

SPECIAL COURT FOR SIERRA LEONE

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Document: **PUBLIC – DEFENCE RESPONSE TO PROSECUTION MOTION FOR ADMISSION OF DOCUMENTS OF THE UNITED NATIONS AND UNITED NATIONS BODIES**

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THE SPECIAL COURT FOR SIERRA LEONE

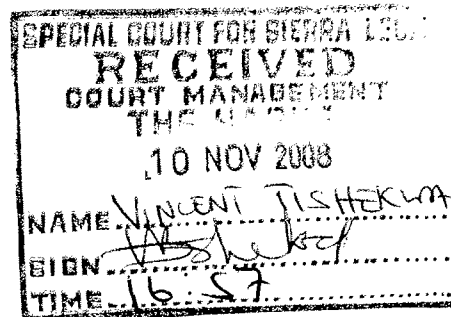
In Trial Chamber II

Before: Justice Teresa Doherty, Presiding
Justice Richard Lussick
Justice Julia Sebutinde
Justice El Hadji Malick Sow, Alternate

Registrar: Mr. Herman von Hebel

Date: 10 November 2008

Case No.: SCSL-2003-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

DEFENCE RESPONSE TO PROSECUTION MOTION FOR ADMISSION OF DOCUMENTS
OF THE UNITED NATIONS AND UNITED NATIONS BODIES

Office of the Prosecutor

Ms. Brenda J. Hollis
Ms. Leigh Lawrie

Counsel for Charles G. Taylor

Mr. Courtenay Griffiths Q.C.
Mr. Terry Munyard
Mr. Andrew Cayley
Mr. Morris Anyah

I. Introduction

1. On 29 October 2008, the Prosecution filed a *Public Prosecution's Motion for Admission of Documents of the United Nations and United Nations Bodies* ("The Motion") with related Annexes,¹ seeking the admission of documents of the United Nations and United Nations Bodies. The application was made pursuant to Rule 89(C), or alternatively, Rule 89(C) and 92bis of the Special Court Rules of Procedure and Evidence ("Rules").
2. The Defence opposes the Motion and submits that:
 - a. Rule 89(C) cannot be used in isolation to admit the documents included in the Motion.²
 - b. Rule 89(C) AND 92bis are the correct avenue for admission. Any evidence within the Document that goes to the acts and conduct of the accused is however inadmissible.

II. Applicable Legal Principles

Rule 89(C) should not be used in isolation

3. It is not true as the Prosecution contends that there is no specific rule for admission of documentary evidence.³ "If a document is to be tendered without a witness, then the application should be made under 92bis of the rules".⁴ Rule 92bis as Justice Lussick pointed out, "is *lex specialis* dealing with information in documents".⁵
4. This is not to say that 89(C) does not apply to documents tendered as evidence. The practice of this Court has been to admit documentary evidence under Rules 89(C) and 92bis⁶; a procedure the Prosecution has adopted in the past.⁷ Where Rules 89(C) has

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-650, Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies, 29 October 2008. (the "**Motion**").

² Annexes A and B of *Prosecutor v Taylor*, SCSL-03-01-650, "Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies", 29 October 2008

³ Prosecution Motion, para. 4.

⁴ *Prosecutor v Taylor*, SCSL-03-01-T, Trial Transcript, 21 August 2008 p.14253:4-6.

⁵ Ibid 14249:15-16

⁶ *Prosecutor v Taylor*, SCSL-03-01-369, 'Decision on Prosecution's Motion for Admission of Material Pursuant to Rules 89(C) and 92bis', 7 December 2007.

⁷ For example see Annex A of *Prosecutor v Taylor*, SCSL-03-01-241, 'Prosecution's Motion for Admission of Material Pursuant to Rules 89(C) and 92bis', 17 May 2007 (the "**May 2007 Motion**"). Nowhere has the Prosecution sought admission of these documents under Rule 89(C) alone in preference to Rule 92bis. It is noteworthy that some of these documents included reports by United Nations bodies, e.g. Exhibit 1.171.

been used to admit documents independent of Rule 92bis, the practice has been for such documents to be produced through a witness. In the *Sesay case*, which the Prosecution seeks to rely on, for instance, the relevance of the evidence that was admitted under 89(C) in that case was established through a Witness to the extent that “the Witness was asked questions about the content of the report during cross-examination by the Defence”.⁸ Further, in the *Fofana Bails Decision*, the Appeals Chamber underscored the availability of witnesses that could have been called to testify to the documents in issue in that case.⁹ The documents were therefore not independent of a witness *per se*.

5. Thus, in the practice and jurisprudence of this Court, Rule 89(C) has been used as a threshold clause rather than a gateway for the admission of documents contrary to the Prosecution’s argument that Rule 92bis is exclusively for documents prepared for legal proceedings and 89(C) for “other” documents.¹⁰
6. The *Blaskic case*,¹¹ which the Prosecution also seeks to rely on for the proposition that Rule 89(C) can be used to admit documents without a witness does not assist its case in so far as there are two crucial differences between the ICTY and the SCSL. First, in the ICTY, documents other than witness statements and transcripts cannot be admitted under Rule 92bis. In the case of the SCSL, as shown above, it is the practice of the court to admit news reports, letters and other documentary evidence not prepared for legal proceedings through Rule 89(C) and 92bis.¹² Secondly, Rule 89(C) in the ICTY contains additional safeguards not present in the SCSL, including the need to establish probative value and reliability. The Prosecution seeks to rely on *Blaskic* without taking into account these important differences.

⁸ *Prosecutor v Sesay et al*, SCSL-04-15-T-620, “Decision on Prosecution Motion to Admit into Evidence a Document Referred to Cross-Examination”, 2 August 2006 (the “**Sesay Decision**”), p.3

⁹ *Prosecutor v. Norman et al*, SCSL-04-14-AR65-371, “Fofana – Appeal against Decision Refusing Bail”, 11 March 2005, (“Fofana Bail Decision”), Para 30. First, the written submission from the Sierra Leone Government: “It was open to the judge to invite Mr Kobba to present the State’s submission in person: if he required further “authentication” the Judge could have instructed his court clerk to telephone Mr Kobba and establish that the submissions were authentic” para 28. Secondly, the declaration from the Chief of Investigations: “It was open to the Defence to ask Mr White to be called and to cross-examine him” para 29. Thirdly, the unsigned declaration of Ms Fortune: “There are many issues... that would need to be explored with her in person”.

¹⁰ The Motion, Para 9

¹¹ See *Prosecutor v. Taylor*, SCSL-03-01-PT-369, ‘Decision on Prosecution’s Motion for Admission of Material Pursuant to Rules 89(C) and 92bis’, 7 December 2007. in the Motion citing para 35 of the Judgement, IT-95-14, 3 March 2000. (citing para.35 of *Prosecutor v. Blaskic*, Judgment, IT-95-14, 3 March 2000).

¹² *Ibid.*

The correct tests under Rule 89(C)

7. The Defence submits that the Prosecution has failed to fully state the tests under 89(C).¹³ Further to the relevance test, there are other important safeguards that must be fulfilled. Under Rule 95, “[n]o evidence shall be admitted if its admission would bring the administration of justice into serious disrepute”. Further, the Court has “inherent jurisdiction to exclude evidence where its probative value is outweighed by its prejudicial effect”.¹⁴ In exercising this discretion, the Court will consider whether admitting the evidence “will impact adversely and unfairly on the integrity of the proceedings”.¹⁵
8. Rule 89(C) is therefore not absolute. It is subject to the inherent discretion of the court in the interest of the justice. In exercising that discretion, the courts have always been mindful of the Accused’s fair trial rights. This court has, for instance held that “the Accused will be unfairly prejudiced if documents pertaining to their acts and conduct are admitted into evidence without giving the Defence the opportunity of cross-examination”.¹⁶ In the *Kenema Decision* the court also held that where documentary evidence is close to subordinates of the Accused, “it would not be fair to the accused to permit the evidence to be given in written form”.¹⁷

In the Alternative

9. Further and alternatively, should the Trial Chamber be minded to admit the documents in Annexes A and B to the Motion solely under Rule 89(C), as is the practice in the ICTY, then Chamber ought to be guided by the practice that court. In particular, the Court should seek guidance from the *Kordic and Cerkez case*, where as in the present case, the Prosecution sought to admit documentary evidence without witnesses at the close of its case. In that case, the ICTY Appeals Chamber upheld the Trial Chamber’s Decision to admit the documents under Rule 89(C) subject to the following exclusionary conditions:

¹³ Prosecution Motion, para 4 et seq.

¹⁴ Gbao Decision, para 7.

¹⁵ Ibid para 8, and, p.3 *Prosecutor v Norman et al*, SCSL-04-14-T-447 , “Decision on Prosecution’s Request to Admit Evidence into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)”, 14 July 2005 (“CDF 92bis Decision”).

¹⁶ Ibid p.4.

¹⁷ *Kenema Decision*, Page 4,.

“(1) the document(s) had already been admitted; (2) the material had already been produced in other proceedings before the International Tribunal and therefore had been available to the Prosecution when it presented its case; (3) the material was not sufficiently significant to warrant admission at so late a stage of the proceedings; (4) the material was cumulative and did not add to the voluminous material already in evidence; or (5) the material was based on anonymous sources or hearsay statements that were incapable of then being tested by cross-examination”¹⁸.

In that case, the Appeals Chamber also affirmed the Trial Chamber Decision that the probative value of some evidence was so reduced that “it [was] substantially outweighed by the need to ensure a fair trial” as the Defence would have no opportunity to cross-examine witnesses.

Rule 92bis

10. The Defence submits that the correct gateway for proper admission of the evidence in this case is Rule 89(C) **AND** 92bis [emphasis added]. The Defence reiterates the Trial Chamber’s decision of 21 August 2008, that any document without a witness should be tendered through 92bis.¹⁹

The Defence submits that if 89(C) were an independent gateway for documentary evidence, then Rule 92bis would effectively become redundant. The SCSL has clearly and deliberately distinguished Rule 92bis from that of its sister tribunals the ICTY and ICTR.²⁰ In the SCSL Rule 92bis relates to the admission of *information* including written statements and transcripts. The choice of the word *information* was deliberate that “Rule 92bis is clearly flexible enough to allow the admission of documentary evidence”.²¹

11. Under the ICTY Rule 92bis, only written statements and transcripts are admissible. As Trial Chamber I has noted, the SCSL “standard[s] [are] quite different from [the] Rule 92bis standard in ICTY and ICTR Rules of Procedure and Evidence.” The “ICTY and ICTR Rule 92bis is designed for admission of a written statement of a witness and/or

¹⁸ *Prosecutor v Kordic and Cerkez*, Appeals Judgement, Case No. IT-95-14/2-A, Para 190.

¹⁹ This is not the first instance of the Prosecution seeking to admit a document without a witness. On the 14 May 2008 Trial Chamber II states that the Prosecution are to use the alternative proof of fact procedure ‘to introduce documents without a witness’. *Prosecutor v Taylor*, SCSL-03-01-T Trial Transcript, 14 May 2008, page 9783, line 28 – page 9784 line 3.

²⁰ The Judges of this Court, at one of their first plenary meetings, recognised a need to amend ICTR 92bis *Prosecutor v Norman et al*, SCSL-04-14-PT-117, Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence, 2 June 2004.

²¹ *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-618, Decision on Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence, 2 August 2006, Page 5.

transcript from a witness' previous testimony before the Tribunal in lieu of the oral testimony."²² The SCSL Rule 92*bis* on the other hand goes beyond this narrow scope.

12. The Defence submit that the Prosecution is trying to circumvent Rule 92*bis*, especially with respect to evidence that goes to the acts and conduct of the accused, by trying to admit documents containing such evidence through 89(C) alone.

Information in lieu of oral testimony

13. The Defence submit that the Prosecution is mistaken in stating that the documents should not be produced under Rule 92*bis* on the basis that they are not witness statements or testimonies. Rule 92*bis* is not exclusively limited to witness statements and testimony as it is with other sister tribunals. The SCSL Rules encompass *information* which is defined as "...assertions of fact (not opinions) made in documents or electronic communications".²³ Any document attesting to the facts of the case could therefore fall under Rule 92*bis*.

Acts and conduct of the accused

14. The Prosecution misinterprets the Rules when it argues that information, which is neither a witness statement nor transcript, admitted via 92*bis* is admissible if it goes to the acts and conducts of the accused.²⁴
15. The use of the word *including* in Rule 92*bis* clearly shows that the categorisation of the different types of information that cannot go to the acts and conduct of the accused under the Rule is not exhaustive. As Trial Chamber II itself has observed, "...the effect of rule 92Bis is to permit the reception of information, - assertions of fact (but not opinion) including, *but not limited to*, written statements and transcripts that do not go to proof of the acts and conduct of the accused..."²⁵
16. Rule 92*bis* was deliberately amended to exclude information that goes to the acts and conduct of the accused in order to protect the Accused's fair trial rights.²⁶ The prohibition on the admission of information that goes to proof of the acts and conduct

²² *Prosecutor v Norman et al*, SCSL-04-14-T-447, Supra Note 15

²³ *Prosecutor v. Norman et al*, SCSL-04-14-AR73-398, Fofana – Decision on Appeal Against Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 16 May 2005

²⁴ Prosecution Motion, para 15.

²⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-556, Decision on Prosecution Notice under Rule 92*bis* for the Admission of Evidence related to *inter alia* Kenema District and of Prosecution Notice under Rule 92*bis* for the Admission of the prior testimony of TF1-036 into Evidence, 15 July 2008.

²⁶ CDF 92*bis* Decision

of the accused is well-established in international law and has been affirmed in the decisions of this Court. For the most part, the phrase, “acts and conduct of the accused” should be given its ordinary meaning: deeds and behaviour of the accused.²⁷ In *Prosecutor v. Galic*, the ICTY Appeals Chamber sets out various examples of what should be considered acts and conduct of the accused.²⁸

17. Trial Chamber 1 has also determined that acts of co-perpetrators or subordinates of the accused²⁹ are relevant in determining if cross-examination should be allowed, but not in determining if a document should be admitted under Rule 92bis.³⁰ Thus, there remains a distinction between (a) acts and conduct of those others who commit the crimes, for which the indictment alleges that the accused is individually responsible, and (b) the acts and conduct of the accused as charged in the Indictment which establish his responsibility for the acts and conduct of those others.³¹ The first is admissible under Rule 92bis, the latter is not. Significantly, the **proximity** of the acts and conduct of the alleged subordinate to the accused, as described in the evidence sought to be admitted, is relevant to this determination.³² Furthermore, this Trial Chamber has ruled that the absence of cross-examination would unfairly prejudice the accused and it is in the interest of justice to afford the accused such an opportunity.³³
18. The Defence submit that documents pertaining to acts and conducts of co-perpetrators and subordinates should not be admitted unless there is a witness who can be brought for cross-examination. The fact that the Prosecution may have difficulty in identifying

²⁷ *Prosecutor v. Milosevic*, ICTY-02-54-T, “Decision on Prosecution’s Request to Have Written Statements Admitted Under Rule 92bis”, 21 March 2002, para. 22.

²⁸ *Prosecutor v. Galic*, ICTY-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92bis(C)”, 7 June 2002, paras. 10 and 11 (“*Galic 92bis Appeals Decision*”) (emphasis added) (copy provided with Prosecution Notice).

²⁹ For purposes of this Objection, and based generally on Prosecution allegations, the following non-exhaustive list of personalities should be considered “subordinates” of Mr. Taylor: Foday Sankoh, Sam Bockarie, Issa Sesay, Morris Kallon, Augustine Gbao, Johnny Paul Koroma, Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu, Benjamin Yeaten, Ibrahim Bah, Daniel Tamba Jungle, Eddie Kanneh, Zig Zag Marzah, and Savage.

³⁰ CDF 92bis Decision, pg. 4.

³¹ See *Galic 92bis Appeals Decision*, para. 9.

³² *Galic 92bis Appeals Decision*, para. 13; *Prosecutor v. Martić*, ICTY-95-11-T, “Decision on Prosecution’s Motions for Admission of Transcripts Pursuant to Rule 92bis and of Expert Reports Pursuant to Rule 94bis”, 13 January 2006, para. 20.

³³ *Prosecutor v. Taylor*, SCSL-01-556, “Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence”, 15 July 2008, pg.5, para.4

or securing a witness should not be a reason for restricting the rights of the accused to test the evidence against him.

19. More specifically, the Special Court has held that where a witness statement contains information “material to the command responsibility and joint criminal enterprise allegations in the Indictment”, that information goes to a “critical element of the Prosecution’s case” and is therefore “proximate enough to the accused so as to require cross-examination”, as is the Trial Chamber’s discretion to order under Rules 26*bis* and 54.³⁴ This is simply, but crucially, a matter of fairness.³⁵

III. Submissions

89(C) and 92bis

20. The Defence submit the proper procedure to adopt in this case is Rule 89(C) and 92*bis*, conjunctively. Under this procedure, the Prosecution must first establish relevance with respect to each piece of information that it seeks to adduce. All non-relevant information must be redacted.
21. Secondly, the documents must be susceptible of confirmation. While confirmation is not required immediately, the documents must be capable of corroboration in due course. The documents in this case, or at least some of them, fail this test. The Defence notes that as the Prosecution is drawing to the end of its case, with almost eighty percent of the witness already testified the chances for independent confirmation of the evidence is very slim. The documents in question cannot properly be corroborated by those witnesses who have already testified as that would have denied the Defence the opportunity to cross examine on them. In the attached **Annex A** the Defence highlights specific information that is not susceptible to confirmation.
22. The evidence in Tab 13 is also not susceptible to confirmation for other reasons. The witness statements in Annex B of the Prosecution Motion have no reference to the names of the victims or any identifying material. It is therefore impossible to know whether the witness has already testified in this case. Further, this makes any form of

³⁴ Prosecutor v Sesay, Kallon and Gbao, SCSL-04-15-T-1049, Decision on Defence Application for the Admission of the Witness Statement of DIS-129 Under Rule 92*bis*, or in the Alternative, Under Rule 92*ter*, 12 March 2008 pages. 1 and 3.

³⁵ Galic 92*bis* Appeals Decision, para. 15; *Prosecutor v. Martić*, ICTY-95-11-T, “Decision on Prosecution’s Motions for Admission of Written Evidence Pursuant to Rule 92 bis of the Rules”, 16 January 2006, paras. 29, 33.

investigation into the accuracy of the statements impossible. The medical reports attached to the statements are also in issue. The quality of a majority of the forms is extremely poor and the handwriting is illegible. Further, the language of the documents is not the official working language of the Special Court as provided by Article 24 of the Statute and the documents remain untranslated. The pictures supporting each of the cases are of further concern. The photos are unclear and are of an extremely poor quality. Even the Prosecution acknowledges the poor quality of a significant amount of the document. In view of the defects Tab 13 should be excluded.

23. Thirdly, the content of the documents cannot go to the acts and conducts of the accused as argued above. In **Annex A**, the Defence identifies all the evidence going to the acts and conduct of the Accused, further to that identified by the Prosecution, which must be excluded. In footnote 29 above, the Defence also highlights all references to subordinates proximate to the Accused whose acts and conducts should be deemed acts and conduct of the Accused, and must be excluded. Further, for purposes of determining the acts and conduct of the Accused, the Defence also submits that all references to Charles Taylor, President Taylor, Government of Liberia, Liberia whilst Charles Taylor was the President, Liberians, neighbouring countries to Sierra Leone and the Sierra Leone Region should be taken to refer to Accused. See examples in **Annex A**.
24. The Defence notes that there is also information that goes to the acts and conduct of the Accused contained in portions of the documents which the Prosecution does not seek to admit into evidence and submits that that is all the more reason why non-relevant information should be redacted.³⁶
25. The Defence also submit that any information within the documents that goes to a critical element of the Prosecution case should be subject to cross examination and addresses all such instances in **Annex A**.

³⁶ To illustrate this point Tab 14 refers to the acts and the conduct of the accused at Page 21590 paragraph 1, 3, 6 and 7 and Page 21590 paragraphs 1 and 2 and Page 21591 paragraphs 1, 2 and 3 subsections 1 – 10 and Page 21592 subsections 7 – 10.

Rule 89 (c)

26. If the documents submitted in Annexes A and B of the Motion were to be admitted under Rule 89C they should be subject to all the above mentioned tests under Rule 89C (e.g. relevance, Rule 95 and the inherent jurisdiction to exclude). Further, as argued above, as the admission of the evidence is in the discretion of the court, in the interest of justice, the Trial Chamber should be guided by the *Kordic and Cerkez*³⁷ test.
27. The second part of the test, which is premised on potential prejudice to the Defence, excludes the belated tendering of material that has already been produced in other proceedings before the tribunal and was therefore at all times available to the Prosecution when it was presenting its case. This part of the test applies to fourteen of the documents in Annexes A and B.³⁸ These documents were produced in the AFRC and RUF trials³⁹ and so would have been available to the Prosecution when it presented its case.
28. The third limb of the test which re-emphasises relevance requirement, excludes the belated tendering of material that is not sufficiently significant to warrant admission late in the proceedings. Half of the documents include crime-based evidence, which is arguably not significant at this stage of trial, whose matters in issue involve linkage-based evidence.⁴⁰
29. The fourth limb, which is premised on judicial economy, excludes material that is cumulative and does not add substance to the voluminous material already in evidence. At least seven of the documents submitted in the Motion go to facts that have already been attested to in other documentary or oral evidence admitted by the Chamber.⁴¹ It includes well-known events such as the invasion of Freetown in January 1999 and allegations of RUF/AFRC receiving help from Liberia.
30. Finally, material based on anonymous sources or hearsay statements that were incapable of then being tested by cross-examination are excluded. Every document

³⁷ Appeals Judgement, Case No. IT-95-14/2-A, Para 190 and see above paragraph 13.

³⁸ Tabs 1, 4, 6, 9, 10, 13, 15, 18, 21, 22, 23, 24, 25, 29.

³⁹ *Prosecutor vs. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu* and *Prosecutor vs. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*.

⁴⁰ Tabs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 15, 18, 19, 21 and 29.

⁴¹ Tabs 1-5 cover crime-based evidence and Tabs 15, 18, 27, 28 and 32 cover linkage evidence already attested to in documentary and oral evidence.

submitted in Annexes A and B is either from an anonymous source itself or, is based on sources which are anonymous, hearsay or simply not stated.

31. For all of the reasons outlined above, the relevant passages of the documents highlighted in the Annexes to this Motion cannot be admitted under Rule 89(C) alone.

IV. Conclusion

32. For all the foregoing reasons, the Defence opposes the Prosecution's Motion and submits that only those pieces of evidence not objected to in this Response should be admitted. Alternatively, should some portions of the evidence be admitted, then the Prosecution should be required to produce witnesses for cross-examination regarding those portions that go to the acts or conduct of the accused or his proximate subordinates.

33. The Defence notes that this Response is a couple of paragraphs over the prescribed page limit and seeks the court's indulgence, given the size of the original Motion and the importance of the matter.

Respectfully Submitted,



STUART CHRISTIE



Courtenay Griffiths Q.C.

Lead Counsel for Charles G. Taylor

Dated this 10th Day of November 2008

The Hague, The Netherlands

Table of Authorities

SCSL

Prosecutor v Taylor

Prosecutor v. Taylor, SCSL-03-01-T-650, Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies, 29 October 2008.

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Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 21 August 2008

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 14 May 2008

RUF

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Prosecutor v. Sesay, Kallon, Gbao, SCSL-04-15-T-1049, Decision on Defence Application for the Admission of the Witness Statement of DIS-129 under Rule 92bis, or in the Alternative, Under Rule 92ter, 12 March 2008

CDF

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<http://www.un.org/icty/kordic/appeal/judgement/cer-aj041217e.pdf>

Prosecutor v. Milosevic, ICTY-02-54-T, "Decision on Prosecution's Request to Have Written Statements Admitted Under Rule 92bis", 21 March 2002
<http://www.un.org/icty/milosevic/trialc/decision-e/20321AE517364.htm>

Prosecutor v. Galic, ICTY-98-29-AR73.2, "Decision on Interlocutory Appeal Concerning Rule 92bis(C)", 7 June 2002

Prosecutor v. Martić, ICTY-95-11-T, "Decision on Prosecution's Motions for Admission of Transcripts Pursuant to Rule 92bis (d) and of Expert Reports Pursuant to Rule 94bis", 13 January 2006
<http://www.un.org/icty/martic/trialc/decision-e/060113.htm>

Prosecutor v. Martić, ICTY-95-11-T, "Decision on Prosecution's Motions for Admission of Written Evidence Pursuant to Rule 92 bis of the Rules", 16 January 2006
<http://www.un.org/icty/martic/trialc/decision-e/060116.htm>

Authorities Provided

22151
64 KB

IT-98-29-AR73.2
A64-A42
07 JUNE 2002

UNITED
NATIONS



**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: IT-98-29-AR73.2
Date: 7 June 2002
Original: English

IN THE APPEALS CHAMBER

Before: Judge David Hunt
Judge Mehmet Güney
Judge Asoka de Zoysa Gunawardana
Judge Fausto Pocar
Judge Theodor Meron

Registrar: Mr Hans Holthuis

Decision of: 7 June 2002

PROSECUTOR

v

Stanislav GALIĆ

DECISION ON INTERLOCUTORY APPEAL CONCERNING RULE 92bis(C)

Counsel for the Prosecutor:

Mr Mark Ierace, Senior Trial Attorney

Counsel for the Defence:

Ms Mara Pilipović & Maître Stephane Piletta-Zanin

The background to the appeal

1. Pursuant to a certificate granted by the Trial Chamber in accordance with Rule 73(C) of the Rules of Procedure and Evidence ("Rules"), as Rule 73 then stood,¹ Stanislav Galić (the "appellant") has appealed against the admission into evidence of two written statements made by prospective witnesses to investigators of the Office of the Prosecutor ("OTP"). Both prospective witnesses have died since making their statements.
2. The appellant, as the Commander over a period of almost two years of the Sarajevo Romanija Corps (part of the Bosnian Serb Army), is charged in relation to an alleged campaign of sniping and shelling against the civilian population of Sarajevo conducted during that time by the forces under his command and control. He is charged with individual responsibility pursuant to Article 7.1 of the Tribunal's Statute and as a superior pursuant to Article 7.3 for crimes against humanity and for violations of the laws and customs of war. The prosecution concedes that it is no part of its case that the appellant personally physically perpetrated any of the crimes charged himself.² Its case pursuant to Article 7.1 is that he planned, instigated, ordered or otherwise aided and abetted the commission of those crimes by others.³ Its case pursuant to Article 7.3 is that the appellant knew, or had reason to know, that his subordinates had committed or were about to commit such crimes and that he failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.⁴
3. The first written statement admitted into evidence was made by Hamdija Čavčić. He was a chemical engineer employed by the Department for Criminal and Technical Investigations in Sarajevo as an expert in investigating the traces in the case of fire or explosions. As such, he investigated a shelling on 12 July 1993 in which twelve people had been killed. He prepared a contemporaneous Criminal and Technical Report in which he deduced the direction from which the particular shell had been fired. His written statement to the OTP investigator, which is dated 16 November 1995, annexes that report and confirms that the findings which he had made in it

¹ Certificate Pursuant to Rule 73(C) in Respect of Decisions of the Trial Chamber on the Admission into Evidence of Written Statements Pursuant to Rule 92bis(C), 25 Apr 2002 ("Certificate"). Rule 73, which deals with motions other than preliminary motions, then provided that, unless the Trial Chamber certified pursuant to Rule 73(C) that an interlocutory appeal during the trial was appropriate for the continuation of the trial, decisions rendered during the course of the trial on motions involving evidence and procedure were without interlocutory appeal.

² Prosecutor's Pre-Trial Brief Pursuant to Rule 65ter(E)(i), 23 Oct 2001, par 68.

³ *Ibid*, par 68.

⁴ Indictment, par 11.

were true. He also explains in greater detail how he had reached those conclusions. In addition, the written statement describes a similar investigation of a shelling on 5 February 1994. These two incidents are identified as incidents 2 and 5 in the schedule to the indictment.

4. The second written statement admitted into evidence was made by Bajram Šopi. He was present on 7 September 1993 collecting firewood when a man was killed by a sniper's shot. His statement to the OTP investigator says that both he and the man who was killed were dressed in civilian clothes. It describes his own wounding by shooting and the damage to his house by shelling in two incidents during 1992. It also describes the injuries to his daughter by shelling at an unspecified time. He further states that there were military units behind his house in a school building which had been "levelled". Only that part of the statement which describes the incident on 7 September 1993, which is identified as incident 11 in the schedule, was tendered.

The relevant Rules

5. The appeal principally concerns two rules in Section 3 of the Rules (headed "Rules of Evidence"), Rules 89 and 92*bis*, and the interaction between them. It is convenient, therefore, to quote each of those two Rules in full:

Rule 89 General Provisions

- (A) A Chamber shall apply the rules of evidence set forth in this Section, and shall not be bound by national rules of evidence.
- (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.
- (C) A Chamber may admit any relevant evidence which it deems to have probative value.
- (D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.
- (E) A Chamber may request verification of the authenticity of evidence obtained out of court.
- (F) A Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form.

Rule 92*bis* Proof of Facts other than by Oral Evidence

- (A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.
 - (i) Factors in favour of admitting evidence in the form of a written statement include but are not limited to circumstances in which the evidence in question:

- (a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;
 - (b) relates to relevant historical, political or military background;
 - (c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;
 - (d) concerns the impact of crimes upon victims;
 - (e) relates to issues of the character of the accused; or
 - (f) relates to factors to be taken into account in determining sentence.
- (ii) Factors against admitting evidence in the form of a written statement include whether:
- (a) there is an overriding public interest in the evidence in question being presented orally;
 - (b) a party objecting can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or
 - (c) there are any other factors which make it appropriate for the witness to attend for cross-examination.
- (B) A written statement under this Rule shall be admissible if it attaches a declaration by the person making the written statement that the contents of the statement are true and correct to the best of that person's knowledge and belief and
- (i) the declaration is witnessed by:
 - (a) a person authorised to witness such a declaration in accordance with the law and procedure of a State; or
 - (b) a Presiding Officer appointed by the Registrar of the Tribunal for that purpose; and
 - (ii) the person witnessing the declaration verifies in writing:
 - (a) that the person making the statement is the person identified in the said statement;
 - (b) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct;
 - (c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and
 - (d) the date and place of the declaration.
- The declaration shall be attached to the written statement presented to the Trial Chamber.
- (C) A written statement not in the form prescribed by paragraph (B) may nevertheless be admissible if made by a person who has subsequently died, or by a person who can no longer with reasonable diligence be traced, or by a person who is by reason of bodily or mental condition unable to testify orally, if the Trial Chamber:
- (i) is so satisfied on a balance of probabilities; and
 - (ii) finds from the circumstances in which the statement was made and recorded that there are satisfactory *indicia* of its reliability.
- (D) A Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused.
- (E) Subject to Rule 127 or any order to the contrary, a party seeking to adduce a written statement or transcript shall give fourteen days notice to the opposing party, who may within seven days object. The Trial Chamber shall decide, after hearing the parties, whether to admit the statement or transcript in whole or in part and whether to require the witness to appear for cross-examination.

The issues in the appeal

- 6. The appellant has raised a number of issues in his Interlocutory Appeal:
 - (1) The appellant says that both statements did not fall within Rule 92bis because they go to proof of “the acts and conduct of the accused as charged in the indictment”.⁵ The prosecution responds to this issue in three alternative ways. Either (a) the statements do not go to proof of the acts and conduct of the accused charged in the indictment,⁶ or (if they do go to such proof) (b) Rule 92bis(C) does not exclude proof of the acts and conduct of the accused by a written statement of a deceased person,⁷ and (c) the evidence is in any event admissible under Rule 89(C) without the restrictions of Rule 92bis.⁸
 - (2) The appellant says that the Trial Chamber did not evaluate what is said to be the requirement of Rule 92bis(C)(i) as to “the probability of the said statements”.⁹ The prosecution responds that the appellant has misread the requirements of Rule 92bis(C)(i).¹⁰
 - (3) The appellant says that the Trial Chamber “did not engage in establishing the question of reliability”.¹¹ The prosecution responds that the Trial Chamber correctly determined that there were satisfactory *indicia* of the reliability of each statement in the circumstances in which it was made and recorded.¹²
 - (4) The appellant says that Rule 92bis does not relate to expert witnesses, whose evidence is admissible only under Rule 94bis, so that the statement of Hamdija Čavčić (described in par 3, *supra*) was inadmissible upon that basis also.¹³ The prosecution responds that Rule 92bis is directed to any witness whose statement does not go to proof of the acts or conduct of the accused, including expert witnesses,¹⁴ and that Rule 94bis is directed to experts who are not in a position themselves to testify directly about the facts upon which they base their expert opinion.¹⁵

⁵ Appeal of the Decisions on [*sic*] the Trial Chamber of 12 April, and 18 April 2002, 2 May 2002 (“Interlocutory Appeal”), pp 2-3, 4-8.
⁶ Prosecution’s Response to Accused Stanislav Galić’s Interlocutory Appeal Pursuant to Rule 73(C) on the Decisions on Trial Chamber I of 12 and 18 April 2002, 13 May 2002 (“Response”), pars 33-49.
⁷ *Ibid*, pars 7-14.
⁸ *Ibid*, pars 15-32, 58-62.
⁹ Interlocutory Appeal, pp 3-4, 11.
¹⁰ Response, pars 50-57.
¹¹ Interlocutory Appeal, p 3.
¹² Response, pars 63-68.
¹³ Interlocutory Appeal, p 9.
¹⁴ Response, par 72.
¹⁵ *Ibid*, par 71.

- (5) The appellant says that it is not in the interests of justice to admit into evidence part of a written statement, and that the other party must be given the opportunity to argue that the statement should be admitted in its entirety because he has no possibility of cross-examining the maker of the statement.¹⁶ The appellant also argues that, if the statement includes material which is irrelevant, the whole statement must be rejected.¹⁷ The prosecution responds that it has the prerogative to tender evidence which it deems to be relevant to its case provided that it is *prima facie* credible.¹⁸

Counsel for the appellant orally informed the Appeals Chamber that his client did not intend to file a reply to the prosecution's Response, but relied upon what is said in his Interlocutory Appeal in answer to the prosecution's arguments.¹⁹

7. The certificate given by the Trial Chamber pursuant to Rule 73(C) (as it then stood) – that it was appropriate for the continuation of the trial that an interlocutory appeal be determined – related only to the first of these issues, as to the proper interpretation of the exclusion in Rule 92*bis*(A) of statements which go to proof of “the acts and conduct of the accused as charged in the indictment”.²⁰ It is, however, within the discretion of the Appeals Chamber to determine also other, related, issues where it considers it appropriate to do so, at least where they have been raised in the interlocutory appeal and the respondent to the appeal has had the opportunity to put his or its arguments in relation to those related issues. It is clear, from the present case and from other cases presently being tried in the Tribunal, that it will be beneficial to the Trial Chambers and to counsel generally that all of these matters be resolved in the present appeal. The Appeals Chamber proposes therefore to deal with them all.

1(a) The “acts and conduct of the accused as charged in the indictment”

8. The appellant emphasises that Rule 92*bis* excludes from the procedure laid down any written statement which goes to proof of the acts and conduct of the accused *as charged in the indictment*.²¹ He says that, as the indictment charges the appellant with individual criminal responsibility –

- (i) as having aided and abetted others to commit the crimes charged, and

¹⁶ Interlocutory Appeal, p 11.

¹⁷ *Ibid*, p 11.

¹⁸ Response, par 69.

¹⁹ Communication, 22 May 2002.

²⁰ Certificate, p 2.

²¹ Interlocutory Appeal, p 5.

(ii) as the superior of his subordinates who committed those crimes, the acts and conduct of those others and of his subordinates “represent his own acts”.²² The appellant describes those “others” as “co-perpetrators”, and he says that the “acts and conduct of the accused as charged in the indictment” encompasses the acts and conduct of the accused’s co-perpetrators and/or subordinates.²³ This argument was rejected by the Trial Chamber.²⁴

9. The appellant’s interpretation of Rule 92bis would effectively denude it of any real utility. That interpretation is inconsistent with both the purpose and the terms of the Rule. It confuses the present clear distinction drawn in the jurisprudence of the Tribunal between (a) the acts and conduct of those others who commit the crimes for which the indictment alleges that the accused is individually responsible, and (b) the acts and conduct of the accused as charged in the indictment which establish his responsibility for the acts and conduct of those others. It is only a written statement which goes to proof of the latter acts and conduct which Rule 92bis(A) excludes from the procedure laid down in that Rule.

10. Thus, Rule 92bis(A) excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish –

- (a) that the accused committed (that is, that he personally physically perpetrated) any of the crimes charged himself,²⁵ or
- (b) that he planned, instigated or ordered the crimes charged, or
- (c) that he otherwise aided and abetted those who actually did commit the crimes in their planning, preparation or execution of those crimes, or
- (d) that he was a superior to those who actually did commit the crimes, or
- (e) that he knew or had reason to know that those crimes were about to be or had been committed by his subordinates, or
- (f) that he failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.

²² *Ibid*, p 6.

²³ *Ibid*, p 2. The present appeal is not the occasion to consider whether the expression “co-perpetrator”, rather than “perpetrator” or “principal offender”, is an appropriate description of those persons who actually commit the crimes which the indictment charges the accused with responsibility.

²⁴ Decision on the Prosecutor’s Motion for the Admission into Evidence of Written Statement by a Deceased Witness, and Related Report Pursuant to Rule 92bis(C), 12 Apr 2002 (“First Decision”), p 4; Decision on the Prosecutor’s Second Motion for the Admission into Evidence of Written Statement by Deceased Witness Bajram Šopi, Pursuant to Rule 92bis(C), 18 Apr 2002 (“Second Decision”), p 4.

²⁵ This is not any part of the prosecution case in this present matter.

Where the prosecution case is that the accused participated in a joint criminal enterprise, and is therefore liable for the acts of others in that joint criminal enterprise,²⁶ Rule 92bis(A) excludes also any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish –

- (g) that he had participated in that joint criminal enterprise, or
- (h) that he shared with the person who actually did commit the crimes charged the requisite intent for those crimes.²⁷

Those are the “acts and conduct of the accused as charged in the indictment”, *not* the acts and conduct of others for which the accused is charged in the indictment with responsibility.²⁸

11. The “conduct” of an accused person necessarily includes his relevant state of mind, so that a written statement which goes to proof of any act or conduct *of the accused* upon which the prosecution relies to establish that state of mind is not admissible under Rule 92bis. In order to establish that state of mind, however, the prosecution may rely upon the acts and conduct of *others* which have been proved by Rule 92bis statements. An easy example would be proof, in relation to Article 5 of the Tribunal’s Statute, of the knowledge by the accused that his acts fitted into a pattern of widespread or systematic attacks directed against a civilian population.²⁹ Such knowledge may be inferred from evidence of such a pattern of attacks (proved by Rule 92bis statements) that he *must* have known that his own acts (proved by oral evidence) fitted into that pattern. The “conduct” of an accused person may also in the appropriate case include his omission to act.

12. This interpretation gives effect to the intention of Rule 92bis, which (together with the concurrent amendments to Rules 89 and 90)³⁰ was to qualify the previous preference in the Rules

²⁶ In *Prosecutor v Tadić*, IT-94-1-A, Judgment, 15 July 1999 (“*Tadić Judgment*”), at par 220, this liability is described as that of an accomplice.

²⁷ *Tadić Judgment*, par 196; *Prosecutor v Brđanin & Talić*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, par 31.

²⁸ See also *Prosecutor v Milošević*, IT-02-54-T, Decision on Prosecution’s Request to Have Written Statements Admitted Under Rule 92bis, 21 Mar 2002 (“*Milošević Decision*”), par 22: “The phrase ‘acts and conduct of the accused’ in Rule 92bis is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused. It should not be extended by fanciful interpretation. No mention is made of acts and conduct by alleged co-perpetrators, subordinates or, indeed, of anybody else. Had the rule been intended to extend to acts and conduct of alleged co-perpetrators or subordinates it would have said so.”

²⁹ *Tadić Judgment*, par 248.

³⁰ At the same time that Rule 92bis was introduced, Rule 90 was amended by deleting par (A), which stated: “Subject to Rules 71 and 71bis, witnesses shall, in principle, be heard directly by the Chambers”, and Rule 89 was amended by adding par (F), which states: “A Chamber may receive the evidence orally or, where the interests of justice allow, in written form”.

for “live, in court” testimony,³¹ and to permit evidence to be given in written form where the interests of justice allow provided that such evidence is probative and reliable, consistently with the decision of the Appeals Chamber concerning hearsay evidence in *Prosecutor v Aleksovski*.³² Far from being an “exception” to Rule 89, as the appellant claims,³³ Rule 92bis identifies a particular situation in which, once the provisions of Rule 92bis are satisfied, and where the material has probative value within the meaning of Rule 89(C), it is in principle in the interests of justice within the meaning of Rule 89(F) to admit the evidence in written form.³⁴ (The relationship between Rule 92bis and Rule 89(C) is discussed in pars 27-31, *infra*.)

13. The fact that the written statement goes to proof of the acts and conduct of a subordinate of the accused or of some other person for whose acts and conduct the accused is charged with responsibility does, however, remain relevant to the Trial Chamber’s decision under Rule 92bis. That is because such a decision also involves a further determination as to whether the maker of the statement should appear for cross-examination.³⁵ The proximity to the accused of the acts and conduct which are described in the written statement is relevant to this further determination.³⁶ Moreover, that proximity would also be relevant to the exercise of the Trial Chamber’s discretion in deciding whether the evidence should be admitted in written form at all.

³¹ *Prosecutor v Kordić & Čerkez*, IT-95-14/2-AR73.5, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000 (“*Kordić & Čerkez* Decision”), par 19.

³² IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 Feb 1999 (“*Aleksovski* Decision”), par 15. The relevant passage is quoted in a footnote to par 27, *infra*.

³³ Interlocutory Appeal, p 10.

³⁴ The admission into evidence of written statements made by a witness in lieu of their oral evidence in chief is not inconsistent with Article 21.4(e) of the Tribunal’s Statute (“In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: [...] to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; [...]”) or with other human rights norms (for example, Article 6(3)(d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides: “Everyone charged with a criminal offence has the following minimum rights: [...] to examine, or have examined, witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; [...]”). But, where the witness who made the statement is not called to give the accused an adequate and proper opportunity to challenge the statement and to question that witness, the evidence which the statement contains may lead to a conviction only if there is other evidence which corroborates the statement: *Unterpertinger v Austria*, Judgment of 24 Nov 1986, Series A no 110, pars 31-33; *Kostovski v The Netherlands*, Judgment of 20 Nov 1989, Series A no 166, par 41; *Vidal v Belgium*, Judgment of 22 Apr 1992, Series A no 235-B, par 33; *Lüdi v Switzerland*, Judgment of 15 June 1992, Series A no 238, par 49; *Artner v Austria*, Judgment of 28 Aug 1992, Series A no 242-A, pars 22, 27; *Saïdi v France*, Judgment of 20 Sept 1993, Series A no 261-C, pars 43-44; *Doorson v The Netherlands*, Judgment of 26 Mar 1996, par 80; *Van Mechelen v The Netherlands*, Judgment of 23 Apr 1997, Reports of Judgments and Decisions, 1997-III, pars 51, 55; *A M v Italy*, Judgment of 14 Dec 1999, 1999-IX Reports of Judgments and Decisions, par 25; *Lucà v Italy*, Judgment of 27 Feb 2001, 2001-II Reports of Judgments and Decisions, pars 39-40; *Solakov v Former Yugoslav Republic of Macedonia*, Judgment of 31 Oct 2001, appl No 47023/99, par 57.)

³⁵ Rule 92bis(E).

³⁶ *Milošević* Decision, par 22.

Where the evidence is so pivotal to the prosecution case, and where the person whose acts and conduct the written statement describes is so proximate to the accused, the Trial Chamber may decide that it would not be fair to the accused to permit the evidence to be given in written form.³⁷ An easy example of where the exercise of that discretion would lead to the rejection of a written statement would be where the acts and conduct of a person other than the accused described in the written statement occurred in the presence of the accused.

14. The exercise of the discretion as to whether the evidence should be admitted in written form at all becomes more difficult in the special and sensitive situation posed by a charge of command responsibility under Article 7.3 of the Tribunal's Statute. That is because, as the jurisprudence demonstrates in cases where the crimes charged involve widespread criminal conduct by the subordinates of the accused (or those alleged to be his subordinates), there is often but a short step from a finding that the acts constituting the crimes charged were committed by such subordinates to a finding that the accused knew or had reason to know that those crimes were about to be or had been committed by them.³⁸ Where the criminal conduct of those subordinates was widespread, the inference is often drawn that, for example, "there is no way that [the accused] could not have known or heard about [it]",³⁹ or "[the accused] had to have been aware of the genocidal objectives [of his subordinates]".⁴⁰

15. In such cases, it may well be that the subordinates of the accused (or those alleged to be his subordinates) are so proximate to the accused that *either* (a) the evidence of their acts and conduct which the prosecution seeks to prove by a Rule 92bis statement becomes sufficiently pivotal to the prosecution case that it would not be fair to the accused to permit the evidence to be given in written form, *or* (b) the absence of the opportunity to cross-examine the maker of the statement would in fairness preclude the use of the statement in any event. It must be emphasised, however, that the rejection of the written statement in any of these situations is not based upon any identification of that person's acts or conduct with the acts or conduct of the accused.

³⁷ *Prosecutor v Brđanin & Talić*, IT-99-36-T, (*Confidential*) Decision on the Admission of Rule 92bis Statements, 1 May 2002, par 14 [A public version of this Decision was filed on 23 May 2002.]

³⁸ *Prosecutor v Delalić et al*, IT-96-21-A, Judgment, 20 Feb 2001 ("*Delalić Judgment*"), par 241. There is a helpful list of *indicia* as to whether a superior "must have known" about the acts of his subordinates provided in the Final Report of the UN Commission of Experts (M. Cherif Bassiouni, Chairman), established pursuant to Security Council Resolution 780 (1992), 27 May 1994 (S/1994/674), under the heading "II Applicable Law - D. Command Responsibility".

³⁹ *Prosecutor v Delalić et al*, IT-96-21-T, Judgment, 16 Nov 1998, par 770.

⁴⁰ *Prosecutor v Krstić*, IT-98-33-T, 2 Aug 2001, Judgment, par 648.

16. The Appeals Chamber is very conscious of the fact that, in many cases, the evidence tendered pursuant to Rule 92bis will be relevant at the same time both to (i) the prosecution case that the accused has command responsibility under Article 7.3, and (ii) its case that the accused has individual responsibility under Article 7.1 (including participation in a joint criminal enterprise) other than personally perpetrating the crimes himself. However, Rule 92bis was primarily intended to be used to establish what has now become known as "crime-base" evidence, rather than the acts and conduct of what may be described as the accused's immediately proximate subordinates – that is, subordinates of the accused of whose conduct it would be easy to infer that he knew or had reason to know. The Appeals Chamber does not believe, therefore, that the concerns which it has expressed as to the use of Rule 92bis in Article 7.3 cases where it relates to the acts and conduct of the accused's immediately proximate subordinates will unduly limit the advantages to the expeditious disposal of trials which the Rule was designed to achieve. It may be that, where the evidence which the prosecution wishes to establish by extensive use of Rule 92bis in a particular case is specially pivotal to that case because it deals with the acts and conduct of the accused's immediately proximate subordinates, it will have to elect between the alternative formulations of its case which it has pleaded if it wishes to take advantage of the Rule in relation to that evidence.

17. Returning to the present case, the two statements admitted into evidence by the Trial Chamber pursuant to Rule 92bis(C) did not go to proof of any acts or conduct of the accused, and the objection by the appellant upon this basis is rejected. The issue then arises as to whether they should nevertheless have been rejected in the exercise of the Trial Chamber's discretion.

18. The written statement by Bajram Šopi, who was present collecting firewood when a man was killed by a sniper's shot, does not indicate the source of the shot and (on its face and taken by itself) it appears to be of no particular importance to proof of the responsibility of the appellant. No question of discretion arises in relation to that statement. However, the statement of the expert (Hadija Čavčić) concerning his conclusions as to the direction from which the particular shell had been fired, could – for the reasons given in pars 15-16, *supra* – be of substantial importance to the prosecution case if it is the vital link in demonstrating that the shell which is alleged to have caused many casualties was fired from a gun emplacement manned by immediately proximate subordinates of the accused. A question of discretion would therefore

appear to arise as to whether it would be unfair to the accused to permit this evidence to be given in written form in any event, particularly as there can be no opportunity to cross-examine him.

19. The Trial Chamber's Decision in relation to the expert's statement deals in careful detail with the arguments raised as to the statement's compliance with the requirements of Rule 92bis,⁴¹ but it does not discuss any issue of discretion as might have been expected if that issue had been considered by the Trial Chamber. This may well be because counsel for the accused appears to have rested her opposition to the application by the prosecution exclusively upon the argument that the acts and conduct of the accused included those of his subordinates and upon the absence of any opportunity to cross-examine the expert, and she did not address the issue of discretion. In the opinion of the Appeals Chamber, however, it would be preferable that a Trial Chamber should nevertheless always give consideration to the exercise of the discretion given by Rule 92bis whenever the prosecution seeks to use that Rule in the special and sensitive situation posed by a charge of command responsibility under Article 7.3 where the evidence goes to proof of the acts and conduct of the accused's immediately proximate subordinates.

20. In the present case, there have been two witnesses who have already given oral evidence concerning the shelling described in the expert's statement (Mirza Sabljica, who conducted the investigation with Hadija Čavčić, and Sead Besić) and a third witness (Muhamed Jusufspahić) has yet to give oral evidence concerning it.⁴² The Trial Chamber concluded that the opportunity which the accused had to cross-examine those witnesses made up for the absence of such an opportunity in relation to the now deceased Hadija Čavčić.⁴³ It may well be – it is not possible to tell on the rather limited material before the Appeals Chamber – that the evidence of those witnesses will reduce or even remove any suggestion that the statement of Hadija Čavčić, despite the absence of the opportunity to cross-examine him, is sufficiently pivotal to the prosecution case that the shell was fired by subordinates of the accused as to render it unfair (because of their immediate proximity to him) to permit the evidence to be given in written form. The Appeals Chamber is, therefore, not in a position in this case to exercise its own discretion in the place of the Trial Chamber as it ordinarily would be.⁴⁴ In these circumstances, and in the light of the

⁴¹ First Decision.

⁴² *Ibid*, p 3.

⁴³ *Ibid*, p 3.

⁴⁴ cf *Prosecutor v Milošević*, IT-99-37-AR73, IT-01-50-AR73 & IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 Apr 2002 ("*Milošević Appeal Decision*"), pars 4, 6.

Appeals Chamber's rejection of the other issues argued in the appeal, it will be necessary to uphold the appeal against the order made in the First Decision so that the matter may be returned to the Trial Chamber for it to consider the exercise of its discretion in accordance with this present Decision in relation to the statement of Hadija Čavčić.

21. For these reasons, it remains appropriate to deal also with the two alternative responses put forward by the prosecution in relation to the exclusion of any written statement which goes to proof of the acts and conduct of the accused.

1(b) Does the exclusion apply to Rule 92bis(C) written statements?

22. The prosecution tendered the two statements in question under Rule 92bis(C), which concerns written statements by persons who have since died or who can no longer with reasonable diligence be traced or who are unable to testify orally by reason of their bodily or mental condition. The prosecution's argument is that Rule 92bis(C) does not exclude proof of the acts and conduct of the accused where the person who made the statement tendered under that Rule has since died. This argument is based upon what is described as a "contextual" interpretation of the Rule.⁴⁵

23. The prosecution submits that Rule 92bis(A) contemplates written statements made by persons who could still be called to give evidence, and that its purpose is to save the time of the evidence being given orally. On the other hand, the prosecution submits, Rule 92bis(C) contemplates statements made by persons who cannot be called to give evidence, and that its purpose is to permit the "best" evidence available to be given.⁴⁶ The prosecution claims support for this submission in the fact that, whereas both Rule 92bis(A) and Rule 92bis(D) (which concerns the admissibility of a transcript of evidence given by the witness in proceedings before the Tribunal) refer expressly to the exclusion of such written statements which go to proof of the acts and conduct of the accused, Rule 92bis(C) does not make any reference to that exclusion. The prosecution calls in aid the maxim *expressio unius est exclusio alterius*.⁴⁷ Such a maxim must always be applied with great care in statutory interpretation, for it is not of universal application. It is often described as a valuable servant but a dangerous master. Contrary to the

⁴⁵ Response, pars 7-8.

⁴⁶ *Ibid*, pars 12-13.

⁴⁷ The express mention of one person or thing is the exclusion of another (Co Litt 210a).

prosecution's argument, however, the context which Rule 92bis provides for the particular provision in Rule 92bis(C) demonstrates that the maxim is irrelevant to its interpretation.

24. Rule 92bis(A) makes admissible written statements in lieu of oral testimony, but limits such written statements to those which go to proof of a matter other than the acts and conduct of the accused as charged in the indictment. Rule 92bis(B) sets out the form of a declaration which must be attached to the written statement before it becomes admissible under Rule 92bis(A) in lieu of oral testimony. Rule 92bis(D) provides a separate and self-contained method of producing evidence in a written form in lieu of oral testimony by the tender of the transcript of a witness's evidence in proceedings before the Tribunal. Rule 92bis(C), however, does *not* provide a separate and self-contained method of producing evidence in written form in lieu of oral testimony. Both in form and in substance, Rule 92bis(C) merely excuses the necessary absence of the declaration required by Rule 92bis(B) for written statements to become admissible under Rule 92bis(A).

25. The prosecution argument that Rule 92bis(C) does not exclude proof of the acts and conduct of the accused by a written statement of a deceased person is rejected.

1(c) Admissibility under Rule 89(C) without Rule 92bis restrictions

26. The prosecution's third response to the appellant's arguments that the two statements admitted into evidence go to proof of the acts and conduct of the accused was that they were in any event admissible under Rule 89(C) without the restrictions of Rule 92bis.⁴⁸

27. Rule 89(C) – "A Chamber may admit any relevant evidence which it deems to have probative value" – permits the admission of hearsay evidence (that is, evidence of statements made out of court), in order to prove the truth of such statements rather than merely the fact that they were made.⁴⁹ Hearsay evidence may be oral, as where a witness relates what someone else

⁴⁸ Response, pars 15-24.

⁴⁹ *Aleksovski* Decision, par 15: "It is well settled in the practice of the Tribunal that hearsay evidence is admissible. Thus relevant out of court statements which a Trial Chamber considers probative are admissible under Rule 89(C). This was established in 1996 by the Decision of Trial Chamber II in *Prosecutor v. Tadić* [IT-94-1-T, Decision on the Defence Motion on Hearsay, 5 Aug. 1996 ('*Tadić* Decision')] and followed by Trial Chamber I in *Prosecutor v. Blaškić* [IT-95-14-T, Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability, 26 Jan. 1998 ('*Blaškić* Decision')]. Neither Decision was the subject of appeal and it is not now submitted that they were wrongly decided. Accordingly, Trial Chambers have a broad discretion under Rule 89(C) to admit relevant hearsay evidence. [footnote continued on next page]

had told him out of court, or written, as when (for example) an official report written by someone who is not called as a witness is tendered in evidence. Rule 89(C) clearly encompasses both these forms of hearsay evidence. Prior to the addition of Rule 92bis, the statement of a witness made to an OTP investigator who had died since making it had been admitted into evidence by a Trial Chamber pursuant to Rule 89(C), in *Prosecutor v Kordić & Čerkez*.⁵⁰ The Appeals Chamber overruled that decision on the basis that the discretion to admit hearsay evidence under Rule 89(C) had to be exercised so that it was in harmony with the Statute and the other Rules to the greatest extent possible,⁵¹ and only where the Trial Chamber was satisfied that the evidence was reliable.⁵² To some extent, the *Kordić & Čerkez* Decision by the Appeals Chamber was dependent upon the preference in the Rules at the time for “live, in court” testimony,⁵³ but its insistence upon the reliability of hearsay evidence was maintained in relation to hearsay written statements, despite the qualification of that preference (see par 12, *supra*), when Rule 92bis was introduced as a result of that decision.

28. Rules 92bis(A) and Rule 92bis(C) are directed to written statements prepared for the purposes of legal proceedings. This is clear not only from the fact that Rule 92bis was introduced as a result of the *Kordić & Čerkez* Decision but also from its description of the written statement as being admitted “in lieu of oral testimony” in Rule 92bis(A), as well as the nature of the factors identified in Rule 92bis(A) in favour and against “admitting evidence in the form of a written statement”. Rule 92bis(D), permitting the transcript of a witness’s evidence in proceedings before the Tribunal to be admitted as evidence, is similarly directed to material produced for the purposes of legal proceedings. Rule 92bis as a whole, therefore, is concerned

Since such evidence is admitted to prove the truth of its contents [*Tadić* Decision, pars 15-19], a Trial Chamber must be satisfied that it is reliable for that purpose, in the sense of being voluntary, truthful and trustworthy, as appropriate; and for this purpose may consider both the content of the hearsay statement and the circumstances under which the evidence arose [*Tadić* Decision, pars 15-19]; or, as Judge Stephen described it, the probative value of a hearsay statement will depend upon the context and character of the evidence in question [*Tadić* Decision, p 3 of Judge Stephen’s concurring opinion]. The absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is ‘first-hand’ or more removed, are also relevant to the probative value of the evidence [*Blaškić* Decision, par 12]. The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence [*Tadić* Decision, pp 2-3 of Judge Stephen’s concurring opinion].”

⁵⁰ IT-95-14/2-T, 21 Feb 2000, Transcript p 14,701.

⁵¹ *Kordić & Čerkez* Decision, par 20.

⁵² *Ibid*, pars 22-24.

⁵³ *Ibid*, par 19.

with hearsay evidence such as would previously have been admissible under Rule 89(C). But it is hearsay material of a very special type, with very serious issues raised as to its reliability.

29. Unlike the civil law, the common law permits hearsay evidence only in exceptional circumstances.⁵⁴ When many common law jurisdictions took steps to limit the rule against hearsay by permitting the admission of written records kept by a business as evidence of the truth of what they stated notwithstanding that rule, they invariably excluded from what was to be admissible under that exception any documents made in relation to pending or anticipated legal proceedings involving a dispute as to any fact which the document may tend to establish. This exclusion reflected the fact that such documents are not made in the ordinary course by persons who have no interest other than to record as accurately as possible matters relating to the business with which they are concerned. It also rested upon the recognised potential in relation to such documents for fabrication and misrepresentation by their makers and of such documents being carefully devised by lawyers or others to ensure that they contained only the most favourable version of the facts stated.

30. The decision to encourage the admission of written statements prepared for the purposes of such legal proceedings in lieu of oral evidence from the makers of the statements was nevertheless taken by the Tribunal as an appropriate mixture of the two legal systems, but with the realisation that any evidentiary provision specifically relating to that material required considerable emphasis upon the need to ensure its reliability. This is particularly so in relation to written statements given by prospective witnesses to OTP investigators, as questions concerning the reliability of such statements have unfortunately arisen,⁵⁵ from knowledge gained in many trials before the Tribunal as to the manner in which those written statements are compiled.⁵⁶ Rule 92bis has introduced that emphasis.

⁵⁴ See, generally, *Myers v Director of Public Prosecutions* [1965] AC 1001.

⁵⁵ *Kordić & Čerkez Decision*, par 27; *Prosecutor v Naletić & Martinović*, IT-98-34-T, *Confidential Decision on the Motion to Admit Statement of Deceased Witnesses Kazin Mežit and Arif Pasalić*, 22 Jan 2002, p 4.

⁵⁶ In the usual case, the witness gives his or her statement orally in B/C/S, which is translated into English and, after discussion, a written statement is prepared by the investigator in English. The statement as written down is read back to the witness in English and translated orally into B/C/S. The witness then signs the English written statement. Some time later, the English written statement is translated into a B/C/S written document, usually by a different translator, and it is this third stage translation which is provided to the accused pursuant to Rule 66. Neither the interview nor the reading back is tape-recorded to ensure the accuracy of the oral translation given at each stage.

31. A party cannot be permitted to tender a written statement given by a prospective witness to an investigator of the OTP under Rule 89(C) in order to avoid the stringency of Rule 92bis. The purpose of Rule 92bis is to restrict the admissibility of this very special type of hearsay to that which falls within its terms. By analogy, Rule 92bis is the *lex specialis* which takes the admissibility of written statements of prospective witnesses and transcripts of evidence out of the scope of the *lex generalis* of Rule 89(C), although the general propositions which are implicit in Rule 89(C) – that evidence is admissible only if it is relevant and that it is relevant only if it has probative value – remain applicable to Rule 92bis. But Rule 92bis has no effect upon hearsay material which was not prepared for the purposes of legal proceedings. For example, the report prepared by Hamdija Čavčić (described in par 3, *supra*) could have been admitted pursuant to Rule 89(C) if it was not prepared for the purposes of legal proceedings (as to which the evidence is silent). The prosecution argument that the two statements admitted into evidence were in any event admissible under Rule 89(C) without the restrictions of Rule 92bis is rejected.

2 The “probability of the said statements”

32. The appellant submits that neither of the decisions under appeal indicates that the Trial Chamber had “engaged in evaluation of the requirements prescribed under Rule 92bis(C)(i)”.⁵⁷ By admitting the written statement of a deceased witness “without previously attempting to establish its probability”, the appellant says, the decision of the Trial Chamber is opposed to the provisions of that Rule.⁵⁸ The “failure to engage in establishing the probability of the said statements” is also alleged to have caused the Trial Chamber to fail “in a reliable manner to establish facts on the basis of which these statements will be assessed”.⁵⁹ The submission is later repeated in these terms: “Trial Chamber in the contested decisions [...] did not proceed in accordance with the Rule 92bis(C)(i) and in view of this error, the contested decisions are legally untenable.”⁶⁰

33. The appellant has misread Rule 92bis(C)(i). For convenience, the terms of Rule 92bis(C) are repeated:

(C) A written statement not in the form prescribed by paragraph (B) may nevertheless be admissible if made by a person who has subsequently died, or by a person who can no longer with reasonable diligence be traced, or by a person who is by reason of bodily or mental condition unable to testify orally, if the Trial Chamber:

⁵⁷ Interlocutory Appeal, p 3.

⁵⁸ *Ibid*, p 4.

⁵⁹ *Ibid*, p 4.

⁶⁰ *Ibid*, p 11.

- (i) is so satisfied on a balance of probabilities; and
(ii) finds from the circumstances in which the statement was made and recorded that there are satisfactory *indicia* of its reliability.

What Rule 92*bis*(C)(i) requires is that the Trial Chamber be satisfied on a balance of probabilities that the written statement was “made by a person who has subsequently died, or by a person who can no longer with reasonable diligence be traced, or by a person who is by reason of bodily or mental condition unable to testify orally”. That is made clear by the use of the words “if the Trial Chamber [...] is *so* satisfied” immediately following those words.⁶¹ The requirements of Rule 92*bis*(C)(i) have nothing to do with the “probability” or any other characteristic of the statement itself. The assessment of the reliability of that statement is the subject of Rule 92*bis*(C)(ii).

34. There was no issue taken by the appellant before the Trial Chamber in relation to the assertion by the prosecution at the trial that the makers of the two statements admitted into evidence were dead, coupled as it was with a death certificate for each of them. This objection by the appellant is rejected.

3 The reliability of the statements

35. The appellant submits that the Trial Chamber “did not engage in establishing the question of reliability”.⁶² This submission has not been developed in his Interlocutory Appeal in any way. The reliability of the statements had been contested before the Trial Chamber, and the Trial Chamber in each of its decisions made findings not only that it was satisfied that the written statement of each witness and the report of Hamdija Čavčić had satisfactory *indicia* of their reliability within the meaning of Rule 92*bis*(C)(ii),⁶³ but also that each had “probative value within the meaning of Rule 89(C)”.⁶⁴ The appellant has criticised the Trial Chamber’s reference to Rule 89(C) as “an error on a question of law”,⁶⁵ saying that there was no need to have recalled the general provisions of Rule 89 as Rule 92*bis* was the special rule applicable. As the Appeals Chamber has already stated, evidence is admissible only if it is relevant and it is relevant only if it has probative value, general propositions which are implicit in Rule 89(C).⁶⁶ The Trial Chamber need not have referred to Rule 89(C), but it did have to be satisfied that the evidence in

⁶¹ Emphasis has been added to the word “so”.

⁶² Interlocutory Appeal, p 3.

⁶³ First Decision, p 3; Second Decision, p 4.

⁶⁴ First Decision, p 3; Second Decision, p 4.

⁶⁵ Interlocutory Appeal, p 9.

⁶⁶ Paragraph 31, *supra*.

the statements was relevant in that sense before they could be admitted. No error was made by the Trial Chamber.

36. The prosecution is correct in its assertion that the appellant has not in this appeal contested the finding of the Trial Chamber in accordance with Rule 92bis(C)(ii) that there were satisfactory *indicia* of the reliability of each statement in the circumstances in which it was made and recorded.⁶⁷ Those findings of fact can be interfered with only if the appellant demonstrates that they were ones which no reasonable tribunal of fact could have reached,⁶⁸ or that they were invalidated by an error of law.⁶⁹ There has been no attempt to do so, and the Appeals Chamber, having considered the material before the Trial Chamber, is not satisfied that those findings are open to appellate review.

37. The appellant's complaint is rejected.

4 Application of Rule 92bis to expert witnesses

38. The appellant submits that Rule 92bis does not relate to expert witnesses, whose evidence is admissible only under Rule 94bis, so that the evidence of Hamdija Čavčić, the chemical engineer, was inadmissible under Rule 92bis.⁷⁰ Rule 94bis provides:

Rule 94bis Testimony of Expert Witnesses

- (A) The full statement 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 filing of the statement 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; or
 - (ii) it wishes to cross-examine the expert witness.
- (C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

The appellant says that this Rule makes a formal distinction between witnesses and expert witnesses, so that Rule 92bis, in the absence of a clear and formal statement of intention to the

⁶⁷ Response, par 22.

⁶⁸ *Tadić* Judgment, par 64; *Prosecutor v Aleksovski* IT-95-14/1-A, Judgment, 24 Mar 2000, par 63; *Prosecutor v Furundžija*, IT-95-17/1-A, Judgment, 21 July 2000, par 37; *Delalić* Judgment, pars 434-435, 459, 491, 595; *Prosecutor v Kupreškić et al*, IT-96-16-A, Judgment, par 30.

⁶⁹ *Milošević* Appeal Decision, par 6.

⁷⁰ Interlocutory Appeal, p 9.

contrary, must be regarded as being subject to the same formal distinction.⁷¹ The Appeals Chamber does not accept the appellant's submissions.

39. Rule 94*bis* performs two separate functions. Whereas Rule 66(A)(ii) requires the prosecution to disclose the statements of all prosecution witnesses when a decision is made to call those witnesses, and whereas Rule 65*ter* requires the accused to disclose a summary of the facts on which each of his witnesses will testify prior to the commencement of the defence case, Rule 94*bis* provides a separate timetable for the disclosure of the statements of expert witnesses whichever party is calling that expert. Once the statement of an expert witness has been disclosed, Rule 94*bis* requires the other party to react to that statement within a further time limit and, depending upon whether the other party wishes to cross-examine the expert, provides for the admission of that statement without calling the expert witness to testify. No such provision is made in relation to the witnesses whose statements are disclosed by the prosecution pursuant to Rule 66(A)(ii) or the witnesses whose summaries are to be disclosed by the accused pursuant to Rule 65*ter*. In this sense, there is a clear distinction made in Rule 92*bis* between expert witnesses and other witnesses.

40. However, Rule 94*bis* contains nothing which is inconsistent with the application of Rule 92*bis* to an expert witness. Indeed, Rule 92*bis* expressly contemplates that witnesses giving evidence relating to the relevant historical, political or military background of a case (which is usually the subject of expert evidence) will be subject to its provisions. There is nothing in either Rule which would debar the written statement of an expert witness, or the transcript of the expert's evidence in proceedings before the Tribunal, being accepted in lieu of his oral testimony where the interests of justice would allow that course in order to save time, with the rights of the other party to cross-examine the expert being determined in accordance with Rule 92*bis*. Common sense would suggest that there is every reason to suggest that such a course ought to be followed in the appropriate case.

41. There is perhaps less need for reliance upon Rule 92*bis*(C) where an expert witness has died since making his report, as it is usually possible for the party requiring that expert evidence to obtain it from another source. But, again, there is nothing in either Rule which would debar reliance upon Rule 92*bis*(C) in relation to the report of an expert witness in the appropriate case.

⁷¹ *Ibid*, p 9.

The objection taken in the present case is to a witness whose expert evidence could not be replaced by another witness. Hamdija Čavčić describes the results of the shellings which he investigated at the time of their occurrence. His deductions as to the direction from which the shells were fired is without doubt expert evidence, but that expert evidence is based upon facts to which only he could testify directly.

42. It is unclear whether this particular objection was taken by the appellant before the Trial Chamber, but it is obvious that, if it had been, the only reasonable conclusion which would have been open to the Trial Chamber *in relation to this issue* was to have admitted the statement under Rule 92bis. The appellant's objection is rejected.

5 Admissibility of part of a written statement

43. The appellant submits that, in relation to the statement of Bajram Šopi (described in par 4, *supra*), it is not in the interests of justice, and it is to the detriment of his fair trial, not to have admitted that part of that statement which, it is said, states:⁷²

[...] the fact that in the school, which was located in the vicinity of his house, the army was stationed there from where it was going to the first front combat line, that he took part in bringing food for the army, and other facts which prove that he was not a civilian, and that he was present in the zone of legitimate military targets.

The appellant asserts that he should have been given the opportunity to present his stand in relation to this part of the statement, to argue that it should have been admitted because he was unable to cross-examine this witness.⁷³

44. The clear suggestion in those submissions that the appellant was not given the opportunity to put these arguments at the trial is entirely without merit. A response to the prosecution's motion to admit the evidence was filed by the appellant on 8 April.⁷⁴ Its concerns were directed to what are described as the statement's "many inconsistencies and imprecise information" as to incident 11 in the schedule to the indictment, the absence of detail as to the wounding of the witness's wife (which was recounted in a part of the statement not tendered by the prosecution) and, in very general terms, the "poor and incomplete explanation of the facts from his short written statement". Significantly, the response made no mention of the arguments

⁷² Interlocutory Appeal, p 11.

⁷³ *Ibid*, p 11.

⁷⁴ Reply to the Request of the Prosecutor to Present the Evidence in Accordance to [*sic*] Rule 92bis(C), 8 Apr 2002, signed by Ms Pilipović as lead counsel.

now put before the Appeals Chamber. The appeal process is not designed for the purpose of allowing parties to remedy their own failings or oversights at the trial.

45. Moreover, the written statement which was admitted into evidence makes no mention of the witness taking part in bringing food for the army, or any other fact which may prove that he was not a civilian, as the Interlocutory Appeal suggests. Even if the witness could be regarded as a combatant at some earlier time, it is not clear from the statement how he lost his civilian status when he was collecting firewood at the time the other man present was shot. There was no mention in the statement of "legitimate military targets" unless this describes the school building behind the witness's house which (the statement says) had been "levelled" the year before this incident, but which had at that earlier time been used to house military units. If this interpretation was disputed, it was open to the appellant to raise that issue in the cross-examination of another witness to the same incident, one Nura Bajraktarević. No detriment to the fair trial of the appellant has so far been demonstrated by the non-tender of this part of the statement.

46. It must be emphasised that Rule 92*bis*(C) makes specific provision for the admission of part only of a written statement of a witness,⁷⁵ and that it is for the Trial Chamber to decide, after hearing the parties, whether to admit the statement in whole or in part.⁷⁶ Notwithstanding the argument of the prosecution to the contrary,⁷⁷ it is *not* its "prerogative" to determine how much of the statement is to be admitted. Where that part of the written statement not tendered by the prosecution modifies or qualifies what is stated in the part tendered, or where it contains material relevant to the maker's credit, the absence of any opportunity to cross-examine the witness (which must be the case where Rule 92*bis*(C) is concerned) would usually necessitate the admission of those parts of the statement as well. There is no foundation for the appellant's argument that, if the statement includes material which is irrelevant, the whole of the statement must be rejected.⁷⁸

47. The appellant's objection is rejected.

⁷⁵ Rule 92*bis*(A).

⁷⁶ Rule 92*bis*(E).

⁷⁷ Response, par 69.

⁷⁸ Interlocutory Appeal, p 11.


Disposition

48. For the foregoing reasons:

- (1) The appeal against the Trial Chamber's First Decision (given on 12 April 2002) is allowed, so that the matter may be returned to the Trial Chamber for it to consider the exercise of its discretion in accordance with this present Decision in relation to the statement of Hamdija Čavčić.
- (2) The appeal against the Trial Chamber's Second Decision (given on 18 April 2002) is dismissed.

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

Dated this 7th day of June 2002,
At The Hague,
The Netherlands.



Judge David Hunt
Presiding Judge

[Seal of the Tribunal]

ANNEX A

Annex A: Objection to Admission of UN Documents through Rules 89(C) and 92bis

22175

Doc.	Title/Date	Objection	Explanation
1	Sierra Leone Humanitarian Situation Report 04-05 June 1997	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> No information as to the author of the document Extracts in the document intended to be admitted by the Prosecution lists Sam Bockarie as the RUF commander who allegedly masterminded the operation to take hostage the Sierra Leonean Ambassador to Guinea in March 1997- he is considered subordinate to Mr. Taylor Document addresses a meeting taking place in May 1997 – irrelevant as outside the indictment period
2	Letter dated 27 June 1997 from the Permanent Representative of Nigeria to the United Nations addressed to the President of the Security Council (S/1997/449)	<input checked="" type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> Document addresses a situation prior to Mr. Taylor being elected president of Liberia – document date July 1997. Irrelevant as outside the indictment period. Document refers to Liberia and its internal situation No information about the author of the document. Eyewitnesses and sources to some of the alleged happenings are considered as reliable – with no name or additional information given (see para. 1) Some conclusions in the document are drawn on what the Defence considers unreliable sources as they are not identified (see para 1.) Extracts discuss Sam Bockarie – considered subordinate to Mr. Taylor Document addresses a situation prior to Mr. Taylor being elected president of Liberia- dated 6 August 1997
3	Statement by the President of the Security Council (S/PRST/1997/36)	<input checked="" type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> Document addresses a situation prior to Mr. Taylor being elected president of Liberia – document date July 1997. Irrelevant as outside the indictment period. Document refers to Liberia and its internal situation No information about the author of the document. Eyewitnesses and sources to some of the alleged happenings are considered as reliable – with no name or additional information given (see para. 1) Some conclusions in the document are drawn on what the Defence considers unreliable sources as they are not identified (see para 1.) Extracts discuss Sam Bockarie – considered subordinate to Mr. Taylor Document addresses a situation prior to Mr. Taylor being elected president of Liberia- dated 6 August 1997
4	Sierra Leone Humanitarian Situation Report 08-14 July 1997	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> Document addresses a situation prior to Mr. Taylor being elected president of Liberia – document date July 1997. Irrelevant as outside the indictment period. Document refers to Liberia and its internal situation No information about the author of the document. Eyewitnesses and sources to some of the alleged happenings are considered as reliable – with no name or additional information given (see para. 1) Some conclusions in the document are drawn on what the Defence considers unreliable sources as they are not identified (see para 1.) Extracts discuss Sam Bockarie – considered subordinate to Mr. Taylor Document addresses a situation prior to Mr. Taylor being elected president of Liberia- dated 6 August 1997
5	Statement by the President of the Security Council (S/PRST/1997/42)	<input checked="" type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> Document addresses a situation prior to Mr. Taylor being elected president of Liberia- dated 6 August 1997
6	Security Council Committee on Sierra Leone Releases List of Junta Members Affected by Sanctions – Press Release	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> Document lists Sam Bockarie, Samuel Kargbo, Johnny Paul Koroma, Michael Lamin and most of the other individuals considered to be subordinates of Mr Taylor

Annex A: Objection to Admission of UN Documents through Rules 89(C) and 92bis

22176

Doc.	Title/Date	Objection	Explanation
7	Sierra Leone: Humanitarian Situation Report, 21 January -12 February 1998	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> No information about the author of the document
8	Sierra Leone Humanitarian Situation Report, 16-30 April 1998	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> The amount of war wounded such as 101 amputees is not susceptible to confirmation Extracts contain information going directly to the acts and conducts to the accused as identified and underlined by the Prosecution. However the Prosecution fail to highlight in the same paragraph 2 the following: a)ECOMOG spokesman have alleged that RUF fighters are being trained at a camp in Lofa county in Northern Liberia (para 2), and b) that is was further stated that there is evidence that former NPFL and ULIMO-K fighters were crossing from Liberia into Sierra Leone to assist the activities of the RUF (para 2) These events go to the core of the Prosecution case and should not be admitted – results in prejudice to the Accused
9	Security Council Resolution 1181 (13 July 1998)	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> Document discusses the alleged cross-border arms flow taking place in order to support Rebels in Sierra Leone (para 13) This allegation goes to the core of the Prosecutions case and should not be admitted – results in prejudice to the Accused.
10	Second Progress Report of the Secretary General on the United Nations Observer Mission in Sierra Leone (S/1998/960) 16 October 1998	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> The document is not susceptible of confirmation as there is no name of the author of the report. Also para. 21, regarding to human rights abuses Extracts in the document intended to be admitted by the Prosecution contain information going directly to the acts and conducts to the accused as identified and underlined by the Prosecution. However the Prosecution fail to identify and underline the following : a) mention of Foday Sankoh (para 4)

Annex A: Objection to Admission of UN Documents through Rules 89(C) and 92bis

22177

Doc.	Title/Date	Objection	Explanation
11	Third Progress Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone (S/1998/1176) 16 December 1998	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> b) mention of Sierra Leone and Liberia relationship (para 6) c) the alleged information receive by the author from President Kabbah of alleged preparation by Liberia for the dispatch of fighters for an incursion into Sierra Leone d) discusses the situation in Sierra Leone in Liberia and the relationship between those two countries (para 61) • All of the allegations and issues raised in the report go the critical element of the Prosecution case – establishing a clear link between Sierra Leone and Liberia • The document is not susceptible of confirmation as there is no name of the author of the report. Also, for ex, para. 32 lists precise numbers of ex-child combatants from the RUF which are not susceptible of confirmation • Extracts contain information going directly to the acts and conducts to the accused as identified and underlined by the Prosecution. However the Prosecution fail to identify and underline the following: <ul style="list-style-type: none"> a) mention of Foday Sankoh (para 37) b) the mention of Liberia in the context of illegal transit of weapons and ammunitions (the rest of para 74 – the Defence submits the whole paragraph goes to the acts and conducts of the accused not just the underlined section by the Prosecution) • All of the allegations and issues raised in the report go the critical element of the Prosecution case – establishing a clear link between Sierra Leone and Liberia
12	Special Report of the Secretary – General on the United Nations Observer Mission in Sierra Leone	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Extracts contain information going directly to the acts and conducts to the accused as identified and underlined by the Prosecution. However the Prosecution fail to identify and underline the following:

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Doc.	Title/Date	Objection	Explanation
	(S/1999/20) 7 January 1999		<ul style="list-style-type: none"> a) mention of Sam Bockarie and Foday Sankoh in light of an attack on Freetown (para 6) b) the formation of the Committee of Five – comprising Liberia (para 13) c) implications of Liberia in providing military support to the rebels by Commander of ECOMOG (para 14 – consequently the Defence submits the whole paragraph goes to the acts and conducts of the accused not just the underlined portion by the Prosecution) d) Chairman of ECOWAS trying to initiate a relationship between Sierra Leone and Liberia (para 17) <ul style="list-style-type: none"> • All of the information provided in the extracts by the Prosecution go the critical element of the Prosecutions case as they are addressing the 6 January 1999 Freetown invasion
13	Report on Atrocities Committed Against The Sierra Leone Population, 28 January 1999		
13: Case #1	--	<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • The Document highlights orders from Superman (Dennis Mingo) considered to be subordinate to Mr Taylor • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo.
13: Case #2	--	<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo.
13: Case #4	--	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates	<ul style="list-style-type: none"> • Document makes mention that the perpetrators were rebels under Foday Sankoh who is considered subordinate to Mr. Taylor

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Doc. Title/Date	Objection	Explanation
	<input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Witness states that he knew that they were rebels because they always went around in groups of 8, 12, 18 or 24 persons. • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo.
13: Case #6	<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo.
13: Case #7	<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo. • Mentions Foday Sankoh who is considered subordinate to Mr. Taylor
13: Case #9	<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo.
13: Case #10	<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo.
13: Case #14	<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo.

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Doc.	Title/Date	Objection	Explanation
13: Case #15		<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Case discusses people speaking Liberian english • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo. • Case discusses Sam Bockarie
13: Case #17		<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo. • Case discusses Sam Bockarie
13: Case #18		<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo.
13: Case #19		<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo.
13: Case #20		<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo.
13: Case #22		<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Name redacted from the statement • The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo. • Case discusses rebels being Liberian

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Doc.	Title/Date	Objection	Explanation
13: Case #24		<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> Name redacted from the statement The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo. Case discusses rebels being Liberian
13: Case #27		<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> Name redacted from the statement The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo. Case discusses Foday Sankoh
13: Case #29		<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> Name redacted from the statement The quality of the document makes it illegible and therefore of questionable relevance. Document is not in the official language of the SCSL. Very poor quality photo. Case discusses rebels being Liberian
13: Case #33		<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> Name redacted from the statement The case is outside of the indictment period Case discusses Superman, Foday Sankoh and Sam Bockarie considered subordinates to Mr Taylor
14	Letter dated 22 February 1999 from the Charge d' Affaires A.I. of the Permanent Mission of Liberia to the United Nations Addressed to the Secretary-General (S/1999/193) 23 February 1999	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> Extracts contain information going directly to the acts and conducts to the accused as identified and underlined by the Prosecution. However, since the document refers to 'Liberia' and the 'Government of Liberia', this directly goes to acts and conducts of Mr. Taylor as the President of Liberia.
15	Fifth Report of the Secretary General on the United Nations Observer	<input checked="" type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates	<ul style="list-style-type: none"> Part of the document deleted at para 45 is essential to understand the context and determining relevance. Map is not of good quality.

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Doc.	Title/Date	Objection	Explanation
	Mission in Sierra Leone (S/1999/237) 4 th March 1999	<input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Killing of policemen during the Freetown Invasion is not susceptible of confirmation. No information to the author of the document. UNSMSIL human rights officers who went to Freetown and assessed the situation are not identified • Extracts contain information going directly to the acts and conducts to the accused as identified and underlined by the Prosecution. However the Prosecution fail to identify and underline the following: <ol style="list-style-type: none"> a) rebel forces relying on receiving weapons from outside the country one of those places being Liberia (para 4) b) reference to Foday Sankoh (para 10,11 and 14) • In addition, the document refers to the 'Government of Liberia', as the President of Liberia, this directly goes to the acts and conducts of Mr Taylor as identified by the Prosecution (para 18 and 19). • The Document goes directly to a critical element of the Prosecutions Case -- showing that rebel forces in Sierra Leone were receiving weapons from outside the Country for the 6 January 1999 Freetown invasion
16	Security Council Resolution 1231 (1999) 11 March 1999	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Extracts contain information going directly to the acts and conducts to the accused as identified and underlined by the Prosecution. However the Prosecution fail to identify and underline the following: <ol style="list-style-type: none"> a) the concern expressed over alleged supply of arms and mercenaries from Liberia (para 5) • Reference to Liberia and President of Liberia' should be taken to go directly to the acts and conduct of Mr Taylor because of his position as President. • The document goes directly to a critical element of the Prosecution case -- reference of arms supply from Liberia • The specifics of the human rights abuses such as up to 5,000 houses destroyed reported by the Ministry of Housing is not susceptible to confirmation
17	Sierra Leone Humanitarian Situation Report 1 - 17 May 1999	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates	

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Doc.	Title/Date	Objection	Explanation
18	Sixth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone (S/1999/645) 4 June 1999	<input type="checkbox"/> Critical element of Pros case <input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • No information to the author of the document • (comment: note that the combination of the documents is prejudicial – one shows that it was Liberia supplying mercenaries, then another will speak of mercenaries, etc) • No information to the author of the document • Extracts contain information going directly to the acts and conducts to the accused as identified and underlined by the Prosecution. However the Prosecution fail to identify and underline the following: <ul style="list-style-type: none"> a) mention of Foday Sankoh and his transportation to Lome via Monrovia, Liberia (para 5, 6 and 33) b) allegations of arms and shipment reaching the rebels in Sierra Leone from Liberia (para 13- the Defence submits that the whole paragraph goes to the acts and conduct of the accused not just the part underlined by the Prosecution • Reference to the Government of Liberia or Liberia should be taken to go directly to the acts and conducts of Mr. Taylor because of his position as President. • The Document goes directly to a critical element of the Prosecution case -- allegations of arms shipment from Sierra Leone to Liberia
19	Sierra Leone Humanitarian Situation Report, 18 May – 11 June 1999	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Massacre of Makama in June 1999 is not susceptible of confirmation • No information to the author of the document • Examples are unable to be confirmed.
20	Sierra Leone Humanitarian Situation Report, 17 July – 10 August 1999	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • No information to the author of the document • Examples, such as hostages, are unable to be confirmed. • No information as to who comprised the interagency assessment teams • Extracts contain information going directly to the acts of subordinates -- Foday Sankoh, Sam Bockarie and J.P.Koroma
21	Sierra Leone Humanitarian	<input type="checkbox"/> Irrelevant	<ul style="list-style-type: none"> • Attack on a bus in Mile 91 is not susceptible of

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Doc.	Title/Date	Objection	Explanation
	Situation Report 03 – 09 October 1999	<input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> confirmation. Examples, such as hostages, are unable to be confirmed. No information to the author of the document Extracts contain information going directly to the acts of subordinates -- Foday Sankoh, Mike Lamin and J.P. Koroma
22	Security Council Resolution 1270 (1999) 22/10/1999	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none">
23	Security Council Resolution 1289 (2000) 7/02/2000	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> The Document goes directly to a critical element of the Prosecution case -- reference to the natural resources of Sierra Leone.
24	Sierra Leone: Humanitarian Situation Report 10 to 24 July 2000	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> No information to the author of the document Victims are not identified and therefore can not be confirmed Examples, such as hostages, are unable to be confirmed.
25	Security Council Resolution 1313 (2000) 4 August 2000	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none">
26	Sierra Leonean Humanitarian Situation Report 25 Jul – 07 Aug 2000 7 August 2000	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> No information as to the author of the document. Examples are unable to be confirmed as they are unnamed. Extracts contain information going directly to the acts and conducts to the accused such as: <ul style="list-style-type: none"> o Ambassador Oluayemi Adeniji visiting Monrovia for consultation with Mr. Taylor to discuss Sierra Leone (pg 0004180)
27	Report of the Security Council Mission to Sierra Leone (S/2000/992) 16 October 2000	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> No information to the author of the document. No information as to the identity of the investigators or mission interlocutors. Extracts contain information going directly to the acts and conducts to the accused as identified and underlined

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Doc. Title/Date	Objection	Explanation
		<p>by the Prosecution. However the Prosecution fail to identify and underline the following:</p> <ul style="list-style-type: none"> • the United Nations mission visiting Liberia (para 4) • reference made to Issa Sesay as the interim leader of the RUF (para 22) • allegation made that Mr Taylor had a strong influence, even direct control over RUF and that the main objective for Mr Taylor was that RUF maintained control of the diamond-producing areas (para 23) • Presidents Obasanjo revealing his view that Mr Taylor exercised control over RUF (para 25) • President Obasanjo being in touch with Issa Sesay (para 26) • the alleged support provided by Mr Taylor to RUF (para 30 – the Defence submits that the whole paragraph goes to the acts and conducts of the accused not just the underlined part by the Prosecution) • alleged attacks from Liberia and Sierra Leone which led to deaths of thousands of Guineans (para 33) • arms flow from Liberia (para 43 – the Defence submits that the whole paragraph goes to the acts and conducts of the accused not just the underlined part by the Prosecution) • allegation that Mr Taylor’s relationship with the RUF was a key to the situation in Sierra Leone (para 54, part d) <p>• The Document goes directly to a critical element of the Prosecutions case in seeking to link Mr Taylor to the RUF and with reference to Sierra Leonean diamonds and arms.</p>
28	<p>Letter and Report of the Security Council Committee established</p> <p><input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates</p>	<ul style="list-style-type: none"> • Extracts contain information going directly to the acts of subordinates -- Foday Sankoh, Mike Lamin, J.P. Koroma and Morris Kallon

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Doc.	Title/Date	Objection	Explanation
29	pursuant to resolution 1132 (1997) concerning Sierra Leone (S/2000/1238) Security Council Resolution 1346 (2001) 30 March 2001	<input checked="" type="checkbox"/> Critical element of Pros case <input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> The Document goes directly to a critical element of the Prosecutions case as it addresses diamonds and the participation of Liberia in the Committee Document goes directly to a critical element of the Prosecutions Case by reference to the natural resources of Sierra Leone. References to Liberia should be taken as going to the acts and conducts of the accused, as he was the President at the time.
30	Security Council Committee names RUF Members subject to expulsion from Liberia. Press Release SC/7047 12/04/2001	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> No information to the author of the document The Document goes directly to a critical element of the Prosecutions Case in seeking to link Mr Taylor to the RUF. This document goes directly to the acts and conduct of the accused. The document discusses the Government of Liberia harbouring RUF members whilst Mr Taylor is in power. The document expressly lists 26 RUF subordinates requesting their expulsion from Liberia, these subordinates include people who are considered proximate to the Accused
31	First Report of the Secretary General pursuant to Security Council Resolution 1343 (2001) regarding Liberia (S/2001/424) 30 April 2001	<input type="checkbox"/> Irrelevant <input checked="" type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> No information to the author of the document Extracts contain information going directly to the acts and conducts to the accused as identified and underlined by the Prosecution. However the Prosecution fail to identify and underline the following: <ul style="list-style-type: none"> Government of Sierra Leone sending a letter to Mr Taylor requesting the extradition of Bockarie and other RUF members (para 15 – the Defence submits that the whole paragraph goes to the acts and conducts of the accused and not just the underlined by the Prosecution) Liberia continuing to maintain relations with RUF (para 17) Mentioning of Kallon (para 20) Mentioning of Sam Bockarie as being openly

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Doc.	Title/Date	Objection	Explanation
32	Security Council Resolution 1385 (19 December 2001)	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<p>seen in the streets of Monrovia (para 27)</p> <ul style="list-style-type: none"> o Allegations of military training camp at Gbatala and the other at Nama where members of the ATU trained (para 30) o Mentioning of Sam Bockarie and the controversy of his whereabouts (para 37) o Allegations that Government of Liberia should account for Sam Bockaries whereabouts (para 39) o Allegation made that Bockarie was still at the time of the report living in Liberia (para 41) <ul style="list-style-type: none"> • This document goes to the core of the Prosecution case -- seeks to link the Government of Liberia to the activities of the RUF
33	Letter and Report of the Security Council Committee established pursuant to resolution 1343 (2001) concerning Liberia addressed to the President of the Security Council. 18 January 2002	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input checked="" type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Illicit diamond trade during the conflict in Sierra Leone
34	Security Council Resolution 1408 (6 May 2002)	<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Document goes to the acts and conducts of Mr Taylor through reference to 'Liberia' which we take to include Mr Taylor as President. This document directly links Liberia (whilst Mr Taylor was President) and the RUF. The document refers to Liberia and Liberian Leadership both of which should be taken to mean Mr Taylor as President.
		<input type="checkbox"/> Irrelevant <input type="checkbox"/> Not Susceptible of Confirmation <input checked="" type="checkbox"/> Acts/Conduct of Accused, Subordinates <input type="checkbox"/> Critical element of Pros case	<ul style="list-style-type: none"> • Document goes to the acts and conducts of Mr Taylor through reference to the 'Government of Liberia' which we take to include Mr Taylor as President. This includes references to the active support of the Government of Liberia to the RUF, and explicit reference to the President of Liberia, thus being Mr Taylor. References to states in neighbouring countries or states in the region should, in addition, be taken to include Liberia and as its president this should be extended to Mr Taylor.

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ANNEX B

Annex B: Objection to Admission of UN Documents through Rule 89(C)

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Doc.	Title/Date	Objection	Explanation
1	Sierra Leone Humanitarian Situation Report 04-05 June 1997	<input checked="" type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> • AFRC Exh. P.48 (para 5) • RUF Exh. 157 (para 5) • Crime based evidence • June 1997 Meeting between JPK and Bockarie: <ul style="list-style-type: none"> • Prosecutor v Taylor, Transcript p.10443:13 – p.10446:20 and p.10440:21 – p.10442:19 and p.10452:7-26, 21 May 2008 • Violence of May, June (Freetown), July (Freetown, Western Area, Zimmi, Kenema-Kono highway), August 1997: <ul style="list-style-type: none"> • Exhibit P-69 United Nations Security Council Resolution (1132) 8 October 1997, p.2 para 1 • Exhibit P-78 Sierra Leone - 1998 - A Year of atrocities against prosecution civilians, Amnesty International Report, p.8-9 • Exhibit P-203 Adoption of statement by witness and interview notes 4 July 2008 TF1-206 - PGS 19741 - 19743 p.2 • "Local UN staff" witnessed RUF shooting in the streets, para 1 • "Unconfirmed reports" of amputations, para 1
2	Letter dated 27 June 1997 from the Permanent Representative of Nigeria to the United Nations addressed to the President of the Security Council (S/1997/449)	<input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> • Crime based evidence • Violence of May, June (Freetown), July (Freetown, Western Area, Zimmi, Kenema-Kono highway), August 1997: <ul style="list-style-type: none"> • Exhibit P-69, p.2 para 1 • Exhibit P-78 p.8-9 • Exhibit P-203 p.2 • No sources given for information on human rights abuses
3	Statement by the President of the Security Council (S/PRST/1997/36)	<input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> • Violence of May, June (Freetown), July (Freetown, Western Area, Zimmi, Kenema-Kono highway), August 1997: <ul style="list-style-type: none"> • Exhibit P-69, p.2 para 1 • Exhibit P-78 p.8-9 • Exhibit P-203 p.2

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Doc.	Title/Date	Objection	Explanation
4	Sierra Leone Humanitarian Situation Report 08-14 July 1997	<input checked="" type="checkbox"/> Anonymous/hearsay <input checked="" type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> No sources given for information on human rights abuses AFRC Exh. P.49 (page 1-2, paras 1-5) RUF Exh. 164 (paras 1-5) Crime based evidence Violence of May, June (Freetown), July (Freetown, Western Area, Zimmi, Kenema-Kono highway), August 1997, <ul style="list-style-type: none"> Exhibit P-69 United Nations Security Council Resolution (1132) 8 October 1997, p.2 para 1, Exhibit P-78 p.8-9, Exhibit P-203 p.2 Cooperation between AFRC and RUF: Prosecutor v Taylor, Transcript p.10443:13 – p.10446:20 and p.10440:21 – p.10442:19 and p.10452:7-26, 21 May 2008 No sources given for fighting in Freetown, Western Area, Zimmi area, and Kenema-Kono highway No sources given for co-operation between AFRC and RUF (paras 1-5)
5	Statement by the President of the Security Council (S/PRST/1997/42)	<input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> Violence of May, June (Freetown), July (Freetown, Western Area, Zimmi, Kenema-Kono highway), August 1997: <ul style="list-style-type: none"> Exhibit P-69 United Nations Security Council Resolution (1132) 8 October 1997, p.2 para 1, Exhibit P-78 p.8-9, Exhibit P-203 p.2 No sources given for the “continued looting and commandeering of relief supplies of international agencies or the continuing violence by the junta towards the rebels” p.2, para 1
6	Security Council Committee on Sierra Leone Releases List of Junta Members Affected	<input checked="" type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> AFRC Exh. P.84 (admitted through 1st accused) Crime based evidence List of RUF/AFRC on travel ban Exhibit P-38 Global Witness Report, Taylor-Made, The Pivotal Role of Liberia’s Forest and Flag

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Doc.	Title/Date	Objection	Explanation
7	by Sanctions – Press Release SC/6472 Sierra Leone: Humanitarian Situation Report, 21 January -12 February 1998	<input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	of Convenience in Regional Conflict, p.12 <ul style="list-style-type: none"> No author given Crime based evidence February 1998 Looting by AFRC: <ul style="list-style-type: none"> Exhibit P-78, p.8-9 Exhibit P-131 IRIN-West Africa Update 146, 98.2.16, University of Pennsylvania - African Studies Center, p.1 No sources given for looting of vehicles, or in Kenema, Bo or Makeni (paras 1 and 3) Hearsay statement of “Ministers” at ECOWAS meeting (para 9) No sources given for looting of food stocks (para 16a)
8	Sierra Leone Humanitarian Situation Report, 16-30 April 1998	<input type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> Crime based evidence April 1998 Fighting between ECOMOG and junta: <ul style="list-style-type: none"> Exhibit P-78 page 2 Exhibit D-36 Letter Dated 10 July 1998 from the Permanent Representative of Nigeria to the UN Addressed to the President of the Security Council p.3 April 1998 Training of RUF in Lofa County: <ul style="list-style-type: none"> Prosecutor v Taylor Transcript, .p.3273:17 – p.3274:1, 6 February 2008 Prosecutor v Taylor Transcript, p. 852:5-26, 9 January 2008 April 1998 NPFL and ULIMO-K crossing from Liberia to help RUF: Prosecutor v Taylor, Transcript, p.864:8-27, 9 January 2008 Human Rights violations, looting and amputations widespread: <ul style="list-style-type: none"> Exhibit P-78 Sierra Leone – 1998 – A Year of Atrocities Against Civilians, Amnesty International Report, <i>passim</i> Exhibit D-36 p.3 NPFL and ULIMO-K helps RUF from Liberia: Exhibit P-31 p.8-12 No sources given for continued fighting between ECOMOG, RUF and junta; occupation of areas by junta forces, RUF attacks near Kamakwie, Batkanu, and Makeni; nor for “looting and amputations widespread” (para 1)

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Doc.	Title/Date	Objection	Explanation
9	Security Council Resolution 1181 (13 July 1998)	<input checked="" type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> • "ECOMOG spokesmen" alleged RUF being trained at camps in northern Liberia (para 2) • No source given for rejection of allegations by Liberian government (para 2) • Col Khobe, ECOMOG commander unavailable for cross-examination (para 2) • No sources given for fighting between ECOMOG and RUF and junta forces (para 5) • "Merlin and Christian Extension Services" have reported massive increase in war-wounded (para 6) • "Reports of mutilation widespread" and no source given for admittance of 101 amputees to hospital (para 6) • AFRC Exh. P.38 • RUF Exh. 154 • Crime based evidence
10	Second Progress Report of the Secretary General on the United Nations Observer Mission in Sierra Leone (S/1998/960) 16 October 1998	<input checked="" type="checkbox"/> Anonymous/hearsay <input checked="" type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> • Security Council Resolution summarised in Exhibit P-78 page 5 • No sources given for continued attacks on civilians (para 1) • AFRC Exh. P.44 (paras 9-10, 21-23) • RUF Exh. 160 (para 21) • Crime based evidence • UN Report of 16 October 1998 (10) summarised in Exhibit P-78 at p.4 and 5 • 16 October 1998 RUF threaten terror campaign if Sankoh not released: Prosecutor v Taylor, Transcript p.2401:3-2401:23, 28 January 2008 • 16 October 1998 Atrocities, mutilations, amputations, executions: <ul style="list-style-type: none"> • Exhibit P-78 p.10-14 • Exhibit D-36 p.3 • No sources given for increase in attacks on and atrocities against civilians (para 9-10) • "an escalating number of reports" of human rights abuses, "photographic evidence suggests", "it is reported", "UNOMSIL received reliable reports", (para 21-22) • No sources on deterioration of security situation (para 49)

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Doc.	Title/Date	Objection	Explanation
11	Third Progress Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone (S/1998/1176) 16 December 1998	<input type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> No sources on atrocities (para 54) No sources on humanitarian emergency (para 55) No sources on "latest developments" between Sierra Leone and Liberia (para 61) <p>Crime based evidence</p> <ul style="list-style-type: none"> December 1998 rebel attacks against civilians and human rights abuses: <ul style="list-style-type: none"> Exhibit P-189, Transcript, SCSL Prosecutor v Alex Tamba Brima, Bazzy Kamara and Santigie Borbor Kanu, Friday 1 July 2005 p.13-20 Prosecutor v Taylor, Transcript p.5434:4 – p.5437:4, 6 March 2008 Prosecutor v Taylor, Transcript p.1650:20-1651:20, 18 January 2008 Prosecutor v Taylor, Transcript p.4073:20 - p.4074:8, 18 February 2008 Prosecutor v Taylor, Transcript p.5809:28 – p.5810:18, 11 March 2008 <p>Prosecutor v Taylor, Transcript p.8242:8 – p.8242:23, 22 April 2008</p> <ul style="list-style-type: none"> "On the basis of information received from UNOMSIL" (para 18-19) No sources given for rebel attacks (para 21-22) No sources on child ex-combatants (para 32) No sources on national sensitisation programme (para 34) No sources for atrocities (para 36-37) No sources for rebel attacks (para 71)
12	Special Report of the Secretary – General on the United Nations Observer Mission in Sierra Leone (S/1999/20) 7 January 1999	<input type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<p>Crime based evidence</p> <ul style="list-style-type: none"> December 1998 Rebel attacks on Waterloo, Koidu, Makeni, Hastings: <ul style="list-style-type: none"> Exhibit P-78 Prosecutor v Taylor, Transcript p.5434:4 – p.5437:4, 6 March 2008 Prosecutor v Taylor, Transcript p.1650:20-1651:20, 18 January 2008

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Doc.	Title/Date	Objection	Explanation
			<ul style="list-style-type: none"> • Prosecutor v Taylor, Transcript p.4073:20 - p.4074:8, 18 February 2008 • Prosecutor v Taylor, Transcript p.5809:28 – p.5810:18, 11 March 2008 • Prosecutor v Taylor, Transcript p.8242:8 – p.8242:23, 22 April 2008 • Bockarie threatens attack on Freetown: Prosecutor v Taylor, Transcript p.2401:3-2401:23, 28 January 2008 • January 1999 Invasion of Freetown and displacement of civilians: <ul style="list-style-type: none"> • Exhibit P-205A p.29-59 Transcript, SCSL, Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara & Santige Borbor Kanu 9 & 10 March 2005, • Exhibit P-206 P.7-20 Transcript, SCSL, Prosecutor v Issa Sessay, Morris Kallon & Augustine Gbao, 28 November 2005 • Exhibit P-207 p.38-59, Transcript, SCSL, Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara & Santige Borbor Kanu, 6 April 2005 • Exhibit P-208, p.1-8, SCSL, Witness Statement, TF1-084, 22 February 2003 • Prosecutor v Taylor, Transcript p.893:11 – p.894:3, 10 January 2008 • Prosecutor v Taylor, Transcript p.2328:2-22, 28 January 2008 • Prosecutor v Taylor, Transcript p.3242:9-20, 6 February 2008 • Prosecutor v Taylor, Transcript p.8182:21 – p.8183:10, 21 April 2008 • RUF/AFRC reliance on foreign weapons and mercenaries: <ul style="list-style-type: none"> • Exhibit P-18, <i>passim</i> • Exhibit P-19, p.10-26 • Exhibit P-31 p.9-11 • Exhibit P-70 paras 4 and 5 • Exhibit P-78 p.3
		<input checked="" type="checkbox"/> Anonymous/hearsay	<ul style="list-style-type: none"> • No sources on rebel attacks (para 3-4) • No sources for Bockarie statement or attack on Makeni (paras 6-8)

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Doc.	Title/Date	Objection	Explanation
13	Report on Atrocities Committed Against The Sierra Leone Population, 28 January 1999	<input checked="" type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> No sources on rebel attack on Freetown (para 10) "The meeting was informed by the government of Sierra Leone and ECOMOG" No sources given on rebel attacks and Prosecution relying on local fears: "and, it is feared, the killing of civilians" (para 19-20) "It is estimated that" (para 25) <p>AFRC Exh. P.51 (case reports 02, 04, 05, 06, 07, 15, 16, 18, 19, & 33)</p> <ul style="list-style-type: none"> Amputees given letters, told to see President Kabbah: <ul style="list-style-type: none"> Prosecutor v Taylor, Transcript p.4022:9 – p.4024:1, 18 February 2008 Prosecutor v Taylor, Transcript p.8336:22 – p.8339:23, 23 April 2008 Prosecutor v Taylor, Transcript p.3931:13-17, 14 February 2008 Prosecutor v Taylor, Transcript p.17993:1-6, 6 October 2008 Prosecutor v Taylor, Transcript p.19610:10-13, 30 October 2008 Cases #14 and #22 attackers spoke Liberian English: <ul style="list-style-type: none"> Exhibit P-203 p.2 Adoption of Statement by Witness and Interview Notes, 4 July 2008, Case #24 use of child combatants Exhibit P-43 Expert Report of Jessica Alexander, Children Associated with Fighting Forces in the Conflict in Sierra Leone, 4 May 2007, <i>passim</i>
14	Letter dated 22 February 1999 from the Charge d'Affaires A.I. of the Permanent Mission of Liberia to the United Nations Addressed to the Secretary-General (S/1999/193) 23 February	<input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay	<p>The entire report is based on anonymous witnesses</p> <p>Crime based evidence</p> <p>Liberian Government protests in 1999: Exhibit D-34 Liberia's Response to Allegations of Her Involvement in the Sierra Leonean Civil War <i>passim</i></p> <p>No sources given for atrocities (para 2)</p>

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Doc.	Title/Date	Objection	Explanation
15	1999 Fifth Report of the Secretary General on the United Nations Observer Mission in Sierra Leone (S/1999/237) 4 th March 1999	<input checked="" type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	AFRC Exh p.46 (pages 1, 5, paras 2, 21, 27) Crime based evidence <ul style="list-style-type: none"> January 1999 Invasion of Freetown and displacement of civilians and release of prisoners from Pademba Road Prison: <ul style="list-style-type: none"> Exhibit P-205A p.29-59 Exhibit P-206 p.7-20 Exhibit P-207 p.38-59 Exhibit P-208, p.1-8 Prosecutor v Taylor, Transcript p.893:11 – p.894:3, 10 January 2008 Prosecutor v Taylor, Transcript p.2328:2-22, 28 January 2008 Prosecutor v Taylor, Transcript p.3242:9-20, 6 February 2008 Prosecutor v Taylor, Transcript p.8182:21 – p.8183:10, 21 April 2008 <ul style="list-style-type: none"> RUF/AFRC reliance on foreign weapons and mercenaries: <ul style="list-style-type: none"> Exhibit P-18, Report of the panel of experts established by resolution 1306 – S/2000/1195, adopted on 20 December 2000, <i>passim</i> Exhibit P-19, Diamonds, the RUF and the Liberian connection – A report for the office of the prosecutor The Special Court for Sierra Leone, Ian Smillie, <i>passim</i> Exhibit P-31 p.9-11 Exhibit P-70 paras 4 and 5 Exhibit P-78 P.3
		<input checked="" type="checkbox"/> Anonymous/hearsay	<ul style="list-style-type: none"> No sources given for rebel attack on Freetown (para 2) No sources given for presence of foreign mercenaries or Liberians (para 4) No sources for attack on Freetown and police (para 9) No sources on radio broadcasts by President Kabbah (paras 12 and 14) “The team [UNOMSIL human rights officers] found” (paras 20-27) “According to medical sources interviewed” (para 23) “There have been reports of widespread rape” (para 24)

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Doc.	Title/Date	Objection	Explanation
16	Security Council Resolution 1231 (1999) 11 March 1999	<input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay	<ul style="list-style-type: none"> • "Many rape victims were reported" (para 24) • "Reports were received of" (para 25) • "Child care agencies reported" (para 26) • "Escapes reported" (para 26) • No sources given for deterioration in humanitarian situation (para 31) • No sources for atrocities (para 44-45)
17	Sierra Leone Humanitarian Situation Report 1 – 17 May 1999	<input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> • No sources given for rebel atrocities (para 3) • "Continued reports" para 5
			<ul style="list-style-type: none"> • January 1999 Invasion of Freetown and displacement of civilians: <ul style="list-style-type: none"> • Exhibit P-205A p.29-59 • Exhibit P-206 P.7-20 • Exhibit P-207 p.38-59, • Exhibit P-208, p.1-8, • Prosecutor v Taylor, Transcript p.893:11 – p.894:3, 10 January 2008 • Prosecutor v Taylor, Transcript p.2328:2-22, 28 January 2008 • Prosecutor v Taylor, Transcript p.3242:9-20, 6 February 2008 • Prosecutor v Taylor, Transcript p.8182:21 – p.8183:10, 21 April 2008
		<input checked="" type="checkbox"/> Anonymous/hearsay	<ul style="list-style-type: none"> • "RUF forces continue to be accused of human rights abuses" (p.1 para 2) • "the UN Security Council said that" (p.1 para 2) • "no group is more anxious ... than the direct victims of brutal conflict" (p.2 para 3) • "initial reports indicate" (p.4 para 3) • "ECOMOG and villagers estimate that" (p.4 para 3) • "humanitarian agencies fear that" (p.4 para 3) • "interviews with refugees... reports of atrocities" (p.5 para 3) • "According to the Ministry of Housing" (p.5 para 4)

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Doc.	Title/Date	Objection	Explanation
18	Sixth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone (S/1999/645) 4 June 1999	<input checked="" type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> • "UNICEF registered" (p.11 para 7) • "ADRA reported" (p.11 para 8) • AFRC Exh p.47 (paras 7-8, 19-20, 28-33) • RUF Exh (162 (pars 19-20, 28-33)) Crime based evidence <ul style="list-style-type: none"> • June 1999 allegations of arms shipments to RUF through or from Liberia: <ul style="list-style-type: none"> • Exhibit P-31 <i>passim</i> • Exhibit P-32 <i>passim</i> • June 1999 RUF diamond mining, rebel atrocities: <ul style="list-style-type: none"> • Exhibit P-18 <i>passim</i> • Exhibit P-19 <i>passim</i>
19	Sierra Leone Humanitarian Situation Report, 18 May – 11 June 1999	<input type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> • No source given for human rights violations (para 9) • "Continued allegations of arms shipments"(para 13) • "Continued reports of an arms supply"(para 19) • No other sources given for rebel activity (paras 19-20) • "Most of them [atrocities] reported from the provincial towns" (para 28) • "Based on eyewitness accounts" (para 28) • "Escapes... continued to provide disturbing accounts... escapees reported" (para 29) • "are believed to have been summarily executed... The UNOMSIL team observed... survivors also reported... eye witnesses described" (para 30) • "RUF/AFRC reportedly amputated" (para 31) • "The abductions have reportedly followed... the section chief estimated... one man told UNOMSIL... Most of the people interviewed" (para 32) • No source given (para 40) • No source given (para 63) Crime based evidence <ul style="list-style-type: none"> • January 1999 Invasion of Freetown and displacement of civilians: <ul style="list-style-type: none"> • Exhibit P-205A p.29-59

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Doc.	Title/Date	Objection	Explanation
			<ul style="list-style-type: none"> • Exhibit P-206 p.7-20 • Exhibit P-207 p.38-59 • Exhibit P-208, p.1-8 • Prosecutor v Taylor, Transcript p.893:11 – p.894:3, 10 January 2008 • Prosecutor v Taylor, Transcript p.2328:2-22, 28 January 2008 • Prosecutor v Taylor, Transcript p.3242:9-20, 6 February 2008 • Prosecutor v Taylor, Transcript p.8182:21 – p.8183:10, 21 April 2008 • June 1999 human rights abuses: <ul style="list-style-type: none"> • Prosecutor v Taylor, Transcript p.5320:13 – p.5321:11 and p.5327:9, 5 March 2008 • Prosecutor v Taylor, Transcript p.4917:7-20 and p.4926:22 - p.4927:15, p.4928:1 – p.4930:2, p.4924:16-21, 22 April 2008 • Prosecutor v Taylor, Transcript p.4048:16 - p.4050:9, 18 February 2008
20	Sierra Leone Humanitarian Situation Report, 17 July – 10 August 1999	<input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> • No source given (p.2 para 4) • No source given (p.3 bullet point 3) • “Foreciah Administrator claimed... AFP reported... attacks reported... two incidents have been reported... villagers... told an assessment team” (p.3 para 4-5) • “More than 3,000 children have been reported missing... most of them are believed to have been abducted” (p.5 bullet point 3) • “UNICEF and its partners have continued to” (p.12 para 2)
			<ul style="list-style-type: none"> • July/August 1999 RUF hostage taking and abducting children: <ul style="list-style-type: none"> • Exhibit P-43 Expert Report of Jessica Alexander, Children Associated with Fighting Forces in the Conflict in Sierra Leone, 4 May 2007, <i>passim</i> • Exhibit D-20 BBC News Article, World: Africa Sierra Leone: Who are the Kidnappers, 6 August 1999, <i>passim</i> • Exhibit D-24 BBC News Article, World: Africa Sierra Leone Hostage Tells of Ordeal, 6 August 1999, <i>passim</i>

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Doc.	Title/Date	Objection	Explanation
21	Sierra Leone Humanitarian Situation Report 03 – 09 October 1999	<input checked="" type="checkbox"/> Anonymous/hearsay <input checked="" type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay	<ul style="list-style-type: none"> Prosecutor v Taylor, Transcript p.4088:21 - p.4090:1, 18 February 2008 Anonymous: Those hostages were still held under the control of the RUF (and GOSL calling for their release). Anonymous: significant looting RUF Exh. 158 (para. Headed "Child Protection" in Section 3) Crime based evidence
22	Security Council Resolution 1270 (1999) 22/10/1999	<input checked="" type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay	<ul style="list-style-type: none"> Anonymous: the return to Sierra Leone of Johnny Paul Koroma and Foday Sankoh Anonymous: the bus attack by rebels on Masiaka - Mile 91 Hearsay: harassment of civilians by AFRC AFRC Exh. P-39 (p.4, para. 18) RUF Exh. P.99 (admitted through TF1-165)
23	Security Council Resolution 1289 (2000) 7/02/2000	<input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay <input checked="" type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay <input checked="" type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative	No sources given for return of AFRC and RUF to Freetown, Para 5 RUF Exh. 168 (paras. 4& 9-11) No sources for continued human rights abuses, para5
24	Sierra Leone: Humanitarian Situation Report 10 to 24 July 2000	<input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay <input checked="" type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative	No sources given, paras 1-2 RUF Exh. 170
25	Security Council Resolution 1313 (2000) 4 August 2000	<input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative	No sources given for RUF attacks, <i>passim</i>
26	Sierra Leonean Humanitarian Situation Report 25 Jul – 07 Aug 2000 7 August 2000	<input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay	July/August 2000 RUF human rights abuses including forced recruitment of children in Makeni and Kambia: Exhibit P-43, <i>passim</i> <ul style="list-style-type: none"> Anonymous: report of burning of 24 houses in Mayibin village and

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Doc.	Title/Date	Objection	Explanation
27	Report of the Security Council Mission to Sierra Leone (S/2000/992) 16 October 2000	<input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> the killing of civilians Anonymous: reports by HRW <ul style="list-style-type: none"> RUF aim to maintain control of diamond areas: <ul style="list-style-type: none"> Exhibit P-18 Report of Panel of Experts pursuant to Security Resolution (1306) 2000 p.16-22, Exhibit P-19, p.12-18 Exhibit P-32, p.5 RUF commanders unwilling to disarm: Exhibit P-32 Attacks on Guinea from Sierra Leone and Liberia: Exhibit P-32 Links between armed groups and diamond and arms trade: <ul style="list-style-type: none"> Exhibit P-18, p.16-22 Exhibit P-19, <i>passim</i> Exhibit P-32, p.8 Exhibit P-125 News Article From the Liberian Newspaper, Daily Times, Across Liberia-Sierra Leone Border Guns Traded for Diamonds, Friday July 24, 1998, <i>passim</i>
28	Letter and Report of the Security Council Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone (S/2000/1238)	<input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> No sources for attacks on peacekeepers, para 7 <ul style="list-style-type: none"> Link between diamond industry and arms <ul style="list-style-type: none"> Exhibit P-18, p.16-22 Exhibit P-19, <i>passim</i> Exhibit P-32, p.8 Exhibit P-125, <i>passim</i> Liberian helicopters delivering arms: <ul style="list-style-type: none"> Exhibit P-18, p.35 Exhibit P-31, p.11 Exhibit P-32, p.22 "Information reached the committee" on Bockarie's and Massaquoi's visit to Burkina Faso, para 22 "the committee was also informed" on Liberian supply of arms, para 22

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Doc.	Title/Date	Objection	Explanation
29	Security Council Resolution 1346 (2001) 30 March 2001	<input checked="" type="checkbox"/> Already Produced <input checked="" type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	RUF Exh. 169 (paras. 1-2) Crime based evidence <ul style="list-style-type: none"> March 2001 human rights abuses by RUF: <ul style="list-style-type: none"> Prosecutor v Taylor, Transcript p.5350:19 – 5351:13, p.5353:1-18, p.5357:23 – p.5360:3, 5 March 2008 Prosecutor v Taylor, Transcript p.5398:26 – p.5401:17, p.5477:19 – p.5490:14, 6 March 2008
30	Security Council Committee names RUF Members subject to expulsion from Liberia. Press Release SC/7047 12/04/2001	<input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay	“The reports of human rights abuses”, para 6 Exhibit P-38 p.12 No author given
31	First Report of the Secretary General pursuant to Security Council Resolution 1343 (2001) regarding Liberia (S/2001/424) 30 April 2001	<input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> Sam Bockarie in Liberia in 2001 <ul style="list-style-type: none"> Prosecutor v Taylor, Transcript p.10294:19-24, 20 May 2005 Exhibit P-31 p.13-14 Prosecutor v Taylor, Transcript p.886:15 to p.887:24, 10 January 2008 Prosecutor v Taylor, Transcript p.2449:2 - p.2452:5, 28 January 2008
		<input checked="" type="checkbox"/> Anonymous/hearsay	<ul style="list-style-type: none"> Government of Liberia either reluctant or unable to tell the mission, para 28 “The sources interviewed mentioned”, para 30 “Conclusion of ECOWAS members meeting”, para 38 bullet point 3 “Unverified information, indicates Bockarie still in Liberia”, para 41 UN Office in Liberia collected and relayed information, para 7 UN Office “was informed that”, para 10 “Government of Liberia stated that”, para 8, 9, 11 “UNAMSIL observed that”, para 15 “Government of Liberia announced that”, para 15 and 16 “UNAMSIL informed that”, para 17

Annex B: Objection to Admission of UN Documents through Rule 89(C)

Doc.	Title/Date	Objection	Explanation
32	Security Council Resolution 1385 (19 December 2001)	<input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input checked="" type="checkbox"/> Cumulative	<ul style="list-style-type: none"> • "An RUF Commander informed the Nigerian Battalion", para 20 • "Most of the people interviewed", para 27
33	Letter and Report of the Security Council Committee established pursuant to resolution 1343 (2001) concerning Liberia addressed to the President of the Security Council. 18 January 2002	<input checked="" type="checkbox"/> Anonymous/hearsay <input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay	<ul style="list-style-type: none"> • Illegal diamond trade in Sierra Leone: <ul style="list-style-type: none"> • Exhibit P-18, p.16-22 • Exhibit P-19, <i>passim</i> • "Ongoing efforts by interested states" etc para 5
34	Security Council Resolution 1408 (6 May 2002)	<input type="checkbox"/> Already Produced <input type="checkbox"/> Not sufficiently significant <input type="checkbox"/> Cumulative <input checked="" type="checkbox"/> Anonymous/hearsay	<ul style="list-style-type: none"> • Anonymous: the letter and report of the SC was based on an unconfirmed report to the SC • Anonymous author
			No sources given for continued breach of resolution 1343 (2001) para 4

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