



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: 21 October 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: 21 October 2009

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON MUNGO MELVIN'S STATUS AS AN
EXPERT**

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 Expert Report of Major General Mungo Melvin OBE” with Annexes A and B, filed confidentially on 12 October 2009 (“Submission”), and hereby renders its Decision.

I. PROCEDURAL HISTORY

1. On 17 September 2009, the Trial Chamber allowed the prosecution to substitute expert witness General Constantin Degeratu with Major General Mungo Melvin in its “Decision on Prosecution’s Motion to Substitute Expert Witness” (“Substitution Decision”). On 1 October 2009, the Trial Chamber denied reconsideration of the Substitution Decision in its “Decision on Motion for Reconsideration of Trial Chamber Decision Regarding Substitution of Prosecution Expert Witness” (“Reconsideration Decision”).

2. In its Submission, the Prosecution moves the Trial Chamber to admit into evidence the report authored by Major General Melvin titled “General Questions of Command in Relation to the Case Pertaining Against Momčilo Perišić” (“Report”).¹ On 20 October 2009, the Defence declined to accept the Report in its “Notice Pursuant to Rule 94 *bis* with Regard to Prosecution Witness Mungo Melvin and Request to Lift Confidentiality of Filings” filed publicly by the Defence on 20 October 2009 (“Notice”).

II. SUBMISSIONS

A. Prosecution

3. In support of its Submission, the Prosecution submits that Major General Melvin has ample expertise in the field of generally accepted military principles governing topics related to co-operation, command and control, secondment and command responsibility.² The Prosecution submits that the Report is directly relevant and probative to all counts in the Indictment, particularly the position and authority of the Accused with regard to Yugoslav Army officers serving in the Army of Republika Srpska and the Army of the Republic of Serbian Krajina.³

¹ Motion, Annex A.

² Motion, para. 8.

³ Motion, para. 8.

B. Defence

4. In its Notice, the Defence does not accept the expert report, challenges both its relevance and the qualification of its author and wishes to cross-examine him.⁴ The Defence requests the Trial Chamber to require Major General Melvin to appear for cross-examination in this case and reserves the right to respond on the merits of the Submission by arguing that it is premature to admit the Report into evidence until after the witness' testimony is heard.⁵ The Defence further requests that the confidentiality of the motions and decisions on this matter be lifted, save for the annexes to the "Prosecution Motion to Substitute Expert Witness with Annexes A and B" ("Initial Motion") dealing with internal Prosecution witness records.⁶

III. APPLICABLE LAW

5. The applicable law for admitting expert reports pursuant to 94 *bis* of the Rules has been outlined in its past decisions and the Trial Chamber incorporates it by reference here.⁷

IV. DISCUSSION

6. An analysis of Major General Melvin's Curriculum Vitae ("CV") shows that at the time when he prepared the Report he had over 35 years of military service and is soon to leave his post as General Officer Commanding the UK Support Command to become the Senior Army Member at the Royal College of Defence Studies, London.⁸ Major General Melvin has also authored the British Army Doctrine Publication ("ADP") "Command" and edited and co-authored the ADP "Land Operations", both adopted in the British Army Code.⁹

7. Given Major General Melvin's relevant practical and academic experience in military training and research, the Trial Chamber finds that he has gained specialised knowledge as an expert in the field of military command and control. The Trial Chamber finds that Major General Melvin is qualified as an expert within the meaning of Rule 94 *bis* of the Rules.

⁴ Notice, para. 2.

⁵ Notice, paras 2, 9.

⁶ Notice, para. 6.

⁷ See *e.g.* Decision on Uncontested Srebrenica Expert Reports, 26 August 2009, paras 4-9; Decision on Expert Reports of Ewa Tabeau, 23 April 2009, 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.

⁸ Annex B, CV of Major General Melvin.

⁹ Report, para. 1.2; Annex B, CV of Major General Melvin.

8. Considering the Defence submission that it reserves the right to challenge the admissibility of the Report until after Major General Melvin has given his testimony in court, the Trial Chamber will defer its admissibility decision until the conclusion of the witness' testimony.

9. The Trial Chamber will also defer its decision as to the Defence request for lifting the confidentiality of all the filings related to this matter until it has received a response from the Prosecution.

V. DISPOSITION

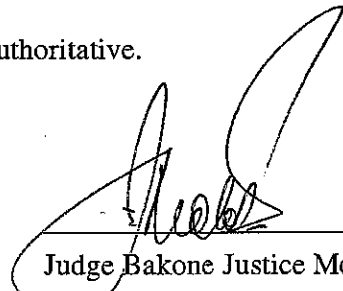
10. **FOR THE FOREGOING REASONS** and **PURSUANT TO** Rules 54, 89 and 94 *bis* of the Rules, the Trial Chamber hereby

ORDERS that Major General Mungo Melvin shall appear before the Chamber as an expert to be examined by the Parties and the Chamber;

DEFERS a decision on the admissibility of the Report until the conclusion of Major General Melvin's testimony; and

URGES the Prosecution to respond to the Defence request to lift the confidentiality of all the filings related to the expert witness' testimony.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this twenty first day of October 2009

At The Hague

The Netherlands

[Seal of the Tribunal]