



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-05-88-T

Date: 11 March 2008

Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost
Judge Ole Bjørn Støle – Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 11 March 2008

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVIČANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC

**DECISION ON DEFENCE OBJECTIONS TO ADMISSION OF THE
EXPERT STATEMENT OF GENERAL RUPERT SMITH**

Office of the Prosecutor

Mr. Peter McCloskey

Counsel for the Accused

Mr. Zoran Živanović and Ms. Mira Tapušковиć for Vujadin Popović
Mr. John Ostojić and Mr. Christopher Meek for Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Drago Nikolić
Mr. Aleksandar Lazarević and Mr. Miodrag Stojanović for Ljubomir Borovčanin
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Milan Gvero
Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević

THIS 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”);

BEING SEISED OF “General Miletić’s Objection to the Admission into Evidence of General Smith’s Expert Statement”, filed in the original French on 21 November 2007 (“Miletić Objection”),¹ in which Miletić opposes the admission of the “Expert Statement of General Sir Rupert Smith Taken 13 July 2006”² (“statement”), in its entirety, and alternatively identifies passages which should be redacted, and “Passages of the Expert Statement of General Smith to Which Objection is Taken by Milan Gvero”, filed on 21 November 2007 (“Gvero Objection”), in which Gvero identifies passages of the statement which should be redacted;

RECALLING that following General Smith’s testimony on 9 November 2007, Miletić and Gvero objected to the admission of the statement arguing that portions of it exceed the scope of General Smith’s expertise as established by the Trial Chamber, at which time the Trial Chamber ordered them to file written submissions identifying the specific passages of the statement to which they objected, and specifying that the Trial Chamber did not require any additional argumentation;³

RECALLING the “Second Decision Regarding the Evidence of General Rupert Smith” (“Second Decision”), issued on 11 October 2007, in which the Trial Chamber held that General Smith would be “allowed to testify as an expert with regard to the history, function and importance of a Main Staff in general, but not as an expert with regard to the function and operation of the VRS Main Staff, nor with regard to the command doctrine of the VRS”;⁴

CONSIDERING that wherever the statement includes opinion which goes beyond the limits established in the Second Decision, the Trial Chamber will have no regard to that evidence as expert opinion and, therefore, that it is not necessary to redact the statement;

PURSUANT TO Rules 54 and 89,

¹ 28 November 2007 (English translation).

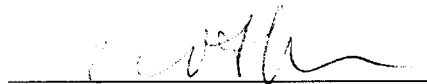
² Tendered as Ex. 6D00183.

³ T. 17831–17832 (9 November 2007).

⁴ Second Decision, p. 5.

HEREBY DENIES the Miletić Objection and the Gvero Objection.

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



Carmel Agius
Presiding

Dated this eleventh day of March 2008
At The Hague
The Netherlands

[Seal of the Tribunal]