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19 July 2013

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**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-09-92-T
Date: 19 July 2013
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orié, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 19 July 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION PURSUANT TO RULE 94 *BIS* IN RELATION TO
PROPOSED EXPERT HELGE BRUNBORG**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 28 March 2013, the Prosecution disclosed (“Notice of Disclosure”) two expert reports co-authored by Helge Brunborg (“Integrated Reports”), two documents accompanying the Integrated Reports (“Accompanying Documents”), and Helge Brunborg’s *curriculum vitae* (“CV”) pursuant to Rule 94 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹

2. On 23 April 2013, the Defence filed a request for an extension of time of 17 days to respond to the Notice of Disclosure.² It indicated that the translation of the Accompanying Documents had not been provided to it in BCS and that therefore, the Defence expert - appointed by the Registry for this purpose - could not analyze the Integrated Reports in full.³ On 26 April 2013, the Prosecution submitted that the translations of the Accompanying Documents would soon be disclosed to the Defence.⁴ With this expectation, the Chamber provisionally set the deadline for the Defence to file its Rule 94 *bis* response by 14 May 2013.⁵

3. By means of an informal communication of 18 June 2013 to the Parties, the Chamber asked the Defence whether the aforementioned translations had been provided to it. On 19 June 2013, the Defence responded informally that it had received them. On 19 June 2013, the Prosecution informed the Defence and the Chamber, by means of an informal communication, of its intention to call this witness to provide evidence pursuant to Rules 92 *ter* and 94 *bis* of the Rules. The following day, 20 June 2013, the Defence filed its Rule 94 *bis* response notice (“Response Notice”).⁶

II. APPLICABLE LAW

4. Rule 94 *bis* (B) provides:

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

¹ Prosecution’s Notice of Disclosure of Expert Report of Dr. Helge Brunborg (RM604) Pursuant to Rule 94 *bis*, 28 March 2013.

² Defence Motion to Enlarge Time to Respond to Prosecution’s Notice of Disclosure of Expert Report of Dr. Helge Brunborg (RM604) Pursuant to Rule 94*bis*, 23 April 2013 (“Motion to Enlarge Response Time”).

³ Motion to Enlarge Response Time, paras 4-5.

⁴ T. 10461.

⁵ Ibid.

⁶ Defense Rule 94*bis* Notice and Objection Relative to Proposed Prosecution Witness Helge Brunborg, 20 June 2013.

- (ii) it wishes to cross-examine the expert witness; and
- (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.

5. Rule 127 (A) of the Rules provides, in part:

[...] a Trial Chamber or Pre-Trial Judge may, on good cause being shown by motion,

- (i) enlarge or reduce any time prescribed by or under these Rules;
- (ii) recognize as validly done any act done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has already expired.

6. The Chamber further recalls and refers to the applicable law set out in a previous decision.⁷

III. DISCUSSION

7. At the outset, the Chamber observes that the Defence filed its Response Notice on 19 June 2013, nearly three months following the Prosecution's Notice of Disclosure and over a month after the extended deadline set by the Chamber. It further observes that the Defence has not requested an additional extension of time. The Response Notice provides no explanation or justification regarding the delay beyond the extended deadline. The Defence noted only that it filed its Response Notice after it had had the opportunity to consult with its own expert "on the topic of this proposed expertise".⁸ Nevertheless, the Chamber has considered whether the late disclosure of BCS translations of the Accompanying Documents could constitute good cause for the late filing. These Accompanying Documents comprise two pages, which were made available in English on 23 March 2013, and which contain a limited amount of text. Even if the translation of these two pages had been transmitted after the 14 May 2013 deadline, which the Defence has not argued, this alone would not justify the delay in filing the Response Notice. In the absence of a showing of good cause by the Defence for its late filing, the Chamber finds that the Response Notice was invalidly filed, and will not further consider it.

8. The Chamber will, *proprio motu*, address the expertise of Mr. Brunborg. His CV shows that he has over 20 years of experience in statistics, demographic research, and analysis.⁹ He obtained a Ph.D. in economics, with a specialization in demography, in 1983. Since then, he has authored a great number of articles in his field of expertise, and acquired substantial experience in

⁷ Decision on Defence Request to Disqualify Richard Butler as an Expert and Bar the Prosecution from Presenting his Reports, 19 October 2012, paras 4-9.

⁸ Response Notice, para. 2.

conducting field missions for the purposes of demographic research in various parts of the world, including to the former Yugoslavia between 1997 and 1999. The Trial Chamber is satisfied that Mr. Brunborg qualifies as an expert, within the meaning of Rule 94 *bis* of the Rules, in demography.

9. Mr. Brunborg co-authored the Integrated Reports with Ewa Tabeau and Arve Hetland.¹⁰ These reports provide updated information regarding an expert report prepared by Helge Brunborg in 2000. On 25 June 2013, the Prosecution indicated by means of an informal communication that Mr. Brunborg will provide evidence pertaining to the background and context of the preparation of the original 2000 expert report, whereas Ms. Tabeau will provide evidence pertaining to the updates to the original report in 2009. The Prosecution indicated that it anticipates filing its Rule 94 *bis* motion regarding Ms. Tabeau at the end of July or beginning of August 2013.

10. The Chamber is satisfied that the Integrated Reports co-authored by Mr. Brunborg fall within his area of expertise, and that they contain information that is relevant and *prima facie* of probative value to the case. In light of the above, the Chamber concludes that Mr. Brunborg may provide testimony in relation to the Integrated Reports as a demographic expert. The Chamber will defer its decision on the admission into evidence of the Integrated Reports until the conclusion of Mr. Brunborg's evidence and, depending on the outcome of the Prosecution's anticipated Rule 94 *bis* motion regarding Ms. Tabeau's proposed expert testimony, the evidence of Ms. Tabeau.

IV. DISPOSITION

11. For the foregoing reasons, and pursuant to Rules 54, 94 *bis* and 127 of the Rules, the Chamber hereby


- (i) **REJECTS** the Response Notice as having been filed in violation of the set time limit;
- (ii) **DECIDES** that Helge Brunborg may testify as an expert witness; and

⁹ Document bearing Rule 65 *ter* no. 4504 (CV of Helge Brunborg).

¹⁰ See documents bearing Rule 65 *ter* nos 11269 (Expert report entitled "The 2009 Integrated Report on Srebrenica Missing Including a Progress Report on DNA-Based Identification", dated 9 April 2009) and 11270 (Expert report entitled "Srebrenica Missing: Persons Reported Missing and Dead after the Take-Over of the Srebrenica Enclave by the Bosnian Serb Army on 11 July 1995", dated 9 April 2009).

- (iii) **DEFERS** its decision on admission into evidence of the Integrated Reports and the Accompanying Documents until the conclusion of Helge Brunborg's testimony and, if applicable, Ewa Tabeau's testimony.

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



Judge Alphons Orie
Presiding Judge

Dated this nineteenth day of July 2013
At The Hague
The Netherlands

[Seal of the Tribunal]