



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: 13 May 2010
Original: ENGLISH
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: 13 May 2010

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE PRALJAK DEFENCE REQUEST FOR
CLARIFICATION AND RECONSIDERATION OF OR, IN THE
ALTERNATIVE, FOR CERTIFICATION TO APPEAL THE ORDER ON
THE ADMISSION OF EVIDENCE RELATING TO THE TESTIMONY OF
SLOBODAN PRALJAK**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
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

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”),

SEIZED of “Slobodan Praljak’s Request for Certification and Reconsideration or, in the Alternative, for Certification to Appeal the Non-Admission of Certain Documents tendered through Slobodan Praljak”, brought publicly by Counsel for the Accused Slobodan Praljak (“Praljak Defence”), on 9 March 2010 (“Request”),

NOTING the “Order to Admit Evidence Relating to the Testimony of Slobodan Praljak”, issued publicly on 15 February 2010 (“Order of 15 February 2010”),

NOTING the “Decision regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber” rendered publicly on 26 March 2009 (“Decision of 26 March 2009”), in which the Chamber restricted requests for reconsideration filed by the parties and recalled that such requests ought to remain the exception and not the rule,¹

CONSIDERING that the Office of the Prosecutor (“Prosecution”) and the other Defence teams have not filed responses to the Request,

CONSIDERING, firstly, that in the Request the Praljak Defence asks the Chamber to reconsider its decision to bar admission for Exhibits P 00549, P 03803, 3D 03747, 3D 03748, 3D 03751, 3D 03752 and 4D 00838 on grounds that they did not appear on the list of exhibits that it filed pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”)(“65 *ter* List”); that the Praljak Defence, more precisely, submits that, when filing its 65 *ter* List, it could not anticipate that it would be obligated to present these exhibits while re-examining Slobodan Praljak in order to refute attacks on the credibility of Slobodan Praljak made by the Prosecution,²

CONSIDERING, secondly, that, the Praljak Defence requests that the Chamber reconsider its decision to bar admission for Exhibits 3D 03549 and 3D 03563 on

¹ “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber”, public document, 26 March 2009, p. 3.

² Request, paras 4, 12, 13 and 36(a).

grounds that they did not appear on its 65 *ter* List and argues here that, contrary to what is asserted by the Chamber in the Order of 15 February 2010, the said exhibits did appear on its 65 *ter* List but under another reference number; that it emphasizes that Exhibit 3D 03549 is a compilation of Exhibits 3D 03116, 3D 03124, 3D 01080, 3D 01083, 3D 03126 and 3D 03141, which do appear on its 65 *ter* List and that Exhibit 3D 03563, as it reported on its IC List,³ existed within the *eCourt* system and on its 65 *ter* List under reference number P 00842,⁴

CONSIDERING, thirdly, that the Praljak Defence asks the Chamber to shed light upon its request for admission of Exhibits 3D 00855, 3D 01357, 3D 02212, 5D 04394, P 05381 and IC 01031, in that the Chamber neglected to rule on them in the Order of 15 February 2010; that, more precisely, the Praljak Defence asserts that the Chamber seems to have inadvertently pressed the wrong key in that the Chamber reviewed the admissibility of Exhibit 3D 01537 in lieu of 3D 01357, Exhibit P 05581 in lieu of P 05381 and Exhibit 3D 00885 in lieu of 3D 00855,⁵

CONSIDERING, fourthly, that the Praljak Defence asks the Chamber to reconsider the non-admission of tendered Exhibits IC 01026, 3D 03541, 1D 03137, 3D 02633, 3D 01195 and 3D 03535,⁶ in whole or in part, emphasizing the fact that minor, unavoidable technical mistakes committed in a request for admission of this magnitude cannot justify the non-admission of these exhibits;⁷ that the English translations of certain exhibits are available under another reference number;⁸ that Slobodan Praljak spoke about certain passages tendered for admission and that the Chamber therefore ought not to have barred their admission into evidence;⁹ that the

³ IC 01036.

⁴ Request, paras 5-6, 14-16 and 36(a).

⁵ Request, paras 3, 23, 24 and 36(a).

⁶ Regarding Proposed Exhibit 3D 03535, the Chamber points out that the Praljak Defence identifies the said document under the dual reference number 3D 03535/3D 02647 in its IC List as well as in its Request and that the Praljak Defence explains only in its IC List that Proposed Exhibit 3D 03535 comprises additional excerpts from a work whose excerpts constitute the exhibit uploaded on *eCourt* under reference number 3D 02647. See IC List, p. 20, and Request, para. 22.

⁷ Request, paras 17-22 and 36(a).

⁸ Request, paras 17-22 and 36(a). As concerns Exhibit IC 01026, the Praljak Defence argues that the translation of this report is available under reference number P 09808 and adds that the page put to the Witness corresponds to page 33 of P 09808. See Request, para. 18. As concerns Exhibit 3D 03541, the Praljak Defence submits that the English translation is linked to Exhibit 3D 02654. *Id.* Regarding page 1D53-1825 of the exhibit, the Praljak Defence notes, contrary to what is asserted by the Chamber in the Order of 15 February 2010, that the English translation of the said page is available, under reference number 1D53-1634.

⁹ As for pages 26, 98 to 105, 106, 108, 221, 341 and 342 in Exhibit 3D 02633, the Praljak Defence asserts, contrary to what is asserted by the Chamber in the impugned Order that Slobodan Praljak spoke

ambiguities or erroneous information in its IC List have now been corrected¹⁰ and that denying admission to exhibits containing subsequently corrected technical errors would be disproportionate, especially so in circumstances involving a request for admission of this magnitude,¹¹

CONSIDERING, finally, that the Praljak Defence argues that the Chamber applied an erroneous standard for admitting evidence in barring the admission of 34 exhibits due to their lack of relevance and exceeded its discretionary powers to admit evidence tendered through a witness by applying a standard more restrictive than minimum threshold relevance, as required at this stage of the proceedings,¹²

CONSIDERING, in the Request, that the Praljak Defence asks the Chamber in the alternative to grant certification to the appeal it intends to bring against the Order of 15 February 2010 on grounds that the Chamber erred in refusing to admit relevant documents, applied the guidelines regarding the 65 *ter* List erroneously and applied a more strict standard for admission to the Defence in that the Chamber did admit evidence presented by the Prosecution despite errors of a technical nature¹³ and that the Chamber thus exceeded its discretionary powers; that the entirety of this evidence may significantly affect the fairness and expeditious conduct of the proceedings and that the immediate resolution by the Appeals Chamber of the issues raised may materially advance the proceedings,¹⁴

CONSIDERING that a Trial Chamber enjoys inherent powers to reconsider its own decisions and that it may entertain a request for reconsideration if the requesting party satisfies the Chamber of the existence of a clear error in the reasoning of the

about them and provided relevant page numbers from the hearing transcript for this purpose. See Request, para. 19.

¹⁰ As concerns Exhibit 3D 01195, the Praljak Defence concedes failing to specify the ERN number of the corresponding English translation and explains that it is in fact 3D44-0031. See Request, para. 21. Regarding Proposed Exhibit 3D 03535, the Praljak Defence admits to having cited incorrect reference numbers for the pages of Proposed Exhibit 3D 03535 that it sought for admission in its IC List and provides the proper reference numbers in its Request, that is, ERN page 3D41-0180 of the BCS version of Exhibit 3D 03535 and the corresponding English translation, that is, ERN page 3D40-1167 of Exhibit 3D 02647. See Request, para. 22.

¹¹ Request, para. 20.

¹² Request, paras 25-28 and 36(a). The exhibits affected by the Request for Reconsideration are the following: 3D 00542, 3D 00641, 3D 00642, 3D 00897, 3D 00907, 3D 00963, 3D 01077, 3D 01078, 3D 01285, 3D 01286, 3D 001287, 3D 01289, 3D 01291, 3D 01301, 3D 01304, 3D 01305, 3D 01719, 3D 01727, 3D 02000, 3D 02004, 3D 02218, 3D 02415, 3D 02504, 3D 02608, 3D 02657, 3D 02859, 3D 02891, 3D 02292, 3D 03086, 3D 03089, 3D 03543, 3D 03546, 3D 03553 and 3D 03562.

¹³ Request, para. 36(b).

¹⁴ Request, paras 8, 29-35 and 36(b).

impugned decision or that particular circumstances, which may be new facts or new arguments,¹⁵ justify its reconsideration in order to avoid an injustice,¹⁶

CONSIDERING that the Chamber recalls the Decision of 26 March 2009, wherein, to ensure the expeditious conduct of proceedings, the Chamber restricted requests for reconsideration,

CONSIDERING that, upon review of those aspects of the Request addressing the reconsideration of the Chamber's decision to bar admission for 34 exhibits based on their lack of relevance to the Amended Indictment of 11 June 2008 ("Indictment"),¹⁷ the Chamber notes that the Praljak Defence, in filing its Request, neither put forth particular circumstances nor established that the Chamber committed a clear error in its reasoning denying admission to these 34 exhibits, making it necessary to reconsider the Order of 15 February 2010; that in filing the Request it is merely putting forth arguments about the relevance of the above-mentioned Proposed Exhibits as they relate to the Indictment, exhibits that it neither tendered into evidence during the testimony of Slobodan Praljak, who was to testify to their reliability, their relevance and their probative value in light of the allegations contained in the Indictment, nor identified via its IC List; that the Praljak Defence is merely questioning the decision of the Chamber in the said Order by furnishing additional information that ought to have appeared in the testimony of Slobodan Praljak and that it ought to have included in its IC List; that the Chamber therefore decides to deny the Request as to its first part,

CONSIDERING that, upon review of that part of the Request addressing the non-admission of Exhibits P 00459, P 03803, 3D 03747, 3D 03748, 3D 03751, 3D 03752 and 4D 00838 on grounds that they were not included in its 65 *ter* List, the Chamber

¹⁵ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004, pp. 3-4, citing *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Trial Chamber III, "Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witnesses", 9 May 2002, para. 8.

¹⁶ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004, pp. 3-4, citing e.g. *The Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21A-bis, "Judgment on Sentence Appeal", 8 April 2003, para. 49; *The Prosecutor v. Popović et al.*, Case No. IT-05-88-T, "Decision on Defence Motion for Certification to Appeal Decision Admitting Written Evidence Pursuant to Rule 92 bis", 19 October 2006, p. 4.

¹⁷ Request, paras 25-28 and 36(a). The Proposed Exhibits at issue in the Request for Reconsideration are the following: 3D 00542, 3D 00641, 3D 00642, 3D 00897, 3D 00907, 3D 00963, 3D 01077, 3D 01078, 3D 01285, 3D 01286, 3D 001287, 3D 01289, 3D 01291, 3D 01301, 3D 01304, 3D 01305, 3D

recalls in this regard that a party may seek the admission of documents tendered during re-examination yet not included in its *65 ter* list, provided that such party expressly specifies in the courtroom or in its IC List that these documents are tendered in hopes of responding to a statement introducing a new topic first raised during the cross-examination of a witness; that the Chamber notes in this regard that the Praljak Defence merely explained in the transcript that it was tendering Exhibit P 00459 in response to a question put by Judge Antonetti,¹⁸ Exhibit P 03803 in response to a question put by Judge Trechsel during the Prosecution's cross-examination,¹⁹ and Exhibit 3D 03747 in response to a question put by Judge Antonetti during the Prosecution's cross-examination;²⁰ that the Chamber points out that although the Praljak Defence does not itself point out that Exhibits 3D 03751 and 3D 03752, given the circumstances in which they were tendered, appear to have been tendered in response to points raised by the Prosecution during its cross-examination²¹ and that the Praljak Defence did not specify the circumstances in which Exhibits 3D 03748 and 4D 00838²² were tendered,

CONSIDERING that the Chamber observes that the Praljak Defence failed to explicitly specify, either during Slobodan Praljak's testimony or in its IC List, that the presentation of these exhibits was an attempt to respond to a new issue first raised during the cross-examination; that, in particular, the underlying fact that these exhibits were tendered in response to certain questions put by the Judges or during the cross-examination by the Prosecution does not preclude the obligation to include these exhibits in its *65 ter* List; that, having failed to do so, the Praljak Defence ought to have shown that these exhibits responded to questions covering new topics not raised during the examination-in-chief; that the Chamber therefore finds that the Praljak Defence did not establish that the Chamber for its part committed a clear error in its reasoning such as would obligate it to reconsider the Order of 15 February 2010 and that it is therefore appropriate to deny the Request insofar as it concerns reconsideration of the rejection of the exhibits mentioned above,

01719, 3D 01727, 3D 02000, 3D 02004, 3D 02218, 3D 02415, 3D 02504, 3D 02608, 3D 02657, 3D 02859, 3D 02891, 3D 02292, 3D 03086, 3D 03089, 3D 03543, 3D 03546, 3D 03553 and 3D 03562.

¹⁸ Transcript in French ("T(F)"), p. 44676, Hearing of 10 September 2009.

¹⁹ T(F), pp. 44679 and 44680, Hearing of 10 September 2009.

²⁰ T(F), p. 44680, Hearing of 10 September 2009.

²¹ T(F), pp. 44659-44661, Hearing of 10 September 2009.

²² T(F), p.p. 44659 and 44661, Hearing of 10 September 2009 for Exhibit 3D 03748 and T(F) p. 44684, Hearing of 10 September 2009 for Exhibit 4D 00838.

CONSIDERING, as concerns those portions of the Request for Reconsideration addressing the non-admission of Exhibits 3D 03549 and 3D 03563 on grounds that they did not appear on the 65 *ter* List of the Praljak Defence, the Chamber takes note of the explanations supplied by the Praljak Defence in its Request and furthermore points out that the Praljak Defence had simply indicated in its IC List that Exhibit 3D 03549 was a compilation of Exhibits 3D 03116, 3D 03124, 3D 01080, 3D 01083, 3D 03126 and 3D 03141 and that Exhibit 3D 03563 was linked to Exhibit P 00842 without providing any additional clarification²³ — these explanations do not in any event excuse the fact that these exhibits do not appear in its 65 *ter* List,

CONSIDERING that, as concerns the non-admission of Exhibit 3D 03535 on grounds that the English translation was not available in the *eCourt* system under reference number 3D 03535 and also the non-admission of Exhibits IC 01026 and 3D 03541 on grounds that the English translation of Exhibit IC 01026 available on *eCourt* was incomplete and that the translation of Exhibit 3D 03541 did not appear in *eCourt*, the Chamber takes note of the explanations provided by the Praljak Defence concerning these exhibits;²⁴ that the Chamber must first emphasize that the Request addresses Exhibit 3D 03535 alone²⁵ and not Exhibit 3D 02647, which according to the Praljak Defence contains in its English version an English translation of the page of Exhibit 3D 03535 tendered for admission by the Praljak Defence; that the Chamber observes that as of this date there is still no English translation attached to Exhibit 3D 03535 and that, moreover, no English translations of Exhibits IC 01026 and 3D 03541 are currently available in *eCourt* under those reference numbers,

CONSIDERING that the Chamber recalls that requests for reconsideration are not designed to remedy technical errors attributable to the parties²⁶ and observes that the Praljak Defence neither pleaded particular circumstances nor established that the Chamber committed clear error in its reasoning denying admission into evidence of Exhibits 3D 03549, 3D 03563, 3D 03535, IC 01026 and 3D 03541 and thus requiring reconsideration of the Order of 15 February 2010 and that there are grounds therefore to deny these portions of the Request,

²³ IC 01036.

²⁴ Request, paras 14, 15, 18, 22 and 24.

²⁵ Request, para. 36(a).

²⁶ “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber”, public document, 26 March 2009, p. 3.

CONSIDERING, moreover, that the Chamber takes note of the explanations of the Praljak Defence addressing the reference number of the English translation of Exhibit 3D 01195; that the Chamber has also ruled on the same exhibit in its “Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber” of 1 April 2010,²⁷ wherein it signalled to the Praljak Defence, as an exception, that the Chamber would be able to reconsider its decision to bar the said exhibit if and only if a single English translation appeared in the eCourt system; that the Chamber observes once more that the Praljak Defence did not comply with the requirements of the Chamber since both English translations still exist in the eCourt system, and that the Chamber therefore decides not to reconsider its rejection of Exhibit 3D 01195,

CONSIDERING, as concerns the Request of the Praljak Defence for reconsideration of the rejection by the Chamber of ERN page 1D53-1825 of the English version of Exhibit 1D 03137 in its Order of 15 February 2010 on grounds that the said page does not exist in the eCourt system, the Chamber, firstly, points out that the Praljak Defence did not indicate the eCourt page numbers of the excerpts of the exhibit tendered for admission and, on the contrary, simply supplied the ERN page numbers; that, secondly, ERN page 1D53-1825 of the English version of Exhibit 1D 03137 is not uploaded into the eCourt system and that the Chamber for that reason finds that the Praljak Defence’s request to reconsider the non-admission of the said page of Exhibit 1D 03137 is moot,

CONSIDERING that in support of its Request for Reconsideration of the non-admission of eCourt pages 26, 98 to 105, 106, 108, 221, 341 and 342 of the English version of Exhibit 3D 02633 on grounds that Slobodan Praljak did not comment on them or did not do so sufficiently during his testimony, the Praljak Defence disputes the Chamber’s decision to bar admission, asserting that these pages were all presented to Slobodan Praljak during his testimony and that the Chamber therefore omitted to take into account certain pages from the hearing transcript in which the passages from Exhibit 3D 02633 were examined by Slobodan Praljak during his testimony,²⁸

²⁷ “Decision on Praljak Defence Motion for Admission of Documentary Evidence”, 1 April 2010, public document, para. 43.

²⁸ Request, para. 19.

CONSIDERING that the Chamber recalls that in the Order of 15 February 2010, the Chamber declared inadmissible *eCourt* pages 26, 98 to 105, 106, 108, 221, 341 and 342 of the English version of Exhibit 3D 02633 on grounds that the Accused Praljak, during his testimony, had not commented or adequately commented upon the said excerpts of the Exhibit tendered for admission,

CONSIDERING that the Chamber points out that the Praljak Defence appears to assert that the mere presentation and discussion of the passages tendered for admission into evidence are sufficient for those passages to be admitted into evidence; that in keeping with the rules and the established practice of the Chamber in this domain, the party seeking to tender an exhibit for admission will, in principle, do so through the testimony of a witness capable of attesting to its reliability, relevance and probative value,²⁹

CONSIDERING in this case that the Chamber finds it appropriate to provide clarification regarding the said passages of Exhibit 3D 02633; that the Praljak Defence did not present *eCourt* pages 98, 100 and 108 of the English version of Exhibit 3D 02633 to Slobodan Praljak,³⁰ who was unable to comment upon the said passages; that Slobodan Praljak expressly refused comment upon *eCourt* pages 341 and 342 of the said Exhibit, which were presented to him, and he thus did not comment upon these two pages;³¹ that Slobodan Praljak likewise failed to comment adequately upon the relevance, probative value and reliability of *eCourt* pages 26, 99, 101 to 106 and 221 of the English version of Exhibit 3D 02633 and limited himself to a general commentary upon the themes covered by these exhibits;³² that, more particularly, the document found on *eCourt* page 199 of the BCS version of Exhibit 3D 02633, which corresponds to *eCourt* page 221 of the English version of the said Exhibit bears neither stamp, nor signature, nor letterhead that could attest to the reliability and authenticity of the said page,

²⁹ “Decision Adopting Guidelines for the Presentation of Defence Evidence”, public document, 24 April 2008, para. 27 (“Decision of 24 April 2008”).

³⁰ On this point, the Chamber notes that the Praljak Defence, contrary to its practice for the other *eCourt* pages giving rise to this request for reconsideration, did not provide citations to the transcript page numbers for these *eCourt* pages, explicitly mentioned by the Praljak Defence and put to Slobodan Praljak. Moreover, having again reviewed the transcripts for 14 and 18 May 2009, the Chamber observes that *eCourt* page numbers 98, 100 and 108 were not mentioned and presented to Slobodan Praljak as required by Guideline No 8 of the Decision of 24 April 2008.

³¹ Hearing of 18 May 2009, T(F), p. 40222.

³² Hearing of 14 May 2009, T(F), pp. 40131, 40145 and 40146.

CONSIDERING that the Chamber therefore finds that the Praljak Defence neither argued particular circumstances nor established that the Chamber committed a clear error in its reasoning denying admission into evidence for pages 26, 98, 99 to 106, 108, 221, 341 and 342 of the English version of Exhibit 3D 02633,

CONSIDERING that, as concerns those portions of the Request seeking clarification of the status of Proposed Exhibits 3D 00855, 3D 01357, 3D 02212, 5D 04394, P 05381 and IC 01031, the Chamber is first of all surprised at the request of the Praljak Defence to clarify the status of Exhibit 3D 01357; that, in fact, the Praljak Defence did indeed request admission of the exhibit bearing reference number 3D 01357, whereas the reference number indicated in its IC List matches neither the description of the said Exhibit disclosed by the Praljak Defence by means of its IC List nor the Exhibit presented by the Praljak Defence to Slobodan Praljak in the pages of the transcript marked in the IC List;³³ that, notwithstanding the fact that it was incorrectly cited by the Praljak Defence in its IC List, the Chamber worked around this typographical mistake and analyzed the Exhibit bearing reference number 3D 01537 presented to Slobodan Praljak at the time of his testimony;³⁴ that the Chamber finds in this respect that the request for clarification of the Praljak Defence is therefore moot,

CONSIDERING that, as concerns the request for clarification of the status of Exhibit 5D 04394, the Chamber is likewise surprised by this request and wishes to draw the attention of the Praljak Defence to the fact that the said exhibit requested for admission by the Ćorić Defence and the Praljak Defence was admitted into evidence in the Order of 15 February 2010;³⁵ that the Chamber finds in this respect that the request for clarification of the Praljak Defence is therefore moot,

CONSIDERING that, as concerns the request for clarification of the status of Proposed Exhibit P 05381, the Chamber notes that it committed a typographical mistake in the Annex to the Order of 15 February 2010 insofar as it identified reference number P 05581 in place of P05381³⁶ as appearing in the list of exhibits tendered by the Praljak Defence; that this typographical mistake is without bearing upon its decision concerning the admissibility of this exhibit insofar as the Chamber

³³ IC 01036; T(F) p. 40600, Hearing of 25 May 2009.

³⁴ The Praljak Defence identifies this reference number in the transcript. See T(F), p. 406000, Hearing of 25 May 2009.

³⁵ Annex to the Order of 15 February 2010, p. 32.

did consider the admissibility of Exhibit P 05381 in its review and not that of Exhibit P 05581, which was in no wise tendered for admission by the Praljak Defence; that the Chamber decides it is proper to amend the Annex to the Order of 15 February 2010 in order to record that Exhibit P 05381, tendered for admission by the Praljak Defence, alone was barred and not Exhibit P 05581;

CONSIDERING that the Chamber recognizes it neglected to rule upon the requests of the Praljak Defence to admit into evidence Exhibits 3D 00855 (*eCourt* pages 186 to 194, 199 to 204, 205, 208 to 210 and 272 of the English version), 3D 02212 and IC 01031 in the Order of 15 February 2010; that it is therefore proper to clarify the said Order for purposes of ruling upon the admissibility of these three exhibits,

CONSIDERING that, as concerns Exhibit 3D 00855, the Chamber points out that it does not appear on the 65 *ter* List and, in addition, that the Praljak Defence has neglected to specify the *eCourt* page numbers of the English version of Exhibit 3D 00855 that were tendered for admission, as is required by Guideline No 8 of the Decision of 24 April 2008, and therefore the Chamber decides to deny the request to admit into evidence *eCourt* pages 186 to 194, 199 to 204, 205, 208 to 210 and 272 of the English version of 3D 00855 for the above-mentioned reasons,

CONSIDERING that the Chamber wishes to underline that this omission cannot in any case be likened to a typographical error, as the Praljak Defence asserts in its Request,³⁷ and recalls that the Praljak Defence likewise sought the admission of Exhibit 3D 00885 and that the Chamber ruled on the admissibility of this exhibit in the Order of 15 February 2010,

CONSIDERING after review of Exhibit 3D 02212, that the Chamber observes that the Praljak Defence put the said exhibit to Slobodan Praljak during the hearing, that it displays sufficient indicia of relevance, probative value and reliability, and therefore decides that it is proper to admit Exhibit 3D 02212 into evidence,

CONSIDERING, as concerns Exhibit IC 01031, that the Chamber observes that the information conveyed by the Praljak Defence in its IC List about the said exhibit is

³⁶ Annex to the Order of 15 February 2010, p. 11.

³⁷ Request, para. 23, note 12.

erroneous insofar as it does not match the exhibit to which it is related;³⁸ that the Praljak Defence did not moreover provide information about this exhibit in the Request; that the Chamber finds that it is therefore proper to deny the request of the Praljak Defence to admit the said exhibit into evidence for the reasons cited above,³⁹

CONSIDERING moreover that, as concerns those portions of the Request addressing the request for certification to appeal the Order of 15 February 2010, the Chamber points out, firstly, that the Request of the Praljak Defence for Certification to Appeal the Order of 15 February 2010 relates to all of the documents denied admission in the said order and that the said Request provides no further explanations; that, secondly, the Chamber is convinced of the reasonable basis in law of the said order and finds that the Praljak Defence has not established that the sum and substance of the Request constitutes an issue likely to significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and that an immediate resolution of this issue by the Appeals Chamber may materially advance the proceedings,

³⁸ Exhibit IC 01031 is a document produced by S. Praljak concerning the census in Central Bosnia in 1981 and 1991, in eCourt, whereas it is described in the IC List of the Praljak Defence as designating a map of the position held by S. Praljak at Sunja in November 1992. See IC 01036.

³⁹ The IC List identifies Exhibit IC 01031 as a map of the position held by S. Praljak at Sunja in November 1992 whereas the exhibit is identified as a document produced by S. Praljak concerning the census in central Bosnia in 1981 and 1991. See IC 01036.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 73 (B) and 89 of the Rules of Procedure and Evidence,

DECLARES MOOT the request for clarification and reconsideration of the Order of 15 February 2010 concerning Exhibits 1D 03137, 3D 01357 and 5D 04394 for the reasons set forth herein,

GRANTS IN PART the request for clarification and reconsideration in the Order of 15 February 2010,

DECIDES that it is proper to amend the Annex to the Order of 15 February 2010 for purposes of recording that only Exhibit P 05381, requested for admission by the Praljak Defence, and not Exhibit P 05581, as stated in the said Order, is barred,

DECIDES that Exhibit 3D 02212 ought to be admitted into evidence for the reasons set forth herein,

DENIES the requests to admit into evidence eCourt pages 186 to 194, 199 to 204, 205, 208 to 210 and 272 of the English version of Exhibit 3D 00855 and of IC Exhibit 01031 for the reasons set forth herein,

DENIES in all other respects the request for clarification and reconsideration of the Order of 15 February 2010 filed by the Praljak Defence for the reasons set forth herein, **AND**

DENIES the request for certification to appeal the Order of 15 February 2010 filed by the Praljak Defence for the reasons set forth herein,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this thirteenth day of May, 2010
At The Hague
The Netherlands

[Seal of the Tribunal]