



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 4 MAY 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Richard Lussick, Presiding
Justice Teresa Doherty
Justice Julia Sebutinde
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg
Ms Carolyn Buff

For the Registry:

Mr Gregory Townsend
Ms Advera Kamuzora
Ms Rachel Irura

For the Prosecution:

Mr Nicholas Koumjian
Mr Mohamed A Bangura
Ms Kathryn Howarth
Ms Ula Nathai-Lutchman
Ms Maja Dimitrova

For the accused Charles Ghankay
Taylor:

Mr Courtenay Griffiths QC
Ms Salla Moilanen

1 Monday, 4 May 2009

2 [Open session]

3 [The accused present]

4 [Upon commencing at 9.30 a.m.]

09:31:28 5 PRESIDING JUDGE: Good morning. We will take appearances
6 first, please.

7 MR KOUMJIAN: Good morning Mr President, your Honours and
8 counsel opposite. For the Prosecution this morning are Mohamed A
9 Bangura, Maja Dimitrova, Kathryn Howarth, Ula Nathai-Lutchman and
09:31:51 10 myself, Nicholas Koumjian.

11 MR GRIFFITHS: Good morning, Mr President, your Honours,
12 counsel opposite. For the Defence today are myself, Courtenay
13 Griffiths, and Ms Salla Moilanen, our case manager.

14 PRESIDING JUDGE: Thank you. Well, our first business
09:32:10 15 today is to deliver our decision on the Defence Rule 98 motion.
16 The Trial Chamber is seized of a Defence motion for judgment of
17 acquittal pursuant to Rule 98 of the Rules of Procedure and
18 Evidence. Pursuant to this rule the Trial Chamber is bound to
19 deliver our decision, including our reasons, orally. I will
09:32:39 20 therefore read the Trial Chamber's decision in full.

21 A brief procedural history is as follows. The Prosecution
22 rested its case on 27 February 2009. On the same day the Defence
23 notified the Trial Chamber that it intended to move for a
24 judgment of acquittal under Rule 98. The Trial Chamber heard
09:33:06 25 oral submissions on the motion from the Defence on 6 April 2009
26 and the Prosecution presented its response on 9 April 2009 after
27 which the Trial Chamber adjourned to consider the matter. The
28 Trial Chamber informed the parties that it would deliver its
29 decision on 4 May 2009, which is today. In reaching its

1 decision, the Trial Chamber has considered all the submissions of
2 the parties and all of the evidence before it.

3 The Trial Chamber will first give a brief summary of the
4 submissions of the parties. The Defence moves the Trial Chamber
09:33:52 5 to acquit the accused on each and every count in the second
6 amended indictment. It raises issues with regard to the standard
7 of review applicable to Rule 98 and the law that applies to the
8 offences alleged in the indictment.

9 While not contesting the crime base evidence the Defence
09:34:13 10 challenges the quality of evidence, or lack thereof, with regard
11 to each element of the modes of liability linking the accused to
12 the alleged offences.

13 The Defence submits that the evidence presented by the
14 Prosecution linking the accused to the crimes alleged in the
09:34:32 15 indictment is not capable of sustaining a conviction, even if
16 believed. The Defence also notes inconsistencies and
17 contradictions in the evidence presented by the Prosecution.

18 In its response, the Prosecution opposes the motion on all
19 grounds presented by the Defence and requests the Trial Chamber
09:34:58 20 to dismiss it. It submits that it has led evidence capable of
21 supporting a conviction on each and every count of the
22 indictment.

23 The parties provided further submissions on particular
24 issues which the Trial Chamber will address in detail in the body
09:35:18 25 of the decision that follows.

26 We deal now with the standard of review in relation to Rule
27 98. Rule 98 sets out the applicable legal standard when
28 reviewing a motion for judgment of acquittal. It provides that:

29 "If, after the close of the case for the prosecution, there

1 is no evidence capable of supporting a conviction on one or more
2 counts of the indictment, the Trial Chamber shall, by oral
3 decision and after hearing the oral submissions of the parties,
4 enter a judgment of acquittal on those counts."

09:35:59 5 This Trial Chamber has previously held in the case of
6 Prosecutor v Brima and others, otherwise known as the AFRC case,
7 that the test to be applied when considering a motion under Rule
8 98 is whether there is evidence, if accepted, upon which a
9 reasonable tribunal of fact could be satisfied beyond reasonable
09:36:23 10 doubt of the guilt of the accused on the particular charge in
11 question. The Trial Chamber must assume that the Prosecution's
12 evidence is entitled to credence, unless incapable of belief.

13 Accordingly the object of the enquiry is not to make
14 determinations of fact having weighed the credibility and
09:36:46 15 reliability of the evidence, rather it is simply to determine
16 whether the evidence, assuming that it is true, could not
17 possibly sustain a finding of guilt beyond reasonable doubt.
18 That will only be the case where there is no evidence whatsoever
19 which is probative of one or more of the required elements of a
09:37:09 20 crime charged, or where the only such evidence is incapable of
21 belief.

22 To be incapable of belief, the evidence must be obviously
23 incredible or unreliable. The Trial Chamber should not be drawn
24 into fine assessments of credibility, or reliability. Needless
09:37:32 25 to say a finding that the evidence is not obviously incredible
26 does not foreclose the Trial Chamber at the end of the trial from
27 finding that the evidence is, in fact, neither credible nor
28 reliable.

29 In applying the above mentioned test, it is not necessary

1 under the rule for the Trial Chamber to enquire into the
2 sufficiency of the evidence in relation to each paragraph of the
3 indictment. There is no need at the Rule 98 stage to examine
4 whether each paragraph of the indictment is supported by the
09:38:11 5 Prosecution evidence. Rather, the evidence should be examined in
6 relation to the counts. Rule 98 requires the Trial Chamber to
7 determine only whether there is no evidence capable of supporting
8 a conviction on one or more counts of the indictment and to enter
9 a judgment of acquittal on those counts.

09:38:34 10 The essential function of the rule was stated by the ICTY
11 in the cases of Strugar and Hadzihasanovic. The Trial Chambers
12 in those cases observed as follows:

13 "It is worth noting the extent and frequency to which Rule
14 98 bis has come to be relied on in proceedings before this
09:39:01 15 tribunal and the prevailing tendency for Rule 98 bis motions to
16 involve much delay, lengthy submissions and therefore an
17 extensive analysis of evidentiary issues in decisions. This
18 appears to be in contrast to the position typically found in
19 common law jurisdictions from which the procedure is derived.

09:39:26 20 While Rule 98 bis is an important procedural safeguard, the
21 object and proper operation of the rule should not be lost sight
22 of. It's essential function is to separate out and bring to an
23 end only those proceedings in respect of a charge for which there
24 is no evidence on which a Trial Chamber could convict, rather
09:39:53 25 than to terminate prematurely cases where the evidence is merely
26 weak."

27 The indictment charges in paragraph 33 that:

28 "The accused, by his acts or omissions, is individually
29 criminally responsible pursuant to Article 6.1 of the Statute for

1 the crimes referred to in Articles 2, 3 and 4 of the Statute
2 which crimes the accused planned, instigated, ordered, committed,
3 or in whose planning, preparation or execution the accused
4 otherwise aided and abetted, or which crimes amounted to or were
09:40:39 5 involved within a common plan, design or purpose in which the
6 accused participated, or were a reasonably foreseeable
7 consequence of such common plan, design or purpose."

8 In addition, or alternatively, under paragraph 34 of the
9 indictment the accused is charged with individual criminal
09:41:04 10 responsibility under Article 6.3 of the Statute.

11 In deliberating upon this motion, the Trial Chamber has
12 examined the Prosecution evidence in its entirety. Where
13 specific evidence is cited in this oral decision, this is done
14 for illustrative purposes and should not necessarily be taken as
09:41:27 15 an exhaustive listing.

16 We come now to the law on the modes of liability charged in
17 the indictment. Rule 98 does not require that the Trial Chamber
18 be satisfied that there is evidence supporting each of the
19 individual allegations making up the counts of the indictment.
09:41:51 20 Thus, where as in the present case the accused is charged under
21 multiple modes of liability, it is sufficient if there is
22 evidence capable of supporting a conviction on the basis of one
23 of those modes of liability.

24 The parties made submissions on the law in relation to the
09:42:10 25 modes of liability charged in the indictment. The Trial Chamber
26 finds these submissions to be generally consistent with
27 established jurisprudence of the Special Court for Sierra Leone
28 and the ad hoc international tribunals which this Chamber
29 considered in the AFRC case. For the purpose of this decision,

1 we will here state our opinion in this regard.

2 We deal firstly with the mode of commission through
3 participation in a joint criminal enterprise. An accused may be
4 found to have committed a crime through participation in a joint
09:42:53 5 criminal enterprise. The actus reus of joint criminal enterprise
6 liability comprises three elements: (1) a plurality of persons;
7 (2) the existence of a common plan, design or purpose which
8 amounts to or involves the commission of a crime provided for in
9 the Statute; and (3) participation of the accused in the common
09:43:16 10 plan, design or purpose involving the perpetration of one of the
11 crimes provided for in the Statute.

12 The mens rea requirements for liability under the basic and
13 extended forms of joint criminal enterprise which are pleaded in
14 the indictment against the accused in this case are not the same.

09:43:39 15 In the basic category of joint criminal enterprise the
16 accused must intend to perpetrate a certain crime, this being the
17 shared intent on the part of all co-perpetrators.

18 The mens rea for the extended category of joint criminal
19 enterprise is twofold. In the first place the accused must have
09:44:01 20 had the intention to take part in and contribute to the common
21 purpose. In the second place, responsibility under the third
22 category of joint criminal enterprise for a crime that was
23 committed beyond the common purpose of the joint criminal
24 enterprise, but which was a natural and foreseeable consequence
09:44:20 25 thereof, arises only if the Prosecution proves that the accused
26 had sufficient knowledge that the additional crime was a natural
27 and foreseeable consequence to him in particular.

28 The accused must also know that the crime which was not
29 part of the common purpose, but which was nevertheless a natural

1 and foreseeable consequence of it, might be perpetrated by a
2 member of the group or by a person used by the accused or another
3 member of the group.

09:44:56

4 The accused must willingly take the risk that the crime
5 might occur by joining or continuing to participate in the
6 enterprise. The Trial Chamber can only find that the accused has
7 the requisite intent if this is the only reasonable inference on
8 the evidence.

09:45:20

9 Planning. Planning implies that one or several persons
10 contemplate designing the commission of a crime at both the
11 preparatory and execution phases. Responsibility is incurred
12 when the level of the accused's participation is substantial,
13 even when the crime is actually committed by another person. The
14 actus reus requires that the accused, alone or together with
15 others, designed the criminal conduct constituting the crimes
16 charged. It is sufficient to demonstrate that the planning was a
17 factor substantially contributing to such criminal conduct.

09:45:42

18 The mens rea requires that the accused acted with direct
19 intent in relation to his own planning, or with the awareness of
20 the substantial likelihood that a crime would be committed in the
21 execution of that plan. Planning with such awareness has to be
22 regarded as accepting that crime.

09:46:05

23 Instigating. Instigating means prompting another to commit
24 an offence. The actus reus requires that the accused prompted
25 another person to commit the offence and that the instigation was
26 a factor substantially contributing to the conduct of the other
27 person or persons committing the crime.

09:46:29

28 The mens rea requires that the accused acted with direct
29 intent, or with the awareness of the substantial likelihood that

1 a crime would be committed in the execution of that instigation.

2 Ordering. The actus reus of ordering requires that a
3 person in the position of authority uses that authority to
4 instruct another to commit an offence. No formal
09:47:09 5 superior/subordinate relationship between the accused and the
6 perpetrator is necessary. It is sufficient that the accused
7 possessed the authority to order the commission of an offence and
8 that such authority can reasonably be inferred.

9 The mens rea for ordering requires that the accused acted
09:47:31 10 with direct intent in relation to his own ordering, or with the
11 awareness of the substantial likelihood that a crime will be
12 committed in the execution of that order.

13 Aiding and abetting. The actus reus of aiding and abetting
14 requires that the accused gave practical assistance,
09:47:53 15 encouragement or moral support which had a substantial effect on
16 the perpetration of a crime. Aiding and abetting may be
17 constituted by contribution to the planning, preparation or
18 execution of a finally completed crime. Such contribution may be
19 provided directly, or through an intermediary, and irrespective
09:48:16 20 of whether the participant was present or removed both in time
21 and place from the actual commission of the crime.

22 The mens rea required for aiding and abetting is that the
23 accused knew that his act would assist the commission of the
24 crime by the perpetrator, or that he was aware of the substantial
09:48:39 25 likelihood that his acts would assist the commission of a crime
26 by the perpetrator. However it is not necessary that the aider
27 and abetter had knowledge of the precise crime that was intended
28 and which was actually committed, as long as he was aware that
29 one of a number of crimes would probably be committed including

1 the one actually committed.

2 Individual criminal responsibility pursuant to Article 6.3
3 of the Statute. Article 6.3 provides:

4 "The fact that any of the acts referred to in articles 2 to
09:49:18 5 4 of the present Statute was committed by a subordinate does not
6 relieve his or her superior of criminal responsibility if he or
7 she knew or had reason to know that the subordinate was about to
8 commit such acts or had done so and the superior had failed to
9 take the necessary and reasonable measures to prevent such acts
09:49:42 10 or to punish the perpetrators thereof."

11 Article 6.3 thus requires a three-pronged test for criminal
12 liability to attach: (1) the existence of a superior/subordinate
13 relationship between the accused as superior and the perpetrator
14 of the crime; (2) the accused knew or had reason to know that the
09:50:07 15 crime was about to be or had been committed; and (3) the accused
16 failed to take necessary and reasonable measures to prevent the
17 crime or punish the perpetrators thereof.

18 The scope of Article 6.3 not only includes military
19 commanders, but also political leaders and other civilian
09:50:29 20 superiors in possession of authority.

21 The Trial Chamber will now turn to specific preliminary
22 issues raised by the Defence.

23 The Defence submits that any evidence adduced of crimes
24 committed in a location with a name that did not precisely match
09:50:52 25 a location pleaded in the indictment should not be considered by
26 the Trial Chamber. The Defence therefore requests that such
27 locations should be struck out.

28 The Prosecution in response argues that the Defence
29 submission must fail as Rule 98 requires the Trial Chamber to

1 make findings on the counts in the indictment and not on specific
2 particulars.

3 The Trial Chamber recalls its finding at paragraph 25 of
4 the AFRC Rule 98 decision that it would not be appropriate or
09:51:29 5 desirable to strike out the names of such locations given that a
6 variety of languages and dialects are spoken in Sierra Leone and
7 that some witnesses are illiterate. Thus names of locations
8 mentioned by witnesses which are similar but not identical to
9 names of locations that appear in the indictment may refer to the
09:51:50 10 same location. Furthermore, the Defence had ample opportunity to
11 raise any doubts regarding such matters through
12 cross-examination.

13 For the foregoing reasons, the Trial Chamber considers that
14 it is not an appropriate or desirable remedy to strike out the
09:52:10 15 names of these locations. The Trial Chamber will, at the
16 appropriate time, review all the evidence to determine whether a
17 witness and the indictment are referring to the same location
18 despite minor spelling discrepancies.

19 The Defence also submits that the Prosecution did not
09:52:32 20 adduce evidence of any acts of burning in Goderich, Kent or
21 Grafton in the Western Area and requests the Trial Chamber to
22 strike out those locations. The Prosecution contests the absence
23 of evidence of acts of burning in the locations submitted by the
24 Defence and provides references to evidence in support of its
09:52:58 25 assertion.

26 However, the Trial Chamber in keeping with our ruling in
27 paragraph 21 of the AFRC Rule 98 decision, holds that we are not
28 empowered by Rule 98 to break down a count to its particulars
29 supplied in the indictment and then to enter a judgment of

1 acquittal in respect of any particular which has not been proved,
2 nor would it be practicable to do so. The Trial Chamber
3 therefore rejects this Defence submission.

4 The Trial Chamber will now consider the chapeau
09:53:47 5 requirements. The Trial Chamber notes that the accused is
6 charged with three types of crime provided for in the Statute of
7 the Special Court: crimes against humanity under Article 2 of
8 the Statute; serious violations of Article 3 common to the Geneva
9 Conventions and of additional Protocol II pursuant to Article 3
09:54:10 10 of the Statute; and other serious violations of international
11 humanitarian law under Article 4 of the Statute. For the
12 purposes of this decision, we will refer to the latter two
13 categories of crimes as war crimes.

14 In order to secure a conviction, the Prosecution must prove
09:54:31 15 the underlying offences, the general requirements of crimes
16 against humanity or war crimes - sometimes referred to as the
17 chapeau requirements - and the accused's individual
18 responsibility.

19 The offences charged in this indictment are acts of
09:54:55 20 terrorism at Count 1; murder at Counts 2 and 3; rape at Count 4;
21 sexual slavery at Count 5; outrages against personal dignity at
22 Count 6; cruel treatment at Count 7; physical violence as an
23 other inhumane act at Count 8; conscripting or enlisting children
24 under the age of 15 into armed forces or groups, or using them to
09:55:21 25 participate actively in hostilities, at Count 9; enslavement at
26 Count 10; and pillage at Count 11.

27 The Trial Chamber notes that the Defence has not, at least
28 for the purpose of this motion, challenged the sufficiency of the
29 evidence in relation to the chapeau requirements for crimes

1 against humanity and war crimes. Nevertheless, for the purposes
2 of this Rule 98 decision the Trial Chamber recalls the evidence
3 of numerous Prosecution witnesses who have testified as to
4 attacks directed against civilians which fall within the scope of
09:56:03 5 the indictment. Furthermore, the Trial Chamber recalls that it
6 has taken judicial notice of an armed conflict on the territory
7 of Sierra Leone also falling within the scope of the indictment.

8 The Trial Chamber is satisfied, based upon a review of all
9 the evidence available, that there is evidence capable of
09:56:25 10 supporting a finding that the chapeau requirements of crimes
11 against humanity and war crimes have been met.

12 The Defence did not take issue with the crime base evidence
13 led by the Prosecution and restricted its arguments to the
14 quality and sufficiency of the linkage evidence, or lack thereof,
09:56:55 15 and in particular to the lack of evidence going to the modes of
16 liability. Accordingly, the Trial Chamber will restrict its
17 review of the evidence to those areas.

18 The Trial Chamber will now turn to a consideration of the
19 individual criminal responsibility of the accused in relation to
09:57:18 20 Counts 1 through 11 of the indictment.

21 The Defence argued that there was no evidence linking the
22 accused to the crimes committed under any of the modes of
23 liability pleaded by the Prosecution.

24 The parties took different approaches to the evaluation of
09:57:41 25 the sufficiency of the evidence with regard to the modes of
26 liability. The Defence made submissions on the modes of
27 liability of planning, committing, instigating, ordering and
28 aiding and abetting before turning to joint criminal enterprise
29 which it submitted is "the backbone of this case. This is what

1 the case amounts to."

2 The Defence completed its oral submissions by an evaluation
3 of the evidence adduced so far in relation to superior criminal
4 responsibility and concluded that there was no evidence capable
09:58:19 5 of supporting a conviction on any count and asked the Trial
6 Chamber to deliver a judgment of acquittal on all counts.

7 The Prosecution submitted that, should the Trial Chamber
8 determine that there is evidence which could support a conviction
9 on a count on the basis of any one of the alleged forms of
09:58:41 10 liability, there is no need for the Trial Chamber to also examine
11 the other forms of liability in respect of that count.

12 It presented jurisprudence from several cases at the ICTY
13 in support of this approach, namely the decisions on Rule 98 bis
14 in the cases of Prosecutor v Martić, Prosecutor v Mrksić,
09:59:08 15 Prosecutor v Milutinović and Prosecutor v Prlić.

16 Following this approach, the Prosecution set out the
17 evidence it alleged is capable of supporting a conviction on all
18 counts of the indictment based on the accused's participation in
19 a common plan design or purpose, the mode of liability also
09:59:31 20 referred to as joint criminal enterprise.

21 Although it maintained that there was no need to do so, the
22 Prosecution then went on to also set out evidence which it
23 suggested is capable of supporting a conviction under other modes
24 of liability, namely aiding and abetting, planning, instigating,
09:59:54 25 ordering and superior responsibility.

26 The Trial Chamber agrees with the Prosecution that it is
27 not necessary for the purposes of Rule 98 to evaluate the
28 sufficiency of the evidence in relation to each mode of liability
29 and that it is sufficient if there is evidence capable of

1 supporting a conviction on the basis of one of those modes.

2 Dealing firstly with commission through joint criminal
3 enterprise, both parties have highlighted the centrality of joint
4 criminal enterprise responsibility to this case and, as
10:00:44 5 mentioned, the Prosecution argues that there is evidence capable
6 of supporting a conviction against the accused on each and every
7 count of the indictment based on his participation in a joint
8 criminal enterprise. Therefore, the Trial Chamber will consider
9 the sufficiency of the evidence in relation to this mode of
10:01:07 10 liability.

11 In summary the Defence submitted that the Prosecution led
12 no evidence to support the participation of the accused in either
13 the basic or the extended form of joint criminal enterprise and,
14 in particular, that there is no evidence of a common plan,
10:01:29 15 purpose or design between the accused and other co-perpetrators,
16 nor is there evidence of a shared intent to have existed between
17 the co-perpetrators throughout the indictment period. The
18 Prosecution disagrees.

19 The Trial Chamber recalls its decision on the urgent
10:01:50 20 Defence motion regarding a fatal defect in the Prosecution second
21 amended indictment relating to the pleading of JCE of 27 February
22 2009, in which we held that the second amended indictment
23 satisfied the requirements for the pleading of joint criminal
24 enterprise in that it charged the accused with participating
10:02:15 25 along with others, namely members of the RUF, AFRC, RUF/AFRC
26 junta or alliance and/or Liberian fighters, in a campaign to
27 terrorise the civilian population of Sierra Leone between 30
28 November 1996 and 18 January 2002 and that the crimes charged in
29 the indictment were part of a campaign of terror, or were a

1 reasonably foreseeable consequence thereof. The nature of the
2 accused's participation in the criminal enterprise was also
3 narrated in paragraph 74 of that decision.

4 We come now to the Trial Chamber's findings on commission
10:03:10 5 through a joint criminal enterprise. As set out in the
6 applicable law above, the elements of this mode of liability are
7 the existence of a common purpose, a plurality of persons, the
8 participation of the accused and the requisite mens rea.

9 As to existence of a common purpose to terrorise, the Trial
10:03:41 10 Chamber finds that there is evidence capable of supporting a
11 finding of the existence of this common purpose. The Trial
12 Chamber refers to inter alia the evidence of witness TF1-532 that
13 the accused and Sam Bockarie, in planning to recapture territory
14 across Sierra Leone, agreed to make operations fearful, and on
10:04:05 15 the evidence of witness TF1-371 who testified that the accused
16 was involved in planning Operation No Living Thing. During these
17 operations, crimes set out in the indictment were systematically
18 committed against the civilian population.

19 The Prosecution has adduced evidence that the common
10:04:28 20 purpose to terrorise the civilian population existed from the
21 pre-indictment period. Witness TF1-045, testified that in 1994
22 the accused was involved in a plan to terrorise civilians at
23 Sierra Rutile so that the RUF could take control of the area.
24 Witness TF1-532 testified that in 1996 the accused approved a
10:04:58 25 plan by Foday Sankoh to terrorise civilians in order to
26 discourage them from participating in the elections.

27 In addition, there is evidence that individuals associated
28 with the accused shared the common purpose to terrorise the
29 civilian population. Inter alia, Witness TF1-334 testified that

1 child soldiers were sent to amputate civilians in order to
2 terrorise them. Witness TF1-360 testified that Sam Bockarie
3 ordered his fighters to make Kono fearsome, meaning to burn down
4 houses and kill civilians. TF1-367 testified that at Guinea
10:05:48 5 Highway Issa Sesay ordered that Operation Free Sankoh should be a
6 fearful operation.

7 The Trial Chamber is further satisfied that during the
8 campaign to terrorise the civilian population civilians were
9 killed, raped, forced into sexual slavery, subjected to physical
10:06:12 10 violence, including amputations and mutilation, and were abducted
11 and forced into labour. The Trial Chamber is similarly satisfied
12 that children participated actively in hostilities and that
13 civilian property was pillaged.

14 Taken together, the Trial Chamber finds that there is
10:06:34 15 evidence on which it could find that the accused and others
16 shared a common purpose to take part in a campaign to terrorise
17 the civilian population of the Republic of Sierra Leone.

18 We come now to the element of plurality of persons. The
19 Prosecution has adduced evidence that a number of individuals who
10:07:00 20 were associated with the accused were involved in the
21 perpetration of the crimes indicted. Among them were members of
22 the RUF, AFRC, AFRC/RUF junta or alliance and/or Liberian
23 fighters, individuals such as Sam Bockarie, Issa Sesay, Foday
24 Sankoh, Johnny Paul Koroma, Eddie Kanneh, Benjamin Yeaten, Daniel
10:07:35 25 Tamba and others.

26 This evidence is based on the testimony of inter alia
27 witnesses TF1-567, TF1-532, TF1-371, TF1-360, TF1-276, TF1-045,
28 TF1-406, TF1-334 and TF1-516. Thus, the Trial Chamber is
29 satisfied that there is sufficient evidence that a plurality of

1 persons was involved in the joint criminal enterprise.

2 In relation to the alleged participation of the accused,
3 the Trial Chamber finds that there is evidence that the accused
4 participated in the joint criminal enterprise. In particular the
10:08:36 5 Prosecution has adduced evidence that the accused provided arms,
6 ammunition, financial assistance, manpower and other supplies to
7 other participants in the joint criminal enterprise in
8 furtherance of the common purpose, that he provided safe havens
9 to other members, that he provided moral encouragement and
10:09:01 10 military advice, that he facilitated the export of diamonds in
11 return for arms, that he facilitated communication between the
12 various members of the joint criminal enterprise and that he had
13 persons who he believed endangered the common purpose killed.

14 This evidence is based on inter alia the testimony of
10:09:24 15 witnesses TF1-371, TF1-532, TF1-375, TF1-406, TF1-045, TF1-275,
16 TF1-360, TF1-276, TF1-577, TF1-388, TF1-516, TF1-334, TF1-084 and
17 TF1-114.

18 In relation to the mens rea requirement, the Prosecution
19 has charged the accused with responsibility for the crimes
10:10:17 20 alleged under the first and third categories of joint criminal
21 enterprise.

22 In its oral submission, the Defence argued that the
23 Prosecution has adduced no evidence that the accused shared the
24 intent to terrorise the civilian population of Sierra Leone with
10:10:35 25 any co-perpetrators.

26 The Trial Chamber finds that the Prosecution has adduced
27 evidence capable of proofing that the accused intended to
28 participate in the alleged joint criminal enterprise.

29 The evidence shows that the accused may have had the

1 specific intent to terrorise the civilian population of Sierra
2 Leone in the pre-indictment period. From the early 1990s, the
3 accused and Foday Sankoh agreed to assist each other in the
4 capture of territory both in Liberia and Sierra Leone. Inter
10:11:14 5 alia, Witness TF1-045 testified that in 1994 the accused advised
6 Foday Sankoh to terrorise the civilian population around Sierra
7 Rutile in order to take control of the area. Witness TF1-532
8 testified that the accused agreed to a plan proposed by Foday
9 Sankoh to disrupt the 1996 elections in Sierra Leone by
10:11:44 10 terrorising the civilian population.

11 In addition the Trial Chamber finds that there is evidence
12 that the accused maintained this intent during the indictment
13 period, namely the evidence of inter alia Witness TF1-532 who
14 testified that the accused and Sam Bockarie, in planning to
10:12:05 15 recapture territory across Sierra Leone, agreed to make the
16 operations fearful. Witness TF1-371 testified that the accused
17 was involved in planning Operation No Living Thing.

18 The Trial Chamber finds that there is evidence that
19 individuals alleged to have collaborated with the accused
10:12:29 20 committed the crimes mentioned above with the primary purpose of
21 terrorising the civilian population of the Republic of Sierra
22 Leone, namely the evidence of witnesses TF1-045, TF1-276,
23 TF1-352, TF1-334, TF1-360, TF1-375, TF1-367 and Stephen Ellis.

24 Finally, there is evidence that the accused was aware of
10:13:05 25 the intent of those individual to terrorise the civilian
26 population, namely the evidence of Witness TF1-567 and exhibits
27 D-34, P-70, P-130, P-298, P-299, P-305, P-306, P-307, P-308,
28 P-310, P-317 and P-38.

29 The Trial Chamber also notes the numerous BBC Focus on

1 Africa reports, which are Prosecution exhibits P-263, P-348A and
2 B, P-349A and B, P-350A and B, P-354A and B, P-356A and B, 357A
3 and B and 358A and B, which exhibits were admitted into evidence
4 regarding the crimes committed in Freetown in January 1999,
10:14:23 5 together with the evidence of Witness TF1-561 and TF1-406 who
6 testified that the accused listened regularly to the BBC.

7 The Trial Chamber is therefore satisfied that the
8 Prosecution has adduced evidence capable of supporting a
9 conviction against the accused on Counts 1 through 11 of the
10:14:48 10 indictment based on his participation in a joint criminal
11 enterprise.

12 Having so found, the Trial Chamber is not required by Rule
13 98 to consider whether there is evidence capable of supporting a
14 conviction against the accused on any count based on any other
10:15:09 15 form of criminal responsibility.

16 The Trial Chamber emphasises that a ruling that there is
17 evidence capable of supporting a conviction on a particular count
18 does not necessarily mean that the Trial Chamber will, at the end
19 of the case, return a conviction on that count. This is so
10:15:30 20 because the standard for determining sufficiency under Rule 98 is
21 not evidence on which a Trial Chamber should convict, but
22 evidence on which it could convict.

23 Having said that, for the reasons stated the Trial Chamber
24 dismisses the Defence motion in its entirety.

10:16:00 25 Well, as the Trial Chamber indicated on 9 April, we intend
26 to fix a date for the commencement of the Defence case today. Do
27 you have anything you would like to say on that issue,
28 Mr Griffiths?

29 MR GRIFFITHS: Mr President, your Honours, I caused to be

1 circulated a few weeks ago a memo suggesting a start date in
2 mid-July and setting out the reasons in support of that request.
3 Can I enquire whether your Honours had an opportunity of seeing
4 that?

10:16:40 5 PRESIDING JUDGE: Yes, I think we all got that. Thank you,
6 Mr Griffiths.

7 MR GRIFFITHS: And I note that I think within the last
8 couple of days there has been a response from Ms Hollis, on
9 behalf of the Prosecution.

10:16:55 10 PRESIDING JUDGE: We also have that.

11 MR GRIFFITHS: Now can I make it plain at the outset, your
12 Honours, that the date suggested by me in that memo is in fact
13 the bare minimum, the bare minimum time frame we submit to
14 guarantee the fair trial rights of Mr Taylor, and we would
10:17:24 15 welcome more time if the Trial Chamber felt able to grant that
16 request because, frankly, our resources are currently stretched
17 to its very limits.

18 I returned from Freetown yesterday morning, my planned
19 flight on Friday night having been cancelled at gone midnight on
10:17:50 20 Friday, and I have to return first thing tomorrow morning. I
21 pause to mention the fact that, whilst on the ground in West
22 Africa, it is consequently impossible for me to spend any time
23 with the accused firstly preparing him for the giving of evidence
24 - and I've already indicated that he will be giving evidence -
10:18:16 25 and also going through the very numerous exhibits that we
26 anticipate will be introduced in evidence through him.

27 Now other members of my team, Mr Munyard, Mr Anyah,
28 Mr Chekera and two legal assistants, are currently in West Africa
29 and we anticipate that they, along with myself, will remain in

1 West Africa until the end of May.

2 However, as we have discovered, progress is a lot slower
3 there than we anticipated and, frankly, the progress we are
4 making at present suggests that the date indicated by myself in
10:19:11 5 that memo might well be overly optimistic.

6 Furthermore, in light of the Appeal Chamber's decision on
7 JCE and indeed your Honours' decision on our Rule 98 motion, we
8 anticipate now having to call additional evidence to deal with
9 aspects of the alleged plan; witnesses who, frankly, we had not
10:19:44 10 either anticipated or intended to call.

11 Consequently, having now been on the ground and armed with
12 that experience, our submission is that a start date even in the
13 middle of July will necessarily cause difficulties.

14 Now, whilst making that submission, of course we are aware
10:20:12 15 as I set out in that memo of the continuing financial constraints
16 under which this Court operates and of course we appreciate that
17 there has to be a limit to the discretion which this Trial
18 Chamber will allow.

19 Nonetheless, it seems to us that to order a start date
10:20:35 20 prematurely will in due course prove to be a false economy - and
21 I say that quite bluntly - because it will result undoubtedly in
22 future requests for more time because of our inability to in
23 effect sort out these difficulties at the front end. It seems to
24 me that time allowed at this stage will guarantee savings down
10:21:05 25 the line and so consequently, whereas the request was for
26 mid-July, I am now suggesting that more time should be granted in
27 order to permit us to prepare properly for the start of the
28 Defence case.

29 I don't know if I can assist with any particular matters,

1 Mr President?

2 PRESIDING JUDGE: Yes, one matter that is not entirely
3 relevant to the start date, Mr Griffiths. It seems from what you
4 are saying that most of your team is now in West Africa.

10:21:42 5 MR GRIFFITHS: That's correct.

6 PRESIDING JUDGE: Whereas it's customary and indeed
7 practical once the Trial Chamber delivers its decision on a Rule
8 98 motion to fix a status conference fairly promptly and we were
9 considering later this week to fix a status conference. Who in
10:22:03 10 your team is going to be here to attend if you are going back to
11 Africa yourself tomorrow?

12 MR GRIFFITHS: Bluntly, no-one.

13 PRESIDING JUDGE: Well the thing is you might have to
14 rethink that, Mr Griffiths.

10:22:25 15 JUDGE SEBUTINDE: Mr Griffiths, you say, or you have just
16 addressed the Chamber to say, that in spite of your having stated
17 that you were prepared to start in mid-July you would appreciate
18 additional time, but you haven't told us what other date you have
19 in mind apart from mid-July.

10:22:46 20 MR GRIFFITHS: Well, can I put it in this way. Under
21 normal circumstances we apprehend that there would have been a
22 summer break, under normal circumstances, and it seems to us the
23 more appropriate start date, bearing in mind the difficulties we
24 have now identified, would be some time in mid-August.

10:23:12 25 PRESIDING JUDGE: Well before you finalise that answer,
26 Mr Griffiths, we would point out that we are not taking a summer
27 break at the same time as the ICC. We will be delaying that
28 summer break until some time around October, or maybe even later.
29 We haven't fixed that date yet.

1 MR GRIFFITHS: I'm grateful for that indication,
2 Mr President, but nonetheless I would still maintain that in our
3 submission a more appropriate start date now, in light of what
4 we've discovered, would be some time in mid-August.

10:24:05 5 JUDGE SEBUTINDE: Mr Griffiths, you indicated that your
6 team would find difficulties being here for the proposed status
7 conference next week, or even this week. What alternatives do
8 you suggest before we - well, at least to give the opportunity to
9 the other side to comment for a status conference?

10:24:25 10 MR GRIFFITHS: Well can I first make this enquiry, your
11 Honour. Is it proposed at that status conference to deal with
12 matters such as - is that proposed to be a pre-Defence status
13 conference?

14 PRESIDING JUDGE: No, that will be a status conference
10:24:43 15 leading up to the pre-Defence conference. At that conference -
16 at the initial status conference, as we will state later, we will
17 be looking at the general situation as regards matters already
18 disclosed and so forth and the number of witnesses. We will come
19 to that later, but to answer your question, no, it's not the
10:25:10 20 pre-Defence conference.

21 MR GRIFFITHS: And can I enquire whether your Honours had a
22 particular date for that hearing? This Friday?

23 JUDGE DOHERTY: You are referring now to the status
24 conference, rather than the pre-Defence conference?

10:27:08 25 MR GRIFFITHS: Your Honour, yes.

26 [Trial Chamber conferred]

27 PRESIDING JUDGE: Mr Griffiths, we were thinking around
28 Thursday for the status conference. We will hear the Prosecution
29 before we settle on a date, but we are thinking of some time

1 before Friday because that seems to be when the plane to Africa
2 leaves again.

3 MR GRIFFITHS: It may be possible to accommodate such a
4 hearing on this Thursday, your Honour. It may be that I can make
10:27:39 5 arrangements so that somebody is present for that, but I do make
6 this general observation. At one level the need, it would seem
7 to us, for a status conference is dependent very much on the
8 start date for the Defence case to which your Honours in due
9 course agree, because it may well be that we could delay having
10:28:05 10 such a status conference until a later stage dependent very much
11 on the date that you finally arrive at. I don't know if that
12 assists.

13 PRESIDING JUDGE: Yes, all right. Well, we will hear from
14 the Prosecution first. Mr Koumjian.

10:28:25 15 MR KOUMJIAN: Thank you, your Honours. Your Honours, we
16 recognise that choosing the date for the start of the Defence
17 case is a matter within your Honours' discretion balancing your
18 obligation under Rule 26 bis to ensure that the trial is both
19 fair and expeditious.

10:28:46 20 We do not think that a delay such as that requested by the
21 Defence would result in an expeditious trial. We think it is an
22 inordinately lengthy delay in the resumption of the taking of
23 evidence in this case, considering the Prosecution called its
24 last witness on 30 January.

10:29:14 25 Also, we do think that the fair trial rights of the
26 Prosecution could be affected by an inordinate delay in that the
27 longer the period of time is before the Defence case resumes the
28 longer the period of time has passed that the Chamber has not
29 heard the Prosecution witnesses and all of us have memories that

1 fade over time.

2 Your Honours, we do think and we understand that this is a
3 complex case. We, being in a similar situation as the Defence,
4 recognise that people cannot be in two places at one time and
10:29:53 5 that there are a lot of witnesses and materials to deal with, but
6 we do not think the delay requested is reasonable.

7 The resources available to the Defence are very
8 significant. At my count - and I will be corrected if I am
9 wrong - the Defence has eight lawyers working on the case, along
10:30:12 10 with trial manager, international and national investigators,
11 case manager and interns, some of whom may be lawyers themselves.
12 The Defence has three offices in The Hague, in Sierra Leone and
13 in Liberia.

14 So while we recognise that it is your Honours' obligation
10:30:34 15 to ensure the Defence has sufficient time to adequately and
16 fairly prepare the Defence case and prepare Mr Taylor for his
17 testimony, we think that given the size of the Defence team that
18 that can be done in a shorter period of time than that requested
19 by the Defence. I would not give a date unless your Honours ask
10:30:55 20 me to, because I think it's within your Honours' discretion to
21 set that date.

22 We would also be requesting at the earliest reasonable time
23 that the Defence provide certain materials required under Rule 73
24 ter, I believe it is. Those are materials that your Honours may
10:31:19 25 order.

26 In particular, in order for the Prosecution to prepare for
27 the Defence case, we are anxious to obtain the list of witnesses
28 that the Defence intends to call. Of course there is always a
29 situation where something could happen and that could change, but

1 the Defence has had investigators and lawyers representing the
2 accused since shortly after his arrest in 2006. Some of those
3 even remain on the case - some of the same personnel remain on
4 the case. The Defence must have a good idea at this time of the
10:31:57 5 witnesses they intend to call in this case and we would ask
6 within a reasonable - a short and reasonable - time to obtain
7 that list of witnesses and summaries of what these witnesses are
8 expected to say.

9 As for the status conference, we are at your Honours'
10:32:13 10 discretion. We will be here whatever day your Honours set.
11 Thank you.

12 PRESIDING JUDGE: Just one question, Mr Koumjian. When you
13 say that the delay requested by the Defence is inordinate, are
14 you referring to their previously mentioned start date of 15
10:32:34 15 July, or to the latest submission by Mr Griffiths which is that a
16 later date would be preferable?

17 MR KOUMJIAN: Your Honour, we believe that 15 July - that
18 an earlier trial date could be set for the start of the Defence
19 case than 15 July, ensuring both parties' right to a fair trial
10:32:57 20 and an expeditious trial.

21 PRESIDING JUDGE: Thank you. Anything arising you might
22 want to reply to, Mr Griffiths?

23 MR GRIFFITHS: Mr President, just this. With all due
24 respect to the Prosecution, in our submission they are in no
10:33:18 25 position to assess what a reasonable time is for the preparation
26 of the Defence case. We who defend Mr Taylor are in the best
27 position to make that assessment and the Court should, in our
28 submission, credit us with sufficient responsibility towards
29 these proceedings that we would not make a request unless we

1 genuinely and reasonably felt that it was necessary in order to
2 guarantee the fair trial rights of the accused. It is after
3 careful deliberation amongst our team that we make this request.

4 Now so far as any prejudice which it is suggested the
10:34:11 5 Prosecution might suffer in consequence of our request, in
6 particular the suggestion made by Mr Koumjian that memories fade,
7 we observe firstly that we are here dealing with professional
8 judges, not a lay jury, and furthermore that the evidence in this
9 case is captured in the plain black and white of a transcript
10:34:40 10 available for reference not only to your Honours but also to the
11 Prosecution if Mr Koumjian's memory needs to be reminded in due
12 course.

13 So consequently we submit that no prejudice would result to
14 the Prosecution from the delay that we request, observing in
10:35:01 15 response to the recitation by Mr Koumjian of the resources
16 available to the Defence the fact that the Prosecution, even
17 though their case ended as long ago as the end of January, still
18 retain for the most part the resources available to them
19 throughout the currency of their case. So consequently, frankly
10:35:24 20 and bluntly, it really doesn't lie in Mr Koumjian's mount to
21 assess what resources are available to us and consequently what
22 we are able to achieve in the time available.

23 I have no further submissions.

24 PRESIDING JUDGE: Thank you. All right. Well, we will
10:35:49 25 take an early morning break and we will notify Madam Court
26 Attendant when we are ready to come back.

27 [Break taken at 10.35 a.m.]

28 [Upon resuming at 11.38 a.m.]

29 PRESIDING JUDGE: In relation to an appropriate date for

1 the commencement of the Defence case we have considered the
2 arguments of the parties, including the memorandum of
3 Mr Griffiths of 26 March 2009 and that of Ms Hollis for the
4 Prosecution of 15 April 2009; both of which were referred to in
11:40:03 5 the Defence submissions.

6 We bear in mind in fixing an appropriate start date that
7 Mr Taylor has been in custody since March 2006 and presumably
8 investigations and preparations have been ongoing since that
9 time. We also note that the last Prosecution witness was heard
11:40:31 10 over three months ago on 29 January 2009. We note also that the
11 Defence intends to call Mr Taylor to give evidence and no doubt
12 that will be a substantial amount of time which could be used for
13 the preparation of other Defence witnesses.

14 Taking these considerations into account we are not
11:41:08 15 convinced that the time sought by the Defence is justified and
16 we, the majority, are of the view that a reasonable and
17 appropriate date for the start of the Defence case will be
18 Monday, 29 June 2009 and we so order.

19 When I say the majority, Justice Sebutinde dissents from
11:41:41 20 this view and wishes to say some words putting forward the
21 dissenting view.

22 JUDGE SEBUTINDE: Thank you, Mr President. I am of the
23 view - and this is my dissenting opinion - that the time
24 requested by the Defence in order to permit them to adequately
11:42:05 25 prepare their Defence is not unreasonable.

26 My view is premised upon three pertinent factors. Firstly,
27 in my view the Defence is in the best position to assess the time
28 that they require at this stage to prepare. This particular
29 Defence team, as opposed to previous Defence teams representing

1 Mr Taylor, in my view have earned themselves a good track record,
2 inasmuch as they have lived up to their commitment at the outset
3 of the trial that the continuance we granted them at the
4 beginning would translate into a smooth trial and it did. I see
11:42:49 5 no reason to doubt Mr Griffiths's commitment now.

6 Secondly, the time set by my colleagues is roughly a period
7 of eight weeks from I think the 98 decision and this is based
8 upon a comparison - this compares with, it is not based upon but
9 compares with, the time that this Court granted to the accused
11:43:30 10 persons in the AFRC trial.

11 Now, in my view, I think this trial is different in that
12 the parties are not sitting in the jurisdiction where the
13 witnesses are located and both the Prosecution and the Defence
14 have additional logistical problems that are posed as a result of
11:43:53 15 the trial not being held at the seat of the Court, or where the
16 witnesses are located.

17 Now, in this particular case the problem is compounded for
18 the Defence because their witnesses are likely to be located at
19 least in two different locations separate from where the trial is
11:44:16 20 being held, and so for me a period that compares either with the
21 period granted in the AFRC or even in the RUF case, which were
22 held in Freetown, is not a realistic comparison.

23 Thirdly, I think that a premature start of the Defence case
24 is likely to result in an interrupted hearing with a multiplicity
11:44:45 25 of unforeseen and probably undesirable delays once the hearing
26 begins. In my view I think if adequate time were granted at the
27 start, or before the start, in the long run we would avoid a
28 delay.

29 For those reasons I would have granted the time requested

1 by the Defence and which time I think they are entitled to under
2 Article 17 of the Statute.

3 PRESIDING JUDGE: The next matter to consider is a status
4 conference prior to fixing a pre-Defence conference. Now,
11:45:31 5 Mr Griffiths, you mentioned earlier that before considering the
6 matter further you wanted to know what the status conference is
7 all about.

8 Well, we could indicate this. If you look at Rule 73 ter,
9 there are a number of things that could be ordered of the Defence
11:45:57 10 prior to the pre-Defence conference. The Trial Chamber proposes
11 that any submissions - well, the Trial Chamber proposes the
12 status conference could firstly deal with any submissions as to
13 what should be produced by the Defence and when it should be
14 produced prior to making any orders for production of those items
11:46:24 15 prior to the pre-Defence conference. That is why we had in mind
16 a status conference.

17 MR GRIFFITHS: Mr President, we accept the nature of the
18 obligations we have under Rule 73 ter and appreciate the need to
19 set a date for a pre-Defence conference.

11:46:52 20 Can I make the following suggestion. I've already
21 indicated that several members of the team are currently in West
22 Africa and are due to return at the end of May, I myself will be
23 engaged in the same mission until that time and we will be in a
24 better position at that stage, the end of May, to comply with
11:47:18 25 some of the obligations and duties which fall upon us under Rule
26 73 ter. So, could I suggest a date for such a pre-Defence
27 conference on or about 8 June.

28 PRESIDING JUDGE: Are you talking about the status
29 conference prior?

1 MR GRIFFITHS: I am sorry, I am talking about a pre-Defence
2 conference on or about 8 June which would allow us time to return
3 from West Africa and assess whatever progress has been made.
4 Your Honours will of course be aware of the particular
11:47:59 5 disclosures which are required under that section of the rules
6 and, as a result of the work which is ongoing in West Africa, we
7 will be better placed to provide that information to the
8 Prosecution by such a date.

9 PRESIDING JUDGE: Well then, Mr Griffiths, can we assume
11:48:24 10 that given what can be ordered of the Defence under Rule 73 ter
11 you wouldn't wish to be heard on any of those considerations
12 before the Court actually makes an order obliging the Defence to
13 produce certain things?

14 MR GRIFFITHS: Well, it may be of assistance to all parties
11:48:50 15 to be clear about what orders the Court proposes prior to that
16 date so that we are all working towards the same goal.

17 Now consequently, if that be right, if your Honours are
18 proposing such a status conference on Thursday of this week, as I
19 earlier indicated upon reflection it should be possible to
11:49:20 20 accommodate that.

21 PRESIDING JUDGE: Thank you, Mr Griffiths. Mr Koumjian, do
22 you have anything to say on the issue?

23 MR KOUMJIAN: No, your Honour. We would be prepared on
24 Thursday, or today if your Honours wish, to address the orders
11:49:42 25 the Prosecution seek, which would be to request the witness
26 names, the exhibits, the summaries and the statements that are
27 within the discretion of the Court under that rule, but Ms Hollis
28 will be back here on Thursday and that date is acceptable to us.

29 PRESIDING JUDGE: What do you say to the proposal for a

1 pre-Defence conference on 8 June? That will be three weeks prior
2 to the start of the Defence case.

3 MR KOUMJIAN: That's fine, your Honour. We will deal -
4 without prejudicing our position on when the Rule 73 ter
11:50:19 5 materials will be produced, we can address that on Thursday as to
6 setting a deadline on those materials.

7 PRESIDING JUDGE: Thank you, Mr Koumjian.

8 Well then, Mr Griffiths, we are grateful you've altered
9 your schedule to --

11:50:43 10 MR GRIFFITHS: It is not having altered my schedule, but it
11 will be possible to have Mr Anyah here.

12 PRESIDING JUDGE: All right. Well, we appreciate that.

13 What we are going to do then is we will order a status
14 conference to take place this Thursday, that is 7 May, at 9.30.
11:51:09 15 Now, the agenda at this stage will simply be a discussion and
16 submissions by the parties on the matters that ought to be
17 produced by the Defence prior to the pre-Defence conference.
18 That agenda can be added to simply by either party emailing the
19 Trial Chamber legal officer prior to Thursday and we will be
11:51:48 20 flexible on Thursday as well as to what relevant matters can be
21 dealt with in relation to Rule 73 ter disclosures.

22 We will make a formal order fixing the pre-trial conference
23 on Thursday - I beg your pardon, the pre-Defence conference on
24 Thursday, but we note that 8 June seems to be a suitable date to
11:52:29 25 both parties for the pre-Defence conference.

26 All right. Well, we will adjourn the Court now until 9.30
27 this Thursday morning, 7 May.

28 [Whereupon the hearing adjourned at 11.50 a.m.
29 to be reconvened on Thursday, 7 May 2009 at

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