



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

Case No. IT-04-81-T

Date: 9 December 2009

Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Pedro David
Judge Michèle Picard

Registrar: Mr. John Hocking

Decision of: 9 December 2009

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON PROSECUTION'S SUBMISSION OF
SUPPLEMENTARY INFORMATION OF MAJOR
GENERAL MUNGO MELVIN**

The Office of the Prosecutor

Mr. Mark Harmon
Mr. Daniel Saxon

Counsel for the Accused

Mr. Novak Lukić
Mr. Gregor Guy-Smith

TRIAL CHAMBER I (“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 “Prosecution’s Submission of Supplementary Information of Major General Mungo Melvin” with Annex A, filed publicly on 26 November 2009 (“Submission”), and hereby renders its Decision.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 21 October 2009, the Trial Chamber found that Major General Mungo Melvin was an expert on military command and control.¹ Though Major General Melvin’s original expert report and associated exhibits were admitted by an oral ruling on 27 October 2009,² on 26 October 2009 the Trial Chamber directed Major General Melvin to supplement his report by answering the following question:

My question really is: Has it ever happened that, as a form of punishment at the time of disciplining, an officer is told that in fact your right to promotion is now being withdrawn, so don't even hope for a promotion in the next couple of months or so?³

2. The Prosecution’s Submission, which contains supplementary information provided by Major General Melvin (“Supplementary Information”), purports to answer the Trial Chamber’s question.⁴

II. APPLICABLE LAW

3. The applicable law for the admission of expert reports pursuant to 94 *bis* of the Rules has been outlined in previous decisions and the Trial Chamber incorporates it by reference here.⁵

III. DISCUSSION

4. Regardless of whatever probative value it may have, the Trial Chamber finds the Supplementary Information to be inadmissible because it was not authored by an expert whose expertise, in the meaning of Rule 94 *bis*, was established by the Trial Chamber. Unlike a situation where others write an expert report under the supervision and direction of the expert,⁶ here Major General Melvin indicates he has “obtained expert legal advice” from Mr. Humphrey Morrison and

¹ Decision on Mungo Melvin’s Status as an Expert, 21 October 2009.

² Mungo Melvin, T. 9456-9457.

³ Mungo Melvin, T. 9390, 9393 (question by Judge Moloto and the subsequent direction by the Trial Chamber).

⁴ Submission, paras 1-2.

⁵ See *e.g.* Decision on Uncontested Srebrenica Expert Reports, 26 August 2009, paras 5-9; Decision on Expert Reports of Ewa Tabeau, 23 April 2009 (“Tabeau Decision”), paras 6-11; Decision on Expert Report by Richard Phillips, 10 March 2009, paras 5-10; Decision on Expert Reports by Richard Butler, 04 March 2009, paras 7-12.

⁶ *E.g.* Tabeau Decision, para. 12.

that this person wrote the response to the Trial Chamber's question "on [Melvin's] behalf".⁷ The circumstances indicate that the Trial Chamber's question falls outside of Major General Melvin's expertise. For the foregoing reasons, the Trial Chamber finds that the Supplementary Information does not comply with Rule 94 *bis*.

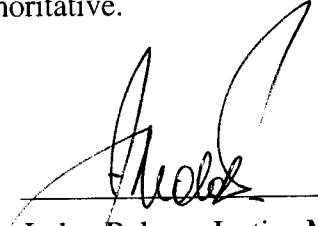
5. Despite its decision, the Trial Chamber would like to express its gratitude to Major General Melvin and others in the British Government for their efforts to assist the Tribunal.

IV. DISPOSITION

6. **FOR THE FOREGOING REASONS** and **PURSUANT TO** Rules 54, 89 and 94 *bis* of the Rules, the Trial Chamber hereby

DENIES the Submission.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this ninth day of December 2009

At The Hague

The Netherlands

[Seal of the Tribunal]

⁷ Supplementary Report, para. 4. Mr. Morrison in turn appears to have been assisted in his drafting by a Mr. Peter Kinross. Supplementary Report, para. 11.