



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-08-91-T
Date: 29 September 2010
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 29 September 2010

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION PURSUANT TO RULE 94 *BIS*
ACCEPTING EWAN BROWN AND AFFIRMING EWA
TABEAU AS PROSECUTION EXPERT WITNESSES,
AND WRITTEN REASONS FOR THE ORAL RULING
ACCEPTING ANDRAS RIEDLMAYER AS AN EXPERT
WITNESS**

The Office of the Prosecutor

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I. INTRODUCTION

1. Trial Chamber II ("Trial Chamber") of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 ("Tribunal") is seised of the following submissions insofar as they concern requests in respect of proposed Prosecution expert witness Ewan Brown:

- "Prosecution's notice of disclosure of expert witness statements under Rule 94 *bis*", filed on 29 February 2008 ("Rule 94 *bis* Notice"), and
- "Prosecution's supplemental motion for admission of evidence of experts pursuant to Rules 94 *bis*, 92 *bis*, and 92 *ter*, with confidential annexes", filed on 17 August 2009 ("Supplemental Motion").¹

The Prosecution tenders Ewan Brown as a "military analyst",² seeks to convert his mode of testimony from Rule 92 *bis* to Rule 92 *ter*,³ and requests admission into evidence of the following:

- a) his *curriculum vitae*,⁴
- b) a proposed expert report entitled "Military developments in the Bosanska Krajina 1992" ("Bosanska Krajina Report"),⁵
- c) a three-page errata sheet to the Bosanska Krajina Report,⁶
- d) a witness statement, dated 27 and 28 July 2009, and an annex thereto listing additional documents made available to him to assess the effect, if any, on his report,⁷ and
- e) his testimony in the *Krajišnik* case on 11 to 14 July 2005 and a list of documents used during this testimony.⁸

¹ The Trial Chamber notes that Rule 94 *bis* Notice was filed on 29 February 2008, not on 3 March 2008. Several proposed experts subject were removed from the Prosecution's exhibit list. Colin Kaiser (ST093) and Nicolas Sebire (ST101) were removed as expert witnesses by the Supplemental Motion, para. 6. Patrick Treanor (ST096), Albert Hunt (ST102), Richard Wright (ST103), Thomas Parsons (ST100) were not included on the Prosecution's reduced list of witnesses, filed on 10 Sep 2009, p. 6. Christian Nielsen (ST092) and Robert Donia (ST095) were accepted as expert witnesses by oral decision on 4 Sep 2009, T. 119-120. Dorothea Hanson (ST158) was accepted as an expert by oral decision on 20 Oct 2009, T. 1757; see also Written reasons for the Trial Chamber's oral decision accepting Dorothea Hanson as an expert witness, issued 5 Nov 2009.

² Rule 94 *bis* Notice, para. 1.

³ Supplemental Motion, para. 27 a. The Prosecution initially requested to call Ewan Brown pursuant to Rule 92 *bis*, Prosecution motion for admission of transcripts and written statements *in lieu* of *viva voce* testimony pursuant to Rule 92*bis* ("Rule 92 *bis* Motion"), para. 15 and Annex A, pp 106-107.

⁴ Rule 94 *bis* Notice, Annex A, p. 1

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Supplemental Motion, Annex A.

⁸ Supplemental Motion, para. 7.

2. On 28 May 2010, the Trial Chamber, stating that written reasons would follow, ruled that Andras Riedlmayer, who was also subject of the above submissions, may be classified as a “Balkans cultural heritage expert”.⁹ The Prosecution had requested admission into evidence of the following material:¹⁰

- a) his *curriculum vitae*,¹¹
- b) a report entitled “Destruction of cultural heritage in Bosnia-Herzegovina, 1992-1996: A post-war survey of selected municipalities”, dated 2002, prepared for the *Slobodan Milošević* case (“First Riedlmayer Report”),¹²
- c) a report entitled “Destruction of cultural heritage in Bosnia-Herzegovina: a post-war survey of the destruction of non-Serb cultural heritage in the municipalities of Banja Luka, Bijeljina, Bosanka Krupa, Bratunac, Brcko, Cajnice, Doboj, Foca, Visegrad and Zvornik during the 1992-95 war, with specific reference to 1992”, dated 1 June 2003, prepared for the *Krajišnik* case (“Second Riedlmayer Report”),¹³
- d) a report entitled “Destruction of cultural heritage in Bosnia and Herzegovina: A post-war survey of the destruction of non-Serb cultural heritage in the municipalities of Banja Luka, Bijeljina, Bosanska Krupa, Bosanki Novi, Bosanki Petrovac, Bratunac, Brcko, Cajnice, Donji Vakuf, Foca, Ilijas, Kalinovik, Ključ, Kotor Varos, Novi Grad, Pale, Prijedor, Rogatica, Sanski Most, Sokolac, Vogosca and Zvornik during the 1992-1995 war, and a report on the 25-26 August 1992 shelling of the national and university of library of Bosnia and Herzegovina in Sarajevo”, dated 2009, prepared for the *Karadžić* case (“Third Riedlmayer report”),¹⁴
- e) a report entitled “Destruction of cultural heritage in Bosnia and Herzegovina: a post-war survey of the destruction of non-Serb cultural heritage in the municipalities of Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Sanski Most, Teslic, Bosanski Šamac, Brcko, Doboj, Gacko, Višegrad, Vlasenica, Zvornik, and Bileca during the 1992-95 War, dated 18 August 2009, prepared for the present case (“Fourth Riedlmayer Report”),¹⁵

⁹ Hearing, 28 May 2010, T. 10956. See also Rule 94 *bis* Notice, para. 1.

¹⁰ The material is also listed in an email from the Prosecution to the Trial Chamber and the Parties, dated 31 May 2010.

¹¹ Rule 94 *bis* Notice, Annex A.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Supplemental Motion, Annex A.

¹⁵ Supplemental Motion, Annex A; Prosecution’s consolidated reply to both Stanišić’s and Župljanin’s responses to the Prosecution’s supplemental motion for admission of the evidence of experts pursuant to Rules 94 *bis*, 92*bis* and 92*ter*, filed on 7 Sep 2009 (“Consolidated Reply”), para. 10.

- f) a statistical addendum called “Sacred sites of the non-Serb communities in the surveyed municipalities damaged or destroyed in 1992” (“Statistical Addendum”),¹⁶
- g) a CD-ROM containing a database of photographs of cultural sites,¹⁷
- h) his testimony in the *Slobodan Milošević* and the *Krajišnik* cases on 8 July 2003 and 23 May 2005, respectively, and associated exhibits,¹⁸ and
- i) two maps showing locations of destroyed and damaged religious and other buildings in Bosnia and Herzegovina.¹⁹

At the conclusion of Andras Riedlmayer’s testimony on 2 June 2010, the Trial Chamber admitted into evidence the material tendered.²⁰ The Trial Chamber sets out its reasons for these decisions herein.²¹

3. It is recalled, in the interest of the completeness of the record, that on 15 July 2010, the Trial Chamber ruled that Ewa Tabeau, who was also subject of the above submissions, as well as of an addendum filed on 11 March 2010, may be considered an expert in demography.²² The Trial Chamber held that three reports tendered through the witness are relevant to the case.²³ However, in respect of one of these reports, which was provided with the Addendum, the Trial Chamber considered that the Prosecution had not acted with due diligence in requesting Ewa Tabeau as late as November 2009 to prepare the report.²⁴ The reasons stated by the Prosecution for requesting this report – that the Completion Strategy had prompted the undertaking of a general research exercise

¹⁶ Rule 94 *bis* Notice, Annex A.

¹⁷ *Ibid.*

¹⁸ Supplemental Motion, Annex A.

¹⁹ Rule 94 *bis* Notice, Annex A.

²⁰ Hearing, 2 Jun 2010, T. 11284.

²¹ See *infra* para. 23 onwards.

²² Hearing, 15 Jul 2010, T. 12894-12896. See also Rule 94 *bis* Notice, para. 1. Ewa Tabeau was initially on the Prosecution’s witness list of 8 June 2009 as a Rule 92 *ter* witness but was later the subject of the Rule 92 *bis* Motion (see paras 15-16 and Annex A, p. 140). See also Supplemental Motion, para. 11, where the Prosecution stated that it did not wish her to be heard under Rule 92 *ter*. The request that her evidence be admitted under Rule 92 *bis* was rendered moot by the Trial Chamber’s ruling at the pre-trial conference that all expert witnesses in this case would be presented pursuant to Rule 94 *bis*, Pre-trial conference, 4 Sep 2009, T. 104.

²³ Hearing, 15 Jul 2010, T. 12895. The Prosecution initially tendered a report which Ewa Tabeau and Marcin Zoltowski prepared for *Prosecutor v. Krajišnik* and which was submitted with the Rule 94 *bis* Notice (see Annex A thereof). By the Supplemental Motion (see para. 11) the Prosecution sought to replace this report by an updated version thereof concerning the municipalities relevant to this case entitled “Ethnic composition in and internally displaced persons and refugees from 18 municipalities of Bosnia and Herzegovina, 1991 and 1997”, dated 7 April 2009 (“First Tabeau Report”), and a report prepared for the *Slobodan Milošević* case, entitled “Ethnic composition, internally displaced persons and refugees from 47 municipalities on Bosnia and Herzegovina, 1991 to 1997-98”, dated 4 April 2003 (“Second Tabeau Report”). By an addendum filed on 11 March 2010, the Prosecution sought to add a third report, entitled “Victims of war related to the Mićo Stanišić and Stojan Župljanin Indictment” and dated 18 February 2010 (*id* para. 3) (“Third Tabeau Report”), see “Prosecution’s addendum in respect of ST098 to its notice of disclosure of expert witness statements under Rule 94 *bis* filed on 3 March 2008, and supplemental motion for admission of the evidence of experts pursuant to Rules 94 *bis*, 92 *bis*, and 92 *ter*, with confidential annexes filed on 17 August 2009”, filed 11 March 2010 (“Addendum”).

²⁴ The transcript of the oral ruling reads in error “November 2010”, Hearing, 15 Jul 2010, T. 12896.

to provide a legacy of the Tribunal – did not amount to good cause.²⁵ Nevertheless, since this 25-page report was disclosed to the Defence on 5 March 2010 the Trial Chamber was satisfied that the Defence would not suffer undue prejudice. The Trial Chamber, therefore, allowed Ewa Tabeau to testify regarding all three reports and stated that it would decide, by the end of her testimony, which of the three reports, or which parts thereof, would be admitted into evidence.²⁶ Ewa Tabeau is scheduled to testify later this month.

II. RELEVANT PROCEDURAL HISTORY AND SUBMISSIONS

4. On 11 April 2008, following the filing of the Rule 94 *bis* Notice, the Defence of Mićo Stanišić (“Stanišić Defence”) filed its notice pursuant to Rule 94 *bis*(B) (“Stanišić Rule 94 *bis* Notice”).²⁷ On 16 April 2008, as a result of the breakdown in communication between then counsel Stevo Bezbradica and Mićo Stanišić, the Accused personally filed a notice pursuant to Rule 94 *bis* and requested the Trial Chamber to disregard the Stanišić Rule 94 *bis* Notice.²⁸ On the Trial Chamber’s instruction, this notice was not accepted by the Registry since the Accused continued to be represented by counsel.²⁹

5. On 23 September 2008, following the arrest of Stojan Župljanin, the cases against the two accused were joined.³⁰ On 19 November 2008, the Prosecution requested, *inter alia*, that the Rule 94 *bis* Notice apply also to Stojan Župljanin.³¹ On 27 February 2009, the Defence of Stojan Župljanin (“Župljanin Defence”) gave notice pursuant to Rule 94 *bis*(B) (“Župljanin Rule 94 *bis* Notice”).³²

6. On 17 August 2009, the Prosecution filed the Supplemental Motion. On 31 August 2009, the Stanišić Defence and Župljanin Defence filed separate responses to the Supplemental Motion

²⁵ Hearing, 15 Jul 2010, T. 12896.

²⁶ *Id.*, T. 12896.

²⁷ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Defence’s Rule 94 *bis* Notice, filed 11 Apr 2008, p. 3. See also *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision regarding responses to Prosecution motions pursuant to Rule 92 *bis* and 92 *quater* and the Defence notice pursuant to Rule 94 *bis*, 10 Mar 2008, whereby the Trial Chamber granted an extension of time to the Stanišić Defence to file its notice under Rule 94 *bis* (B).

²⁸ Stanišić Response, paras 2-7, referring in paragraph 4 to the filing of Mićo Stanišić.

²⁹ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision of the Registrar, 13 June 2008, p. 3, which withdrew the assignment of Stevo Bezbradica as lead counsel and assigned Slobodan Zečević in his stead.

³⁰ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT and *Prosecutor v. Stojan Župljanin*, Case No. IT-99-36/2-PT, Decision on the Prosecution’s motion for joinder and for leave to consolidate and amend indictments, 23 Sep 2008; Prosecution’s motion for joinder and for leave to consolidate and amend indictments, with confidential annexes, 15 Jul 2008.

³¹ Prosecution notice and request regarding Rule 92 *bis*, 92 *ter*, and 92 *quater* evidence, 19 Nov 2008; Stojan Župljanin’s motion requesting an order that the Prosecution clarify its motion of 19 November 2008, 3 Dec 2008; Decision on Stojan Župljanin’s motion requesting an order that the Prosecution clarify its motion of 19 November 2008, 15 Dec 2008; Prosecution amended notice and request regarding Rule 92 *bis*, 92 *ter*, and 92 *quater* evidence, 10 Dec 2008.

³² Stojan Župljanin’s response to the Prosecution’s Rule 94 *bis* notice, filed confidentially 27 Feb 2009. The Župljanin Defence was granted an extension of time to respond, Decision on Stojan Župljanin’s motion for the Trial Chamber to reconsider its decision of 15 December 2008, 16 Jan 2009, para. 6.

(“Stanišić Response” and “Župljanin Response”, respectively).³³ The Stanišić Defence sought to supplement the Stanišić Rule 94 *bis* Notice, submitting that the Stanišić Rule 94 *bis* Notice was filed without consultation with Mićo Stanišić by the counsel then representing him.³⁴

7. On 7 September 2009, the Prosecution replied to the Stanišić Response and the Župljanin Response, noting that it had stated in a “preliminary reply”, filed on 4 September 2009, that it would file a substantive response (“Consolidated Reply”).³⁵

8. On 11 March 2010, the Prosecution filed the Addendum providing notice of the Third Tabeau Report.³⁶ On 19 March 2010, the Stanišić Defence responded to the Addendum (“Stanišić Addendum Response”).³⁷ On 24 March 2010, the Župljanin Defence responded (“Župljanin Addendum Response”).³⁸

III. APPLICABLE LAW

9. An expert is a person who “by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute”.³⁹ The witness’s former and present positions and professional experience are important.⁴⁰ The qualifications and expertise of a witness can be determined by considering the witness’s *curriculum vitae*, scholarly articles, other

³³ Mr. Mićo Stanišić’s supplemental filing in response to the Prosecution’s filing on proposed experts and response to the Prosecution’s supplemental motion for admission of the evidence of experts pursuant to Rules 94 *bis*, 92 *bis* and 92 *ter*, with confidential annexes, 31 Aug 2009; Defence request for leave to exceed the word limit and response to Prosecution’s supplemental motion for admission of the evidence of experts pursuant to Rules 94 *bis*, 92 *bis*, and 92 *ter*, 31 Aug 2009.

³⁴ Stanišić Response, paras 3-4.

³⁵ Prosecution’s consolidated reply to both Stanišić’s and Župljanin’s responses to the Prosecution’s supplemental motion for admission of the evidence of experts pursuant to Rules 94 *bis*, 92 *bis* and 92 *ter*, 7 Sep 2009 (“Consolidated Reply”); Prosecution’s motion for leave to reply and preliminary reply to Mićo Stanišić’s supplemental filing in response to the Prosecution’s filing on proposed witnesses and response to the Prosecution’s supplemental motion for admission of the evidence of experts pursuant to Rule 94 *bis*, 92 *bis* and 92 *ter*, 4 Sep 2009.

³⁶ Addendum, para. 3.

³⁷ Stanišić Defence opposition to Prosecution’s addendum in respect of ST098 to its notice of disclosure of expert witness statements under Rule 94 *bis* filed on 3 March 2008, and its supplemental motion for admission of the evidence of experts pursuant to Rules 94 *bis*, 92 *bis*, and 92 *ter*, with confidential annexes filed on 17 August 2009.

³⁸ Župljanin response to Prosecution’s addendum in respect of ST-98 to its notice of disclosure of expert witness statements under Rule 94 *bis* filed on 3 March 2008, and its supplemental motion for admission of the evidence of experts pursuant to Rules 94*bis*, 92*bis* and 92*ter*, with confidential annexes filed on 17 August 2009, filed on 24 March 2010.

³⁹ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision concerning the expert witnesses Ewa Tabeau and Richard Philips, 3 Jul 2002 (“*Galić Decision*”), p. 2; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Decision on Prosecution’s submission of statement of expert witness Ewan Brown, 3 Jun 2003 (“*Brđanin Decision*”), p. 4.

⁴⁰ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on admissibility of expert report of Kosta Čavoški, 1 Mar 2006, pp. 2-3.

publications or any other pertinent information about the witness.⁴¹ An expert is expected to make statements and draw conclusions independently and impartially.⁴²

10. The fact that the witness has been involved in the investigations and preparation of the Prosecution or Defence case, or is employed or paid by one party, does not disqualify him as an expert witness or make the expert statement or report unreliable.⁴³ Thus, the question of potential bias of an expert is separate and distinct from that of whether a person is qualified to be an expert. It is for the opposing party or parties to challenge in cross-examination the witness's independence or impartiality.⁴⁴

11. According to Rule 89(C), a Trial Chamber may admit any relevant evidence which it deems to have probative value. Rule 94 *bis* does not set a different or higher threshold for the admission of evidence than Rule 89(C).⁴⁵ However, having accepted a witness as an expert "does not necessarily entail that his reports would be admitted as evidence".⁴⁶ In order for an expert report or statement to be deemed admissible, the following requirements must be met:

- the proposed witness is classified as an expert,
- the expert report or statement meets the minimum standards of reliability,
- the expert report or statement is relevant and of probative value, and
- the content of the expert report or statement falls within the accepted expertise of the expert witness.⁴⁷

There must be sufficient information as to the sources used in support of the statements in the expert report. The sources must be clearly indicated and accessible in order to allow the other party

⁴¹ *Id.* p. 3; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Decision on the Defence motion to exclude the expert reports of Robert Donia, 27 Oct 2008, ("*Perišić* Decision"), para. 6.

⁴² *Perišić* Decision, para. 7 and *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Decision on Prosecution's submission of the expert report of Nena Tromp and Christian Nielsen pursuant to Rule 94 *bis*, 18 Mar 2008, para. 10.

⁴³ *Galić* Decision, pp. 2-3; *Brđanin* Decision, p. 4; *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Prosecution's motion for admission of transcripts pursuant to Rule 92 *bis* (D) and of expert reports pursuant to Rule 94 *bis*, 13 Jan 2006, para. 39.

⁴⁴ *Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Decision on appellant Jean-Bosco Barayagwiza's motion for extension of time, 3 May 2007, p. 3, where the Appeals Chamber held that "an expert is required to testify with the utmost neutrality and with scientific objectivity. The party alleging bias on the part of an expert witness may demonstrate the said bias through cross-examination, by calling its own expert witnesses or by means of an expert opinion in reply" (also cited in *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 Jan 2008 ("*Popović* Appeals Decision"), para. 20).

⁴⁵ *Brđanin* Decision, p. 4.

⁴⁶ *Popović* Appeals Decision, para. 31.

⁴⁷ *Perišić* Decision, para. 5; *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on second Prosecution motion for the admission of evidence pursuant to Rule 92 *bis* (two expert witnesses), 23 Jul 2008, para. 15; *Popović* Appeals Decision, para. 21; *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Defence's submission of the expert report of Professor Smilja Avramov pursuant to Rule 94 *bis*, 9 Nov 2006, para. 5.

to challenge the basis on which the expert witness reached his conclusions.⁴⁸ The Trial Chamber may consider, for example, “whether there is transparency in the methods and sources used by the expert witness, including the established or assumed facts on which the expert witness relied.”⁴⁹ The requirement that the content of a statement or report fall within the expertise of the expert ensures that the statements or reports will only be treated as expert evidence, in so far as they are based on the expert’s specialist knowledge, skills or training.⁵⁰

12. The overall reliability and relevance of the expert’s report or statement may be challenged in cross-examination. Following the practice in this trial, the expert report or statement may be admitted into evidence if, after cross-examination, the Trial Chamber is satisfied that sufficient proof of reliability has been established.⁵¹ It is recalled that the Defence may submit expert findings to the contrary and call experts during the presentation of its case.

IV. DISCUSSION

A. Preliminary matters

13. At the pre-trial conference held on 4 September 2009, the Trial Chamber ruled that the evidence of all expert witnesses to be called in this case would be presented pursuant to the procedure set out in Rule 94 *bis* and not under Rule 92 *bis* or Rule 92 *ter*.⁵² This ruling renders moot the Prosecution’s requests to admit evidence of Ewan Brown and Andras Riedlmayer pursuant to Rule 92 *ter*. The Trial Chamber has, therefore, not considered the Prosecution’s request in respect of Ewan Brown to convert the mode of testimony from Rule 92 *bis* to Rule 92 *ter* and to admit into evidence his testimony in the *Krajišnik* case and the list of documents used during this testimony.⁵³ For the same reason, the Trial Chamber did not consider the Prosecution’s request to convert Andras Riedlmayer’s mode of testimony from Rule 92 *bis* to Rule 92 *ter* and to admit into evidence the transcripts of his testimony in the *Slobodan Milošević* and the *Krajišnik* cases and the associated exhibits thereto.⁵⁴

⁴⁸ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision on the Prosecution motion for reconsideration of the admission of the expert report of Professor Radinović, 21 Feb 2003, para. 9.

⁴⁹ *Popović Appeals Decision*, para. 29.

⁵⁰ *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Defence’s submission of the expert report of Professor Smilja Avramov pursuant to Rule 94 *bis*, 9 Nov 2006, para. 12.

⁵¹ See, for instance, hearing, 14 Dec 2009, T. 4697, in respect of Dorothea Hanson, and hearing, 2 Jun 2010, T. 11284, in respect of Andras Riedlmayer.

⁵² Pre-trial conference, 4 Sep 2009, T. 104.

⁵³ See *supra* para. 2.

⁵⁴ Supplemental Motion, para. 27 a. This concerns the “Photoboard showing various cultural and religious sites”, the “INT TV video footage of Bijeljina of 17 March 1993”, the video entitled “Burning Books: The destruction of a National Library” and the “map of Bosnia showing sites of destroyed mosques”, respectively admitted in the *Slobodan Milošević* case as P488.1, P488.2, P488.3 and P488.4, Supplemental Motion, Annex A.

14. Rule 94 *bis*(B) sets a clear time-limit for responding to a notice provided under Rule 94 *bis*(A). In the absence of any other time-limit set by the Trial Chamber or pre-trial Judge, the opposing party must respond within thirty days of disclosure of the expert report. In the present case, the Rule 94 *bis* notice personally filed by Mićo Stanišić was, on the Trial Chamber's instructions, not accepted by the Registry as the Accused continued to be represented by counsel.⁵⁵ It is noted that the Stanišić Rule 94 *bis* Notice, filed by the previous counsel of Mićo Stanišić, gives notice of the intent to cross-examine the expert witnesses listed in the Rule 94 *bis* Notice, but remains silent as to whether the Stanišić Defence challenges their qualifications or the relevance of their reports. Notably, the Stanišić Defence does not seek leave to supplement its notice at a later date. As a result, the submissions in the Stanišić Response to the Supplemental Motion regarding preclusion of Ewan Brown and Ewa Tabeau as proposed expert witnesses are held to be untimely and will not be considered.

B. Ewan Brown

1. Prosecution submissions

15. Ewan Brown has a degree in Modern History as well as a masters degree in Criminology.⁵⁶ He was employed from 1986 to 1996 as British Army Intelligence Officer "working at various levels of military command, including active service in Northern Ireland, Middle East and Bosnia and Herzegovina."⁵⁷ Ewan Brown "trained and gained experience in the direction, collection, analysis and dissemination of military information and intelligence product [*sic*]."⁵⁸ This work included, *inter alia*:

to understand the organization, command structure use and deployment of armed organizations and forces as well as their likely courses of action during military and other actions. It involved the ability to assess the relevance of technical, documentary and other military material and conduct contextual analysis.⁵⁹

Between 1998 and 2004, the Prosecution employed Ewan Brown as "a senior military analyst and team leader".⁶⁰ As a military analyst and team leader, his duties were to "provide analysis in support of ongoing investigations and prosecutions", including "analysis of military activity in Bosnia and Herzegovina, command responsibility and linkage issues, combat regulations and doctrine, operational and tactical analysis of individual operations."⁶¹

⁵⁵ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision of the Registrar, 13 June 2008, p. 3.

⁵⁶ Rule 94 *bis* Notice, Annex B, Ewan Brown's *curriculum vitae*, p. 1.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Id.*, p. 2.

⁶¹ *Id.*, p. 2.

16. The Prosecution seeks to supplement Ewan Brown's evidence by a witness statement dated 27 and 28 July 2009 and an annex thereto listing additional documents which the Prosecution made available to him.⁶² Ewan Brown was asked to review these documents and assess the effect, if any, on his report. The Prosecution submits that due to other work commitments, Ewan Brown was unable to review his original report until May 2009.⁶³ On 4 August 2009, the Prosecution disclosed the witness statement to the Defence.⁶⁴

2. Defence submissions

17. Both the Stanišić Defence and the Župljanin Defence challenge the qualifications of Ewan Brown as an expert and state they intend to cross-examine him.⁶⁵ Both Defence teams also object to the late disclosure of the evidence which Ewan Brown, upon the Prosecution's request, reviewed in May 2009. The Stanišić Defence submits that "[n]o reason is given to explain what steps the Prosecution took since early 2008 to locate these newly emerged documents, when the documents were received by the Prosecution, and why they were only heralded or disclosed on 31 July 2009."⁶⁶ It notes that the material in question includes "documents and transcript from the *Krajišnik* trial, which presumably have been in the possession of the Prosecution for quite some time."⁶⁷ The Župljanin Defence submits "[a]s Mr. Župljanin's case was joined with that of Mr. Stanišić on 23 September 2008, it is incomprehensible that the Prosecution has just now discovered documents which are necessary to the testimony of Mr. Brown".⁶⁸

3. Findings

18. The Trial Chamber considers Ewan Brown to be qualified as an expert on military analysis within the meaning of Rule 94 *bis*. It is recalled that Mićo Stanišić and Stojan Župljanin are charged with crimes committed in several municipalities by virtue of their participation in a joint criminal enterprise ("JCE") in which they are alleged to have, *inter alia*, "command[ed] and direct[ed] members and agents of the RS MUP who were acting in co-ordination with crisis staffs, the VRS, and other Serb Forces in implementing the objective of the JCE".⁶⁹ Given Ewan Brown's

⁶² The statement provides that "[i]n general, these 'new' documents either gave additional examples to certain issues discussed in the report, reinforced conclusions I had made or filled in a gap in a particular series or sequence of events. Some of my observations with respect to individually selected documents are set below. Unless otherwise noted, I had not seen the documents listed below when I prepared my report", witness statement dated 27 July 2009, p. 3.

⁶³ Consolidated Reply, para. 7.

⁶⁴ Consolidated Reply, para. 7. The review was carried out between 11-15 May 2009, Ewan Brown witness statement, dated 27-28 July 2009, p. 2.

⁶⁵ Stanišić Rule 94 *bis* Notice, p. 3; Stanišić Response, paras 81-92; Župljanin Rule 94 *bis* Notice, paras 6, 7; Župljanin Response, paras 3, 13.

⁶⁶ Stanišić Response, para. 98(e).

⁶⁷ *Ibid.*

⁶⁸ Župljanin Response, para. 12.

⁶⁹ Second amended consolidated indictment, 10 Sep 2009, paras 11. d)-12. b).

professional qualifications, the Trial Chamber holds that he will be able to assist in understanding the military activities of 5th Corps JNA/1st Krajina Corps and its subordinate units during 1992 as well as assist in understanding the regulations and laws governing the procedure and command function of the JNA and VRS.

19. The aim of the Bosanska Krajina Report is “to provide a background analysis of the activity of the Yugoslav National [*sic*] Army (JNA)/Army of the Republika Srpska (VRS) military forces operating in northern Bosnia and Herzegovina (known as the Bosanska Krajina) during 1992”, in particular “on the activity of the key military Corps in the area, the JNA 5th Corps/VRS 1st Krajina Corps”.⁷⁰ The report “is limited scope [*sic*] but attempts to outline the general military developments in the Bosanska Krajina, analyse the chronology and nature of the military attacks conducted by the Bosnian Serb forces during this period and outline the roles, responsibilities and authorities of the Commander of the 5th Corps/1st Krajina Corps.”⁷¹ The report is “based exclusively on an analysis of selected military, police, political and other related documentary material in the possession of the [Prosecution] and is not an exhaustive analysis of all aspects of events in the Bosanska Krajina area between 1991-1992.”⁷² The Trial Chamber considers the Bosanska Krajina Report and the errata sheet to meet the relevant standard of reliability, to be relevant and of probative value and to fall within the area of expertise of Ewan Brown.

20. The Prosecution does not explain when the additional documents, which it asked Ewan Brown to review in May 2009, became available.⁷³ It only states that “further relevant documents had ‘emerged’”.⁷⁴ Furthermore, the Prosecution has not advanced any substantive reason for disclosing this material to the Defence as late as 4 August 2009. Rather, the Prosecution submits that “[n]o time limit was prescribed by the Trial Chamber or the pre-trial Judge in these proceedings regarding the disclosure of expert reports pursuant to Rule 94 *bis*”.⁷⁵ However, the Prosecution overlooks Rule 66(A) which provides that:

[s]ubject to the provisions of Rules 53 and 69, the Prosecutor shall make available to the defence in a language which the accused understands [...] within the time limit prescribed by the Trial Chamber or the pre-trial Judge appointed pursuant to Rule 65 *ter*, copies of the *statements of all* witnesses whom the Prosecutor intends to call to testify at trial (emphasis added).

⁷⁰ Bosanska Krajina Report, p. 4.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ The only information provided is that “a small number of additional documents” and previously unavailable translations of documents were provided “[o]n 30 June and 20 July 1992 [*sic*]” (witness statement dated 27 July 2009, p. 2). According to the witness statement, the Prosecution sent documents to Ewan Brown by email and although there is no specific information as to when this happened, it may be understood from the statement that it was done not long before Ewan Brown’s visit to The Hague on 11-15 May 2009, witness statement dated 27 July 2009, p. 2.

⁷⁴ Supplemental Motion, para. 7.

⁷⁵ Consolidated Reply, para. 5 and fn. 5, where the Prosecution submits that the pre-trial Judge’s oral order at the Rule 65 *ter* conference on 8 July 2009, that disclosure pursuant to Rule 66(A)(ii) was to be completed by 31 July 2009, “does not apply to expert reports, as Rule 94 *bis* is the disclosure rule for this category of witnesses.”

In compliance with the pre-trial Judge's order on 8 July 2009, that disclosure pursuant to Rule 66(A) was to be completed by 31 July 2009, it was incumbent on the Prosecution to provide the new statement by that date. Nevertheless, in view of the fact that the Prosecution disclosed the statement to the Defence in early August 2009, and considering that the material has been in the possession of the Defence for over a year, the Trial Chamber is unable to perceive any undue prejudice to the Defence in this respect. The Trial Chamber also holds that the witness statement and the annex thereto, which lists the additional documents made available to Ewan Brown, meets the minimum standards of reliability, is relevant and has probative value, and falls within the accepted expertise of Ewan Brown.

21. In accordance with the practice followed in this trial, the Trial Chamber will consider admission into evidence of the Bosanska Krajina Report, the errata sheet, Ewan Brown's witness statement and the annex thereto at the end of Ewan Brown's testimony.

C. Andras Riedlmayer

1. Prosecution submissions

22. Andras Riedlmayer holds a Master of Arts in History and Near Eastern studies as well as a Masters of Sciences in Library and Information Science.⁷⁶ He is currently a bibliographer of Islamic Arts in a documentation centre at Harvard University.⁷⁷ His *curriculum vitae* reflects an extensive contribution on aspects of the cultural heritage of the Ottoman-era Balkans, including co-founding the Kosovo Cultural Heritage Project in 1999 of which he remains principal investigator to this date.⁷⁸ He is the author of numerous articles, publications, essays and reports dealing with the issue of cultural destruction during the conflict in the former Yugoslavia and in particular Bosnia and Herzegovina.⁷⁹

23. Following its notice of disclosure of the First and the Second Riedlmayer Reports, along with the Statistical Addendum and the CD-ROM containing the photographic database, the Prosecution stated that it would only rely on the parts of this material which relate to the municipalities listed in the indictment.⁸⁰ The Third Riedlmayer Report was disclosed to the Defence on 31 July 2009⁸¹ and the Fourth Riedlmayer Report – which was prepared in response to Defence complaints that the other reports concerned municipalities outside the scope of the indictment in the

⁷⁶ Rule 94 *bis* Notice, Annex A.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ Supplemental Motion, para. 6.

⁸¹ Consolidated Reply, para. 10. See also Supplemental Motion, para. 7 and fn 8.

present case – was disclosed on 28 August 2009.⁸² In the Prosecution’s submission, “no prejudice would be caused to the Defence” since it would call Andras Riedlmayer towards the end of its case.⁸³

2. Defence submissions

24. Both the Stanišić Defence and the Župljanin Defence gave notice of their intention to cross-examine Andras Riedlmayer.⁸⁴ The Stanišić Defence remained silent as to whether it challenged his qualifications or whether it challenged the relevance of his reports. The Župljanin Defence challenged the qualifications of the witness in a broad fashion.⁸⁵ It challenged the relevance of the First and the Second Riedlmayer Reports as well as the Statistical Addendum.⁸⁶ The Župljanin Defence also submitted that this material contains evidence in relation to a number of irrelevant municipalities and requested the witness to produce an updated report for this case.⁸⁷ Both Defence raised objections to the late disclosure by the Prosecution of new evidence.⁸⁸

3. Findings

25. The Trial Chamber finds that Andras Riedlmayer is qualified as an expert on Balkans cultural heritage within the meaning of Rule 94 *bis*. It also finds that he will be able to assist it in understanding the damage caused during the conflict in Bosnia and Herzegovina to cultural and religious sites of the Bosnian Muslim and Bosnian Croat communities relevant to the indictment.

26. The Trial Chamber holds that all four reports and the other material tendered by the Prosecution through Andras Riedlmayer are relevant and probative and meet the relevant standard of reliability. The reports clearly fall within the area of expertise of Andras Riedlmayer. The references in the reports are detailed and the sources used are clearly indicated. By way of example, the Trial Chamber notes that the First Riedlmayer Report includes, *inter alia*, a damage assessment of each of the places of worship, libraries, educational buildings and cultural sites across nineteen municipalities, as well as descriptions and assessments of documentation sources, documents and maps.⁸⁹ Moreover, the Third Riedlmayer Report “documents cases of the deliberate destruction of

⁸² Consolidated Reply, para. 10.

⁸³ *Ibid.*

⁸⁴ Stanišić Rule 94 *bis* Notice, para. 3; Župljanin Rule 94 *bis* Notice, para. 7

⁸⁵ Župljanin Rule 94 *bis* Notice, para. 8

⁸⁶ *Id.*, para. 9 c.

⁸⁷ *Ibid.*

⁸⁸ Stanišić Response, para. 98(b); Župljanin Response, para. 11.

⁸⁹ First Riedlmayer Report, p. 5.

cultural and religious heritage of the Bosnian Muslim and Bosnian Croat (Roman Catholic) communities during the 1992-1995 war in 22 municipalities".⁹⁰

V. DISPOSITION

27. Pursuant to Rule 94 *bis* of the Rules:

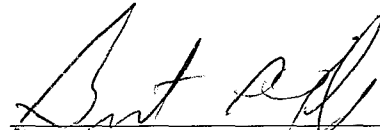
ACCEPTS Ewan Brown as an expert in military analysis;

AFFIRMS its oral decisions of 28 May 2010 and 2 June 2010 that Andras Riedlmayer may be considered a Balkans cultural heritage expert, and admitting into evidence the material tendered through this witness, respectively;

AFFIRMS its oral decision of 15 July 2010 that Ewa Tabeau may be considered an expert in demography;

REMAINS SEISED of the Prosecution's requests to admit into evidence the material tendered through Ewan Brown and Ewa Tabeau, which will be considered at the conclusion of their respective testimony.

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



Judge Burton Hall
Presiding

Dated this of twenty-ninth day of September 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

⁹⁰ Third Riedlmayer Report, p. 6.