

ECLI:NL:GHSHE:2017:2650

Instantie	Gerechtshof 's-Hertogenbosch
Datum uitspraak	21-04-2017
Datum publicatie	13-06-2017
Zaaknummer	20-001906-10 English translation
Formele relaties	Eerste aanleg: ECLI:NL:RBSGR:2006:AY5160, (Gedeeltelijke) vernietiging en zelf afgedaan Oorspronkelijk arrest: ECLI:NL:GHSHE:2017:1760 Cassatie: ECLI:NL:HR:2018:2349
Rechtsgebieden	Europees strafrecht Internationaal strafrecht Strafprocesrecht
Bijzondere kenmerken	Verwijzing na Hoge Raad
Inhoudsindicatie	Translation of ECLI:NL:GHSHE:2017:1760. Only the Dutch text of the full verdict is authentic. Case K. The Court of Appeal sentences the defendant to a term of imprisonment of 19 years for complicity in war crimes, committed multiple times, and for supplying arms and ammunition to (the regime of) Charles Taylor in violation of weapon embargoes.
Vindplaatsen	Rechtspraak.nl

Uitspraak

English translation of ECLI:NL:GHSHE:2017:1760

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Judgement

Criminal law section

Case no. : 20-001906-10

Judgement : April 21, 2017

DEFENDED ACTION

Ruling of the three judge panel at the Court of Appeal in 's-Hertogenbosch,

rendered, after referral of the case by the Supreme Court following the appeal lodged against the judgement of the District Court in The Hague of June 7, 2006, case no. 09-750001-05, in the criminal case against:

[Defendant]

Born in [place of birth] on [date of birth] 1942,
without a known address or residence in the Netherlands
correspondence address: [correspondence address]
in which:

- The defendant was acquitted of the charges under 1A, 1B, 2A, 2B, 3A and 3B;
 - The defendant was sentenced for
 - "complicity in a deliberate violation of a rule laid down by article 2 (old) of the Sanctions Act 1977, committed multiple times" and
 - "complicity in a deliberate violation of a rule laid down by article 2 of the Sanctions Act 1977, committed multiple times"
- to a term of imprisonment of 8 years, less the time spent in pre-trial detention in accordance with article 27 of the Dutch Criminal Code;
- The court issued an order for the return of items seized from the defendant.

Appeal

Both the defendant and the public prosecutor lodged an appeal against abovementioned judgement.

In its ruling of 10 March 2008, case no. 22-004337-06, the Court of Appeal in The Hague set aside above mentioned judgement and fully acquitted the defendant of the charges against him and ordered the return of items seized from the defendant.

In its ruling of April 20, 2010, no. S 08/01322, the Supreme Court set aside the judgement rendered by the Court of Appeal in The Hague and referred the case to this Appeals Court to retry the existing appeal case and give judgement.

Extent of the appeal

At the hearing of the Court of Appeal on 6 February 2017, the advocates general (the prosecutors on appeal) informed the court that all seized objects about which no decision had been taken yet, shall be returned to the defendant.

The court will therefore, with the consent of the defence and the advocates general, not take a decision concerning the seized objects.

Hearing of the case

This judgement has been rendered following the hearing of the case in court.

The court has taken note of the demand submitted by the advocates general and of all issues brought forward on behalf of the defendant.

In their demand, the advocates general have requested the court to set aside the contested judgement and to render a new judgement, whereby they have requested the court:

- To acquit the defendant of the charges under 1A primarily and in the alternative, 1B, 2A primarily and in the alternative, 2B, 3A primarily and in the alternative and 3B;
- And with regard to the charges under 1A in the further alternative, 2A in the further alternative, 3A in the further alternative, 4 and 5, to sentence the defendant to a term of imprisonment of 20 years, less the time spent in pre-trial detention in accordance with article 27 of the Dutch Criminal Code.

Furthermore, the advocates general demanded the court to order the imprisonment of the defendant.

The defence has pleaded:

- Primarily, to declare the inadmissibility of Public Prosecution Service;
- In the alternative, to fully acquit the defendant of all charges;
- In the further alternative, should the defendant be found guilty, not to impose a prison sentence on him, since he is unable to undergo imprisonment.

Contested judgement

The contested judgement shall be set aside because it is incompatible with the judgement to be rendered hereafter.

Indictment

After the modification of the indictment during the hearing of the case in the first instance, the defendant is charged with the offences as mentioned below:

COUNT 1A *Primarily*

that he, at (one) (or more) points in time in or around December 1, 2000 through March 1, 2001, at least in the year 2000 and/or 2001, and/or (also) in or around the period from January 1, 2002 through December 31, 2002, in Guéckédou, at least in Guinea, together and in conjunction with (an) other(s), (each time) violated the laws and practices of war,

- while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) was to be feared and/or
- that offence/those offences (each time) involved inhuman treatment and/or
- that offence/those offences (each time) involved looting and/or
- while that offence/those offences (each time) resulted in the death of (an) other(s) and/or
- that offence/those offences (each time) involved rape and/or
- that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
- that offence/those offences (each time) involved acts of violence with united forces against one (or more) person(s) or acts of violence against a dead, sick or wounded person,

which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, and/or (one or more) of his co-perpetrator(s), being Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 4] and/or [co-perpetrator 5] and/or [co-perpetrator 6] and/or [co-perpetrator 7] and/or [co-perpetrator 8] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present) then and there (each time)

-
- contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or
- the stipulations set out in article 130 of the Geneva Convention relative to the Treatment of Prisoners of War ("Third Geneva Convention" 1949) and/or
- the stipulations set out in article 147 of the Geneva Convention relative to the Protection of Civil Persons in Time of War ("Fourth Geneva Convention", 1949) and/or
- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949, as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to an (international or non-international) armed conflict on the territory of Liberia and/or Guinea

(repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more) person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause),

attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the afore-mentioned person(s), together and in conjunction with others,

(each time) deliberately,

- by using AK 47's (Automat Kalashnikov 47) and/or RPG's (Ruchnoi Protivotankovye Granatamy, also referred to as Rocket Propelled Grenade or Russian Powerful Gun) and/or one or more GMG's (General Machine Gun) and/or mortars and/or other fire weapons, fired

(at random) at the town of Guéckédou, without making any distinction between soldiers and civilians, while knowing that this (type of) attack(s) would cause excessive loss of human lives, injuries to civilians and/or damages to civilian objects and/or

- aimed and/or fired at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or
- set fire to (a) house(s) where (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause were still staying and/or
- cut off the head(s) of three, at least one or more civilian(s) and/or (members) (of) (the) personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (subsequently) threw (one) (or more) baby/babies against walls and/or threw (one) (or more) baby/babies into wells and/or
- forced (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause to gather in (one) (their) house(s) and/or (subsequently) threw (a) grenade(s) inside as a consequence of which the afore-mentioned civilians and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or

- raped (a) woman/women and/or (a) child/children and/or
- plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces.

Alternatively: in so far as the above should not or could not lead to a conviction

that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 4] and/or [co-perpetrator 5] and/or [co-perpetrator 6] and/or [co-perpetrator 7] and/or [co-perpetrator 8] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present) at (one) (or more) points in time in or around the period of December 1, 2000 through March 1, 2001, at least in the year 2000 and/or 2001, and/or (also) in or around the period from January 1, 2002 through December 31, 2002, in Guéckédou, at least in Guinea, together and in conjunction with (an) other(s), at least alone

(each time) violated the laws and practices of war,

- while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) was to be feared and/or
- that offence/those offences (each time) involved inhuman treatment and/or
- that offence/those offences (each time) involved looting and/or
- that offence/those offences (each time) resulted in the death of (an) other(s) and/or
- that offence/those offences (each time) involved rape and/or
- that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
- that offence/those offences (each time) involved acts of violence with united forces against one (or

more) person(s) or acts of violence against a dead, sick or wounded person,

which implies that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 4] and/or [co-perpetrator 5] and/or [co-perpetrator 6] and/or [co-perpetrator 7] and/or [co-perpetrator 8] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present) then and there (each time)

- contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or
- the stipulations set out in article 130 of the Geneva Convention relative to the Treatment of Prisoners of War ("Third Geneva Convention", 1949) and/or
- the stipulations set out in article 147 of the Geneva Convention relative to the Protection of Civil Persons in Time of War ("Fourth Geneva Convention", 1949) and/or
- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949, as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to an (international or non-international) armed conflict on the territory of Liberia and/or Guinea,

(repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more) person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause),

attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the afore-mentioned person(s), together and in conjunction with others, (each time) deliberately,

- by using AK 47's (Automat Kalashnikov 47) and/or RPG's (Ruchnoi Protivotankovye Granatamy, also referred to as Rocket Propelled Grenade or Russian Powerful Gun) and/or one or more GMG's (General Machine Gun) and/or mortars and/or other fire weapons, fired (at random) at the town of Guéckédou, without making any distinction between soldiers and civilians, while knowing that this (type of) attack(s) would cause excessive loss of human lives, injuries to civilians and/or damages to civilian objects and/or
- aimed and/or fired at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or
- set fire to (a) house(s) where (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause were still staying and/or
- cut off the head(s) of three, at least one or more civilian(s) and/or (members) (of) (the) personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (subsequently) threw (one) (or more) baby/babies against walls and/or threw (one) (or more) baby/babies into wells and/or
- forced (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause to gather in

(one) (their) house(s) and/or (subsequently) threw (a) grenade(s) inside

as a consequence of which the afore-mentioned civilians and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or

- raped (a) woman/women and/or (a) child/children and/or
- plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces

Which crime(s) was/were deliberately solicited (each time) in or around the period from January 1, 1999 through December 31, 2002 in Buchanan and/or Monrovia and/or (in) Lofa County and/or (elsewhere) in Liberia and/or in Guéckédou, at least in Guinea by the defendant, together or in conjunction with (an) other(s), at least alone, by means of gifts and/or promises and/or abuse of authority and/or violence and/or threat and/or deception and/or by providing the occasion and/or means and/or information, which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, and/or his co-perpetrator(s), then and there (each time) intentionally

- sold and/or supplied (a load of) weapons, being one or more AK-47's (Automat Kalashnikov 47) and/or one or more RPG's (Ruchnoi Protivotankovye Granatamy, also referred to as Rocket Propelled Grenade or Russian Powerful Gun) and/or one or more GMG's (General Machine Gun) and/or ammunition that belonged to the above mentioned arms, and/or mortars to Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or
- placed his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) at the disposal of the (armed) conflict and (subsequently) deliberately let them join in the fight with their (own) weapons and/or ammunition (being one or more AK-47's and/or one or more RPG's and/or one or more GMG's and/or one or more mortars) (obtained) from OTC and/or RTC, and/or
- threatened to dismiss or suspend (indefinitely) his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) if this/these staff member(s) refused to participate in the (armed) conflict and/or
- placed one (or more) helicopter(s) and/or (a) truck(s) and/or (a) (pick-up) truck(s), at least one or more vehicles, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, for the benefit of the transport of armed forces and/or weapons and/or ammunition and/or food and/or clothing and/or uniforms, at least goods for use by the (armed) conflict and/or combatants, and/or
- placed an RTC camp, in any case a (meeting) place, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or
- supplied and/or gave money and/or cigarettes and/or marihuana, at least (a) controlled drug(s) to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia, and/or
- gave (an) instruction(s) and/or (an) order(s) with regard to the use of (heavy) weapons and/or battle methods to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia, which instruction(s) or order(s) implied (among other matters) that heavy weapons had to be used and/or that in the shortest possible time

as much as possible should be destroyed (also expressed by the phrase "enter, destroy and escape") and or that nobody should be left alive (also expressed by the phrase "no baby on target") and/or to set fire to houses and/or to order the armed forces to plunder anything they wanted

In the further alternative, in so far as the above should not or could not lead to a conviction

that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 4] and/or [co-perpetrator 5] and/or [co-perpetrator 6] and/or [co-perpetrator 7] and/or [co-perpetrator 8] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present)
at (one) (or more) points in time in or around the period of December 1, 2000 through March 1, 2001, at least in the year 2000 and/or 2001, and/or (also) in or around the period from January 1, 2002 through December 31, 2002, in Guéckédou, at least in Guinea, together and in conjunction with (an) other(s), at least alone

(each time) violated the laws and practices of war,

- while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) was to be feared and/or
- that offence/those offences (each time) involved inhuman treatment and/or
- that offence/those offences (each time) involved looting and/or

while that offence/those offences (each time) resulted in the death of (an) other(s) and/or

- that offence/those offences (each time) involved rape and/or
- that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
- that offence/those offences (each time) involved acts of violence with united forces against one (or more) person(s) or acts of violence against a dead, sick or wounded person,

which implies that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 4] and/or [co-perpetrator 5] and/or [co-perpetrator 6] and/or [co-perpetrator 7] and/or [co-perpetrator 8] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present) then and there (each time)

- contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or
- the stipulations set out in article 130 of the Geneva Convention relative to the Treatment of Prisoners of War ("Third Geneva Convention", 1949) and/or
- the stipulations set out in article 147 of the Geneva Convention relative to the Protection of Civil Persons in Time of War ("Fourth Geneva Convention", 1949) and/or
- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949, as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to an (international or non-international) armed conflict on the territory of Liberia and/or Guinea

as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to an (international or non-international) armed conflict on the territory of Liberia and/or Guinea (repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or

cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more) person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause), attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the aforementioned person(s), together and in conjunction with others, (each time) deliberately,

- by using AK 47's (Automat Kalashnikov 47) and/or RPG's (Ruchnoi Protivotankovye Granatamy, also referred to as Rocket Propelled Grenade or Russian Powerful Gun) and/or one or more GMG's (General Machine Gun) and/or mortars and/or other fire weapons, fired (at random) at the town of Guéckédou, without making any distinction between soldiers and civilians, while knowing that this (type of) attack(s) would cause excessive loss of human lives, injuries to civilians and/or damages to civilian objects and/or
- aimed and/or fired at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or
- set fire to (a) house(s) where (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause were still staying and/or
- cut off the head(s) of three, at least one or more civilian(s) and/or (members) (of) (the) personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (subsequently) threw (one) (or more) baby/babies against walls and/or threw (one) (or more) baby/babies into wells and/or
- forced (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause to gather in (one) (their) house(s) and/or (subsequently) threw (a) grenade(s) inside as a consequence of which the afore-mentioned civilians and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or

- raped (a) woman/women and/or (a) child/children and/or
- plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces

whereby the defendant, together and in conjunction with (an) other(s), at least alone, in or around the period from January 1, 1999 through December 31, 2002 in Buchanan and/or Monrovia and/or (in) Lofa County and/or (elsewhere) in Liberia and/or in Guéckédou, at least in Guinea, deliberately provided the occasion and/or means and/or information and/or then and there deliberately aided and abetted to commit that/those crime(s)

which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, and/or his co-perpetrator(s), then and there (each time) intentionally

- sold and/or supplied (a load of) weapons, being one or more AK-47's (Automat Kalashnikov 47) and/or one or more RPG's (Ruchnoi Protivotankovye Granatamy, also referred to as Rocket Propelled Grenade or Russian Powerful Gun) and/or one or more GMG's (General Machine Gun) and/or ammunition that belonged to the above mentioned arms, and/or mortars to Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or

- placed his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) at the disposal of the (armed) conflict and (subsequently) deliberately let them join in the fight with their (own) weapons and/or ammunition (being one or more AK-47's and/or one or more RPG's and/or one or more GMG's and/or one or more mortars) (obtained) from OTC and/or RTC, and/or
- threatened to dismiss or suspend (indefinitely) his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) if this/these staff member(s) refused to participate in the (armed) conflict and/or
- placed one (or more) helicopter(s) and/or (a) truck(s) and/or (a) (pick-up) truck(s), at least one or more vehicles, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, for the benefit of the transport of armed forces and/or weapons and/or ammunition and/or food and/or clothing and/or uniforms, at least goods for use by the (armed) conflict and/or combatants, and/or
- placed an RTC camp, in any case a (meeting) place, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or
- supplied and/or gave money and/or cigarettes and/or marihuana, at least (a) controlled drug(s) to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia, and/or
- gave (an) instruction(s) and/or (an) order(s) with regard to the use of (heavy) weapons and/or battle methods to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia, which instruction(s) or order(s) implied (among other matters) that heavy weapons had to be used and/or that in the shortest possible time as much as possible should be destroyed (also expressed by the phrase "enter, destroy and escape") and/or that nobody should be left alive (also expressed by the phrase "no baby on target") and/or to set fire to houses and/or to order the armed forces to plunder anything they wanted

and/or

COUNT 1B

that [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 4] and/or [co-perpetrator 5] and/or [co-perpetrator 6] and/or [co-perpetrator 7] and/or [co-perpetrator 8] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), being (among others) (a) staff member(s) of OTC and/or RTC, in any case (a) person(s) employed by and/or subordinate to the defendant, at (one) (or more) points in time in or around the period of December 1, 2000 through March 1, 2001, at least in the year 2000 and/or 2001, and/or (also) in or around the period from January 1, 2002 through December 31, 2002, in Guéckédou, at least in Guinea, together and in conjunction with (an) other(s), at least alone

(each time) violated the laws and practices of war,

while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) was to be feared and/or

that offence/those offences (each time) involved inhuman treatment and/or

that offence/those offences (each time) involved looting and/or

while that offence/those offences (each time) resulted in the death of (an) other(s) and/or

that offence/those offences (each time) involved rape and/or
that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
that offence/those offences (each time) involved acts of violence with united forces against one (or
more) person(s) or acts of violence against a dead, sick or wounded person,

which implies that [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 4] and/or [co-perpetrator 5] and/or [co-perpetrator 6] and/or [co-perpetrator 7] and/or [co-perpetrator 8] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), being (among others) (a) staff member(s) of OTC and/or RTC, in any case (a) person(s) employed by and/or subordinate to the defendant, then and there (each time) contrary to

- international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or

the stipulations set out in article 130 of the Geneva Convention relative to the Treatment of Prisoners of War ("Third Geneva Convention", 1949) and/or

the stipulations set out in article 147 of the Geneva Convention relative to the Protection of Civil Persons in Time of War ("Fourth Geneva Convention", 1949) and/or

- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949,

as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to an (international or non-international) armed conflict on the territory of Liberia and/or Guinea (repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more) person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause), attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the aforementioned person(s), together and in conjunction with others, (each time) deliberately,

- by using AK 47's (Automat Kalashnikov 47) and/or RPG's (Ruchnoi Protivotankovye Granatamy, also referred to as Rocket Propelled Grenade or Russian Powerful Gun) and/or one or more GMG's (General Machine Gun) and/or mortars and/or other fire weapons, fired (at random) at the town of Guéckédou, without making any distinction between soldiers and civilians, while knowing that this (type of) attack(s) would cause excessive loss of human lives, injuries to civilians and/or damages to civilian objects and/or
- aimed and/or fired at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or
- set fire to (a) house(s) where (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause were still staying and/or
- cut off the head(s) of three, at least one or more civilian(s) and/or (members) (of) (the) personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (subsequently) threw (one) (or more) baby/babies against walls and/or threw (one) (or more) baby/babies into wells and/or
- forced (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause to gather in

(one) (their) house(s) and/or (subsequently) threw (a) grenade(s) inside

as a consequence of which the afore-mentioned civilians and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or

- raped (a) woman/women and/or (a) child/children and/or
- plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces,

which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, in any case as executive of OTC and/or RTC, with regard to the above-mentioned attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, at (one) (or more) points in time in or around the period of December 1, 2000 through March 1, 2001, at least in the year 2000 and/or 2001, and/or (also) in or around the period from January 1, 2002 through December 31, 2002, in Buchanan and/or Monrovia and/or (in) Lofa County and/or (elsewhere) in Liberia and/or in Guéckédou, at least in Guinea, repeatedly, at least one time (each time) intentionally allowed his subordinate(s) to commit this/these attacks, namely that he, the defendant did not take any or did not take sufficient measures in order to avoid the attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, and/or to punish the subordinates who were responsible for the attacks;

COUNT 2A *Primarily*

that he, at (one) (or more) points in time in or around the year 2002, at least in the year 2001 and/or 2002, in Voinjama, at least in the vicinity of Voinjama, at least in Lofa County, at least in Liberia, together and in conjunction with (an) other(s)

(each time) violated the laws and practices of war,

- while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) - - was to be feared and/or
- that offence/those offences (each time) involved inhuman treatment and/or
- that offence/those offences (each time) involved looting and/or
- while that offence/those offences (each time) resulted in the death of (an) other(s) and/or
- that offence/those offences (each time) involved rape and/or
- that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
- that offence/those offences (each time) involved acts of violence with united forces against one (or more) person(s) or acts of violence against a dead, sick or wounded person,

which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, and/or (one or more of) his co-perpetrator(s), being Charles Taylor

and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 9] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), then and there (each time)

- contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or
- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949, as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to a(n) (non-international) armed conflict on the territory of Liberia (repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more) person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause), attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the afore-mentioned person(s), together and in conjunction with others, (each time) deliberately,

- aimed and/or fired at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or as a consequence of which the afore-mentioned civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or
- raped (a) woman/women and/or (a) child/children and/or
- (subsequently) plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces;

In the alternative, in so far as the above should not or could not lead to a conviction

that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 9] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present),

at (one) (or more) points in time in or around the year 2002, at least in the year 2001 and/or 2002, in Voinjama, at least in the vicinity of Voinjama, at least in Lofa County, at least in Liberia, together and in conjunction with (an) other(s)

(each time) violated the laws and practices of war,

- while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) - - was to be feared and/or
- that offence/those offences (each time) involved inhuman treatment and/or
- that offence/those offences (each time) involved looting and/or
- while that offence/those offences (each time) resulted in the death of (an) other(s) and/or
- that offence/those offences (each time) involved rape and/or
- that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
- that offence/those offences (each time) involved acts of violence with united forces against one (or more) person(s) or acts of violence against a dead, sick or wounded person,

which implies that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 9] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), then and there (each time)

- contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or
- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949,

as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to a(n) (non-international) armed conflict on the territory of Liberia

(repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more) person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause),

attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the afore-mentioned person(s), together and in conjunction with others, (each time) deliberately,

- aimed and/or fired at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or as a consequence of which the afore-mentioned civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or
- raped (a) woman/women and/or (a) child/children and/or
- (subsequently) plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces;

The above mentioned crime(s) were deliberately solicited (each time) in or around the period from January 1, 1999 through December 31, 2002 in Buchanan and/or Monrovia and/or Voinjama and/or (in) Lofa County and/or (elsewhere) in Liberia by the defendant, together or in conjunction with (an) other(s), at least alone, by means of gifts and/or promises and/or abuse of authority and/or violence and/or threat and/or deception and/or by providing the occasion and/or means and/or information, which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, and/or his co-perpetrator(s), then and there (each time) intentionally

- sold and/or supplied (a load of) weapons, being one or more AK-47's (Automat Kalashnikov 47) and/or one or more RPG's (Ruchnoi Protivotankovye Granatamy, also referred to as Rocket Propelled Grenade or Russian Powerful Gun) and/or one or more GMG's (General Machine Gun) and/or ammunition that belonged to the above mentioned arms, and/or mortars to Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or

- placed his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) at the disposal of the (armed) conflict and (subsequently) deliberately let them join in the fight with their (own) weapons and/or ammunition (being one or more AK-47's and/or one or more RPG's and/or one or more GMG's and/or one or more mortars) (obtained) from OTC and/or RTC, and/or
- threatened to dismiss or suspend (indefinitely) his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) if this/these staff member(s) refused to participate in the (armed) conflict and/or
- placed one (or more) helicopter(s) and/or (a) truck(s) and/or (a) (pick-up) truck(s), at least one or more vehicles, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, for the benefit of the transport of armed forces and/or weapons and/or ammunition and/or food and/or clothing and/or uniforms, at least goods for use by the (armed) conflict and/or combatants, and/or
- placed an RTC camp, in any case a (meeting) place, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or
- supplied and/or gave money and/or cigarettes and/or marihuana, at least (a) controlled drug(s) to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia, and/or
- gave (an) instruction(s) and/or (an) order(s) with regard to the use of (heavy) weapons and/or battle methods to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia;

In the further alternative, in so far as the above should not or could not lead to a conviction

that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 9] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present),
at (one) (or more) points in time in or around the year 2002, at least in the year 2001 and/or 2002, in Voinjama, at least in the vicinity of Voinjama, at least in Lofa County, at least in Liberia, together and in conjunction with (an) other(s)

(each time) violated the laws and practices of war,

- while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) - - was to be feared and/or
- that offence/those offences (each time) involved inhuman treatment and/or
- that offence/those offences (each time) involved looting and/or
- while that offence/those offences (each time) resulted in the death of (an) other(s) and/or
- that offence/those offences (each time) involved rape and/or
- that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
- that offence/those offences (each time) involved acts of violence with united forces against one (or more) person(s) or acts of violence against a dead, sick or wounded person,

which implies that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 9] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), then and there (each time)

- contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or
- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949,

as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to a(n) (non-international) armed conflict on the territory of Liberia (repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more) person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause), attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the afore-mentioned person(s), together and in conjunction with others, (each time) deliberately,

- aimed and/or fired at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or as a consequence of which the afore-mentioned civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or
- raped (a) woman/women and/or (a) child/children and/or
- (subsequently) plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces;

whereby the defendant, together and in conjunction with (an) other(s), at least alone, in or around the period from January 1, 1999 through December 31, 2002 in Buchanan and/or Monrovia and/or Voinjama and/or (in) Lofa County and/or (elsewhere) in Liberia, deliberately provided the occasion and/or means and/or information and/or then and there deliberately aided and abetted to commit that/those crime(s)

which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, and/or his co-perpetrator(s), then and there (each time) intentionally

- sold and/or supplied (a load of) weapons, being one or more AK-47's (Automat Kalashnikov 47) and/or one or more RPG's (Ruchnoi Protivotankovye Granatamy, also referred to as Rocket Propelled Grenade or Russian Powerful Gun) and/or one or more GMG's (General Machine Gun) and/or ammunition that belonged to the above mentioned arms, and/or mortars to Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or
- placed his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) at the disposal of the (armed) conflict and (subsequently) deliberately let them join in the fight with their (own) weapons and/or ammunition (being one or more AK-47's and/or one or more RPG's and/or one or more GMG's and/or one or more mortars) (obtained) from OTC and/or RTC, and/or
- threatened to dismiss or suspend (indefinitely) his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) if this/these staff member(s) refused to participate in the (armed) conflict and/or

- placed one (or more) helicopter(s) and/or (a) truck(s) and/or (a) (pick-up) truck(s), at least one or more vehicles, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, for the benefit of the transport of armed forces and/or weapons and/or ammunition and/or food and/or clothing and/or uniforms, at least goods for use by the (armed) conflict and/or combatants, and/or
- placed an RTC camp, in any case a (meeting) place, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or
- supplied and/or gave money and/or cigarettes and/or marihuana, at least (a) controlled drug(s) to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia, and/or
- gave (an) instruction(s) and/or (an) order(s) with regard to the use of (heavy) weapons and/or battle methods to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia;

and/or

COUNT 2B

that [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 9] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), being (among others) (a) staff member(s) of OTC and/or RTC, in any case (a) person(s) employed by and/or subordinate to the defendant, at (one) (or more) points in time in or around the year 2002, at least in the year 2001 and/or 2002, in Voinjama, at least in the vicinity of Voinjama, at least in Lofa County, at least in Liberia, together and in conjunction with (an) other(s), at least alone

(each time) violated the laws and practices of war,

- while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) - - was to be feared and/or
- that offence/those offences (each time) involved inhuman treatment and/or
- that offence/those offences (each time) involved looting and/or
- while that offence/those offences (each time) resulted in the death of (an) other(s) and/or
- that offence/those offences (each time) involved rape and/or
- that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
- that offence/those offences (each time) involved acts of violence with united forces against one (or more) person(s) or acts of violence against a dead, sick or wounded person,

which implies that [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 9] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), being (among others) (a) staff member(s) of OTC and/or RTC, in any case (a) person(s) employed by and/or subordinate to the defendant, then and there (each time)

- contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or

personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or

- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949,

as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to a(n) (non-international) armed conflict on the territory of Liberia

(repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more) person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause),

attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the afore-mentioned person(s), together and in conjunction with others, (each time) deliberately,

- aimed and/or fired at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or as a consequence of which the afore-mentioned civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or
- raped (a) woman/women and/or (a) child/children and/or
- (subsequently) plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, in any case as executive of OTC and/or RTC, with regard to the above-mentioned attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, at (one) (or more) points in time in or around the year 2002, at least in the year 2001 and/or 2002, in Buchanan and/or Monrovia and/or Voinjama and/or(in) Lofa County and/or (elsewhere) in Liberia, repeatedly, at least one time (each time) intentionally allowed his subordinate(s) to commit this/these attacks, namely that he, the defendant did not take any or did not take sufficient measures in order to avoid the attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, and/or to punish the subordinates who were responsible for the attacks;

COUNT 3A *Primarily*

that he, at (one) (or more) points in June 2002, at least in or around the period of December 1, 2001 through June 30, 2002, at least in the year 2001 and/or 2002, in Kolahun, at least in the vicinity of Kolahun, at least in Lofa County, at least in Liberia, together and in conjunction with (an) other(s)

(each time) violated the laws and practices of war,

- while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) - - was to be feared and/or
- that offence/those offences (each time) involved inhuman treatment and/or
- that offence/those offences (each time) involved looting and/or
- while that offence/those offences (each time) resulted in the death of (an) other(s) and/or
- that offence/those offences (each time) involved rape and/or
- that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
- that offence/those offences (each time) involved acts of violence with united forces against one (or more) person(s) or acts of violence against a dead, sick or wounded person, which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, and/or (one or more of) his co-perpetrator(s), being Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 8] and/or [co-perpetrator 10] and/or [co-perpetrator 11] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), then and there (each time)
- contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or
- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949,

as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to a(n) (non-international) armed conflict on the territory of Liberia

(repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more) person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause),

attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the afore-mentioned person(s), together and in conjunction with others, (each time) deliberately,

- bombarded (at random) in (the) (town of) Kolahun (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) with grenades for a longer period of time, more specifically (one) (and a half) day, and/or
- aimed and/or fired (at random) at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or
- told (a) man (men) and/or (a) woman (women), at least (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause, to undress and (subsequently) to lie down on the floor and executed this/these person(s) and/or
- set fire to (a) house(s) where (one) (or more) civilian(s) and/or personnel of the armed forces that

had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause was/were still staying
as a consequence of which the afore-mentioned civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or

- raped (a) woman/women and/or (a) child/children and/or
- tortured two, at least one or more, man (men) by locking this/these man (men) into an attic and/or (subsequently) setting fire to a bundle of pepper under this attic by which act this/these man (men) threatened to suffocate, while from that offence death or severe bodily harm of the above mentioned man (men) could be feared, which offence at least included an inhuman treatment and/or
- plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces;

In the alternative, in so far as the above should not or could not lead to a conviction

that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 8] and/or [co-perpetrator 10] and/or [co-perpetrator 11] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), at (one) (or more) points in June 2002, at least in or around the period of December 1, 2001 through June 30, 2002, at least in the year 2001 and/or 2002, in Kolahun, at least in the vicinity of Kolahun, at least in Lofa County, at least in Liberia, together and in conjunction with (an) other(s)

(each time) violated the laws and practices of war,

- while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) - - was to be feared and/or
- that offence/those offences (each time) involved inhuman treatment and/or
- that offence/those offences (each time) involved looting and/or
- while that offence/those offences (each time) resulted in the death of (an) other(s) and/or
- that offence/those offences (each time) involved rape and/or
- that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
- that offence/those offences (each time) involved acts of violence with united forces against one (or more) person(s) or acts of violence against a dead, sick or wounded person,

which implies that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 8] and/or [co-perpetrator 10] and/or [co-perpetrator 11] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), then and there (each time)

- contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or
- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949,

as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to a(n) (non-

international) armed conflict on the territory of Liberia

(repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more) person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause),

attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the afore-mentioned person(s), together and in conjunction with others, (each time) deliberately,

- bombarded (at random) in (the) (town of) Kolahun (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) with grenades for a longer period of time, more specifically (one) (and a half) day, and/or
- aimed and/or fired (at random) at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or
- told (a) man (men) and/or (a) woman (women), at least (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause, to undress and (subsequently) to lie down on the floor and executed this/these person(s) and/or
- set fire to (a) house(s) where (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause was/were still staying

as a consequence of which the afore-mentioned civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or

- raped (a) woman/women and/or (a) child/children and/or
- tortured two, at least one or more, man (men) by locking this/these man (men) into an attic and/or (subsequently) setting fire to a bundle of pepper under this attic by which act this/these man (men) threatened to suffocate, while from that offence death or severe bodily harm of the above mentioned man (men) could be feared, which offence at least included an inhuman treatment and/or
- plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces

the above-mentioned crime(s)

were deliberately solicited (each time) in or around the period from January 1, 1999 through December 31, 2002 in Buchanan and/or Monrovia and/or Kolahun and/or (in) Lofa County and/or (elsewhere) in

Liberia

by the defendant, together or in conjunction with (an) other(s), at least alone, by means of gifts and/or promises and/or abuse of authority and/or violence and/or threat and/or deception and/or by providing the occasion and/or means and/or information,

which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, and/or his co-perpetrator(s), then and there (each time) intentionally

- sold or supplied (a load of) weapons, being one or more AK-47's (Automat Kalashnikov 47) and/or one or more RPG's (Ruchnoi Protivotankovye Granatamy, also referred to as Rocket Propelled Grenade or Russian Powerful Gun) and/or one or more GMG's (General Machine Gun) and/or ammunition that belonged to the above mentioned arms, and/or mortars to Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or
- placed his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) at the disposal of the (armed) conflict and (subsequently) deliberately let them join in the fight with their (own) weapons and/or ammunition (being one or more AK-47's and/or one or more RPG's and/or one or more GMG's and/or one or more mortars) (obtained) from OTC and/or RTC, and/or
- threatened to dismiss or suspend (indefinitely) his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) if this/these staff member(s) refused to participate in the (armed) conflict and/or
- placed one (or more) helicopter(s) and/or (a) truck(s) and/or (a) (pick-up) truck(s), at least one or more vehicles, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, for the benefit of the transport of armed forces and/or weapons and/or ammunition and/or food and/or clothing and/or uniforms, at least goods for use by the (armed) conflict and/or combatants, and/or
- placed an RTC camp, in any case a (meeting) place, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or
- supplied and/or gave money and/or cigarettes and/or marihuana, at least (a) controlled drug(s) to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia, and/or
- gave (an) instruction(s) and/or (an) order(s) with regard to the use of (heavy) weapons and/or battle methods to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia, which instruction(s) or order(s) implied (among other matters) that "Kolahun needed to be swept clean" and/or words of similar meaning;

In the further alternative, in so far as the above should not or could not lead to a conviction that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 8] and/or [co-perpetrator 10] and/or [co-perpetrator 11] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), at (one) (or more) points in June 2002, at least in or around the period of December 1, 2001 through June 30, 2002, at least in the year 2001 and/or 2002, in Kolahun, at least in the vicinity of Kolahun, at least in Lofa County, at least in Liberia, together and in conjunction with (an) other(s)

(each time) violated the laws and practices of war,

- while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) - -

was to be feared and/or

- that offence/those offences (each time) involved inhuman treatment and/or
- that offence/those offences (each time) involved looting and/or
- while that offence/those offences (each time) resulted in the death of (an) other(s) and/or
- that offence/those offences (each time) involved rape and/or
- that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
- that offence/those offences (each time) involved acts of violence with united forces against one (or more) person(s) or acts of violence against a dead, sick or wounded person,

which implies that Charles Taylor and/or [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 8] and/or [co-perpetrator 10] and/or [co-perpetrator 11] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), then and there (each time)

- contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or
- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949,

as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to a(n) (non-international) armed conflict on the territory of Liberia (repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more) person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause), attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the afore-mentioned person(s), together and in conjunction with others, (each time) deliberately,

- bombarded (at random) in (the) (town of) Kolahun (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) with grenades for a longer period of time, more specifically (one) (and a half) day, and/or
- aimed and/or fired (at random) at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or
- told (a) man (men) and/or (a) woman (women), at least (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause, to undress and (subsequently) to lie down on the floor and executed this/these person(s) and/or
- set fire to (a) house(s) where (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause was/were still staying

as a consequence of which the afore-mentioned civilian(s) and/or personnel of the armed forces that

had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or

- raped (a) woman/women and/or (a) child/children and/or
- tortured two, at least one or more, man (men) by locking this/these man (men) into an attic and/or (subsequently) setting fire to a bundle of pepper under this attic by which act this/these man (men) threatened to suffocate, while from that offence death or severe bodily harm of the above mentioned man (men) could be feared, which offence at least included an inhuman treatment and/or
- plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces

whereby the defendant, together and in conjunction with (an) other(s), at least alone, in or around the period from January 1, 1999 through December 31, 2002 in Buchanan and/or Monrovia and/or Kolahun and/or (in) Lofa County and/or (elsewhere) in Liberia deliberately provided the occasion and/or means and/or information and/or then and there deliberately aided and abetted to commit that/those crime(s)

which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, and/or his co-perpetrators then and there (each time) intentionally

- sold and/or supplied (a load of) weapons, being one or more AK-47's (Automat Kalashnikov 47) and/or one or more RPG's (Ruchnoi Protivotankovye Granatamy, also referred to as Rocket Propelled Grenade or Russian Powerful Gun) and/or one or more GMG's (General Machine Gun) and/or ammunition that belonged to the above mentioned arms, and/or mortars to Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or
- placed his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) at the disposal of the (armed) conflict and (subsequently) deliberately let them join in the fight with their (own) weapons and/or ammunition (being one or more AK-47's and/or one or more RPG's and/or one or more GMG's and/or one or more mortars) (obtained) from OTC and/or RTC, and/or
- threatened to dismiss or suspend (indefinitely) his/their (own) staff member(s) employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) if this/these staff member(s) refused to participate in the (armed) conflict and/or
- placed one (or more) helicopter(s) and/or (a) truck(s) and/or (a) (pick-up) truck(s), at least one or more vehicles, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, for the benefit of the transport of armed forces and/or weapons and/or ammunition and/or food and/or clothing and/or uniforms, at least goods for use by the (armed) conflict and/or combatants, and/or
- placed an RTC camp, in any case a (meeting) place, at the disposal of Charles Taylor and/or the government of Liberia and/or (its) armed forces, at least to armed forces active in Liberia, and/or
- supplied and/or gave money and/or cigarettes and/or marihuana at least (a) controlled drug(s) to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia, and/or
- gave (an) instruction(s) and/or (an) order(s) with regard to the use of (heavy) weapons and/or battle methods to the members of the armed forces of Charles Taylor and/or (of) (the government of) Liberia and/or to the staff members of OTC and/or RTC who were put at their disposal for the purpose of the conflict, at least to the armed forces active in Liberia, which instruction(s) or order(s) implied (among other matters) that "Kolahun needed to be swept clean" and/or words of similar meaning;

and/or

COUNT 3B

which implies that [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 8] and/or [co-perpetrator 10] and/or [co-perpetrator 11] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), being (among others) (a) staff member(s) of OTC and/or RTC, in any case (a) person(s) employed by and/or subordinate to the defendant,

at (one) (or more) points in June 2002, at least in or around the period of December 1, 2001 through June 30, 2002, at least in the year 2001 and/or 2002, in Kolahun, at least in the vicinity of Kolahun, at least in Lofa County, at least in Liberia, together and in conjunction with (an) other(s)

(each time) violated the laws and practices of war,

- while from that offence/those offences (each time) death or severe bodily harm of (an) other(s) - - was to be feared and/or
- that offence/those offences (each time) involved inhuman treatment and/or
- that offence/those offences (each time) involved looting and/or
- while that offence/those offences (each time) resulted in the death of (an) other(s) and/or
- that offence/those offences (each time) involved rape and/or
- that offence/those offences (each time) resulted in severe bodily harm of (an) other(s) and/or
- that offence/those offences (each time) involved acts of violence with united forces against one - (or more) person(s) or acts of violence against a dead, sick or wounded person,

which implies that [co-perpetrator 1] (alias [co-perpetrator 1]) and/or [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 8] and/or [co-perpetrator 10] and/or [co-perpetrator 11] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present), being (among others) (a) staff member(s) of OTC and/or RTC, in any case (a) person(s) employed by and/or subordinate to the defendant, then and there (each time)

- contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) and/or
- the stipulations set out in "common" article 3 of the Geneva Conventions dated 12 August 1949,

as (a) member(s) of and/or participant(s) to, at least belonging to, one of the parties to a(n) (non-international) armed conflict on the territory of Liberia

(repeatedly) committed an attack on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape, and/or looting, with regard to (one) (or more)

person(s) who were (at that time) not (no longer) directly participating in the hostilities (being (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause), attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member(s), at least the afore-mentioned person(s), together and in conjunction with others, (each time) deliberately,

- bombarded (at random) in (the) (town of) Kolahun (a) civilian(s) and/or personnel of the armed forces that had laid down arms and/or (a) person(s) who had been put out of action by imprisonment or another cause) with grenades for a longer period of time, more specifically (one) (and a half) day, and/or
- aimed and/or fired (at random) at (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or
- told (a) man (men) and/or (a) woman (women), at least (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause, to undress and (subsequently) to lie down on the floor and executed this/these person(s) and/or
- set fire to (a) house(s) where (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause was/were still staying

as a consequence of which the afore-mentioned civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause died and/or experienced (severe) bodily harm and/or

- raped (a) woman/women and/or (a) child/children and/or
- tortured two, at least one or more, man (men) by locking this/these man (men) into an attic and/or (subsequently) setting fire to a bundle of pepper under this attic by which act this/these man (men) threatened to suffocate, while from that offence death or severe bodily harm of the above mentioned man (men) could be feared, which offence at least included an inhuman treatment and/or
- plundered possessions of (one) (or more) civilian(s) and/or personnel of the armed forces that had laid down arms and/or the person(s) who had been put out of action by imprisonment or another cause and/or (of) (members of) the armed forces

which implies that he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, in any case as executive of OTC and/or RTC, with regard to the above-mentioned attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, at (one) (or more) points in time in or around June 2002, at least in the period from December 1, 2001 through June 30, 2002, at least in the year 2001 and/or 2002, in Buchanan and/or Monrovia and/or Kolahun and/or(in) Lofa County and/or (elsewhere) in Liberia, repeatedly, at least one time (each time) intentionally allowed his subordinate(s) to commit this/these attacks, namely that he, the defendant did not take any or did not take sufficient measures in order to avoid the attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, and/or to punish the subordinates who were responsible for the attacks;

COUNT 4

that he, in the period from July 21, 2001 through May 8, 2002, in Buchanan, Liberia, together and in conjunction with another or others, at least alone,

two times, at least one or several times, being

- in or around the period from November 10, 2001 through November 29, 2001 and/or
- in or around the period from February 28, 2002 through March 8, 2002

contrary to the ban set out in article 2 of the Liberian Sanctions Regulations 2001, established pursuant to article 2 paragraph 2 of the Sanctions Act 1977,

which stipulates the ban on selling and/or supplying weapons and/or ammunition and/or military equipment and/or goods and/or armed or non-armed yards and/or spare parts and/or repairs and/or the maintenance thereof and/or military technology to natural persons and/or legal persons in Liberia, referred to in the Schedule to the Resolution on Imports and Exports of Strategic Goods

deliberately sold and/or supplied weapons and/or ammunition and/or military equipment and/or goods and/or armed or non-armed yards and/or spare parts and/or repairs and/or the maintenance thereof and/or military technology, referred to in the Schedule to the Resolution on Imports and Exports of Strategic Goods, to one or more natural persons and/or legal person(s) in Liberia,

in fact, he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, and/or (one) (or more of) his co-perpetrator(s), then and there, (each time) deliberately

sold and/or supplied (a load of) weapons, being one or more AK-47's (Automat Kalashnikov 47) and/or one or more RPG's (Ruchnoi Protivotankovye Granatamy, and/or Rocket Propelled Grenade and/or Russian Powerful Gun) mortars and/or one or more GMG's (General Machine Gun), at least weapons as referred to in article 2 of the Liberian Sanctions Regulations 2001 to Charles Taylor and/or his armed forces, at least to armed forces active in Liberia, and/or to the personnel employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) at least to (one) (or more) natural person(s) and/or legal person(s) in Liberia.

COUNT 5

that he, in the period from September 26, 2002 through May 7, 2003, in Buchanan, Liberia, together and in conjunction with another or others, at least alone,

two times, at least one or several times, being

- in or around the period from December 15, 2002 through December 30, 2002 and/or

- in or around the period from April 25, 2003 through May 7, 2003

contrary to the ban set out in article 2 of the Liberian Sanctions Regulations 2002, established pursuant to article 2 paragraph 2 of the Sanctions Act 1977, which stipulates the ban on selling and/or supplying weapons and/or ammunition and/or military equipment and/or goods and/or armed or non-armed yards and/or spare parts and/or repairs and/or the maintenance thereof and/or military technology to natural persons and/or legal persons in Liberia, referred to in the Schedule to the Resolution on Imports and Exports of Strategic Goods

deliberately sold and/or supplied weapons and/or ammunition and/or military equipment and/or goods and/or armed or non-armed yards and/or spare parts and/or repairs and/or the maintenance thereof and/or military technology, referred to in the Schedule to the Resolution on Imports and Exports of Strategic Goods, to one or more natural persons and/or legal person(s) in Liberia,

in fact, he, the defendant, (as) president of Oriental Timber Company and/or owner and/or director of Royal Timber Company, and/or (one) (or more of) his co-perpetrator(s), then and there, (each time) deliberately

sold and/or supplied (a load of) weapons, being one or more AK-47's (Automat Kalashnikov 47) and/or one or more RPG's (Ruchnoi Protivotankovye Granatamy, and/or Rocket Propelled Grenade and/or Russian Powerful Gun) mortars and/or one or more GMG's (General Machine Gun), at least weapons as referred to in article 2 of the Liberian Sanctions Regulations 2001 to Charles Taylor and/or his armed forces, at least to armed forces active in Liberia, and/or to the personnel employed by the companies Oriental Timber Company (OTC) and/or Royal Timber Company (RTC) at least to (one) (or more) natural person(s) and/or legal person(s) in Liberia.

Language and/or writing errors or omissions appearing in the indictment have been corrected. This has neither affected nor injured defendant's defence.

Admissibility of the Prosecution

A. Liberian Amnesty Scheme

The defence counsel has argued - briefly rendered - that the Public Prosecution Service should be declared inadmissible in its prosecution with respect to all charges, since an "*act to grant immunity from both civil and criminal proceedings against all persons within the jurisdiction of the republic of Liberia from acts and crimes committed during the civil war from December 1989 to August 2003*" dated August 7, 2003, (hereafter: the Liberian Amnesty Scheme) is in force. Now that this amnesty scheme is directly applicable to the crimes which the defendant is charged with, the defendant should not be prosecuted (further) by the Public Prosecutor, at least, according to the defence counsel, this follows from principle of equality, the principle of protection of legitimate expectations and/or the absence of jurisdiction.

A.1 The Liberian amnesty scheme and the right to prosecute

With regard to the Liberian Amnesty Scheme, the court considers as follows.

During her oral pleadings, the defence counsel submitted aforementioned Liberian Amnesty Scheme and she included an "affidavit of attestation" dated 14 February 2017. These documents show that the Liberian Amnesty Scheme was approved on 7 August 2003 by the then President of Liberia and published on 8 August 2003 by the Liberian Ministry of Foreign Affairs. The affidavit was included to demonstrate that the Liberian Amnesty Scheme is a valid regulation under Liberian law and that it has not been formally withdrawn afterwards.

On 11 August 2003, Charles Taylor stepped down as President of Liberia, which shows that he approved the amnesty scheme shortly before his retirement.

A short while after the publication of the Liberian Amnesty Scheme, i.e. on 18 August 2003 and after preceding negotiations in Ghana between the government (GOL) and the conflicting parties (LURD and MODEL), the Comprehensive Peace Agreement (CPA) took effect, which was a peace agreement that also recommended the creation of the National Transitional Government of Liberia (NTGL). This transitional government was broadly composed of representatives of the opposing parties, political parties, civil society organisations and the 15 counties (districts) of Liberia.

Article XXXIV of the CPA states that the NTGL:

" Shall give consideration to a recommendation for general amnesty to all persons and parties engaged or involved in military activities during the Liberian civil conflict that is subject of this Agreement."

Article XXXV sub c of the CPA states that:

"For the avoidance of doubt, relevant provisions of the Constitution, statutes and other laws of Liberia which are inconsistent with the provisions of this Agreement are also hereby suspended."

Article XXXV sub e states that:

"All suspended provisions of the Constitution, Statutes and other laws, affected as a result of this agreement, shall be deemed to be restored with the inauguration of the elected Government by January 2006. All legal obligations of the transitional government shall be inherited by the elected government."

Article XIII of the CPA of 18 August 18 2003, states that a Truth and Reconciliation Commission was to be set up on issues such as impunity.

By Act of 10 June 2005, this commission, the so-called Truth and Reconciliation Commission (TRC) was

established. article VII of the TRC-Act of Liberia (*Functions and Powers*), under g states:

"(...) provided that *amnesty or exoneration shall not apply to violations of international humanitarian law and crimes against humanity in conformity with international laws and standards.*" (all underlining above added by the court)

In article II of the TRC-Act of Liberia definitions are included of "*Human Rights violations*" and "*Violations of International Humanitarian law*".

From the provisions in the above quoted article VII of the TRC-Act of Liberia, the court deduces that the Transitional Government (NTGL) apparently decided that it would not proceed to a "*general amnesty*".

In 2009, the TRC published a report which included recommendations on amnesty and prosecution of offences committed during the civil war, being offences to which the Liberian Amnesty Scheme submitted by the defence would also apply.

A.1.1

On the basis of the facts and circumstances rendered above under A.1. the court concludes that:

- the Liberian Amnesty Scheme was approved by Charles Taylor, the then President of Liberia, on 7 August 2003, which was one of the last days of his presidency. After all, on 11 August 2003, i.e. four days after his approval, Taylor transferred power to the then Vice President Moses Blah and left/fled from Liberia;
- at the time when the abovementioned amnesty scheme was issued under the then rule of Charles Taylor, peace talks were already being held in Ghana and thus all parties involved were discussing the manner in which amnesty would be granted or not;
- the peace agreement (CPA) which came into force several days later, shows that it was agreed that the Transitional Government (NTGL) should pay attention to a general amnesty scheme. Also, the explicit choice was made to set up a Truth and Reconciliation Commission (TRC), which would expressly be authorised to make recommendations regarding amnesty or prosecution;
- Article VII, section 26, part g. of the 'TRC-Act of Liberia' states explicitly that the recommendation for amnesty does not apply to 'international crimes', such as the war crimes charged to the defendant;
- neither in the peace agreement, nor in the TRC-Act of Liberia, nor in a subsequently published TRC-report reference is made to the Liberian Amnesty Scheme, as submitted by the defence.

A.1.2

To begin with, the court states that based on the case file and the court hearings it has not been demonstrated that the creation of the Liberian Amnesty Scheme was invalid, or that this Scheme was formally withdrawn or formally terminated at any moment.

However, from the manner in which the Liberian Amnesty Scheme was established and the subsequent choices and steps that were made by (among others) the Transitional Government (NTGL) and the Truth and Reconciliation Commission (TRC), the court concludes, together with the advocates general, that although the Liberian Amnesty Scheme might have been in force at a certain moment, this Scheme did not have formal legal force (anymore) after signing the peace agreement and the creation of the Truth and Reconciliation Commission (TRC). After all, the competence to make recommendations regarding prosecution or amnesty with regard to crimes committed during the second civil war had become the responsibility of the Truth and Reconciliation Commission (TRC). In this respect, recommendations to grant amnesty in case of war crimes or crimes against humanity is explicitly ruled out.

The conclusions of the defence counsel that in its judgement the Supreme Court of Liberia¹ stated that (a) the TRC went beyond certain competences, that (b) in an '*dissenting opinion*' regarding this judgement² the Liberian Amnesty Scheme was explicitly mentioned by a commission member of the TRC, that (c) there was (or is) a discussion about the scope of the TRC's powers and that (d) two commission members did not sign the TRC-report dated 30 June 2009, regardless of the contents of the arguments, do not diminish what was considered above.

A.1.3

Furthermore, the court considers, and perhaps unnecessarily, that even if it is assumed that the Liberian Amnesty Scheme had formal legal force (for a short period) and it would have been applicable to the defendant, (entitlement to) amnesty with regard to war crimes is in conflict with international law, and for that reason it should be excluded from being implemented.

The court believes that from international law – as stated among others in articles 2 and 3 of the European Convention on Human Rights and Fundamental Freedoms (ECHR)³ – a positive obligation arises which implies that in case of allegations of war crimes or crimes against humanity, an effective (criminal) investigation should be initiated and prosecution should be instituted concerning such crimes if necessary.⁴ Therefore, granting amnesty in case of war crimes and crimes against humanity is inconsistent with international law. An amnesty such as the one in question which would rule out prosecution resulting from the abovementioned positive obligations, would then (except in special circumstances not experienced by the court here) constitute a violation of the convention itself. Accordingly, the court considers that on the basis of international law, a national amnesty scheme which rules out prosecution concerning war crimes or crimes against humanity, is incompatible with the international obligation to institute prosecution in respect of such crimes.

For that reason, an amnesty scheme like this one cannot be applied.

This follows even directly from Resolution 1674 (2006) of the United Nations Security Council which emphasises that Nations should fulfil their obligation in order to make an end to impunity for war crimes (among others) and crimes against humanity and proceed to prosecution of those who are guilty of these crimes.⁵

In this judgement the court also considers that the amnesty scheme did not come about in the course of the peace process, but was drafted by the then government of Charles Taylor, during whose regime the facts as charged occurred, actually shortly before his more or less forced departure from Liberia.

This is the reason why the court believes that, if it had to be assumed that the Liberian Amnesty Scheme has formal legal force (or had force for a short while) in Liberia and assuming that it is (would have been) applicable to the defendant in Liberia, this does not imply that the Dutch prosecution has lost the right to (further) prosecution of the defendant.

A.2 The Liberian Amnesty Scheme and the principles of equality and legitimate expectation

With regard to invoking the principles of equality and legitimate expectations, the court considers as follows.

By virtue of the discretionary principle laid down in article 167, first paragraph of the Code of Criminal Procedure, it is up to the prosecutor to independently decide whether prosecution should take place following a criminal investigation. According to case law, the decision to prosecute is only in a very limited way suitable for a substantive judicial review, in the sense that only in exceptional cases there is room for a declaration of inadmissibility of the prosecution service with regard to prosecuting a defendant based on the fact that the initiation or continuation of that prosecution is incompatible with the principles of due process – in so far as relevant here for the principles of equality and legitimate expectations – because no reasonable acting member of the prosecution service has been able to determine whether (the continuation of) prosecution may serve any interest protected by criminal enforcement. With respect to this criterion, which calls for some restraint, when possibly taking the decision to declare the prosecution service inadmissible, the court is subject to strict requirements with regard to giving a reasoned opinion for such a decision. In this respect, a careful balance should be made between the prosecution service's position regarding the importance of this criminal prosecution and the circumstance argued by the defence, which should lead to the conclusion that the decision to prosecute is contrary to the principles of equality and legitimate expectations, as argued in the current case.

A.2.1

Violation of the principles of equality is only relevant where equal situations are treated unequally and a reasonable and objective justification for this unequal treatment is lacking.

The court considers that it has not been argued nor proven that Dutch citizens who were accused of crimes such as charged to the defendant were not prosecuted for reasons of (an appeal to) amnesty on the basis of the Liberian Amnesty Scheme. Therefore, the court believes that it has not been demonstrated that there are any cases of (an) unidentified third party/parties which are similar to the case of this defendant.

A.2.2

Regarding the appeal to the principle of legitimate expectations the court considers that such an appeal can only be successful if criminal prosecution is initiated or continued after statements made by or attributable to the prosecution service (or comparable actions) which would have aroused the defendant's justified confidence that he will not be (further) prosecuted. However, as a general rule, such justified confidence cannot be derived from statements made or actions performed by officials in this country to whom no authority has been allocated regarding the decision whether or not to prosecute (further).

In the court's opinion it has not been made plausible that, at any moment, concrete commitments were made to the defendant regarding non-prosecution of the offences as charged in this criminal case. Furthermore, with reference to the considerations under A. through A.1.3. above, the court finds that the defendant could not have derived the justified expectations from the Liberian Amnesty Scheme, believing that he would not be prosecuted (further) by the Dutch Public Prosecution Service.

A.3 Absence of jurisdiction regarding war crimes

With regard to having jurisdiction in relation to the alleged war crimes, the court considers that the prosecution of the defendant for these crimes is founded on articles 8 and 9 of the Wartime Offences Act (WOS).

To begin with, article 94 of the Constitution states that statutory provisions in force within the Kingdom of the Netherlands cannot be applied if this applicability is incompatible with any binding provisions and decisions of international law organisations. This provision states that the court needs to verify statutory provisions against treaties and decisions of international law organisations, but that the court may not verify those against unwritten international law.

It is in the interest of all peoples that war crimes, wherever committed and by whomever, are combated and prosecuted. In any case, the four Geneva Conventions of 12 August 1949, are based on this principle (also see the considerations under K. through K.4).

Since the entry into force of these treaties, acting in violation of common article 3 of these treaties constitutes crimes as defined in article 8 of the WOS and in this case, based on article 3 of the WOS, the Dutch judiciary is granted so-called universal jurisdiction. The court is of the opinion that this also expressly concerns the crimes defined in article 9 WOS.

A.4

In view of the above the court concludes that with respect to the war crimes as charged, jurisdiction follows from the provisions laid down in articles 8 and 9 of the WOS and additionally concludes that in spite of the Liberian Amnesty Scheme, the Dutch Prosecution Service has not lost its right to (further) prosecute this defendant of Dutch nationality for crimes made punishable by Dutch legislation in force (during the period as charged by the Dutch Prosecution Service).

A.5 Absence of jurisdiction regarding violation of the Sanctions Act of 1977

The defence has further argued that the Dutch Prosecution Service should be declared inadmissible in its prosecution with regard to counts 4 and 5 (acts in violation of the Liberian Sanctions Regulations 2001 and 2002, hereafter: the Sanctions Act violations) allegedly committed in Liberia, since jurisdiction to prosecute these crimes is lacking. After all, article 5 ICW 7 of the Dutch Criminal Code requires double criminality in this respect. Because the alleged violations of the Sanctions Act 1977 are also governed by the Liberian Amnesty Scheme, this requirement is not met, according to the defence.

A.5.1

The court considers that the defence ignores the provision given in article 13 of the Sanctions Act 1977, since this article states that for violations of this act, an active nationality principle is in force. The article provides a more extensive regulation than article 7 of the Dutch Criminal Code. The purpose of the extension of the applicability is to prevent Dutch nationals from evading the rules imposed by the Sanctions Act 1977 by committing the prohibited acts in a foreign country.⁶

Article 13 of the Sanctions Act 1977 does not include the requirement that the crime should be punishable by virtue of the law of the country where the crime was committed. It was deemed appropriate not to include that requirement of double criminality since, in case of sanctions, this often involves crimes committed in a country against which the sanctions are directed and which are not punishable in that country.⁷

The above implies that regarding the question of jurisdiction, only the Dutch nationality of the defendant is relevant.

A.6

In this respect the court notes, perhaps unnecessarily, that the fact that an amnesty scheme is announced does not imply that the crimes which fall under this scheme would not be considered to be punishable crimes in Liberia anymore, but merely that the persons accused of such crimes will not be prosecuted. Therefore, in order to determine jurisdiction of The Netherlands and the possible double criminality in the context of that jurisdiction, such a scheme is not relevant.

A.7 Conclusion

In view of everything that has been considered in the above, the court dismisses the arguments brought forward by the defence counsel for relying on the Liberian Amnesty Scheme, seeking to declare the inadmissibility of the prosecution service in its prosecution of the defendant.

B. Conditional request for hearing witnesses under the Liberian Amnesty Scheme

In the alternative, the defence counsel (conditionally) requested, should the court dismiss the arguments set out under A, to hear the Liberian Minister of Justice and the highest authority within the Liberian Public Prosecution Service concerning the operation of the Liberian Amnesty Scheme (the policy), the national and international reach thereof and the prosecution of crimes as referred to in that Act.

B.1

In view of what has been considered under A to A.7 above, the court is of the opinion that it has now been sufficiently informed regarding the points about which the defence wants to hear the witnesses. The court rejects the defence's conditional request seeking to hear said persons, as the court, in view of what the defence has argued, did not find the need for hearing these witnesses.

C. Equality of arms – plea to declare the prosecution inadmissible

The defence counsel submitted an extensive written defence (pleading notes pages 17-108), which consists of several parts and separate points of criticism and which primarily concludes that the prosecution service should be declared inadmissible in these criminal proceedings.

C.1

Regarding this plea the court considers that the legal effect of declaring the inadmissibility of the prosecution service in the criminal proceedings, pursuant to article 359a of the Code of Criminal Proceedings is only applicable in exceptional cases. This sanction is only possible if gross violation of

the principles of due process have taken place which, by intentional disregard of the interests of the defendant, caused a violation of his right to a fair trial (Zwolsman criterion). This means that it must be established that any unlawfulness has taken place and that the defendant's interests in this case were infringed and that this infringement has been established as such, and that purposively or by gross negligence of those interests his right to a fair trial has been wronged.

In addition, in exceptional cases, even if there is no culpability and the defendant's interests have not actually been infringed, there may be grounds for the inadmissibility of the prosecution service. This is the case if a serious violation of such a fundamental principle as the right to due process has been established, whereby the heart of the legal system is affected (Karman criterion).

The court believes that in so far as the defence relies on a procedural error as referred to in article 359a of the Code of Criminal Procedure, it shall be required that, according to the statutory assessment factors, as mentioned in article 359a, paragraph 2 of the Code of Criminal Procedure, it is clearly explained why an alleged procedural error should lead to a (in this case, the heaviest) legal effect, since only in response to such a defence the court shall be required to render a reasoned decision.⁸

In the opinion of the court, the defence did not clearly state on the basis of these statutory assessment factors why alleged procedural errors should lead to the inadmissibility of the prosecution. The defence has pointed out a large number of criticisms in its plea, which - as the court understands - should jointly lead to this conclusion. Points of criticism that are in particular related to the way in which the (criminal) investigation was organised, but in addition, the defence counsel pointed out that (in her opinion) there were factual inaccuracies or impossibilities of the facts stated by witnesses in their testimonies, and she also raised some individual points of criticism (for example, not immediately deleting conversations or 'confidential calls' with professionals who have client privilege). Despite the use of subheadings, the court finds it hard to detect a clear structure or common thread running through the long pleading notes submitted by the defence counsel. The more than 90 pages of pleadings notes are an almost irreversible clash of criticisms, arguments and allegations, from which it is difficult to deduct a substantiated point of view.

Furthermore, these criticisms rarely state which specific rule would have been violated, what degree of seriousness the default implied, whether a specific disadvantage arose and which disadvantage that would be.

To this extent the defence does not comply with the requirements that may be imposed on it and for that reason alone the defence is ready for rejection.

C.1.1

In view of the importance of the present case, and in particular because of the need to react to this criticism expressed by the defence, the court nevertheless has reason to respond officially.

However, it should be noted that, inherent in the manner in which the defence is conducted, there are

restrictions with respect to taking a purposeful and reasoned decision on what the defence counsel has put forward. As stated before, the court shall understand the points of criticism expressed by the defence in such a manner that these should jointly lead to declare the inadmissibility of the prosecution service in these criminal proceedings, due to irreparable procedural errors allegedly made during the preliminary investigation.

The court further states that at the core this defence is connected with the alleged infringement of the rights of the defence by the way in which the (criminal) investigation was started and by the set-up of the investigation and prosecution up to the present stage of the appeal proceedings. The counsel hereby mentions the principle of 'equality of arms' pursuant to article 6 of the ECHR. In addition, a number of separate criticisms have been raised.

The court tried to group and summarise the various parts and criticisms raised under this plea. The following summaries (sub C.2, C.3 and C.4) do not contain exhaustive summaries of the extensive pleas put forward by the defence counsel; for what has been argued in particular by the defence in this respect, the court refers to the contents of the pleading notes submitted at the hearing of the appeal proceedings.

C.2 The reasons, legal grounds and ways in which the evidence was obtained whereupon the suspicion against the defendant was based

Regarding the start of the investigation the defence counsel (also) argued that the formal ground for the initial suspicion against the defendant can no longer be verified, because the individuals who drew up the reports that served as 'starting information' are 'partly' untraceable. In addition, the reports relate to material that is apparently false, contradictory and pre-directed. The manner in which the prosecution service built up the suspicion is therefore contrary to the principles of diligence, proportionality and innocence presumption, so that the evidence obtained on that basis can never contain any truth.

C.2.1

The court considers that the investigation was launched in response to information from public sources which had come to the attention of the Dutch investigative bodies.

In this manner, partly because of his involvement in the company OTC, the defendant ended up in the report of Global Witness "*The Usual Suspects - Liberia's Weapons and Mercenaries in Côte d'Ivoire and Sierra Leone*" of March 2003 as an 'important player' in the illegal arms trade. The defendant was also mentioned in a negative sense in the December 2000 report drawn up by the '*Panel of Experts*' appointed by the United States Security Council, which among other matters investigated "*the link between trade in diamonds and trade in arms and related materials*" with regard to Sierra Leone. This investigation was expanded to Liberia in later years.

Together with the District Court, the Appeals Court believes that the reports of – in the opinion of the court – authoritative organisations in itself provided sufficiently objectifiable factual circumstances which could form the basis for a reasonable presumption of the criminal offences committed by the defendant. In addition, there was no obligation to start the criminal investigation by verifying the allegations from those public sources. Incidentally, it has not been shown that there was any (strong) indication to that effect. In making this assessment, the court also takes into account that in the first stage of the investigation (custodial) coercive measures, which must comply with more demanding criminal procedural requirements, had not yet been adopted.

With regard of the circumstances that afterwards a number of the authors of the report appeared to be untraceable and that in the course of the investigation there were doubts about the validity of (parts of) the reports, the court considers that, in so far as this should be adopted, these circumstances cannot lead to the conclusion that at the start of the investigation there were not enough reasons for suspecting the defendant of having committed the alleged criminal offences. In addition, as time went on the criminal investigation produced even more and different kinds of incriminating evidence against the defendant.

Against that background the court takes the view that it has not become plausible that the use of the contents of those reports as starting information or the way in which the investigation was organised shortly afterwards, constituted a violation of the principles of diligence or proportionality or innocence presumption.

Therefore the court believes that no procedural error was made at the start of the investigation nor shortly afterwards.

C.3 Unilateral, incomplete and otherwise insufficient investigation

With regard to the (criminal) investigation, the defence counsel argued that the police and the prosecution service made it impossible for the defence to test and question the origin of the evidence obtained from testimonies (how and by whom the witnesses were introduced). For example, the prosecution service deliberately used the Criminal Intelligence Unit (CIE) and confidential contact persons to cover up the way in which the witnesses eventually rendered those statements. Consequently they made it impossible for the defence, on the one hand, to test the motives and trustworthiness of the witnesses as individuals and, on the other hand, to adequately verify the contents of their testimonies. This applies in particular since Liberian witnesses may have unfair motives for testifying contrary to the truth (such as tribal background, political relations and local interests which may be linked to the outcome of this criminal case) and because there are indications in the case file that third parties directed the investigation. According to the defence counsel, distinctive groups of witnesses were introduced by different confidential contact persons, who instructed the witnesses beforehand to make incriminating statements regarding the defendant while rendering their testimonies (by the defence referred to as “menu cards”).

The way in which the witnesses were prepared and subsequently heard, has seriously damaged the reliability of their statements. In this respect the defendant’s counsel argued (among other matters):

- payments were made to witnesses;
- during the interviews witnesses were not separated from other witnesses;
- connections between witnesses were not sufficiently taken into account;
- witnesses were incorrectly informed and instructed;
- witnesses were told that they would not be prosecuted and could therefore testify freely;
- witnesses were heard without sending a request for legal assistance;
- several witnesses were not interrogated sufficiently; among other matters, they failed to question the witnesses about the sources of their knowledge.

Moreover, despite explicit and repeated requests submitted by the defence, various points mentioned – in the pleading notes – concerning witnesses have not been investigated by the prosecution service.

C.3.1

First of all it should be noted that in so far as the criticism refers to taking evidence from witnesses without the underlying request for legal assistance, this criticism fails for a lack of factual grounds. The documents included in appendix 5 to the reply of the advocates general indicate that permission was given by the Liberian authorities for the letters rogatory by the examining magistrate at the District Court of The Hague and that this permission was confirmed several times during the further investigation.

In addition, the court contends that, as far as there would have been any procedural error within the framework of international legal assistance between Liberia and the Netherlands, this concerns agreements between States and therefore cannot constitute a violation of the interests which are intended to protect the defendant.

Furthermore, the court considers that it has not become evident that the reliability of the witness statements used as evidence was affected by the payment of compensations (reimbursement of expenses) and the provision of telephones.

However, like the defence, the court has reservations about the way in which the criminal investigation was conducted in the first phase in Liberia, more in particular in relation to the lack of transparency regarding the introduction of witnesses to the investigative authorities and subsequently the manner in which they were heard.

In an internationally oriented and complex investigation like this one, in which witnesses are approached through intermediaries / confidential contact persons, it may be expected that there is openness about the manner in which and the circumstances under which these witnesses were detected, approached and heard.

The court notes that the CIE of the National Criminal Investigation Service of the Netherlands conducted the first exploratory investigation in Liberia in April 2004. During that investigation, witnesses were brought to the attention of the CIE by some individuals.

In order to protect the identity of these individuals, they obtained a protected status and in the

investigation against the defendant they were referred to as 'confidential contact persons'. It has also become apparent that these confidential contact persons sometimes used so-called 'intermediaries', who then made contact with potential witnesses. After that the information provided to the CIE was forwarded to the criminal investigators. Subsequently, several of these potential witnesses were heard tactically, as witnesses. Other witnesses were directly heard by the criminal investigators. The CIE concealed the way in which the aforementioned confidential and intermediary contact persons did their jobs. During subsequent interrogations by the examining magistrate, questions about this issue were systematically overruled by the examining magistrate. In view of all this, the court finds that they did not act transparently during the first phase of the criminal investigation in Liberia regarding the manner in which witnesses were introduced, how confidential and intermediary contact persons did their jobs and to what degree selectivity played a role.

After thoroughly studying the case file, the court established furthermore that initially the CIE and investigating officers often did not continue to put more critical and concrete questions to the witnesses during their interviews.

The specific problems of this complex international investigation, for which they had little experience (language problems, cultural elements and inappropriate motives to testify in a certain way: see below under G.1 to G.2) may not have been adequately recognised by the reporting officers before and during these interviews.

The court therefore considers that by the way in which the first phase of the investigation was conducted in Liberia, the defence was restricted both in examining the motives and trustworthiness of the witnesses as individuals and adequately reviewing the contents of their statements. The possibility suggested by the defence that third parties allegedly directed the investigation could not be thoroughly examined either. Therefore the court concludes that in this phase the rights of the defence were infringed.

Although, in view of the above, the court has critical remarks about the way in which the interests of the defence were taken into account at that stage, the shortcomings in this regard throughout the entire proceedings cannot be labelled as irreparable procedural errors during the investigation which would result in the failure to conduct a fair trial ("*the general right to a fair trial requires to evaluate the proceedings as a whole*"). Let alone that those interests were infringed to such a degree, that this should lead to such a far reaching sanction as declaring the inadmissibility of the prosecution service.

In this respect, the court deems that sufficient compensation has been given to the defence for the aforesaid shortcomings.

In the course of these long lasting proceedings, partly at the request of the defence, a large number of witnesses were heard, official reports were drawn up and other investigative activities were conducted (such as judicial inspections). In addition, the defence submitted a significant amount of documents relating to the manner in which witnesses were introduced and/or relating to the reliability of witness statements.

With regard to the introduction of witnesses, the court believes that in the autumn of 2005 the

"interview reports" of the preliminary interviews with the informants were nevertheless added to the file and thus from that moment on the contents of those first statements could be examined.

Furthermore, CIE staff, namely [CIE officer 1], [CIE officer 2] and [CIE officer 3] were heard extensively on the deployment and working methods of confidential contact persons and official reports were drawn up on the use of intermediaries (see, among other matters, official report of CIE officer [name CIE officer] dated 28 November 2016). Finally, also confidential persons (CP1 and CP2) themselves were heard by a justice acting as examining magistrate.

All information about the introduction of witnesses and the use of intermediaries and confidential persons gave the court a good picture of the reasons for using intermediary and confidential contact persons in the first phase of the investigation.

This modus operandi during the first phase of the investigation was partly due to the difficult circumstances under which the CIE and criminal investigation officers had to operate in a torn country shortly after the civil war and without an adequate infrastructure. In addition, shielding their operations in order to protect the safety of intermediary and confidential persons played an important role.

The court also believes that it was unlikely that the actions of the investigating officers were motivated by an objective to prevent the defence from getting information about the way in which witnesses were introduced and to take away the opportunity to verify witness statements for accuracy and reliability. Consequently, the court has not found any serious breaches of principles of due process which, by deliberately or grossly neglecting the interests of the defendant, constituted an infringement of his right to a fair trial.

Regarding the manner in which witnesses were subsequently heard, the court considers that in spite of the CIE reports and official reports of witness testimonies, in a (much) later stage many of the witnesses who had been interviewed by the criminal investigators rendered yet another statement before an examining magistrate and/or examining justice. Thus there are several witnesses who have multiple statements in the file.

On the basis of the whole of these statements, the court obtained a clear picture of the (un) reliability and accuracy of witness statements. In this regard, the court refers to what is considered below regarding the accuracy and reliability of witness statements (see G.1 to G.2). These include the considerations as to which circumstances the court took into account when examining the statements or depositions of Liberian witnesses. These also show that a number of statements were not used as evidence, especially for lacking reliability and probative value.

The fact that the previously mentioned shortcomings have been sufficiently compensated may appear from the contents of the oral pleadings and the rejoinder of the defence counsel. After all, the defence - in many cases extensively documented - has pointed out the actual inaccuracy or impossibility of facts mentioned in those statements, as well as inconsistencies in subsequent statements made by a particular witness. The defence has also had the opportunity to mount a comprehensive defence regarding the (alleged) directing of the witness statements and the involvement of intermediary and confidential contact persons in all of this.

However, the court concludes that the suggestions put forward on numerous occasions during the counsel's speech and rejoinder that third parties had a steering influence on the investigation and that instructions had been given by third parties, which would have affected the reliability of the statements used as evidence, have not become plausible.

In view of the above, in the opinion of the court it has not become plausible that any irreparable procedural errors were made during the criminal investigation.

Considering the proceedings as a whole, the Court of Appeal also concludes that it has not become plausible that there has been any infringement of the right to a fair trial.

C.4 Other defence pleas

Furthermore, the counsel put forward a number of individual defences that would affect the admissibility of the prosecution service.

The defence counsel argued that the confidential relationship between herself and the defendant had been violated by confiscating her correspondence and by not immediately deleting intercepted telephone conversations (confidential calls) of professionals who have client privilege.

With regard to the parallel investigation in the appeal proceedings, the counsel argued that the defence was not invited by the prosecution service for the taking of evidence from certain witnesses, while some of those witnesses could not be questioned at a later stage either.

Furthermore, the matters concerning anonymous witnesses A03 and A04, which were presented to the police by the Office of the Prosecutor (OTP) at the Special Court for Sierra Leone (SCSL), would affect the admissibility of the prosecution service. Contrary to a previous decision taken by the Court of Appeal in The Hague, the prosecution service had presented summaries of the allegedly false and mendacious statements of witnesses A03 and A04 at the hearing and included these in the case file. According to the defence counsel, this was done deliberately or in any case with a great chance - which later on appeared to be true - that they could not be heard anymore.

Finally, various questions were disallowed by examining magistrates and justices for often incomprehensible reasons.

C.4.1

The court considers that the allegations regarding the violation of the confidential relationship between the defence counsel and her client have not been substantiated sufficiently. Moreover, that violation has not become plausible in any other way. In so far as some individual issues have not been dealt with in an entirely correct manner (in particular with regard to not immediately deleting the records of certain intercepted telephone conversations), the court believes that in the present

proceedings this should not have any legal effect. After all, the hearing of the case in court has not shown or made it plausible that the police or the prosecution service directly or indirectly used information that can be redirected in any way to one or more of these confidential calls. Now that the seriousness of the error has been put into perspective and considering the lack of any infringement of the rights of the defendant, the court will suffice by simply stating that an omission took place.

As for the argument that the defence was not invited by the prosecution service to be present during witness examinations, the court refers to what was stated under C.3.1. with regard to the total image of the witness statements or depositions. To the extent that this course of action could be considered as not entirely correct, in the opinion of the court it does not lead to any legal consequences.

Regarding the proceedings in relation to witnesses A03 and A04, the court believes first of all that by presenting and providing summaries of the statements of A03 and A04, the decision taken by the Court of Appeal in The Hague was not ignored. The defence counsel's argument that the prosecution service allegedly presented and submitted false and untruthful statements of A03 and A04, requires a substantive assessment of those statements, which does not affect the public prosecutor's admissibility.

Regarding the proposed suggestion that the statements of June 2007 which were incriminating for the defendant were submitted while knowing or with the high probability that A03 and A04 could not be heard anymore, the court is of the opinion that this suggestion is not reflected by the actual course of actions.

As early as 15 November 2007, during the proceedings at the Court of Appeal in The Hague, the prosecution already made a submission to the court to order these witnesses to be heard by the examining magistrate in accordance with article 226a of the Code of Criminal Procedure. Subsequently, these witnesses were heard by the examining magistrate during a so-called *status* examination and the official court records of those statements were submitted to the Court of Appeal in The Hague.

On 9 January 2008, a court record containing the summary of the examinations of June 2007 was submitted in order to substantiate the need to examine witnesses A03 and A04.

The Appeals Court in The Hague rejected this request 'without sufficiently motivating their decision' according to the ruling of the Supreme Court.

After the case had been remitted to this court, at the end of 2010 the prosecution service verified whether the witnesses would still be willing to render a statement whereupon, through the intermediary of the OTP, their answer was affirmative. On 1 February 2011, the court ruled on a petition submitted by the prosecution that these witnesses would be examined in accordance with so-called 'article 226a Code of Criminal Procedure' proceedings. Subsequently, the examining justice did everything in his power to hear these witnesses.

In his letter dated 28 February 2014, the examining justice informed that one witness could not be traced and that the other witness could no longer be approached, that in spite of all the efforts mentioned in that letter it had not been possible to conduct a (status) examination and that he could

not take a decision on the petitions pursuant to article 226a Code of Criminal Procedure. Furthermore, in his letter the examining justice stated his conclusion to the extent that: *"(...) given the facts and circumstances and given the conditions under which the examination should take place, further efforts to hear witnesses A03 and A04 cannot be expected. In addition, I take into account that, in view of the current state of affairs and currently available information, as well as the fact that I am responsible for ensuring that the witnesses' identity remains undisclosed, further international criminal (police) cooperation does not offer any possibilities either."*

In his letter dated 19 May 2016, the examining justice informed the court that he had made an assessment to see whether that conclusion was still applicable, that the information which he had received from the prosecution service had not lead to a different opinion, that it was not to be expected either that the facts and circumstances on which this conclusion is based will change within the near future and that therefor he could still not render a decision on the petitions submitted by the prosecutor.

After that the court did not receive any new information, not even from the prosecution service. For that reason, at the hearing of 6 February 2017, the court ruled that it was not likely that A03 and A04 could be heard within an acceptable timeframe.

In view of the above, it has not become plausible that at the time of the submission of the court record containing the summaries of the witness examinations of A03 and A04, there was already a great chance that these witnesses could no longer be heard. On the contrary, it shows that at least until the end of 2010 it should have been possible to hear A03 and A04.

The position adopted by the defendant that examining magistrates and justices disallowed questions in an often incomprehensible manner, does not involve any procedural error during the preliminary investigation. This concerns an evaluation of interests made by the examining magistrates and justices which, in view of the (closed) legal system, is not open to review by this court.

C.5 Conclusion

In view of all considerations mentioned above under C.1 to C4.1, the court concludes that no irreparable procedural errors were made during the preliminary investigation as referred to in article 359a of the Criminal Procedure Code, which should result in the legal consequences as provided in that article.

Neither did the court establish any serious infringement of such a fundamental principle as the right to a fair trial, which would affect the heart of the legal system.

The court therefore dismisses the comprehensive defence put forward by the defence counsel seeking to declare the inadmissibility of the prosecution service, in all its elements.

Since there are no other facts nor circumstances which preclude the admissibility of the prosecution service, the court concludes that the prosecution service is admissible in its prosecution.

Acquittal

D.1 Acquittal of complicity and incitement to commit war crimes and crimes against humanity.

Briefly stated, under counts 1A primarily, 2A primarily and under 3A primarily, the defendant was charged with the (co) commission of war crimes committed during different timeframes and crimes against humanity in Guéckédou in Guinea, and/or in (the vicinity of) Voinjama and Kolahun in Liberia. Under counts 1A alternatively, 2B alternatively and 3B alternatively, the defendant was charged with deliberately inciting others to commit those war crimes.

D.1.1

The Court of Appeal, together with the advocates general and the defence, has come to the conclusion that the defendant should be acquitted of those charges, in the absence of legal and conclusive evidence for these allegations. In this respect, the court refers to what is considered in this regard under L and L.1.

D.2 Acquittal of *command responsibility* and *civil leadership* in relation to war crimes and crimes against humanity

Once again briefly stated, under counts 1B, 2B and 3B the defendant was charged with the fact that he deliberately allowed his subordinates to commit the alleged war crimes and crimes against humanity in Guéckédou in Guinea, and/or in (the vicinity of) Voinjama and Kolahun in Liberia, or that he failed to take measures to prevent this (the so-called *command responsibility* and/or *civil leadership*).

D.2.1

The Court of Appeal, together with the advocates general and the defence, has come to the conclusion that the defendant should be acquitted of those charges, in the absence of legal and convincing evidence for these allegations. More in particular the court considers in this respect that there was a hierarchical relationship between the defendant, as president and/or owner of OTC and

RTC, and a number of persons who committed war crimes. However, according to the court's judgement, the evidence fails to prove that, also on a military level, the defendant had the effective opportunity (effective control) to take preventive measures against atrocities (war crimes) committed during the attacks on or in the vicinity of Guéckédou, Voinjama and/or Kolahun.

D.3 Conclusion

Consequently, during the hearing of the case, the contents of legal evidence did not convince the court that the defendant committed the offences as charged under count 1A primarily and alternatively, 1B, 2A primarily and alternatively, 2B, 3A primarily and alternatively and 3B, so that the court shall acquit the defendant of those charges.

Exclusion of evidence

E. Equality of arms –plea seeking to exclude all evidence

Alternatively, to her comprehensive defence (see C, C.2, C.3 and C.4) the defence counsel added the conclusion that all evidentiary material should be excluded from the evidence.

E.1

First of all the court points out that, in so far as this request refers to means of proof that the court did not use as evidence, this claim put forward by the defence will not be discussed and assessed for lack of interest.

E.2

As already considered under C.1, the defence did not motivate (at least not sufficiently) on the basis of statutory assessment factors, why an alleged procedural error should lead to a legal effect (alternatively, the exclusion of evidence).

So far the defence does not comply with the requirements that may be imposed given the current state of case law. For this reason alone, the defence's application must be rejected.

E.3

Furthermore, for the sake of completeness and with reference to the considerations under C.2 to C.5 inclusive, the court concludes that it has not been demonstrated that any procedural error as referred to in article 359a Code of Criminal Procedure was made during the preliminary investigation, to which the legal effect mentioned in aforementioned article should be applied.

Consequently, the court dismisses the plea put forward by the defence counsel seeking to exclude all evidence.

E.4 Other pleas seeking to exclude evidence

Furthermore, the defence requested to exclude from the evidence statements made by various witnesses mentioned by name and in that context (inter alia) referred to (in her eyes) the factual inaccuracies or impossibilities of facts about which they testified and to inconsistencies in the successive statements rendered by a specific witness. In a single case, the defendant's counsel claimed that the witness could not be adequately questioned by the defence.

E.4.1 Rejection of applications for exclusion of evidence

The court refers to the considerations given below concerning the accuracy and reliability of witness statements or depositions (see under L and L.1). On the basis of the hearing of the case in court and overseeing the contents of the entire case file, and more in particular the contents of the witness statements, the court received an adequate image in order to be able to judge the (un)reliability and accuracy of (parts of) the witness statements.

A number of testimonies were not used as evidence, precisely because of a lack of reliability or probative value.

However, some inconsistencies or inaccuracies are no reason for the court to exclude each time the entire statement of a witness.

The suggestions made several times that third parties had a steering influence on the investigation and that instructions had been given by third parties, which would have affected the reliability of the statements used as evidence, have not become plausible in the opinion of the court.

To the extent that this plea is based on the assertion that the lack of an adequate opportunity to interrogate an incriminating witness pursuant to article 359a of the Code of Criminal Procedure should lead to the exclusion of evidence, this plea is rejected due to the fact that this assertion has no basis in law.

However, a statement rendered by a witness during the preliminary investigation which was

incriminating for the defendant shall be excluded from the evidence if the defence did not have an adequate opportunity to question the witness and this incriminating testimony has been of decisive importance for the evidence ("*solely and decisive*") or, in other words, this evidence is not supported sufficiently by other evidence. Nevertheless, no (part of a) witness statement – in so far as this statement was used as evidence – can be considered to be a(n) (partially) isolated statement, because all testimonies are sufficiently corroborated by the contents of other means of proof that were used as conclusive evidence.

Consequently, the court rejects the defence's pleas seeking the exclusion of the evidence.

Means of proof used by the court

The 89 means of proof which have probative value for the judicial finding of fact have been included in the appendix to this judgement (92 pages).

Special considerations (regarding the evidence)

F. General

The decision that the proven offences were committed by the defendant is based on the facts and circumstances contained in the above-mentioned means of proof, considered in conjunction with one another.

Each means of proof – also parts thereof – will only be used as evidence for that proven fact, or those proven facts, to which it relates according to its contents.

G. Insufficiently reliable witness statements

The counsel for the defence argued that the defendant should be acquitted of the charges for lack of sufficiently reliable witness statements.

For all that has been argued concerning this matter by the defence, the court refers to the contents of the pleading notes submitted during the hearing of these appeal proceedings.

G.1 General considerations with regard to the appreciation of the evidence

The court considers that the case file contains various witness statements which might demonstrate the defendant's involvement in illegal weapon deliveries and war crimes. A large number of those witnesses were interviewed in Liberia by the CIE of the Netherlands Criminal Investigation Police, after they had been introduced to the CIE by so-called 'confidential contact persons'. The information provided to the CIE was then forwarded to the Dutch criminal investigators. Afterwards, several of those witnesses were heard tactically, meaning in their capacity of witnesses. Other witnesses were directly heard by the criminal investigation police. At a (far) later stage, many witnesses (who had been interviewed by the police) rendered a statement before an examining magistrate and/or examining justice. So multiple statements of various witnesses are included in the case file.

From the outset, the defence challenged the incriminating statements by – in many cases documented extensively and providing many details – pointing at the (in her eyes) factual inaccuracies or impossibilities of the facts mentioned in those statements, as well as inconsistencies in the successive statements rendered by a specific witness.

Regarding the assessment of the accuracy and reliability of the witness statements or depositions, the court has taken into account (inter alia) a more general factor (lapse of time), as well as a number of factors that are specific for this particular criminal case (political, cultural and socioeconomic differences, the influence of traumatic experiences and influencing witnesses), which could have affected the accuracy and reliability of the statements. In the paragraphs below the court will discuss these factors in greater detail.

G.1.1 Lapse of time

The events set out in the charges relate to facts and circumstances which allegedly took place a long time ago. When a witness renders a statement, he will have to rely on his memory. Ideally, the event about which the witness testifies, must have been well observed and saved, the stored information must be kept unchanged in his memory for a while and, finally, the witness must be able to retrieve the information from his long-term memory. Additionally, circumstances during the perception of the criminal offence may affect the perception and, consequently, the quality of the witness statement. This applies even more when, as in this case, it is about the perception of traumatic events in a war situation.

As far as this applies to observation skills, it is evident that the (sometimes very) long passage of time alone puts a strain on the memory and the limits of that memory of the numerous witnesses who have testified about these events. For most witnesses in the present criminal case, it must be assumed that the time elapsed since the alleged events has affected the accuracy and reliability of the memory of what has been observed and experienced. As a complicating factor, as discussed below, it must also be taken into account that Liberia predominantly has an oral culture, with information being remembered (through the memory of a particular place or event, see also below) rather than being written down.

In view of the aforementioned lapse of time, a significant proportion of the evidence used by the court is taken from witness statements rendered in an early stage (before the criminal investigation police and the examining magistrate).

G.1.2 Liberian society

The alleged events, if proven, took place in Liberia and, in part, across the borders of Guinea, being

non Western countries, which politically, culturally and socio-economically, differ and differed enormously from Dutch society.

Both the expert consulted by the court S.D.K. Ellis, senior researcher at the Africa Study Centre in Leiden, as the expert consulted by the court Professor M. Utas, Senior Researcher at The Nordic Africa Institute in Uppsala, Sweden, have conducted extensive research into Liberian society and the civil wars. In their reports/answers to questions, the following specific political, cultural and socioeconomic differences are identified, which the court has taken into account:⁹

- Liberia was actually in a state of war from the end of 1989 to 1997 and again from 1999 to 2003. During those periods, the country was internally torn by major, in particular political and ethnic disputes and armed conflicts (in this case), which puts a special strain on the investigation, such as the tracing of available witnesses, the memory of these witnesses about specific events and the availability of other additional evidence.
- Liberia predominantly has an oral culture, in which information is remembered (through the memory of a particular place or event, see below) rather than being written down.
- English is the official language in Liberia, but there are more than twenty other languages/dialects. For some Liberians, English is the second language; for others it is their mother tongue. Those who learn English as a second language often have a limited command of the language. In general, Liberian English is neither a real Creole language nor a '*pidgin*' language, but a simple version of standard English. Initially, Liberian English is difficult to understand for newcomers. As the court also found in studying the case file, it cannot be ruled out that the translation of Liberian English into ordinary English may have gone wrong in some parts/details. Witnesses themselves also reported communication problems while rendering a statement.
- Liberians have a culture of secrecy, the underlying reasoning being that important information may not be disclosed to persons who are not qualified to receive that information.
- Liberians are generally not interested in the times of the clock, but often refer to different parts of the day, i.e. dawn, morning, afternoon, evening.
- When referring to timeframes, Liberians rather refer to events, such as the birth of a child or public events, the rainy season, or dry season, instead of being able to remember an exact date or even a year. References made to time and number are therefore generally inaccurate.
- Liberia has a very low education level. In 2010, 61% of the adults were literate, in 2004 that percentage was 55%. In addition, Utas observed that although officially people are able to read and write, in reality they often have great difficulty in doing so. Moreover, Liberians often exaggerate their education level because it is one of the most important elements on which their status is based. Considering the observations made by Utas, the percentage of literates must have been lower in the period mentioned in the charges.
- Generally speaking, interviewing or hearing Liberians involves many problems, especially when it comes to hearing people about issues that are sensitive due to concerns about safety and because these people are part of an informal network.
- It is possible that witness statements rendered by Liberians are not accurate for lack of clarity. On the one hand, this is due to cultural differences in the way of explaining or displaying events (see above). On the other hand, a witness gives himself the opportunity for an alternative explanation of his statement, if later on such a possibility of escape appears to be useful. In this respect, feelings such as insecurity, shame and self-interest can play a role. Liberians can therefore be difficult to follow or even seem illogical.

Furthermore, the court found that place names in Liberia are spelled in various ways, even in official maps that are attached to the documents. In addition, there are place names that sound the same or are even spelled in the same way, but do not always refer to the same place. The fact that a witness names a particular place, which is also located under the same name (or with a slightly different spelling) in another area of Liberia, does not mean that this statement should be regarded as unreliable.

G.1.3 Trauma and memory

Another subject that the court has given particular attention, is the fact that a number of witnesses who testified in the present criminal case (the so-called 'former fighters') have been exposed to (severe) traumatising events as (child) soldiers during the first civil war (end 1989 to July 1996). A number of them testified that they had also been involved as perpetrators in the (seriously) traumatising events that took place during the timeframes referred to in the indictment. In some cases, these witnesses subsequently stated that they themselves had been imprisoned by rebels and had become victims of (seriously) traumatising events.

Consequently, for the assessment of statements of this type and the possible inconsistencies and inaccuracies therein, the court will take into account the fact that these refer to extremely dramatic events which may have had a great impact on the witnesses concerned.

If perpetrators/victims of traumatic events rely on memories of those events, it appears that on several occasions statements are not entirely consistent. The court has found that this is also quite frequently applicable in the present case.

The court also takes into account that, in the case of statements of such 'former fighters', insecurity, shame and self-interest can play a major role.

On the basis of the above, the court concludes that the rendition of a traumatic event by a witness and/or victim must be assessed with due care and only in conjunction with other evidence. This rendition may indeed be distorted.

G.1.4 Collusion

In the opinion of the court, based on various documents in the case file it appears that, after the defendant had been brought before the examining magistrate and had been remanded in custody on 18 March 2005, witnesses in Liberia were approached by persons associated with the defendant, being: [person concerned 1], [person concerned 2] and [co-perpetrator 1]. The witnesses who were approached were offered money in order to render a different statement than their previous statement which was incriminating for the defendant. With that intention, [co-perpetrator 1] started looking for them carrying a list with names of witnesses and a photograph of witness [co-perpetrator 4].¹⁰

As a result, witness [witness 1] made a phone call to reporting officer [reporting officer 1]. Among other things he then stated that [person concerned 2] and another man were searching for witnesses carrying a list of names including witness [witness 2]. They wanted the witnesses to render a different statement.¹¹ Witness [witness 2] also reported to the police about two men, including [person concerned 1], who were searching for witnesses carrying a list of names.¹²

[Name team leader CivPol], who was team leader of CivPol in Buchanan during the aforementioned period, stated that at that time he had acted as emergency contact for witnesses in the present criminal case. Several witnesses contacted him, because they had been approached by men asking them to change their statements. Subsequently, a meeting was held that was attended by five or six witnesses, including [witness 3], [co-perpetrator 4] and [co-perpetrator 9]. The witnesses looked frightened, according to [name team leader CivPol]. After the meeting, in the middle of June 2005, a witness contacted him again.

That witness told him that it was being organised that people were going to render false statements. A few days later the name [alias co-perpetrator 1] was mentioned. According to that information all

witnesses had been approached personally.¹³

The image of influencing witnesses by persons associated with the defendant is enhanced by intercepted telephone conversations and email conversations between the defendant's daughter and the defendant and others, including [co-perpetrator 1]. From all this the court concludes that, in the period after the defendant had been remanded in custody, the defendant's daughter sent a list with names of witnesses, had contact about the list of witness statements with persons associated with the defendant in Liberia (among them [co-perpetrator 1]). In the summer of 2005 she travelled to Monrovia herself.¹⁴

The image of influencing witnesses by persons associated with the defendant is also enhanced by statements made by witnesses before the examining magistrate in which they explicitly reported that they feared for their safety because of people who were approaching them in Liberia.¹⁵

Subsequently, in 2005 various witness statements (affidavits) that originated from the defence were included in the case file. Those affidavits had been rendered in June 2005 in Monrovia at the offices of a Liberian Law Firm and were all exculpatory for the defendant.

In view of the above, the court concludes that the defence exerted pressure on several witnesses in order to render statements that were exculpatory for the defendant (collusion). For the assessment of the accuracy and reliability of these statements, the court has taken this into account. This prompted the court to set aside the affidavits of witnesses who had previously rendered incriminating statements submitted by the defence, for being unreliable.

G.2 Assessment of witness statements

For the assessment of the accuracy and reliability of witness statements, the court has not closed its eyes for the factual inaccuracies/impossibilities and inconsistencies (as pointed out by the defence counsel). For that same reason, the court very carefully made an assessment and appreciation of the means of proof used as evidence, and if there were repeated inconsistencies or gaps in a statement, in some cases this gave rise to completely disregard the statement, unless the witness statement concerned, in so far as relevant, was corroborated on essential elements by other evidence.

In view of the foregoing considerations under G.1.2 and G.1.3, in the case of minor discrepancies (for example, the exact dates) in witness statements, the court did not assess these statements in advance as unreliable, because these discrepancies are often explained by the factors outlined above.

With regard to statements rendered by witnesses which have been used as evidence, the court has no reason whatsoever to doubt the accuracy and reliability of those statements, as far as used for the judicial finding of fact, now that – considering their mutual (time) connection and coherence and the remaining (supporting) evidence – the court concludes that they are consistent in the core. In this regard, the court refers to the facts and circumstances set out below, which provide a clear picture of the defendant's involvement in the alleged offences.

H. Weapons and ammunition

The defence took the view that the defendant should be acquitted of the charges under counts 4 and 5 – in short – the importation of weapons into Liberia in violation of the Sanctions Regulation Liberia 2001 (count 4) and the Sanctions Regulation Liberia 2002 (count 5). The counsel for the defence primarily argued in that respect (among other matters) that legal and conclusive evidence to prove that (illegal) weapons and ammunition were imported into the port of Buchanan by the [ship 1] is

missing.

Alternatively, the defence counsel argued that, if the court establishes the fact that weapons were imported by the [ship 1], there is still no or insufficient legal and convincing evidence available which shows that the defendant had knowledge thereof and, in addition, no evidence to prove that the defendant had power of disposal over those goods. Indeed, from various contracts, statements and job descriptions, it appears that the defendant was the president of OTC, but that he had no effective control over that company.

H.1 Established facts and circumstances

In view of the correlation between the primary and alternative plea, the court will discuss them jointly.

On the basis of the means of proof used as evidence, including the defendant's statements, the court establishes the following facts and circumstances, on the basis of which the conclusions are drawn as described below.

H.2 Defendant's involvement in OTC and RTC

With regard to the defendant's involvement in both companies Royal Timber Company (RTC) and Oriental Timber Company (OTC):

- In 1986, the defendant's company TIMCO started its logging business in Liberia. The defendant had concessions to log wood in Liberia. At the end of the 90's (1997 or 1998) the company was transferred into RTC.
- The defendant stated that RTC was his company.
- The defendant referred to himself as president or owner of this company.
- In the starting period the defendant was sole shareholder of RTC. Later on part of the shares were transferred to persons in the circles around Charles Taylor (see also below).
- Both operationally and strategically the defendant was involved in RTC. Among other matters, the defendant was involved in obtaining concessions for RTC, hiring personnel, and buying vehicles for RTC. He also received royalties from the company.
- The defendant stated that together with his Indonesian partners he founded OTC, another company that was involved in logging in Liberia. The contracts for OTC were signed in 1999.
- The defendant was president of OTC and owned a substantial part of the shares. The director was [OTC director] (hereafter: [OTC director]).
- At strategic level, the defendant intervened with OTC, he was involved in obtaining concessions, maintaining contacts with the Forestry Development Authority (FDA) and LFDC (formal owner of concessions), he was Charles Taylor's contact person in relation to OTC and was also involved in acquiring effective control over the port of Buchanan by OTC.

- At operational level, the defendant was also involved in OTC. This included his (indirect) involvement in hiring people for OTC's security, buying machines for OTC, supervising the logging production, visiting the port of Buchanan, inspecting and giving orders with regard to unloading the cargo of the [ship 1] (an OTC ship). In addition, on behalf of OTC he made payments to (for example) Charles Taylor and various individuals associated with Taylor.

H.2.1

In the light of the facts and circumstances mentioned above and what appears from the evidence in this respect, the court concludes that the defendant fulfilled an important role in the operations of both OTC and RTC and also had effective control within these companies.

The counsel's assertion that the defendant did not exercise effective control within OTC is therefore refuted by the contents of the evidence used by the court.

H.3 Relation between (the companies of) the defendant and (the regime of) Charles Taylor

With regard to the ties between (the companies of) the defendant and (the regime of) Charles Taylor:

- The defendant stated that he formed part of a second *inner circle* of Charles Taylor, being the 'major business people' who had a direct relationship with the president.
- The defendant introduced OTC's director, [OTC director], to Charles Taylor, the FDA and the Ministry of Finance.
- With regard to both OTC and RTC, as well as other (business) matters the defendant had direct contact with Charles Taylor.
- There was a close financial relationship between the defendant and Charles Taylor, through the connection with OTC. The defendant stated before the examining magistrate that Charles Taylor had insisted on the arrangement that the defendant should pay 50% of the royalties which the defendant would receive from OTC to him, Charles Taylor.
- Charles Taylor named OTC his "*pepperbush*", a Liberian expression which according to the defendant means that something is important to you, for example in the financial or family context; something in which someone places a personal interest.
- Charles Taylor had commercial and financial interests in RTC. In this respect the court relies on the defendant's own statement and on digital files found in the possession of the defendant. Furthermore, a written document from 2002 shows that Charles Taylor's daughter [name of Charles Taylor's daughter] was in possession of RTC shares. In addition, there is an agreement that dates from September 2002 between the shareholders of RTC, being the defendant and [person concerned 3]. As results from a statement rendered by the defendant during the hearing in court, the latter had been put forward by Charles Taylor himself.
- Through the intermediary of Charles Taylor, OTC and RTC received large areas for the exploitation of the logging business in the form of concessions.
- In fact, OTC received the use of and control over the port of Buchanan.
- The personal ties between OTC and persons who worked for the Liberian government were close.

[co-perpetrator 2] worked in the Liberian army as a high ranked military officer (ex-chief of staff of the Navy Division). At the time of the alleged offences [co-perpetrator 2] was director of the National Port Authority (hereafter: NPA), operated as commander of the armed forces at the frontlines and in

addition, he was head of security of OTC.

According to [name aide-de-camp], the aide-de-camp of Charles Taylor, [co-perpetrator 2] had personally been assigned to that position by Taylor, first of all to organise the security unit at OTC and secondly because Taylor wanted to be involved in OTC.

[co-perpetrator 3] did not only serve as head of the special security unit of Charles Taylor, the Special Security Service (SSS), but also fulfilled the role of Advisor at

OTC Security. The defendant stated that he paid [co-perpetrator 3] and his SSS staff on several occasion.

[co-perpetrator 1] served as general of the government army NPFL (National Patriotic Front of Liberia). Later on [co-perpetrator 1] started working for the defendant for both RTC and OTC. [co-perpetrator 1] acted as 'resident manager', performing a large variety of activities, both privately and commercially for the defendant and his companies. According to the defendant's statement before the examining magistrate, because of his connections [co-perpetrator 1] was engaged if something needed to be arranged at government level.

- On various occasions Charles Taylor directly requested the defendant to have OTC money paid to him. The defendant himself made many of those payments himself.
- The defendant purchased various goods at the request of Charles Taylor, such as goods for road constructions, machinery and a car. At the request of Taylor, he also transferred money for the purchase of a helicopter.
- During several months the defendant placed his helicopter at the disposal of Charles Taylor.
- The defendant made use of his contacts with Charles Taylor, by letting Taylor write a letter to [witness 6], Minister of Labour, at the time of the regime Taylor, in order to get exemption from payments for working permits for non-Liberian employees of OTC.
- The defendant went to Thailand with a delegation from Charles Taylor, for talks about the recognition of Taiwan by Liberia. The Minister of Foreign Affairs was also present. On this occasion they made use of the contacts of [OTC director], director of OTC.
- On behalf of Liberia, the defendant maintained contacts with the European Union through [person concerned 4] and [person concerned 5]. The defendant facilitated a visit to Liberia by [person concerned 4], for example by buying a ticket for [person concerned 4], by letting him stay in (his) hotel Africa and by making a trip to Buchanan with [person concerned 4]. All this to improve the relations between the European Union and Liberia.
- In cooperation with the EU, the defendant tried to set up a meeting with the former president of Guinea, Lansana Conté, for the purpose of starting peace negotiations between Guinea and Liberia. In that respect the defendant made financial contributions to [person concerned 4] and [person concerned 5].
- The Liberian authorities issued a diplomatic Liberian passport to the defendant. At a later stage that passport was renewed.

H.3.1

From the abovementioned facts and circumstances, as well as all that results from the means of proof in this respect, the court concludes that the political, financial and private interests of Charles Taylor, then President of Liberia, were strongly intertwined with the interests of (the companies of) the defendant.

H.4 Delivery of weapons and ammunition by the [ship 1]

With regard to the delivery of weapons and ammunition by the [ship 1]:

- From 2000 OTC is the owner of the ship the [ship 1].
- Between 2000 and 2003, goods were transported via Serway Shipping (previously: Global Star Shipping Company) by the [ship 1] from/for OTC and RTC between Liberia and Asia. For this transport the ship used the port of Buchanan in Liberia.
- The overview in the logbook of the [ship 1] shows that in the period from 2000 to April 2003 the ship entered the port of Buchanan eight times to unload goods. In this respect the court considers that, according to the underlying data¹⁶ of this overview, contrary to the data in the logbook, the ship did not enter the port of Buchanan on 21 April 2003, but on 25 April 2003. In conclusion, the ship entered the port of Buchanan in the months of August 2000, January 2001, June 2001, November 2001, February 2002, August 2002, December 2002 and April 2003.

The witness statements used by the court as evidence show a consistent image of a more or less fixed procedure which was followed when the [ship 1] entered the port of Buchanan with weapons and ammunition on board (this cannot be established with certainty regarding the delivery of August 2002, see below under H 4.2).

- i. High-ranking persons of OTC and Taylor's government would come to the port of Buchanan. The same persons would not always be present, but often the defendant and [co-perpetrator 1] were among them.
- ii. OTC security officers were instructed to close the port and ensure that only the high-ranked persons, OTC security personnel and OTC employees who were involved in unloading the weapons, would be present.
- iii. On several occasions the defendant himself inspected shipments of weapons and ammunition.
- iv. On several occasions the defendant himself directly gave the order to unload the weapons and ammunition.
- v. Subsequently, the high-ranking persons would disappear from the port, after which various witnesses, including persons belonging to the security of OTC, boarded the ship and unloaded the weapons and ammunition.
- vi. Unloading weapons and ammunition only took place during late evening and night, because the OTC leadership did not want to disclose the nature of the goods on board of the ship. However, the unloading of regular "commercial" goods did take place during the day.
- vii. The weapons and ammunition were packed in wooden crates/boxes ("*wooden crates/cartons/boxes*") and containers.
- viii. Several witnesses saw weapons and/or ammunition in those containers and wooden crates/boxes. Those witnesses testified about RPG's, AK 47's and large machine guns (GMG's) and the corresponding ammunition. In addition, witnesses saw inscriptions on the containers and wooden crates/boxes that indicated the presence of the aforementioned weapons (for example, "AMMO", "ak47 rifle" "RPG"). Some witnesses saw weapons in crates/boxes, because those crates/boxes had been broken during transport or unloading.
- ix. The weapons were loaded on trucks, logging trucks (including low loaders) and/or pickups ("*trucks*"). The containers and crates were covered with nets or tarpaulins.

Furthermore, those testimonies give a general picture of the places where the arms and ammunition

brought to the port of Buchanan by the [ship 1] were subsequently stored and distributed:

- Some of the weapons and ammunition were directly distributed to the security guards of OTC in the port of Buchanan.
- Escorted by the Anti Terrorist Unit (ATU), the '*trucks*' transported the containers and crates/boxes with arms and ammunition. Some of the weapons and ammunition were brought to the 'Loop'. On the premises of 'The Loop' there were villas which were used by the management of OTC. This is where the weapons and ammunition were stored and distributed to the security guards of OTC.
- Weapons and ammunition were also transported to Monrovia, both to White Flower, a residence of Charles Taylor in Congotown, and to the Executive Mansion in Monrovia.

In (the direct vicinity of) both residences arms and ammunition were stored and distributed to government troops to be used (among others) for the armed battle at the frontlines.

- Other parts of the shipment were subsequently transported to Bomi Wood, a small '*base camp*' of RTC close to Tubmanburg, where again weapons were distributed among the government forces, which were subsequently brought to the frontlines.

H.4.1 The defendant's presence in the port of Buchanan

During her oral pleadings the counsel argued that seven times during the times that the [ship 1] was in the port of Buchanan, the defendant was not in Liberia and that he was in Monrovia the other two times. In so far as witnesses testified that they had seen that the defendant was in the port of Buchanan when the ship was there or that they had seen that the defendant inspected the [ship 1], those statements are considered unreliable for that reason alone.

H.4.2

In this respect, the court refers to the official report regarding the defendant's use of the American Express Card, information in his passport and correspondence found in relation to his travel movements dated 23 November 2015.¹⁷

The court infers from this that on two occasions the defendant cannot have been in the port of Buchanan when the [ship 1] was there.

The first time concerns April 2000. On the grounds of, among others, the statement rendered by [person concerned 6], the court concludes that no arms or ammunition were delivered on that occasion, because at that time the ship had just been bought by OTC and was empty when it had come sailing from England.¹⁸ The second time refers to – just like the first time not charged under counts 4 and 5 – a delivery in August 2002. Presumably the defendant was staying in Paris at that moment. The evidence used by the court does not demonstrate that a witness explicitly stated that he had seen the defendant in the port of Buchanan during that delivery.

With respect to the other seven times that the [ship 1] entered into the port of Buchanan (months August 2000, January 2001, June 2001, November 2001, February 2002, December 2002 and April 2003) and based on the credit card transactions, the travel movements of the defendant and the correspondence found, it cannot be excluded that the defendant has been in the port of Buchanan when the [ship 1] was there. This also applies to the extent that witnesses have stated that the

defendant had inspected the cargo on (one of) those deliveries.

In the opinion of the court, this defence therefore lacks factual grounds.

H.4.3

The counsel's assertions that the defendant did not know that weapons were being imported and that, in addition, he did not have power of disposal over those goods, is therefore refuted by the contents of the evidence used by the court and all that has been considered in the above.

After all, on the basis of the established facts and circumstances and the conclusions drawn from the above regarding the defendant's effective control and major role within OTC and RTC, the interrelationship between (the companies of) the defendant and (the regime of) Charles Taylor and the delivery of weapons by the [ship 1] and the transport of weapons (H.4), the court concludes that the defendant had a significant role in the structural importation of weapons through the port of Buchanan by the [ship 1] in the period between 2000 and 2003.

In order to reach this conclusion, the court also included the contents of the letter drawn up by the defendant with file name 21228 created on 5 September 2002.¹⁹ In this letter to the attention of "John", the defendant observes that 'they' have been attacked heavily in Liberia and do not have enough arms to defend themselves and are quickly losing ground. Concerning the role of the UN and the import of weapons, the defendant then points out:

"The UN is not doing anything and they are claiming that we are still importing arms. What do they want, we must lay down and die. If we do not stop these people then they will be in Monrovia in no time (...)"

In the light of the foregoing the court interprets this letter, in such a way that the defendant (i) is closely tied with Taylor's regime and feels connected with it, (ii) contributes ideas about whether or not to import weapons, and (iii) considers the import of weapons to be legitimate in order to stop the warriors.

H.5 Sanctions Regulations 2001 and 2002

The court considers that during the period from May 2001 to May 2002 including, Resolution 1343 (2001) dated 7 March 2001 from the Security Council of the United Nations was in force. This resolution included among other matters that Member States had to take measures to prevent that weapons were sold and delivered to Liberia (UN arms embargo). On 6 May 2002, Resolution 1408 (2002) was adopted. This resolution, which imposed another UN arms embargo on Liberia, was in force until May 2003.

The European Council of the European Union adopted the arms embargo in their regulations.²⁰ Accordingly, the Dutch Minister of Foreign Affairs at the time introduced two ministerial regulations based on the Sanctions Act 1977, being the Sanctions Regulation 2001 (entry into force on 17 May

2001) and, in replacement thereof, the Sanctions Regulation Liberia 2002 (which expired on 8 May 2003).

H.6 Conclusions regarding counts 4 and 5

In view of what has been considered above, the court believes that it has legally and convincingly been proven that the defendant, in conjunction with others, intentionally introduced weapons into Liberia. Subsequently, these weapons (inter alia) were distributed among the troops from the army of (the regime of) Charles Taylor.

Two of these deliveries constituted a violation of Sanctions Regulation Liberia 2001 and two deliveries constituted a violation of Sanctions Regulation Liberia 2002.

On the basis of aforesaid facts and circumstances, seen in conjunction with and in the context (of time) with everything else that results from the means of proof, the court concludes that, contrary to the defence counsel's pleas, it has been legally and convincingly proven that the defendant committed the violations of the Sanctions Act 1977 which have been declared proven under counts 4 and 5 of the charges.

I. Defences seeking acquittal of complicity in war crimes

The author of the indictment, under counts 1A, 2A and 3A, each time (in so far as still relevant) charged the defendant in the further alternative with complicity in the violation of article 8 (old) of the Wartime Offences Act (hereafter: article 8 WOS). The offence charged under count 1A relates to war crimes committed in Guéckédou, a city in the republic of Guinea, also referred to as Guinea-Conakry (hereafter: Guinea). The offence charged under count 2A was allegedly committed in (the vicinity of) Voinjama and the offence charged under count 3A in (the vicinity of) Kolahun. Voinjama and Kolahun are cities located in the north of Liberia, in Lofa County.

Hereafter, the alleged offences will be jointly referred to as "the war crimes".

The defence counsel pleaded acquittal of all alleged war crimes. Primarily, the defence counsel took the position that on the basis of the legal means of proof one cannot draw the conclusion that the defendant was in any way involved in the war crimes. From the outset, the defence has challenged the incriminating statements relating to war crimes by pointing out the factual inaccuracies or impossibilities of facts mentioned in those statements and inconsistencies in successive statements made by a certain witness.

Alternatively, the counsel claimed that it cannot be established that, at the time of the alleged criminal offences, there was a (be it or not international) armed conflict in Liberia and/or Guinea, which is one of the conditions to come to the judicial finding of fact in relation to war crimes. In this respect the counsel argued that this question has not yet been answered by the courts in the Netherlands or an (ad hoc) UN tribunal, so that the court itself shall have to make the assessment, in compliance with the criteria laid down in international case law, whether a conflict can be qualified as an armed conflict. The file does not contain sufficient reliable evidence to prove that qualification.

According to the defendant's counsel, the evidence fails to prove this with regard to the nature, size, places of the alleged armed conflict, the supposed structures of the opposing parties and the degree of organisation of those parties.

In the further alternative, the counsel claimed that the defendant should be acquitted of the war crimes, because it cannot be declared legally and convincingly proven that the defendant had knowledge of the war crimes committed.

In that respect the counsel argued that, assuming that weapon transports did take place, it cannot be established that those weapons served for or formed part of a plan to commit war crimes. This also applies to the other contributions which the defendant allegedly made according to the prosecution service to the regime of Charles Taylor (i.e.: personnel, equipment, money and a meeting place).

I.1 Order of discussing the counsel's defences and further considerations of the court

In reaction to these defences, first of all the court will establish the facts and circumstances based on the means of proof used with regard to the parties to the conflict, the fights in (the vicinity of) Guéckédou, Voinjama and Kolahun (see below under J. to J.4) and on the basis thereof the court will draw its conclusions to be set out below.

For the purpose of establishing the facts, the court did use the witness statements contested by the defence. Regarding the manner in which the court has examined the reliability and accuracy of the statements, the court refers to what is considered under G.1 to G.2. In addition, the court will respond further to two specific points raised by the defence regarding alleged factual inaccuracies or impossibilities in statements made by a number of witnesses, namely with regard to the RTC camp 'Bomi Wood' (see below under J.5) and the identity of the person Bassaboy and/or Kpellehboy (see below under J.6).

Thereafter, on the basis of current legislation, international conventions and customary law, as well as international and national case law, the court will outline the frameworks or requirements that must be met in order to obtain conclusive evidence to prove war crimes as referred to in article 8 of the WOS. The facts, circumstances and conclusions set forth above will be judged by the court on the basis of that assessment framework (see K.-K.5 below).

Finally, the court will discuss the defendant's involvement in the alleged war crimes (see below below).

J. General considerations regarding the parties to the conflict

On the basis of various public sources, testimonies of victims and perpetrators, statements by experts who have spoken with eyewitnesses (Dufka and Ellis) as well as media scans, which have all been used as evidence, the court establishes the following facts and circumstances and draws the conclusions as set out below.

With regard to the parties to the conflict in Lofa County, Liberia and in (the vicinity of) Guéckédou, Guinea:

- Since 1999, there was an armed conflict in Lofa County, located in the far north of Liberia on the border with Guinea, between Liberian combined armed forces and the rebels of the Liberians United for Reconciliation and Democracy (LURD).
- The Liberian combined armed forces consisted of various Liberian government forces, such as the Navy Division led by [co-perpetrator 2], the SSS led by [co-perpetrator 3], the ATU and the AFL. They were regularly joined by the Revolutionary United Front (RUF), an armed group which fought mainly in

Sierra Leone with the support of Charles Taylor. The contents of the means of proof which served as evidence demonstrated that employees of OTC and RTC also fought at the side of the Liberian combined armed forces.

- The LURD was a rebel group which was active in Liberia, aimed at destabilising Charles Taylor's regime. The suspicion was that the LURD was supported by the Government of Guinea.

- The armed conflict in Lofa County showed a cyclical pattern with varying successes on both sides. Between 2000 and the end of 2002, there were fierce fights near various cities in Lofa County. At the beginning of 2001, the battle was hardened. Between 2000 and 2003, Voinjama and Kolahun were alternately under the control of the Liberian combined armed forces and the LURD.

- In addition, just across the border there were fights with Guinea, because Liberian President Charles Taylor wanted to destabilise Guinea and sought revenge for Guinea's support to the LURD (see J.2 below).

- During those fights, the Liberian combined armed forces committed serious crimes such as (among others) killing civilians, pillaging, rape, physical abuse and burning down villages/cities in Lofa County and Guéckédou (see also below).

- Due to the fights, major refugee flows developed into, among others, Ivory Coast and Sierra Leone. Cities like Voinjama and Kolahun, with tens of thousands of inhabitants in pre-combat times, have become "ghost cities" as a result of the struggle. There were hardly any citizens living there after the fighting, houses and cabins were destroyed and there was no electricity and running water (anymore).

- The fighting in Lofa County continued until 2003. Until that time, the area was constantly unsafe.

As already considered under A.1.1. and A.1.2, after the resignation of Charles Taylor and after the prior peace talks in Ghana between the Liberian government (GOL) and the conflicting parties (including the LURD), the CPA became effective on 18 August 2003. This is the Accra Peace Agreement, which included the recommendation for the National Transitional Governance of Liberia (NTGL). This transitional government was broadly composed of representatives of the conflicting parties, political parties, civil society organisations and the 15 counties (districts) of Liberia.

The court concludes that there were many flash points in Lofa County and just across the border in Guinea at Guéckédou. These flash points were related to each other and must be judged in the context of the conflict between the Liberian combined armed forces at the service of Charles Taylor's regime and, on the other hand, the LURD, that wanted to overthrow Taylor's regime and were supported in their struggle by Guinea.

J.1 Armed conflict in (the vicinity of) Guéckédou.

With regard to the fighting in (the vicinity of) Guéckédou:

- Guéckédou is a city located in the south of Guinea just across the border with Liberia, Lofa County.
- Starting at the end of 2000, attacks were carried out on Guéckédou by the Liberian combined armed forces and the RUF. Charles Taylor had decided that Guinea should be attacked, with the aim to destabilise and take revenge on Guinea for its support to the LURD. Among the members of the combined armed forces, operation Guéckédou was referred to as "*Enter, Destroy and Escape*" which – in short – meant that if the armed forces entered somewhere and the enemy had withdrawn, everything had to be destroyed. Escape would not be allowed.

- The Liberian government supported the attacks by supplying arms and transport. Among other weapons, they used Kalashnikovs, RPGs, artillery and mortars.
- In November 2000 [co-perpetrator 3], head of the SSS and Advisor at OTC Security, gave the order to various Liberian commanders to attack Guéckédou in December 2000. On 6 December 2000, an operation was carried out whereby the then flourishing / thriving market village of Guéckédou was attacked. A fierce battle took place at Guéckédou. The Liberian combined armed forces had to withdraw after the fierce fighting.
- During almost the entire month of January 2001 attacks were carried out in (the vicinity of) Guéckédou whereby refugees could no longer be helped and an unsafe situation arose.
- At the end of February 2001, on a market day in Guéckédou, there was a combined operation of the Liberian armed forces and the RUF once again. During that operation, Guéckédou was first surrounded by the Liberian combined armed forces, and then the city was bombarded with heavy weapons (including mortars and RPGs), which killed many civilians. After that, the soldiers of the combined armed forces entered the city and committed atrocities (war crimes) against the population.
- The *Standard Operations Procedure* was "to destroy" and "kill everybody". In both operations (6 December 2000 and February 2001) hundreds of soldiers were gathered under the command of (among others) [co-perpetrator 3] and [co-perpetrator 2].
- Soldiers of the Liberian combined armed forces stated that they had wrought carnage or massacre among the people of Guéckédou. Witnesses stated that they themselves had committed, or had been eyewitnesses of, or had heard directly from perpetrators and/or victims about (inter alia) the following atrocities committed multiple times by the Liberian armed forces:
 - Civilians were targeted and shot dead.
 - Civilians became victims of barrages.
 - Houses were set on fire, while civilians were still inside.
 - Three civilians were beheaded, by cutting their heads off with a combat knife.
 - Babies were hit/thrown with their heads against the wall until their skulls shattered.
 - Live babies were thrown into a well.
 - Civilians were driven into a house, locked up and then a grenade was thrown in.
 - Women were raped.
 - Possessions of civilians were looted.
 - Civilians were tortured.
- Due to the fighting, almost the entire population of Guéckédou fled or died. At the end of March 2001, the city was in ruins and the water supply had been polluted. Bodies lay scattered in the streets and illness prevailed among the few civilians who were still present. The destruction that had taken place was the result of the fighting on the one hand, but also of pillages and house searches and the destruction that ensued.
- Statements rendered by [co-perpetrator 7], [co-perpetrator 5], [co-perpetrator 6], [co-perpetrator 8], [co-perpetrator 4] and [witness 4], considered jointly and in conjunction with each other, show that OTC and RTC personnel joined the Liberian combined armed forces for the purpose of the attacks on Guéckédou.
- Various persons involved in OTC/RTC were strategically/operationally involved in the attacks on Guéckédou.
- [co-perpetrator 3], head of the SSS and OTC Security Advisor, is referred to as (overall) commander of the armed forces and as the direct commander who gave the order for the operation on 6 December 2000.
- [co-perpetrator 2], director of the NPA and head of OTC Security, was involved in the operations as commander and sent OTC personnel to Guéckédou.
- [co-perpetrator 1], former general of the NPFL and resident manager of RTC and OTC, also sent OTC/RTC personnel to Guéckédou and was directly involved in the distribution of arms to the Liberian combined armed forces.
- Both [co-perpetrator 2] and [co-perpetrator 3] said in different wordings that nobody should stay alive, that there was no difference between civilians and soldiers and that total destruction should take place. Anyone who resisted was the enemy and thus the soldiers were allowed to do whatever

they wanted. Hereby they also gave the order '*no baby on target*', a statement that had been made by Charles Taylor and that was regularly repeated at the front by the commanders of the armed forces. This meant that there were no rules on how to deal with civilians; nothing and no one should be rescued, not even babies.

- As results from various witness statements, fighters of OTC and RTC used arms and ammunition that had been brought in by the [ship 1] into the port of Buchanan. Furthermore these statements show that those arms and ammunition were distributed among the Liberian combined armed forces. These concern the same type of weapons (AK 47s, RPGs and GMGs) as the ones about which witnesses testified who were (also) involved in the unloading of the weapons in the port of Buchanan.
- In addition to the Executive Mansion and White Flower in Monrovia, the RTC camp in Bomi Wood, near Tubmanburg was an important collection point of weapons and ammunition that originated from the [ship 1]. This is also the location where those weapons and ammunition were distributed among the commanders of the Liberian combined armed forces. As mentioned before, [co-perpetrator 1] was also involved in this operation.

J.2 Armed conflict in (the vicinity of) Voinjama

With regard to the conflict (the vicinity of) Voinjama.

- Voinjama is a city in Lofa County, in the north of Liberia. As stated in the above, in the timeframe between 2000 and the end of 2002 there was almost constant fighting between the Liberian combined armed forces and the LURD at the front in Lofa County, including in (the vicinity of) Voinjama. This battle was characterised by a cyclical pattern with varying successes on both sides.
- From approximately March/April 2001 the LURD made considerable progress in Lofa County. In March 2001, it is reported that Voinjama would be in the hands of the LURD.
- After a helicopter carrying the Liberian Minister of Sport and Youth François Massaquoi was shot near Voinjama on 17 April 2001, whereby the minister died, the Liberian combined armed forces intensified the battle.
- On 9 August 2001, it was reported that Voinjama was back in the hands of the Liberian combined armed forces. Subsequently, counter attacks of the LURD took place.
- In November 2001, Voinjama had become a ghost town, almost the entire population (about 50,000 inhabitants) had fled or died. As a result of the fighting, the city was in ruins and there was no running water or electricity (anymore).
- Until October 2002, fierce battles took place between the Liberian combined armed forces and the LURD, with varying reports about who had control over Voinjama.
- Statements rendered by witnesses [co-perpetrator 5], [co-perpetrator 6], [co-perpetrator 8], [co-perpetrator 4], [co-perpetrator 9], [co-perpetrator 11], [co-perpetrator 10] and [witness 4], considered jointly and in conjunction with each other, who participated at various moments in the fighting at this front, show that OTC and RTC personnel joined the Liberian combined armed forces for the purpose of the battle at this front.
- Various persons involved in OTC/RTC were strategically/operationally involved in the battle in Voinjama:
 - [co-perpetrator 2], director of the NPA and head of OTC Security, was (overall) commander in the battle in Voinjama and also sent OTC personnel to this front.
 - [co-perpetrator 1] former general of the NPFL and resident manager of RTC and OTC, who is referred to as 'general' at this front, sent OTC/RTC personnel to this front and was directly involved in the distribution of arms to the Liberian combined armed forces.

- Again it was said in different wordings by the commanders that no one should stay alive ("*no baby on target*"). Anybody who resisted was the enemy and the soldiers were allowed to do whatever they wanted. This order came directly from Taylor, who had told [co-perpetrator 2] that the *Standard Operations Procedure* should be "*no baby should live, kill everybody*".
- Witnesses stated that they themselves had committed, or had been eyewitnesses of, or had heard directly from perpetrators and/or victims about (inter alia) the following atrocities committed by the Liberian armed forces:
 - Civilians were killed by barrages.
 - Civilians were targeted and shot dead.
 - Unarmed men were shot dead.
 - Women and children were raped.
 - Possessions of civilians were looted.
 - Houses were set on fire.
 - A baby was beaten to death by hitting his head against the floor.
- As results from various witness statements, fighters of OTC and RTC used arms and ammunition that had been brought in by the [ship 1] into the port of Buchanan. Furthermore these statements show that those arms and ammunition were distributed among the Liberian combined armed forces. These concern the same type of weapons (AK 47s, RPGs and GMGs) as the ones about which witnesses testified who were (also) involved in the unloading of the weapons in the port of Buchanan.
- In addition to the Executive Mansion and White Flower in Monrovia, the RTC camp in Bomi Wood, near Tubmanburg was an important collection point of weapons and ammunition that originated from the [ship 1]. This is also the location where those weapons and ammunition were distributed among the commanders of the Liberian combined armed forces. As mentioned before, [co-perpetrator 1] was also involved in this operation.

J.3 Armed conflict in (the vicinity of) Kolahun

With regard to the battle in (the vicinity of) Kolahun, on the basis of the evidence the court establishes the following facts and circumstances:

- Kolahun is a city in Lofa County, in the north Liberia. As stated in the above, in the timeframe between 2000 and the end of 2002 there was almost constant fighting between the Liberian combined armed forces and the LURD at the front in Lofa County, including Kolahun. This battle was characterised by a cyclical pattern with varying successes on both sides.
- In the period between February until August 2001 there was battles in (among other places) the vicinity of Kolahun.
- After that, around December 2001 and the beginning of 2002, fierce battles took place again at Kolahun between the Liberian combined armed forces and the RUF against the LURD. In particular, the evidence shows that there was an operation in the period from 19 to 25 December 2001. [co-perpetrator 2] acted as commander in this operation. On 25 December 2001, the combined Liberian forces reconquered Kolahun and thereby/thereafter they committed atrocities (war crimes) against the civilian population.
- Subsequently, the LURD reconquered Kolahun again.
- After April/June 2002, again there were fierce battles (in the vicinity of) Kolahun by the Liberian combined armed forces under the command of [co-perpetrator 2]. The Liberian combined armed forces then encircled Kolahun and bombarded the city for a longer period of time with heavy weapons (including mortars and RPGs), whereby many civilians were killed and houses/cabins caught fire.
- Thereafter, the Liberian combined forces entered Kolahun and again committed cruelties (war crimes) against the civilian population.
- In any case until November 2002, those fights continued. There were varying reports about who had

control over Kolahun.

- Statements rendered by witnesses [co-perpetrator 8], [co-perpetrator 4], [co-perpetrator 9], [co-perpetrator 11], [co-perpetrator 10], [witness 4] and [witness 5], considered jointly and in conjunction with each other, who participated at various moments in the fighting at this front, show that OTC and RTC staff joined the Liberian combined forces for the purpose of the battle at this front.
- Various persons involved in OTC/RTC were strategically/operationally involved in the battle in Kolahun:
 - [co-perpetrator 2], director of the NPA and head of OTC Security, is referred to as (overall) commander of the armed forces and was also involved as commander in the operation at the end of December 2001.
 - [co-perpetrator 1] former general of the NPFL and resident manager of RTC and OTC, sent OTC/RTC personnel to this front and was directly involved in the distribution of arms to the Liberian combined armed forces.
 - [co-perpetrator 2] acted as commander and gave orders. Again the instructions were given that no one should stay alive (*"no baby on target"*).
 - Witnesses stated that they themselves had committed, or had been eyewitnesses of, or had heard directly from perpetrators and/or victims about (inter alia) the following atrocities committed by the Liberian armed forces:
 - Civilians were targeted and shot dead.
 - Houses were searched and after that civilians were (targeted and) shot dead.
 - Civilians were forced to undress and then they were executed.
 - Houses were set on fire, while civilians were still inside.
 - Women and children were raped.
 - In any case two civilians were tortured. [co-perpetrator 10] stated that he tortured two civilians by chasing them to the attic of a cabin and subsequently setting fire to a pepper bush, so that they could not breathe properly due to the amount of smoke and almost choked.
 - Possessions of civilians were looted.
 - As results from various witness statements, fighters of OTC and RTC used arms and ammunition that had been brought in by the [ship 1] into the port of Buchanan. Furthermore these statements show that those arms and ammunition were distributed among the Liberian combined armed forces. These concern the same type of weapons (AK 47s, RPGs and GMGs) as the ones about which witnesses testified who were (also) involved in the unloading of the weapons in the port of Buchanan.
 - In addition to the Executive Mansion and White Flower in Monrovia, the RTC camp in Bomi Wood, near Tubmanburg was an important collection point of weapons and ammunition that originated from the [ship 1]. This is also the location where those weapons and ammunition were distributed among the commanders of the Liberian combined armed forces. As mentioned before, [co-perpetrator 1] was also involved in this operation.

J.4 Surrounding villages

The court considers that the majority of the abovementioned atrocities (war crimes) against civilians in the cities of Guéckédou, Voinjama and Kolahun were committed by the combined armed forces. In a number of cases witnesses stated that the atrocities were committed in (a) village(s) in the vicinity of Kolahun and Voinjama. In assessing whether the villages in which the facts have been committed were committed in the vicinity of those two cities, the court has also repeatedly taken note of the maps submitted by the court at the hearing of 16 March 2017 from the Lofa County atlas of Doctors Without Borders. In particular, the second map concerning the Kolahun district and the fifth map concerning the Voinjama district.

By way of example, the court refers to the statement of [victim 1], who testified (amongst others) that she had been captured in a village in the Kolahun district by government soldiers, was taken to the village of Haryarhun and then was forced to walk to the village of Veseha (*phonetically: referring to either Vezala or Velezala*) where she was raped by Liberian soldiers. As results from aforesaid maps in

combination with information from public source 'Google maps', the village of Vezala is located in the Voinjama district and given the distance between the villages it was possible to walk that distance on foot.²¹

On the basis of aforesaid maps, the court has established that the villages mentioned in the evidence, as far as atrocities (war crimes) were committed there by the Liberian combined armed forces, are located in the vicinity of Voinjama or in the vicinity of Kolahun.

J.5 Plea with regard to the existence of RTC camp Bomi Wood

During her oral pleadings and rejoinder, the defence counsel stated, briefly summarised, that RTC did not have a camp in the vicinity of Tubmanburg. The German company Bomi Wood, which had a concession in Bomi County, built a camp before the first Liberian civil war just past the town of Tubmanburg (seen from the road coming from Monrovia), where among other activities wood was processed in a sawmill. The counsel argued that RTC and OTC had no concessions near Bomi Wood, nor engaged in activities in that area. Therefore, according to the defence, there was no need to use a camp with a sawmill or to deploy security employees there. RTC operated from Camp Israel which was not located in that area and only used a transit-log yard situated before the little town of Tubmanburg (seen from the road coming from Monrovia). This was a log yard without any buildings, where wood was stored before being transported to the port of Monrovia. To the extent that witnesses have stated that they were stationed for RTC security in RTC camp Bomi Wood or otherwise testified about the existence of an RTC camp named Bomi Wood, for these reasons alone their statements are unreliable and not suitable to be used as evidence, according to the defence counsel.

J.5.1 Conclusion of the court regarding the existence of RTC camp Bomi Wood

All arguments put forward by the defence counsel regarding camp Bomi Wood, do not give the court any reason to doubt the accuracy and reliability of witness statements of [co-perpetrator 10], [co-perpetrator 5], [co-perpetrator 6] and [co-perpetrator 8], in so far as used as evidence. As results from these statements - considered jointly and in conjunction with each other - it is clear that they worked for RTC security, that RTC employees were stationed at/near RTC camp Bomi Wood, that the defendant visited camp Bomi Wood on a number of occasions and talked to fighters there, that weapons and ammunition (originating from the [ship 1]) were stored and distributed there among the commanders who went to the front line.

In this context, the court considers that the assertions made by the defence are refuted by the means of evidence which show that, besides using the log yard in the vicinity of Tubmanburg - which, as evidenced by the proceedings at the hearings in court, was not more than an empty field where logs were stored - RTC also made use of a camp. This was a camp with constructions, that had been built by the German company Bomi Wood.

In this connection, the court refers in particular to the defendant's statement rendered to the police dated 20 March 2015.²² After the defendant had been asked about Bomi Wood, he answered: *"That is an old German concession. There used to be a German logging operation by that name. There they had a saw mill and wood exploitation, it was located in the area of Bomi Wood. Tubmanburg was the name of the city or village in that area. Bomi Wood was the name of an old concession which name was adopted by RTC. RTC was active in Bomi Wood. There they had a workers camp, named RTC camp. This camp consisted of small wooden houses for the workers. There were, I believe, one or two caravans for the managers. This was some sort of base camp."* (underlining added by the court).

This statement does not only coincide with the statements of the witnesses mentioned above about the location of the camp and that RTC was active there, but also with the document submitted by the defence 'A short history of Bomi Woods' written by [name of former employee], former employee of Bomi Wood.²³ This document shows that camp Bomi

Wood with a saw mill was built by the German government in the vicinity of Tubmanburg, Bomi County, and that in addition to this camp there was a log yard at a distance of five miles. This concerns the log yard which according to [former employee of Bomi Wood] was used by RTC.

Finally, the court considers that it cannot be ruled out that the witnesses mentioned above, which were neither found to be involved in wood logging nor processing, referred to the whole area around the village of Tubmanburg (i.e. RTC log yard, the village and RTC camp Bomi Wood together) as being RTC camp Bomi Wood.

J.6 Plea with regard to the identity of "Bassaboy and/or Kpellehboy"

The defence has argued that some witnesses who testified that they had fought against the LURD, had apparently been pre-directed and according to the defence these witnesses had made false and contradictory incriminating statements in relation to the defendant.

According to the counsel (among others things and in particular), this is evidenced by the fact that these witnesses have stated about a certain general "Kpellehboy" who would have worked as Chief Security for RTC. However, the *Chief Security* was Anthony "Bassaboy" Morris.

That these are no apparent mistakes but directed false statements, is revealed by the fact that five witnesses have mentioned the name "Kpellehboy" and that three of those witnesses stated in addition that "Kpellehboy" died at the ambush whereby [co-perpetrator 1] was injured. From various other testimonies, however, it appears that Anthony "Bassaboy" Morris was killed in that ambush.

To the extent that witnesses have testified that they had been given instructions by "Kpellehboy", those statements are considered to be unreliable for that reason alone. Especially since it cannot be excluded that these witnesses are former fighters of the LURD.

J.6.1 Conclusion of the court regarding the identity of "Bassaboy" and/or "Kpellehboy"

With regard to the above, the court concludes that the case file shows that almost all Liberian security employees and persons who fought at the front used either a nickname, fighter name or radio name. The nicknames "Kpellehboy" and "Bassaboy" are connected to an African tribal background, in particular to the two largest ethnic groups in Liberia (the *Kpelle* mainly in the centre of Liberia and the *Bassa* mainly near Buchanan).²⁴ The court does not exclude and even believes it to be very likely that more people had a nickname based on their tribal background with the suffix "-boy".

The court further concludes that the file contains several indications that both a "Kpellehboy" and a "Bassaboy" were involved in and had high positions in the security of OTC ("Bassaboy") and RTC ("Kpellehboy"). In this respect, the court refers to the statement of [co-perpetrator 10] before the examining judge dated 12 January 2006²⁵. The court also refers to the TRC report dated 3 December 2009, which shows that on the basis of its investigations, the TRC identified both a "Bassaboy" and a "Kpellehboy" as perpetrators during the conflict (*"committed wrongs during the conflict"*).²⁶

To the extent that the defence counsel has argued that some statements are internally contradictory, since the witnesses stated that they had received orders from "Kpellehboy" after 2 December 2001, while [co-perpetrator 1]'s hospital data show that the ambush - in which "Kpellehboy" was allegedly killed and [alias co-perpetrator 1] had been injured - took place on 2 December 2001, the court also refers - there may be more people with that nickname as previously considered - to what the court considered under G.1 to G.2. Various factors (including course of time, cultural differences, the influence of traumatic experiences) may have influenced the naming of wrong dates and years. In the opinion of the court, this does not make the entire statement unreliable in advance.

As already considered under C.3, the court concludes that the suggestions put forward on numerous occasions during the counsel's speech and rejoinder that third parties had a steering influence on the investigation and that instructions had been given by third parties, which would have affected the

reliability of the statements used as evidence, have not become plausible in the opinion of the court.

K. War crimes – legal framework and international legal sources

At the time of the alleged facts, war crimes were made punishable in (among others) article 8 (old) of the Wartime Offences Act (hereafter: article 8 of the WOS), which article then read:

"A person who is guilty of violation of the laws and customs of war will be punished with a term of imprisonment of not more than 10 years or a fine of the fifth category."

As from 1 October 2003, the legislator has replaced this penalisation by the articles 5, 6 and 7 of the Dutch International Crimes Act (WIM). In the WIM, the legislator has explicitly opted for a re-codification of the penalisation of war crimes. The re-codification does not arise from a changed insight of the legislator regarding punishability of relevant behaviour made punishable in this context, which would lead to the application of article 1, second paragraph of the Dutch Criminal Code, nor can this changed insight be derived from the threat of punishment regarding which the WIM, in respect to war crimes, does not essentially differ from the WOS, so connection has been sought in the grounds for an increase of the penalty under the WOS.

The court will therefore apply the provisions of article 8 of the WOS.

The term "laws and customs of war" in article 8 WOS refers, inter alia, to the four Geneva Conventions²⁷ and the accompanying, later established, Additional Protocols I and II (hereafter: AP I and AP II) dated 8 June 1977.²⁸

AP I and AP II fill a number of gaps in the Geneva Conventions. AP I does this for international armed conflicts, AP II for non-international armed conflicts. The aim of AP II is the (further) improvement of the protection of citizens and others who do not participate in the armed struggle (anymore).

The Geneva Conventions apply in full to international armed conflicts and, to a limited extent, to non-international conflicts. These four conventions contain an article 3 that is consistent in all treaties. This article is hereafter referred to as common article 3. common article 3 contains minimum behavioural standards which must be observed by the parties to a non-international armed conflict.²⁹

K.1 Individual criminal liability

The court notes first of all that from the offence description of the war crimes as charged in this criminal case as defined in article 8 of the WOS follows, that a person who acts as a perpetrator, co-

perpetrator, inciter or accomplice of violations of the laws and customs of war may be held individually liable for war crimes by virtue of conventional written laws of war as arising from various treaties or international customary law.

Although the offence description does not explicitly state that a specific capacity is required for the commission of the alleged war crimes, it follows from the contextual element of the armed conflict that in principle only the military, members of other armed groups as well as their military or civilian leaders or commanders can fall under these provisions.³⁰

The different forms of individual criminal liability find their legal ground in the treaties, international customary law or in both. The fact that a specific form of individual liability has been recognised in customary law is important for two reasons: (i) contrary to the relevant treaties, international humanitarian customary law is binding for all States and the same applies to the accused person (who is also bound by international (criminal) customary law) and (ii) it is standard practice of the tribunals to not hold a defendant liable for being involved in the commission of a certain crime, unless that crime has found recognition in (international) customary law.

Furthermore, not every violation of the laws and customs of war (humanitarian laws of war) constitutes a war crime. Under international law, only serious violations of humanitarian laws are subject to individual criminal liability. It must be assumed that the legislator has chosen to only consider the penalisation under article 8 of the WOS as serious violations of the laws of war.

In order to draw the boundaries of criminal liability, the Dutch court must focus on international law. Therefore the court will have to examine whether the offences as charged to the defendant are considered to be serious violations of humanitarian laws of war and (thus) are punishable "*according to general principles of law recognised by the community of nations*".³¹

A violation is serious if the basic norms of humanitarian law, as laid down in treaties or forming part of international customary law, are violated, and this violation has serious consequences for the victim.³² This requirement is fulfilled if the conduct violating humanitarian law endangers protected persons or goods, or represents a violation of rules which protect important values.³³ The serious breaches of the provisions of the Geneva Conventions, as previously discussed under A.3, provide for universal jurisdiction over such violations and, at the same time, imply a positive obligation for Member States to prosecute such serious violations or to extradite alleged war criminals. Finally, if a serious violation is found, this shall result in individual criminal liability under international law.³⁴

Traditionally, the notion of war crimes was limited to international armed conflicts. According to the articles of association and/or case law of the ad hoc tribunals (ICTR, ICTY and SCSL³⁵), violations of humanitarian law in the context of non-international armed conflicts can also lead to individual criminal liability under international law. The conclusion that individual liability based on customary law results from violations of international humanitarian law in non-international armed conflicts, is based on the consideration that punishment of perpetrators was required to guarantee the enforcement of humanitarian law.³⁶

Although common article 3 sets out minimum rules applicable to armed conflicts of non-international (internal) nature, which were later extended by the AP II, this provision does not contain an explicit reference to criminal liability in case of a breach of its provisions. Nevertheless, serious violations of

the prohibitions contained in common article 3 comply with the requirements for individual criminal liability under international law.³⁷

K.1.1 Conclusion regarding individual criminal liability

On the basis of the above, the court is of the opinion that the persons responsible for the violations of humanitarian war as set out in the provisions of common article 3, the AP II and international customary law, during the events that took place on Liberian territory and in Guinea in the years 2000, 2001 and 2002, were criminally liable as individuals under international law and may therefore be subjected to prosecution.

K.2 Requirements and frameworks for war crimes

On the basis of common article 3 and the AP II, as well as the substance given to it in literature and (international) case law of the ad hoc tribunals, criminal offences are considered to be war crimes in a non-international armed conflict if the following requirements are met

- (i) There must be an armed conflict on the territory of one of the contracting parties in the alleged periods;
- (ii) There should be close coherence - in (international) literature and jurisprudence called 'nexus' - between the prohibited acts of a defendant and the armed conflict.
- (iii) Victims must belong to one of the categories of protected persons referred to in the common article 3; meaning that they must be persons who do not participate directly in the hostilities (anymore).

K.2.1 Existence and nature of the armed conflict

In line with established case law of the international ad hoc tribunals³⁸ there is an armed conflict if:

- States resort to armed violence between them, or
- there is prolonged armed violence between government agencies and organised armed groups, or
- there is armed violence between organised armed groups within a State.³⁹

In this definition a distinction is made between international armed conflicts on the one hand (armed violence between two or more States) and non-international (internal) armed conflicts on the other hand (armed violence between armed forces of a State and dissident armed forces or other organised armed groups or between these groups within the State).⁴⁰

The definition of an internal armed conflict focuses on two aspects of the (internal) conflict:

- a. a) the intensity and the duration of the hostilities, and
- b) the degree of organisation of the combating parties.⁴¹

Ad a: The question whether the hostilities are of sufficient intensity to be referred to as an armed conflict does not depend on the subjective judgement and evaluation of the parties to the conflict, but rather depends on the objective and actual level of violence that is used in the confrontation between

the combating parties:

*"the ascertainment of the intensity of a non-international conflict does not depend on the subjective judgement of the parties to the conflict. [...] If the application of international humanitarian law depended solely on the discretionary judgement of the parties to the conflict, in most cases there would be a tendency for the conflict to be minimised by the parties thereto."*⁴²

Ad b: Furthermore, the parties involved in the conflict must have a minimum degree of organisation and cohesion that will enable them to plan and execute military operations and to impose discipline within their ranks.⁴³ In particular, the troops must in all cases be under responsible command and able to comply with the minimum standards of humanitarian law:

"An armed conflict is distinguished from internal disturbances by the level of intensity of the conflict and the degree of organisation of the parties to the conflict". ⁴⁴

As far as the application of the laws of war is concerned, the temporal and geographical reach of both internal and international armed conflict extends further than the exact time and place of the hostilities.⁴⁵ For example, for answering the question whether the hostilities can be referred to as an armed conflict, it is not decisive to establish that there is an armed conflict "on every square centimetre of the territory" on which the military activities take place.⁴⁶

In other words, once it has been established that the alleged conduct has taken place within the territory over which one of the parties to the conflict has (had) control, the laws and practices of war will in principle apply to the entire territory of the parties to the conflict, regardless of whether actual combat acts occurred at that time and at that place. In this case the laws and practices of war will remain applicable until a general peace settlement has been reached or, in case of internal armed conflicts, a peaceful solution has been reached.⁴⁷

The court shall include the above in its considerations.

K.2.2 Existence and nature of the conflict

The court establishes that during the periods as referred to in the indictment (the years between 2000 and 2002 inclusive), there were long-term and intense fights between, on the one hand, the above-mentioned Liberian combined armed forces, sometimes assisted by the RUF, and, on the other hand, an organised armed group, the LURD, which was supported by the Republic of Guinea. The purpose of the LURD was to destabilise Liberia and to overthrow Charles Taylor's regime. The Liberian combined armed forces united various Liberian government forces with commanders associated with Liberian government forces. This battle was not only conducted on Liberian territory in Lofa County, but also just across the border with Guinea: in at least two operations, the city of Guéckédou was attacked by the Liberian combined armed forces.

This information is not only confirmed by statements from individuals who have been involved (as victims or perpetrators) in the conflict, but also through research by experts, international sources and media scans.

Based on that information, the court concludes that there was a degree of organisation and cohesion within the Liberian combined armed forces, which enabled them to plan and execute military operations, and impose discipline within their ranks. This is evidenced, inter alia, by the fact that the Liberian combined armed forces also carried out large-scale operations, such as the attacks on Guéckédou and Kolahun. The Liberian combined armed forces gathered for the purpose of those operations and were equipped with (heavy) weapons and ammunition (including RPGs and mortars) by the Liberian regime and OTC / RTC. In an attack on Guéckédou and Kolahun, they surrounded the

cities and shelled them for a long time and then entered those cities. The armed forces were under the direct command of commanders like [co-perpetrator 3] and [co-perpetrator 2], who also received orders from President Charles Taylor.

Now that these troops were under responsible command, the court fails to see why the armed forces would not have been able to meet the minimum criteria of humanitarian law. In spite of that, however, orders were given consciously to allow total destruction to take place during those operations (as appears from the names of operation "*Enter, Destroy and Escape*" and the given orders "*to destroy*", "*kill everybody*" and "*no baby on target*").

On the basis of the above, the court concludes that in the region of Lofa County, which includes the cities of Voinjama and Kolahun, there was indeed an internal armed conflict in the proven periods.

At times, that internal armed conflict expanded over the border with Guinea, where the LURD was attacked as well. This attack was also aimed at destabilising the Republic of Guinea because they were suspected of supporting the LURD. To that end, there was an armed conflict with both an intergovernmental component (against Guinea) and a non-intergovernmental component (against the dissident Liberian warriors of the LURD).

No matter what, now that one can speak of norm violations that are applicable both in an international and non-international armed conflict, it is sufficient for the court to conclude that there was an armed conflict in Guéckédou, Guinea.

The above means that the laws and customs of war were in principle valid for the entire territory of the parties to the conflict, regardless of whether actual fighting was taking place at that time and at that place.

In that case, these laws and customs of war will continue to apply until the general peace settlement had been reached, i.e. from 18 August 2003, being the time when the (Comprehensive) Accra Peace Agreement (CPA), which also included the LURD, was signed.

K.3 Nexus

The court argues that not all crimes committed during an armed conflict are also war crimes. In order to be referred to as a war crime, the alleged crime must also have a close relationship ('a clear nexus') to the armed conflict.⁴⁸ This close relationship between armed conflict and criminal behaviour of the perpetrator, the nexus, distinguishes war crimes from "common" crimes committed during - but not related to - an armed conflict. War crimes, however, do not have to be so intertwined with the war that if identical criminal behaviour had occurred during peacetime, such offences could not be considered as war crimes committed at the time of the war.⁴⁹ The penalisation of the war overlaps with criminality in peacetime and many of those acts that would be considered war crimes (such as murder and rape) would often be classified as domestic crimes if committed in peacetime so that the fact that certain acts or conduct may fall under a certain category does not exclude that it would also fall under the other.

The ICTR Appeals Chamber has outlined the contours of the nexus lower limit. This shows that the function of the nexus requirement is essentially twofold. First of all, it is important to distinguish war crimes from purely communal crimes. Secondly, the nexus requirement is necessary to exclude purely coincidental or isolated criminal incidents that do not constitute war crimes under international laws of war. Such arbitrary or isolated incidents are, in principle, sanctioned by national legislation.⁵⁰

The court hereby adopts these nexus requirements.

The court looks at the question which substance should be given to the required close coherence of the proven facts with the armed conflict, in other words: what factors can help to establish the nexus? In answering that question, the court has focused on the judgements of the ad hoc tribunals which may be regarded as authoritative in fulfilling this requirement.

From these judgements it can be concluded that the armed conflict must have had a significant impact on the perpetrator's ability to commit the crime, his decision to commit it, the way in which it was committed or the purpose for which it was committed.⁵¹ If it can be established that the perpetrator of the offence concerned acted "in the furtherance of or under the guise of the armed conflict", the nexus requirement has been met according to the Appeals Chamber. Criteria such as the perpetrator, contrary to the victim, being a soldier or warrior, the victim being a member of the other party, etc., are factors that can contribute to the evidence of the nexus. Furthermore, case law of the ad hoc tribunals shows that the armed conflict does not necessarily have to be the cause of committing the crime in order to be qualified as a war crime⁵², although the armed conflict must have had a significant share in the perpetrator's ability to commit the offence, his decision thereto, the manner in which or the purpose for which the offence was committed.⁵³

Although actual hostilities taking place during or in the vicinity of the crime is a factor which may help to establish a nexus between the alleged criminal conduct and the armed conflict, the nexus requirement does not necessarily imply a strict geographical or temporal coincidence between the acts of the perpetrator and the armed conflict.⁵⁴ In order to qualify as a war crime, the crime does not have to be committed while at the same time hostilities are taking place by the parties to the conflict, nor does the crime have to be committed at the place where the hostilities are taking place. It is sufficient that the actions are closely linked to those hostilities or to the armed conflict as a whole, for example because the underlying crimes were made possible by the armed conflict or are part of it.⁵⁵

There is, in other words, no necessary connection between the area where the actual fighting is taking place and the geographical reach of the laws of war: "*There is no necessary correlation between the area where the actual fighting is taking place and the geographical reach of the laws of war*".⁵⁶ As previously discussed, the laws of war are applicable and should be applied throughout the territory under the control of one of the parties to the conflict.⁵⁷

In its deliberations the court also included the judgement of the Trial Chamber in the Kunarac case, in which the court considered - briefly rendered - that the acts of the perpetrator (in this case rape and other forms of sexual violence) were closely related to the armed conflict, despite the fact that the offences in question were committed over a longer period, including the time when no military activities took place at all in the region where the crimes were committed.

The Trial Chamber then comes to the following conclusion: "*Not only were the many underlying crimes made possible by the armed conflict, but they were very much a part of it.*"⁵⁸

On the other hand, it is not sufficient if it can only be established that the crime in question occurred while an armed conflict was going on, or that this crime could be committed because of the circumstances created by the armed conflict. The condition remains that the criminal conduct took place in the context of the armed conflict and can be associated with it. Furthermore, war crimes are not limited to crimes of a purely military nature. The category of war crimes goes beyond the confines of crimes committed by soldiers and other armed groups belonging to the parties to the conflict. In other words, this implies that war crimes in general can be committed by both fighters and non-fighters.

The court hereby adopts these factors.

In addition, the court considers that the nexus requirement applies to the actions of the (co) defendant(s) (as actually described in the indictment) and the war itself, that is, the circumstances, the

(actual) events, and the consequences that followed from the hostilities between two or more parties. It is not required that the perpetrator in one way or another must be related or linked to any of the parties to the conflict.

K.3.1 Assessment of the nexus

In the opinion of the court, on the basis of the contents of the evidence used, and what has been considered, it has been established that the offences as referred to in the indictment could be committed because of the start or the existence of the armed conflict in Lofa County, Liberia and Guéckédou, Guinea. Because of the armed conflict and the orders given in that context (cities were shelled at random, without making a distinction between civilians and soldiers) atrocities took place by the combined forces against (among others) civilians. In addition, the armed conflict had a significant influence on the decisions of the perpetrators referred to in the indictment to attack civilians and on the ability to do so. Civilians were (among others) identified (or accused of cooperation) with the enemy by the commanders, namely the LURD, and the persons referred to in the indictment were ordered or motivated to commit the crimes against them. Furthermore, the armed conflict with the LURD was used as a pretext or cover for the crimes committed against civilians. In the opinion of the court, the court hearing of the case shows that, according to the evidence used by the court, it has been established beyond reasonable doubt that the perpetrators referred to in the indictment acted in furtherance of the armed conflict or used that conflict as a cover. There were no accidental or isolated criminal incidents. Consequently, it has also been established that there is a required nexus between the armed conflict and the proven crimes. The offences as charged were not only possible because of the armed conflict, they were also part of that conflict.

K.4 Protected persons as defined in common article 3

The third element, also closely related to the nexus standard, which serves to establish a war crime in a non-international armed conflict concerns the need for the victim to belong to one of the categories of protected persons referred to in the aforementioned common article 3.

In this respect the court puts first that the penalisation of war crimes aims at seeing to it that armed conflicts are fought in an as much as possible acceptable way and in accordance with the laws of war. The consequences of the hostilities should be limited as much as possible to those who participate in the hostilities themselves. After all, the penalisation of war crimes in a non-international conflict is based on the idea that the (terrible) consequences of an armed struggle should be limited to those who fight in it and that, in line with this, an effective protection must be offered to those who do not participate in the conflict (anymore).

The interest intended with this penalisation is the protection of people who, at the time of a domestic war (may) become victim of crimes which are committed in relation to the war. The Appeals Chamber of the ICTR has put it as follows:

*"The purpose of the said provisions [common article 3 and the AP II; addition by the court] is the protection of people as victims of internal armed conflicts, not the protection of people against crimes unrelated to the conflict, however reprehensible such crimes maybe."*⁵⁹

In view of the above, the court considers as follows.

The protection offered by common article 3 is limited in two ways. First, common article 3 applies only to a particular category of internal hostilities and, secondly, it only protects certain categories of victims of the war, namely the category of persons as defined in paragraph 1 of common article 3. With regard to the first limitation, common article 3 stipulates that it is applicable in the case of an armed conflict that is of a non-international nature, on the territory of one of the High Contracting Parties.

The second limitation refers to the category of persons who are included in the protection. To be

protected by common article 3, the victim must be either a citizen ⁶⁰ or someone who does not actively participate in the hostilities, including personnel of armed forces who have laid down their weapons and those who are out of combat for reasons of disease, injury, detention or any other cause.⁶¹

Thus, common article 3 is intended for all those who are on the territory of the State in which the conflict takes place, except for combatants who are fighting at that moment until their imprisonment and citizens who directly participate in the hostilities, thereby increasing their privileges.

Although the use of violence by civilians to defend themselves against the unlawful assault or looting, rape and murder by looting soldiers or other participants in the battle might imply that the required threshold of injury caused to the person (death, injury or destruction) is exceeded, there should explicitly not be any intention to support one of the parties to the conflict against the other. If individual self-defence against forbidden violence would mean that you are no longer protected from a direct attack, this would have the (absurd) consequence of legitimising a similar unjust assault.

That is why the use of necessary and proportional violence in such situations cannot be regarded as direct participation in the armed conflict.⁶²

Comparing this to the categories of persons protected by other relevant statutory provisions, it can be concluded that common article 3 includes, among others, all those who are protected under the Geneva Conventions against serious infringements, as well as those who fall under the protection of AP II. While common article 3 limits the category of protected persons, anyone - warrior and non-warrior - can fundamentally be held liable for a serious violation of common article 3. This article, in principle, does not limit the categories of potential perpetrators. More specifically, it is not required that the perpetrator is in one way or another related to one of the parties to the armed conflicts (although this is often the case in practice).⁶³

K.4.1 Conclusion regarding attacks aimed against civilians in particular

In the judgement of the court, it has been established in this context that the victims, in an incidental case, concerned LURD rebels knocked out of action or rebels who had laid down their weapons. However, almost all victims of the actions mentioned in the proven facts concerned civilians, possibly civilians who wanted to protect their own possessions and thus acted in self-defence against prohibited violence, but mostly civilians who had accidentally become victims of the Liberian combined armed forces who were ordered not to spare anything or anyone (e.g. "*no baby on target*"). It has not been established that those citizens were, in any way, still participating in the hostilities between the Liberian combined armed forces and the LURD.

The court therefore concludes that the victims belonged to the category of persons with respect to whom common article 3 and AP II seek to offer protection.

K.5 Conclusion regarding war crimes

Based on the above facts and circumstances, the court is of the opinion that there was an (internal) armed conflict in Lofa County, Liberia and Guéckédou, Guinea, in the alleged periods. This armed conflict was (at least) of substantial influence (i) on the ability of the persons mentioned in the proven facts to commit the alleged facts, as far as proven, (ii) on their decisions to commit these crimes, (iii) on the manner in which the crimes were committed or (iv) on the purpose for which they were committed.

In addition, the victims of these crimes belonged to the category of persons with respect to whom common article 3 and AP II sought to offer protection.

On the basis of the evidence produced during the proceedings, the court comes to the conclusion that it has been established, beyond reasonable doubt, that the persons mentioned in the proven facts, with respect to all proven facts, are guilty of war crimes as referred to in article 8 of the WOS.

L. Considerations regarding the evidence for the defendant's involvement in the war crimes.

Regarding the role of the defendant or his involvement in the abovementioned war crimes, on the basis of all the foregoing considerations and from what is demonstrated in the evidence, it has been established that:

- in the proven periods, he was the owner of RTC and president of OTC;
- in the period from 2000 until 2003 inclusive, with his company OTC, he was actively involved in the import of weapons with the [ship 1] in the port of Buchanan and also supplied weapons to (the regime of) Charles Taylor (see H. through H.6);
- he provided employees of the companies OTC and RTC to unload the weapons and ammunition, but also to transport these weapons to the Loop in Buchanan, the Executive Mansion and White Flower in Monrovia and Camp Bomi Wood near Tubmanburg . These include places where those weapons were stored and/or distributed among defendant's employees and/or the Liberian combined armed forces (see H. to H.6 inclusive). Those weapons and ammunition were also transported to the front lines by OTC/RTC personnel.
- he provided employees of the companies OTC and RTC for the armed conflict in Lofa County and Guéckédou. These employees often used the weapons which had been distributed to them by these companies (see J.1 to 4 inclusive);
- he allowed that [co-perpetrator 2], [co-perpetrator 3] and [co-perpetrator1], being persons who were closely related to the defendant and those companies, but also to (the regime of) Charles Taylor, played important roles in the armed conflict in Lofa County and Guéckédou, and also allowed them to order the employees of these companies to participate in the armed conflict in Lofa County and Guéckédou (see under J.1 to 4 inclusive);
- he apparently made RTC camp Bomi Wood available for the storage of weapons and ammunition from the [ship 1]. This place was also used to distribute those weapons and ammunition among the commanders at the frontlines of the armed conflict, including by [co-perpetrator1] (see under J.1 to 4 inclusive);
- he visited that camp multiple times and encouraged warriors to fight;
- he was in the immediate vicinity when the command was given to use heavy weapons in the attack on Guéckédou. The defendant expressly promised the soldiers that they were allowed to loot (*"the soldiers had to complete the mission and (.....) promised that they could keep everything that they would find afterwards"*).

L.1 Acquittal of co-committing and inciting to commit war crimes.

The court finds that, from the above, it appears that the defendant thus made an active and conscious contribution to the war operations.

The court will acquit the defendant, as considered above under D., of the commission or incitement of the alleged war crimes, because fundamentally there is no or insufficient proof of joint execution on the part of the defendant, the defendant personally has not committed actual war crimes and, by its appearance, the defendant's behaviour must be classified as complicity rather than co-commission or incitement.

L.2 Complicity, dual intent

In order to obtain a conviction with respect to complicity, according to consistent case law it is required that it must not only be proven that the defendant's intention was to promote or facilitate that crime within the meaning of article 48 Dutch Criminal Code, but also that the intent - whether or not in conditional form - was aimed at the commission of the offence by that third party, in this case the commission of war crimes. It is not required that the assistance provided was indispensable or that an adequate causal contribution to the basic crime has been provided. It is sufficient that the assistance of the accomplice has actually promoted the crime or facilitated the commission of that crime.

The court further states that, from an international criminal law perspective, the requirements for the contribution of the "aider or abettor" are not significantly heavier or different.

L.2.1 Intent regarding the provision of means for the promotion of the armed conflict.

In the given circumstances, the court is of the opinion that the defendant (i) by supplying weapons and ammunition to the regime or Charles Taylor, (ii) by telling armed employees to join the Liberian combined armed forces, (iii) by contravening the UN resolutions to provide arms and ammunition by (iv) using RTC Camp Bomi Wood as a collection and distribution site for those arms and ammunition, he must have been aware that - "in the ordinary cause of events" - weapons and ammunition would also be used.

The court believes that the defendant's conduct (see under L, among others) also demonstrates the defendant's knowledge that through this conduct, the armed conflict in Lofa County and Guéckédou would be promoted and facilitated for the Liberian combined armed forces and that his intent was aimed at aiding and abetting that armed conflict. In this context, the court again refers to the letter drawn up by the defendant on 5 September 2002⁶⁴, with file # 21228, from which the court derives that the defendant (i) operates in the vicinity of and feels closely related to the regime or Taylor, (ii) shares his thoughts on whether or not to import weapons and (iii) legitimises the import of weapons to stop the combatants. Furthermore, the court refers to statements by, among others, [co-perpetrator 5] and [co-perpetrator 10], who stated that Taylor and the defendant spoke to each other at White Flower and that afterwards the weapons imported by the [ship 1] were distributed to the generals who fought at the front.

L.2.2. (Conditional) Intent concerning war crimes

The question the court then needs to address is whether the defendant's intention was also aimed at the commission of war crimes by third parties who have acted to promote the armed conflict or under the pretext thereof. The defendant - consistent with his emphatic denials - did not provide the court with relevant information. In addition, the case file does not contain sufficient legal and convincing evidence to establish that the defendant was part of a plan to commit war crimes or knew that war crimes would be committed by third parties with the weapons and ammunition.

L.2.3 Framework of conditional intent

The question the court therefore needs to address is whether the defendant had a conditional intent regarding the war crimes committed by those third parties. In this respect the court puts first that there is conditional intent regarding a certain consequence - such as the alleged war crimes - if the defendant knowingly and wilfully exposed himself to the probable chance that there would be a particular consequence. The answer to the question whether certain behaviour triggers the significant probability of a particular consequence depends on the circumstances of the case. In this respect the nature of the actions and the circumstances under which they were carried out are important. In all cases this will have to concern a probability which, according to general rules of experience, can be considered significant. In order to establish whether the defendant has exposed himself to such a probability, it is not only required that the defendant is aware of the significant probability that the consequence will occur, but also that he has consciously accepted that probability at the time of the actions (taken that probability into the bargain).

L.2.4 Established facts and circumstances

For answering these questions, the court has taken the following facts and circumstances into account.

As previously considered, Liberia is a country which politically, culturally and socio-economically, differed and still differs from Dutch society. Liberia was actually in a state of war from the end of 1989 until 1997 and again from 1999 until 2003. During those periods, the country was internally torn apart by major, in particular political and ethnic disputes and armed conflicts, including with the LURD in Lofa County and with the LURD in Guinea in Guéckédou.

The defendant has stated that he travelled to Liberia in the early 1980s to trade in the food industry. At that time, President Samuel Doe was in power (*the court: 1980-1990*). At one point, the defendant was approached to become the manager of hotel Africa in Monrovia. He then closed a twenty-year lease contract. The defendant also had a BMW garage and a small airline company in Liberia and since 1986 he owned his first logging company, Timco. The defendant has stated that he had to stop these

activities around 1990 because of the outbreak of the first civil war. He then fled to Sierra Leone. Therefore, the intervention methods of Charles Taylor and the atrocities of the first civil war cannot be taken place unnoticed by him.

After Samuel Doe had been killed, the defendant returned to Liberia some time later. Next to the hotel, in the late 1990s when Charles Taylor was president, the defendant started with RTC and later OTC. As already mentioned in H.3 and H.3.1, the political, financial and private interests of (the regime of) Charles Taylor were strongly intertwined with the interests of (the companies of) defendant. In mid-2003, the defendant fled from Buchanan, due to threatening violence from approaching rebels. For a considerable period, including the time of the alleged facts, the defendant was married to Monique Mathelier, a Liberian woman.

The court is of the opinion that the defendant, who lived/stayed in Liberia regularly for two decades, who was married to a Liberian woman, who operated as an important businessman there, who fled due to the first civil war and returned to Liberia, who maintained contacts with the president of Liberia Charles Taylor and whose interests were strongly intertwined with (the regime of) President Taylor, must have had some knowledge of Liberian society, including political and ethnic disputes and the associated armed conflicts. He should also have had the necessary knowledge of the way in which those conflicts were fought in Liberia.

The fact that the defendant had the necessary knowledge also appears from his own statements. The defendant stated, *inter alia*, the following:

- That a war in African countries (*the court: such as Liberia*) is fought differently than in Europe and that human life has less value. That the different tribes had different ways to deal with the conquered opponent. The defendant mentioned the example of the Crown tribe, where it happened that the conqueror would cut out the heart of the conquered and eat it. According to the Crown, this would give the conqueror extra strength.⁶⁵
- After the defendant was asked how it was possible that in wars in Africa so much violence is used and so much damage is caused, he stated that this was in the culture of different tribes.⁶⁶
- After the reporting officers mentioned that the weapons (*the court: imported on the [ship 1]*) were used to plunder villages, that people were killed and such, the defendant stated that according to the stories, everybody did the same (*the court: in Liberia*).⁶⁷
- After the reporting officers told the defendant that the people in Liberia wanted Taylor to be tried in Liberia and not in Sierra Leone because Taylor had committed crimes in Liberia during battles with, for example, the LURD, the defendant stated that Taylor had not done anything different than the LURD did against Taylor. "*When you see the video of how the LURD fought against Taylor, you can imagine what went on then and there*", the defendant stated.⁶⁸
- During the hearing at the first instance court, the defendant stated that in Africa wars took place which, as described, were not fought by the book. It is true, according to the defendant, that atrocities were committed during those wars in Africa.⁶⁹
- While questioned by the examining judge, the defendant was confronted with a document including a text written by him: "*We all agree that the way in which wars are fought in these countries is very horrific and that things have taken place that never should have happened.*" When the examining judge asked the defendant what he meant, he replied, "*I'm talking about warfare in Africa. That's a way of conducting a war that should not be allowed.*"⁷⁰
- During the hearing at the Court of Appeal in The Hague, the defendant stated: "*It is common knowledge how wars are fought in Africa and that cruelties are committed. Clearly it was not a war according to the Geneva Conventions.*"⁷¹

In addition, media scans reveal that worldwide, including in the Netherlands and France (the defendant had an apartment in Paris and often stayed there⁷²), already from the beginning reports were published about the events in Liberia, including the fierce fighting and atrocities committed in Lofa County and Guéckédou.⁷³ The defendant stated that he followed the media if he was not in Liberia, and in the years 2000 to 2003 he also followed the foreign media. The defendant also stated that he looked in the newspapers in Liberia as well.⁷⁴

Since the defendant had major financial interests in Liberia and lived there most of the time, it is near to impossible that when being confronted with the events, the reports about the armed conflict and the atrocities, this should have escaped his attention.

L.2.5 Conclusions regarding conditional intent with respect to war crimes

In view of the above, the court is of the opinion that the defendant (i) by importing weapons and ammunition for the regime of Charles Taylor, (ii) by providing armed personnel to the Liberian combined armed forces, (iii) by making trucks and drivers available, (iv) as well as by making the RTC camp Bomi Wood available, he exposed himself to the significant probability that war crimes and/or crimes against humanity would be committed by third parties. This applies to the crimes for which weapons and ammunition were directly used (such as shooting civilians) and in case of indirect use, such as threatening to use weapons and/or crimes committed by the armed groups (such as rape and pillaging).

The court assumes that the defendant, in spite of what he has stated concerning his knowledge about those events, also was aware of the violent nature of the (armed warriors of the) then regime of Charles Taylor.

By providing weapons, personnel and equipment to the armed conflict under such circumstances, according to the court, the defendant consciously accepted (took into the bargain) the probability that war crimes and/or crimes against humanity would be committed.

M. Conclusions regarding counts 1, 2 and 3

In view of everything considered above, the court believes that the defendant - in conjunction with others - deliberately provided means for the acts as referred to in the proven facts and committed by the persons mentioned in the proven facts.

In view of everything considered above, the defendant has thus deliberately been an accomplice to the war crimes in the further alternative proven under 1A, 2A and 3A.

Additional (conditional) requests

N. (Conditional) requests for hearing witnesses

Both during her oral pleadings and rejoinder, the defence counsel made multiple (conditional) requests to hear witnesses or to have them heard. Among others, she made the following requests:

- in case the court when ruling on the evidence relies on witness statements, to hear as a witness without restrictions: all witnesses presented by the advocates general, as referred to in their closing speeches and, all witnesses appearing on the defence's summary of origin and connections of those witnesses;
- in case the court, for the judicial finding of fact, relies on oral evidence or evidence obtained from witness statements, to hear as witnesses: all witnesses presented by the prosecution service and who, ultimately appear to have been introduced by unidentified third parties and who have not or not sufficiently been examined and regarding to whom there is no full and adequate record in the file, for the purpose of testing their reliability, more in particular regarding discrepancies, verifying the possibly active role regarding the presentation of witnesses, the origin of the witnesses and their statements;
- in case the court, when ruling on the evidence, relies on any means of proof, to hear as witnesses: all witnesses, i.e. the witnesses referred to in the file and mentioned by the prosecutors in their closing speech, and also including [confidants], and the crew of all other ships in the port.

In addition to the fact that the defence counsel actually wants to hear all witnesses appearing in the case file one more time, she has also made separate (conditional) requests to hear some witnesses in particular. The court understands that those requests are also related to the alleged discrepancies, the alleged steering role when presenting the witnesses, the origin of the witnesses and their statements and/or not having had adequate opportunity to examine various witnesses or dissatisfaction with the manner of reporting.

In so far as the (conditional) requests of the defence have not been discussed elsewhere in the judgement (see under B and B.1), in the context of the coherence between conditional requests, the court will discuss these (conditional) requests together.

N.1

The court puts first that, in so far as the (conditional) requests for the hearing of witnesses relates to witnesses whose statements have not been used by the court as evidence, the requests are rejected since the arguments submitted by the defence have not demonstrated the need for such witness examinations at all. With regard to the other witnesses requested, i.e. the witnesses of which the court used (part of) a statement as evidence, with regard to what the defence has put forward in rather general terms, the court has not found the need to hear those witnesses. The court believes that it has now been sufficiently informed concerning the subjects about which the defence wants to hear the witnesses. In this respect, the court refers in particular to what has been considered under A.1 to A.7 and G.1 to G.2 above.

Therefore, the court rejects the conditional requests for the hearing of witnesses.

Proven charges

1A.

That [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 4] and/or [co-perpetrator 5] and/or [co-perpetrator 6] and/or [co-perpetrator 7] and/or [co-perpetrator 8] and/or (an)other(s), at points in time in the years 2000 and 2001, in Guéckédou, together and in conjunction with others, each time violated the laws and practices of war, while from these offences death or severe bodily harm of (an) other(s) was to be feared and/or those offences involved inhuman treatment and/or those offences involved looting and/or while those offences resulted in the death of (an) other(s) and/or those offences involved rape, which implies that [co-perpetrator 2] and/or [co-perpetrator 3] and/or [co-perpetrator 4] and/or [co-perpetrator 5] and/or [co-perpetrator 6] and/or [co-perpetrator 7] and/or [co-perpetrator 8] and/or (one or more) other(s) (person(s) who has/have remained unknown until the present) then and there, contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to civilians and/or the stipulations set out in the "common" article 3 of the Geneva Conventions dated 12 August 1949, as participants in an armed conflict on the territory of Guinea repeatedly committed an attack on someone's life and/or physical violence and/or cruel inhuman treatment and/or torture and/or rape, and/or looting, with regard to persons who were, at that time, not (no longer) directly participating in the hostilities, being civilians, which attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid member, together and in conjunction with others, deliberately,

- by using RPGs and/or mortars and/or other fire weapons, fired at random at the town of Guéckédou, without making any distinction between soldiers and civilians, while knowing that this type of attack would cause excessive loss of human lives, injuries to civilians and/or damages to civilian objects and/or
- aimed and/or fired at civilians and/or
- set fire to houses where civilians still staying and/or
- cut off the heads of three civilians and/or threw babies against walls and/or threw babies into wells and/or
- forced civilians into their houses and subsequently threw a grenade inside as a consequence of which
- the afore-mentioned civilians died and/or
- raped women and/or
- plundered possessions of civilians and/or members of the armed forces

for the commission of which crimes he, the defendant, in the period from 1 August 2000 to 31 December 2001 inclusive, in Buchanan and/or Monrovia and/or elsewhere in Liberia, deliberately provided means,

after all, he, the defendant, president of Oriental Timber Company and owner and director of Royal Timber Company, then and there intentionally:

- supplied weapons, being AK-47s and RPGs and GMGs and ammunition that belonged to the above mentioned arms to Charles Taylor and/or his armed forces, and,
- put his own staff members, employed by the companies Oriental Timber Company (OTC) and Royal Timber Company (RTC) at the disposal of the armed conflict
- threatened to dismiss his staff members employed by the Oriental Timber Company (OTC) if these staff members refused to participate in the armed conflict and,
- placed trucks and pick-up trucks at the disposal of Charles Taylor and/or his armed forces, for the benefit of the transport of armed forces and/or weapons and/or ammunition and,

- placed an RTC camp, in any case a meeting place, at the disposal of Charles Taylor and/or his armed forces;

2A.

That [co-perpetrator 2] and/or [co-perpetrator 9] and/or (an)other(s) at points in time in the years 2001 and 2002, in Voinjama, at least in the vicinity of Voinjama, each time violated the laws and practices of war,
while from these offences death or severe bodily harm of (an) other(s) was to be feared and/or those offences involved inhuman treatment and/or those offences involved looting and/or while those offences resulted in the death of (an) other(s) and/or those offences involved rape, which implies that [co-perpetrator 2] and/or [co-perpetrator 9] and/or (one or more) other(s) (person(s) then and there, contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to civilians and/or the stipulations set out in the "common" article 3 of the Geneva Conventions dated 12 August 1949, as participants in an armed conflict on the territory of Liberia repeatedly committed an attack on someone's life and/or physical violence and/or cruel inhuman treatment and/or torture and/or rape, and/or looting, with regard to persons who were, at that time, not (no longer) directly participating in the hostilities, being civilians,

which attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid members, together and in conjunction with others, deliberately, aimed and/or fired at civilians, as a consequence of which said civilians,

- the afore-mentioned civilians died and/or
- raped women and/or
- plundered possessions of civilians and/or members

for the commission of which crimes he, the defendant, in the period from 1 August 2000 until 31 December 2002 inclusive, in Buchanan and/or Monrovia and/or Voinjama and/or elsewhere in Liberia, deliberately provided means,

after all, he, the defendant, president of Oriental Timber Company and owner and director of Royal Timber Company, then and there intentionally:

- supplied weapons, being AK-47s and RPGs and GMGs and ammunition that belonged to the above mentioned arms to Charles Taylor and/or his armed forces, and,
- put his own staff members, employed by the companies Oriental Timber Company (OTC) and Royal Timber Company (RTC) at the disposal of the armed conflict
- threatened to dismiss his staff members employed by the Oriental Timber Company (OTC) if these staff members refused to participate in the armed conflict and,
- placed trucks and pick-up trucks at the disposal of Charles Taylor and/or his armed forces, for the benefit of the transport of armed forces and/or weapons and/or ammunition and,
- placed an RTC camp, in any case a meeting place, at the disposal of Charles Taylor and/or his armed forces;

3A.

[co-perpetrator 2] and/or [co-perpetrator 8] and/or [co-perpetrator 10] and/or [co-perpetrator 11] and/or (an)other(s), at points in time in the years 2001 and 2002, in Kolahun, at least in the vicinity of

Kolahun, each time violated the laws and practices of war,
while from these offences death or severe bodily harm of (an) other(s) was to be feared and/or
those offences involved inhuman treatment and/or
those offences involved looting and/or
while those offences resulted in the death of (an) other(s) and/or
those offences involved rape,
which implies that [co-perpetrator 2] and/or [co-perpetrator 8] and/or [co-perpetrator 10] and/or [co-perpetrator 11] and/or (an) other(s) (person(s) then and there, contrary to international common law (in particular the common law ban on attacks carried out without making any distinction between soldiers and civilians) and/or torture and/or inhuman treatment and/or rape and/or looting and/or acts of violence with regard to civilians and/or the stipulations set out in the "common" article 3 of the Geneva Conventions dated 12 August 1949, as participants in an armed conflict on the territory of Liberia repeatedly committed an attack on someone's life and/or physical violence and/or cruel inhuman treatment and/or torture and/or rape, and/or looting, with regard to persons who were, at that time, not (no longer) directly participating in the hostilities, being civilians,
which attack(s) on someone's life and/or physical violence, at least mutilation and/or cruel (inhuman) treatment and/or torture and/or rape and/or looting, which (among other matters) implied that the aforesaid members, together and in conjunction with others, deliberately,
- bombed civilians in the city of Kolahun at random with grenades, for a long duration, and/or
- (aimed and) shot at civilians and/or
- told civilians to undress and to lie down on the ground and then executed said civilians and/or
- set fire to houses in which there were still civilians,
as a result of which aforementioned civilians died or suffered injuries and/or
- raped women and/or children and/or
- locked two men in an attic and subsequently set fire to a bale of pepper in this attic causing these men to almost suffocate, while this fact involved inhuman treatment and/or
- plundered possessions of civilians and/or of (members of the) armed forces,

for the commission of which crimes he, the defendant, in the period from 1 August 2000 to 31 December 2002 inclusive, in Buchanan and/or Monrovia and/or Kolahun and/or elsewhere in Liberia, deliberately provided means,

after all, he, the defendant, president of Oriental Timber Company and owner and director of Royal Timber Company, then and there intentionally:

- supplied weapons, being AK-47s and RPGs and GMGs and ammunition that belonged to the above mentioned arms to Charles Taylor and/or his armed forces, and,
- put his own staff members, employed by the companies Oriental Timber Company (OTC) and Royal Timber Company (RTC) at the disposal of the armed conflict
- threatened to dismiss his staff members employed by the Oriental Timber Company (OTC) if these staff members refused to participate in the armed conflict and,
- placed trucks and pick-up trucks at the disposal of Charles Taylor and/or his armed forces, for the benefit of the transport of armed forces and/or weapons and/or ammunition and,
- placed an RTC camp, in any case a meeting place, at the disposal of Charles Taylor and/or his armed forces;

4.

He, in the period from 21 July 2001 until 8 May 2002 inclusive, in Buchanan, Liberia together and in conjunction with others, twice, i.e.:

- in the period from 10 November 2001 until 29 November 2001 inclusive and
- in the period from 28 February 2002 until 8 March 2002 inclusive,

deliberately and in violation of the prohibition of article 2 of the Sanctions Regulation Liberia 2001, as set out in article 2 paragraph 2 of the Sanctions Act 1977,

which stipulates the ban on selling and/or supplying weapons and/or ammunition and/or military equipment and/or goods and/or armed or non-armed yards and/or spare parts and/or repairs and/or the maintenance thereof and/or military technology to natural persons and/or legal persons in Liberia, referred to in the Schedule to the Resolution on Imports and Exports of Strategic Goods, has supplied weapons and ammunition to natural persons in Liberia,

after all, he, the defendant, president of Oriental Timber Company and owner and director of Royal Timber Company, then and there intentionally supplied weapons, being AK-47s and RPGs and GMGs to Charles Taylor and/or his armed forces and to the employees of the Oriental Timber Company (OTC).

5.

He, in the period from 26 September 2002 until 7 May 2003 inclusive, in Buchanan, Liberia together and in conjunction with others, twice, i.e.:

- in the period from 15 December 2002 until 30 December 2002 inclusive and
- in the period from 25 April 2003 until 7 May 2003 inclusive,

deliberately and in violation of the prohibition of article 2 of the Sanctions Regulation Liberia 2001, set out in article 2 paragraph 2 of the Sanctions Act 1977,

which stipulates the ban on selling and/or supplying weapons and/or ammunition and/or military equipment and/or goods and/or armed or non-armed yards and/or spare parts and/or repairs and/or the maintenance thereof and/or military technology to natural persons and/or legal persons in Liberia, referred to in the Schedule to the Resolution on Imports and Exports of Strategic Goods, has supplied weapons and ammunition to natural persons in Liberia,

after all, he, the defendant, president of Oriental Timber Company and owner and director of Royal Timber Company, then and there intentionally supplied weapons, being AK-47s and RPGs and GMGs to Charles Taylor and/or his armed forces and to the employees of the Oriental Timber Company (OTC).

Punishability of the proven facts

O. Absence of material unlawfulness and/or appeal to (unreasonable or improper) self-defence and/or force majeure.

In case the court shall declare (one of the) facts proven, the defence has stated that Liberia had the right to defend itself against the attacks of (among others) the LURD rebels. In this regard, the counsel referred to (a.) article 51 of the Charter of the United Nations, (b.) article 8, third paragraph of the International Criminal Court Statute and (c.) article 41 of the Dutch Criminal Code (self-defence or unreasonable or improper use of self-defence).

The court understands this plea in the sense that the defence claims that the defendant should be

discharged from all further prosecution due to the absence of material unlawfulness in his actions and/or because he relies on self-defence or unreasonable or improper use of self-defence and/or force majeure (in the sense of state of emergency).

O.1

Sub a.

Article 51 of the United Nations Charter reads, in so far as relevant here:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

On the basis of this provision, a collective and individual right to defence can be distinguished, in which, in both cases, there has to be reasonable and proportional conduct to stop the attack or danger, however only until the Security Council has taken the necessary measures to preserve peace and security.

Nevertheless, this provision is not applicable to the defendant since – as has been demonstrated in the proven facts – the conduct did not as much relate to (self) defence but rather to misbehaviour (war crimes) against civilians, i.e. killing defenceless civilians including babies, burning houses, committing rape on a large scale and looting property that belonged to civilians.

If the counsel, with respect to the proven facts under 4 and 5, wanted to invoke the right to defence as referred to in article 51 of the Charter, this appeal cannot be successful now that the supply of weapons to the regime of Charles Taylor while invoking the right to defend oneself on the basis of article 51 of the United Nations Charter would mean a violation of aforementioned arms embargo, which had actually been imposed because the support of Charles Taylor's regime to the RUF rebel group posed a threat to international peace and security in the region.

The court further considers that an arms embargo, which should have an impact on all the conflicting parties, does not affect the right to defend.

Sub b.

In addition, the defence counsel relied on article 8 of the Statute of the International Criminal Court, which reads:

"1. The court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(...)

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(...)

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(...)

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means."

The court believes that there is no way in which the defendant, as a citizen, has the right to appeal to article 8 paragraph 3 of the Statute Regulations, which in this provision only guarantees the right of a State as referred to in article 3, paragraph 1 of AP I.

However, whatever the meaning, the right of the government to maintain *law and order* or to defend unity and territorial integrity finds its limitation in the legitimacy of the means used and, in particular, in the provisions of article 8 (2) under c and e. The alleged acts carried out by or because of the combined armed forces actually constitute a violation of the interests referred to in article 8, paragraph 2, under c and e of the Statute of the International Criminal Court.

Sub c.

Although the war situation is required for the justification of the defensive conduct, which is not expressly mentioned in article 41 Criminal Code, according to the Memorandum of Understanding⁷⁵ the protection of goods may constitute a justifiable interest, *"provided that it concerns (proportional) protection of goods which serve a legitimate purpose"*.

To the extent that one can speak of an act of war on the part of the (LURD) rebels against which the Liberian government was allowed to defend itself, in this case there was no need for a defence nor of a *"right of individual or collective self-defence"* as referred to in article 51 of the Charter or a *"reasonable defence"*, because the conduct consist of misbehaviour (war crimes) against defenceless citizens, such as shooting at civilians, killing civilians including babies, rape and looting property belonging to citizens. On the basis of the outward appearance of this conduct, it cannot be regarded as aiming at defence but - viewed at the core - should be seen as offensive.

The appeal to self-defence is therefore rejected. As a matter of fact, it has not become plausible either that the alleged conduct has been the immediate consequence of a strong emotion brought about by the unlawful attack.

Finally, the counsel relied on a state of emergency. The defendant, so the court understands, provided weapons, lorries and armed personnel because he found himself in a state of emergency. It must be presumed that in an individual case, exceptional circumstances can lead to behaviour that is punishable by law but which may nevertheless be justified if, inter alia, the acts were committed in a state of emergency, that is, generally speaking - that the perpetrator, confronted with the need to choose between conflicting duties and interests, let the most important prevail.

The defendant pleads, in essence, that the complicity in war crimes and the violation of the Sanctions Act 1977 committed by him was justified because the combined armed forces of Liberia had to defend themselves. An appeal to force majeure in the sense of emergency only succeeds when a defendant has violated the law because, in this way and given the circumstances, he let a clearly more important interest prevail.

The proven facts are among the most serious known to the international legal order. The court believes that the argument that Charles Taylor wanted to stop the LURD rebels, does not justify complicity in war crimes and crimes against humanity in a "dirty war". And this also does not justify the violation of an arms embargo that is actually meant to prevent acts of war and the associated war crimes and crimes against humanity.

The court thus fails to see that the defendant has let a clearly more important interest prevail. On the contrary, by the acts of the defendant who delivered the weapons, warriors and means of transport to Charles Taylor's regime, in the opinion of the court the defendant contributed to the fact that the situation in which war crimes and crimes against humanity in Liberia were committed, continued for a longer period.

Therefore, the court rejects the plea of the defence.

The facts proven under 1A, 2A and 3A constitute, each time:

Complicity in co-committing violations of the laws and customs of war, while the offence results in death or involves rape, committed multiple times.

The facts proven under 4 constitute:

Co-committing deliberate violations of a regulation laid down in article 2 ICW article 3 of the Sanctions Act 1977, committed multiple times.

The facts proven under 5 constitute:

Co-committing deliberate violations of a regulation laid down in article 2 of the Sanctions Act 1977, committed multiple times.

No facts or circumstances have become plausible that would rule out the punishability of the offences.

Punishability of the defendant

No facts or circumstances have become plausible that would rule out the punishability of the defendant.

Therefore, the defendant is punishable with regard to the above proven facts.

Punishment to be imposed

P. Modification of legislation with regard to war crimes

As already considered under K, the penal provisions of the WOS as they were in force at the time of the proven periods were recorded in the WIM on 1 October 2003. The court considers that there is no change in the legislator's view regarding the punishment of the criminal offences in this context.

According to the provisions of article 1, paragraph 2, of the Dutch Criminal Code, the court will therefore apply the WOS, as it was effective from 1 January 1991 until 1 October 2003.

In view of the provisions of article 8, paragraphs 1 and 3 of the WOS, as they read at the time of the proven facts, the maximum sentence to be imposed on a (co-)perpetrator of the proven facts qualified as war crimes: life imprisonment or a fixed-term prison sentence of not more than twenty years, or a fine of the fifth category.

P.1 Modification of legislation with regard to violations of the Sanctions Act 1977

Violations of the Sanctions Act 1977 are punishable according to the Economic Offences Act. After the violations of the Sanctions Act 1977 proven under 4 were committed, the Economic Offences Act was amended several times as well. In this case, only the amendment relating to the Sanctions Act 1977 is of importance.

The Sanctions Act 1977 was included in the enumeration in article 1, preamble and under 2° of the Economic Offences Act and was included in the Act of 16 May 2002 in article 1, preamble and below 1° of the Economic Offences Act. This change came into effect on 7 June 2002 (Government Gazette 2002, 270). The consequence of this change is that the maximum penalty imposed for violations of the Sanctions Act 1977 has been increased.

It cannot be said that the amendment to the Economic Offences Act relating to the Sanctions Act 1977, which took place after the commission of the offences proven under 4, resulted in more favourable provisions for the defendant which would prompt the application of article 1, paragraph 2 of the Dutch Criminal Code.

The applicable statutory provision relating to the facts proven under 4 is therefore, article 1, preamble and 2 ° of the Economic Offences Act, as stated at the time of the commission of the proven criminal offences.

With regard to the proven facts stated under 5, the court will apply article 1, preamble and paragraph 1 of that Act.

P.2 Conclusions with regard to the maximum penalty in the current case

With regard to complicity (proven above), the court has looked at article 49, paragraph 2 of the Dutch Criminal Code, as it read until 1 February 2006 (the date of entry into force of the Reassessment of Maximum Penalties Act).

On the basis of criminal law applicable prior to this entry into force, for complicity in a crime which is punishable by life imprisonment a maximum prison sentence of fifteen years may be imposed. Now that the defendant has been found guilty of this complicity multiple times, in his case the duration of the imprisonment shall not be more than twenty years, in accordance with the provisions regarding concurrence of acts as referred to in article 57, second paragraph of the Dutch Criminal Code.

In the opinion of the court and in accordance with articles 10, 49, paragraphs 2, 57 and 78 of the Dutch Criminal Code, article 8 of the WOS and articles 1, 2 and 6 of the Economic Offences Act, as they read at the time of the proven facts, viewed together and in relation to each other, no other conclusion can be drawn than that in the present case a prison sentence of a maximum of twenty years may be imposed on the defendant.

Q. Grounds for the sentence

The advocates general demanded the court that the defendant be sentenced regarding the proven

facts to a term of twenty years imprisonment, less the time spent in pre-trial detention pursuant to article 27 of the Criminal Code.

In determining the sentence to be imposed, different aspects were taken into account such as the nature and seriousness of the proven offences, the circumstances under which the proven offences were committed and the defendant as a person, which have all been discussed during the hearing of the case.

The defendant, a business man operating on international level, was active in logging operations in Liberia with the companies OTC and RTC from 1999 to mid-2003. The interests of (the companies of) the defendant were intertwined with the political, financial and private interests of (the regime of) Charles Taylor, the president of Liberia at that time.

In the period from 2000 to mid-2003, the defendant, together with others, used the company OTC (of which he was president) to import shipments of weapons (RPGs, AK 47s and GMGs) and corresponding ammunition with a ship via the port of Buchanan, Liberia. By importing these weapons, the defendant acted in violation of arms embargoes in 2001 and 2002, which resulted directly from United Nations Security Council resolutions. These resolutions had been issued because the support of Charles Taylor's regime to the RUF rebel group resulted in a threat to international peace and security in the region. The defendant and his co-perpetrators have deliberately violated the embargoes, making use of covert procedures (including sending people away from the port, shutting down the harbour and unloading weapons and ammunition in the dark) to keep the arms deliveries out of (international) sight.

The defendant did not only supply arms and ammunition to Charles Taylor's armies for years, but also provided a camp of his company RTC for the (temporary) storage and distribution of weapons. He also made (armed) employees available to Charles Taylor's troops. All this for the purpose of an armed conflict in northern Liberia and just across the border in Guinea, in Guéckédou. In this armed conflict, Charles Taylor's armies fought in a bloody war with the rebel group LURD, which operated in and out of Guinea. As accomplice, the defendant is co-responsible for the proven war crimes and crimes against humanity committed against defenceless civilians during that armed conflict. He deliberately provided an essential contribution to these violations because, through the supply of weapons and ammunition, he enabled the regime to (almost undiminishedly) continue their armed attacks on defenceless civilians inflicting death and destruction for a number of years. The armed fighters were ordered to rescue nothing and no one

(*"no baby on target"*) and, among other things, they randomly bombed cities, beheaded civilians, raped women and children, threw live babies into wells, hit/threw babies with their heads against the wall until their skulls crushed and, after they had plundered them, left cities in ruins.

Until today, the defendant has denied the facts and has not provided any clarity about his motives for his criminal activities. In conclusion, it must be assumed that the defendant did not act out of political or ideological motives, but acted in fear of losing his investments in Liberia and losing his income from the logging companies. Thus, his actions were committed for financial gain and apparently with the acceptance of the serious consequences.

The court has taken into account the extract from the Justice Department's Criminal Records dated 11 April 2017, which shows that the defendant has no prior convictions for similar criminal offences in the

past.

The court also recognises the fact that the proven offences were committed about fifteen years ago, that the defendant has remained in prolonged uncertainty because the hearing of his case has taken a long time, and that the defendant is now a man of advanced age and fragile health. The court shall only grant a very limited significance to these personal circumstances.

Considering that this case, among others, involves extremely gross violations of the principles of humanitarian law which have taken place, and that the defendant had an important supporting role in those violations, when determining the sentence it is also of great importance to show to the victims and survivors, as well as to the international legal community, that the court considers the actions of the defendant to be very serious crimes.

In particular, the court has looked at the aspect of general prevention. Businessmen like the defendant who operate (internationally) and do not shy away from doing so in cooperation with regimes such as Charles Taylor's, must be made aware of the possibility of becoming involved in serious (international) crimes (against humanity).

For sentencing the court has taken into consideration judgements which have been given in similar cases. In this respect it has been found that the proven facts are difficult to compare with other similar facts, because in particular war crimes carry a number of specific elements.

All things considered, the court is of the opinion that in the context of proper law enforcement a long non-suspended prison sentence will do justice to the seriousness of the facts. The court concludes that the maximum prison sentence to be imposed in this case is appropriate.

Apart from what will be considered below with regard to the duration of the trial, the hearing of the case has not revealed any facts and circumstances which give rise to depart from this premise.

The court takes into account that the proceedings on appeal before this court have taken a considerable amount of time. On 20 April 2010, the Supreme Court annulled the judgement of the Appeals Court in The Hague and remitted the case to this court. The final judgement in the present appeal proceedings is delivered on 21 April 2017.

The court concludes that, on the basis of a two-year trial period set as standard by the Supreme Court, the time limit has been exceeded by more than five years. However, it should be noted that this concerns a very extensive and complicated case file, and that the facts have taken place in another part of the world. In addition, the question can also be raised whether this two-year period is suitable for application in the context of the committed (complicity in) war crimes and crimes against humanity. We know from experience, in particular with regard to the trial of such crimes by international tribunals set up for this purpose and crimes prosecuted by the International Criminal Court - that a thorough examination of such criminal cases requires considerably more time than the aforesaid two years.

Moreover, in the course of the proceedings the defence submitted a large number of investigative requests. These additional investigations - inherent to the international component of this case and the dependence on the willingness of foreign authorities to cooperate in the investigation - have taken up quite some time. Furthermore, the Ebola crisis that broke out in western Africa significantly delayed the visits to Liberia (for hearing witnesses).

Be that as it may, due to its particular complexity and international component, as well as the

defendant's attitude towards the proceedings, in the eyes of the court the trial of this case has taken quite a long time.

In addition, the court has taken into account that the proven criminal offences were committed approximately 14 to 17 years ago.

On the grounds of the above mentioned long duration of the appeal proceedings and the total duration of the trial of the case, the court finds reason to compensate the defendant and to impose a sentence of 19 years imprisonment.

R. Fit for detention

Regarding the sentence to be imposed, the court has not seen reason to take into account the argument put forward by the defence counsel that the defendant is allegedly unfit for detention.

During the hearing of the case it has not become plausible that the defendant would be completely unsuitable to undergo detention - in any form - nor has it been demonstrated that the defendant's life and the quality thereof would be threatened by detention in such a way, that it would constitute a violation of articles 2 or 3 of the ECHR or the Torture Convention.

In making this assessment, the court has taken particular account of:

- the email message dated 17 March 2017, from M. Kamphorst-Roemer, physician and as medical advisor associated to the Department of Correctional Institutions (DJI), which - rendered succinctly - indicates that the defendant is initially fit for detention in the Judicial Centre for Somatic Care (JCvSZ). The necessary care and infection prevention measures for his lung problems can be provided within detention. While in detention, the defendant will have access to specialist care by a lung doctor specialising in interstitial lung diseases. In case of progression, oxygen may be administered if necessary. After a period of stay and care in the JCvSZ, it is possible to determine what would be the best suitable detention environment.

The court believes that the doctor's opinion has been sufficiently substantiated. The counsel's assertion that the doctor did not conduct an independent inquiry has not become plausible.

The defence counsel's requests, made by fax of 31 March 2017 to hear expert witnesses or request them to issue a further report on this matter, are hereby dismissed by the court.

In view of the arguments put forward by the defence in support of these requests, the court considers that there is no need for such hearings and further inquiries.

The court concludes that, on the basis of all available information, including the medical information provided by the defence, it has now been sufficiently informed.

For the sake of completeness the court considers that, if the defendant's health should deteriorate

further, additional health reports can be made during the execution phase once again.

Provisional detention

S. Demand to order imprisonment

During the hearing on 10 February 2017, the advocates general demanded the court to issue an order for the imprisonment of the defendant.

S.1 Order of imprisonment

In the present ruling the defendant is convicted of, among other offences, complicity in war crimes and sentenced to long-term imprisonment.

This implies that the commission of these criminal offences has now been firmly established on appeal. The defendant has been convicted of crimes for which provisional detention is allowed.

Moreover, according to the judgement of the Court of Appeal, the facts constitute crimes for which, according to the legal description, a prison sentence of twelve years or more can be imposed. In addition, the court considers that, in view of the nature of the proven facts and the sufferings caused to (the relatives of) the victims, the legal order has been severely shocked.

The court has also taken into consideration that since the crimes were committed, considerable time has elapsed. However, considering the seriousness and nature of the criminal offences this lapse of time does not diminish the impact they have had on the legal order, but especially in case of war crimes the shock of the legal order continues.

This implies that there is an important reason concerning public safety, which requires the immediate deprivation of liberty of the defendant, according to the court.

The fact that a prior order of provisional detention was lifted, makes no difference.

Therefore, the court shall order the imprisonment of the defendant.

Applicable statutory provisions

The decision is governed by the provisions of article 8 of the Wartime Offences Act, articles 2 and 3 of the Sanctions Act 1977, articles 47, 48, 49 and 57 of the Criminal Code and articles 1, 2 and 6 of the Economic Offences Act, as they stood at the time of the proven facts.

JUDGEMENT

The Court of Appeal:

Sets aside the judgement rendered in the case on appeal and renders a new judgement.

Declares the public prosecution service admissible with respect to the prosecution.

Declares not proven the offences charged to the defendant under 1A principally and alternatively, 1B, 2A principally and alternatively, 2B, 3A principally and alternatively and 3B and acquits the defendant thereof.

Declares, as considered above, that the defendant has committed the offences as charged under 1A in the further alternative, 2A in the further alternative, 3A in the further alternative, 4 and 5.

Declares not proven the offences that the defendant has been charged with, more or different from what has been declared proven above, under 1A in the further alternative, 2A in the further alternative, 3A in the further alternative, 4 and 5 and acquits him thereof.

Declares the proven facts punishable, qualifies them as referred to above and declares the defendant liable to punishment.

Sentences the defendant to a **term of imprisonment** for the duration of **19 (nineteen) years**.

Orders that the time spent by the defendant in pre-trial detention in a form as referred to in article 27, first paragraph of the Dutch Criminal Code prior to the execution of this judgement, shall be deducted from the prison term in so far as this time has not already been deducted from another prison sentence.

Orders the imprisonment of the defendant, which order shall be recorded in the minutes separately.

Judgement rendered by:

mr. H. Harmsen, president,
mr. A.M.G. Smit and *mr.* K. van der Meijde, justices,
in the presence of *mr.* R.P. van der Pijl and *mr.* M.F.S. ter Heide, clerks of the court,
and pronounced during a public hearing on 21 April 2017.

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- ¹ Supreme Court of Liberia, *Williams v Tah et al* [2011], LRSC 12 dated 21 January 2011 (appendix C to the defence counsel's rejoinder).
- ² Dissenting opinion Supreme Court of Liberia, *Brown-Bull vs. Truth & Reconciliation Commission* [2009], LRSC 16 dated 30 January 2009 (appendix B to the defence counsel's rejoinder).
- ³ And also "the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" and resolution 2005/81 regarding impunity, principle 19.
- ⁴ *Marguš vs Croatia*, EHRM 27 May 2014, no. 4455/10 and *Ould Dah t. France*, EHRM 17 March 2009, no. 13113/03.
- ⁵ RES/1674 (2006) Paragraph 8.
- ⁶ Parliamentary Documents I 1978/79, 14006, 34, p. 12.
- ⁷ Parliamentary Documents II 1977, 14006, 9, p. 3.
- ⁸ Supreme Court 4 November 2014, ECLI:NL:HR:2014:3109, NJ2015/288, Supreme Court 19 February 2013, ECLI:NL:HR:2013:BY5322 and Supreme Court 30 March 2004, ECLI:NL:HR:2004:AM2533.
- ⁹ See the memorandum submitted by fax dated 27 May 2005 written by Prof. Dr. S.D.K. Ellis, the document included in the fax of 15 July 2005 from Prof. Ellis (both attached to the examining magistrate's records), the answers sent by Prof. Ellis on 16 April 2013 to questions from the examining justice, advocates-general and defence and the answers sent by Prof. M. Utas to questions from the examining justice, advocates-general and defence dated 7 October 2013.
- ¹⁰ Official report of findings contact [alias co-perpetrator 1] and witness [co-perpetrator 4] dated 27 April 2005, 3rd pro forma, binder 3, appendix 16, p. 923-924.
- ¹¹ Official report of findings telephone conversation [witness 1] dated 29 April 2005, 3rd pro forma, binder 3, p. 928-929.
- ¹² Official report of findings telephone conversation witness [witness 2] dated 29 April 2005, 3rd pro forma, binder 3, p. 930-931.
- ¹³ The interrogation by the Examining Magistrate (EM) of [name team leader CivPol] dated 10 April 2006, "folder EM-examinations second part of folder 11" p. 769-773.
- ¹⁴ Official report of the approach of witnesses, 3rd pro forma, binder 3, appendix 16, p. 796-822.
- ¹⁵ Official reports [co-perpetrator 4] dated 10 January 2016, folder EM-examinations, folder I, p. 266, official report of [co-perpetrator 11], folder EM-examinations, folder II, dated 2 March 2006, folder , p. 577. For a corroborating statement regarding the approach of witnesses see the statement rendered in the English language before the examining justice by witness [witness 7] dated 15 January 2014, Official report of rogatory commission to Liberia 2013, p. 10-14. Witness [witness 7] was approached in 2012.
- ¹⁶ End file, binder 9, p. 3130.

- ¹⁷ Official report regarding the defendant's use of the American Express Card, information in his passport and correspondence found in relation to travel movements dated 23 November 2005, p. 161-184.
- ¹⁸ Statement/report of the Hong Kong Police Force dated 19 January 2006, containing a statement of [person concerned 6], end file, binder 6, p. 1810-1812.
- ¹⁹ The letter, included as appendix 2 in the Official report of findings of the Netherlands National Police dated 12 November 2010, which official report was attached as appendix 12 to the letter of the advocates-general dated 17 November 2010 titled "Documents and investigation requests submitted by the Public Prosecution Service in the case against [the defendant]".
- ²⁰ Respectively Regulation (EG) no.1146/2001 of the Council of the European Union dated 11 June 2001 (PbEGL 126) and Regulation (EG) no.1318/2002 of the Council of the European Union dated 22 July 2002 (PbEGL 156).
- ²¹ According to Google Maps, the route that was taken by the fighters and [victim 1] from Hoyayahun to Vezala (Velezala) is 12.4 km. Under the circumstances that could take four hours.
- ²² Official report of witness examination dated 20 March 2005, 1st Pro Forma, part II, pages 28-36
- ²³ The document, sent to the Appeals Court in The Hague by letter from the defence counsel dated 4 April 2014, as appendix 12 to the documents and enclosed with her fax message dated 21 April 2006.
- ²⁴ Official notice Liberian Ministry of Foreign Affairs dated May 2003, 4rth pro forma, 3rd binder. p. 1047, Official notice on Liberia, situation regarding asylum policy, Ministry of Foreign Affairs dated 16 October 2002 4rd pro forma, 3rd binder p. 1120 and Official notice on Liberia from the Ministry of Foreign Affairs dated May 2003, 4rd pro forma, 3rd binder, p. 1172.
- ²⁵ Official report of witness examinations dated 12 January 2006, EJ-examinations p. 294.
- ²⁶ Truth and Reconciliation Commission report dated 3 December 2009, part II, enclosed as appendix 8 with the letter from the advocates general dated 17 November 2010, p. 338-340 of the PDF.
- ²⁷ Geneva Convention for the amelioration of the condition of the wounded and sick in the armed forces in the field, of 12 August 1949, BoT. 1951,72; Geneva Convention for the amelioration of the condition of the wounded, sick and shipwrecked persons in the armed forces at sea of 12 August 1949, BoT. 1951, 73; Geneva Convention for the treatment of prisoners of war of 12 August 1949, BoT. 1951, 74; Geneva Convention for the protection of citizens in times of war of 12 August 1949, BoT. 1951, 75.
- ²⁸ Additional Protocol to the Geneva Conventions of 12 August 1949 for the protection of victims of international armed conflicts (AP I), BoT. 1978, 41; Additional Protocol to the Geneva Conventions of 12 August 1949, for the protection of victims of non-international armed conflicts (AP II), BoT. 1978, 42.
- ²⁹ Parliamentary Documents II, 2001-2002, 28 337, no. 3, p. 10.
- ³⁰ Since the Nuremberg trials it is generally accepted that war crimes are committed primarily by individuals and not by the states.
- ³¹ Prosecutor v. Delalic et al., Case No. IT-96-21-A, Judgement, 20 February 2001 (Celebici Appeal Judgement), § 173. Prosecutor v. Milutinovic, Šainovic and Ojdanic, Case No. IT-99-37-AR72, Decision on Motion Challenging Jurisdiction: Joint Criminal Enterprise Decision, 21 May 2003, § 42.
- ³² See (e.g.) Prosecutor v. Tadić, Case No. IT-94-1, Decision on the defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 ('Tadić, Jurisdiction Decision'), § 94
- ³³ See: J.-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, Vol. I: Rules, Cambridge, 2005, p. 569 et seq.
- ³⁴ Tadic Jurisdiction Decision, §§ 128-137
- ³⁵ Respectively International Criminal Tribunal for Rwanda, International Criminal Tribunal for Yugoslavia, Special Court for Sierra Leone.
- ³⁶ Tadic Jurisdiction Decision, §§ 128-129.
- ³⁷ Idem. See also: Celebici Appeal Judgement, §§ 162 and 171; Prosecutor v. Limaj et al., Case No. IT-

01-47-T, Judgement, 30 November 2005 ('Limaj Trial Judgement'), § 176; Prosecutor v. Blaskic, Case No. IT-95-14-T, Judgement, 3 March 2000 ('Blaskic Trial Judgement'), § 176; Prosecutor v. Naletic and Martinovic, Case No. IT-98-34-T, Judgement, 31 March 2003 (Naletic and Martinovic Trial Judgement), § 228.

³⁸ ICTR , ICTY and the Special Court for Sierra Leone (SCSL).

³⁹ See e.g. Prosecutor v. Kunarac et al. Case No. IT-96-23 and IT-96-23/1-A, Judgement, 12 June 2002 ('Kunarac Appeal Judgement'), § 56; Tadic Jurisdiction Decision, § 70 and Furundžija Trial Judgement, § 59.

⁴⁰ See Tadic Trial Judgement, Case No. IT-94-1-T, Judgement, 7 May 1997, § 562: "protracted armed violence between governmental authorities and organised armed groups or between such groups within a State".

⁴¹ E.g. Prosecutor v. Tadic Trial Judgement, § 562; Prosecutor v. Rutaganda, Case No. ICTR-96-3, Judgement and Sentence, 6 December 1999 ('Rutaganda Trial Judgement'), § 93; Celebici Trial Judgement, § 184 and Akayesu Trial Judgement, § 120.

⁴² Akayesu Trial Judgement, § 603

⁴³ See e.g. Prosecutor v. Tadic Trial Judgement, par 562 and Prosecutor v. Milošević, Case No. IT-02-54-T, Decision on Motion for Judgement of Acquittal, 16 June 2004, §§ 23-25.

⁴⁴ Akayesu Trial Judgement, §§ 625-626.

⁴⁵ Tadić Jurisdiction Decision, § 67.

⁴⁶ Kunarac Appeal Judgement, § 64 and Blaskić Trial Judgement, § 64.

⁴⁷ Tadic Jurisdiction Decision, §§ 69 and 70; Kunarac Appeal Judgement, §§ 57 and 64; Celebici Trial Judgement, §§ 209-210, Blaskic Trial Judgement, § 64.

⁴⁸ Celebici Trial Judgement, § 197; Blaskic, Trial Judgement, § 69; Kayishema and Ruzindana Trial Judgement, § 623 ('direct conjunction'); Tadic Jurisdiction Decision, § 70 ('closely related to the hostilities') and idem Kunarac Trial Judgement, § 402 en Bagosora Trial Judgement, 18 December 2008, § 2231.

⁴⁹ Kunarac Appeal Judgement, § 60.

⁵⁰ Prosecutor v. Rutaganda, Case No. ICTR-96-3-A, Judgement, 26 May 2003 ('Rutaganda Appeal Judgement'), § 570.

⁵¹ Inter alia Prosecutor v. Vasiljević, Case No. IT-98-32-T, Judgement, 29 December 2002 ('Vasiljević Trial Judgement'), § 25; Prosecutor v. Stakić, Case No. IT-97-24-A, Judgement, 22 March 2006, § 342; Prosecutor v. Mrkšić, Case No. IT-95-13/1-T, Judgement, 27 September 2007, §§ 423-424; Prosecutor v. Semanza, Case No. ICTR-97-20-T, Judgement, 15 May 2003 ('Semanza Trial Judgement'), §§ 516-522 en Prosecutor v. Semanza, Case No. ICTR-97-20-A, 20 May 2005 ('Semanza Appeal Judgement'), § 427; Rutaganda Appeal Judgement, §§ 556-685; Prosecutor v. Ntagerura, Bagambiki and Imanishimwe, Case No. ICTR-99-46-T, Judgement and Sentence, 25 February 2004 ('Ntagerura Trial Judgement'), §§ 793-802 en Prosecutor v. Ntagerura, Bagambiki and Imanishimwe, Case No. ICTR-99-46-A, Judgement, 2006 ('Ntagerura Appeal Judgement'), § 427

⁵² Prosecutor v. Kamuhunda , Case No. ICTR-95-54A-T, Judgement, 22 January 2004, § 735.

⁵³ Vasiljevic Trial Judgement, § 25 and Kunarac Appeal Judgement, § 58.

⁵⁴ Vasiljevic Trial Judgement, § 25 and Kunarac Appeal Judgement, § 58.

⁵⁵ In this context, see: Kunarac Trial Judgement, § 568 and Naletic and Martinovic Trial Judgement, §180 and §§ 619-622.

⁵⁶ Kunarac Appeal Judgement, § 57.

⁵⁷ Vasiljevic Trial Judgement, § 25; Kunarac Appeal Judgement, § 57; Kunarac Trial Judgement, § 568 and Celebici Trial Judgement, §§ 194-195.

⁵⁸ Kunarac Trial Judgement, § 568.

⁵⁹ Semanza Trial Judgement, § 368.

- ⁶⁰ Rutaganda Trial Judgement, §§ 100-101 and Kayishema and Ruzindana Trial Judgement, §§ 179-180.
- ⁶¹ Tadić Trial Judgement, §§ 615-616.
- ⁶² Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, ICRC Reports and documents, Volume 90 Number 872, ICRC December 2008, p. 1028.
- ⁶³ Akayesu Appeal Judgement, § 444 and furthermore: Rutaganda Appeal Judgement, §§ 569-570.
- ⁶⁴ The letter, included as appendix 2 in the Official report of findings of the Netherlands National Police dated 12 November 2010, which official report was attached as appendix 12 to the letter of the advocates-general dated 17 November 2010 titled "Documents and investigation requests submitted by the Public Prosecution Service in the case against [the defendant]".
- ⁶⁵ The official report of interrogation of the defendant dated 18 March 2005, 1st Pro Forma, part II, page 21.
- ⁶⁶ The official report of interrogation of the defendant dated 18 March 2005, 1st Pro Forma, part II, page 22.
- ⁶⁷ The official report of interrogation of the defendant dated 20 March 2005, 1ste Pro Forma, part II, page 34.
- ⁶⁸ The official report of interrogation of the defendant dated 20 March 2005, 1st Pro Forma, part II, page 34.
- ⁶⁹ Court order dated 24 April 2006, 25 April 2006, 26 April 2006, 27 April 2006, 28 April 2006, 1 May 2006, 2 May 2006, 3 May 2006, 4 May 2006, 8 May 2006, 10 May 2006, 11 May 2006, 12 May 2006, 24 May 2006 and 7 June 2006, p. 10.
- ⁷⁰ The official report of interrogation before the examining judge dated 18 and 21 April 2006, Binder EJ-interrogations named "folder 1 part 2," after page 843 not numbered consecutively, under 113.
- ⁷¹ Court record dated 28 January 2008, 11 February 2008, 18 February 2008 and 25 February 2008, p. 20.
- ⁷² See the official report concerning the use of American Express Card, passport data and correspondence found in relation to travel movements dated 23 November 2005, third pro forma, binder 1, p. 161-184.
- ⁷³ The official report relating to media scan, final file, binder 2, p. 371-418.
- ⁷⁴ The official report of interrogation before the examining judge dated 18 and 21 April 2006, Binder EJ-interrogations named "folder 1 part 2," after page 843 not consecutively numbered, under 117.
- ⁷⁵ Memorandum of Understanding to the International Crimes Act, Parliamentary Documents II 2001/02, 28 337, no. 3, p. 28.
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