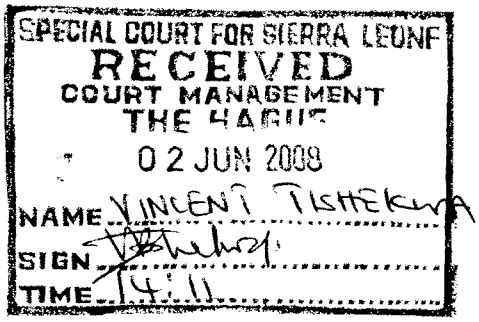
525) SCSL-03-01-T 17315-17322) 17315

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Herman von Hebel

Date filed: 2 June 2008



THE PROSECUTOR **Against** **Charles Ghankay Taylor**

Case No. SCSL-03-01-T

PUBLIC

PROSECUTION REPLY TO "DEFENCE RESPONSE TO PROSECUTION MOTION FOR ADMISSION OF DOCUMENT PURSUANT TO RULE 89(C)"

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I. INTRODUCTION

1. The Prosecution files this reply to the "Public Defence Response to Prosecution Motion for Admission of Document Pursuant to Rule 89(C)".[1] The Response was filed on 30 May 2008 and so filed out of time. The Prosecution notes that the reason given for the late filing was that the Defence experienced technical problems with the e-mail system. This Reply is filed should the Response be accepted out of time because of the e-mail problems encountered by the Defence.[2]

2. The Response argues that Security Council Resolution 1315 (2000)[3] cannot be "submitted 'through thin air'" and that its admission would manifestly prejudice the Accused.[4] First, to the extent the Defence argue that documentary evidence must be admitted through a witness, then, as already addressed in the Motion,[5] that argument is without merit. Secondly, regarding prejudice to the Accused; as also set out in the Motion, prejudice alone is not sufficient to exclude relevant evidence as all relevant evidence submitted by the Prosecution is generally prejudicial to an accused. Lastly, the Defence's arguments regarding prejudice turn on a misinterpretation of what is meant by "acts and conduct of the accused" and ignore the reality that the Rules of Procedure and Evidence ("**Rules**") favor the admission of relevant evidence. The jurisprudence of the Special Court for Sierra Leone ("**SCSL**") demonstrates that a very high standard must be met before relevant evidence is considered prejudicial enough to warrant exclusion. Therefore, for the reasons set out below, the Response should be dismissed.

II. SUBMISSIONS

3. The Defence's argument that the Prosecution is requesting the submission of evidence "through thin air" or through the "back door" ignores the fact that the Prosecution offers the evidence in accordance with the Rules[6] and on the basis of its relevance to the

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[1] *Prosecutor v. Taylor*, SCSL-03-01-T-523, "Public Defence Response to Prosecution Motion for Admission of Document Pursuant to Rule 89(C)", filed on 30 May 2008 ("**Response**").
[2] "Practice Direction on dealing with Document in The Hague-Sub-Office", Article 12, Adopted on 16 January 2008, amended 25 April 2008.
[3] Security Council Resolution 1315 (S/RES/1315 (2000)) dated 14 August 2000 hereinafter referred to in this Reply as the **Resolution**.
[4] Response, para. 3.
[5] *Prosecutor v. Taylor*, SCSL-03-01-T-510, "Public Prosecution Motion for Admission of Document Pursuant to Rule 89(C)", 19 May 2008 ("**Motion**"), para. 10.
[6] Motion, paras. 4 - 15.

Prosecution's case, including its relevance to the testimony of TF1-571.[7] Indeed, the Defence made the document relevant to the testimony of TF1-571 through its cross-examination of that witness. Further, the Chamber in its ruling also accepted the relevance of the Resolution. Having established its relevance to this witness, the Defence cannot now argue that the Prosecution is seeking its admission through improper means and so should not be admitted.

4. The Prosecution notes that in the Response the Defence continue to advance the erroneous argument that the Prosecution has sought admission of the Resolution *through* witness TF1-571.[8] To avoid any confusion, the Prosecution again states that it has never sought admission of the Resolution *through* witness TF1-571 and does not seek admission of the document through the witness in the Motion.[9]

*Admission of Documents under Rules 89(C) and 92*bis

5. The Defence's argument focusing on Rule 92*bis* and asserting that, in particular, the Resolution would be excluded under this Rule, is also without merit.[10] First, as stated in the Motion,[11] the Rule which governs admissibility of this document is Rule 89(C). And, indeed, Rule 89(C) has been used on previous occasions to admit documentary evidence.[12] Accordingly, the Prosecution properly seeks admission under Rule 89(C). Secondly, Rule 92*bis* is not applicable as the Resolution is not being submitted *in lieu of oral testimony.*[13] Further, as the Resolution does not go to proof of any act or conduct of the Accused, as such term is defined in international jurisprudence, it would not be excluded under Rule 92*bis*.

6. In the most recent consideration of what is meant by the phrase "acts and conduct of the accused" by a Chamber of the SCSL, Trial Chamber I[14] took guidance from the definition

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[7] Motion, paras. 17 - 21
[8] Response, para. 2.
[9] See *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 May 2008, page 9782, lines 9-11 and page 9783, lines 2-5 and Motion, para. 2.
[10] Response, para. 7.
[11] Motion, paras. 4 – 5 and 11 – 15.
[12] Motion, para. 4.
[13] Motion, para. 5.
[14] *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1125, "Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements under Rule 92*bis*", 15 May 2008, para. 35.

given by the ICTY Appeals Chamber in the *Galić* case.[15] In *Galić*, it was held that:

> "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 92*bis*. 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 92*bis* statements. An easy example would be proof ... of the knowledge by the accused that his acts fitted into a pattern of widespread or systematic attacks directed against the civilian population. Such knowledge may be inferred from evidence of such a pattern of attacks (proved by Rule 92*bis* statements) that he *must* have known his own acts (proved by oral evidence) fitted into that pattern."[16]

7. Therefore, on the basis of the interpretation provided in *Galić*, the Resolution does not go to proof of any act or conduct *of the accused* as it does not refer to the Accused at all. Instead, it concerns the international response to the situation in Sierra Leone, focusing in particular on the proposed establishment of the SCSL. Further, on the basis of *Galić*, the Prosecution is entitled to rely on the Resolution to draw certain inferences regarding the knowledge of the Accused in relation to the atrocities in Sierra Leone provided the evidence from which inferences are drawn does not *itself* refer to the acts and conduct of the Accused.

The Relevance and Prejudice of Resolution 1315

8. The Defence argue that it is prejudicial to attempt to increase the evidentiary weight of TF1-571's evidence concerning a conversation between the Accused and Sam Bockarie by tendering a document which was never put to TF1-571.[17] This argument ignores the reality that there is no rule which requires that documentary evidence which corroborates a witness be put into evidence through that witness. Indeed, as noted above, there is no requirement that a document such as a UN Resolution be admitted into evidence through a witness.[18] Further, the Defence argument does not establish "prejudice" to the level required under SCSL jurisprudence, i.e., that the evidence impacts adversely and unfairly

[15] *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis* (C), 7 June 2002 ("***Galić* Decision**").
[16] *Galić* Decision, para. 11 (footnotes omitted).
[17] Response, para. 10.
[18] See para. 2 above and Motion, para. 10.

upon the integrity of the proceedings before the Court,[19] and/or brings the administration of justice into serious disrepute. As noted above, all relevant evidence submitted by the Prosecution is generally prejudicial to an accused; the fact that the Resolution was not put to TF1-571 does not meet the test for exclusion of relevant evidence.

9. The Resolution is relevant on its face to prove knowledge or awareness of the contemplated creation of the SCSL. This contemplated creation led to various actions on the part of the Accused, including the conversation with Bockarie which Bockarie conveyed to TF1-571[20]. In this regard, the Defence erroneously characterize the "real issue" as whether TF1-571 was aware of the Resolution himself or whether TF1-571 was aware that the Accused was aware of the Resolution at the time of his alleged conversation with Bockarie.[21] The "real issue", relating to the evidence of TF1-571, is rather: whether the establishment of the SCSL was being contemplated by the international community; and whether this would have been known to the Accused, thus leading the Accused to alert Bockarie to the resulting pressure the Accused felt himself subject to. Whether or not TF1-571 was himself aware of the Resolution is, therefore, irrelevant.

10. Indeed, similar reasoning supports the conclusion that the Prosecution's request that the Resolution be admitted is not an improper attempt to increase the evidentiary weight of TF1-571's evidence. Instead, such a request is a legitimate means to seek admission of relevant evidence. The fact that the UN document bolsters the credibility of a witness by corroborating his testimony is by no means fatal to its admission. To argue otherwise is disingenuous.

11. The Defence also argue that the prejudice to the Accused would manifestly outweigh the probative value of the evidence.[22] In this regard, the Defence argue that "the consideration of the probative value against the prejudicial effect of admitting Resolution 1315 must be considered prior to admission [of the Resolution] into evidence."[23]

12. This final submission, regarding probativity being a condition of admission, is erroneous

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[19] *Prosecutor v. Norman et al.*, SCSL 04-14-T-AR65, "Fofana – Appeal against Decision Refusing Bail", 11 March 2005 ("***Fofana* Bail Appeals Decision**"), para. 24; *Prosecutor v. Sesay et al.*, SCSL-04-15-T-391, "Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker", 23 May 2005, para. 8. Emphasis added.
[20] Response, para. 8.
[21] Response, para. 9.
[22] Response, para. 12.
[23] Response, para. 13.

and contrary to the SCSL's established jurisprudence on the issue. The Prosecution notes the Appeals Chamber's observation on this point that "[a]lthough the probative value of particular items in isolation may be minimal, the very fact that they have some relevance means that they must be available for counsel to weave into argument and for the Judge to have before him in deciding what to make of the overall factual matrix."[24] Thus, there is no requirement that the evidence be both relevant and probative.[25] The test for admissibility of evidence under Rule 89(C) is relevance only. However, notwithstanding this fact, in relation to TF1-571, the document has significant probative value. The Resolution counters the Defence cross-examination suggesting that the witness was not truthful regarding the conversation between the Accused and Bockarie.

13. In addition, when considering this submission, it is important to note that the evidence concerning the conversation between the Accused and Bockarie, albeit that Bockarie is now dead, is simply another form of hearsay evidence. Hearsay is admissible before international tribunals and the weight to be given it, as with all evidence, will be decided by professional judges at the conclusion of the case. Further, Rule 92*qater* specifically provides for the admissibility of evidence of deceased witnesses.

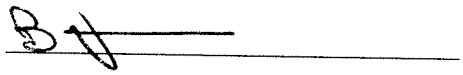
III. CONCLUSION

14. For the reasons set out in the Motion and above, the Prosecution requests that the Resolution be admitted into evidence under Rule 89(C). The Resolution is relevant; it is not being submitted *in lieu of oral testimony;* and its admission will not impact adversely and unfairly *upon the integrity of the proceedings* before the Court, and/or will not bring the administration of justice into serious disrepute.

[24] *Fofana* Bail Appeals Decision, para. 23.
[25] *Prosecutor v. Brima et al.*, SCSL-04-16-T-280, "Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95", 24 May 2005, para. 13.

15. The Prosecution requests that the Motion be granted.

Filed in The Hague,
2 June 2008
For the Prosecution,



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LIST OF AUTHORITIES

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(Copy provided with Motion)