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SCSL-03-01-T
(24125-24134)

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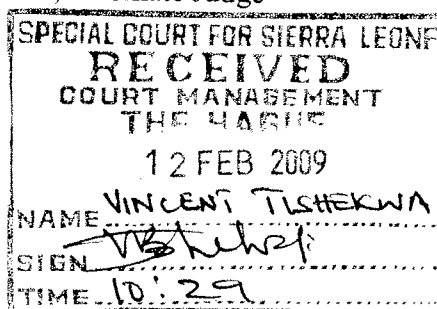
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone**

TRIAL CHAMBER II

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

Registrar: Mr. Herman von Hebel

Date filed: 12 February 2009



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION MOTION FOR ADMISSION OF DOCUMENT PURSUANT TO RULES 89(C)
AND 92bis**

Office of the Prosecutor:
Ms. Brenda J. Hollis
Ms. Ula Nathai-Lutchman

Counsel for the Accused:
Mr. Courtenay Griffiths Q.C.
Mr. Andrew Cayley
Mr. Terry Munyard
Mr. Morris Anyah

I. INTRODUCTION

1. Pursuant to Rules 73, 89(C) and 92*bis* of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“**Rules**”), the Prosecution files this motion to request that the Trial Chamber admit into evidence Security Council Resolution 1315 (2000).¹

II. BACKGROUND

2. The Prosecution first sought admission of Resolution 1315 on 14 May 2008 following the testimony of witness TF1-571.² Having heard argument by each Party, the Trial Chamber ruled that:

“Whilst we accept the document is relevant, we do not consider this document is admissible through this witness. There are provisions in the rules for alternative proof of facts and we do not consider this tender through this witness is an appropriate procedure in this instance.”³

3. As a result of the above Ruling, the Prosecution requested that the Trial Chamber admit into evidence Resolution 1315 under Rule 89(C).⁴
4. On 6 February 2009, the Appeals Chamber ruled on the Prosecution Notice of Appeal and Submissions concerning the tender of documents.⁵ The Appeals Chamber held that relevance is the requirement for admissibility of documents.⁶ The Appeals Chamber also held that the Trial Chamber will want to satisfy itself to the document’s relation to the witness, and where applicable, that a foundation must be laid showing the witness’ competence to give evidence in relation to that

¹ United Nations Security Council Resolution 1315 (2000), 14 August 2000, (S/RES/1315 (2000)), is provided in the **Annex** to this motion and is referred to in this motion as **Resolution 1315**.

² See *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 May 2008, (“T”), 9781:16-18.

³ *Ibid.*, T9783:28 – 9784:3 (“**Ruling**”).

⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-510, “Prosecution Motion For Admission of Document Pursuant to Rule 89(c)”, 19 May 2008 (“**Motion**”).

⁵ *Prosecutor v. Taylor*, SCSL-03-01-AR73-721, “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 6 February 2009 (“**Appeals Chamber Decision**”).

⁶ *Ibid.*, para 37.

document.⁷ If this cannot be done, the document must be tendered under Rule 92bis.⁸

4. On 9 February 2009, noting the Appeals Chamber Decision, the Trial Chamber denied the Motion, finding that Resolution 1315, being in effect a document tendered *in lieu* of oral testimony, should have been tendered under Rule 92bis and is not admissible under Rule 89(C) in the absence of a witness competent to give evidence in relation to that document.⁹
5. In accordance with the above Decision, the Prosecution requests that the Trial Chamber admit into evidence Resolution 1315 under Rules 89(C) and 92bis on the basis of the following submissions.

III. APPLICABLE LAW

Admission under Rule 89(C) and 92bis

6. For evidence to be admitted pursuant to both Rules, the evidence must be relevant, its reliability susceptible of confirmation, and does not go to proof of the acts and conduct of the accused.

IV. SUBMISSIONS ON ADMISSIBILITY OF EVIDENCE

7. The **Annex** contains Resolution 1315, for which admission is sought. Admission of this evidence is requested under Rule 89(C) and Rule 92bis (based on the interpretation of Rule 92bis advanced in paragraphs 15 and 16 of the UN Documents Motion¹⁰).

⁷ *Ibid.*, paras. 38, 40.

⁸ *Ibid.*, para. 42.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T-724, “Decision on Prosecution Motion For Admission of Document Pursuant to Rule 89(C)”, 9 February 2009 (“**Decision**”), page 3.

¹⁰ *Prosecutor v. Taylor*, SCSL-01-03-T-650, “Prosecution Motion for Admission of Documents of the United Nations & United Nations Bodies”, 29 October 2008, (“**UN Documents Motion**”), paras. 15-16.

Application for Admission under Rules 89(C) and 92bis

Relevance

8. The Trial Chamber has already noted that Resolution 1315 is relevant.¹¹

Susceptible of confirmation

9. The phrase “susceptible of confirmation” contained in Rule 92bis(B) has been interpreted to mean that “proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course.”¹² In this regard, “capable of corroboration” as defined by the Appeals Chamber must be given a liberal interpretation. The material may not require corroboration at all, or at the very least, a scintilla of corroboration. For example, a UN report should not require corroboration. As regards susceptibility of confirmation, the Prosecution is not required to prove that the evidence is in fact reliable at this stage, only that the reliability of the evidence is susceptible of confirmation.¹³

Proof of the acts and conduct of the accused

10. Resolution 1315 which the Prosecution seeks to admit does not go to proof of the acts and conduct of the Accused as that term is defined and limited by the jurisprudence. The Prosecution relies on and incorporates by reference its submissions made under this heading at paragraphs 15 to 16 of the UN Documents Motion, substituting any reference therein to “Documents” with a reference to “Resolution 1315”.¹⁴ It is therefore appropriate that the Prosecution seeks admission of these statements pursuant to Rule 92bis.

¹¹ See Ruling, at para. 2, *supra*.

¹² *Prosecutor v. Norman et al.*, SCSL-04-14-AR73, “Fofana – Decision on Appeal Against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, App. Ch., 16 May 2005, para. 26.

¹³ *Ibid.*

¹⁴ UN Documents Motion, paras. 15-16.

VI. CONCLUSION

11. For the reasons stated above, the Prosecution respectfully requests the Trial Chamber, in exercising its discretion, to admit into evidence pursuant to Rules 89(C) and 92*bis* Security Council Resolution 1315 (2000), a copy of which is contained in the Annex to this motion.

Filed in The Hague,

12 February 2009,

For the Prosecution,



Brenda J. Hollis
Principal Trial Attorney

LIST OF AUTHORITIES**SCSL Cases****Prosecutor v. Taylor – Case No. SCSL-03-01**

1. *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 May 2008.
2. *Prosecutor v. Taylor*, SCSL-03-01-T-510, “Prosecution Motion For Admission of Document Pursuant to Rule 89(C)”, 19 May 2008.
3. *Prosecutor v. Taylor*, SCSL-01-03-T-650, “Prosecution Motion for Admission of Documents of the United Nations & United Nations Bodies”, 29 October 2008.
4. *Prosecutor v. Taylor*, SCSL-03-01-AR73-721, “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 6 February 2009.
5. *Prosecutor v. Taylor*, SCSL-03-01-T-724, “Decision on Prosecution Motion For Admission of Document Pursuant to Rule 89(C)”, 9 February 2009.

Prosecutor v. Norman et al. – Case No. SCSL-04-14

1. *Prosecutor v. Norman et al.*, SCSL-04-14-AR73, “Fofana – Decision on Appeal Against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, App. Ch., 16 May 2005.

UN Document

1. United Nations Security Council Resolution 1315 (2000), 14 August 2000, (S/RES/1315 (2000)).

<http://daccessdds.un.org/doc/UNDOC/GEN/N00/605/32/PDF/N0060532.pdf?OpenElement>

(Copy also provided in Annex)

24131

ANNEX

SECURITY COUNCIL RESOLUTION 1315 (2000)

24132

United Nations

S/RES/1315 (2000)



Security Council

Distr.: General
14 August 2000

Resolution 1315 (2000)

**Adopted by the Security Council at its 4186th meeting, on
14 August 2000**

The Security Council:

Deeply concerned at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity,

Commending the efforts of the Government of Sierra Leone and the Economic Community of West African States (ECOWAS) to bring lasting peace to Sierra Leone,

Noting that the Heads of State and Government of ECOWAS agreed at the 23rd Summit of the Organization in Abuja on 28 and 29 May 2000 to dispatch a regional investigation of the resumption of hostilities,

Noting also the steps taken by the Government of Sierra Leone in creating a national truth and reconciliation process, as required by Article XXVI of the Lomé Peace Agreement (S/1999/777) to contribute to the promotion of the rule of law,

Recalling that the Special Representative of the Secretary-General appended to his signature of the Lomé Agreement a statement that the United Nations holds the understanding that the amnesty provisions of the Agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law,

Reaffirming the importance of compliance with international humanitarian law, and *reaffirming further* that persons who commit or authorize serious violations of international humanitarian law are individually responsible and accountable for those violations and that the international community will exert every effort to bring those responsible to justice in accordance with international standards of justice, fairness and due process of law,

Recognizing that, in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

Taking note in this regard of the letter dated 12 June 2000 from the President of Sierra Leone to the Secretary-General and the Suggested Framework attached to it (S/2000/786, annex),

Recognizing further the desire of the Government of Sierra Leone for assistance from the United Nations in establishing a strong and credible court that will meet the objectives of bringing justice and ensuring lasting peace,

Noting the report of the Secretary-General of 31 July 2000 (S/2000/751) and, in particular, *taking note* with appreciation of the steps already taken by the Secretary-General in response to the request of the Government of Sierra Leone to assist it in establishing a special court,

Noting further the negative impact of the security situation on the administration of justice in Sierra Leone and the pressing need for international cooperation to assist in strengthening the judicial system of Sierra Leone,

Acknowledging the important contribution that can be made to this effort by qualified persons from West African States, the Commonwealth, other Member States of the United Nations and international organizations, to expedite the process of bringing justice and reconciliation to Sierra Leone and the region,

Reiterating that the situation in Sierra Leone continues to constitute a threat to international peace and security in the region,

1. *Requests* the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court consistent with this resolution, and *expresses* its readiness to take further steps expeditiously upon receiving and reviewing the report of the Secretary-General referred to in paragraph 6 below;

2. *Recommends* that the subject matter jurisdiction of the special court should include notably crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law committed within the territory of Sierra Leone;

3. *Recommends further* that the special court should have personal jurisdiction over persons who bear the greatest responsibility for the commission of the crimes referred to in paragraph 2, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone;

4. *Emphasizes* the importance of ensuring the impartiality, independence and credibility of the process, in particular with regard to the status of the judges and the prosecutors;

5. *Requests*, in this connection, that the Secretary-General, if necessary, send a team of experts to Sierra Leone as may be required to prepare the report referred to in paragraph 6 below;

6. *Requests* the Secretary-General to submit a report to the Security Council on the implementation of this resolution, in particular on his consultations and negotiations with the Government of Sierra Leone concerning the establishment of the special court, including recommendations, no later than 30 days from the date of this resolution;

24134

7. *Requests* the Secretary-General to address in his report the questions of the temporal jurisdiction of the special court, an appeals process including the advisability, feasibility, and appropriateness of an appeals chamber in the special court or of sharing the Appeals Chamber of the International Criminal Tribunals for the Former Yugoslavia and Rwanda or other effective options, and a possible alternative host State, should it be necessary to convene the special court outside the seat of the court in Sierra Leone, if circumstances so require;

8. *Requests* the Secretary-General to include recommendations on the following:

(a) any additional agreements that may be required for the provision of the international assistance which will be necessary for the establishment and functioning of the special court;

(b) the level of participation, support and technical assistance of qualified persons from Member States of the United Nations, including in particular, member States of ECOWAS and the Commonwealth, and from the United Nations Mission in Sierra Leone that will be necessary for the efficient, independent and impartial functioning of the special court;

(c) the amount of voluntary contributions, as appropriate, of funds, equipment and services to the special court, including through the offer of expert personnel that may be needed from States, intergovernmental organizations and non-governmental organizations;

(d) whether the special court could receive, as necessary and feasible, expertise and advice from the International Criminal Tribunals for the Former Yugoslavia and Rwanda;

9. *Decides* to remain actively seized of the matter.