

Case No. SCSL-2004-15-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ISSA SESAY
MORRIS KALLON
AUGUSTINE GBAO

WEDNESDAY, 26 SEPTEMBER 2007
10.05 A.M.
STATUS CONFERENCE

TRIAL CHAMBER I

Before the Judges:	Bankole Thompson, Presiding
For Chambers:	Mr Matteo Crippa Mr Felix Nkongho
For the Registry:	Mr Thomas George
For the Prosecution:	Mr Peter Harrison Mr Reginald Fynn
For the accused Issa Sesay:	Mr Wayne Jordash Ms Sareta Ashraph
For the accused Morris Kallon:	Mr Charles Taku Mr Melron Nicol-Wilson
For the accused Augustine Gbao:	Ms Haddijatou Kah-Jallow

1 [RUF26SEP07A- MD]
2 Wednesday, 26 September 2007
3 [Open session]
4 [The accused Kallon present]
5 [Upon commencing at 10.05 a.m.]

the

6 PRESIDING JUDGE: Good morning, learned counsel. This
7 proceeding is a status conference for the continuation of the
8 phase of the RUF trial. May I have appearances, please. For
9 Prosecution?

is

10 MR HARRISON: Harrison, initials P H, and also appearing
11 Mr Reginald Fynn, F-Y-N-N.

12 PRESIDING JUDGE: Thank you. For the first accused?

13 MR JORDASH: Myself, W Jordash, and co-counsel, Sareta
14 Ashraph.

15 PRESIDING JUDGE: Thank you. For the second accused?

16 MR NICOL-WILSON: Your Honours, Melron Nicol-Wilson and
17 Charles Taku, lead counsel.

18 PRESIDING JUDGE: Thank you. For the third accused?

19 MS KAH-JALLOW: Kah-Jallow, initial H, for Mr Augustine
20 Gbao.

21 PRESIDING JUDGE: Thank you. This status conference is
22 convened pursuant to Rule 65bis pursuant to the Rules of

aforesaid 23 Procedure and Evidence of this Court. According to the
24 Rule:
25 "A status conference may be convened by the Designated
26 Judge, the Trial Chamber or a Judge designated from
among 27 its members. The status conference shall:
28 1. Organise exchanges between the parties so as to
ensure 29 expeditious trial proceedings;

accused

1 2. Review the status of his case and to allow the
2 the opportunity to raise issues in relation thereto."

3 We will proceed to do precisely that: (a) organise
4 exchanges between the Prosecution and the Defence for the
5 expeditious conduct of the case for the Defence and we afford
6 each accused person the opportunity to raise any issues in
7 relation to the case.

closed

8 By way of a brief procedural history, it may be recalled
9 that this trial commenced on 5 July 2004. The Prosecution
10 its case on 2 August 2006 after 182 days of trial; 86
11 testified for the Prosecution.

witnesses

March

adjourned

12 Subsequently, a pre-Defence conference was held on 20
13 2007. The Defence case commenced on 3 May 2007 and was
14 on 28 June 2007 after 32 days of trial.

to

addition

15 On 26 June 2007, the first accused Issa Hassan Sesay
16 completed his testimony as witness on his own behalf pursuant
17 Rule 85(C). His testimony commenced on 3 May 2007. In
18 to the testimony of the first accused, two protected witnesses
19 also testified on his behalf.

resume
20 After this status conference, the Defence case will
21 on 4 October 2007. The Prosecution and each Defence team were
22 informed of the new schedule for the commencement of the
Defence
23 case by means of an email sent by the Chamber's legal officer
on
24 18 September 2007.
25 Specifically, our agenda items for the proceeding today
26 are:
27 1. Preliminary issues, especially the state of the
health
28 of each accused; and (b) any detention or related issues.
29 2. Trial logistics, particularly (a) the trial
schedule;

1 (b) case presentation and number of witnesses; (c) Rule 92bis,
2 Rule 92ter and Rule 92quater witnesses; and (d) next Defence
3 witnesses.

the

4 3. We will cover expert witnesses and also deal with
5 status report, if any, on joint statement of agreed facts and
6 law.

that

7 The third item would be outstanding motions and then we
8 will complete the proceeding with any other relevant issues
9 counsel might wish to raise.

of

10 I shall now proceed with preliminary issues. As regards
11 the health of the accused, may I inquire from counsel for the
12 first accused; is there an issue on the status of the health
13 your client that you wish to raise?

of

14 MR JORDASH: No, thank you. May I explain that his lack
15 presence today in court is nothing to do with his health.

16 PRESIDING JUDGE: Right.

17 MR JORDASH: It is to do with him getting on with other
18 work.

the

19 PRESIDING JUDGE: Thank you. Counsel for the second
20 accused, do you have any comments to make as to the status of
21 health of your client?

22 MR NICOL-WILSON: The accused is in good health, Your
23 Honour.

24 PRESIDING JUDGE: Very well. I ask the same question of
25 counsel for the third accused.

26 MS KAH-JALLOW: Your Honour, the third accused is not in
27 court today, not due to ill health --

28 PRESIDING JUDGE: Yes.

29 MS KAH-JALLOW: -- simply because he is extremely tired.

SCSL - TRIAL CHAMBER I

1 He is in good health.

2 PRESIDING JUDGE: Thank you.

3 Mr Jordash, any detention issues that you want to raise
in
4 respect of your client?

5 MR JORDASH: No, thank you.

6 PRESIDING JUDGE: And Mr Nicol-Wilson?

7 MR NICOL-WILSON: None, Your Honour.

8 PRESIDING JUDGE: And Ms Kah-Jallow?

9 MS KAH-JALLOW: None, Your Honour.

10 PRESIDING JUDGE: Do we have a representative here from
the
11 detention facility? Is there anything you need to apprise the
12 Court about at this point in time in relation to the
management
13 of your facility, insofar as such management impacts upon the
14 accused persons?

15 MR PAUL: No, Your Honour.

16 PRESIDING JUDGE: Dr Harding, do you have anything to
tell
17 us?

18 DR HARDING: No, Your Honour.

19 PRESIDING JUDGE: Thank you. Then you are released.

20 DR HARDING: Thank you.

21 PRESIDING JUDGE: We will now move on to the second item
on

22 the agenda, the trial logistics.

times
23 As regards the trial schedule, our sitting days and
from
24 are as follows: Mondays, Tuesdays, Thursdays and Fridays,
to
25 9.30 a.m. until 5.30 p.m. with a break for lunch from 1 p.m.
26 2.30 p.m.. There will be no Wednesday sittings of this Court.

judicial
27 As indicated in this Chamber's order, rescheduling
28 calendar issued on 2 August 2007, the trial will proceed
which
29 continuously until its completion save for periods during

1 the Chamber will observe judicial recess.

2 At this juncture, I think it's important for the Chamber
to
3 reiterate the usual request which comes from the Court
4 Management's unit for the cooperation of all parties to speak
5 slowly, and avoid speaking together when making submissions in
6 court or examining, or cross-examining witnesses so as to
7 facilitate the work of the Court interpreters and the Court
8 reporters.

9 Sub-item (b) is case presentation and overall number of
10 Defence witnesses. The Defence case will resume with the
11 presentation of further evidence on behalf of the first
accused.

12 From a cursory review of the current updated witness list for
13 each Defence team, the Chamber notes that the Defence for
Sesay
14 intends to call a total of 149 core witnesses, two of whom
have
15 already testified, and the Defence for Kallon intends to call
a
16 total of 83 core witnesses, and finally the Defence of Gbao
17 intends to call a total of 55 witnesses, core witnesses,
although
18 a motion for modification of its witness list is pending
before
19 the Court.

20 So, in total the Defence now intends to call 287 core

21 witnesses.

22 These are familiar figures, undoubtedly, but the Chamber
23 also notes that each Defence team has, on previous occasions,
24 indicated that it will continue to review the list of its
25 witnesses, so as to effect further reduction, and that it will
26 communicate any such reduction to the Chamber and the
Prosecution
27 as soon as possible.

28 The records show that no such indications have recently
29 come to the attention of the Bench. The Chamber strongly

1 encourages the Defence to make some determined effort, even if
2 Herculean, in this direction, having regard to the interests
of
3 justice and the expeditious and efficient administration of
the
4 trial proceedings.

5 Does learned counsel for the first accused have any
6 response to this reflection of the state of the records?

7 MR JORDASH: Only that we are fully cognisant of the
need
8 to reduce our witness list.

9 PRESIDING JUDGE: Quite right.

10 MR JORDASH: And we will do that.

11 PRESIDING JUDGE: And make efforts to --

12 MR JORDASH: No doubt about it.

13 PRESIDING JUDGE: And at this time we speak advisedly,
14 determined efforts, even if Herculean.

15 MR JORDASH: Yes.

16 PRESIDING JUDGE: Very well.

17 MR JORDASH: Yes, I'll leave it at this stage.

18 PRESIDING JUDGE: I appreciate it. I ask the same
question
19 of counsel for the second accused?

20 MR NICOL-WILSON: Your Honour, what I can say for
certain

number 21 is that there is definitely going to be a reduction in the
list 22 of our witnesses as we are going to continue to review the
23 in line with our defence strategy.
third 24 PRESIDING JUDGE: Thank you. Learned counsel for the
25 accused?
Lord. 26 MS KAH-JALLOH: I have no comment on this issue, my
27 I have not received instructions.
intimation 28 PRESIDING JUDGE: But would you communicate the
29 of the Bench to the appropriate counsel?

1 MS KAH-JALLOH: I certainly will.

2 PRESIDING JUDGE: Thank you. I reckon that the
Prosecution
3 has no comment on those responses. Sorry?

4 MR TAKU: With due respect, Your Honour, in addition to
5 what my learned colleague has just said, we will surely review
6 the list and reduce as the Bench has advised. We also want to
7 take the opportunity that, however, we will ask for, in due
8 course ask for a variation to bring few other witnesses.

9 PRESIDING JUDGE: Yes. And, of course, when you invoke
the
10 relevant rules you certainly will see the conditions and
criteria
11 that apply in those circumstances. Does the Prosecution have
any
12 comment to make on those responses?

13 MR HARRISON: Just to remind the Court that at the
status
14 conference on 20 March 2007 the Presiding Judge did make some
15 comments about the Oric decision from the Appeal Chamber in
the
16 ICTY and the remedies that were available to the Court where
17 there is a concern about either duplicative witnesses or
simply a
18 far too extensive list of witnesses, and the Prosecution just
19 wants to remind the Court that there may be a certain
conundrum

impose

20 that arises if at a later date the Court is of the mind to

21 a limit, a significant way through a Defence case, because the

witnesses

22 Defence may not necessarily put all of their important

23 at the beginning of the trial.

24 PRESIDING JUDGE: Yes.

25 MR HARRISON: And they may be caught out if an order is

and

26 imposed halfway or two-thirds way through the Defence case,

through

27 they are then in a difficult position of trying to sift

28 those witnesses who may actually be deemed to be the most

29 important witnesses in the Defence case.

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1 PRESIDING JUDGE: Thank you. Does Mr Jordash want to
2 respond to that? If there is any -- in case we are confronted
3 some stage with this legal conundrum.

4 MR JORDASH: Only that the Defence at the appropriate
5 are given the opportunity to make submissions. This is a very
6 different case to the Oric case. It's a very different
7 Prosecution case. It's much much larger than the Oric case.
8 It's much much larger than almost all Prosecution cases at
9 international tribunals.

10 There are very good reasons why the number of witnesses
11 our case would be substantially bigger than would ordinarily
12 the case.

13 It all starts with the breadth of the Prosecution case
14 it couldn't be wider.

15 PRESIDING JUDGE: Well, we will bear this in mind and
16 the time comes the Court has the resourcefulness, the Bench
17 the resourcefulness to be able to do what is in the best
18 interests of justice --

19 MR JORDASH: Yes.

it 20 PRESIDING JUDGE: -- when the situation does arise, if

21 does.

written 22 MR JORDASH: And I would simply ask that there be

23 submissions on the subject if that subject arises.

Thanks. 24 PRESIDING JUDGE: Yes. We are amenable, anyway.

25 MR JORDASH: Thank you.

Rule 26 PRESIDING JUDGE: The other theme is, the question of

notes 27 92bis, Rule 92ter and Rule 92quater witnesses. The Chamber

28 that the respective witness lists for the first and second

29 accused currently indicates that each Defence team intends to

92bis.

1 call various witnesses pursuant to the provisions of Rule

for

2 At this juncture, the Chamber would like to remind the
3 parties that the said Rule was amended at the last plenary
4 meeting of the Special Court and that there were, in fact, two
5 new rules; a new Rule 92ter and a new Rule 92quater and so,

the

6 reasons of judicial economy and effective trial management,

Defence,

7 Chamber takes the opportunity to remind counsel for the

8 who may wish to invoke those provisions, to do so, shall I say

9 promptly, in order to ensure that such applications are

Jordash?

10 considered and disposed of with due expedition. Yes, Mr

92ter?

11 MR JORDASH: Could I just raise an issue about Rule

12 PRESIDING JUDGE: Yes.

make

13 MR JORDASH: I should say globally this: That we are
14 attempting to put as much of our case on paper. We want to

15 as much use as possible out of Rule 92bis and Rule 92ter.

16 PRESIDING JUDGE: Yes.

of

17 MR JORDASH: We can see that there could be huge savings

18 time in taking that approach.

19 PRESIDING JUDGE: Yes.

20 MR JORDASH: We are, though, a little bit confused about
21 92ter and would appreciate some guidance at some stage.

22 The Rule, as Your Honour will know, is predicated upon
23 agreement between the parties.

24 PRESIDING JUDGE: Of the parties, yes.

25 MR JORDASH: And then the presence, it seems, of the
26 witness in court.

27 PRESIDING JUDGE: Yes.

28 MR JORDASH: The difficulty we are having is this: That
29 due to the, well one, delay in preparation, and two, just the

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advance

finally

has

what

and

be

1 mechanics of interviewing witnesses and then bringing them
2 Freetown to proof them, there is a likelihood that we cannot
3 decisions on 92ter until fairly late in the day, and what we
4 would ideally like is a procedure by which a few days before
5 witnesses are supposed to testify live, to be able to produce
6 statement, give it to the Prosecution, and make -- hopefully
7 to an agreement on that statement with the Prosecution and
8 issue a notice or an application to the Trial Chamber.

9 We can't envisage that that could be done much in
10 of a witness testifying by virtue of not being able to bring a
11 witness to Freetown, much before and, two, not be able to
12 proof a witness much before they testify.

13 So we are hoping that any procedure the Trial Chamber
14 in mind will be sufficiently short, so that we can indicate
15 we want to do pursuant to 92ter, and agreement can be reached
16 maybe only one, two or three days after that the witness be
17 brought to court and, with Your Honour's leave, that witness
18 heard pursuant to 92ter.

to
final
this
that
the
would
want

19 That is a long way of saying I hope that we don't have
20 put a motion in many many weeks before and wait for the usual
21 exchange of pleadings and so on before being able to make a
22 decision on a witness because I suspect if that is the case we
23 won't be in a position to utilise 92ter as much as we can if
24 more brief procedure which I am proposing could be followed.
25 PRESIDING JUDGE: I reckon that if the brief procedure
26 you are proposing is within the spirit of 92ter, and is not
27 inconsistent with the plain and ordinary language of it, then
28 Bench, guided by both parties, will be advised as to what
29 be the best kind of solutions to adopt, and I probably don't

1 to -- I've not actually found time to apply my mind to 92ter
to
2 think of all the infinite variety of situations that it may
apply
3 to but it's a point worth noting.

4 Does the Prosecution intend to make any preliminary
point
5 on that or you will wait until an appropriate time?

6 MR HARRISON: Just as a preliminary point --

7 PRESIDING JUDGE: Yes.

8 MR HARRISON: -- 92bis does have a relatively short
notice
9 period in any event --

10 PRESIDING JUDGE: Yes.

11 MR HARRISON: -- of simply ten days.

12 PRESIDING JUDGE: Yes.

13 MR HARRISON: So it's not contemplated within 92bis that
14 there be an extensive period.

15 PRESIDING JUDGE: Yes. The rules, I think, these rules,
16 when they were amended at plenary, there was a lot of thought
as

17 to what were some of the practical situations that they were
18 meant to apply to, and I think the amendments were done in the
19 spirit of pragmatism, to allow the rules to be so applied in a
20 very pragmatic way, not to frustrate the ends of justice and
that

have

21 is all I can say at this point in time. As I have said, I
22 not done any further study as I have been on vacation and so I
23 have not had anything to be doing with the law whilst I was on
24 vacation. Right.

yet

25 Well, let's proceed to the list of witnesses that are
26 to testify.

on

27 By notice filed on 10 May 2007, as subsequently amended

order

28 13 June 2007, counsel for the first accused indicated the

first

29 of call for the next witnesses in the case on behalf of the

witnesses

Defence

will

have

are

upon

1 accused. The names and other identifying data of these
2 were previously disclosed to the Prosecution, and all the
3 teams, in pursuance of the Defence disclosure obligations.
4 According to the records, and the notice, the order of call
5 be follows:
6 DIS-176, DIS-074, DIS-177, DIS-080, DIS-077, DIS-178,
7 DIS-225, DIS-069, DIS-188, DIS-149, DIS-143, DIS-147, DIS-187,
8 DIS-078, DIS-281, DIS-113, and DIS-257. Mr Jordash, do we
9 it right?
10 MR JORDASH: That's right. Can I indicate a likely
11 amendment.
12 PRESIDING JUDGE: Very well.
13 MR JORDASH: DIS-147 is, sadly, no longer with us so we
14 considering Rule 92quater, and it is unlikely we will rely
15 DIS-143, but as regards the order and the other witnesses, all
16 remains the same.
17 PRESIDING JUDGE: Thank you. Counsel for the second,
18 accused any comment on that?
19 MR NICOL-WILSON: No, Your Honour.
20 PRESIDING JUDGE: Counsel for the third?

21 MS JALLOH: Thank you, Your Honour.

any 22 PRESIDING JUDGE: Learned counsel for the Prosecution,
23 statement?

24 MR HARRISON: No. Simply to assure Defence counsel that
the 25 just as they accommodated us when we made numerous changes in
26 call order, we too will accommodate any necessary changes that
27 come up --

28 PRESIDING JUDGE: Thank you for that.

29 MR HARRISON: [Overlapping speakers] through any plan.

1 PRESIDING JUDGE: Thanks. The next sub-item is expert
2 witnesses and filing of expert reports.

3 A review of the record reveals that the Defence of the
4 first accused indicated its intention to call one military
5 witness; namely, DIS-250, to testify about the conflict in
6 Leone and the anthropology of the RUF movement.

7 During the pre-Defence conference, held on 20 March
8 counsel for the first accused confirmed that the relevant
9 report for this expert witness will be ready by April 2007,
10 subsequently made available to the other parties in pursuance
11 Rule 94bis. What is the current position on this issue,
12 Mr Jordash?

13 MR JORDASH: The indication Your Honour refers to is, of
14 course, correct.

15 PRESIDING JUDGE: Yes.

16 MR JORDASH: At that stage it was envisaged DIS-250
17 be the second witness.

18 PRESIDING JUDGE: Yes.

19 MR JORDASH: That is no longer the case.

20 PRESIDING JUDGE: Okay.

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2007,

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and

of

would

end 21 MR JORDASH: If we call DIS-250, it will be towards the
22 of our case, and we are presently reviewing a draft of the
23 report.

24 PRESIDING JUDGE: Yes. Right.

25 MR JORDASH: Could I raise a further issue.

ask 26 PRESIDING JUDGE: Well, before you do that, let me just
27 for short responses in respect of that. The fact that DIS-250
is 28 no longer going to feature in this --

29 MR JORDASH: Sorry to jump up again.

1 PRESIDING JUDGE: Very well.

2 MR JORDASH: Sorry, Mr Nicol-Wilson. DIS-250 was not
the
3 military expert.

4 PRESIDING JUDGE: I see.

5 MR JORDASH: Just to indicate, he was or is the
6 anthropological expert.

7 PRESIDING JUDGE: I see. The witness who will talk
about
8 the anthropology of the RUF movement?

9 MR JORDASH: Yes.

10 PRESIDING JUDGE: Counsel, any response? You too are
11 entitled to these reports.

12 MR NICOL-WILSON: None, Your Honour. All I wish to say
is
13 that we intend to call two expert witnesses.

14 PRESIDING JUDGE: We will come to you, all right. I am
15 just asking whether this impacts on you. Counsel for the
third
16 accused, nothing useful to add here?

17 MS KAH-JALLOW: No.

18 PRESIDING JUDGE: Mr prosecuting counsel?

19 MR HARRISON: Yes. I think we knew prior to today that
250
20 was not one of the next batch of witnesses.

21 PRESIDING JUDGE: Yes.

an

22 MR HARRISON: The only matter the Prosecution wishes to
23 raise is that on 9 March 2005, this Trial Chamber did impose
24 order upon the Prosecution to produce the Prosecution expert
25 reports.

26 PRESIDING JUDGE: Yes.

be

27 MR HARRISON: And they were to be produced within or on
28 4 May -- on or before 4 May 2005, which ultimately ended up to
29 about a year before those experts testified.

1 PRESIDING JUDGE: Perhaps what you are suggesting, in a
2 subtle way, is that even-handed justice requires that we do
3 something, in case there is undue delay?

4 MR HARRISON: Yes.

5 PRESIDING JUDGE: We will take that on advisement. Yes,
6 you wanted to make some further clarification?

7 MR JORDASH: Yes, if I may. I will be candid with the
8 Court that we've had huge difficulties obtaining a military
9 expert, not because the expertise is not out there, and not
10 because it's not out there in support of our case but because
of
11 for the Registry funding issue.

12 Only May of 2007, did the Registry agree that the
Defence
13 were entitled to funding above a P3 level for experts who, in
our
14 particular case, were of 20 years and more experience.

15 Unsurprisingly, we were unable to obtain agreement from
our
16 selected expert concerning their attendance in Freetown for
17 research and their agreement to testify.

18 We had the experts. Sadly, because of the Registry's
19 approach to funding for the Defence we lost the experts, and
we
20 are just about reaching agreement with a new expert to replace

of
has
we
to
both

21 the one we lost. Only today did we receive an email from one
22 the previous experts, who we've managed to keep on board, who
23 indicated that it may be tricky for him to come to Freetown
24 except for more than around a week before the Christmas break.
25 That difficulty has arisen because we lost the first expert;
26 had to find a replacement; we found the replacement; we have
27 then coordinate timetables of the two military experts we are
28 seeking to call. Now we have to find a time when they can
29 come to Freetown to do the research.

before

1 I would have loved to have a military expert report
2 I started the Defence case. I have indicated that throughout
3 this case: We need to have expert reports well in advance of
4 respective party's case. It's obvious to me. Sadly, through
5 fault of our own, that has not been possible. In due course
6 may - I hope that not --

a

no

that

7 PRESIDING JUDGE: Because of the funding problem?

8 MR JORDASH: Because of the funding problem.

am

9 PRESIDING JUDGE: All I can say in response to that is I

subject

10 aware that there is, in fact, a motion on precisely that
11 before the Court, which is on deliberation. Quite.

before

12 MR JORDASH: Well, the issue -- I think the motion

13 Your Honour is less about expert reports.

14 PRESIDING JUDGE: Yes.

level.

15 MR JORDASH: Because in May of 2007, the Registry
16 eventually agreed that we could fund our experts at a P5

17 PRESIDING JUDGE: Yes.

18 MR JORDASH: And our experts have now agreed to that
19 funding. Now the issue is one of timetabling and trying to

20 coordinate the two experts to do the research.

21 PRESIDING JUDGE: Yes.

22 MR JORDASH: But we are doing our very best and we
regard

23 the military experts as essential to our case.

24 PRESIDING JUDGE: Very well.

25 MR JORDASH: There is a possibility, and I raise it now,
26 that the experts will not be able to come to Freetown until
27 January because, at the moment, they are both indicating the
best

28 they can manage is around seven to ten days before Christmas,

29 which we would not regard as necessarily sufficient to conduct

1 their research. We will speak to them later today and see
what
2 can be worked out.

3 PRESIDING JUDGE: As long as you keep the Chambers
apprised
4 of the developments. I am sure there are adjustments possible
5 that can be made, having regard to the interests of both
parties
6 and also the Chambers own --

7 MR JORDASH: Yes.

8 PRESIDING JUDGE: -- role as the ultimate custodian of
the
9 interests of justice. Certainly I don't regard that these are
10 insurmountable difficulties, nor would the Chamber's approach
be
11 one of inflexibility. We will make appropriate adjustments
and
12 as long as we do not do anything that would undermine the
overall
13 interests of justice on this matter.

14 MR JORDASH: Could I just flag up one possible solution
to
15 this, and I am only flagging it up, I have not given it any
huge
16 thought.

17 PRESIDING JUDGE: Yes.

18 MR JORDASH: If indeed our experts cannot allocate
enough

we
19 time to do the research before Christmas, it may well be that
20 apply to interpose our experts during the course of our
have
21 co-accused's case. That may be the way to ensure that they
22 time to do the research in the new year and time to give those
23 reports to the Prosecution in time for the Prosecution to
24 consider them.

25 PRESIDING JUDGE: We note that. Any comments? Nothing
26 useful to add to that?

27 MR HARRISON: I don't think there is anything helpful I
can
28 add.

29 PRESIDING JUDGE: Thank you. Learned counsel on this
side

1 have nothing useful to add?

2 MR NICOL-WILSON: Nothing.

3 MR TAKU: Just one.

4 PRESIDING JUDGE: Yes, Mr Taku.

5 MR TAKU: Two comments, Your Honour.

6 PRESIDING JUDGE: Very well.

7 MR TAKU: We would like to say, clearly, Your Honours,
that

8 we are watching very closely. Hopefully the Sesay team
succeeds

9 in the motion they have filed about funding so that we would
only

10 take the issues many times in the course of this case.
Second,

11 about the question of the experts, I can understand their
12 problem. We are actually putting tremendous pressure on our
13 experts to expedite the report. It's always difficult for
14 somebody who is heading a very, very large international
15 military --

16 PRESIDING JUDGE: Organisation?

17 MR TAKU: Organisation, to find enough time, but we are
18 doing our very best to see that we are in touch with our
experts.

19 I will let you know as soon as the report is available.

20 PRESIDING JUDGE: The Bench is not insensitive to these
21 peculiarities and problems and difficulties.

22 During the same pre-Defence conference that I referred
to
23 earlier, counsel for the first accused confirmed its intention
to
24 retain three other expert witnesses; namely, another military
25 expert, a child psychologist/statistician expert and a diamond
26 mining expert but that it was unable, at that time, to secure
27 such experts due to some funding difficulties. Have you
covered
28 that in your previous submission or do you want to speak
29 specifically to this?

1 MR JORDASH: I can speak specifically to this. The only
2 other expert we are now actively considering is an expert
whose
3 opinion will be sought on the statistics, which we glean from
the
4 DDR records. There is a problem there, too. The Prosecution
5 have had the records and they have compiled a report which has
6 not be relied upon in this case but has been, out of courtesy,
7 served upon us.

8 We have been trying, over the summer, to obtain access
to
9 the same DDR records which form the basis of that research.
We
10 have been given a name by the Prosecution and we have
approached
11 various people in the appropriate ministry, who keep bouncing
us
12 around somewhat. I am not saying that in a pejorative sense.
I
13 think people generally are not sure where the documents are
and
14 where the consent to have a look at the documents comes from,
but
15 we are hoping to start -- we are hoping, one, to get access to
16 the documents within a matter of days, if not the next two
weeks.
17 Thereafter follows, perhaps, up to six weeks research on the
18 document. I believe that's what the Prosecution expert took
to

19 actually compile the figures. Thereafter, we will send the
20 figures to an appropriate expert to look at and draw whatever
21 conclusions can be drawn.

22 We would have hoped, and I am going to put it no
stronger
23 than this, we would have hoped when the Prosecution had access
to
24 the documents themselves, we could have just come in and
looked
25 at the documents whilst they were in the custody of the
26 Prosecution, but we discovered that the Prosecution had
27 effectively sent the documents back, so the whole process has
to
28 begin again where we have to seek permission. We are being
29 somewhat hampered by that, but we are, we hope, making
progress.

thought,

1 This does mean a report is unlikely before, I would have

2 the new year.

that

3 PRESIDING JUDGE: Yes. Mr Harrison, is there anything

situation.

4 you can add useful to that? Is there an ameliorating

5 MR HARRISON: I would have to make some inquiries.

6 PRESIDING JUDGE: Yes.

near

7 MR HARRISON: But my understanding is it took nowhere

8 six weeks to review, and I should just clarify the Prosecution

9 never had custody of the documents.

10 PRESIDING JUDGE: I see.

Court

11 MR HARRISON: The only other matter I can advise the

the

12 of is that I think this has been a matter which has been in

already.

13 contemplation of the Defence for quite a few months now

14 I would be hesitant to pin it to a particular month, but I'm

15 thinking it may go back as early as March or April.

16 PRESIDING JUDGE: Thank you. Yes, Mr Jordash?

17 MR JORDASH: Indeed, it has. It has been in our

18 contemplation since the cross-examination of the Prosecution's

19 child soldier expert who indicated these documents existed.

that 20 PRESIDING JUDGE: Is there really a realistic prospect
21 the documents will be available?
and 22 MR JORDASH: They have given access to the Prosecution
- 23 whilst my learned friend says the Prosecution have never had -
24 PRESIDING JUDGE: Custody of them.
have 25 MR JORDASH: -- possession of them, then clearly they
been 26 had a form of possession of them, because their expert has
27 sitting with them over --
28 PRESIDING JUDGE: Actual or constructive?
29 MR JORDASH: Well, according to the ministry records,

1 actual.

2 PRESIDING JUDGE: Actual possession.

3 MR JORDASH: It says that the Prosecution had possession
of
4 the documents. That is what the ministry documents my learned
5 friend Ms Ashraph looked at yesterday indicated. I don't know
6 whether that meant they took them away or whether they simply
had
7 them in a room, but in some ways it doesn't -- what matters is
we
8 don't have access to them. At some point we may have to come
to
9 the Court and seek an order for them.

10 PRESIDING JUDGE: Yes.

11 MR JORDASH: But there is no ambiguity about our right,
I
12 would submit, to the documents. I am hoping we wouldn't have
to
13 come to the Court and bother you with such an application. I
14 hope we can find the relevant person and they can give us the
15 same courtesy they have given to the Prosecution, but we are
the
16 Defence so it may not work out that way.

17 PRESIDING JUDGE: Well, we will let you try that option.

18 MR JORDASH: Thank you.

19 PRESIDING JUDGE: Counsel for the other accused persons
20 don't have anything useful to add to that?

21 MR NICOL-WILSON: Nothing useful to add, Your Honour.

22 MS KAH-JALLOW: Nothing, Your Honour.

23 accused,

PRESIDING JUDGE: Right. Adverting to the first

24 the record reveals that the Defence for Kallon indicated its

25 intention to call two expert witnesses; namely, an expert on

well

26 disarmament, demobilisation and rehabilitation programs, as

27 as an expert on age verification procedures and a military

reiterate

28 expert, and during the pre-Defence conference, you did

29 that the expert report for the first expert witness was due on

16

13
1 July 2007, while the report for the second expert was due on
2 August 2007. What is the present position on these
projections
3 and estimates?

4 MR NICOL-WILSON: Your Honours, the record is correct.

5 PRESIDING JUDGE: Right. I thought so.

6 MR NICOL-WILSON: At the moment, we've received the
report
7 for the first expert witness, and that will be filed this
week.

8 PRESIDING JUDGE: Good.

9 MR NICOL-WILSON: For the second expert witness, we have
10 not yet received the report.

11 PRESIDING JUDGE: Any indication as to how soon that
will
12 be?

13 MR NICOL-WILSON: Well as soon as it is received, Your
14 Honour, it will be filed. How soon that is, I cannot --

15 PRESIDING JUDGE: Quite right. But are you going to
16 intensify your efforts to get that.

17 MR NICOL-WILSON: Definitely.

18 PRESIDING JUDGE: So you will be making some progress in
19 respect to your own reports?

20 MR NICOL-WILSON: Yes.

useful

21 PRESIDING JUDGE: Thank you. Prosecution, anything

22 to add there?

23 MR HARRISON: No, nothing comes to mind.

the

24 PRESIDING JUDGE: Yes. As regards the third accused,

25 record reveals that the Defence for Gbao did not indicate any

26 final intention to call any expert witness, but at the

27 pre-Defence conference, the Defence indicated that it had not

instruct

28 identified any suitable expert witness but intended to

29 an expert on the nature of guerrilla movements. I don't know

1 whether they intend to instruct or to secure, rather, an
expert
2 on the nature of guerrilla movements, with particular
reference
3 to the RUF. Does the record reflect accurately the position,
4 Ms Jallow?

5 MS KAH-JALLOW: Your Honour, my understanding is -- my
6 instructions are actually that they have identified --

7 PRESIDING JUDGE: That expert --

8 MS KAH-JALLOW: -- an expert --

9 PRESIDING JUDGE: -- on the nature of guerrilla
movements?

10 MS KAH-JALLOW: Exactly, Your Honour, and they will be
11 filing a report in due course.

12 PRESIDING JUDGE: Well, good. Fine. In other words,
there
13 would be progress in that direction?

14 MS KAH-JALLOW: Yes. Absolutely.

15 PRESIDING JUDGE: Unless there is some professional
16 decision not to call that expert?

17 MS KAH-JALLOW: Absolutely. Thank you, Your Honour.

18 PRESIDING JUDGE: Well, consistent with the Chamber's
19 scheduling order for the preparation and commencement of the
20 Defence case, dated 30th day of October 2006, as a matter of
law,

21 the Bench wishes to reiterate its position that any additions
to
22 the witness lists is only permissible on the showing of good
23 cause by the applicants. So I hope that is kept in mind,
because
24 already the lists are quite formidable, and therefore, if
there's
25 an attempt to escalate them, the Bench would want to apply
some
26 stringent criteria in terms of good cause.
27 The other issue for discussion is the filing of status
28 report on joint statements of agreed facts. I think we can --
we
29 recall that by the consequential orders for the preparation
and

this

report

It

points

next

such

parties

and

that

willing

1 the commencement of the Defence case, dated 28 March 2007,
2 Chamber ordered inter alia that each Defence team and the
3 Prosecution should file, every two months, a joint status
4 on any additional point of fact or law they have agreed upon.
5 may be recalled that in its subsequent order concerning the
6 filing of status reports regarding additional agreed upon
7 of fact and law, dated 7 June 2007, the Chamber noted that the
8 first report had not then been filed. We indicated that the
9 report was due on 28 July 2007. According to the record, no
10 second report was filed by the parties. In other words, the
11 position is that filing is still pending.

12 All I think we can do at this point is to urge the
13 to exercise utmost diligence in complying with any direction
14 order given by this Court, but if there is anything helpful
15 both sides can disclose, we are willing -- the Bench is
16 to hear. Mr Jordash?

17 MR JORDASH: There are no discussions in hand concerning
18 agreements of facts.

19 PRESIDING JUDGE: Yes.

20 MR JORDASH: From our perspective --

21 PRESIDING JUDGE: There is nothing?

22 MR JORDASH: Well, we requested a huge amount of facts
to

23 be agreed, all of them taken from the Prosecution case or just

24 about all of them taken from the Prosecution case; just about
all

25 of them or a good portion of them not agreed.

26 PRESIDING JUDGE: So they remain contentious?

27 MR JORDASH: It appears that in the Prosecution case it

28 remains contentious to the Prosecution, but it seems as though

29 there is not much room for movement given that approach.

1 PRESIDING JUDGE: Yes, quite. Right.

2 MR JORDASH: We haven't received any suggestions from
the
3 Prosecution and we are willing to listen to any, but, as far
as
4 we are concerned, we made, I think, 140-odd suggestions --

5 PRESIDING JUDGE: Suggestions.

6 MR JORDASH: Sorry, 129 suggestions and we are in a sort
of
7 impasse, I think.

8 PRESIDING JUDGE: Okay. Mr Nicol-Wilson?

9 MR NICOL-WILSON: Your Honours, it cannot be put better
10 than you have said, that all the remaining issues remain
11 contentious, as far as the Defence for Kallon is concerned,
but
12 we will continue to hold discussions with the Prosecution and
13 see.

14 PRESIDING JUDGE: Very well. Ms Kah-Jallow?

15 MS KAH-JALLOW: My instructions are that counsel will be
16 engaging the Prosecution.

17 PRESIDING JUDGE: Yes. Learned counsel for the
18 Prosecution, anything?

19 MR HARRISON: There is nothing I can add.

20 PRESIDING JUDGE: Yes. Well, all we can do is to exalt
you
21 to exercise the utmost diligence and, actually, the system is

22 adversarial in nature.

23 On the question of legal representation for the third

24 accused, by an oral ruling on 22 June 2007, this Chamber
granted

25 a request by the third accused for the withdrawal of his then

26 lead counsel, Professor Andreas O'Shea. Subsequently, upon
the

27 recommendation of this Chamber, the Principal Defender
appointed

28 the then co-counsel, Mr John Cammegh, as the new lead counsel
for

29 the third accused.

continuing

1 We recall that upon indicating his commitment to
2 to represent the accused, Mr Cammegh did also indicate that he
3 was going to engage another counsel to be with him at all
4 during the trial. Do we have any useful information on this?

times

this

5 MS KAH-JALLOW: The only information I can give you at
6 point in time, Your Honour, is that the Principal Defender has
7 been in constant consultation with Mr Cammegh. My

understanding

be

8 is when he arrives in Freetown in time for the trial, he will
9 able to provide a list, the composition --

10 PRESIDING JUDGE: Yes.

team.

11 MS KAH-JALLOW: -- give us the composition of his new

12 He has appointed two legal assistants, Miss Lea Kulinowski is
13 still in the team, and Mr Scott Martin.

14 PRESIDING JUDGE: Yes.

has

15 MS KAH-JALLOW: When he does arrive, he will be in a
16 position to intimate to the Principal Defender as to who he
17 appointed as co-counsel.

18 PRESIDING JUDGE: Very well. So we will have some
19 information on that.

20 MS KAH-JALLOW: Yes, Your Honour. Hopefully.

agenda 21 PRESIDING JUDGE: The last substantive issue on the
22 for this morning, before we go to any other business, relates
to 23 the outstanding motions. The following motions are currently
24 pending before the Trial Chamber in this case: 1.
Prosecution 25 application for leave to appeal majority decision on oral
26 objection taken by counsel for the third accused to the
27 admissibility of portions of the evidence of witness TF1-371,
28 filed by the Prosecution on 21 August 2006; 2. Confidential
29 Sesay Defence motion requesting the lifting of protective

Defence

1 measures in respect of protected witnesses, filed by the
2 on 19 January 2007; 3. Application for leave to appeal 2
3 2007 decision, filed by the Defence for Sesay on 5 March 2007.

March

that

4 MR JORDASH: Your Honour, sorry to leap up. I think
5 one has been filed.

6 PRESIDING JUDGE: Been filed?

7 MR JORDASH: Yes.

8 PRESIDING JUDGE: But it's pending. It has not been
9 disposed of, has it?

10 MR JORDASH: I am right, I think.

11 PRESIDING JUDGE: It has been disposed of?

12 MR JORDASH: Yes.

is

13 PRESIDING JUDGE: Very well. Thank you then. Next one

of

14 Defence motion seeking a stay of the indictment and dismissal

and/or

15 all supplemental charges, Prosecution's abuse of process

Sesay

16 failure to investigate diligently, filed by the Defence for

17 on 24 April 2007.

Prosecution

18 The next one is motion requesting reasons for

19 objection to authenticity of the exhibit filed by Issa Sesay,

20 filed by the Defence for Sesay on 30 April 2007.

able

21 MR JORDASH: I am sorry to keep leaping up, but I am
22 to assist.

23 PRESIDING JUDGE: That is okay.

24 MR JORDASH: The Prosecution responded to that and,
25 effectively, as I understand it, it's not that we say the
26 exhibits are not authentic, it's just that we are not able to
27 definitively say they are.

28 PRESIDING JUDGE: Yes.

29 MR JORDASH: I think that is the Prosecution position.

1 PRESIDING JUDGE: Yes.

stance

2 MR JORDASH: If that is the Prosecution position, then I
3 would be happy to withdraw the motion because it appears what
4 they are saying is simply: Well, we don't know. If their
5 is we don't know that's --

6 PRESIDING JUDGE: Is the Prosecution in a position to
7 respond to that now?

other

to

8 MR HARRISON: That was part of the response and the
9 part was that authenticity is not necessarily a prerequisite
10 admissibility.

11 PRESIDING JUDGE: Quite, yes.

grateful

12 MR HARRISON: With those two aspects, we would be
13 if the motion was withdrawn.

14 PRESIDING JUDGE: Yes. That seems to shed some light on
15 the position that you raised.

a

deal

16 MR JORDASH: It does. Providing there isn't going to be
17 belated challenge at a time when we are not in a position to
18 with the challenge, then I am content to withdraw the motion.

19 PRESIDING JUDGE: So you go on record as doing that now?

20 MR JORDASH: Yes.

21 PRESIDING JUDGE: Very well. The records will reflect
22 that.

additional

23 The next one is Gbao request for leave to call
24 witnesses and for order for protective measures with ex parte
25 annex A, filed by the Defence for Gbao on 5 July 2007.

objections

23

26 Another one is Gbao request for leave to raise
27 to the form of the indictment filed by the Defence for Gbao on

for

28 August 2007, and then there is also the Defence application

by

29 disclosure pursuant to Rule 89(B) and/or Rule 66(A)(ii) filed

1 the Defence for Sesay on 4 September 2007 and, finally, an
2 application for judicial review of Registry's refusal to
provide
3 additional funds for an additional counsel as part of the
4 implementation of the arbitration decision of 26 April 2007.

5 All I can say is that the Bench is currently
deliberating
6 on these motions. Decisions in respect of them will be
published
7 in due course with an eye to expeditiousness.

8 Are there any submissions of the parties, any matters or
9 issues that they need to raise under "any other business"?
All
10 right. Mr Prosecutor?

11 MR HARRISON: There is nothing that we have, sorry.

12 PRESIDING JUDGE: Yes, quite.

13 MR JORDASH: Just two things, Your Honour. As a result
of
14 the -- because of the elections there has been, as Your Honour
15 will be aware --

16 PRESIDING JUDGE: You mean the national elections?

17 MR JORDASH: The national elections.

18 PRESIDING JUDGE: Yes. The parliamentary here.

19 MR JORDASH: There was a security prohibition on travel
20 which has delayed the travel of Defence witnesses to Freetown.
21 At the moment, the witness house is practically empty, despite

22 efforts we made outside of the prohibition in attempts to
23 indicate to witnesses, in Kailahun, that they should start to
24 make their way to Freetown.

25 The trip did get off last week but we are yet to see any
26 witnesses -- I think we have got two at the moment -- but we

are

27 yet to see the majority of the witnesses coming to Freetown.

We

28 are expecting them today, tomorrow, in the very near future.

29 We are hopeful that will not delay the start but I can

say

1 this: If Your Honours hadn't delayed the trial for a week we
2 certainly wouldn't have been in a position to start tomorrow.

3 PRESIDING JUDGE: Yes.

4 MR JORDASH: And I am hoping that that situation
remedies

5 itself very, very quickly, in the next day or so, because if
we
6 don't get witnesses soon --

7 PRESIDING JUDGE: It doesn't get aggravated somehow.

8 MR JORDASH: Yes. We need to engage in final
preparations

9 when they arrive so I put the Court on notice of that at this
10 stage.

11 The second thing is simply this: Just a polite and
12 respectful request that Your Honours could indicate, as soon
as

13 possible, breaks; when we will be breaking for Christmas and
when
14 we will be coming back in the new year.

15 PRESIDING JUDGE: You certainly will get something. I
am
16 sure there should be something out by the -- I would
conjecture

17 that there may be something out by the end of this week.

18 MR JORDASH: If Your Honours would consider also
indicating

19 the new year, simply because it assists with witnesses.

20 PRESIDING JUDGE: Yes.

21 MR JORDASH: But it also assists us who live elsewhere,
22 travel into Freetown.

23 PRESIDING JUDGE: Our resourceful legal officers are
24 working on that issue right now.

25 MR JORDASH: I can see him frowning.

26 PRESIDING JUDGE: Yes. But is there a possibility, too,
27 that notwithstanding the difficulty that you are having, which
28 you say was left of the elections, is there a possibility that

on

29 4 October we may have some, say, two or three witnesses to

start

1 with while this situation eases itself?

2 MR JORDASH: I am confident we will start on Thursday.

3 PRESIDING JUDGE: Yes, the 4th.

4 MR JORDASH: Whether there is a delay the next week as
we
5 try to catch up, I don't know.

6 PRESIDING JUDGE: We could make the adjustments.

7 MR JORDASH: Yes. Providing we get witnesses this week
we
8 will be ready to go by Thursday.

9 PRESIDING JUDGE: Okay. Yes, Mr Taku.

10 MR TAKU: Yes, Your Honour. If we could respectfully
draw
11 your attention to a notice that was filed by the Prosecutor on
10
12 August 2007. The Defence of Kallon has not deemed it
necessary

13 to file a response, first because the preamble to that notice
14 doesn't concern us at all but also because within that you
15 reserved the issue when -- some of the issues on 25 November
2005
16 when TF1-045 came to testify and I raised some of the issues
and
17 also during the motion for [indiscernible] you took the ruling
in
18 respect of Kallon in particular but also on some of the issues
19 directing when this issue shall be raised, and we thought that

to
20 that notice has nothing to do with us. We are not conceding
21 the issue raising the motion but we just believe that that
22 decision you took when the motion of acquittal, the other oral
23 arguments were made on motion of acquittal, those others are
24 still binding. That is the reason why we don't deem it
necessary
25 to respond.

26 PRESIDING JUDGE: To respond.

27 MR TAKU: But if Your Honours make any other orders that
28 would require us to respond to the issues raising that notice
we
29 will do that, but we believe that we will raise them amply at

Your

to

is

dates

would

1 every opportunity, and that we will proof other counsel and
2 Honours that those issues have been raised. That order re the
3 motion of acquittal stands, and there will be no application
4 reconsider the orders we made then. That is the reason. It
5 not that we are conceding to any of the issues raised in that
6 notice.

7 PRESIDING JUDGE: Well, let me give the Prosecution an
8 opportunity to shed some light on this, the issue that he has
9 raised.

10 MR HARRISON: I am afraid I missed the date. I couldn't
11 quite catch --

12 PRESIDING JUDGE: Did you say -- could you repeat the
13 again?

14 MR TAKU: On 10 August 2007, the filing notice.

15 PRESIDING JUDGE: Yes.

16 MR TAKU: In that notice they were saying that they
17 still litigate prima issues of --

18 PRESIDING JUDGE: Yes.

19 MR TAKU: -- objections to the indictment and joint
20 criminal enterprise and all the issues.

21 PRESIDING JUDGE: Yes.

22 MR TAKU: And we looked at the preamble and we thought -

23 we noticed it didn't concern us.

24 PRESIDING JUDGE: And you said that this didn't concern
25 you.

26 MR TAKU: And even if it concerned us we believed that
the
27 issue had been raised and Your Honours in the course of the
28 proceedings, during the motion of acquittal --

29 PRESIDING JUDGE: So you didn't file a response, that's

1 what you say.

2 MR TAKU: So we were thought that it wasn't necessary.

3 PRESIDING JUDGE: Yes, because it didn't concern you.

4 MR TAKU: It didn't concern us. And also because they
5 didn't ask Your Lordships to reconsider that decision. We

raised

6 the issue and they opposed in the course of the motion of

7 acquittal. It cannot be raised and then be raised
8 subsequently.

8 You made an order to that effect and that is the reason. It's

9 not that by not responding doesn't mean that we are conceding
10 to

10 the issue raised in the notice.

11 PRESIDING JUDGE: Did you --

12 MR HARRISON: I understand now.

13 PRESIDING JUDGE: Yes.

14 MR HARRISON: I think it's a position that falls within
15 the

15 parameters of what Defence counsel is entitled to do.

16 PRESIDING JUDGE: To do.

17 MR HARRISON: If they are not conceding, they are not

18 conceding.

19 PRESIDING JUDGE: Conceding, yes. Right.

20 MR JORDASH: If I can buttress my learned friend's

21 comments.

22 PRESIDING JUDGE: Yes.

of

23 MR JORDASH: We too didn't react to the notice because

24 the position taken by the Prosecution and the Honourable Trial

25 Chamber that the Rule 98 argument at decision stage.

Ms

26 PRESIDING JUDGE: Yes. Well, thanks. Anything else?

27 Jalloh?

28 MS KAH-JALLOH: Your Honour, I have no further
submissions.

29 I just simply want to convey Mr Cammegh's apologies for his

1 absence.

2 PRESIDING JUDGE: Very well.

3 MS KAH-JALLOW: Through no fault of his own. We were
4 unable to make further amendments to his travel arrangements

to

5 be here on time.

6 PRESIDING JUDGE: Very well.

7 MS KAH-JALLOW: Thank you.

8 PRESIDING JUDGE: The apology is accepted.

9 There being no other business to engage the attention of
10 this Chamber, I bring the proceeding to a close.

a.m.,

11 [Whereupon the hearing adjourned at 11.08

12 to be reconvened on Thursday, the 4th day of
13 October 2007 at 9.30 a.m.]

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SCSL - TRIAL CHAMBER I