motion for Admission of Documentary Evidence", rendered publicly on 6 March 2009, at paragraph 31, that the Chamber must clearly "have the videos in order to admit them, where appropriate, and that it would be unreasonable for it to admit merely a transcription of them." In this case, the Praljak Defence did not submit any video material when it filed its Motion. The Chamber thus has no information concerning the manner in which the transcriptions were prepared, nor any means of verifying their accuracy. The Chamber therefore decides to deny the request to admit these seven Proposed Exhibits.

[54] *See*, notably the "Decision on the Prosecution Motion for Admission of Documentary Evidence (Two Motions: HVO and Herceg-Bosna)", public, 11 December 2007.

VII. Proposed Exhibits Presenting Insufficient Indicia of Reliability

56. In the Motion, the Praljak Defence states that the Proposed Exhibits bear sufficient indicia of reliability and that the source of each Proposed Exhibit is stated in the Topical Annexes A – I attached to the Motion.[56]

57. In the Prosecution Response, the Prosecution asks the Chamber to deny the admission of the Proposed Exhibits for which it has stated objections in its Confidential Annex I, for reasons related to defects in authenticity or reliability.[57] The Prosecution points out that for many of the Proposed Exhibits, the Motion contains neither the description of the exhibit nor the description of its indicia of reliability, contrary to Guideline No. 9.[58] It likewise submits that several Proposed Exhibits do not present indicia of reliability, for example, as they do not bear any letterhead, stamp or signature.[59]

58. In the Stojić Response, the Stojić Defence opposes the admission of Proposed Exhibit 3D 02019, for although it is partly identical to Exhibit P 05958, already admitted into evidence, it features handwriting at the top from an unidentified author.[60] The Stojić Defence states that the Chamber has already denied admission to documents for defects in reliability and authenticity on occasions when the name of the author was not mentioned, was unknown or whose signature was illegible, and this was done even when they bore other indicia of reliability such as a stamp or letterhead.[61] Likewise, the Stojić Defence opposes the admission into evidence of Proposed Exhibit 3D 02388 on the grounds that it contains handwriting from an unidentified author, and that the said writing is, moreover, illegible.[62]

59. In its Reply, the Praljak Defence states that it has tried in good faith to provide adequate descriptions of the exhibits, but insofar as the exhibits were "self-explanatory", the Prosecution's objection on the relative inadequacies in the descriptions of the exhibits did not justify exclusion by the Chamber.[63] Moreover, the Praljak Defence describes as "rich in irony, but devoid of merit" the Prosecution's

[55] Motion, Confidential Annex B, p. 3; Confidential Annex F, pp. 2, 5 and 9; Confidential Annex G, pp. 5 and 8.
[56] Motion, para. 8 and Confidential Annexes A-I.
[57] Prosecution Response, para. 3 (a) and Confidential Annex 1.
[58] Prosecution Response, para. 10.
[59] Prosecution Response, para. 12 and Confidential Annex 1.
[60] Stojić Response, paras 2, 3 and 5.
[61] Stojić Response, para. 4.
[62] Stojić Response, paras 6-8.

general objection to the absence of indicia of reliability when they simultaneously contest the admission of documents entitled "sources" due to their size.[64]

60. In Confidential Annex A attached to the Reply, the Praljak Defence gives general and specific responses to the objections raised by the Prosecution and the Stojić Defence.[65] Thus, objecting on general grounds, the Praljak Defence argues that the authenticity and reliability of each document have been explained in Confidential Annex I to the Motion entitled "Source", which includes substantial information related to the origins of the Proposed Exhibits.[66] It adds that Confidential Annex B attached to the Reply includes archive receipts as well as related documentation, which establishes the source and the authenticity of the exhibits contested by the Prosecution and the Stojić Defence.[67] It likewise adds that Confidential Annex B attached to the Reply contains diverse data establishing that the documents contained therein were collected in the building of the Croatian State Archives.[68]

61. Moreover, in Confidential Annex B attached to the Reply, the Praljak Defence sets forth which Proposed Exhibits are exhibits originating with the Prosecution, as indicated by their presence in the electronic disclosure system ("EDS") or the ERN numbers.[69] The Praljak Defence declares its surprise when the Prosecution opposes the admission of certain Proposed Exhibits on grounds that they do not present sufficient indicia of reliability and authenticity even though these exhibits were disclosed by the Prosecution to the Praljak Defence pursuant to Rule 68 of the Rules or were found in the EDS and were for this reason available to the Praljak Defence.[70]

62. The Chamber observes, as a preliminary remark, that it already denied admission, above, to Proposed Exhibit 3D 02388 on grounds that the Praljak Defence did not specify which of the two English translations uploaded onto the *e*court system followed the original BCS version, making the Chamber unable to rule on the relevance, probative value and reliability of this Proposed Exhibit.

63. Following that, with regard to Proposed Exhibit 3D 02019, the Chamber observes, following the example of the Stojić Defence, that the author of the handwriting was

[63] Reply, para. 7.
[64] Reply, para. 9.
[65] Reply, para. 2(a) and Confidential Annex A.
[66] Confidential Annex A to the Reply, p. 2.
[67] Reply, para. 2(b) and Confidential Annex B.
[68] Confidential Annex A, p. 2 and Confidential Annex B to the Reply.
[69] Reply, para. 2(b) and Confidential Annex.

not identified and adds that the second page of the original document was perfectly legible. For these reasons, the Chamber denies the request for admission concerning this Proposed Exhibit.

64. Regarding the argument of the Praljak Defence relating to its request to admit the Proposed Exhibits disclosed by the Prosecution pursuant to Rule 68 of the Rules, the Chamber reminds the Praljak Defence that the fact that certain Proposed Exhibits were disclosed to it by the Prosecution pursuant to Rule 68 of the Rules or that they are present in the "EDS" does not absolve them from meeting the criteria of authenticity and reliability required by Guideline No. 9. Consequently, the Chamber cannot embrace this argument.

65. Next, the Chamber observes that the documents supplied in Confidential Annex B of the Reply which, according to the Praljak Defence, are intended to demonstrate that the Proposed Exhibits were collected in the Croatian State Archives building, [71] include: (1) a letter from the Ministry of Justice of the Republic of Croatia authorizing the Praljak Defence to consult the Croatian State Archives regarding the war in BH between 1991 and 1994[72]; (2) archive receipts in which Counsel for the Accused Praljak indicate that they consulted certain documents and requested copies from the Croatian State Archives[73] and (3) a letter from the Ministry of Justice of the Republic of Croatia dated as of 4 October 2007, addressed to a lawyer, Kovačič, regarding the disclosure of the documents of the MUP concerning the training and education of police officers at the Police Academy in Zagreb.[74]

66. The Chamber emphasises that the "archive receipts from the Croatian State Archives" under discussion look like slips prepared and signed by Counsel for the Praljak Defence to show that they consulted the documents and requested copies of them from the Croatian State Archives. The said "archive receipts from the Croatian State Archives" do not display any signature, stamp or other indicia to show that they originated in the Croatian State Archives, as the Praljak Defence maintains. Thus, lacking any other insight from the Praljak Defence about the said archive receipts and lacking a stamp of the Croatian Archives on those Proposed Exhibits, the Chamber cannot be certain that these documents whose sources are stated in Confidential

[70] Reply, p. 2 and Confidential Annex A, pp. 18, 19, 36, 37, 59, 60-62, 67, 68.
[71] Reply, para. 2(b) and Confidential Annex B.
[72] Reply, Confidential Annex B, pp. 9 and 10.
[73] Reply, Confidential Annex B, pp. 11-53.
[74] Reply, Confidential Annex B, pp. 54-57.

Annex B to the Reply as being the "Croatian State Archives" did indeed come from the Croatian Archives, as submitted by the Praljak Defence.

67. The Chamber reminds the Parties that the authenticity and reliability of the Proposed Exhibits are the focus of a comprehensive analysis by the Chamber. The Chamber recognises that it could happen that a Proposed Exhibit indeed originates from the Croatian Archives yet lacks a stamp on its cover to attest to that fact. Thus, the Chamber considers that an exhibit containing a letterhead, a stamp or a signature may nevertheless in any case present sufficient indicia of reliability, despite the absence of a legible stamp from the Croatian Archives.[75]

68. In virtue of these considerations, the Chamber observes that Proposed Exhibits 3D 00040, 3D 00061, 3D 00298, 3D 00333, 3D 00775, 3D 00836, 3D 00866, 3D 00879, 3D 00880, 3D 00882, 3D 00986, 3D 00990, 3D 01025, 3D 01026, 3D 01136, 3D 01053, 3D 01200, 3D 01204, 3D 01323, 3D 01324, 3D 01412, 3D 01440, 3D 01668, 3D 01718, 3D 01960, 3D01965, 3D 02045, 3D 02142, 3D 02234, 3D 02244, 3D 02248, 3D 02271, 3D 02309, 3D 02324, 3D 02334, 3D 02365, 3D 02393, 3D 02568, 3D 02617, 3D 02830, 3D 02831, 3D 02832, 3D 02838, 3D 02839 and 3D 03048 do not bear any letterhead, signature, stamp or other sufficient indicia of reliability or authenticity or are (partially) illegible. The Chamber therefore decides to deny admission to these Proposed Exhibits.

69. The Chamber emphasises that, given its decision to deny admission to Proposed Exhibit 3D 01136, the Prosecution's request to admit this exhibit under seal is now moot.

VIII. Proposed Exhibits Pertaining to a Defence of Alibi

70. The Praljak Defence seeks the admission into evidence of Proposed Exhibits 3D 00686, 3D 00687, 3D 00906, 3D 01323, 3D 01324 and 3D 01412 on grounds that these documents go to prove that Slobodan Praljak was present at a given location – Zagreb or BH – on dates certain and, in addition, as far as Proposed Exhibits 3D 00686, 3D 00687 and 3D 01324 are concerned, go to refute the testimony of Witness CU.[76]

[75] *See* Proposed Exhibits: 3D 00025, 3D 00527, 3D 00959, 3D 01144, 3D 01150, 3D 01151, 3D 01153, 3D 01159, 3D 01160, 3D 02166, 3D 02603, 3D 02604, 3D 02610, 3D 02767, 3D 02768, 3D 02772, 3D 02789 and 3D 02793.
[76] Motion, Confidential Annex A, pp. 1-3; Confidential Annex A to the Reply, p. 3.

71. The Prosecution opposes the admission into evidence of Proposed Exhibits 3D 00686, 3D 00687 and 3D 00906 on grounds that these documents, which present a link with the Notice regarding Defence of Alibi of the Praljak Defence that appeared on 23 October 2007,[77] ought to have been presented during the deposition of Slobodan Praljak in this case.[78] Moreover, the Prosecution opposes the admission into evidence of Proposed Exhibits 3D 01323, 3D 01324 and 3D 01412 on grounds that they do not present sufficient indicia of reliability and authenticity and that they ought to have been tendered through a witness.[79] Finally, for this entire group of six Proposed Exhibits, the Prosecution advances that they do not go to prove, contrary to statements of the Praljak Defence, that the Accused Praljak was present on a specific date in a specific place.[80]

72. The Chamber observes initially that it has already denied admission, above, to Proposed Exhibits 3D 01323, 3D 01324 and 3D 01412 on the grounds that they do not present sufficient indicia of authenticity or reliability.[81] The Chamber does not consider it timely to examine them from the perspective of their reliability and will limit its review to the request to admit Proposed Exhibits 3D 00686, 3D 00687 and 3D 00906.

73. The Chamber next observes that the Proposed Exhibits 3D 00686, 3D 00687 and 3D 00906 do not appear in the Notice regarding Defence of Alibi given by the Praljak Defence on 23 October 2007 and that the Praljak Defence did not comply with Rule 67 (D) of the Rules, which contemplates disclosure to the other parties and to the Chamber as soon as evidence that ought to have been disclosed through a notice regarding defence of alibi under the provisions of Rule 67 (B) of the Rules.[82] The Chamber observes nevertheless that the Prosecution did not express any objection to

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[77] The Accused Praljak's Notice regarding Defence of Alibi, filed confidentially on 23 October 2007 ("Notice regarding Defence of Alibi"), para. 2.
[78] Prosecution Response, Confidential Annex 1, pp. 12, 13 and 19.
[79] Prosecution Response, Confidential Annex 1, pp. 39-41.
[80] Prosecution Response, Confidential Annex 1, pp. 12, 13, 19 and 39-41.
[81] *See* para. 68, *supra*.
[82] Rule 67 (B) (i)(a) of the Rules provides that: "Within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge appointed pursuant to Rule 65 *ter*:

(i) the defence shall notify the Prosecutor of its intent to offer:
(a) the defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi ...." *(emphasis added)*

Rule 67 of the Rules continues: "(C) Failure of the Defence to provide notice under this Rule shall not limit the right of the accused to testify on the above defences. (D) If either party discovers additional evidence or material which should have been disclosed earlier pursuant to the Rules, that party shall immediately disclose that evidence or material to the other party and the Trial Chamber."

the tardy disclosure of the said exhibits but merely to the fact that, for purposes of admission, they ought to have been presented during the deposition of Slobodan Praljak in this case.[83] The Chamber therefore decides to examine the request to admit the said Exhibits.

74. The Chamber notes that Proposed Exhibits 3D 00686 and 3D 00687 are two letters bearing the signature of Slobodan Praljak, dated as of 5 June 1992 that were sent from the city of Zagreb. The Chamber considers that these exhibits may tend to establish the date and location of Praljak in relation to the defence of alibi as it is set forth in the Notice regarding Defence of Alibi[84] and that they present sufficient indicia of relevance, probative value and reliability. The Chamber considers furthermore that time constraints may justify the presentation of these exhibits through the instrumentality of a written request, and not through the deposition of Slobodan Praljak. The Chamber thereby concludes that it lies within the interests of justice to admit Proposed Exhibits 3D 00686 and 3D 00687.

75. As for Proposed Exhibit 3D 00906, the Chamber notes that this is an order from Slobodan Praljak dated as of 23 June 1992 showing that it was sent from Zagreb and referring to the HV's organisation. The Chamber holds the view that this exhibit does not relate to the defence of alibi as set forth in the Notice regarding Defence of Alibi[85] and that it does not present sufficient indicia of relevance and probative value. The Chamber therefore decides to deny its request for admission.

IX. Proposed Exhibits Involving Crimes Committed by the BH Army Against Croatian Civilians in Bosnia

76. In Annex G attached to the Motion, entitled "Crimes Against Ethnic Croatians", the Praljak Defence requests the admission of 18 Proposed Exhibits relating to crimes committed against Croatian Civilians in Bosnia.[86]

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[83] Prosecution Response, Confidential Annex 1, pp. 12, 13 and 19.
[84] Notice regarding Defence of Alibi, para. 2.
[85] Notice regarding Defence of Alibi, para. 2.
[86] *See* Proposed Exhibits 3D 00717, 3D 00837, 3D 00838, 3D 00896, 3D 00922, 3D 00936, 3D 00988, 3D 01075, 3D 01114, 3D 01523, 3D 02026, 3D 02142, 3D 02415, 3D 02651, 3D 03046, 3D 03120, 3D 03144 and 3D 01923.

77. The Chamber wishes to recall its prior decisions[87] in which it stated that the principle of *tu quoque* does not constitute a defence under international humanitarian law. It nevertheless clarified that the evidence relating to the atrocities committed against Bosnian Croatians might be admissible based on the idea that it would go to refute one of the allegations made in the Indictment but that, unless the Defence were to establish how such evidence goes to refute one or more of these allegations, and in this manner displays some measure of relevance, the Chamber will not admit it into evidence.[88] Indeed, the jurisprudence of the Tribunal has clearly determined that the exhibits going to prove that the Muslims of Bosnia committed atrocities against Croatian civilians in the municipalities falling outside of the scope of the Indictment are without relevance whatsoever in the sense that they do not help to refute the allegations brought in the Indictment against the Accused.[89] In the same fashion, Trial Chamber II, in the *Kupreškić* Decision, was of the view that evidence produced to show that one of the parties in the Croatian-Muslim conflict was responsible for the outbreak of the war was not relevant.[90]

78. In this case, in Annex G of the Motion, the Praljak Defence is seeking the admission of the 18 Proposed Exhibits cited above on grounds that: (1) the crimes committed by the BH Army against Croatian civilians caused fear and feelings of insecurity among the Croatian population of BH – as a result, the civilian population ran away from their homes to the areas under HVO control or abroad – the Praljak Defence states that the movements of the Croat population were thus not due to the propaganda of the HZ-HB or to a "reverse ethnic cleansing" but to crimes committed by the BH Army and, more broadly, by the Muslims of Bosnia; (2) the crimes

[87] "Order to Admit Defence Evidence Relative to Witness Christopher Beese", public document, 27 September 2006, p. 3; Oral Decision of 16 February 2009, T(F) at 36878 (public hearing); "Decision on Prosecution Motion to Exclude the Testimony of Dragan Pinjuh", public document, 27 February 2009, p. 3; "Order Admitting Evidence Related to Witness Veso Vegar", public document, 5 May 2009, pp. 2-3; "Decision on the Stojić Defence Motion for the Admission of Documentary Evidence (cooperation between the authorities and the armed forces of Herceg-Bosna and the armed forces of the ABiH)", public document, 21 July 2009, para. 28; "Decision on Stojić Defence Motion for the Admission of Documentary Evidence (functioning of HVO municipal authorities/brigades and relationship between them, the bodies of the operative zone and HVO centralised authority in Mostar)", public document, 17 August 2009, paras. 28-29; "Decision on Stojić Defence Motion for the Admission of Documentary Evidence (co-operation between Herceg-Bosna/HVO authorities and international organisations; compliance with international humanitarian law norms)", public document, 17 August 2009, para. 22.

[88] *See in particular.* the "Order to Admit Defence Evidence Relative to Witness Christopher Beese", public document, 27 September 2006, p. 3.

[89] *See generally* "Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, Vladimir Šantić *alias* Vlado " Case No. IT-95-16-T; "Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque*", public document, 17 February 1999 ("*Kupreškić* Decision"), pp. 3-4.

[90] *Ibidem.*

committed by the BH Army contributed to a chaotic situation and caused criminal reactions of many individuals, thus, the HVO encountered hardship in its attempt to impose firm control, maintain order and prosecute the guilty in a timely manner; (3) the aforementioned Proposed Exhibits are valuable for understanding the context of the events, and, finally (4) these Proposed Exhibits establish that the actions of the HVO were reactive, contradicting allegations by the Prosecution saying that the HVO's actions were part of a plan dating back to 1991.[91]

79. As an initial consideration, the Chamber observes that it has in this Decision already rejected the following Proposed Exhibits (Annex G of the Motion): 3D 01075 for reasons related to a lack of translation and a failure to specify the excerpts sought to be admitted[92] as well as 3D 00988, 3D 00896 and 3D 03120[93] for failure to disclose documents such as CDs, DVDs and/or video at the time of filing the Motion. The Chamber will therefore focus its review upon the other Proposed Exhibits in Annex G to the Motion. The Chamber has likewise by the terms of this Decision excluded from evidence Proposed Exhibit 3D 02142 (in Annex G to the Motion) for defects in authenticity and reliability.[94] However, the Chamber also considers it timely to examine this Proposed Exhibit from the perspective of its reliability.

80. The Chamber considers that it may be legitimate to present exhibits proving the other side's attacks upon the civilian population of an accused's camp if they go to refute, for example, allegations of a widespread or systematic attacks perpetrated upon a civilian population, allegations of the existence of a plan of concerted attacks upon several villages or perhaps to explain the behaviour of the accused, or even to provide information on the organisation and activities of the BH Army or the HVO.[95] However, it is important in this instance that such evidence addresses places appropriately defined. In other words, it is the responsibility of the party seeking to produce such evidence to explain, for each exhibit, what the exact link is, particularly geographic and temporal, to the alleged crimes in the municipalities of the Indictment and/or to the alleged responsibility of the Accused for these crimes, whether the

[91] Motion, Confidential Annex G, p. 1.
[92] For Proposed Exhibit 3D 01075, see p. 39, *supra*.
[93] For Proposed Exhibit 3D 00988 and 3D 00896, see para. 55, *supra*, and for Proposed Exhibit 3D 03120, see para. 52, *supra*.
[94] Proposed Exhibit 3D 02142 – *see* para. 68, *supra*.
[95] *See generally Kupreškić* Decision, p. 4; *Prosecutor v. Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, Vladimir Šantić alias Vlado*, Case No. IT-95-16-T, Judgement, 14 January 2000, public, par. 515-520; *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23 & 23/1-A, Appeals Judgment, 12 June 2002, paras 87-88.

commission of these crimes is alleged within or outside the context of a joint criminal enterprise.

81. Thus, by way of example, for Proposed Exhibit 3D 00936, the Praljak Defence argues that this document is relevant notably in that it illustrates the difficulties of command, control and communications within the HVO in light of actions conducted by the BH Army against the Croat population at Grabovica in the municipality of Konjic and insofar as it thereby refutes the argument of the Prosecution whereby the alleged crimes were committed in furtherance of a joint criminal enterprise.[96] The Chamber cannot adhere to this thesis in that, ultimately, the Praljak Defence fails to establish a link between the BH Army attack at Konjic and the crimes alleged in one or several municipalities in the Indictment.

82. In view of these considerations, the Chamber considers that for Proposed Exhibits 3D 00922, 3D 00936, 3D 01114, 3D 02026, 3D 02142, 3D 02415, 3D 02651, 3D 03046 and 3D 01923, the Praljak Defence has not established a sufficient link with the crimes alleged in the municipalities of the Indictment and/or with the alleged responsibility of the Accused for these crimes. The Chamber, as a result, denies admission to these Proposed Exhibits because they do not bear sufficient indicia of relevance.

X. Other Proposed Exhibits Lacking Sufficiently Relevant Links to the Indictment[97]

83. In confidential Annex B attached to the Motion, entitled *Joint Criminal Enterprise*, the Praljak Defence requests the admission of Proposed Exhibits by submitting that they contradict the argument of the joint criminal enterprise and demonstrate that the Republic of Croatia and the alleged participants in the joint criminal enterprise took concrete actions that directly contradict this allegation.[98]

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[96] Motion, Confidential Annex G, p. 7.
[97] The Chamber elucidates that in this chapter the relevant links of *some* Proposed Exhibits is at issue; reference should be made to the Annex attached to this Decision with respect to the other Proposed Exhibits.
[98] Motion, confidential Annex B, p. 1. *See* Proposed Exhibits: 3D 00142; 3D 00143; 3D 00185; 3D 00320; 3D 00332; 3D 00443; 3D 00617; 3D 00625; 3D 00836; 3D 00879; 3D 00880; 3D 00882; 3D 00954; 3D 00990; 3D 01509; 3D 01533; 3D 01718; 3D 01824; 3D 01883; 3D 01941; 3D 01943; 3D 01951; 3D 01960; 3D 01965; 3D 01966; 3D 02045; 3D 02244; 3D 02309; 3D 02313; 3D 02314; 3D 02324; 3D 02331; 3D 02469; 3D 02600; 3D 02694; 3D 02703; 3D 02837; 3D 02838; 3D 02839; 3D 02845; 3D 03008; 3D 03029; 3D 03030; 3D 03031; 3D 03032; 3D 03033; 3D 03034; 3D 03103; 3D 03112; 3D 03155; 3D 03193; 3D 03194; P 00946; 3D 02230; 3D 02233.

84. In the Prosecution Response, the Prosecution opposes the admission of the Proposed Exhibits in confidential Annex B attached to the Motion on the ground that they are not relevant to the Indictment.[99]

85. *In limine*, the Chamber notes that it has already rejected, in this Decision, some of the Proposed Exhibits in Annex B to the Praljak Defence Motion for reasons relating to the absence of a translation[100] and that the Praljak Defence withdrew its request for admission with regard to Proposed Exhibit 3D 02314.[101] The Chamber, consequently, will focus its assessment on the other Proposed Exhibits in Annex B to the Motion. It also notes that it has already rejected, in this Decision, several Proposed Exhibits (in Annex B to the Motion) for their lack of authenticity and reliability.[102] However, the Chamber also deems it appropriate to rule on the latter Proposed Exhibits from the point of view of their relevance.

86. The Chamber then notes that Proposed Exhibits 3D 00617, 3D 00625, 3D 00990, 3D 01509, 3D 01533, 3D 01824, 3D 01941, 3D 01943, 3D 01951, 3D 02313, 3D 02324, 3D 02837, 3D 02838 and 3D 02839 concern the hospitalisation of Muslim patients in hospitals in the Republic of Croatia or in municipalities outside the scope of the Indictment,[103] the operations of Muslim organisations in the Republic of Croatia,[104] the shipment of MTS to the BH Army through the Republic of Croatia,[105] and the training of BH Army members in the Republic of Croatia in 1991.[106] The Chamber is of the opinion that these Proposed Exhibits are too vague with regard to the allegations in the Indictment or do not serve to establish a link of sufficient relevance to the Indictment. They contain no information which could lead to a better understanding or assessment of the evidence already admitted into evidence on these issues through the witnesses who have already testified. The Chamber considers, therefore, that these Proposed Exhibits do not present sufficient indicia of relevance and decides not to admit them into evidence.

87. In confidential Annex F attached to the Motion, entitled "*ABiH*", the Praljak Defence then requests the admission of 73 Proposed Exhibits on the ground that they

[99] Prosecution Response, confidential Annex pp. 11, 27, 30, 42, 43, 47-49, 57-59 and 83-85.
[100] For Proposed Exhibit 3D 01966, *see supra*, para. 43.
[101] *See supra*, para. 27.
[102] For Proposed Exhibits 3D 00836, 3D 00879, 3D 00880, 3D 00882, 3D 00990, 3D 01718, 3D 01960, 3D 01965, 3D 02045, 3D 02244, 3D 02324, 3D 02838 and 3D 02839, *see supra*, para. 68.
[103] *See* Proposed Exhibits: 3D 00617, 3D 00625, 3D 00990 and 3D 01943.
[104] *See* Proposed Exhibits: 3D 01509, 3D 01533 and 3D 01941.
[105] *See* Proposed Exhibits: 3D 01824, 3D 01951, 3D 02313 and 3D 02324.
[106] *See* Proposed Exhibits: 3D 02837, 3D 02838 and 3D 02839.

go to demonstrate that BH Army members were engaged in conflict against the HVO with the aim of subduing the HVO and achieving control of the territories they believed belonged to them.[107]

88. In the Prosecution Response, the Prosecution opposes the admission of some of the Proposed Exhibits in confidential Annex F, principally on the ground that they are not relevant to the Indictment.[108]

89. *In limine*, the Chamber notes that it already rejected, in this Decision, some of the Proposed Exhibits in Annex F to the Motion for reasons pertaining to their lack of authenticity and reliability.[109] However, the Chamber also deems it appropriate to rule on these Proposed Exhibits from the point of view of their relevance.

90. The Chamber finds that Proposed Exhibits 3D 00180, 3D 00656, 3D 00773, 3D 00933, 3D 00934, 3D 00935, 3D 00937, 3D 00938, 3D 00940, 3D 02406, 3D 02615, 3D 02630, 3D 02871, 3D 02831, 3D 02832 and 3D 03565 basically concern operations undertaken by the BH Army in geographical areas outside the scope of the Indictment. In the same way that the Chamber decided with respect to the Proposed Exhibits on crimes committed by the BH Army against Croatian civilians in Bosnia, the Chamber notes that the Praljak Defence did not establish a link of sufficient relevance between these Proposed Exhibits and the Indictment. The Chamber considers, therefore, that these Proposed Exhibits do not present sufficient indicia of relevance and decides not to admit them.

91. In light of the information provided by the Praljak Defence in the Motion and the Reply, as well as the objections raised by the Prosecution and the Stojić Defence on some of the Proposed Exhibits, the Chamber decides to admit the Proposed Exhibits marked as "Admitted" in the Annex attached to this Decision insofar as they present sufficient indicia of reliability, relevance and probative value in relation to the Indictment.

92. The Chamber wishes to emphasize that, at this stage of the proceedings, it will only consider the admissibility of the Proposed Exhibits and need not make a final assessment of their probative value. It will only do so at the end of the proceedings when all the Prosecution and Defence evidence will have been admitted into the

[107] Motion, confidential Annex F, p. 1.
[108] Prosecution Response, confidential Annex pp. 4, 11, 12, 20, 21, 26, 27 and 44.
[109] For Proposed Exhibits 3D 02381 and 3D 02832 *see supra*, para. 68.

record. During this assessment, the Chamber will notably take into account the fact that inconsistencies may exist between the exhibits; that the Prosecution objects to the interpretation given to them by the Praljak Defence or to their authenticity; that certain information is hearsay and that the Prosecution did not have an opportunity to test the Proposed Exhibits during cross-examination.

93. Finally, the Chamber rejects the Proposed Exhibits marked as "Not Admitted" in the Annex attached to this Decision, and specifies the grounds for the rejection of each of the Proposed Exhibits in the same Annex.

FOR THESE REASONS,

PURSUANT TO Rule 89 (C) of the Rules,

DECLARES the Request moot as to Proposed Exhibits 3D 00015, 3D 00181, pages 183-188 and 288 of 3D 00320, 3D 00443, 3D 00802, 3D 00932, 3D 00939, 3D 01162, 3D 01559, 3D 01731, 3D 02137, 3D 02314, 3D 02856, 3D 03027, 3D 03084, 3D 03144, 3D 03183, 3D 03332 and P 00868 for the reasons set forth in the Annex hereto,

DECLARES moot the Request to Admit into Evidence under seal the Proposed Exhibit 3D 01136,

DECIDES to admit into evidence the Proposed Exhibits marked "Admitted" in the Annex to this Decision,

AND

DENIES THE MOTION BY A MAJORITY in all other respects, for the reasons set forth in this Decision and in the Annex hereto,

The President of the Chamber annexes a dissenting opinion to the Decision of the Chamber.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this first day of April, 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX TO THE LD 9 PRALJAK DECISION

Document List	Proposed Exhibits	Admitted/Not Admitted/Moot
1	3D 00686	Admitted
2	3D 00687	Admitted
3	3D 00906	Not admitted (Reason: the Proposed Exhibit is not related to the alibi defence laid out in the Notice regarding Defence of Alibi and it does not display sufficient indicia of relevance and probative value.)
4	3D 01323	Not admitted (Reason: the Proposed Exhibit does not possess any letterhead, signature, or other sufficient indicator of reliability or authenticity.)
5	3D 01324	Not admitted (Reason: the Proposed Exhibit does not possess any letterhead, signature, or other sufficient indicator of reliability or authenticity.)
6	3D 01412	Not admitted (Reason: the Proposed Exhibit does not possess any letterhead, signature, or other sufficient indicator of reliability or authenticity.)
7	3D 00972	Admitted
8	3D 00982	Admitted
9	3D 01162	Moot (Reason: the Proposed Exhibit was withdrawn by the Praljak Defence.)
10	3D 01211	Admitted
11	3D 01440	Not admitted (Reason: the Proposed Exhibit does not possess sufficient indicia of reliability.)
12	3D 01746	Admitted
13	3D 02019	Not admitted (Reason: the Proposed Exhibit does not possess sufficient indicia of reliability and authenticity. The author of the handwritten annotations is not identified and the second page of the original document is illegible. Moreover, the Proposed Exhibit does not display sufficient indicia of relevance.)
14	3D 02021	Admitted
15	3D 02022	Admitted
16	3D 02575	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of relevance.)
17	3D 02612	Admitted
18	3D 02623	Admitted
19	3D 02789	Admitted
20	3D 02801	Admitted
21	3D 02989	Admitted
22	3D 01191	Admitted
23	3D 01195	Not admitted (Reason: The Praljak Defence did not indicate which of the two uploaded English translations is the accurate translation of the original document and failed to withdraw the inaccurate English translation from the *e*court database. Unless it is able to identify the true English translation, the Chamber is unable to rule on the relevance,

		probative value and reliability of this Proposed Exhibit.)
24	3D 01204	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
25	3D 01547	Admitted
26	3D 02617	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
27	3D 02759	Admitted
28	3D 02804	Admitted
29	3D 03027	Moot (Reason: Proposed Exhibit was withdrawn by the Praljak Defence. In its Order of 15 February 2010, the Chamber admitted the Proposed Exhibit.)
30	3D 00802	Moot (Reason: the Proposed Exhibit has already been admitted by the Order of 15 February 2010.)
31	3D 01144	Admitted
32	3D 01150	Admitted
33	3D 01151	Admitted
34	3D 01153	Admitted
35	3D 01159	Admitted
36	3D 01170	Admitted
37	3D 00542	Not admitted (Reason: The Praljak Defence did not indicate which of the uploaded English translations is the accurate translation of the original document and failed to withdraw the inaccurate English translation from the *e*court database. Unless it is able to identify the true English translation, the Chamber will be unable to rule on the relevance, probative value and reliability of this Proposed Exhibit.)
38	3D 00959	Admitted
39	3D 01160	Admitted
40	3D 01163	Admitted
41	3D 01167	Admitted
42	3D 01200	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
43	3D 01201	Admitted
44	3D 01272	Admitted
45	3D 01459	Not admitted (Reason: The Praljak Defence did not indicate which of the two uploaded English translations is the accurate translation of the original document and failed to withdraw the inaccurate English translation from the *e*court database. Unless it is able to identify the true English translation, the Chamber is unable to rule on the relevance, probative value and reliability of this Proposed Exhibit.)
46	3D 01460	Not admitted (Reason: The Praljak Defence did not

		indicate which of the two uploaded English translations is the accurate translation of the original document and failed to withdraw the inaccurate English translation from the *e*court database. Unless it is able to identify the true English translation, the Chamber is unable to rule on the relevance, probative value and reliability of this Proposed Exhibit.)
47	3D 01461	Admitted
48	3D 01721	Not admitted (Reason: the Proposed Exhibit does not appear on the 65*ter* List of the Praljak Defence and the Praljak Defence has not requested the addition of this Exhibit on the 65*ter* list in compliance with para. 26 of the Decision of 24 April 2008.)
49	3D 02039	Admitted
50	3D 02059	Admitted
51	3D 02166	Admitted
52	3D 02256	Admitted
53	3D 02271	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Moreover, the Proposed Exhibit does not display sufficient indicia of relevance.))
54	3D 02388	Not admitted (Reason: The Praljak Defence did not indicate which of the two uploaded English translations is the accurate translation of the original document and failed to withdraw the inaccurate English translation from the *e*court database. Unless it is able to identify the true English translation, the Chamber is unable to rule on the relevance, probative value and reliability of this Proposed Exhibit.)
55	3D 02400	Admitted
56	3D 02417	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of relevance.)
57	3D 02423	Admitted
58	3D 02424	Admitted
59	3D 02439	Admitted
60	3D 02563	Admitted
61	3D 02579	Admitted
62	3D 02581	Admitted
63	3D 02582	Admitted
64	3D 02585	Admitted
65	3D 02603	Admitted
66	3D 02604	Admitted
67	3D 02610	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of relevance.)
68	3D 02632	Admitted
69	3D 02756	Admitted
70	3D 02767	Admitted
71	3D 02768	Admitted
72	3D 02772	Admitted

73	3D 02793	Admitted
74	3D 02881	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of relevance.)
75	3D 03040	Admitted
76	3D 03041	Admitted
77	3D 03042	Admitted
78	3D 03048	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
79	3D 03066	Not admitted (Reason: the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
80	3D 03084	Moot (Reason: the Proposed Exhibit was withdrawn by the Praljak Defence.)
81	3D 03085	Admitted
82	3D 03133	Not admitted (Reason: the Proposed Exhibit does not appear on the *65ter* List of the Praljak Defence. The Chamber also denies the request to admit Document 3D 03179, substituted for Proposed Exhibit 3D03133, as stated by the Praljak Defence in its Reply.)
83	3D 03332	Moot (Reason: the Proposed Exhibit was withdrawn by the Praljak Defence.)
84	P 03698	Admitted
85	P 04969	Admitted
86	P 06269	Admitted
87	P 06419	Admitted
88	3D 00142	Admitted
89	3D 00143	Admitted
90	3D 00185	Admitted
91	3D 00320	Moot as to English *e*court pages 183-188 and 288 (3D28-0139) (Reason: already admitted by the Order of 15 February 2010.) Not admitted in all other respects (Reason: the Praljak Defence did not specify which excerpts (and corresponding page numbers) from among the 261 pages sought for admission.)
92	3D 00332	Not admitted (Reason: the Proposed Exhibit is in fact the transcription of a video not requested for admission by the Praljak Defence and not filed under the Motion. Lacking the video, the Chamber is unable to verify the reliability and the authenticity of the transcription of the statements.)
93	3D 00443	Moot (Reason: already admitted by the Order of 15 February 2010.)
94	3D 00617	Not admitted (Reason: the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
95	3D 00625	Not admitted (Reason: the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
96	3D 00836	Not admitted (Reason: the Proposed Exhibit created by the Praljak Defence does not display sufficient indicia of reliability.)

97	3D 00879	Not admitted (Reason: the Proposed Exhibit created by the Praljak Defence does not display sufficient indicia of reliability.)
98	3D 00880	Not admitted (Reason: the Proposed Exhibit created by the Praljak Defence does not display sufficient indicia of reliability.)
99	3D 00882	Not admitted (Reason: the Proposed Exhibit created by the Praljak Defence does not display sufficient indicia of reliability.)
100	3D 00954	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of relevance.)
101	3D 00990	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Moreover, the Proposed Exhibit does not display sufficient indicia of relevance.)
102	3D 01509	Not admitted (Reason: the Proposed Exhibit does not possess sufficient indicia of reliability.)
103	3D 01533	Not admitted (Reason: the Proposed Exhibit does not possess sufficient indicia of reliability.)
104	3D 01718	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
105	3D 01824	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of relevance.)
106	3D 01883	Admitted
107	3D 01941	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of relevance.)
108	3D 01943	Not admitted (Reason: the Proposed Exhibit does not possess sufficient indicia of reliability.)
109	3D 01951	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of relevance.)
110	3D 01960	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Furthermore, the Proposed Exhibit does not display sufficient indicia of relevance.)
111	3D 01965	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Furthermore, the Proposed Exhibit does not display sufficient indicia of relevance.)
112	3D 01966	Not admitted (Reason: The Praljak Defence did not indicate which of the two uploaded English translations is the accurate translation of the original document and failed to withdraw the inaccurate English translation from the *e*court database. Unless it is able to identify the true English translation, the Chamber is unable to rule on the relevance, probative value and reliability of this Proposed Exhibit.)

113	3D 02045	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Furthermore, the Proposed Exhibit does not display sufficient indicia of relevance.)
114	3D 02244	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
115	3D 02309	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
116	3D 02313	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of relevance.)
117	3D 02314	Moot (Reason: the Proposed Exhibit was withdrawn by the Praljak Defence.)
118	3D 02324	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Furthermore, the Proposed Exhibit does not display sufficient indicia of relevance.)
119	3D 02331	Admitted
120	3D 02469	Admitted
121	3D 02600	Not admitted (Reason: no English translation available. The Chamber is thus unable to rule on the relevance, probative value and reliability of this Proposed Exhibit.)
122	3D 02694	Admitted
123	3D 02703	Admitted
124	3D 02837	Not admitted (Reason: the Praljak Defence has not established a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
125	3D 02838	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Furthermore, the Proposed Exhibit does not display sufficient indicia of relevance.)
126	3D 02839	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Furthermore, the Proposed Exhibit does not display sufficient indicia of relevance.)
127	3D 02845	Admitted
128	3D 03008	Admitted
129	3D 03029	Admitted
130	3D 03030	Admitted
131	3D 03031	Admitted
132	3D 03032	Admitted
133	3D 03033	Admitted
134	3D 03034	Admitted
135	3D 03103	Not admitted (Reason: the Praljak Defence has not

		annexed to the Motion a CD or DVD-type document that matches a surrogate sheet it is requesting to have admitted.)
136	3D 03112	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches a surrogate sheet it is requesting to have admitted.)
137	3D 03155	Not admitted (Reason: the Praljak Defence did not specify which excerpts (and corresponding page nos.) it sought for admission from this lengthy document.)
138	3D 03193	Admitted
139	3D 03194	Admitted
140	P 00946	Admitted
141	3D 02230	Admitted
142	3D 02233	Admitted
143	3D 00477	Admitted
144	3D 00478	Admitted
145	3D 00480	Admitted
146	3D 00497	Admitted
147	3D 00524	Admitted
148	3D 00527	Admitted
149	3D 00529	Admitted
150	3D 01262	Admitted
151	3D 01462	Admitted
152	3D 01528	Admitted
153	3D 01783	Admitted
154	3D 02353	Admitted
155	3D 02356	Admitted
156	3D 02361	Admitted
157	3D 02363	Admitted
158	3D 02364	Admitted
159	3D 02365	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Furthermore, the Proposed Exhibit does not display sufficient indicia of relevance.)
160	3D 02368	Admitted
161	3D 02369	Admitted
162	3D 02372	Admitted
163	3D 02373	Admitted
164	3D 02375	Not admitted (Reason: The Praljak Defence did not indicate which of the two uploaded English translations is the accurate translation of the original document and failed to withdraw the inaccurate English translation from the *e*court database. Unless it is able to identify the true English translation, the Chamber is unable to rule on the relevance, probative value and reliability of this Proposed Exhibit.)
165	3D 02377	Admitted
166	3D 02530	Admitted

167	3D 00001	Admitted
168	3D 00003	Admitted
169	3D 00005	Admitted
170	3D 00015	Moot (Reason: the Proposed Exhibit was withdrawn by the Praljak Defence.)
171	3D 00023	Admitted
172	3D 00025	Admitted
173	3D 00187	Admitted
174	3D 00208	Admitted
175	3D 00211	Admitted
176	3D 00218	Admitted
177	3D 00246	Admitted
178	3D 00250	Admitted
179	3D 00459	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of relevance.)
180	3D 00678	Admitted
181	3D 00680	Admitted
182	3D 00750	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
183	3D 00751	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
184	3D 00752	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
185	3D 00753	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
186	3D 00754	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
187	3D 00755	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
188	3D 00757	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
189	3D 00758	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
190	3D 00759	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
190	3D 00760	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
192	3D 00761	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
193	3D 00762	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed

		Exhibit.)
194	3D 00763	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
195	3D 00764	Not admitted (Reason: the Motion does not contain a description of the photos found in the Proposed Exhibit.)
196	3D 00919	Admitted
197	3D 00992	Admitted
198	3D 00994	Admitted
199	3D 01005	Admitted
200	3D 01011	Admitted
201	3D 01012	Admitted
202	3D 01017	Admitted
203	3D 01018	Admitted
204	3D 01019	Admitted
205	3D 01022	Admitted
206	3D 01025	Not admitted (Reason: the source of the information contained in the Proposed Exhibit is not identified. The Proposed Exhibit, created in part by the Praljak Defence, does not display sufficient indicia of reliability.)
207	3D 01026	Not admitted (Reason: the source of the information contained in the Proposed Exhibit is not identified. The Proposed Exhibit, created in part by the Praljak Defence, does not display sufficient indicia of reliability.)
208	3D 01053	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
209	3D 01565	Admitted
210	3D 01737	Admitted
211	3D 01745	Admitted
212	3D 01768	Admitted
213	3D 01836	Not admitted (Reason: the Praljak Defence has not established a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
214	3D 01843	Admitted
215	3D 02081	Admitted
216	3D 02229	Admitted
217	3D 02248	Not admitted (Reason: this Proposed Exhibit is partly illegible. Moreover, the Praljak Defence has not demonstrated a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
218	3D 02421	Admitted
219	3D 02427	Admitted
220	3D 02430	Admitted
221	3D 02431	Admitted
222	3D 02432	Admitted
223	3D 02435	Admitted
224	3D 02436	Admitted

225	3D 02466	Not admitted (Reason: the Praljak Defence has not demonstrated a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
226	3D 02565	Admitted
227	3D 02568	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
228	3D 02806	Admitted
229	3D 02825	Admitted
230	3D 02826	Admitted
231	3D 02828	Admitted
232	3D 03063	Admitted
233	3D 03134	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches a surrogate sheet it is requesting to have admitted.)
234	3D 02394	Admitted
235	3D 02395	Admitted
236	P 00868	Moot (Reason: already admitted under the *Ordonnance portant admission d'éléments de prevue relatifs au Témoin Božo Pavlović*, on 19 January 2010.)
237	3D 00037	Admitted
238	3D 00040	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
239	3D 00045	Admitted
240	3D 00048	Admitted
241	3D 00061	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
242	3D 00114	Not admitted (Reason: the Praljak Defence has not demonstrated a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
243	3D 00127	Admitted
244	3D 00134	Admitted
245	3D 00395	Admitted
246	3D 01271	Admitted
247	3D 01598	Not admitted (Reason: the English translation obviously departs from the original BCS version, in the sense that the English translation contains substantial information not contained in the original version in BCS. The Chamber is thus unable to rule on the relevance, probative value and reliability of this Proposed Exhibit.)
248	3D 01602	Admitted
249	3D 02131	Admitted
250	3D 02186	Admitted
251	3D 02188	Admitted

252	3D 02206	Admitted
253	3D 02350	Admitted
254	3D 02418	Admitted
255	3D 02473	Admitted
256	3D 02725	Admitted
257	3D 02779	Admitted
258	3D 02780	Admitted
259	3D 02781	Admitted
260	3D 02790	Admitted
261	3D 02863	Admitted
262	P 03911	Admitted
263	3D 00333	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Furthermore, the Praljak Defence failed to establish that there a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
264	3D 00337	Not admitted (Reason: the Proposed Exhibit is in fact the transcription of a video not filed under the Motion. Lacking the video, the Chamber is unable to verify the reliability and the authenticity of the transcription of the statements.)
265	3D 00548	Admitted
266	3D 00656	Not admitted (Reason: the Praljak Defence has failed to establish that there is a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
267	3D 00668	Admitted
268	3D 00719	Admitted
269	3D 00745	Admitted
270	3D 00775	Not admitted (Reason: the original version of the Proposed Exhibit uploaded on *e*court is illegible. This Proposed Exhibit thereby lacks sufficient indicia of reliability.)
271	3D 00808	Admitted
272	3D 00877	Not admitted (Reason: the Proposed Exhibit is in fact the transcription of a video not requested for admission by the Praljak Defence and not filed under the Motion. Lacking the video, the Chamber is unable to verify the reliability and the authenticity of the transcription of the statements.)
273	3D 00878	Not admitted (Reason: the Proposed Exhibit is in fact the transcription of a video not requested to be admitted by the Praljak Defence and not filed under the Motion. Lacking the video, the Chamber is unable to verify the reliability and the authenticity of the transcription of the statements.)
274	3D 00932	Moot (Reason: the Proposed Exhibit was admitted under the "*Décision relative à la demande de la Défense Petković de reconsidération ou, dans l'alternative, de certification d'appel de l'ordonnance portant sur l'admission d'éléments de prevue relatifs au témoin Milan Gorjanc (3D 00932*

		et 3D 00939)", rendered confidentially by the Chamber on 13 January 2010.)
275	3D 00933	Not admitted (Reason: the Praljak Defence has failed to establish a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
276	3D 00934	Not admitted (Reason: the Praljak Defence has failed to establish that a sufficiently relevant link exists between the Proposed Exhibit and the Indictment.)
277	3D 00935	Not admitted (Reason: the Praljak Defence has failed to establish a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
278	3D 00937	Not admitted (Reason: the Praljak Defence has failed to establish a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
279	3D 00938	Not admitted (Reason: the Praljak Defence has failed to establish a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
280	3D 00939	Moot (Reason: the Proposed Exhibit was admitted under the "*Décision Relative à la demande de la Défense Petković de reconsidération ou, dans l'alternative, de certification d'appel de l'ordonnance portant sur l'admission d'éléments de prevue relatifs au Témoin Milan Gorjanc (3D 00932 et 3D 00939)*", rendered confidentially by the Chamber on 13 January 2010.)
281	3D 00940	Not admitted (Reason: the Praljak Defence has failed to establish a sufficiently relevant link between the Proposed Exhibit and the Indictment.)
282	3D 00941	Admitted
283	3D 00956	Not admitted (Reason: the Proposed Exhibit is in fact the transcription of a video not requested for admission by the Praljak Defence and not filed under the Motion. Lacking the video, the Chamber is unable to verify the reliability and the authenticity of the transcription of the statements.)
284	3D 00986	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
285	3D 01106	Admitted
286	3D 01136	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
287	3D 01450	Admitted
288	3D 01559	Moot (Reason: in the Reply, the Praljak Defence admits that the Proposed Exhibit does not appear on the 65*ter* List and that it was included by mistake.)
289	3D 01620	Admitted
290	3D 01668	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or

		authenticity.)
291	3D 01731	Moot (Reason: already admitted by the Order Admitting Evidence Regarding Witness Filip Filipović, issued on 18 March 2010.)
292	3D 01761	Admitted
293	3D 01792	Admitted
294	3D 01811	Admitted
295	3D 01813	Admitted
296	3D 01914	Admitted
297	3D 02155	Admitted
298	3D 02169	Admitted
299	3D 02234	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
300	3D 02334	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
301	3D 02393	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
302	3D 02406	Not admitted (Reason: the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
303	3D 02408	Admitted
304	3D 02458	Admitted
305	3D 02536	Admitted
306	3D 02611	Admitted
307	3D 02613	Admitted
308	3D 02615	Not admitted (Reason: the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
309	3D 02630	Not admitted (Reason: the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
310	3D 02730	Admitted
311	3D 02775	Admitted
312	3D 02777	Admitted
313	3D 02778	Admitted
314	3D 02811	Admitted
315	3D 02812	Admitted
316	3D 02830	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Furthermore, the Praljak Defence did not specify in the Motion which excerpts (and corresponding page nos.) it sought for admission from this lengthy document.)
317	3D 02831	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Furthermore, the Praljak Defence did not specify in the Motion which excerpts (and

		corresponding page nos.) it sought to have admitted from this lengthy document. Finally, the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
318	3D 02832	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Furthermore, the Praljak Defence did not specify in the Motion which excerpts (and corresponding page nos.) it sought to have admitted from this lengthy document. Finally, the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
319	3D 02856	Moot (Reason: the Proposed Exhibit was withdrawn by the Praljak Defence.)
320	3D 02871	Not admitted (Reason: the Proposed Exhibit does not display sufficiently relevant links to the Indictment.)
321	3D 03565	Not admitted (Reason: the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
322	3D 03183	Moot (Reason: the Proposed Exhibit withdrawn by the Praljak Defence.)
323	3D 00181	Moot (Reason: the Proposed Exhibit is identical to Exhibit 2D 00016, admitted by oral decision on 25 May 2006.)
324	3D 00773	Not admitted (Reason: the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
325	3D 02344	Admitted
326	3D 00217	Admitted
327	3D 00737	Admitted
328	3D 03555	Not admitted (Reason: the Praljak Defence did not specify in the Motion which excerpts (and corresponding page nos.) it sought to have admitted from this lengthy document.)
329	3D 00945	Admitted
330	3D 00952	Admitted
331	3D 00965	Admitted
332	3D 01891	Not admitted (Reason: the Praljak Defence did not explain the reasons why this Proposed Exhibit was important to the resolution of the Case.)
333	3D 02332	Not admitted (Reason: the Praljak Defence did not explain the reasons why this Proposed Exhibit was important to the resolution of the Case.)
334	3D 03072	Admitted
335	3D 00180	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of relevance.)
336	3D 00717	Admitted
337	3D 00837	Admitted
338	3D 00838	Admitted
339	3D 00896	Not admitted (Reason: the Proposed Exhibit is in fact the transcription of a video not requested admission by the Praljak Defence and not filed under the Motion. Lacking the video, the Chamber is

		unable to verify the reliability and the authenticity of the transcription of the statements.)
340	3D 00922	Not admitted (Reason: the Praljak Defence has failed to establish a sufficient link between the Proposed Exhibit and the crimes alleged in the Indictment and/or the alleged responsibility of the Accused for these crimes.)
341	3D 00936	Not admitted (Reason: the Praljak Defence has failed to establish a sufficient link between the Proposed Exhibit and the crimes alleged in the Indictment and/or the alleged responsibility of the Accused for these crimes.)
342	3D 00988	Not admitted (Reason: the Proposed Exhibit is in fact the transcription of a video not requested for admission by the Praljak Defence and not filed under the Motion. Lacking the video, the Chamber is unable to verify the reliability and the authenticity of the transcription of the statements.)
343	3D 01075	Not admitted (Reason: the Praljak Defence did not specify in the Motion which excerpts (and corresponding page nos.) it sought for admission from this lengthy document.)
344	3D 01114	Not admitted (Reason: the Praljak Defence has failed to establish a sufficient link between the Proposed Exhibit and the crimes alleged in the Indictment and/or the alleged responsibility of the Accused for these crimes.)
345	3D 01523	Admitted
346	3D 02026	Not admitted (Reason: the Praljak Defence has failed to establish a sufficient link between the Proposed Exhibit and the crimes alleged in the Indictment and/or the alleged responsibility of the Accused for these crimes.)
347	3D 02142	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity. Moreover, the Praljak Defence has failed to establish a sufficient link between the Proposed Exhibit and the crimes alleged in the Indictment and/or the alleged responsibility of the Accused for these crimes.)
348	3D 02415	Not admitted (Reason: the Praljak Defence has failed to establish a sufficient link between the Proposed Exhibit and the crimes alleged in the Indictment and/or the alleged responsibility of the Accused for these crimes.)
349	3D 02651	Not admitted (Reason: the Praljak Defence has failed to establish a sufficient link between the Proposed Exhibit and the crimes alleged in the Indictment and/or the alleged responsibility of the Accused for these crimes.)
350	3D 03046	Not admitted (Reason: the Praljak Defence has failed

		to establish a sufficient link between the Proposed Exhibit and the crimes alleged in the Indictment and/or the alleged responsibility of the Accused for these crimes.)
351	3D 03120	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches a surrogate sheet it is requesting to have admitted.)
352	3D 03144	Moot (Reason: the Proposed Exhibit was withdrawn by the Praljak Defence.)
353	3D 01923	Not admitted (Reason: the Praljak Defence has failed to establish a sufficient link between the Proposed Exhibit and the crimes alleged in the Indictment and/or the alleged responsibility of the Accused for these crimes.)
354	3D 00294	Not admitted (Reason: the Proposed Exhibit does not appear on the 65 *ter* List of the Praljak Defence. The Chamber likewise denies the request to admit Document 3D 00097, substituted for Proposed Exhibit 3D 00294, as stated by the Praljak Defence in its Reply.)
355	3D 00298	Not admitted (Reason: the Proposed Exhibit possesses neither letterhead, nor signature, nor stamp nor any other sufficient indicia of reliability or authenticity.)
356	3D 00331	Admitted
357	3D 00866	Not admitted (Reason: the Proposed Exhibit does not display sufficient indicia of authenticity and reliability.)
358	3D 00971	Admitted
359	3D 00984	Admitted
360	3D 00985	Admitted
361	3D 01045	Not admitted (Reason: the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
362	3D 01088	Not admitted (Reason: the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
363	3D 01120	Admitted
364	3D 01122	Admitted
365	3D 01147	Admitted
366	3D 01763	Not admitted (Reason: the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
367	3D 02323	Admitted
368	3D 00944	Admitted
369	3D 02514	Admitted
370	3D 02515	Admitted
371	3D 01047	Not admitted (Reason: the Proposed Exhibit does not display sufficiently relevant links to the Indictment.)

372	3D 01268	Admitted
373	3D 01520	Admitted
374	3D 01580	Not admitted (Reason: the Chamber considers that the Praljak Defence has failed to establish a sufficiently relevant link to the Indictment.)
375	3D 01585	Not admitted (Reason: the Chamber considers that the Proposed Exhibit does not display a sufficiently relevant link to the Indictment.)
376	3D 02137	Moot (Reason: the Proposed Exhibit was withdrawn by the Praljak Defence.)
377	3D 02699	Admitted
378	3D 03011	Admitted in part: pages 1 and 2[110] Not admitted in all other respects (Reason: only the first 2 pages of the BCS original of the Proposed Exhibit were translated into English. The Chamber is thus unable to rule on the relevance, probative value and reliability of the un-translated portion of the Proposed Exhibit.)
379	3D 03104	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)
380	3D 03105	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)
381	3D 03106	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)
382	3D 03107	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)
383	3D 03108	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)
384	3D 03109	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)
385	3D 03110	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)
386	3D 03111	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)

[110] These page numbers correspond to the page numbers of the English version of the relevant document in the *ecourt* system.

387	3D 03113	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)
388	3D 03128	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)
389	3D 03151	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)
390	3D 03152	Not admitted (Reason: the Praljak Defence has not annexed to the Motion a CD or DVD-type document that matches the surrogate sheet it is requesting to have admitted.)

Dissenting Opinion of the President of the Chamber, Judge Jean-Claude Antonetti

The Praljak Defence has seized the Trial Chamber of a request to admit **390 documents.**

This request rests primarily upon an interpretation of **Guideline No. 9 of the Decision of 24 April 2008.**

The Trial Chamber has promulgated guidelines in order for a defence team, taking into account the time limits, to obtain admission of a document that has not been presented to a witness, provided that the document meets the six conditions set forth in **Paragraph 35 of the said decision.**

The Praljak Defence, as Paragraph 17 of this Decision states, specified that it complied with the requirements.

As for the Prosecution, it has opposed admitting **254 documents**, roughly equal to 65% of the total number, for the reasons stated in Paragraph 22.

As to the arguments of the Prosecution, the Defence has replied. (See para. 23 of the Decision.)

Before examining, for example, the contents of certain documents denied admission by the majority, it would first be worthwhile to note that the entire group of documents is known to all of the parties and that there are moreover sound reasons to inquire why the Prosecution is now advancing that certain documents are not reliable or authentic, especially when they were disclosed by the Prosecution to the Defence.

As stated in Article 16 of the Statute, **the Prosecutor is responsible for investigation**. Thus, at the time of the investigation, it was the Prosecutor's responsibility to take the initiative to test the reliability and authenticity of the documents, especially insofar as these documents that are currently contested by the Prosecution must have been used by the Prosecution while it was drafting the Indictment ....

That being said, it is likewise appropriate to give further consideration to the issue of the **Croatian State Archives** mentioned in Paragraph 66 of the Decision. I differ strongly from the position stated by the majority on this issue.

Once an attorney of this Tribunal, who has met strict professional requirements, remarks that these documents come from the Croatian archives, there is no basis for me to think that the attorney intended to deceive the Judges, especially insofar as, under this scenario, he would be prosecuted for contempt of Court.

The good faith of **the Prosecution** and of the **Defence** is taken for granted when **one** or **the other** tells us that these documents originated in the Croatian State Archives. For this reason, the ICTY Judges have no reason to question the lawyers' statements without prior grounds for suspicion.

Concerning the **defence of alibi** mentioned in **Paragraph 70 *et ff.* of the Decision**, I do not agree with the view expressed in **Paragraph 72** concerning the exclusion from evidence of Exhibits 3D 01323, 3D 01324 and 3D 01412, which had already been excluded from evidence.

The prior refusal to admit a document does not **ipso facto** entail its exclusion when considering requests made pursuant to Guideline No. 9 and the majority does not explain why it has insisted upon this exclusion, other than to say:

> "The Chamber notes, as a preliminary matter, that Proposed Exhibits 3D 01323, 3D 01324, 3D 01412 have already been excluded on the grounds that they do not display sufficient indicia of authenticity or reliability."

The Praljak Defence, in keeping with the Guideline, motivated its request for these three documents by taking into account the said six conditions.

Regarding Paragraph 86 of the Decision

The Chamber observes that 14 documents concerning the hospitalization of Muslim patients fall outside the scope of the Indictment; the operation of Muslim organisations in the Republic of Croatia, supplying MTS to the BH Army and training the BH Army in the Republic of Croatia **are excessively vague** and do not convey any quantum of information likely to aid us in better understanding the Exhibits already admitted.

This rationale fails to consider the counter-argument of the Defence. The Defence argues that there was no joint criminal enterprise, given that the Republic of Croatia aided the Republic of Bosnia and Herzegovina in multiple ways (medical care, lodging, MTS, etc. ...) throughout the conflict. It follows from this that there was a single enemy: **Serbian forces**.

The exclusion of 14 documents is inconceivable, because these documents inherently present indicia of relevance, especially inasmuch as other documents addressing the same topics have already been admitted by the Trial Chamber.

The Defence, at every turn, has invited numerous defence witnesses to expound upon these topics and has produced documents covered in earlier decisions to admit evidence.

Faced with these circumstances, can we credibly declare that "these Proposed Exhibits are too vague with regard to the allegations of the Indictment or do not show a sufficiently relevant link to the Indictment"?

If that is so, then why allow the witnesses of the Defence to testify on these matters and why admit related evidence?

Regarding Paragraphs 87, 88, 89, 90, 91 and 92 of the Decision

The Praljak Defence sought the admission of **73 Exhibits** that, it said, went to prove that the BH Army initiated combat against the **HVO**.

The Prosecution, surprisingly, disputes their admission into evidence on grounds that **these are not relevant exhibits**.

The majority in the Trial Chamber, at Paragraph 90, considers that certain documents focus on operations initiated by the BH Army in "**geographic zones located beyond the scope of the Indictment**".

Given the state of the evidence assembled, a complete disparity surfaces between the arguments of the Prosecution (an HVO attack against the BH Army) and the arguments of the Defence (attacks by the BH Army against the HVO). This Exhibit lies at the very heart of the theory of **joint criminal enterprise**.

This theory is applicable to all of the territories of the Republic of Bosnia and Herzegovina, and not merely to zones involving cases where a plan of ethnic cleansing existed.

It would then appear difficult to reject out of hand at this stage of the proceedings those Exhibits that go to prove the Defence's theory, unless one of the parties' theories is **presently** adopted ....

Paragraph 91 thus appears to contradict Paragraph 90, because Paragraph 92 states that the Chamber only reviews admissibility and does not conduct a determinative evaluation of their probative value.

This probative value is decided only at the end of the trial "*when all inculpatory and exculpatory evidence has been admitted into evidence.*"

How can the probative value of the Defence's theory of the case be determined if the Chamber does not in the interim admit documents that support the Defence's theory of the case?

I cannot then support this line of reasoning, especially in that it is contrary to Rule 89 (C) of the Rules, which stipulates that **"[t]he Chamber may admit any relevant evidence which it deems to have probative value."**

I will now cite several **examples** of documents excluded from evidence by the majority that should have been admitted in order to preclude a request for reconsideration or an objection from the Defence arguing that it has been denied the right to a fair trial.

It also seems to me, and I must emphasize this, that the admission of these exhibits which totally or partially corroborate other exhibits already admitted would have allowed us to enhance the probative value of these other Exhibits, thereby affording the Judges, during deliberations, a maximum quantity of evidence to lend credence to one theory of the case or the other.

Regarding Non-Admitted Documents

Document 3D 00906

This document was produced by the Ministry of Defence of the Republic of Croatia, on 23 June 1993 and concerns the appointment of an assistant of the Fourth Company of the 156th HV Brigade. This document was signed by General Praljak.

This document is useful for understanding the involvement of the Republic of Croatia in the international armed conflict due to the appointment of Jozo Roso to a unit of the Croatian Army by General Praljak, who himself was in the HVO.

Document 3D 01323

This is a timetable prepared by General Praljak's secretary reporting his schedule. It proves that he was both in the field in Bosnia and Herzegovina and in Zagreb.

Document 3D 01324

This is General Praljak's schedule for Wednesday, 3 June 1992, in which a meeting on the topic of admitting foreigners into a brigade is mentioned.

Document 3D 01412

This is a document prepared by General Praljak's secretary covering the months of January and February. This document establishes that although General Praljak fought in Bosnia and Herzegovina, he continued to maintain activities in the Republic of Croatia (*e.g.* meeting with HTV Croatian Television).

Document 3D 01440

This is a list of attendees at a meeting in Prozor. General Praljak explained in detail what he did in Prozor to restore calm. This document was signed by the attendees at the said meeting. (*cf.* signature Željko Šiljeg, Arif Pašalić, etc...).

Document 3D 02575

This is a document with all indicia of reliability concerning the Prozor zone and how three companies were outfitted with military matériel. This document can only be understood bearing in mind the difficulties inherent to training a professional standing army.

Document 3D 01204

This is a report by **Žarko Tole** concerning the "clashes" between the HVO and the Krešovo police. This document may prove that there were discrepancies within this locality between the HVO and the civilian police. It is important to consider the use of the term **"balijas"** by Žarko Tole.

Document 3D 02617

This document was produced by the 5th Posušje Brigade following up on an order given by General Praljak on 14 September 1993 concerning the return of fighters from the "Mijat Tomić" Company that was not followed. This document may illustrate the difficulty of exercising command, as it shows that some units refused to obey orders. This document must be analysed alongside the contents of the witness interview of the Accused Praljak.

Document 3D 02271

This is a study providing estimates of wartime damage in Croatia in the years 1991-2005. From my perspective, this document is especially relevant because it lists in specific fashion the number of displaced persons and refugees from 1991 and 1998 and it must be remembered that multiple witnesses told of the inflow of refugees to Croatia and the problems related to this inflow for the Croatian government.

Document 3D 00750 - 3D 00764

The majority of the Chamber will not admit these documents on grounds that the Request does not contain a description of the photographs. The value of these photographs is that they depict sequences from the city of Mostar, thereby sparing the Judges of the Trial Chamber from having to return there for site inspection.

Document 3D 00750

This is a photograph of **Mostar** with a view of the newly built bridge. This photograph should be viewed together with videos of the destruction of the old bridge and the tank's position.

Document 3D 00751

This photograph and the following ones involve places where victims were hit by sniper fire. These photographs should be considered together with interviews of the expert witness of the Prosecution discussing the locations where shots were fired and the questions put by the Accused Praljak to the Prosecution's expert witness and to the victims.

/signed/

Jean-Claude Antonetti
Presiding Judge

1 April 2010

At The Hague

The Netherlands