



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 October 2008
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 Hans Holthuis

Order of: 13 October 2008

THE PROSECUTOR

v.

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

PUBLIC

**ORDER ON SLOBODAN PRALJAK'S MOTION REGARDING THE
TRANSLATION OF DOCUMENTS**

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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 Requesting That the Trial Chamber Order the Registrar to Facilitate Translations”, filed confidentially and urgently by Counsel for the Accused Slobodan Praljak (“Praljak Defence”) on 24 January 2008 (“Motion”).

II. PROCEDURAL BACKGROUND

2. On 27 September 2007, the Chamber rendered a “Scheduling Order” in which, pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”), it ordered each Accused to file a list of exhibits that they intend to present in support of their case and to disclose to the Office of the Prosecutor (“Prosecution”) copies of the exhibits in question, translated into English as needed.
3. On 24 January 2008, the Praljak Defence filed its confidential and urgent Motion in which it requests that the Chamber order the Registry of the Tribunal (“Registry”) to take steps to facilitate the translation of documents needed by the Accused Slobodan Praljak (“Accused Praljak”) to effectively prepare his defence.
4. On 28 January 2008, the Chamber rendered its “Decision on Motion for Extension of Time for the Commencement of the Defence Case and Adopting a New Schedule” (“Decision of 28 January 2008”), in which it decided that the Accused were to file their lists of exhibits and witnesses as provided by Rule 65 *ter* (G) of the Rules on 31 March 2008.
5. The same day, the Chamber rendered an oral decision in which it requested the Registry to file its written observations regarding the Motion, pursuant to Rule 33 (B) of the Rules.¹ On 12 February 2008, the Registry filed confidentially the “Registry Submission Pursuant to Rule 33 (B) of the Rules on Slobodan Praljak’s Motion Requesting Translations” in which it requests the Chamber to

dismiss the Motion and instruct the Praljak Defence to follow the procedure established in the “Registry Policy Governing Translation Services Provided by the Registry”, dated 16 November 2006. On 14 February 2008, the Praljak Defence presented its confidential “Slobodan Praljak’s Request for Leave to Reply to the Registry’s Response to Praljak’s Motion Requesting Order to Facilitate Translations & Praljak’s Reply to the Registry’s Submission”, in which it requests the Chamber to grant the Motion.

6. On 27 February 2008, a meeting was held pursuant to Rules 65 *ter* (D) (iv) and (v) of the Rules in the presence of the Chamber’s senior legal officer, representatives of the Conference and Language Services Section (“CLSS”) and members of the Praljak Defence team with the goal of bringing the Parties together in order to facilitate the resolution of issues on the translation of documents.
7. On 28 February 2008, the Praljak Defence filed confidentially and *ex parte* its “Supplemental Information Regarding Praljak’s Motion to Order the Registrar to Facilitate Translations”, in which it indicates the subjects of its exhibits and states that it is not able to sort them by order of priority,
8. On 3 March 2008, the Registry filed confidentially its “Registry Submission Pursuant to Rule 33 (B) Providing Supplemental Information Related to Praljak’s Request for Translations” (“Registry Submission of 3 March 2008”), in which it requests the Chamber to bear in mind the limited translation capacity of CLSS when deciding on the number of documents it authorises the Praljak Defence to request for translation and the deadlines set for the translations to be completed.
9. On 4 March 2008, the Praljak Defence filed confidentially and *ex parte* its “Notice Regarding Registry’s Submission of Supplemental Information on the Motion to Order the Registrar to Facilitate Translations”, in which it recalls that it is unable to establish an order of priority among the exhibits it intends to put on its list filed pursuant to Rule 65 *ter* (G) of the Rules and consequently requests the translation of all the documents submitted to CLSS in preparation of its defence.

¹ Trial transcript in French (“T(F)”) of 28 January 2008, p. 26871.

10. On 19 March 2008, the Chamber rendered its “Order on Slobodan Praljak’s Motion Concerning the Translation of Documents” (“Order of 19 March 2008”) in which it partially responded to the Motion by granting the Praljak Defence an exception to the obligation to produce the translation of Defence exhibits on the exhibit list on 31 March 2008 and stayed its ruling in all other respects.
11. On 31 March 2008, the Praljak Defence filed “Slobodan Praljak’s Submission Pursuant to Rule 65 *ter*” (“65 *ter* (G) Submission”), with three confidential annexes in which it submitted to the Chamber its lists of witnesses and exhibits pursuant to Rule 65 *ter* (G) of the Rules.
12. On 21 April 2008, a pre-defence conference was held before the Chamber pursuant to Rule 73 *ter* of the Rules in the presence of representatives for the Defence and representatives for the Prosecution during which the Chamber heard the Parties’ views on various questions concerning the presentation of Defence evidence.²
13. On 24 April 2008, the Chamber rendered its “Decision Adopting Guidelines for the Presentation of Defence Evidence” (“Decision of 24 April 2008”), in which it established guidelines for the presentation of defence evidence.
14. On 16 May 2008, the Chamber rendered its “Order on Slobodan Praljak’s Motion Concerning the Translation of Documents” (“Order of 16 May 2008”), in which it decided that it was reasonable to allow the Accused Praljak to request a maximum of 3800 standard United Nations pages for translation. Given that CLSS had already translated 1990 standard United Nations pages, the Chamber ordered the Praljak Defence to indicate to the Registry the documents it wished to receive in translation while respecting the maximum limit of 1810 standard United Nations pages and to notify the Registry of the order of priority for the documents that it wished to be translated. In this same order, the Chamber ordered the Registry to translate the documents thus identified by the Praljak Defence within the specified limit.

² CT(F) pp. 27349-27452.

15. On 22 May 2008, the Praljak Defence filed “Slobodan Praljak’s Request for Reconsideration or in the Alternative for Certification to Appeal the Trial Chamber’s 16 May 2008 Decision on the Translation of Defence Evidence”, in which it requested the Chamber to reconsider the Order of 16 May 2008 or in the alternative to certify the appeal it intended to lodge against it.
16. On 11 June 2008, the Chamber rendered its “Decision on Praljak Defence Request for Reconsideration or for Certification to Appeal the Order of 16 May 2008”, in which it denied the request to reconsider the Order of 16 May 2008 but certified the appeal that the Praljak Defence intended to lodge against the Order of 16 May 2008.
17. On 4 September 2008, the Appeals Chamber rendered its “Decision on Slobodan Praljak’s Appeal Against the Trial Chamber’s Decision of 16 May 2008 on Translation of Documents” (“Appeals Chamber Decision of 4 September 2008”), in which it referred the Order of 16 May 2008 back to the Chamber.
18. On 11 September 2008, the Chamber rendered its “Order Requesting Information” (“Order of 11 September 2008”) requesting that CLSS inform the Chamber on:
 - (i) The number of pages that CLSS had translated for each of the Accused in the present case up until 31 August 2008 – indicating the number of pages that constitute witness statement,
 - (ii) The number of pages of pending translation up until 31 August 2008 for each of the Accused in the present case – indicating the number of pages that constitute witness statements,
 - (iii) The deadlines recommended by the Praljak Defence for CLSS to finalise the pending translations,
 - (iv) The deadlines recommended by the other Accused in the present case for CLSS to finalise the pending translations,
 - (v) The number of pending pages of translation for which the Praljak Defence has indicated a priority,

- (vi) The number of pages that CLSS is able to translate every day in respect of its resources, all case included.
19. In this same order, it requested the Praljak Defence to forward to it the following information:
- (i) Whether the information provided by CLSS corresponds to the situation as assessed by the Praljak Defence,
 - (ii) The number of pages that the Praljak Defence intends to send for translation, in addition to those already pending, before it commences the presentation of its Defence case,
 - (iii) A list of the written witness statements that the Praljak Defence has already received in translation, indicating the names of the witnesses,
 - (iv) A list of the written witness statements that the Praljak Defence would still like to receive in translation, indicating the names of the witnesses and the priority of the translation.
20. On 16 September 2008, the Registry filed its “Registry Submission Pursuant to Trial Chamber’s Order Requesting Information Dated 11 September 2008” (“Registry Submission”) in which it provided the information requested by the Chamber in the Order of 11 September 2008.
21. On 22 September 2008, the Praljak Defence filed “Slobodan Praljak’s Submission on Translation Facilities Pursuant to the 11 September 2008 Order” (“Accused Praljak’s Submission”) in which it presented its observations regarding the information provided by the Registry and answered the questions raised by the Chamber in the Order of 11 September 2008.
22. On 26 September 2008, the Registry filed the “Registry’s Submission Pursuant to Rule 33 (B) on Slobodan Praljak’s Submission on Translation Facilities” (“Additional Registry Submission”) in which it responded in turn to the Accused Praljak’s Submission.

III. ARGUMENTS OF THE PARTIES

23. In the Registry Submission, it answers the Chamber's questions raised in the Order of 11 September 2008. In the Accused Praljak's Submission, the Praljak Defence provides the information requested by the Chamber in the Order of 11 September 2008.³ The Chamber will discuss these observations below. Furthermore, the Praljak Defence requests that the Chamber refrain from imposing an absolute limit on the number of pages for translation and order the Registry to increase the rate of translations provided to the Accused Praljak.⁴ In the Additional Registry Submission, the Registry clarifies certain points that the Chamber will deal with below. It furthermore objects to the Praljak Defence request to order the Registry to increase the rate of translations produced for the Accused Praljak's needs.⁵

IV. APPLICABLE LAW

24. Article 21 (4) (b) of the Tribunal Statute ("Statute") guarantees an accused the right to adequate facilities for the preparation of his defence. The Chamber would recall that pursuant to the provisions of the Statute and the Rules, it is incumbent upon the Chamber to ensure that the trial is fair and expeditious, with full respect for the rights of the Accused. Furthermore, under Rule 90 (F) of the Rules, the Chamber exercises control over the mode of presenting evidence so as to guarantee that they are effective for the ascertainment of the truth and avoid the needless consumption of time. The Appeals Chamber noted the importance of Rule 90 (F) of the Rules and decided that the Chamber enjoys considerable discretionary power in the implementation of this Rule.⁶ The Appeals Chamber furthermore recognized that one of the legitimate concerns in this trial is to ensure that proceedings do not suffer undue delays and that the trial is completed within a reasonable time, as guaranteed by due

³ Accused Praljak's Submission, paras. 14-27.

⁴ Accused Praljak's Submission, paras. 28-41.

⁵ Additional Registry Submission, para. 16.

⁶ *The Prosecutor v. Prlić et al*, Case No. IT-04-74-AR73.2, Decision on Joint Defence Interlocutory Appeal Against the Trial Chamber's Oral Decision of 8 May 2006 Relating to Cross-Examination by Defence and on Association of Defence Counsel's Request for Leave to File an *Amicus Curiae* Brief, rendered by the Appeals Chamber on 4 July 2006 ("Appeals Chamber Decision of 4 July 2006"), pp. 4 and 5.

process under international human rights law.⁷ The Appeals Chamber confirmed that in the exercise of its discretionary power, the Chamber is authorised to assess the resources that should be allocated to the Defence before the opening of the Defence case and to reasonably limit these resources.⁸ It noted that an early assessment of resources needed for the presentation of the Defence case ensures the smooth and expeditious conduct of the proceedings.⁹ The Appeals Chamber insisted on the need for a separate evaluation of the needs of each of the accused in a trial of multiple accused, pursuant to Rule 82 (A) of the Rules, so that the allocated resources enable them to present their defence, consistent with Article 21 (4) (b) of the Statute.¹⁰ The Chamber may, however, compare the resources allocated to the different accused in a same case in order to guarantee that they are treated fairly *vis-à-vis* each other.¹¹ The Appeals Chamber finally noted that a Chamber may limit both the time available for oral testimony and the number of pages that may be translated as long as each measure taken is made in the context of the totality of the other measures taken.¹²

V. DISCUSSION

1. Method to calculate the number of pages of pending translation

25. In the Order of 11 September 2008, the Chamber requested that all the Parties refer solely to standard United Nations (“Standard UN”) pages with regard to the number of pages, in order to facilitate the analysis of the information provided by the Parties.¹³ The Chamber recommended following the indications provided by CLSS in an informal communication dated 7 May 2008, whereby one Standard UN page consists of 300 words. This figure is applied within the Tribunal, since the “Practice Direction on the Length of

⁷ Appeals Chamber Decision of 4 July 2006, p. 5.

⁸ Appeals Chamber Decision of 4 September 2008, paras. 19, 25 and 26.

⁹ *Id.* para. 19.

¹⁰ *Id.* paras. 20 and 25.

¹¹ *Id.* para. 20.

¹² *Id.* para. 26.

¹³ Order of 11 September 2008.

Briefs and Motions” adopted by the President of the Tribunal on 16 September 2005 indicates that an average page should not contain more than 300 words.

26. The Chamber notes that with regard to documents already translated, CLSS is able to indicate the number of Standard UN pages. For documents whose translation is pending, however, the Parties may only indicate with certitude the number of original (or physical) pages and not the number of Standard UN pages, since CLSS has not yet made a detailed account of these resources by words per page.¹⁴ The Parties therefore had to make an estimate in order to provide the Chamber with the number of Standard UN pages.
27. The Chamber notes that in the Accused Praljak’s Submission, the Praljak Defence calculated on the basis of a coefficient of 0.628. According to the Praljak Defence, the number of Standard UN pages of pending translation would be obtained by multiplying an original page in BCS by the coefficient 0.628.¹⁵ It reached this multiplication factor by comparing the number of pages in the original of a document with the number of pages in its translated version.¹⁶
28. In the Additional Registry Submission, the Registry indicated that in the present case the number of Standard UN pages equals more or less the same number of original pages.¹⁷ Nevertheless, the Registry did not explain how the Praljak Defence’s calculation may have been erroneous.
29. The Chamber thus finds that it has been given contradictory indications regarding the number of Standard UN pages of pending translation, since the Praljak Defence and CLSS do not apply the same coefficient. Consequently, in order to determine the number of pages of pending translation, the Chamber can only make an estimate.

2. Number of pages requested for translation

30. The Chamber will first recall the observations provided by the Parties concerning the number of pages already translated and the number of pages of

¹⁴ Additional Registry Submission, para. 11.

¹⁵ Accused Praljak’s Submission, para. 15, Annex C attached to the Accused Praljak’s Submission.

¹⁶ Accused Praljak’s Submission, para. 15, Annex C attached to the Accused Praljak’s Submission.

¹⁷ Additional Registry Submission, para. 11.

pending translations. Given that the Praljak Defence and CLSS did not apply the same coefficient when calculating the number of pages of pending translations, the Chamber must thus try to reconcile the two positions.

31. In the Registry Submission, the Registry indicated that CLSS had translated a total of 10,907 Standard UN pages up until 31 August 2008 for all the Defence teams in the present case, of which 4118 for Jadranko Prlić, 933 for Bruno Stojić, 2807 for the Accused Praljak, 817 for Milivoj Petković, 1344 for Valentin Ćorić and 888 for Berislav Pušić.¹⁸ As of 31 August 2008, a total of 3705 original pages were still pending translation: 343 for Jadranko Prlić, 4 for Bruno Stojić, 3320 for the Accused Praljak, 27 for Milivoj Petković, 10 for Valentin Ćorić and one for Berislav Pušić.¹⁹ The Registry stated that the Praljak Defence had indicated that 1382 original pages of the 3320 original pages still pending translation had priority.²⁰
32. In the Accused Praljak's Submission, the Praljak Defence first indicates that the information provided by the Registry on the number of pages already translated seems correct, as far as it can judge.²¹ With regard to the 3320 original pages awaiting translation, it objects to the fact that CLSS characterises them as "pending". Indeed, although the Praljak Defence does not seem to object to the figure of 3320 original pages, it notes that in reality only 1382 of these pages are "pending" translation while the remaining 1938 pages were placed "off hold (*sic*)" in May 2008.²² The Praljak Defence considers that these 1382 pages (of which 752 are witness statements) equal 1000 Standard UN pages as calculated by the Praljak Defence.²³
33. In the Accused Praljak's Submission, the Praljak Defence then indicates that it intends to request the translation of around 2060 Standard UN pages, as calculated by the Praljak Defence (i.e. using the coefficient of 0.628) in addition to the 1000 pages that it considers still pending: 1460 pages of witness statements not yet transmitted to CLSS; 400 pages of expert reports not yet transmitted to CLSS; and around 200 pages of documents that the

¹⁸ Registry Submission, para. 6.

¹⁹ Registry Submission, para. 7; Additional Registry Submission, para. 10.

²⁰ Registry Submission, para. 10; Annex attached to the Registry Submission.

²¹ Accused Praljak's Submission, para. 16.

²² Accused Praljak's Submission, paras. 17-20; Annex D attached to the Accused Praljak's Submission.

Praljak Defence could select either from the documents already sent to CLSS, put on hold in May 2008, or from documents not yet transmitted to CLSS, depending on the needs of the case.²⁴

34. In conclusion, the Chamber first notes that with the exception of around 200 Standard UN pages of documents that the Praljak Defence could select from the documents sent to CLSS, put *off hold* in May 2008, 1938 of the original pages put *off hold* are no longer the subject of the Motion and the Chamber will therefore not consider them in its calculations. The Chamber notes that CLSS translated 2807 Standard UN pages for the Praljak Defence up until 31 August 2008. The number of pages of pending translation for which the Praljak Defence has indicated a priority to the Registry corresponds to 1382 original pages (1000 Standard UN pages as calculated by the Praljak Defence), of which 752 pages are witness statements. Furthermore, the Praljak Defence intends to request that CLSS translate at least 2060 Standard UN pages, of which at least 1460 pages are witness statements, 400 pages are expert reports and 200 pages are other documents.²⁵ The Chamber recalls that according to the CLSS calculation, one original page equals one Standard UN page. This is therefore not 2060 pages but 3270²⁶ Standard UN pages of which 2317²⁷ pages are witness statements and 635²⁸ pages are expert reports. In total, the Praljak Defence would thus like to have between 3060 and 4652 Standard UN pages translated.²⁹

3. Assessment of the needs of the Defence for the Accused Praljak

²³ Accused Praljak's Submission, para. 19; Annex B attached to the Accused Praljak's Submission.

²⁴ Accused Praljak's Submission, para. 25.

²⁵ The Chamber considered the possibility of working with "original pages". It is not, however, able to identify the number of original pages. Thus, Annex B, Section 2 attached to the Accused Praljak's Submission makes it possible to calculate only the number of original pages of witness statements which the Praljak Defence intends to send to CLSS (2322). Conversely, the Chamber does not have available the number of original pages that involve the expert reports and other documents mentioned in paragraph 25 of the Accused Praljak Submission and in Annex B attached to it (Other documents to be transmitted to CLSS).

²⁶ If 2060 Standard UN pages correspond to 63% of the original pages (0.628), this is around 3270 original pages.

²⁷ If 1460 Standard UN pages correspond to 63% of the original pages (0.628), this is around 2317 original pages

²⁸ If 400 Standard UN pages correspond to 63% of the original pages (0.628), this is around 635 original pages

²⁹ According to the coefficient applied by the Praljak Defence (one physical page equals 0.628 of a Standard UN page): 1000 + 2060 = 3060. According to the coefficient applied by CLSS (one physical page equals one Standard UN page): 1382 + 3270 = 4652.

35. In the Motion, the Praljak Defence requests the Chamber to order the Registry to take the necessary measures to ensure that CLSS translates all the documents listed in its 65 *ter* (G) Submission.³⁰ The Praljak Defence repeated this request in the Accused Praljak's Submission.³¹
36. The Appeals Chamber referred back to the Chamber the task of making a new decision on the Motion and individually assessing, in particular, the translation needs of the Praljak Defence in order to present its case.³² It considered that the Chamber had not provided sufficient arguments for its decision not to make an individual assessment of the resources needed by the Accused Praljak in order to present his case.³³ The Chamber will therefore make an assessment of the needs that it considers necessary for the presentation of the Accused Praljak's case, following the guidelines of the Appeals Chamber.
37. In this regard, the Chamber first recalls that according to the "Scheduling Order" of 27 September 2007 and according to the Decision of 28 January 2008, the Defence teams were to disclose to the Prosecution copies of the exhibits on their exhibit lists translated into English on 31 March 2008. In its Order of 19 March 2008, the Chamber granted the Praljak Defence an exception to this obligation, under the condition that it provide a detailed summary translated into English of the contents of each exhibit on its list and organise the exhibits by subject when filing the said list on 31 March 2008.³⁴
38. After a thorough re-examination of the annexes attached to the 65 *ter* (G) Submission, the Chamber finds that a distinction should be made between witness statements and other documents that the Praljak Defence is requesting for translation by CLSS. Thus, in Annex A attached to the 65 *ter* (G) Submission, the Praljak Defence provides some 200 pages of summaries of witness statements translated into English by CLSS. On the other hand, Annex B-1 attached to the 65 *ter* (G) Submission, which lists the Praljak Defence exhibits, does not provide a detailed summary of the contents of each exhibit. It merely gives the document titles. Consequently, the Chamber will analyse

³⁰ Motion, paras. 1, 25.

³¹ Accused Praljak's Submission, paras. 33 and 41.

³² Appeals Chamber Decision of 4 September 2008, paras. 20 and 21.

³³ Appeals Chamber Decision of 4 September 2008, para. 21.

³⁴ Order of 19 March 2008, p. 7; Order of 16 May 2008, p. 5.

the Defence Praljak needs regarding the translation of these two categories in two different sections:

A. Witness Statements

39. The Chamber notes that confidential Annex A attached to the 65 *ter* (G) Submission contains the names of 22 *viva voce* witnesses that the Praljak Defence would like to call to testify for its defence. The Praljak Defence provided detailed summaries of the subject of their testimony on 28 pages. Annex A also contains a list with 194 names of witnesses that the Praljak Defence would like to call pursuant to Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules. For these witnesses, the Praljak Defence provides 183 pages of evidence summaries. Up to 31 August 2008, CLSS had translated three of the statements of these 194 witnesses.
40. The Chamber then made a *prima facie* examination of the probative value of the evidence that the Praljak Defence would like to present to the Chamber pursuant to Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules based on the summaries provided in confidential Annex A attached to the 65 *ter* (G) Submission. The Chamber first finds that a good part of the evidence that the Praljak Defence would like to present deals with points having little or no connection to the present case or is redundant. For example, the Praljak Defence would like to call a number of witnesses concerning humanitarian aid provided to the Muslims throughout the territory of BiH, cooperation between the Croats and Muslims in 1991 and 1992, the aggression of the Serbs or acts perpetrated by enemy forces, such as the Serbian armed forces or the Mujahedin.³⁵
41. The Chamber then notes that several witnesses are called to vouch for the Accused Praljak's good conduct, his positive influence, his ability to manage the difficulties, but in periods or places falling outside the scope of the Second Amended Indictment of 11 June 2008 ("Indictment").

³⁵ Decision Allocating Time to the Defence to Present Its Case, 25 April 2008 ("Decision of 25 April 2008"), para. 31; *The Prosecutor v. Prlić et al*, Case no. IT-04-74-AR73.7, Decision on Defendant's Appeal Against "Décision portant attribution du temps à la Défense pour la présentation des moyens à décharge", 1 July 2008.

42. Furthermore, an examination of the summaries included in confidential Annex A attached to the 65 *ter* (G) Submission reveals that a very large number of these statements deal with the same facts, such as the Accused Praljak's efforts to protect the Old Bridge in Mostar. The Chamber considers that there is no cause to present an excessive number of witnesses and admit an excessive number of written statements on the same subject.
43. In Annex E attached to the Accused Praljak's Submission, the Praljak Defence establishes a list of the crucial issues in its case that allegedly show why the translation of all the witness statements is necessary.³⁶ The Chamber finds there as well, that a large number of the points set out deal with the Accused Praljak's good character and morality without challenging the facts alleged by the Prosecution.³⁷ On the other hand, several issues concern facts or events that are not challenged by the Prosecution and fall outside the scope of the Indictment.³⁸
44. In conclusion, while respecting Article 21 (4) of the Statute, the Chamber finds that it is incumbent upon the Praljak Defence to make a choice among the 194 witnesses that it would like to present pursuant to Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules. It should in particular present witnesses who are likely to testify about the events alleged in the Indictment, who were very close to the events that are the subject of the present case, who are highly competent to testify about a relevant fact and who are the most credible, owing particularly to their role and function during the alleged facts.
45. The Chamber notes that the Praljak Defence has already established a list by order of priority of the witness statements that it requests for translation by CLSS.³⁹ The Praljak Defence notes, however, that this order of priority is arbitrary and hypothetical given that each of the documents is necessary for the presentation of its case.⁴⁰ The Chamber finds that the Praljak Defence should be able to establish an order of priority that is not arbitrary and hypothetical by following the Chamber's advice.

³⁶ Accused Praljak's Submission, para. 33; Annex E attached to the Accused Praljak's Submission.

³⁷ *Cf.* in particular, Annex E attached to the Accused Praljak's Submission, item (a).

³⁸ *Cf.* in particular Annex E attached to the Accused Praljak's Submission, item (b) a and c.

³⁹ Annex B attached to the Accused Praljak's Submission, sections 1 and 2.

⁴⁰ Accused Praljak's Submission, para. 32.

G. Other Documents

46. The Chamber notes that Annex B-1 attached to the 65 *ter* (G) Submission contains a list of 192 pages with 2154 exhibits. During the filing of the 65 *ter* (G) Submission on 31 March 2008, the Praljak Defence did not indicate which documents had been translated and which documents were waiting to be translated. The assessment of Annex B-1 should therefore include all of the documents on the list.
47. In the Appeals Chamber Decision of 4 September 2008, it made a “cursory examination” of the information attached to the 65 *ter* (G) Submission.⁴¹ It considered that the Praljak Defence had made a good faith attempt to comply with the Order of 19 March 2008, submitting more than 400 pages of summaries.⁴²
48. The Chamber notes, as does the Appeals Chamber, that the Annexes attached to the 65 *ter* (G) Submission contain around 400 pages. The Chamber recalls nonetheless that 211 pages contain summaries of witness statements (Annex A). The Chamber recalls that the Order of 19 March 2008 dealt exclusively with the exhibit list and not the witness list. Thus, in the Order of 19 March 2008, the Chamber took note of the fact that the summaries of the witness statements had already been translated and were to be filed on 31 March 2008.⁴³ The Chamber thus limited itself to settling the matter of the translation of the exhibits. It then ordered the Praljak Defence “to furnish a precise translated summary of the contents of each document on its list of exhibits and to classify these documents according to subject when it files them on 31 March 2008.”⁴⁴ The Chamber hoped that an examination of the witness statement summaries and the exhibit summaries to be provided would allow it to rule on the Motion and on the possibility of setting a maximum number of

⁴¹ Appeals Chamber Decision of 4 September 2008, para. 21.

⁴² Appeals Chamber Decision of 4 September 2008, para. 21.

⁴³ Order of 19 March 2008, p 6:” **CONSIDERING** that the Chamber notes, secondly, that the Praljak Defence mentioned during the meeting held on 27 February 2008 that it had summaries of the witness statements it intended to file pursuant to Rules 92 *bis*, 92 *ter* and 92 *quarter* of the Rules translated into one of the official languages of the Tribunal and would submit these translated summaries to the Chamber and the other Parties on 31 March 2008.”

⁴⁴ Order of 19 March 2008, p. 7.

document pages that the Accused would have the right to request the Tribunal to translate.⁴⁵

49. In the Order of 16 May 2008, the Chamber noted that the exhibit list indicated for each document the subject to which it refers, but that this list includes too many different subjects, often redundant and imprecise.⁴⁶ It also noted that Annex B-1 attached to the 65 *ter* (G) Submission did not provide a detailed summary of these exhibits.⁴⁷ Consequently, the Chamber – using its discretionary power – decided that Annex B-1 attached to the 65 *ter* (G) Submission did not respect the instructions set out in the Order of 19 March 2008.⁴⁸ Lacking the information requested to be able to assess the individual needs of the Praljak Defence, the Chamber examined the resources used by the other accused in the present case in order to determine what could be considered “necessary” for the presentation of the Defence case.⁴⁹
50. Given that the Appeals Chamber requested the Chamber to make an individual assessment of the Praljak Defence translation needs, the Chamber made a new examination of Annex B-1 attached to the 65 *ter* (G) Submission. The Chamber still notes that the Praljak Defence has not provided summaries of the exhibits on the list. It furthermore finds that the information provided does not allow it to make a *prima facie* assessment of the relevance and probative value of the documents for the presentation of the Accused Praljak’s Defence case. For example, 122 of the documents are entitled “Reminder for Mr Praljak”. In addition to the date, Annex B-1 indicates the subject “Slobodan Praljak”. Since the Praljak Defence did not provide detailed summaries of the contents of these documents, the Chamber has no way of establishing to which of the facts alleged in the Indictment they refer.
51. Without the necessary information available to assess Annex B-1 attached to the 65 *ter* (G) Submission, the Chamber nonetheless doubts the relevance of several documents classified in the category of “Miscellaneous” or numerous book extracts requested for translation by the Praljak Defence. Even a

⁴⁵ Order of 19 March 2008, p. 6.

⁴⁶ Order of 16 May 2008, p. 5.

⁴⁷ Order of 16 May 2008, p. 5.

⁴⁸ Order of 16 May 2008, p. 5.

⁴⁹ Order of 16 May 2008, p. 8.

superficial examination of this Annex shows that a large number of documents do not seem relevant for the presentation of the Defence case, such as the book entitled “Al Qaida’s Jihad in Europe: The Afghan-Bosnian Network”.

C. The Right to a Fair and Expeditious Trial

52. It is incumbent upon the Chamber to ensure that the rights of the Accused in the present case are fully respected and that they have adequate facilities for the preparation of their defence.⁵⁰ The Chamber notes that Article 21 (4) (b) of the Statute guarantees an accused “adequate” facilities for the preparation of his defence. The Appeals Chamber recognized that time and resource constraints exist in all judicial institutions and that one of the legitimate concerns in the present trial is to ensure that the proceedings do not suffer undue delays and that the trial is completed within a reasonable time, which is a fundamental right of due process under international humanitarian law.⁵¹ The Appeals Chamber expressly noted that a Trial Chamber is authorised to impose a reasonable limitation of the translation resources to allocate to an accused.⁵² The Chamber finds that if there were no control of the modes of presenting evidence as required by Rule 90 (F) of the Rules, including control of the translation resources allocated to an accused, an accused before the Tribunal could paralyse the proceedings by requesting the translation of an excessive number of documents.
53. The Chamber recalls that it has been trying for more than eight months to settle the issue of pending translations for the Praljak Defence.⁵³ It should be noted that solely the Accused Praljak’s translation requests have led to a dispute with CLSS. This dispute results both from the excessive number of pages requested for translation and from the Praljak Defence’s lengthy refusal to cooperate with CLSS by respecting internal procedures established by CLSS in order to avoid duplicate translations and set priorities. Not until the Order of 16 May 2008 was pronounced was the Praljak Defence prepared to establish priorities and cooperate with CLSS. The Praljak Defence has always defended the thesis that every document on its exhibit list is necessary for its

⁵⁰ Statute, Article 20 (1), Article 21 (4)(b).

⁵¹ Appeals Chamber Decision of 4 July 2006, p. 5.

⁵² Appeals Chamber Decision of 4 September 2008, paras. 25 and 26.

defence. It does not want to sort these documents, while some are clearly irrelevant to the present case. This is also reflected in the Accused Praljak's Submission where it is mentioned that the order of priority is "arbitrary and hypothetical given that each of the documents is necessary for the presentation of its case".⁵⁴

54. The Chamber recalls that up until 31 August 2008, the Praljak Defence received the translation of 2807 Standard UN pages and it requests the translation of between 3060 and 4652 additional Standard UN pages, for a total of 5867 to 7459 Standard UN pages. By comparison, CLSS translated 4118 Standard UN pages for the Accused Prlić. As of 31 August 2008, 343 original pages were waiting for translation for the Accused Prlić (which equals 343 Standard UN pages as calculated by CLSS and 216 Standard UN pages as calculated by the Accused Praljak). The Accused Prlić will thus have a total of from 4334 to 4461 Standard UN pages.
55. The Chamber finds that the number of pages requested by the Praljak Defence for translation by CLSS greatly exceeds the number of pages that CLSS will have translated for each of the other Accused in the present case. The Chamber agrees with the Appeals Chamber that pursuant to Rule 82 (A) of the Rules, each accused in a trial of multiple accused enjoys the same rights as though being judged alone. The Chamber recognizes that each of the Defence teams is conducting an independent defence strategy, even if there may be some overlapping. Nevertheless, even if all the Accused do not have the same translation needs, the Chamber finds that needs as excessive as those of the Praljak Defence must be justified and based on convincing arguments. The Praljak Defence has made no real effort to explain to the Chamber why the documents on its exhibit list are necessary for the presentation of its case. The witness statement summaries submitted on 31 August 2008 have also not convinced the Chamber of the need to translate all of the witness statements.
56. Even though the Praljak Defence objects to the Chamber imposing a limit on the number of pages that it may request for translation, the Chamber considers that it must proceed in this manner. The Chamber fears that in the alternative,

⁵³ Cf. Procedural Background.

⁵⁴ Accused Praljak's Submission, para. 32.

the trial will undergo excessive delay, which would infringe upon the rights of the Accused Praljak as well as the rights of the five other Accused in the present case.

57. The Chamber bears in mind the fact that it has already imposed a restriction on the presentation of the Praljak Defence's evidence. Indeed, it reduced the number of hours allocated to it to present its case.⁵⁵ In this decision, the Chamber encouraged the Praljak Defence to make use of Rules 92 *bis* and 92 *ter* of the Rules.⁵⁶ On the other hand, presenting written statements that fall outside the scope of the Indictment or are redundant cannot be encouraged. The Chamber therefore finds that it would not infringe upon the rights of the Accused recognized in Article 21 (4) (e) of the Statute by limiting the number of translation pages and requesting that the Praljak Defence sort the exhibits needed for the presentation of its case.
58. In the Registry Submission, CLSS explains that it can translate a total of 2000 Standard UN pages by month for all the Defence teams and the Prosecution in all the cases before the Tribunal.⁵⁷ It also indicates that since 1 June 2008, CLSS has provided all the Defence teams in the present case with around 670 Standard UN pages of translation per month.⁵⁸ If it is true that as of 31 August 2008, only 385 original pages are pending translation for the other Accused in the present case, this does not automatically mean that CLSS would now be able to translate 670 Standard UN pages for the Praljak Defence alone. CLSS has stated that this figure varies as a function of the number of qualified internal and external translators available, the difficulty of the translations and the need to find a balance among the needs of all the parties in all the trials before the Tribunal.⁵⁹ CLSS has already indicated that it is able to translate around 200 Standard UN pages per month for the Accused Praljak,⁶⁰ which constitutes 10 percent of its total translation capacity for all the cases. In view of the current schedule and the course of the present case, the Chamber considers that the presentation of the Praljak Defence case will not commence

⁵⁵ Decision of 25 April 2008.

⁵⁶ *Id.* para. 31.

⁵⁷ Registry Submission, para. 11.

⁵⁸ Registry Submission, para. 11.

⁵⁹ Registry Submission, para. 11 and Additional Registry Submission, para. 15.

⁶⁰ Registry Submission of 3 March 2008, para. 7.

before April 2009, i.e. in seven months. According to this calculation, CLSS would be able to translate around 1400 Standard UN pages before the commencement of the Praljak Defence case.

VI. CONCLUSION

59. The Chamber has assessed the resources needed by the Praljak Defence as far as possible. It has reviewed the Annexes attached to the 65 *ter* (G) Submission. Given that the Praljak Defence breached the conditions set out in the Order of 19 March 2008, the examination of the exhibits list could only be superficial. The Chamber found that it has to limit the number of translation pages in order to avoid excessive delay in the trial and not infringe upon the fundamental rights of the six Accused in the present case. It has duly borne in mind the reduction of the time allocated to present the Defence case in the Decision of 25 April 2008. It has also taken CLSS's capacities into consideration.
60. The Chamber finds that the rights of the Accused Praljak will be respected by granting him the translation of an additional 1500 Standard UN pages. Given that CLSS has already translated 2807 Standard UN pages for his case, the Accused Praljak will have the right to a total of 4307 Standard UN pages of translation. The Chamber finds that the Praljak Defence will thus have sufficient resources to present its case. The Chamber notes that this limitation of the translation requests applies to the totality of the documents that the Praljak Defence may request for translation and includes the translations of the witness statements that the Praljak Defence intends to file pursuant to Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules.
61. Ideally, the totality of the translations should be completed before the beginning of the Praljak Defence case. Given that the Chamber has *de facto* allowed the Prlić Defence to submit a number of documents for translation even though it has already started to present its case, the Chamber could, as appropriate, proceed likewise for the Praljak Defence. It recalls, however, that pursuant to Guideline 8 adopted in the Decision of 24 April 2008, the Party presenting a witness must disclose to the other Parties and the Chamber a list of all the evidence it intends to present during the testimony of the witness two

weeks before the appearance of the said witness and that the documents must be translated into one of the Tribunal's official languages.⁶¹

V. DISPOSITION

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 20 (1) and 21 (4) (b) of the Statute and Rules 3 (E), 65 *ter* (G) and 90 (F) of the Rules,

DENIES the Motion,

DECIDES that the Praljak Defence may request of CLSS the translation of an additional 1500 Standard UN pages,

REQUESTS

- (i) the Praljak Defence to identify and send to CLSS no later than 7 November 2008, the documents it wishes to receive in translation, including the witness statements that the Praljak Defence intends to file pursuant to Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules, while respecting the maximum limit of 1500 Standard UN pages,
- (ii) the Praljak Defence to inform CLSS of the order of priority for the translation of the documents thus identified,
- (iii) CLSS to translate the documents thus identified by the Praljak Defence within the limit of 1500 Standard UN pages.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this thirteenth day of October 2008

⁶¹ Decision of 24 April 2008, p. 8, para. 28.

At The Hague
The Netherlands

[Seal of the Tribunal]