



**SPECIAL COURT FOR SIERRA LEONE**

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

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IN THE APPEALS CHAMBER

**Before:** Justice Renate Winter, Presiding  
Justice George Gelaga King  
Justice Emmanuel Ayoola  
Justice Geoffrey Robertson  
Justice Raja Fernando

**Registrar:** Robin Vincent

**Date:** 25 May 2004

**PROSECUTOR**                      **Against**                      **MOININA FOFANA**  
(Case No. SCSL-2004-14-AR72(E))

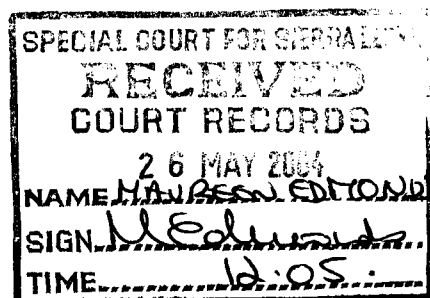
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DECISION ON PRELIMINARY MOTION ON LACK OF JURISDICTION MATERIAE: NATURE OF THE ARMED CONFLICT

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**Office of the Prosecutor:**  
Desmond de Silva  
Luc Côté  
Walter Marcus-Jones  
Abdul Tejan-Cole

**Defence Counsel:**  
Michiel Pestman  
Victor Koppe  
Arrow John Bockarie  
André Nollkaemper  
Liesbeth Zegveld



**THE APPEALS CHAMBER** of the Special Court for Sierra Leone (“Special Court” or “Court”);

**SEIZED** of the Preliminary Motion on the Lack of Jurisdiction *Materiae*: Nature of the Armed Conflict, (“Preliminary Motion”) filed on behalf of Moinina Fofana (“Accused”) on 14 November 2003 (“Preliminary Motion”);

**NOTING** that the Prosecution filed its Response to the Defence Preliminary Motion on Lack of Jurisdiction *Materiae* (Nature of the Armed Conflict) on 24 November 2003 (“Prosecution Response”); and that the Defence filed its Reply to the Prosecution Response on 30 November 2003 (“Defence Reply”);

**NOTING** that the Preliminary Motion was referred to the Appeals Chamber under Rule 72(E) of the Rules of Procedure and Evidence (“Rules”) on 10 December 2003;

**NOTING** that the Defence filed Additional Submissions pursuant to Rule 72(G) of the Rules pertaining to the Preliminary Motion based on Lack of Jurisdiction: The Nature of the Armed Conflict on 12 January 2004 (“Defence Additional Submissions”); that the Prosecution filed its Response to the Additional Submissions on 26 January 2004 (“Prosecution Additional Response”); and that the Defence filed its Reply to the Prosecution Response on 2 February 2004 (“Defence Additional Reply”);

**CONSIDERING THE ARGUMENTS OF THE PARTIES:**

**The Defence Preliminary Motion**

1. The Defence argues that although the Special Court is empowered to adjudicate violations of international humanitarian law, Articles 3 and 4 of the Statute of the Special Court (“Statute”) dealing with “Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II” and “Other serious violations of international humanitarian law” respectively, limit the jurisdiction of the Court to internal armed conflicts only. The Defence argues that Article 3 of the Geneva Convention, taken together with Article 1 of Additional Protocol II and Article 8(2)(e) of the Statute of the International Criminal Court (“ICC”), upon which Articles 3 and 4 respectively are based, applies exclusively to internal armed conflicts. According to the Defence, the fact that the Government of Sierra Leone was the only state to become a signatory to the

Agreement establishing the Special Court suggests that both the Government and the United Nations ("UN") considered the conflict to be an internal one.

2. The Defence submits that the armed conflict in the period for which the Accused is indicted is international in character. According to the Defence, a conflict will be international if: (i) two or more states are party to it; (ii) a state that is not involved exercises control over armed groups or individuals engaged in the conflict; and (iii) an international or regional organization such as the UN becomes involved in enforcement and not simply peacekeeping, thereby becoming a party to the conflict. Applying this test, the Defence argues that the conflict was international on the grounds that: (i) Liberian authorities were involved in the conflict in controlling the RUF and AFRC and were acting under the control of and / or could be assimilated with, the organs of the state of Liberia; (ii) ECOMOG and Nigeria were parties to the conflict; (iii) ECOMOG and the Government of Sierra Leone controlled the CDF.

### **The Prosecution Response**

3. The Prosecution contends that the Special Court does not need to determine whether a conflict is internal or international in character and that no reference was made to the distinction in the Statute because it is immaterial. In other words, nothing in Articles 3 or 4 of the Statute make the nature of the conflict a jurisdictional criterion.
4. The Prosecution argues that Articles 3 and 4 constitute customary international law which applies equally to internal or international armed conflicts. Article 4, it is argued, could have been taken from Article 8(2)(b) of the ICC Statute which deals with international armed conflicts. The Prosecution refers to the protective purpose of international humanitarian law with respect to victims, and argues that its application should not be restricted by the nature of the conflict.
5. The Prosecution submits as a second line of argument that the nature of the conflict is a matter to be determined at trial, on the presentation of evidence.
6. Finally, as a third line of argument, the Prosecution contends that the burden of proof to establish that the conflict was international lies with the Defence, and that they have cited insufficient

evidence as yet to support their claim. In particular, the Prosecution argues that since it alleges that Charles Taylor acted in his personal capacity, the indictment against Taylor cannot be taken as support for the Defence arguments concerning the involvement of Liberia in the armed conflict.

### The Defence Reply

7. The Defence points out that both Prosecution and Defence agree that the Statute of the Special Court should be understood as applicable to internal armed conflicts. Hence it is clear, they argue, that the drafters took Article 4 of the Statute from Article 8(2)(e) of the ICC Statute which contains exactly the same wording.
8. Further, the Defence submits that Articles 3 and 4 cannot be taken out of their context and applied to international armed conflicts, for the following reasons:
  - i. The jurisdiction of the Special Court is limited by its Statute. The Special Court would exceed its jurisdiction if, contrary to the intention of the drafters and the text of its Statute, it were to assume jurisdiction over the same norms as applicable in international armed conflicts.
  - ii. Article 3 of the Statute must be construed as incorporating all of the instruments to which it refers in their entirety, including their criteria for applicability, and not simply substantive rules in isolation.
  - iii. A fundamental difference exists between international and internal armed conflicts, especially as it concerns the legal relevance of the category of 'protected persons'.
9. The Defence argues that the Prosecution suggestion that Charles Taylor acted in his personal capacity and not as head of State has no basis in the international law of state responsibility.
10. Finally, the Defence submits that the question of the nature of the conflict should not be left for trial because: (i) the nature of the armed conflict directly affects the power of the court to try the

Accused under Articles 3 and 4; and (ii) a decision on the matter now is in the interests of judicial efficiency.

### Additional Defence Submissions under Rule 72(G)

11. The Defence reiterates its core argument that the Special Court lacks subject matter jurisdiction to deal with the crimes listed in Articles 3 and 4 of the Statute as the jurisdiction under these provisions is limited to internal armed conflicts while the conflict in Sierra Leone during the period covered by the Indictment was of an international nature. The main points of disagreement between Prosecution and Defence are highlighted as follows: (i) whether the wording of Articles 3 and 4 of the Statute can be read to include or extended to cover customary law prohibitions which apply in international armed conflicts; (ii) whether the nature of the conflict is a matter to be proved at this preliminary stage or at trial; and (3) whether the available facts sufficiently attest to the international character of the conflict in Sierra Leone.
12. The Defence re-emphasizes that the conditions of applicability of the underlying instruments, including elements concerned with the personal, temporal and geographical scope of application, are an integral part of the crimes in Articles 3 and 4 of the Statute. The Prosecution conception that humanitarian law relevant to non-international armed conflict can be substituted for humanitarian law relevant to international conflict is described as a “major misunderstanding”.<sup>1</sup>
13. The Defence goes on to provide further evidence of the international nature of the conflict.

### Prosecution Response

14. The Prosecution reiterates and summarizes the arguments put forward in its initial response. As regards the Defence argument as to the conditions of applicability that must be satisfied under Articles 3 and 4, the Prosecution finds this to be logically incoherent because if the nature of the conflict is an element of the crime to be proved at trial, the Defence need not raise the question as a jurisdictional challenge.

### Defence Reply

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<sup>1</sup> Defence Additional Submissions, para. 11.

15. In its Reply, the Defence urges the Appeals Chamber to hold an oral hearing on the issues.

**HEREBY DECIDES:**

### I. INTRODUCTION

16. The Preliminary Motion on lack of subject-matter jurisdiction under Articles 3 and 4 of the Statute has been referred to the Appeals Chamber on the basis that it raises a serious issue relating to the jurisdiction of the Special Court. The issue is whether the characterization of the conflict in Sierra Leone as internal or international during the period covered by the Indictment against the Accused is a jurisdictional criterion under Articles 3 and 4 of the Statute, and whether the jurisdiction of the Court is thus limited to internal armed conflicts in relation to charges under these articles. The Defence urges the Chamber to proceed to determine the nature of the conflict as a question of fact before the commencement of trial.

### II. ARTICLES 3 AND 4 OF THE STATUTE

17. Articles 3 and 4 of the Statute of the Special Court read as follows:

#### **Article 3: Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II**

The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include:

- a. Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- b. Collective punishments;

- c. Taking of hostages;
- d. Acts of terrorism;
- e. Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- f. Pillage;
- g. The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- h. Threats to commit any of the foregoing acts.

**Article 4: Other serious violations of international humanitarian law**

The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:

- a. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- b. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- c. Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

**III. DRAFTING HISTORY OF THE STATUTE**

18. Both parties agree that the Statute was drawn up with an internal armed conflict in mind. This is supported to some extent by the *travaux préparatoires* which, while not expressly dealing with the issue of the nature of the conflict, suggest that it was assumed to be non-international. In his letter to the Security Council dated 9 August 2000, President Kabbah referred to “the consequences of the civil conflict”<sup>2</sup> in Sierra Leone. Security Council resolution 1315 refers to

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<sup>2</sup> Letter dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council, S/2000/786, 10 August 2000.

“the very serious crimes committed within the territory of Sierra Leone” and recommends in general terms that the subject matter jurisdiction of the Court should include “war crimes and other serious violations of international humanitarian law”.<sup>3</sup> In his Report on the establishment of the Special Court, the Secretary-General noted:

Violations of common article 3 of the Geneva Conventions and of article 4 of Additional Protocol II thereto *committed in an armed conflict not of an international character* have long been considered customary international law, and in particular since the establishment of the two International Tribunals, have been recognized as customarily entailing the individual criminal responsibility of the accused.<sup>4</sup>

19. To the extent that the drafting history of the Statute suggests that the conflict in Sierra Leone was considered to be internal in nature, it does not necessarily follow that the Statute denies the Court jurisdiction over crimes committed during an international armed conflict.

#### IV. SCOPE OF APPLICABILITY OF ARTICLES 3 AND 4

##### A. Article 3

20. Article 3 of the Statute is explicitly taken from Common Article 3 to the Geneva Conventions and Additional Protocol II, both of which apply to internal armed conflicts.<sup>5</sup> The question is whether the reference to these two instruments imports a jurisdictional criterion relating to the nature of the conflict into Article 3 of the Statute. The Statute makes no specific reference to the

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<sup>3</sup> S/RES/1315 (2000), 14 August 2000

<sup>4</sup> Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000, para. 14, emphasis added. This is in line with earlier comments made by the Secretary-General, although a statement made in 1995 referring to the “internal conflict that has raged for the last four years” (S/1995/975, 21 November 1995, para. 36) which the Defence relies upon, is unhelpful since the Court has jurisdiction over acts committed since 30 November 1996 and conflicts may develop from internal to international.

<sup>5</sup> The chapeau of Common Article 3 reads: “In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions...” Article 1 of Additional Protocol II reads: “This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”



nature of the conflict. However, given the express reference to Common Article 3 of the Geneva Conventions and Additional Protocol II, on its face it would seem that Article 3 must be construed as being applicable to internal armed conflicts. As argued by the Defence, the substantive norms cannot be divorced from the criteria essential to their applicability even if those criteria are not specifically incorporated into the Statute. The International Criminal Tribunal for Rwanda ("ICTR"), for example, in interpreting its own Statute, has found that the material requirements of applicability of Additional Protocol II must be satisfied where a specific reference has been made to Additional Protocol II in counts against an accused.<sup>6</sup> Notably, Article 3 of the Statute of the Special Court is taken verbatim from Article 4 of the ICTR Statute.

21. Any obstacle to the application of Article 3 to crimes committed during an international armed conflict is nevertheless overcome if the actual violations included in Article 3, sub-paragraphs (a) to (h), are found to be part of customary international law applicable in an identical fashion to both internal and international armed conflicts. Common Article 3 of the Geneva Conventions of 1949 was designed to reflect certain minimum mandatory rules applicable to internal armed conflicts that were already included within the broader framework of rules applicable to international armed conflicts. In the *Akayesu* case, the ICTR Trial Chamber summarized the position as follows:

The four 1949 Geneva Conventions and the 1977 Additional Protocol I thereto generally apply to international armed conflicts only, whereas Article 3 common to the Geneva Conventions extends a *minimum threshold of humanitarian protection* as well to all persons affected by a non-international conflict, a protection which was further developed and enhanced in the 1977 Additional Protocol II. In the field of international humanitarian law, a clear distinction as to the thresholds of application has been made between situations of international armed conflicts, in which the law of armed conflicts is applicable as a whole, situations of non-international (internal) armed conflicts, where Common Article 3 and Additional Protocol II are applicable, and non-international armed conflicts where only Common Article 3 is applicable.<sup>7</sup>

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<sup>6</sup> See *Prosecutor v Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998, para. 618.

<sup>7</sup> *Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998, para. 601, emphasis added.

The International Committee of the Red Cross Commentary to the Fourth Geneva Convention confirms that “th[e] minimum requirement in the case of non-international conflict, is *a fortiori* applicable in international armed conflicts. It proclaims the guiding principle common to all four Geneva Conventions, and from it each of them derives the essential provision around which it is built.”<sup>8</sup>

22. In the 1986 *Nicaragua* case, the International Court of Justice (“ICJ”) found that Common Article 3:

defines certain rules to be applied in the armed conflicts of a non-international character. There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international armed conflicts; and they are rules which, in the Court’s opinion, reflect what the Court in 1949 called ‘elementary considerations of humanity’.<sup>9</sup>

The ICJ went on to say that “[b]ecause the minimum rules applicable to international and non-international armed conflicts are identical, there is no need to address the question whether those actions must be looked at in the context of the rules which operate for the one or for the other category of conflict.”<sup>10</sup> The ICJ concluded that “general principles of humanitarian law include a particular prohibition, accepted by States, and extending to activities which occur in the context of armed conflicts, whether international in character or not”.<sup>11</sup>

23. The Statute of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) includes in its Article 3 “violations of the laws or customs of war” which have been found to include violations of Common Article 3.<sup>12</sup> Notably, no express mention is made of Common Article 3 or Additional Protocol II in the ICTY Statute. The Appeals Chamber of the ICTY held in the *Tadic* decision on jurisdiction that “with respect to the minimum

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<sup>8</sup> Pictet, (ed), Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, International Committee of the Red Cross, Geneva, 1958, p. 14.

<sup>9</sup> *Military and Paramilitary Activities (Nicaragua v United States)*, (1986) ICJ Reports 14, para. 218.

<sup>10</sup> *Ibid*, para. 219.

<sup>11</sup> *Ibid*, para. 255.

<sup>12</sup> *Prosecutor v Delalic et al.*, Case No. IT-96-21-T, Judgement, 16 November 1998, para. 298.

rules in Common Article 3, the character of the conflict is largely irrelevant”.<sup>13</sup> In that case the Appeals Chamber went on to conclude that:

In the light of the intent of the Security Council and the logical and systematic interpretation of Article 3 [of the ICTY Statute], as well as customary international law, the Appeals Chamber concludes that, under Article 3, the International Tribunal has jurisdiction over the acts alleged in the indictment, regardless of whether they occurred within an internal or international armed conflict. Thus, to the extent that Appellant’s challenge to jurisdiction under Article 3 is based on the nature of the underlying conflict, the motion must be denied.<sup>14</sup>

In the later case of *Prosecutor v Delalic*, the ICTY Appeals Chamber addressed directly the question whether Common Article 3 is applicable to international armed conflicts. The Appeals Chamber explained:<sup>15</sup>

Common Article 3 of the Geneva Conventions may be considered as the “minimum yardstick” of rules of international humanitarian law of similar substance applicable to both internal and international conflicts...It is both legally and morally untenable that the rules contained in common article 3, which constitute mandatory minimum rules applicable to internal conflicts, in which rules are less developed than in respect of international conflicts, would not be applicable to conflicts of an international character. The rules of common Article 3 are encompassed and further developed in the body of rules applicable to international conflicts. It is logical that this minimum be applicable to international conflicts as the substance of these core rules is identical.<sup>16</sup>

In the judgment of the Trial Chamber in the *Akayesu* case before the ICTR, it was held that the core protections in Protocol II which mirror the Common Article 3 protections (namely Articles

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<sup>13</sup> *Prosecution v Tadic*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 20 October 1995, para. 102.

<sup>14</sup> *Ibid*, para. 137.

<sup>15</sup> The Appeals Chamber referred to the opinion of the International Committee of the Red Cross that the purpose of Common Article 3 was to “ensure respect for the few essential rules of humanity which all civilized nations consider as valid everywhere and under all circumstances and as being above and outside war itself”. *Prosecutor v Delalic et al. (Celebici case)*, Case No. IT-96-21-A, Judgement, 20 February 2001, (“*Delalic Appeal Judgment*”), para. 143.

<sup>16</sup> *Delalic Appeal Judgment*, paras 147 and 150.

4(1) and 4(2) of Additional Protocol II) form part of customary international law.<sup>17</sup> It was also pointed out that the four Geneva Conventions and two Protocols were adopted primarily to protect the victims and potential victims of armed conflicts.<sup>18</sup>

24. Article 3, sub-paragraphs (a) to (f), and (h) of the Special Court Statute are taken directly from Article 4(2) of Protocol II, while Article 3(g) mirrors Article 3(1)(d) of Common Article 3. There can therefore be no doubt that the norms embodied in Article 3 of the Statute form part of customary international law. Any argument that these norms do not entail individual criminal responsibility has been put to rest in ICTY and ICTR jurisprudence.<sup>19</sup>

25. It has been observed that “even though the rules applicable in internal armed conflict still lag behind the law that applies in international conflict, the establishment and work of the ad hoc Tribunals has significantly contributed to diminishing the relevance of the distinction between the two types of conflict.”<sup>20</sup> The distinction is no longer of great relevance in relation to the crimes articulated in Article 3 of the Statute as these crimes are prohibited in all conflicts. Crimes during internal armed conflict form part of the broader category of crimes during international armed conflict.<sup>21</sup> In respect of Article 3, therefore, the Court need only be satisfied that an armed conflict existed and that the alleged violations were related to the armed conflict.<sup>22</sup>

26. Where the rules are identical in respect of both internal and international armed conflict it cannot follow that because the provision in the Statute is framed in terms of the treaty provision applicable to internal armed conflicts, the Court has no jurisdiction to apply the provision in the context of an international armed conflict.

27. Furthermore, although it cannot seriously be doubted that there is a distinction between international and internal armed conflict, sometimes it is a distinction without much practical

<sup>17</sup> *Prosecutor v Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998, paras 601-17.

<sup>18</sup> *Ibid*, para. 603.

<sup>19</sup> *Prosecutor v Tadic*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, 128-136, applied in *Prosecutor v Delalic et al. (Celebici case)*, Case No. IT-96-21-T, Judgement, 16 November 1998, para. 307 and *Delalic Appeal Judgement*, paras 159-174.

<sup>20</sup> F. Kalshoven; L. Zegveld, *Constraints on the Waging of War, An Introduction to International Humanitarian Law*, ICRC, 2001, 188.

<sup>21</sup> Archbold, *International Criminal Courts, Practice, Procedure and Evidence*, Sweet & Maxwell 2003, 337, 11-26.

<sup>22</sup> *Ibid*, 338, 11-27.

significance since internal conflict can co-exist with international conflict. In the *Tadic* appeal judgment<sup>23</sup> it was held that “in case of an internal armed conflict breaking out on the territory of a State, it may become international (or, depending upon the circumstances, be international in character alongside an internal armed conflict) if (i) another State intervenes in that conflict through its troops, or alternatively if (ii) some of the participants in the internal armed conflict act on behalf of the other State.”<sup>24</sup> Thus, the distinction between internal and international armed conflict may become blurred but the baseline protections in Common Article 3 and Additional Protocol II nevertheless apply.

#### **B. Article 4**

28. As observed by the Defence, Article 4 “lacks a specific reference to the nature of the underlying conflict”,<sup>25</sup> and it is not linked to a specific conventional provision. The Defence traces Article 4 to Article 8(2)(e) of the Statute of the International Criminal Court (ICC) and it is true that the wording of Article 4(a) to (c) is identical to sub-paragraphs (i), (iii) and (vii) of Article 8(2)(e). However, the fact that the Statute of the Special Court pragmatically borrows wording from a Statute that has been painstakingly formulated to define in the most precise terms the crimes embodied in it does not mean that the entire context of applicability of Article 8(2)(e) has also been incorporated.

29. The Special Court Statute does not include the preface to Article 8(2)(e) of the ICC Statute which refers to “other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law”. Furthermore, as the Prosecution points out, the wording in Article 4 also reflects that of Article 8(b), sub-paragraphs (i), (iii) and (xxvi) of the ICC Statute concerning “serious violations of the laws and customs applicable in international armed conflict”. Although Article 4(c) refers to enlisting children under the age of 15 “into armed forces or groups”, as in Article 8(2)(e) of the ICC Statute, as opposed to “into the national armed forces”, as in Article 8(2)(b), the chosen wording

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<sup>23</sup> *Prosecutor v Tadic*, Case No. IT-94-1-AR72, Judgement, 15 July 1999.

<sup>24</sup> *Ibid*, at para. 84.

<sup>25</sup> Preliminary Motion, para. 7.

may simply have been designed to reflect most accurately the circumstances of the acts of child recruitment alleged to have occurred in Sierra Leone.

30. The Appeals Chamber finds that there is no merit to the argument that because the Statute may have been drafted with reference to an internal armed conflict and because Article 4 most likely was borrowed from Article 8(2)(e) of the ICC Statute dealing with internal conflicts, the Court's jurisdiction to apply Article 4 is restricted to internal armed conflicts.

#### V. FACTUAL QUESTION AS TO THE NATURE OF THE CONFLICT

31. In the circumstances, the question whether the conflict in Sierra Leone was of an internal or international character and at which point, if any, it became internationalized, does not have any bearing on the applicability of Articles 3 and 4 of the Statute and therefore need not be considered by the Appeals Chamber.
32. In any event, the Appeals Chamber is not the proper venue for trial of issues of fact. In the light of the above, the legal points raised by the Applicant, such as the legal criteria for establishing the international character of an armed conflict are at this stage academic.


#### VI. REQUEST FOR ORAL HEARING



33. In its Reply during the 'additional submissions' phase following the referral of the Preliminary Motion to the Appeals Chamber, the Defence urged the Appeals Chamber to hold an oral hearing. The Appeals Chamber has not found it necessary to hear oral arguments on issues that have been addressed exhaustively during two rounds of written argument. Oral argument would have been necessary had the Chamber felt compelled to determine the actual nature of the conflict as a question of fact, however, this question does not arise.

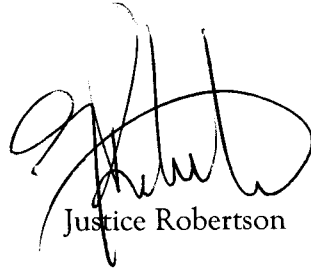
VII. DISPOSITION

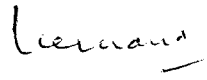
34. This Preliminary Motion is dismissed.

Done at Freetown this 25<sup>th</sup> day of May 2004

  
Justice Winter  
Presiding

   
Justice King Justice Ayoola

  
Justice Robertson

  
Justice Fernando

