

**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: 27 October 2008
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr. Hans Holthuis

Decision of: 27 October 2008

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON DEFENCE MOTIONS TO EXCLUDE
THE EXPERT REPORTS OF MR. PATRICK J.
TREANOR**

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 seized of the “Notice Pursuant to Rule 94bis(B) Concerning Prosecution Expert Mr. Patrick Treanor and Motion to Exclude” (“First Defence Motion”) and the “Public Motion to Strike Supplemental Report of Prosecution Witness Patrick Treanor” (“Second Defence Motion”) filed publicly on 6 December 2006 and on 23 September 2008 respectively, whereby the Defence requests the Trial Chamber to refuse the admission of the following reports of Mr. Patrick J. Treanor:¹ “The Belgrade Leadership and the Serbs in Croatia and Bosnia, 1990-1995” (“First Report”)² and “Momčilo Perišić and the Supreme Defence Council 1993-1998” (“Second Report”)³ (collectively, “Reports”). The Trial Chamber hereby renders its Decision.

I. PROCEDURAL HISTORY

1. On 14 June 2006, the pre-trial Judge ordered the Prosecution “to provide the reports of any expert witnesses to be called” and set the deadline of 20 October 2006 (“Order of 14 June 2006”).⁴ On 13 October 2006, the Prosecution provided an initial version of the First Report to the Defence.⁵ On 6 December 2006, the Defence filed its First Defence Motion, whereby it objected to Mr. Treanor’s status as an expert and his First Report. On 20 December 2006, the Prosecution filed publicly its “Response to Defence Motion to Strike Treanor Report” (“First Prosecution Response”) opposing the First Defence Motion. On 2 February 2007, the Trial Chamber issued its “Order on Defence Submissions Regarding Various Experts’ Reports Disclosed by the Prosecution Pursuant to Rule 94bis” (“Order of 2 February 2007”), in which it deferred the decision on the merits of the parties’ submissions to the Trial Chamber that would hear the case at trial.⁶

¹ Both reports are contained in the “Submission of Expert Reports by Mr. Patrick J. Treanor”, filed confidentially by the Prosecution on 19 September 2008 (“Prosecution Submission”).

² Annex A to the Prosecution Submission. The First Report is dated 1 September 2008.

³ Annex B to the Prosecution Submission. The Second Report is dated 10 September 2008.

⁴ Status Conference, 14 June 2006, T. 50. On 5 October 2006, the Prosecution filed a “Motion to Vacate Order of 14 June 2006 Concerning Filing Time for Military Experts Reports with Confidential Annex A” (“Motion to Vacate”). The Motion to Vacate was denied on 11 October 2006. *See* Decision on Prosecution’s Motion to Vacate Order of 14 June 2006. *See also* Status Conference, 11 October 2006, T. 66.

⁵ According to the Prosecution, the First Report corrects “some minor deficiencies” present in the report provided to the Defence on 16 October 2006, *see* Prosecution Submission, para. 1.

⁶ Order of 2 February 2007, para. 10. *See also* Status Conference, 18 January 2008, T. 131. On 19 February 2007, the Prosecution filed its “Response to Trial Chamber’s Order on Defence Submissions Regarding Various Experts’ Reports Disclosed by the Prosecution Pursuant to Rule 94bis”, wherein the Prosecution notified the Trial Chamber that it complied with the Order of 2 February 2007 in relation to the matters decided by the Trial Chamber at the pre-trial stage.

2. On 19 September 2008, the Prosecution filed a revised version of the First Report and the Second Report.⁷ On 23 September 2008, the Defence filed its Second Defence Motion in which it requests the Trial Chamber to refuse the admission of the Second Report or if “the report is allowed, grant the Defence a reasonable time to prepare for the cross-examination of Mr. Treanor”.⁸

3. On 3 October 2008, the Prosecution filed publicly the “Prosecution’s Supplement to ‘Submission of Expert Reports by Mr. Patrick J. Treanor’” (“Supplemental Prosecution Submission”), in which the Prosecution submitted an updated Curriculum Vitae (“CV”) of Mr. Treanor. On 8 October 2008, the Prosecution filed confidentially its “Response to Public Motion to Strike Supplemental Report of Prosecution Witness Patrick Treanor” (“Second Prosecution Response”), objecting to the Second Defence Motion.

4. On 15 October 2008, the Defence filed a “Confidential Request for Leave to File a Reply and Reply to Prosecution’s Response to Defence ‘Motion to Strike Supplemental Report of Prosecution Witness Patrick Treanor’” (“Defence Reply”).

II. SUBMISSIONS OF THE PARTIES

5. The First Report states that it “describes several aspects of the break-up of the former Yugoslavia during the years 1990-1995” and is concerned with “the goals of Serbian leaders during this process and the state structures they sought to create for the Serbian people, hitherto united within the Socialist Federal Republic of Yugoslavia”.⁹ The Second Report states that it “examines the proceedings of the Supreme Defence Council (“SDC”) of the Federal Republic of Yugoslavia (“FRY”) during the years 1993-1998 in order to facilitate an evaluation of the role of Momčilo Perišić during that period”.¹⁰

6. The Defence submits that it does not accept the Reports and advances the following arguments in support:

- a) The Prosecution has not specified a particular area of expertise for Mr. Treanor. In particular, the Prosecution has indicated that Mr. Treanor is a “political expert” but has not indicated the types of issues on which a political expert is qualified to give expert evidence. Furthermore, the Prosecution has not established that Mr. Treanor is a qualified “political

⁷ Prosecution Submission, para. 1.

⁸ Second Motion, para. 41.

⁹ Annex A to the Prosecution Submission, para. 1.

¹⁰ Annex B to the Prosecution Submission, para. 1.

expert” and that his opinions constitute expert and not individual opinions.¹¹ In the view of the Defence nothing in his CV reflects any specialized knowledge on Mr. Treanor’s part “which establishes that his expertise to render political interpretations or political opinions regarding the materials he has read is beyond the ability of the Trial Chamber itself”.¹²

- b) Even if Mr Treanor is considered a political expert, his Reports fall outside his scope of expertise.¹³ The Defence notes, in this regard, that in the First Report, Mr. Treanor “interprets and offers opinions concerning the meaning of laws enacted in various states” and “selectively excerpts, interprets and gives opinions concerning international legal materials”.¹⁴ As for the Second Report, the Defence argues that it is inappropriate for Mr. Treanor’s report to deal with military and finance matters as “nowhere in his CV, studies, or background does Mr. Treanor list any military experience or education”.¹⁵ There is also no indication that he has “any expertise regarding the budgets and finances of military groups.”¹⁶
- c) By virtue of his association with the Office of the Prosecutor (“OTP”) Mr. Treanor does not possess the objectivity and independence required of an expert witness.¹⁷
- d) The Reports are in large part merely a selection or a summarization of documents “which, if they are offered and admitted as exhibits the Trial Chamber is well suited to assess their proper weight and importance”.¹⁸ Furthermore, in the Defence’s view, “the process of summarising facts which the Trial Chamber is obliged to consider does not require expertise beyond that which is within the capacity of any tribunal of fact”.¹⁹

¹¹ First Defence Motion, paras 1-3; Second Defence Motion, paras 15-21. In the First Defence Motion, the Defence also argues that in the First Report, his “opinions and conclusions” are mixed with factual summary in a manner which makes it difficult, if not impossible, for the reader to know which are summarised facts and which are opinions”, First Motion, p. 5.

¹² Reply, para. 6. The Defence also argues that if the Prosecution through the Expert intends to have Mr. Treanor render an opinion on “the meaning of the matters discussed during the SDC meetings, then his ‘expert opinion’ testimony will improperly and entirely usurp the Trial Chamber’s function as the fact-finder”. If instead his opinion is about the “political context as a historical matter, then the dates of the meetings are self-explanatory and Mr’s Treanor’s testimony is superfluous on that point”, *ibid*, para. 10.

¹³ First Defence Motion, p. 5; Second Defence Motion, paras 22-26. *See also* Reply, para. 12.

¹⁴ First Defence Motion, pp 5, 10-11.

¹⁵ Second Defence Motion, para. 25. *See also* Reply, para. 11.

¹⁶ Second Defence Motion, para. 25.

¹⁷ First Defence Motion, pp 5-9, citing *Prosecutor v. 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 (“*Milutinović et al* Decision”).

¹⁸ First Defence Motion, pp 4, 8-9. *See also*, Reply, para. 13. The Defence also submits that the First Report “is drafted with numerous facts and conclusions stated with only a percentage of such facts footnoted with source materials.” Furthermore, the vast majority of the documents cited by Mr. Treanor as source materials in the First Report “relate to matters which predate the temporal range of the Indictment”, *ibid*. p. 5; Second Defence Motion, paras 27-33.

¹⁹ First Defence Motion, p. 10 referring to *Prosecutor v. Milosević*, Case No. It-02-54, Decision on Admissibility of Prosecution Investigator’s Evidence, 30 September 2002, para. 17; Second Defence Motion, paras 27-33.

7. Finally, over and above the foregoing objections, the Defence submits that the Second Report has been submitted untimely and well beyond the deadline imposed by the Trial Chamber for the submission of expert reports and should be stricken for this reason alone.²⁰

8. In its responses to the First and Second Defence Motions, the Prosecution opposes the Defence submissions and advances the following arguments:

- a) Mr. Treanor's professional background as a historian and political expert as outlined in his CV qualifies him to be an expert witness. He has specialised knowledge relating to the dissolution of the SFRY and the ensuing ethnic conflicts. His extensive knowledge based on reviewing original documentation at the OTP over the last 14 years can assist the trier of fact to understand or determine issues in dispute.²¹ This is also proved by the fact that Mr. Treanor has testified in previous cases before the Tribunal.²²
- b) In respect of the argument that Mr. Treanor has been selective in compiling his Reports, the Prosecution submits that any report by an expert who has reviewed a great quantity of material cannot be expected to include a comprehensive summary of every document consulted. A degree of selectivity is required. The relevant question is not whether the expert has been selective, but whether he has been "*unfairly* selective".²³ Furthermore, in general, in the view of the Prosecution, "the proper vehicle" for addressing all concerns raised by the Defence on the methodology employed by Mr. Treanor is cross-examination.²⁴
- c) In respect of the argument that Mr. Treanor is not sufficiently independent, the Prosecution submits that it is the general practice of the Tribunal to admit the reports and hear the oral evidence of substantially qualified experts who are Tribunal employees, and to take the employment issue into account when determining the weight to be given to expert evidence. In addition, the Defence is "at liberty to nominate its own expert witness" or "submit evidence during the Defence case to counter assertions in the Treanor Report which it contests".²⁵ Therefore, in light of these procedures, exclusion of the Reports would be "a drastic and disproportionate measure", depriving the Trial Chamber of useful assistance and guidance in navigating a large quantity of written material.²⁶

²⁰ Second Defence Motion, paras 8-9, 34-36; Reply, paras 15-16.

²¹ First Prosecution Response, para. 13; Second Prosecution Response, paras 8-9.

²² Second Prosecution Response, paras 8-9 referring to *Brdanin* and *Krajišnik* cases.

²³ First Prosecution Response, paras 11-12. Second Prosecution Response, paras 17-24.

²⁴ First Prosecution Response, para. 14. Second Prosecution Response, para. 21.

²⁵ First Prosecution Response, paras 15-18, 19-27.

²⁶ First Prosecution Response, paras 18, 27. Second Prosecution Response, para. 24.

- d) The Prosecution further submits that by providing a useful overview of large quantities of relevant written material, the Reports may enhance the expeditious conduct of the proceedings.²⁷ Furthermore, with respect to the argument that the Second Report is an inadmissible summary of evidence, the Prosecution submits that Mr. Treanor is not a summary witness but an expert witness, and his opinions will assist the Trial Chamber in understanding the political context of the events analysed in the Reports.²⁸
- e) In relation to the Defence argument that Mr. Treanor makes conclusions and opinions also in respect of legal documents, the Prosecution submits that “to prevent Mr. Treanor from referring to a document merely because that document happens to be a law of a particular entity [...] would be an artificial limitation which would prevent Mr. Treanor from providing a full account of the documentation relevant to any particular issue”.²⁹
- f) Finally, with regard to the issue that the Second Report has been filed untimely, the Prosecution submits that whether the Trial Chamber admits the Report does not depend on the date of disclosure but on whether its admission prejudices the Accused.³⁰ Any perceived prejudice to the Defence can be remedied by deferring cross-examination of Mr. Treanor or by allowing the Defence sufficient time to prepare for cross-examination.³¹

III. APPLICABLE LAW

9. Rule 94 *bis* of the Rules of Evidence and Procedure (“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.

²⁷ First Prosecution Response, para. 24.

²⁸ Second Prosecution Response, para. 19; First Prosecution Response, para. 12.

²⁹ First Prosecution Response, para. 32.

³⁰ Second Prosecution Response, para. 28.

³¹ Second Prosecution Response, para. 28.

- (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.

10. 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;
- 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.³²

11. The term “expert” has been defined by the jurisprudence of the Tribunal as “a person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute”³³. 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’ scholarly articles, other publications or any other pertinent information about the witness.³⁴

12. An expert is expected to make statements and draw conclusions independently and impartially. The fact that the witness has been involved in the investigation and preparation of the Prosecution or Defence case or is employed or paid by one party does not disqualify him or her as an expert witness or make the expert statement unreliable.³⁵ Concerns relating to the witness’s independence or impartiality do not necessarily affect the admissibility of the witness’ statement or report pursuant to Rule 94 *bis* of the Rules, but may affect the weight to be given to the witness’s evidence.³⁶

³² *Prosecutor v. Lukić and Lukić*, 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.

³³ *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. (“*Galić* Decision Experts Tabeau and Philipps”).

³⁴ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Expert Status of Reynaud Theunens, 12 February 2008, 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.

³⁵ *Galić* Decision Experts Tabeau and Philipps pp 2-3.

³⁶ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Admissibility of Expert Report of Kosta Čavoški, 1 March 2006 p. 2; *but see Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Oral Ruling of 13 July 2006.

13. The content of the statement or report must fall within the expert witness's area of expertise.³⁷ 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.³⁸ 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.³⁹

14. 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.⁴⁰

IV. DISCUSSION

A. Alleged Untimely Filing of Treanor's Second Report

15. Regarding the time of the filing of the two Reports, the Trial Chamber recalls that the Prosecution was ordered to disclose any expert witness reports by 20 October 2006. However, only the First Report was filed within the deadline indicated by the pre-trial Judge, while the Second Report was filed well beyond the deadline, on 19 September 2008.

16. The Trial Chamber notes that the Second Report is entirely based on minutes and stenographic notes of SDC sessions.⁴¹ As acknowledged by the Prosecution, these documents were already available to it in June 2005 and were, already at that time, disclosed to the Defence.⁴² Nonetheless, the Trial Chamber notes that the Prosecution did not show any good cause as to why the Second Report was filed nearly two years after the deadline set for the disclosure of expert reports. The Trial Chamber therefore agrees with the Defence that the Second Report was filed out of time, which would be a reason to strike it.

B. Qualification of Mr. Treanor as Expert Witness

17. An analysis of Mr. Treanor's CV shows that he obtained a Ph. D. in history and possesses numerous years of working experience as research officer with the Prosecution. The Trial Chamber

³⁷ *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 94bis, 9 November 2006, ("*Martić*, Decision Expert Avramov") para. 12.

³⁸ *Ibid.*, para. 12.

³⁹ *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, para. 12.

⁴⁰ *Martić*, Decision Expert Avramov, para. 10.

⁴¹ See Second Prosecution Response, at fn.34.

⁴² See Second Prosecution Response, at fn.41 referring to the fact that the SDC minutes were disclosed redacted to the Defence in June 2005 and unredacted in June 2006.

is satisfied that in this position, he gained experience in the study of “policy and contextual evidence relating to all parties to the conflicts in the former Yugoslavia” and in “the identification and analysis of original documentary and published materials relating to the organisation and activities of the various parties of the conflict”.⁴³

18. The Trial Chamber is of the view that as a historian and political expert, Mr. Treanor can be qualified as an expert within the meaning of Rule 94 *bis* of the Rules. However, the Trial Chamber is doubtful that Mr. Treanor’s expertise can assist the Trial Chamber to understand or determine issues which are *in dispute* in this case. In this regard, the Trial Chamber agrees with the Defence that his expert opinion could also “usurp the Trial Chamber’s function as the fact finder”.⁴⁴

19. Nevertheless, the Trial Chamber notes that Mr. Treanor has already testified as an expert witness in two other cases before the Tribunal.⁴⁵ The Trial Chamber is satisfied that, by virtue of his expertise, Mr. Treanor can generally assist the Trial Chamber in understanding the historical background against which the facts relevant to this case occurred and in analysing the relevant documents in their historical context.

20. The Trial Chamber finally dismisses the Defence submission that, by virtue of his association with the Prosecution, Mr. Treanor 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.⁴⁶

C. Defence Objections to the First Report

21. The Trial Chamber is satisfied that the First Report contains relevant information and has probative value. The Report provides information on the Belgrade leadership, the creation and development of Serbian entities both in Bosnia and in Croatia and the role of the Yugoslav Army during the war. It also contains information as to the sources used and detailed references to these sources.

22. The Trial Chamber also finds that the contents of the First Report cover a wide range of issues which generally fall within the area of expertise of the expert witness. In this respect, it notes that Mr. Treanor also occasionally refers in his Report to documents of a primarily legal or fiscal

⁴³ Supplemental Prosecution Submission, p. 2.

⁴⁴ *See supra*, para. 6, fn. 12.

⁴⁵ *See supra*, para. 8.

⁴⁶ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Expert Status of Reynaud Theunens, 12 February 2008, para. 28, with further references also in respect of the *Milutinović et al* Decision cited by the Defence.

nature. However, the Trial Chamber is satisfied that the analysis conducted on these documents, in the overall context of the Report, remains within the confines of Mr. Treanor's expertise.

23. Notwithstanding its relevance and probative value, the Trial Chamber is mindful of the fact that the Report is mainly a description of documents coming from a variety of different sources. It is not entirely clear what methodology was used and what criteria were chosen by Mr. Treanor in reviewing and selecting those documents. The Trial Chamber also notes the Prosecution argument that the relevant question is not whether the expert has been selective, but whether he has been "unfairly selective."⁴⁷ The Trial Chamber is of the view that, in the absence of an indication in the First Report of a clear methodology and criteria which were used by Mr. Treanor to select those documents, the "fairness" of this reviewing and selection cannot be determined. However, this deficiency does not invalidate the Report and can be cured by calling Mr. Treanor for questioning by the Defence and, possibly, the Trial Chamber. The Trial Chamber also notes that similar expert reports have been admitted in the past by other Chambers.

24. In conclusion, the Defence will have the opportunity to test the expertise of the witness as well as the reliability of the Report through cross-examination. Any shortcomings of the Report might have an impact on the weight given to them at a later stage, but do not justify it being stricken at this stage of the proceedings.

D. Defence Objections to the Second Report

25. The Trial Chamber is satisfied that the Second Report contains relevant information to the case. It contains a compilation of minutes and stenographic notes of meetings held by the SDC, which was the highest military decision-making body in the FRY.

26. Notwithstanding the relevance of the Report, the Trial Chamber cannot fail to note that the Report is, to a large extent, a compilation of excerpts from SDC minutes. It is also not entirely clear what methodology was used and what criteria were chosen by Mr. Treanor in selecting and compiling those excerpts.

27. The Trial Chamber further notes that contrary to the fact that an expert is expected to make statements and draw conclusions based on his or her specialised knowledge, the analysis conducted in this Report seems to be limited only to citing or summarising documents, which the Prosecution intends, in any case, to tender into evidence during the trial. The Prosecution has not demonstrated to the Trial Chamber's satisfaction the nature of the "expertise", within the meaning of Rule 94 *bis*, which is required for compiling or summarising documents.

28. The Trial Chamber also notes the Prosecution's argument that the Report will assist the Trial Chamber in understanding the "political context" of the discussions and decisions taken by the SDC.⁴⁸ However, the Trial Chamber is of the view that Mr. Treanor does not have a specialised knowledge in relation to the minutes of the SDC. It further notes that his analysis conducted in the Second Report is of little assistance to the Trial Chamber as it is limited to reiterating or highlighting what is already stated in the SDC minutes.

29. In conclusion, the Trial Chamber finds that the Prosecution has failed to show how the Second Report can assist the Trial Chamber to understand or determine matters in dispute in this case. Furthermore, in the view of the Trial Chamber, the foregoing shortcomings of the Report adversely impact on its admissibility and justify therefore it being stricken at this stage of the proceedings.

V. DISPOSITION

30. **FOR THE FOREGOING REASONS** and **PURSUANT TO** Rules 54, 94 *bis* and 126 *bis* of the Rules, the Trial Chamber

GRANTS leave to the Defence to file the Reply;

DENIES the First Defence Motion;

GRANTS the Second Defence Motion and **STRIKES** the Second Report;

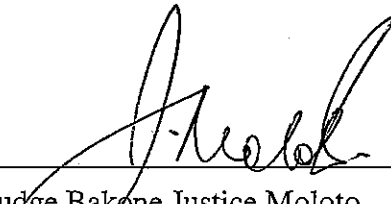
ORDERS that Mr. Patrick Treanor shall appear before the Trial Chamber as an expert to be examined by the Parties and the Trial Chamber with respect to the First Report; and

DEFERS the decision on the admissibility of the First Report until the conclusion of Mr. Treanor's testimony.

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

⁴⁷ See *supra*, para. 8.

⁴⁸ See Second Prosecution Response, para. 19.



Judge Bakone Justice Moloto
Presiding Judge

Dated this twenty-seventh day of October 2008
At The Hague
The Netherlands

[Seal of the Tribunal]