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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 Former Yugoslavia since 1991

Case No. IT-04-81-T

Date: 4 March 2009

Original: English

**IN TRIAL CHAMBER I**

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

**Acting Registrar:** Mr. John Hocking

**Decision of:** 4 March 2009

**PROSECUTOR**

v.

**MOMČILO PERIŠIĆ**

***PUBLIC***

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**DECISION ON EXPERT REPORTS BY RICHARD  
BUTLER**

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**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 Reports by Richard Butler with Annexes 1 Through 7”, filed publicly on 17 February 2009 (“Submission”) and hereby renders its Decision.

## I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 13 and 20 October 2006, the Prosecution disclosed five reports by Richard Butler to the Defence.<sup>1</sup> In its “Notice Pursuant to Rule 94 bis Concerning Prosecution Expert Richard Butler”, filed publicly on 13 November 2006 (“Notice”), the Defence objected to all five reports. On 7 August 2007, the Prosecution disclosed an “analytical addendum” to one of the reports.<sup>2</sup> On 17 February 2009, the Prosecution submitted the following six reports authored by Richard Butler for admission into evidence:

- i. “VRS Corps Command Responsibility”, dated 5 April 2000 (“First Report”);
- ii. “Srebrenica Military Narrative – Operation Krivaja 95”, dated 15 May 2000 (“Second Report”);
- iii. “Srebrenica Military Narrative (Revised) Operation Krivaja 95”, dated 1 November 2002 (“Third Report”);
- iv. “Chapter 8 Analytical Addendum to Srebrenica Military Narrative”, dated 8 September 2003 (“Fourth Report”);
- v. “VRS Brigade Command Responsibility Report”, dated 31 October 2002 (“Fifth Report”); and
- vi. “VRS Main Staff Command Responsibility Report”, dated 9 June 2006 (“Sixth Report”).<sup>3</sup>

2. In its Notice, the Defence contests the qualifications of the witness, declares that it wishes to cross-examine him and objects to the First, Second, Third, Fifth and Sixth Reports.<sup>4</sup> No notice pursuant to Rule 94 *bis* of the Rules of Procedure and Evidence (“Rules”) in respect of the Fourth Report has been filed.<sup>5</sup> Specifically, the Defence contends that “the basis for [Mr. Butler’s] ‘expertise’ concerning the [Army of the Republika Srpska (“VRS”)] is entirely from his work for the [Office of the Prosecutor (“OTP”)] and not from prior military service in the Yugoslav region”.<sup>6</sup> Moreover, the Defence also objects to the form of the reports, notably by arguing that the reports

<sup>1</sup> Submission, para. 1; Notice, p. 1.

<sup>2</sup> Submission, para. 1.

<sup>3</sup> Submission, para. 1.

<sup>4</sup> Notice, p. 2.

<sup>5</sup> See Submission, para. 2. As the Prosecution, the Trial Chamber has reviewed its records and those of the Registry and could not find any notice filed by the Defence with respect to the Fourth Report, which is the analytical addendum that was disclosed after the other Reports.

are in large part a summarisation of documents that Mr. Butler has read during his employment with the OTP and also incorporate witness interviews and testimony.<sup>7</sup> Moreover, the Defence claims that they are drafted with only a percentage of facts footnoted with source materials.<sup>8</sup> As regards the Fifth and Sixth Reports, the Defence additionally submits that Mr Butler's conclusions and opinions "are mixed with the factual summerizations [*sic*] in a manner which makes it difficult, if not impossible, for the reader to know which are summarized facts and which are opinions".<sup>9</sup> Given this allegedly unclear distinction and that Mr. Butler's reports are based upon facts, which are not being independently admitted into evidence, the Defence contends that the reports are unreliable and that the Trial Chamber would not have the possibility to make its own assessment of reliability.<sup>10</sup>

3. Furthermore, the Defence submits that Mr. Butler is not sufficiently independent to present expert opinion testimony.<sup>11</sup> In particular, the Defence argues that Mr. Butler's "long-standing employment with the OTP has tainted his objectivity" and that his active participation in the investigation has led to his expert tasks being performed with a prosecutorial mandate.<sup>12</sup>

4. In its Submission, the Prosecution argues that "Mr. Butler is fully qualified to testify as an expert about these matters and each of his reports is relevant and probative to important issues at trial."<sup>13</sup> The Prosecution submits that Mr. Butler's "ample expertise in the field of military analysis" is demonstrated by his attached curriculum vitae ("CV") and that previous Trial Chambers have admitted into evidence his reports.<sup>14</sup> The Prosecution further submits that the reports are relevant and probative to the events that occurred in Srebrenica in July 1995, as charged in paragraphs 55 to 62 and counts nine to thirteen of the indictment.<sup>15</sup>

5. With respect to the Defence objection to the form of Mr. Butler's reports, the Prosecution responds that it is similar to other reports already admitted into evidence by this Trial Chamber – such as the expert report of Morten Torkildsen admitted as Exhibit P310.<sup>16</sup> According to the Prosecution, Mr. Butler used his expertise "to review documents and other evidence, select the most

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<sup>6</sup> Notice, p. 2.

<sup>7</sup> Notice, pp 2-3, 7.

<sup>8</sup> Notice, p. 3.

<sup>9</sup> Notice, p. 3.

<sup>10</sup> Notice, pp 8-9.

<sup>11</sup> Notice, p. 4.

<sup>12</sup> Notice, pp 4-6, referring to *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Request for Certification of Interlocutory Appeal of Decision on Admission of Witness Philip Coo's Expert Report, 30 August 2006, para. 1.

<sup>13</sup> Submission, para. 1.

<sup>14</sup> Submission, para. 2.

<sup>15</sup> Submission, para. 2, referring to Prosecution Filing of Revised Second Amended Indictment with Annex A, 5 February 2008, Annex A ("Indictment"), paras 55-62.

<sup>16</sup> Submission, para. 4 and fn. 9.

relevant materials and draw appropriate conclusions”.<sup>17</sup> In particular, the Prosecution disputes the Defence’s view that the reports are mere summaries of evidence. On the contrary, the Prosecution submits that “Mr. Butler used objective professional criteria to select relevant documents and organize them so that they offer a comprehensive picture which will assist the Trial Chamber” and that the reports therefore “reflect much more than ‘summaries’ of the source materials”.<sup>18</sup>

6. As to the Defence’s challenge of Mr. Butler’s qualifications as an expert, the Prosecution submits that his “qualifications as an expert in the field of military analysis are beyond dispute”.<sup>19</sup> Concerning the Defence’s contestation of Mr. Butler’s independence, the Prosecution submits that questions about an expert’s lack of independence are matters that do not affect the admissibility of his evidence, but rather go to the weight to be attached to it. Mr. Butler’s previous employment with the OTP should therefore not result in the exclusion of his reports.<sup>20</sup>

## II. APPLICABLE LAW

7. Rule 94 *bis* of the Rules reads as follows:

### Rule 94 *bis* Testimony of Expert Witnesses

- (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
  - (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.

8. The jurisprudence of the Tribunal has established a number of requirements which must be met before an expert statement or report is admissible in evidence. They include:

- i) the proposed witness is classified as an expert;
- ii) the expert statements or reports meet the minimum standard of reliability;

<sup>17</sup> Submission, para. 4.

<sup>18</sup> Submission, para. 7.

<sup>19</sup> Submission, para. 5.

<sup>20</sup> Submission, para. 6.

iii) the expert statements or reports are relevant and of probative value; and

iv) the content of the expert statements or reports falls within the accepted expertise of the witness.<sup>21</sup>

9. The term “expert” has been defined by the jurisprudence of the Tribunal as “a person whom [sic] by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute”<sup>22</sup>. In determining whether a particular witness meets these criteria, the Trial Chamber should take into account the witness’s former and present positions and professional experience through reference to the witness’s CV as well as the witness’s scholarly articles, other publications or any other pertinent information about the witness.<sup>23</sup>

10. The content of the statement or report must fall within the expert witness’s area of expertise.<sup>24</sup> This requirement ensures that the statements or reports of an expert witness will only be treated as expert evidence, insofar as they are based on the expert’s specialised knowledge, skills or training. Statements that fall outside the area of expertise will be treated as personal opinions of the witness and will be weighted accordingly.<sup>25</sup> Generally, an expert witness should not offer his or her opinion on the criminal liability of the accused. This is a matter that falls within the competence of the Chamber.<sup>26</sup>

11. Experts may express their opinion within the confines of their expertise on the facts established in evidence if the opinion is relevant to the case.<sup>27</sup>

12. The evidence sought to be admitted into evidence pursuant to Rule 94 *bis* of the Rules must fulfil the general requirements of admissibility. The proposed evidence must therefore be relevant and have probative value, and the probative value must not be substantially outweighed by the need to ensure a fair trial.<sup>28</sup>

<sup>21</sup> *Prosecutor v. Milan Lukić and Sredoje 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 July 2008, para. 15.

<sup>22</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002, p. 2.

<sup>23</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Expert Status of Reynaud Theunens, 12 February 2008 (“Šešelj Decision”), para. 28, with further references; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Defence Expert Witnesses, 21 August 2007, para. 6, with further references.

<sup>24</sup> *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 November 2006 (“Martić Decision”), para. 12.

<sup>25</sup> *Ibid.*, para. 12.

<sup>26</sup> *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 March 2008, para. 12.

<sup>27</sup> *Martić Decision*, para. 10.

<sup>28</sup> Rule 89(C) and (D) of the Rules.

### III. DISCUSSION

#### A. Qualification of Mr. Butler as an Expert Witness

13. An analysis of Mr. Butler's CV shows that he has had sixteen years of experience in military intelligence and analysis at various levels, relating to several geographic areas and in different units of the United States Army ("U.S. Army") prior to his employment with the OTP.<sup>29</sup> His relevant professional training includes the "U.S. Army Military Intelligence Warrant Officer Technical Certification Course" and the "U.S. Army Military Intelligence Warrant Officer Advance Course".<sup>30</sup>

14. According to his CV, Mr. Butler's responsibilities as Warrant Officer and Chief Warrant Officer comprised, *inter alia*, analysis of traditional battlefield operating systems of potential hostile land forces, tactical intelligence at Division and Corps levels, as well as detailed analysis of potential hostile ground forces, including command and control, mobilisation, operational movements, tactical operations and logistics.<sup>31</sup>

15. While it is true that Mr. Butler acquired familiarity with the VRS only during his position as military analyst for the OTP, the Trial Chamber recalls the established jurisprudence of the Appeals Chamber that:

Expert witnesses are ordinarily afforded wide latitude to offer opinions within their expertise; their views need not be based upon firsthand knowledge or experience. *Indeed, in the ordinary case the expert witness lacks personal familiarity with the particular case*, but instead offers a view based on his or her specialized knowledge regarding a technical, scientific or otherwise discrete set of ideas or concepts that is expected to lie outside the lay person's ken.<sup>32</sup>

16. In this context, the Trial Chamber notes that the Appeals Chamber, when requested to rule on a similar objection concerning Mr. Butler in the *Popović et al.* case,

[was] of the opinion that the fact that Butler may have acquired his knowledge on the organization and the general procedures of the VRS solely as a result of his six years of employment with the Prosecution — an allegation which is not substantiated by the Appellants — does not in itself affect his qualification as an expert.<sup>33</sup>

<sup>29</sup> See Submission, Public Annex 7, p. 3.

<sup>30</sup> Submission, Public Annex 7, p. 4.

<sup>31</sup> Submission, Public Annex 7, p. 3, emphasis added.

<sup>32</sup> *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. 27; *Laurent Semanza v. Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005, para. 303; *Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 198.

<sup>33</sup> *Popović* Appeal Decision, para. 29.

On the contrary, the Appeals Chamber ruled that “it was perfectly within the Trial Chamber’s discretion to find that Butler had the required technical knowledge on the organization and procedures of the VRS”.<sup>34</sup>

17. Given Mr. Butler’s past positions and professional experience, the Trial Chamber is satisfied that he has gained specialised knowledge as an expert in the field of military analysis and is therefore qualified as an expert within the meaning of Rule 94 *bis* of the Rules.

### **B. Reliability and Independence of Mr. Butler’s Proposed Expert Evidence**

18. The Trial Chamber dismisses the Defence submission that, by virtue of his association with the Prosecution, Mr. Butler does not possess the objectivity and independence required by an expert witness. The Trial Chamber recalls that concerns affecting the impartiality or credibility of an expert witness should not necessarily result in exclusion, but may affect the weight accorded to that evidence.<sup>35</sup>

19. Furthermore, the Trial Chamber notes that in its decision in *Popović et al.* case, the Appeals Chambers confirmed with respect to Mr. Butler that “the mere fact that an expert witness is employed or paid by a party does not disqualify him or her from testifying as an expert witness”<sup>36</sup> and that the *Popović et al.* Trial Chamber had not erred in law when finding that concerns related to connections between Mr. Butler and the party calling him, or bias to the position of one side, were not related to his qualifications as an expert.<sup>37</sup>

### **C. Admissibility of the First, Fifth and Sixth Reports**

20. The First, Fifth and Sixth Reports provide detailed analyses of the roles, functions and military organisation of several entities and positions within the VRS, with a special emphasis on the lines of responsibility and authority of senior commanders in effect during the time period relevant to the Srebrenica crimes charged in the Indictment.

21. The First Report defines the VRS entity known as Corps and focuses on the positions of Corps Commander and Corps Chief of Staff. It consists of a synopsis of the background and conditions in which the VRS was formed; an examination of the authorities and responsibilities of the VRS Corps Commander and Corps Chief of Staff as well as the Corps Staff and associated bodies; a review of the institutions and authorities regarding the appointment of these positions and

<sup>34</sup> *Popović* Appeal Decision, para. 30.

<sup>35</sup> Decision on the Defence Motion to Exclude the Expert Reports of Robert Donia, 27 October 2008 (“Donia Decision”), para. 13; *Šešelj* Decision, paras 30-31, with further references.

<sup>36</sup> *Popović* Appeal Decision, para. 20.

control over subordinates; and an evaluation of legal authorities available to maintain order and discipline as well as prevent and prosecute crimes by subordinates. Based on his expertise, Mr. Butler finally draws conclusions from the contents analysed in the Report.

22. The Fifth Report focuses on the analysis of the Brigade echelon as a military entity within the structure of the VRS, paying special attention to the Zvornik Infantry Brigade and the Bratunac Light Infantry Brigade. The Report consists of several sections dealing with the relevant regulations of the former JNA as applied to the VRS units in regard to the responsibilities and authority of senior officers including, *inter alia*, Chief of Staff, Brigade Commander and Assistant Commander for Security; the relationship between the VRS and the Republika Srpska Ministry of Interior special police units ("RS MUP Special Police"); as well as discussing the responsibility of the VRS senior officers with regard to both prevention and prosecution of subordinates for war crimes and crimes against humanity. Based on his expertise, Mr. Butler finally draws conclusions from the contents analysed in the Report.

23. Finally, the Sixth Report is dedicated to the VRS Main Staff. It provides a background synopsis of the origins and establishment of the Main Staff in the context of the wider development of the VRS; a description of the organisation, roles and functions of the Main Staff and relevant positions within it; as well as a discussion of the role of the VRS Main Staff in operations related to alleged crimes committed in and around Srebrenica in 1995.

24. At the outset, the Trial Chamber notes that the First, Fifth and Sixth Reports follow a methodology often used in previously admitted expert reports. Based on documents and other information sources, the author discusses issues relevant to the Indictment and draws conclusions based on his expertise. Mindful of the Defence objection that "numerous facts are stated with only a percentage of such facts footnoted with source materials"<sup>38</sup>, the Trial Chamber is nevertheless satisfied that facts stated in these Reports are generally supported by references used. Furthermore, the paragraph cited in the Defence Notice in support of this objection is taken from a section entitled "Background Synopsis".<sup>39</sup> In this context, the Trial Chamber notes that introductions, synopses, summaries and conclusions in the Reports tend to have fewer footnote references than the more analytic parts, as the former usually summarise or recall facts and findings reached elsewhere in the latter.

25. Nonetheless, the Trial Chamber believes that more explicit and detailed referencing would have been appropriate in some instances, as would an independent section on the opinions and

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<sup>37</sup> *Popović* Appeal Decision, para. 23.

<sup>38</sup> Notice, p. 3.



conclusions in the Sixth Report. However, these shortcomings do not invalidate the overall reliability of these Reports. Moreover, they might be suitably addressed by the Parties and, if necessary, the Trial Chamber itself during the examination of Mr. Butler and will be taken into consideration when determining the weight to be attached to these Reports.

26. Furthermore, the Trial Chamber finds that the concerns advanced by the Defence that Mr. Butler's opinions and conclusions are mixed with factual summaries in the Fifth and Sixth Reports might also have an impact on the weight given to these Reports. According to this Trial Chamber's previous practice, such concerns can be properly addressed by calling the expert witness for cross-examination.<sup>40</sup>

27. With regard to the documents underlying these reports, the Trial Chamber reiterates its view that "it is not a requirement that *all* the sources used by an expert in the report are admitted into evidence as such an approach would unnecessarily burden the trial record. Rather, it is up to the Defence to challenge their use or confront an expert with them during cross-examination if the need arises. Such challenges shall be taken into account by the Trial Chamber in assessing the probative value of the report, including its reliability."<sup>41</sup>

28. The Trial Chamber finds that the contents covered in the First, Fifth and Sixth Reports generally fall within Mr. Butler's area of expertise, which, according to his CV, includes analysis of foreign forces covering command and control.<sup>42</sup>

29. Finally, the Trial Chamber finds that the organisation and general procedures of the VRS, and particularly of those units allegedly involved in the underlying crimes as charged in paragraphs 55 to 62 and counts nine to thirteen of the Indictment, are issues of importance in these proceedings. Therefore, the First, Fifth and Sixth Reports are relevant and probative for the purposes of this case.

#### **D. Admissibility of the Second, Third and Fourth Reports**

30. The Second, Third and Fourth Reports provide together a detailed military narrative based on an analysis of the military fact-base concerning events pertaining to the Srebrenica crime-sites.

31. The Second Report examines the links of the VRS, and specifically of its Drina Corps, to a multitude of alleged criminal acts that occurred in connection with the capture of the Srebrenica

<sup>39</sup> Notice, p. 3; Submission, Annex 6, para. 4.2.

<sup>40</sup> See Donia Decision, para. 16.

<sup>41</sup> Decision on Defence Motion to Exclude the Expert Report of Torkildsen, 30 October 2008 ("Torkildsen Decision"), para. 18; Decision on Defence Motions to Exclude Reports and Preclude Additional Reports of Expert Witness Reynaud Theunens ("Theunens Decision"), 2 December 2008, para. 20.

<sup>42</sup> Submission, Annex 7, p. 3.

“safe area” in July 1995 as well as the role of senior VRS figures in these events. It consists, *inter alia*, of a portrayal of the historical background and organisational developments of the VRS Drina Corps; a description of relevant units and commanders; details of combat activities in and around the area; an assessment of the meetings that took place in Hotel Fontana in July 1995; as well as the description of events that led to the alleged mass executions in and around Srebrenica. Finally, Mr. Butler presents his detailed analysis of the role of several prominent VRS figures in these events as well as in the attempts to conceal these events.

32. The Third Report provides a revised military narrative incorporating additional information that became subsequently available. In particular, it expands the scope of the Second Report to examine the conduct of subordinate units of the VRS Drina Corps, the VRS Main Staff and the RS MUP Special Police. Finally, the Fourth Report constitutes an addendum to the chapter of the Third Report which deals with the information pertaining to Bosnian Muslim males known to be in the custody of the VRS Drina Corps and who are now listed as missing.

33. The Trial Chamber notes that the Second, Third and Fourth Reports offer a meticulous reconstruction of events related to alleged crimes based on an investigative analysis of various documents taken from several sources. These Reports also contain information as to the sources used and detailed references to these sources. At the end of each Report, conclusions are drawn by Mr. Butler based on his expertise. In this context, the Trial Chamber further notes the Defence acknowledgement that the “Srebrenica Military Narratives have sections where Mr. Butler offers opinions and conclusions drawn from the balance of his report” and therefore constitute an “exception to this mixing of fact and opinion” that the Defence has identified in respect to other reports.<sup>43</sup>

34. The Trial Chamber is mindful that the Second, Third and Fourth Reports touch upon the issue of criminal responsibility of several VRS officers for the conduct in and around Srebrenica in July 1995. As such, being of a legal nature, these matters fall outside Mr. Butler’s expertise and should be reserved for the Trial Chamber’s decision at the end of the case, on the basis of the totality of the evidence. At the same time, however, the Trial Chamber notes that these Reports do not mention the conduct or mental state of the Accused, let alone draw any conclusions on the ultimate issue of his criminal responsibility. In accordance with its previous practice, the Trial Chamber will accord appropriate weight to those portions of the Reports which penetrate the Trial

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<sup>43</sup> Notice, p. 3. The Trial Chamber notes that this relates to the Second and Third Report only since the Defence has not filed notice regarding the Fourth Report.

Chamber's sole province to reach conclusions and find facts in rendering judgement, rather than discarding the Reports in their entirety.<sup>44</sup>

35. With regard to the documents underlying these reports, the Trial Chamber reiterates its view stated elsewhere in the present Decision.<sup>45</sup> Accordingly, the Trial Chamber holds that any flaws as to the sources used or referencing can be dealt with during cross-examination.

36. This notwithstanding, the Trial Chamber notes that the military narrative in the Second, Third and Fourth Reports are based to a large extent upon facts and events that constitute the very factual foundation for the crimes charged in respect of the area of Srebrenica in July 1995 and that this type of evidence is best proffered through and corroborated by eye-witness evidence. In the absence of any such evidence or equivalent evidence established through agreed or adjudicated facts, the Trial Chamber will accord minimal weight to the factual contents of these Reports in the context of its overall assessment of the trial record.

37. Based on its evaluation of Mr. Butler's CV, the Trial Chamber finds that the analysis of military and other documents with a view to establishing a detailed military narrative based on tactical operations, unit mobilisation, operational movements and logistics of foreign forces falls within the expertise of Mr. Butler.<sup>46</sup> Moreover, the Second, Third and Fourth Reports address important issues relevant to underlying crimes as charged in paragraphs 55 to 62 and counts nine to thirteen of the Indictment. Therefore, the Second, Third and Fourth Reports are relevant and probative for the purposes of this case.

#### IV. DISPOSITION

38. **FOR THE FOREGOING REASONS** and **PURSUANT TO** Rules 54, 89 and 94 *bis* of the Rules, the Trial Chamber  
**GRANTS** the Prosecution Submission and **ADMITS INTO EVIDENCE** the First, Second, Third, Fourth, Fifth and Sixth Reports;  
**ORDERS** that Mr. Richard Butler shall appear before the Trial Chamber as an expert to be examined by the Parties and the Trial Chamber and **DISMISSES** the Defence Notice in all other respects; and

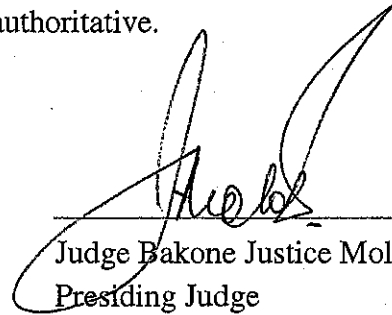
<sup>44</sup> See Decision on Expert Report of P.J.J. van der Weijden, 29 January 2009, para. 18; Decision on Expert Report of Richard Higgs, 26 January 2009, para. 15; Decision on Expert Report of Jožef Poje, 13 January 2009, para. 11.

<sup>45</sup> See para. 27 *supra*.

<sup>46</sup> See Submission, Public Annex 7, p. 3.

**REQUESTS** the Registry to assign exhibit numbers to the First, Second, Third, Fourth, Fifth and Sixth Reports.

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



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Judge Bakone Justice Moloto  
Presiding Judge

Dated this fourth day of March 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**