



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-95-5/18-T

Date: 12 March 2013

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 12 March 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S REQUEST TO EXCLUDE PORTIONS
OF REPORTS OF MILE POPARIĆ**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seized of the request in the “Prosecution’s Response to Disclosure of Reports of Expert Witness Mile Poparić and Request to Exclude Portions of Poparić’s Reports”, filed by the Office of the Prosecutor (“Prosecution”) on 31 January 2013 (“Request”), and hereby renders its decision thereon.

I. Background

1. On 26 April 2012, the Chamber issued the “Scheduling Order on Close of the Prosecution Case, Rule 98 *bis* Submissions, and Start of the Defence Case” (“Scheduling Order”), in which the Accused was instructed, *inter alia*, to file the list of expert witnesses he intends to call during his case and to serve upon the Chamber and the Prosecution copies of the *curriculum vitae* and reports of these expert witnesses by no later than 27 August 2012.¹ On 24 August 2012, the Accused filed a notice regarding the disclosure of the *curriculum vitae* of Mile Poparić, which was only partially translated in English, and two expert reports written in BCS: (1) Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo, co-authored with expert witnesses Mirjana Anđelković-Lukić and Zorica Subotić (“Inconsistencies Report”) and (2) Expert Report for the Defence Small Arms Fire on the Sarajevo Area 1994–1995, co-authored with Subotić (“Small Arms Report”).² The Accused noted that Poparić was a weapon and military equipment expert tasked with analysing the sniping Scheduled Incidents in the Third Amended Indictment (“Indictment”), the reports and testimonies of experts for the Prosecution—Berko Zečević and Richard Higgs—and testimonies and documents tendered through other Prosecution witnesses.³ The Accused also indicated that Poparić would give expert evidence *viva voce*.⁴

2. On 30 August 2012, the Prosecution filed the “Prosecution’s Response to Disclosure of Report of Expert Witness: Mile Poparić” (“Prosecution August 2012 Response”), in which it submitted that given the English translations of the two reports were still pending, it reserved its right to make submissions pursuant to Rule 94 *bis*(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).⁵ However, based on the *curriculum vitae* which was partly translated in English, the Prosecution challenged Poparić’s qualifications as an expert in relation to small arms.⁶

¹ Scheduling Order, para. 24.

² Disclosure of Report of Expert Witness: Mile Poparić, 24 August 2012 (“August 2012 Disclosure”), para. 2.

³ August 2012 Disclosure, paras. 2–3.

⁴ August 2012 Disclosure, para. 4.

⁵ Prosecution August 2012 Response, paras. 3, 6.

⁶ Prosecution August 2012 Response, paras. 4–5.

3. On 7 November 2012, the “Notice of Disclosure of Translation of Report of Expert Witnesses Mile Poparić and Anđelković-Lukić” was filed, in which the Accused notified the Chamber and the Prosecution that the English translation of the Inconsistencies Report had been made available on e-court.⁷ On 10 December 2012, the revised *curriculum vitae* of Poparić was filed in English (“CV”).⁸ On 24 January 2013, the Accused filed the “Disclosure of Supplemental Report of Expert Witness: Mile Poparić” (“Supplementary Report”). On 27 January 2013, the English translation of the Small Arms Report was disclosed to the Chamber and the Prosecution *via* e-mail.

4. Following the Request, on 4 February 2013, the Accused filed the “Response to Request to Exclude Portions of Reports of Mile Poparić (“Response”).

II. Submissions

5. In the Request, the Prosecution requests the exclusion of (1) the Small Arms Report, or alternatively, paragraphs 6, and 9 to 11 therein; (2) the Supplementary Report, or alternatively the discussions of Incidents 1, 3 to 5, and 7 to 11 therein; and (3) Sections A1, A2, and A4, and B1 of the Inconsistencies Report.⁹

6. More specifically, the Prosecution requests the exclusion of the Small Arms Report on the basis that Poparić does not have the requisite expertise in small arms.¹⁰ The Prosecution contends that while the CV shows that Poparić has some basic knowledge and experience with the handling of certain small weapons, it does not indicate any specialised knowledge or experience in the area of small arms that would assist the Chamber in assessing the sniping incidents that took place in Sarajevo.¹¹ It argues that his work as a mechanical engineer did not involve small arms or small arms ballistics and his limited practical experience with small arms, which involves no experience in the use of small arms in a conflict situation, only indicates a basic familiarity with such weapons.¹² Alternatively, it submits that if the Chamber finds Poparić to have the necessary expertise in small arms, paragraphs 6, and 9 to 11 of the Small Arms Report should nevertheless be excluded as they consist of analysis outside of Poparić’s field of expertise.¹³

⁷ Notice of Disclosure of Translation of Report of Expert Witnesses Mile Poparić and Anđelković-Lukić, 7 November 2012, paras. 1–2.

⁸ Revised CV of Expert Witness Mile Poparić, 10 December 2012.

⁹ Request, para. 19.

¹⁰ Request, para. 2.

¹¹ Request, paras. 3–4.

¹² Request, para. 4.

¹³ Request, paras. 2, 5.

7. The Prosecution requests the exclusion of the Supplementary Report on the grounds that it does not “update, clarify, or augment” any conclusions reached in the Small Arms Report.¹⁴ The Prosecution argues that the Supplementary Report analyses ten unscheduled shelling and sniping incidents, none of which are addressed in the Small Arms Report and that the discussions of Scheduled Incident F-9 only reflects the conclusion reached in the Small Arms Report.¹⁵ The Prosecution further submits that the Accused has provided no explanation for his failure to meet the deadline set by the Chamber for the disclosure of the expert reports and has failed to establish that it would be in the interests of justice to allow the late disclosure of the Supplementary Report.¹⁶ Additionally, it reiterates that Poparić does not have the relevant expertise in small arms to provide opinions on the sniping incidents contained in this report.¹⁷ Alternatively, the Prosecution argues that in the event the Chamber finds that Poparić does have the requisite expertise and that the Supplementary Report is generally admissible, the discussion of Incidents 4, 5, 7, 10, and 11 should be excluded as they do not draw upon Poparić’s expertise.¹⁸

8. With respect to the Inconsistencies Report, the Prosecution seeks the exclusion of Sections A1, A2, A4, and B1.¹⁹ More specifically, the Prosecution argues that Section A1 includes Poparić’s conclusions on the credibility of Zečević’s prior statements, which is not based on Poparić’s purported expertise.²⁰ It submits that since the Chamber already determined that a statement given by Zečević was not appropriately characterised as an expert report, an analysis of such factual matters is also not an appropriate subject for expert evidence.²¹ Furthermore, the Prosecution asserts that this section addresses remarks made by Zečević in his three prior statements, none of which are in evidence, and that therefore the analysis is an improper subject-matter for an expert report and has little, if any, probative value.²²

9. The Prosecution argues that Section A2 contains a detailed technical challenge to an expert report co-authored by Zečević analysing five incidents, none of which are Scheduled Incidents in this case.²³ It submits that the Chamber cannot assess Poparić’s analysis of Zečević’s conclusions because Zečević’s underlying report is not in evidence nor were its conclusions of these incidents

¹⁴ Request, para. 7.

¹⁵ Request, para. 7, footnote 15.

¹⁶ Request, para. 8.

¹⁷ Request, para. 10, listing Incidents 1, 3–5, and 7–11.

¹⁸ Request, para. 11.

¹⁹ Request, para. 12.

²⁰ Request, para. 13.

²¹ Request, para. 13.

²² Request, para. 14.

²³ Request, para. 15.

addressed by him during his testimony.²⁴ The Prosecution also argues that Poparić's analysis is of little assistance to the Chamber in assessing Zečević's expertise and has little probative value.²⁵ It further asserts that it would be unfair to the Prosecution and Zečević to allow a Defence expert to attack Zečević's report on unscheduled incidents that has not been tendered in this case.²⁶

10. The Prosecution submits that Section A4 of the Inconsistencies Report analyses a non-admitted report authored by Zečević on a shelling incident in Tuzla, which has no connection to the Indictment.²⁷ It argues that the Chamber cannot evaluate Poparić's analysis since it has not received any detailed evidence on this incident or evidence from Zečević that could assist in explaining the conclusions he reached in relation to that incident.²⁸ Lastly, the Prosecution submits that Section B1 discusses an unscheduled incident and a supplementary report by Higgs, which were not discussed during his testimony and were not admitted into evidence.²⁹ It further submits that it would be unfair to the Prosecution and Higgs to allow a Defence expert to attack an analysis of Higgs that has not been tendered into evidence.³⁰

11. In the Response, the Accused opposes the Request.³¹ He contends that Poparić, a mechanical engineer with lifelong training and experience in military ballistics, is adequately qualified to assist the Chamber in examining the engineering and ballistics issues related to Scheduled Incidents.³² The Accused asserts that compared to Prosecution expert witnesses, such as Patrick van der Weijden, Higgs, and Zečević, Poparić's background clearly indicates he has sufficient expertise.³³ The Accused argues that even if Poparić were not "so qualified", his detailed study of the incidents in the Small Arms Report would assist the Chamber in the same way as some Prosecution expert witnesses did even though "they had no particular expertise in the matters they had studied while employed by the Prosecution".³⁴ Finally, the Accused submits that he does not object to redacting paragraphs 6, 10, and the "first paragraph" of 11 of the Small Arms Report,

²⁴ Request, para. 15.

²⁵ Request, para. 15.

²⁶ Request, para. 15.

²⁷ Request, para. 17.

²⁸ Request, para. 17.

²⁹ Request, para. 18.

³⁰ Request, para. 18.

³¹ Response, para. 1.

³² Response, paras. 2–6, 11.

³³ Response, paras. 8–10.

³⁴ Response, para. 12, naming Dorothea Hanson, Christian Nielsen, and Patrick Treanor.

while paragraph 9 and the “second paragraph” of 11 should be retained as they are within Poparić’s expertise.³⁵

12. The Accused submits that the Supplementary Report is a “genuine” addition to the Small Arms Report and not an attempt to introduce a new expert report after the deadline for the disclosure of expert reports.³⁶ He claims that since Poparić will not be testifying until late April 2013, the Prosecution will have ample time to prepare its cross-examination of Poparić and will not be prejudiced.³⁷ The Accused contends that the Prosecution was allowed to introduce evidence on unscheduled incidents to show a pattern and to establish “indiscriminate use of force in Sarajevo” during the time relevant to the Indictment and that the Supplementary Report does deal with sniping incidents which took place during the time period.³⁸ According to the Accused, the proposed evidence is relevant to establish “a pattern of attribution of sniping incidents to the [Bosnian] Serbs when it can be shown that they could not have been responsible”.³⁹

13. In relation to the Prosecution’s contention that the Inconsistencies Report includes analysis of unscheduled incidents, the Accused argues that he is entitled to show, as part of a challenge to their expertise, that the Prosecution’s expert witnesses reached flawed conclusions.⁴⁰ Lastly, the Accused submits that the Prosecution is able to call witnesses in rebuttal should it deem that “unanticipated new material” concerning its experts had been elicited during the Defence case.⁴¹

II. Applicable Law

14. Rule 94 *bis*, which is a general rule concerning expert witnesses, provides as follows:

- (A) The full statement and/or report of any expert witness to be called by a party shall be disclosed within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge.
- (B) Within thirty days of disclosure of the statement and/or report of the expert witness, or such other time prescribed by the Trial Chamber or pre-trial Judge, the opposing party shall file a notice indicating whether:
 - (i) it accepts the expert witness statement and/or report; or
 - (ii) it wishes to cross-examine the expert witness; and

³⁵ Response, para. 15. The Response refers to “the first paragraph of 11” and “the second paragraph of number 11”. The Chamber is of the view that the Response refers to the first two sentences and the last two sentences of that paragraph.

³⁶ Response, para. 17.

³⁷ Response, para. 17.

³⁸ Response, para. 18.

³⁹ Response, para. 18.

⁴⁰ Response, para. 19.

(iii) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the statement and/or report and, if so, which parts.

(C) If the opposing party accepts the statement and/or report of the expert witness, the statement and/or report may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

15. The general standards of admissibility which are set forth in Rule 89 apply to expert reports.⁴² Rule 89(C) provides that a Chamber may admit any relevant evidence which it deems to have probative value. A minimum degree of transparency in the sources and methods used in an expert report is required at the stage of admission into evidence in order for the Chamber to decide the report's probative value.⁴³ Furthermore, pursuant to Rule 89(D), such probative value must not be substantially outweighed by the need to ensure a fair trial.⁴⁴

16. In addition, in relation to the admission of expert evidence, the jurisprudence of the Tribunal has established that the proposed witness must be qualified as an expert and the content of the expert reports or statements falls within the accepted expertise of the expert witness in question.⁴⁵ The Chamber notes that an expert witness is a person who, by virtue of some specialised knowledge, skill, or training, can assist the Chamber to understand or determine an issue in dispute.⁴⁶ In determining whether a particular witness meets this standard, a Chamber may take into account the witness's former and present positions and professional expertise by means of reference to the witness's *curriculum vitae* as well as the witness's scholarly articles, other publications, or any other pertinent information about the witness.⁴⁷ One of the distinctions between an expert witness and a fact witness is that due to the qualifications of the expert, he or she can give opinions and draw conclusions, within the confines of his or her expertise, and present

⁴¹ Response, para. 20.

⁴² Decision on Prosecution's Motion for Admission of Evidence of Eight Experts Pursuant to Rule 92 *bis* and 94 *bis*, 9 November 2009 ("Decision of 9 November 2009"), para. 14; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008 ("*Popović* Appeal Decision"), para. 22; *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, Decision on Admission of Expert Report of Ratko Škrbić with Separate Opinion of Judge Mindua and Dissenting Opinion of Judge Nyambe, 22 March 2012 ("*Tolimir* Decision"), para. 12.

⁴³ *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-T, Decision on Admission of Expert Report of Geoffery Corn 22 September 2009 ("*Gotovina* Decision"), para. 5.

⁴⁴ Decision of 9 November 2009, para. 14.

⁴⁵ *Popović* Appeal Decision, para. 21; *Gotovina* Decision, para. 5.

⁴⁶ *Popović* Appeal Decision, para. 27; *Gotovina* Decision, para. 5.

⁴⁷ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Expert Status of Reynaud Theunens, 12 February 2008; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Decision on Defence Notice Under Rule 94 *bis*, 5 March 2009, para. 6; *Tolimir* Decision, para. 14.

them to the Chamber.⁴⁸ Only those parts of the evidence which are based on the expert's specialised knowledge, skills or training will be treated as expert evidence.⁴⁹

III. Discussion

A. Poparić's Qualifications as an Expert in Relation to Small Arms

17. The CV of Poparić, a retired lieutenant colonel in the JNA, shows that he obtained a university degree in Mechanical Engineering from the Faculty of Mechanical Engineering at the University of Belgrade in 1980.⁵⁰ Around the same period, he underwent training for "handling and maintenance of all small weapons used in the former JNA" at the Military Academy of the JNA in Zagreb. Prior to this, in 1976, he received obligatory practical training with "the details of the entire production process of small weapons ammunition and its testing" in a private factory. In addition, every year during his military service, he underwent regular training and target practice for small arms.⁵¹ The CV further indicates that Poparić worked as a chief construction engineer for the construction of anti-tank ammunition in a private company and as a chief researcher on testing the construction of artillery ammunition at the Technical Testing Centre in Belgrade for more than 20 years.⁵² Having taken into consideration all these aspects cumulatively, the Chamber is of the view that Poparić's work experience, coupled with his academic background, equips him with sufficient expertise in relation to small arms. The Chamber is therefore satisfied that he can be qualified as an expert within the meaning of Rule 94 *bis* and thus could be called to testify as such.

B. Small Arms Report

18. The Prosecution alternatively requests the exclusion of paragraphs 6, 9, 10, and 11 of the Small Arms Report should the Chamber consider Poparić to be qualified as an expert. Given that the Accused does not object to the redaction of paragraphs 6 and 10 in their entirety, this particular request is moot.

19. The Chamber notes that in paragraph 9, Poparić purports to analyse a demographic document prepared for the case against Stanislav Galić ("*Galić* case"), which lists the victims of sniper fire against the civilians of Sarajevo in the period between August 1992 and September

⁴⁸ *Tolimir* Decision, para. 14.

⁴⁹ *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Defence's Submission on the Expert Report of Professor Smilja Avramov Pursuant to Rule 94 *bis*, 9 November 2006, para. 12.

⁵⁰ CV, p. 4.

⁵¹ The weapons included "7.36 mm pistol, 7.36 mm pistol, 7.63 mm automatic pistol (Scorpion) and M-70 automatic rifle (so-called Kalashnikov), as well as the M-59 7.62 mm semi-automatic rifle". See CV, p. 5.

⁵² CV, pp. 5–6.

1994.⁵³ Poparić also examines a published list of the persons killed in Sarajevo, but in most cases the specific locations of the incident where those individuals were killed are not identified.⁵⁴ He concludes that this analysis establishes that the authorities of Bosnia and Herzegovina (“BiH”) tried to characterise some of the military victims as civilian victims and that “all the victims were understood to have perished from small arms fire opened from the territory under the control of the Army of Republika Srpska, without taking account of whether there was a possibility for the individuals to be shot from the positions of the Army of Republika Srpska”.⁵⁵ This analysis does not reflect Poparić’s specialised knowledge, skills or training, or “discrete set of ideas or concepts that is expected to lie outside the lay person’s ken”.⁵⁶ Accordingly, the Chamber finds that paragraph 9 should be excluded from the report.

20. With regard to paragraph 11, the Chamber first notes that the Accused does not oppose the redaction of the first two sentences. However, the Chamber is of the view that this paragraph should be examined in its entirety. In the first two sentences of this paragraph, Poparić notes that there is evidence that the Army of Bosnia and Herzegovina (“ABiH”) targeted the Holiday Inn Hotel at Marin Dvor in November 1994, when a shaped-charge projectile had struck the hotel.⁵⁷ In reaching this conclusion Poparić states that, “[b]ased on a distinct trace of the shaped-charge thrust [the BiH police] were able to establish that the projectile’s incoming trajectory was at the azimuth of 138°. When lines at 138° are drawn from the end points of the Holiday Inn Hotel, one can see that between them there sit the buildings of the BH Executive Council and Assembly”.⁵⁸

21. In this respect, the Chamber recalls that it has previously permitted evidence to be introduced concerning incidents and events in Sarajevo which are not listed in one of the schedules to the Indictment on the basis that such evidence may go to establishing the general requirements for crimes against humanity or the elements of some of the underlying offences.⁵⁹ In the Chamber’s opinion, the analysis contained in paragraph 11 does not fall under such a category due to its little bearing to this case. The Accused himself acknowledged that this incident was not relevant to the charges in the Indictment during cross-examination of a Prosecution witness.⁶⁰ Even though the

⁵³ Small Arms Report, para. 9 (noting that this document authored by “official BiH authorities” does not contain “any information on victims in 1993”).

⁵⁴ Small Arms Report, para. 9.

⁵⁵ Small Arms Report, para. 9.

⁵⁶ *Popović* Appeal Decision, para. 27.

⁵⁷ The Chamber notes that in the second sentence of paragraph 11 Poparić refers to 1995 instead of 1994. However, based on a BiH Ministry of Interior report relied upon in this paragraph concerning the on-site investigation and forensic examination of explosion traces, the Chamber considers that this purported incident took place in November 1994.

⁵⁸ Small Arms Report, para. 11 (footnote omitted).

⁵⁹ See e.g., T. 5480–5481 (19 July 2010).

⁶⁰ See T. 9057–9058 (4 November 2010).

second part of this paragraph reflects the calculations and depictions of angles by Poparić, the Chamber is of the view that this whole paragraph would not assist it in determining the issues in dispute in this case. Accordingly, the Chamber finds that paragraph 11 should be excluded from the Small Arms Report.

C. Supplementary Report

22. Citing the last sentence of paragraph 9 of the Small Arms Report,⁶¹ the Supplementary Report states that it “provides several cases in Phase ‘B’ of Alipašino Polje and Vojničko Polje in order to illustrate briefly examples of uncritical transfer of responsibility of the Army of Republika Srpska for all incidents in the Sarajevo area” and that the area of Phase “B” was selected “completely by chance”.⁶² The Chamber has found above that paragraph 9 of the Small Arms Report, which the Supplementary Report purportedly supplements, should be excluded on the basis that it does not fall within the purview of Poparić’s expertise.⁶³ Therefore, the Supplementary Report should be excluded on this basis alone.

23. For the sake of completeness, however, the Chamber has reviewed the contents of the Supplementary Report in its entirety. Of the 11 incidents discussed in this report, only one is directly related to the Indictment, namely, Scheduled Incident F-9. The Supplementary Report contains detailed analysis of several unscheduled incidents with the conclusion that a projectile or shell was fired from the direction of the area under ABiH control.⁶⁴ For the analysis of Incidents 4–5, and 7, the report only quotes findings of the trial judgement in the *Galić* case and for the analysis of one incident it discusses a few investigative sources.⁶⁵ As previously stated, certain evidence concerning unscheduled incidents that took place in Sarajevo was allowed to be introduced in this case. Yet, the Chamber has also emphasised that expert evidence “should be focused as much as possible on matters that are directly relevant to the Indictment”⁶⁶ and that “detailed evidence going to specific incidents which are not listed in the Indictment or its Schedule is unhelpful”.⁶⁷ In this light, the Chamber fails to see how the detailed analysis of the unscheduled incidents in the Supplementary Report would in any way assist it in evaluating evidence relating to Scheduled Incidents in this case. Moreover, the parts of the Supplementary Report, which simply summarise parts of the trial judgement in the *Galić* case, have no particular relevance to Poparić’s area of

⁶¹ See *supra* para. 19. The Chamber notes that the last portion of paragraph 9 is at pp. 32–33 of the Small Arms Report and not p. 40 as indicated in the Supplementary Report.

⁶² Supplementary Report, para. 1.

⁶³ See *supra* para. 19.

⁶⁴ Supplementary Report, Incidents 1, 2, 3, 6, and 8.

⁶⁵ Supplementary Report, Incident 10.

⁶⁶ T. 21486 (17 November 2011).

expertise. In addition, the lengthy analysis of these unscheduled incidents is clearly beyond the scope of the Small Arms Report.

24. Lastly, the short section on Scheduled Incident F-9 only makes reference to the conclusions already in the Small Arms Report.⁶⁸ Given the absence of any analysis, the Chamber considers that this sentence is superfluous and does not warrant retaining the Supplementary Report for that sole purpose.

25. Accordingly, the Chamber finds that the Supplementary Report should be excluded. The Chamber will therefore not rule on whether it is the interests of justice to allow the late disclosure of this report.

D. Inconsistencies Report

26. The Chamber notes that in Section A1 of the Inconsistencies Report, instead of challenging the specific methodology or technique Zečević used in his analysis of Scheduled Incidents, Poparić comments on Zečević's prior statements and challenges his general credibility as an expert witness. The discussions do not specifically reflect Poparić's specialised expertise in small arms. The prior statements allegedly taken from Zečević which are analysed in this section of the Inconsistencies Report are not in evidence and thus there is no evidentiary basis against which to assess the analysis in Section A1. The Chamber is not persuaded that this part of the report would assist in its evaluation of Zečević's expertise. The Chamber therefore finds that Section A1 should be excluded from the report.

27. Section A2 contains Poparić's analysis of a report co-authored by Zečević and discussions of five unscheduled incidents.⁶⁹ This report, which is only available in BCS, was only used during the cross-examination of Zečević.⁷⁰ However, it is not part of the trial record and thus there is no evidentiary basis against which to assess the analysis in Section A2. The Chamber finds that the analysis of a non-admitted report of Zečević discussing unscheduled incidents would not assist it in its determination of Zečević's credibility as an expert. The Chamber therefore finds that Section A2 should be excluded from the report.

⁶⁷ T. 5480 (19 July 2010).

⁶⁸ Supplementary Report, p. 40.

⁶⁹ Document with Rule 65 *ter* number 1D03282.

⁷⁰ T. 12210–12213 (22 February 2011); T. 12233–12234 (23 February 2011).

28. Section A4 discusses a document authored by Zečević on a shelling incident in Tuzla in May 1995.⁷¹ The document is not an expert report *per se* but is a PowerPoint document Zečević had prepared for a case before the BiH court.⁷² The Accused was allowed to cross-examine Zečević on this specific incident using that document.⁷³ However, this material is not admitted into evidence in this case and thus there is no evidentiary basis against which to assess the analysis in Section A4. Furthermore, in the Chamber's opinion, such an in-depth analysis of the incident as contained in this section will not be of further assistance in evaluating Zečević's credibility and reliability of his reports. The Chamber therefore finds that Section A4 should be excluded from the report.

29. Finally, in Section B1 Poparić challenges Higgs' expertise and discusses a shelling incident in Livanjska Street in November 1994. In this context, Poparić analyses one of Higgs' reports, which is not admitted into evidence in this case.⁷⁴ Again there is no evidentiary basis against which to assess this part of the report. Moreover, as the Prosecution rightly points out, this unscheduled incident has never been discussed with Higgs in his expert report or during his testimony. The Chamber is not satisfied that Poparić's analysis will assist it in evaluating Higgs' credibility and the reliability of his reports. The Chamber therefore finds that Section B1 should be excluded from the report.

E. Final Remarks

30. Finally, the Chamber notes that, when analysing Scheduled Incidents in the Small Arms Report, Poparić made comments on matters unrelated to his expertise in small arms, such as the credibility and reliability of fact witnesses, the authenticity of medical and police records, the ABiH's duty schedule patterns, the location of a spring, hospital visiting hours, and a scar on the body of a sniping victim.⁷⁵ The Chamber recalls that a proper determination of the relevance, probative value, and reliability of an expert report will be made once the expert witness is brought to testify and cross-examined by the other party.⁷⁶ In this light, should the redacted versions of the Small Arms Report and the Inconsistencies Report be ultimately admitted, the appropriate weight will be ascribed to them by the Chamber given the purview of Poparić's expertise.

⁷¹ See Inconsistencies Report, pp. 80, 108 (also claiming that the analysis made in the document of Zečević was not made "correctly in accordance with scientific and professional norms").

⁷² Inconsistencies Report, para. 35.

⁷³ Document with Rule 65 *ter* number 1D03277; T. 12362–12372 (24 February 2011).

⁷⁴ Document with Rule 65 *ter* number 10253.

IV. Disposition

Accordingly, the Chamber, pursuant to Rules 89 and 94 *bis* of the Rules, hereby

- a) **GRANTS** the Request in part;
- b) **FINDS** that Mile Poparić may provide evidence as an expert;
- c) **ORDERS** that paragraphs 6, 9, 10, and 11 of the Small Arms Report, and Sections A1, A2, A4, and B1 of the Inconsistencies Report be excluded and the redacted versions of these reports be uploaded into e-court prior to the start of Poparić's testimony;
- d) **ORDERS** that the Supplementary Report be excluded; and
- e) **DENIES** the remainder of the Request.

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



Judge O-Gon Kwon
Presiding Judge

Dated this twelfth day of March 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷⁵ See *e.g.*, Small Arms Report, paras. 40, 46, 65, 70, 73, 75, 80, 132, 151, 169.

⁷⁶ See Decision on Evidence of Robert Donia, 19 February 2010, para. 7.