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## The Law and Politics of the Charles Taylor Case

Charles Chernor Jalloh

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## The Law and Politics of the Charles Taylor Case

### Keywords

Politics, Gender, Aiding and Abetting, Criminal Law, International Criminal Law, International Law: History, Liability

# THE LAW AND POLITICS OF THE CHARLES TAYLOR CASE

CHARLES CHERNOR JALLOH\*

## Abstract

*This article discusses a rare successful prosecution of a head of state by a modern international criminal court. The case involved former Liberian president Charles Taylor. Taylor, who was charged and tried by the United Nations-backed Special Court for Sierra Leone (“SCSL”), was convicted in April 2013 for planning and aiding and abetting war crimes, crimes against humanity, and other serious international humanitarian law violations. He was sentenced to 50 years imprisonment. The SCSL Appeals Chamber upheld the historic conviction and sentence in September 2013. Taylor is currently serving his sentence in Great Britain.*

*This article, from an insider who worked as an interim court-appointed defense attorney during the opening of the trial in The Hague in June 2007, is the first to comprehensively evaluate this significant international case since it concluded. I expose the numerous controversies that dogged the trial of Liberia’s former president—from the questions that arose about how best to sequence peace for Liberia and justice for Sierra Leone following the prosecution’s initial unveiling of his judicially sealed indictment through to concerns about whether he should be tried in the heart of Europe, as opposed to Africa, to the completion of appeals. I conclude that the trial of former President Taylor is significant for the SCSL because he was the most powerful suspect to be indicted by the court. Although it may be too early to draw definitive conclusions, a key lesson that we can derive for*

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*international criminal justice is that the indictment of a sitting president for international crimes may sometimes help loosen his grip on power, thereby enabling his subsequent prosecution.*

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## I. INTRODUCTION

The trial of the former president of Liberia, Charles Ghankay Taylor, by the United Nations-backed Special Court for Sierra Leone (“SCSL”), was remarkable in at least four respects. First, it was the only case involving a non-Sierra Leonean before the SCSL. All the other men prosecuted by the tribunal were Sierra Leoneans. They were charged, tried, convicted, and sentenced for crimes that they planned and committed against their own people in their own home country. Taylor, on the other hand, was from neighboring Liberia where he is alleged to be responsible for even worse crimes than those for which he was eventually charged in Sierra Leone.<sup>1</sup> But Taylor, like all the other rebel leaders who participated in Liberia’s dirty war, was never prosecuted in his native country because the parties to that conflict effectively granted themselves amnesty.<sup>2</sup> Rather, he was implicated by the SCSL for supporting Foday Sankoh, the leader of a rebel army called the Revolutionary United Front (“RUF”), to foment a war in Sierra Leone in which numerous serious atrocity crimes were committed. Sankoh and Taylor allegedly made “common cause”<sup>3</sup> to help each other take over their respective countries for personal and political gain.

Second, as a criminal trial, the case against Taylor was inevitably complicated. He reportedly never set foot in Sierra Leone during the time the offenses for which he was charged were perpetrated.<sup>4</sup> This meant that the prosecution’s burden to prove his case, when compared to the other SCSL cases, was going to be doubly difficult. Indeed, for most of the pre-trial and trial phases, the success of the case against Taylor appeared to hinge primarily on two expansive and controversial modes of criminal liability in international criminal law—Joint Criminal Enterprise (“JCE”)<sup>5</sup>

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1. 2 TRUTH & RECONCILIATION COMM’N, REPUBLIC OF LIBER., CONSOLIDATED FINAL REPORT 151-72 (2009) [hereinafter LIBERIAN TRC REPORT].

2. The Liberian TRC Report listed eight leaders of warring factions, two of whom have died, and recommended that the living ones be prosecuted for committing atrocity crimes. *Id.* Taylor was at the top of the list. But an institutional mechanism for prosecution, similar to the one for Sierra Leone, has not to date been established in Liberia. *Id.* at 349. For an early scholarly work anticipating the need for criminal accountability in Liberia for serious international crimes and a proposal for the expansion of the SCSL’s jurisdiction to cover international crimes committed there, see Chernor Jalloh & Alhagi Marong, *Ending Impunity: The Case for War Crimes Trials in Liberia*, 1 AFR. J. OF LEGAL STUD. 53, 70 (2005).

3. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber Judgment, ¶¶ 23, 25 (Special Court for Sierra Leone May 18, 2012), <http://www.scsl docs.org/documents/view/6662-19559> [hereinafter Taylor Trial Judgment]. See also Prosecutor v. Taylor, Case No. SCSL-03-01-A, Appeals Chamber Judgment (Special Court for Sierra Leone Sept. 26, 2013), <http://www.rscsl.org/Documents/Decisions/Taylor/Appeal/1389/SCSL-03-01-A-1389.pdf>.

Commentary on the Taylor trial in respect of specific issues began following the trial judgment in both the blogosphere and in academic journals. See, for examples of the latter, the thoughtful articles by Simon Meisenberg, Laurel Baig, Kai Ambos, Ousman Njikam, Kirsten Keith and Kevin Jon Heller all of whom participated in a special 2013 symposium issue on the Taylor Trial in the *Journal of International Criminal Justice* (Vol. 11, Issue 4).

4. *War Crimes Court Finds Charles Taylor Guilty*, ALJAZEERA (Apr. 27, 2012), <http://www.aljazeera.com/news/africa/2012/04/201242693846498785.html>.

5. For a critique of how the prosecution controversially pleaded JCE at the SCSL, see Wayne

and command responsibility<sup>6</sup>—neither of which requires the suspect to directly commit the acts in question. The task for the tribunal’s prosecutors was how, using those two and other forms of criminal participation such as instigating or ordering, they could link Taylor in Liberia to the offenses carried out by the RUF and its collaborators on Sierra Leonean territory. Interestingly, although they managed to secure Taylor’s conviction for *planning* and *aiding and abetting* crimes in Sierra Leone, the prosecution failed to prove JCE and command responsibility. The inference could reasonably be drawn that the prosecutors over played the centrality of his role in their narratives of the Sierra Leonean conflict.

Third, although Presidents Blaise Compaoré (Burkina Faso) and (the now late) Muammar Gaddafi (Libya) were apparently subjects of initial prosecutorial investigative interest for training, arming, and otherwise financially supporting the RUF,<sup>7</sup> Taylor was the only sitting African president indicted by the SCSL (even though he was no longer in power when he was actually arrested, prosecuted and convicted).<sup>8</sup> He was thus the first leader to be held criminally responsible for international crimes committed in another African State.<sup>9</sup> This later served as fuel for his argument that his trial was political.<sup>10</sup> Yet, the judges rejected his claim that the prosecution selectively and vindictively prosecuted him based on improper political motives and in order to simply advance the U.S. foreign policy interests in Africa. They also rejected the contention that he was discriminatorily singled out for prosecution, effectively painting his argument as an attempt to politicize his case and to deflect his own responsibility.<sup>11</sup>

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Jordash & Scott Martin, *How the Approach to JCE in Taylor and the RUF Case Undermined the Demands of Justice at the Special Court for Sierra Leone*, in *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW* 96, 109-17 (Charles Chernor Jalloh ed., 2014).

6. See Harmen van der Wilt, *Command Responsibility in the Jungle: Some Reflections on the Elements of Effective Command and Control*, in *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW* 144-158 (Charles Chernor Jalloh ed., 2014) and Sandesh Sivakumaran, *Command Responsibility in the Sierra Leonean Conflict*, in *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW* 128-143 (Charles Chernor Jalloh ed., 2014). A provocative literary approach can be found in René Provost, *Authority, Responsibility, and Witchcraft: From Tintin to the SCSL*, in *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW* 159-180 (Charles Chernor Jalloh ed., 2014).

7. *The Impact of Liberia’s Election on West Africa: Hearing Before the Subcomm. on Afr., Global Human Rights & Int’l Operations of the Comm. on Int’l Relations*, 109th Cong. 150, 157 n.11 (2006) (statement of David M. Crane, Former Chief Prosecutor, Special Court for Sierra Leone).

8. Crane has alleged that Gaddafi was an “unindicted co-conspirator” of Taylor’s and that he did not indict him and Compaoré only because of evidentiary issues. On top of that, indicting two more West African heads of state would have undermined the work of the Sierra Leone tribunal. The Prosecution later revealed that, in fact, it had less than a tenth of the evidence it had against Taylor against Gaddafi and Compaoré—hardly the basis for a strong case. See *id.* at 157 n.11; Taylor Trial Judgment, *supra* note 3, ¶ 76.

9. *The Taylor Trial*, SPECIAL COURT FOR SIERRA LEONE: RESIDUAL SPECIAL COURT FOR SIERRA LEONE, <http://www.rscsl.org/Taylor.html> (last visited Mar. 1, 2015).

10. See Taylor Trial Judgment, *supra* note 3, ¶¶ 73-74.

11. *Id.* ¶¶ 81-84.

All others tried by the SCSL were leaders of rebel, militia, or other organizations. But, the eight SCSL convicts drawn from the RUF,<sup>12</sup> the Civil Defense Forces (“CDF”),<sup>13</sup> and the Armed Forces Revolutionary Council (“AFRC”)<sup>14</sup> cases were part of the command structure of those entities. They each either committed the crimes personally or were found to have exercised *de facto* or *de jure* authority over the subordinates who perpetrated them. Thus, before Taylor’s arrest, the highest profile politician that the SCSL charged was the former deputy defense minister, Sam Hinga Norman (who later died before judgment was rendered).<sup>15</sup> Taylor’s head of state status and the fact that he had, by the time of his indictment, gained notoriety for the abuses that his forces committed against civilians in Liberia where he ascended to the presidency in August 1997,<sup>16</sup> made him the most “famous” person before the SCSL. As the perceived “godfather” of the RUF, the stature of Taylor’s case grew after Sankoh and his ruthless number two, Sam “Mosquito” Bockarie, died before they could be tried.<sup>17</sup> In other words, with the apex of the rebel organization unavailable due to Sankoh and Bockarie’s deaths, Taylor became the last person standing. He inevitably gained in symbolic importance as a figure—rightly or wrongly—the prosecution could exaggeratingly blame most of the RUF deprivations even though the Office of the Prosecutor was

12. Prosecutor v. Sesay, Case No. SCSL-04-15-T, Judgment (Mar. 2, 2009), <http://www.scsldocs.org/documents/view/5892-5892>; Prosecutor v. Sesay, Case No. SCSL-04-15-T, Sentencing Judgment, (Apr. 8, 2009), <http://www.scsldocs.org/documents/view/5930-5930>; Prosecutor v. Sesay, Case No. SCSL-04-15-A, Judgment (Oct. 26, 2009), <http://www.scsldocs.org/documents/view/6098-6098>.

13. Prosecutor v. Fofana, SCSL-04-14-T, Judgment, ¶¶ 1, 80-81 (Aug. 2, 2007), <http://www.scsldocs.org/documents/view/4914-19301>; Prosecutor v. Fofana, Case No. SCSL-04-14-T, Judgment on the Sentencing of Moinina Fofana and Allieu Kondewa, ¶¶ 59-63 (Oct. 9, 2007), <http://www.scsldocs.org/documents/view/5001-5001>; Prosecutor v. Fofana, Case No. SCSL-04-14-A, Judgment, ¶ 8 (May 28, 2008), <http://www.scsldocs.org/documents/view/5564-15137>.

14. Prosecutor v. Brima, Case No. SCSL-04-16-T, Judgment, ¶¶ 164-72 (June 20, 2007), <http://www.scsldocs.org/documents/view/4852-12711>; Prosecutor v. Brima, Case No. SCSL-04-16-T, Sentencing Judgment, ¶¶ 88, 108, 116, 135 (July 19, 2007), <http://www.scsldocs.org/documents/view/4895-12838>; Prosecutor v. Brima, Case No. SCSL-2004-16-A, Judgment, ¶¶ 7-8 (Feb. 22, 2008), <http://www.scsldocs.org/documents/view/5315-14250>.

15. Prosecutor v. Norman, SCSL-04-14-T, Decision on Registrar’s Submission of Evidence of Death of Accused Samuel Hinga Norman and Consequential Issues, ¶¶ 13-18 (May 21, 2007), <http://www.scsldocs.org/documents/view/4774-4774> (finding that the Court lost its jurisdiction over Norman and that the case against him was legally extinguished or terminated upon his death). Norman’s trial was controversial amongst the SCSL judges as well elsewhere. See Lansana Gberie, *The Civil Defense Forces Trial: Limit to International Justice?*, in THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW 624-641 (Charles Chernor Jalloh ed., 2014).

16. Taylor Trial Judgment, *supra* note 3, ¶ 8.

17. Though Sankoh died in custody of natural causes on July 9, 2003, Bockarie was murdered, allegedly on Taylor’s orders on May 5, 2003. This led to the withdrawal of their SCSL indictments in December 2003. Prosecutor v. Sankoh, Case No. SCSL-2003-02-PT, Withdrawal of Indictment (Dec. 8, 2003), <http://www.scsldocs.org/documents/view/1093-1093>; Prosecutor v. Bockarie, Case No. SCSL-2003-04-PT, Withdrawal of Indictment (Dec. 8, 2003), <http://www.scsldocs.org/documents/view/1094-1094>. See also *Profile of Republic of Sierra Leone*, U.S. DEP’T OF STATE, <http://www.state.gov/outofdate/bgn/sierraleone/82282.htm> (last updated Mar. 2007).



ultimately unable to prove beyond a reasonable doubt that—as William Schabas aptly put it—Taylor was the “guiding spirit,” “evil genius,” or “mastermind” who “manipulated the war throughout the 1990s.”<sup>18</sup>

Finally, in a still controversial decision that made his case even more unique amongst the SCSL trials, Taylor was the only suspect tried in the heart of Europe at The Hague in the Netherlands, away from the seat of the tribunal in Freetown, Sierra Leone.<sup>19</sup> The decision to change the venue of his trial was taken ostensibly for security reasons.<sup>20</sup> Some critics, especially many from the local civil society, including myself, vehemently contested this rationale.<sup>21</sup> The critics argued that Taylor—who was no longer in power—could not be a threat to an entire sub-region, and that even if he was, it would have been far better, and certainly less costly, for security to be bolstered in Sierra Leone and Liberia rather than move the SCSL’s most important case away from the alleged victim communities most affected by his crimes.<sup>22</sup> Similarly, Taylor was the only convict to be imprisoned outside Africa—in the United Kingdom—where he is as of this writing serving a fifty-year sentence.<sup>23</sup> In contrast, all the others prosecuted by the SCSL for atrocity crimes were detained in Rwanda.<sup>24</sup> Taylor’s repeated requests to be sent to Kigali or somewhere else in Africa for family reasons, cultural affinity, and other similar considerations have not gained any traction. For this reason, absent a fundamental

18. William A. Schabas, *Charles Taylor Judgment Suggests a More Modest Level of Participation in the Sierra Leone Conflict*, PHD STUDIES IN HUMAN RIGHTS (Apr. 28, 2012), <http://humanrightsdoctorate.blogspot.com/2012/04/charles-taylor-judgment-suggests-more.html>.

19. See *The Prosecutor vs. Charles Ghankay Taylor: Transfer of the Trial to The Hague*, SPECIAL COURT OF SIERRA LEONE: RESIDUAL SPECIAL COURT FOR SIERRA LEONE, <http://www.rscsl.org/Taylor.html> (last visited Mar. 1, 2015).

20. Press Release, Special Court for Sierra Leone, Special Court President Requests Charles Taylor be Tried in The Hague (Mar. 30, 2006) (on file with the Press and Public Affairs Office of the Special Court for Sierra Leone).

21. See, e.g., *Prosecutor v. Taylor*, Case No. SCSL-2003-01-PT, Civil Society *Amicus Curiae* Brief Regarding Change of Venue of Taylor Trial Back to Freetown, ¶¶ 3-4, 13 (Mar. 9, 2007), <http://www.scsldocs.org/documents/view/4652-4652>.

22. See Taylor, SCSL-2003-01-PT, ¶¶ 13-16 (pointing out correctly that Taylor had resided in Nigeria freely, before his arrest and transfer to the SCSL, and that both the legislative and executive branches of the Sierra Leonean government and civil society preferred his trial in Sierra Leone; further highlighting that no public evidence had been produced to justify labelling him a threat to security in West Africa).

23. See Charles C. Jalloh, *Prosecutor v. Taylor Case Report*, 108 AM. J. INT’L L. 58, 58 (2014). Taylor’s recent request to be moved from the United Kingdom to Rwanda was denied by the Residual Special Court for Sierra Leone. See *In the Matter of Charles Ghankay Taylor*, Case No. SCSL-03-01-ES, Decision on Public with Public and Confidential Annexes Charles Ghankay Taylor’s Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda (Jan. 30, 2015), <http://www.scsldocs.org/documents/view/9091>.

24. On October 31, 2009, all eight SCSL convicts were transferred to Mpanga Prison, just outside Rwanda’s capital Kigali, to serve their punishment. Since then, there have been several contempt cases prosecuted by the SCSL. In the few instances resulting in convictions and jail time in the cases involving witness tampering, the convicts have served their sentences in Sierra Leone. This explains the qualifier. See generally, Press Release, Rwanda Ministry of Info., Sierra Leone Special Court Convicts Arrive in Rwanda to Begin Prison Sentence (Oct. 31, 2009), available at <http://www.rscsl.org/Clippings/2009/2009-11/pc2009-11-2.pdf>.

change of circumstances, he will most likely live the remainder of his natural life in Britain.

This article examines the law and politics of the trial of former Liberian president Charles Taylor. The paper is intended to introduce non-experts to the case involving one of Africa's most notorious warlords and its controversies. Towards that end, it aims to offer the first complete assessment of the trail of legal and political controversies that came to characterize this high profile international trial from the premature release of a sealed indictment for Taylor by SCSL prosecutors in summer 2003 through to the disposition of final appeals in fall 2013. It exposes and analyzes key legal, practical and other challenges that should offer lessons for the prosecution of current or former heads of state in other international criminal courts. Furthermore, because the article comes from an insider who was privileged to work as court-appointed duty counsel during the opening of this fascinating case, it is submitted that it makes an original and substantial contribution to the international criminal law literature.

Although not without its difficulties, many of which will be discussed later on, the Taylor trial was the jewel in the SCSL's crown. It is also one of the most symbolically important cases in modern international criminal law. The reason is simple. Prior post-Nuremberg attempts to prosecute heads of state or government by the ad hoc International Criminal Tribunals for the former Yugoslavia ("ICTY") and Rwanda ("ICTR") and the permanent International Criminal Court ("ICC") have implicated political figures of a similar standing. But almost all those trials have been marred by practical issues, procedural irregularities, or other obstacles. Some of the cases faltered because states lacked the political will to arrest the suspect (as in the ICC indictment of President Omar Al Bashir of Sudan)<sup>25</sup>; or after entering into a plea bargain with the ICTR prosecution, the accused tried to recant his guilty plea (Rwandan Prime Minister, Jean Kambanda)<sup>26</sup>; or the defendant died before his judgment was rendered (former Yugoslav President, Slobodan Milošević, at the ICTY).<sup>27</sup> In contrast, with the exception of a major hiccup at the beginning of his trial and another which bookended its completion, the Taylor trial proceeded smoothly. Today, despite the fact that each stage of his indictment, trial, and conviction was marked by high legal and political drama, the Taylor case stands as one of the better examples of a complex but successful trial of a former head of state by a modern international criminal court. This underscores the wider significance of the trial and makes it even more worthy of further inquiry by international criminal lawyers.

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25. See *Prosecutor v. Al Bashir*, Case No. ICC-02/05-01/09, Decision on the Cooperation of the Democratic Republic of the Congo Regarding Omar Al Bashir's Arrest and Surrender to the Court, ¶¶ a-c (Apr. 9, 2014), <http://www.icc-cpi.int/iccdocs/doc/doc1759849.pdf>.

26. See *Prosecutor v. Kambanda*, Case No. ICTR 97-23-S, Judgment and Sentence, ¶¶ 34-46 (Sept. 4, 1998), <http://www.unict.org/sites/unict.org/files/case-documents/ict9-23/trial-judgements/en/980904.pdf>; see also *Kambanda v. Prosecutor*, Case No. ICTR 97-23-A, Judgment, ¶¶ 49-95 (Oct. 19, 2000), <http://www.unict.org/sites/unict.org/files/case-documents/ict9-23/appeals-chamber-judgements/en/001019.pdf>.

27. Press Release, Statement by the ICTY Prosecutor, The Hague (Mar. 11, 2006).

The successful completion of the Taylor case is in many ways a credit to a range of actors, who acted locally and globally: from the SCSL itself to the government and people of Sierra Leone, and from foreign governments such as the United States to the United Nations and local African and international civil society. The latter became the champion of the victims of the Sierra Leone conflict, refusing to stand by and let the Taylor trial be bargained away for reasons of political expediency, a possibility that seemed real when he was offered asylum in Nigeria with the blessings of African leaders and powerful western states in return for his resignation from the presidency of Liberia.<sup>28</sup> His trial is a testament to the potentially valuable role that international criminal tribunals can make to the enhancement of regional and global security, especially in the aftermath of horrific conflict and mass atrocity.

The article opens with a brief background into the origins and rise of Charles Taylor in Part II. Part III then discusses how Taylor got enmeshed in the Sierra Leone conflict. This later led to his downfall, including his indictment, arrest, and prosecution by the SCSL for the commission of war crimes, crimes against humanity, and other serious violations of international humanitarian law, as discussed in Parts IV, V and VI. In Part VII, I conclude by summarizing my key arguments and step back and reflect on the wider implications of his case for the SCSL and international criminal justice more generally.

## II. THE ORIGINS AND RISE OF CHARLES TAYLOR

Although he had briefly held a position as a senior government bureaucrat in Liberia, hardly anyone outside Taylor's home country knew of him before 1989. He was virtually unknown among the public in Sierra Leone. Yet, in the span of a few years, his name was to be etched into the consciousness of all Sierra Leoneans as the rebel leader from neighboring Liberia who threatened that "Sierra Leone would taste the bitterness of war."<sup>29</sup> In making good on that threat, he subsequently helped to bring a vicious war to Sierra Leone. To Liberians, he moved from being a somewhat known politically ambitious figure in exile to either a loved or hated rebel leader, and eventually, democratically elected president.

Born in the small town of Arthington, Montserrado County, in northwestern Liberia on January 28, 1948, Taylor by his own account came from a modest background.<sup>30</sup> He hailed from a large family, the third of eleven children, born to a mother who was a former girl servant and a father who was a Baptist school

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28. See Taylor Trial Judgment, *supra* note 3, ¶ 9.

29. See *id.* ¶ 2335 (Although Taylor denied making this infamous statement during his trial, the Trial Chamber found otherwise. That this phrase, which is recalled by many Sierra Leoneans, captured the national imagination is proved by the fact that it is usually repeated either verbatim or in essentially the same formulation).

30. *Id.* ¶ 3.

teacher.<sup>31</sup> He began his early career following in the footsteps of his father as a teacher.<sup>32</sup> However, he quickly moved on to become an accountant.<sup>33</sup>

He then pursued tertiary training at two small private colleges in Massachusetts, United States, where he received an associate degree in accounting in 1974 and a bachelor's degree in economics in 1976.<sup>34</sup> In the eight years between his arrival in the United States in 1972 and his return to Liberia in 1980, Taylor and several of his Liberian compatriots founded the Union of Liberian Associations in the Americas ("ULAA").<sup>35</sup> The apparent goal of the ULAA, which exists to this day, was to help bring about peaceful and democratic change in Liberia.<sup>36</sup>

Taylor's foray into helping create the ULAA while studying in the United States appears to mark the beginning of his planned involvement with Liberian politics. He assumed the ULAA chairmanship in 1979.<sup>37</sup> In that capacity, and at the invitation of the government of President William Tolbert, he returned to Liberia in January 1980.<sup>38</sup> His arrival coincided with the successful coup d'état by Master Sergeant Samuel Kanyon Doe just four months later.<sup>39</sup> Taylor joined the Doe government as a Director General of the General Services Administration and Deputy Minister of Commerce.<sup>40</sup>

About three years later, he abandoned that junior cabinet position after the Doe regime charged him with embezzlement.<sup>41</sup> He fled to the United States where he was arrested in June 1984, following an extradition request by Liberian authorities.<sup>42</sup> He was held, pending return to his native country, until November 1985, when he allegedly escaped from prison and returned to West Africa.<sup>43</sup> Taylor's version of that account is that he was released from the Plymouth County House of Correction by American officials.<sup>44</sup> They looked the other way while he left the country, via Mexico, a story that initially appeared to be corroborated by documents obtained under a freedom of information request by *The Boston Globe* newspaper but that now seems to have been disavowed by the reporter who broke the story.<sup>45</sup> In any

31. *Id.*; Transcript of Record at 24357-59, Prosecutor v. Taylor, SCSL-03-01-T, Trial (July 14, 2009) [hereinafter Transcript of Record—July 14, 2009], available at [http://www.scsldocs.org/transcripts/Charles\\_Taylor/2009-07-14/21666](http://www.scsldocs.org/transcripts/Charles_Taylor/2009-07-14/21666).

32. Taylor Trial Judgment, *supra* note 3, ¶ 4.

33. *Id.*

34. *Id.*

35. *Id.* ¶ 5.

36. *Id.* The ULAA website can be found here: <http://ulaalib.org/>.

37. *Id.*

38. See *id.* ¶ 6; Transcript of Record—July 14, 2009, *supra* note 31, at 24384-85.

39. Taylor Trial Judgment, *supra* note 3, ¶ 6.

40. *Id.*

41. *Id.*

42. *Id.*

43. Taylor Trial Judgment, *supra* note 3, ¶¶ 6-7.

44. Transcript of Record at 24517-20, Prosecutor v. Taylor, SCSL-03-01-T, Trial (July 15, 2009) [hereinafter Transcript of Record—July 15, 2009], available at [http://www.scsldocs.org/transcripts/Charles\\_Taylor/2009-07-15](http://www.scsldocs.org/transcripts/Charles_Taylor/2009-07-15).

45. Bryan Bender, *Former Liberian Dictator Charles Taylor had US Spy Agency Ties*, BOSTON GLOBE, Jan. 17, 2012, <http://www.bostonglobe.com/metro/2012/01/17/mass-escapee-turned-liberian->

event, it seems plausible that it was with the blessings of the U.S. government, which was embarrassed by reports of corruption in Liberia and the Doe government's flagrant violations of human rights, that he returned to West Africa to effect a regime change.<sup>46</sup>

Be that as it may, after leaving the United States, Taylor and several others founded the National Patriotic Front of Liberia ("NPFL") in Côte d'Ivoire.<sup>47</sup> The NPFL took advantage of the mounting disaffection with the Doe dictatorship and the Liberian government's ruthless crushing of the coup by Thomas Quiwonkpa to attract many dissident fighters to its cause.<sup>48</sup> The NPFL operatives subsequently took up military training in Libya in 1987.<sup>49</sup> They thereafter returned to the sub-region via Burkina Faso.<sup>50</sup> With the launch of a military attack from the Ivorian side of the border into the town of Butoa in Liberia on December 24, 1989, Taylor and approximately one hundred "special forces," set off a civil war that would eventually engulf Liberia and several countries in the Mano River basin of West Africa, including Sierra Leone, Guinea, and Côte d'Ivoire itself, which had served as the launching pad for the initial NPFL incursion into Liberia.<sup>51</sup>

Within a few months, Taylor and his fighters marched from the Liberia-Côte d'Ivoire border to the capital Monrovia, recruiting many anti-Doe activists to the NPFL.<sup>52</sup> However, it was a splinter group, the Independent National Patriotic Front of Liberia led by Prince Johnson, not the NPFL, which eventually caught and savagely tortured and murdered Doe in early 1990.<sup>53</sup> In the meantime, in the regions of the country that the NPFL forces captured, Taylor and his followers established the National Patriotic Reconstruction Assembly government.<sup>54</sup> He served as head of that government until 1996, when the first Liberian civil war ended with the conclusion of the Abuja Accord in 1996, and democratic elections were subsequently held.<sup>55</sup> Taylor, running as the National Patriotic Party candidate in July 1997, won the presidential elections reportedly with 75% of the vote and two-thirds of the seats in the legislature.<sup>56</sup> The official vote count was never formally released.<sup>57</sup>

But Taylor's apparent electoral triumph and assumption of power in August 1997 did not restore peace to Liberia. Partly because of his policies, including his failure to smoothly transition from rebel in the bush to chief of state occupying the

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dictator-had-spy-agency-ties/DGBhSfjxPVrtoo4WT95bBI/story.html.

46. See Transcript of Record—July 15, 2009, *supra* note 44, at 24517-23.

47. Taylor Trial Judgment, *supra* note 3, ¶¶ 7, 22.

48. LIBERIAN TRC REPORT, *supra* note 1, at 152.

49. Taylor Trial Judgment, *supra* note 3, ¶ 7.

50. Transcript of Record at 24592-93, Prosecutor v. Taylor, SCSL-03-01-T, Trial (July 16, 2009), available at [http://www.scsldocs.org/transcripts/Charles\\_Taylor/2009-07-16](http://www.scsldocs.org/transcripts/Charles_Taylor/2009-07-16).

51. *Id.* at 24603-08.

52. LIBERIAN TRC REPORT, *supra* note 1, at 158.

53. *Id.* at 158.

54. *Id.* at 157.

55. Taylor Trial Judgment, *supra* note 3, ¶ 8.

56. LIBERIAN TRC REPORT, *supra* note 1, at 164.

57. *Id.*

presidential Executive Mansion, Liberia foundered.<sup>58</sup> According to the Liberian Truth and Reconciliation Commission, the reality of his election as head of state did not dawn early enough on Taylor for him to succeed.<sup>59</sup> He carried on the usual “antics” of a “warlord,” adopting disastrous policies that antagonized key domestic, regional and international constituencies.<sup>60</sup> His “authoritarian” rule was marked by “poor governance, administrative malfeasances, corruption, intimidation and intolerance of opposition, threats, torture, terroristic acts,” and routine extrajudicial and summary executions.<sup>61</sup> This would later give rise to Liberia’s second war. The conflict only ended after Taylor was forced to step aside, largely due to developments in neighboring Sierra Leone.

### III. THE FALL OF CHARLES TAYLOR

#### *A. Sankoh, Taylor, and the Origins of the Sierra Leone Civil War*

Ironically, Taylor did not fall from grace because of his war making in his native Liberia. Instead, it was his meddling in Sierra Leonean affairs that ultimately led to his downfall. That involvement originated from his association with RUF Leader, Sankoh, whom he met in Libya. They agreed to help each other’s projects to take over Liberia and Sierra Leone respectively.<sup>62</sup> Indeed, according to the Sierra Leone Truth and Reconciliation Commission, when Taylor’s forces first invaded Liberia in December 1989, the NPFL included many Sierra Leonean fighters in its ranks.<sup>63</sup> Sankoh, who was one of them, was a key commando.<sup>64</sup> He helped plan and carry out attacks against strategic Liberian government military positions.<sup>65</sup> He thus put his Libyan guerilla training to use in anticipation of his war in Sierra Leone.<sup>66</sup> He would bank on Taylor to return the favor just a few years later, and as a part of this, shared with the NPFL a captured Armed Forces of Liberia military camp, Camp Naama, to train around three hundred RUF fighters known as Vanguarders.<sup>67</sup> The Vanguarders later played a pivotal role in the Sierra Leonean conflict. Sam Bockarie, Issa Sesay, Morris Kallon, and Augustine Gbao were Vanguarders, all of whom—along with Sankoh and Taylor—were later charged by the SCSL.<sup>68</sup>

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58. *Id.* at 164.

59. *Id.*

60. *Id.*

61. *Id.* at 167.

62. 3A WITNESS TO TRUTH: REP. OF THE SIERRA LEONE TRUTH AND RECONCILIATION COMM’N 97 (2004) [hereinafter SIERRA LEONE TRC REPORT].

63. *Id.* at 94-95.

64. *Id.* at 100.

65. *Id.*

66. *Id.* at 101.

67. Taylor Trial Judgment, *supra* note 3; SIERRA LEONE TRC REPORT, *supra* note 62, at 101-02.

68. See *The Prosecutor vs. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, SPECIAL COURT FOR SIERRA LEONE: RESIDUAL SPECIAL COURT FOR SIERRA LEONE, <http://www.rscsl.org/RUF.html> (last visited Mar. 1, 2015).

Similarly, on March 23, 1991, a group of between forty and sixty fighters attacked the remote village of Bomaru in the Kailahun District in eastern Sierra Leone near the Liberian border. The bulk of the attackers were drawn from the NPFL.<sup>69</sup> Indeed, it was apparently a matter of frustration for Sankoh that, even after grandly claiming responsibility for the Bomaru attack on the BBC Radio as the first salvo of the RUF, which at that point had issued an ultimatum to then-Sierra Leonean President, Joseph S. Momoh, to leave power or face a revolt, the government in Freetown attributed responsibility for the invasion solely to Taylor and the NPFL.<sup>70</sup> The Momoh government, which had permitted the Economic Community of West African States (“ECOWAS”) fighter jets to bomb NPFL positions in Liberia from the Lungi International Airport near Freetown, the Sierra Leonean capital, ignored the RUF for a long time before it formally recognized it as an independent force to reckon with.<sup>71</sup>

To the Momoh government, the RUF was in effect the Sierra Leonean wing of the NPFL.<sup>72</sup> In retrospect, with the subsequent findings of the SCSL in its judgments and the work of the Sierra Leonean and Liberian truth commissions, this might have been an exaggeration. Nevertheless, throughout much of the Sierra Leone war, Taylor and Sankoh rebels collaborated even if they had different agendas. For Taylor, the military and political alliance with the RUF helped to not only achieve tactical objectives such as fighting common enemies in Sierra Leone, including dissident Liberian groups such as ULIMO-J and ULIMO-K that had organized against him with the Momoh government’s help,<sup>73</sup> but it also enabled him to exploit the country’s diamonds for private accumulation.<sup>74</sup> The RUF, which often captured territory and mined diamonds with forced civilian labor, exchanged its precious stones for arms primarily through Monrovia.<sup>75</sup> Liberia, which was not a country particularly well-known for diamonds, saw a remarkable increase in its official diamond exports.<sup>76</sup> Those exports might have since suffered a dramatic drop. In its

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69. SIERRA LEONE TRC REPORT, *supra* note 62, ¶¶ 112, 120-21; Taylor Trial Judgment, *supra* note 3, ¶ 2378 (concluding the “[t]he evidence unequivocally establishes that NPFL soldiers constituted the large majority of the invasion force on Sierra Leone”).

70. Taylor Trial Judgment, *supra* note 3, ¶ 27.

71. SIERRA LEONE TRC REPORT, *supra* note 62, ¶ 40; *see id.* ¶ 113. This seems to have justified, in Taylor’s mind, retaliation against Sierra Leone in addition to the fact that the government supported and armed Liberian dissidents to form groups to fight against the NPFL. *Id.* ¶ 41, 45.

72. *See* MICHAEL S. KARGBO, BRITISH FOREIGN POLICY AND THE CONFLICT IN SIERRA LEONE, 1991-2001, 20-21 (Peter Lang AG, Int’l Academic Publishers eds., 2006).

73. *See* Taylor Trial Judgment, *supra* note 3, ¶¶ 30-31, 33-34.

74. *See* JANNA LIPMAN, CHARLES TAYLOR’S CRIMINAL NETWORK: EXPLOITING DIAMONDS AND CHILDREN, 4, 6, 9, 12, 15, (Louise Shelley ed., 2009), available at [http://tracce.gmu.edu/pdfs/student\\_research/Lipman\\_PUBP\\_710\\_TOC\\_Taylor%27s\\_Diamonds\\_and\\_Children\\_FINAL.pdf](http://tracce.gmu.edu/pdfs/student_research/Lipman_PUBP_710_TOC_Taylor%27s_Diamonds_and_Children_FINAL.pdf). *See generally* Iryna Marchuk, *Confronting Blood Diamonds in Sierra Leone: The Trial of Charles Taylor*, 4 YALE J. INT’L AFF. 87, 87-89 (2009).

75. *See* IAN SMILLIE ET AL., THE HEART OF THE MATTER- SIERRA LEONE, DIAMONDS AND HUMAN SECURITY 6, 47 (Partnership Africa Canada ed., 2000). *See generally* U.N. S.C., *Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1306, Paragraph 19, in Relation to Sierra Leone*, U.N. DOC. S/2000/1195 (Dec. 20, 2000).

76. SMILLIE, *supra* note 75, at 48. *See also* 3 Mersie Ejigu, *Post Conflict Liberia: Environmental*

heyday, much of the profits from the lucrative diamond trade allegedly went to Taylor.<sup>77</sup> By the time he became president, he extended his influence into several areas of the Liberian private sector including exploitation of natural resources, such as timber.<sup>78</sup> By the end of the 1990s, Monrovia had become a haven for many other illicit activities involving drug, gun, and diamond runners using the capital as their home base.<sup>79</sup>

During the early part of the Sierra Leone conflict, until the Liberian fighters and the Sierra Leonean rebels fell out and turned on each other sometimes because of sharp disagreements on the means and methods of warfare, the NPFL forces reportedly carried out much of the atrocities against civilians in Sierra Leone.<sup>80</sup> Indeed, it is estimated that up to 1,600 of the 2,000 fighters comprising the initial invasion force from Liberia were NPFL rebels.<sup>81</sup> Together with their RUF collaborators and a smaller cadre of combatants from Burkina Faso, Ivory Coast, and Gambia, they used tactics of terror and not only murdered and raped, but also amputated civilians, including babies as young as six months old.<sup>82</sup> With Taylor's human, material, and other logistical support, and the successive Sierra Leonean government's inept handling of the war, the rebels quickly captured much territory in the two war fronts that they had opened in eastern and southern Sierra Leone.<sup>83</sup> Soon, although their fortunes changed sometimes, the RUF had the upper hand.

The NPFL and RUF fighters also burned villages and looted property.<sup>84</sup> The catalogue of their hair-raising horrors included alleged acts of cannibalism, decapitation of civilians, forced enlistment and drugging of children to fight, the use

*Security as a Strategy for Sustainable Peace and Development*, FESS WORKING PAPERS (2006), available at [http://www.fess-global.org/WorkingPapers/post\\_conflict\\_liberia.pdf](http://www.fess-global.org/WorkingPapers/post_conflict_liberia.pdf). See generally Report to the Minister of Foreign Affairs, the Honorable Lloyd Axworthy, P.C. M.P. from David Pratt, M.P., Nepean-Carleton, Special Envoy to Sierra Leone, *Sierra Leone: The Forgotten Crisis* (Apr. 23, 1999).

77. SMILLIE, *supra* note 75, at 48.

78. GLOBAL WITNESS, *TIMBER, TAYLOR, SOLDIER, SPY: HOW LIBERIA'S UNCONTROLLED RESOURCE EXPLOITATION, CHARLES TAYLOR'S MANIPULATION AND THE RE-RECRUITMENT OF EX-COMBATANTS ARE THREATENING REGIONAL PEACE* 6, 12 (June 2005) (submitted to the U.N. Security Council), available at <https://globalwitness.org/sites/default/files/import/TimberTaylorSoldierSpy.pdf>.

79. Abdul Tejan-Cole, *A Big Man in a Small Cell: Charles Taylor and the Special Court for Sierra Leone*, in *PROSECUTING HEADS OF STATE* 205, 209 (Ellen L. Lutz & Caitlin Reiger eds., 2009).

80. SIERRA LEONE TRC REPORT, *supra* note 62, ¶¶ 239-42. See also Taylor Trial Judgment, *supra* note 3, ¶ 32.

81. SIERRA LEONE TRC REPORT, *supra* note 62, at 120.

82. Catherine E. Bolten, *The Memories They Want. Autobiography in the Chaos of Sierra Leone*, 44 *ETHNOLOGIE FRANCAISE* 429, 430 (2014), available at <http://kroc.nd.edu/sites/default/files/EF-published%20article.pdf>.

83. See *Chronology of Sierra Leone: How Diamonds Fuelled the Conflict*, AFR. CONFIDENTIAL, Apr. 1998, available at [http://www.africa-confidential.com/special-report/id/4/Chronology\\_of\\_Sierra\\_Leone](http://www.africa-confidential.com/special-report/id/4/Chronology_of_Sierra_Leone).

84. Jamie O'Connell, *Here Interest Meets Humanity: How to End the War and Support Reconstruction in Liberia, and the Case for Modest American Leadership*, 17 *HARV. HUM. RTS. J.* 207, 213 (2004).



of human entrails at check points, and the slitting open of pregnant women to settle bets on the sex of the fetus.<sup>85</sup>

By the time the Sierra Leone conflict was formally declared over in January 2002, it was estimated that approximately 75,000 people had been killed, thousands more victimized, and hundreds of thousands more displaced.<sup>86</sup> Even the belated comer to the Sierra Leone conflict, the U.N. Security Council, passed a Chapter VII resolution deploring Liberia's active support of the RUF war.<sup>87</sup> It determined that Taylor's assistance to the RUF constituted a threat to international peace and security and thereafter imposed sanctions on Liberia.<sup>88</sup>

Following two successive coups in Freetown, first by the National Provisional Ruling Council ("NPRC") in April 1992 under Captain Valentine Strasser, and later by Lt.-Colonel Julius Maada Bio in 1996, a transitional democratic election was held in Sierra Leone.<sup>89</sup> The RUF was invited to participate but declined, preferring instead to continue the war and to punish civilians through a savage amputation campaign dubbed "Operation Stop Election."<sup>90</sup> Ahmed Tejan Kabbah, a retired Sierra Leonean bureaucrat from the United Nations who contested as the Sierra Leone People's Party candidate, won.<sup>91</sup> His main campaign promise was to end the war,<sup>92</sup> music to the ears of the war weary population.

Kabbah immediately set about negotiations with the RUF. With the facilitation of the Ivorian government, which played host to the first serious ceasefire talks between the government and the rebels, he concluded the Abidjan Accord on November 30, 1996.<sup>93</sup> The agreement called for a cessation of hostilities, granted status of political movement to the RUF and its members and a limited amnesty against prosecutions as well as foreshadowed the need for a national unity and reconciliation commission.<sup>94</sup> But even though some felt that this would mark the

85. See *id.* at 214.

86. J. Andrew Grant, *Salone's Sorrow: The Ominous Legacy of Diamonds in Sierra Leone*, in RESOURCE POLITICS IN SUB-SAHARAN AFRICA 251, 252 (Matthias Basedau & Andreas Mehler eds., 2005). Statistics are hard to come by, and of what there is, there is conflicting information. A leading American human rights NGO has estimated the total number of deaths at 50,000 while the number of displaced was put at 1 million. See Human Rights Watch, *Sierra Leone—Getting Away with Murder, Mutilation, Rape: New Testimony from Sierra Leone*, HRW Report, July 1999. A U.N. Report estimated 70,000. See also MARY KALDOR & JAMES VINCENT, U.N. DEV. PROGRAM EVALUATION OFFICE, CASE STUDY: SIERRA LEONE: EVALUATION OF UNDP ASSISTANCE TO CONFLICT-AFFECTED COUNTRIES (2006). I opted for the 70,000 figure in the U.N. report in Charles C. Jalloh, *Assessing the Legacy of the Special Court for Sierra Leone*, in THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW 5, 1-19 (Charles C. Jalloh ed., 2014).

87. S.C. Res. 1343, para. 2, U.N. Doc. S/RES/1343 (Mar. 7, 2001).

88. *Id.* paras. 5-6.

89. Taylor Trial Judgment, *supra* note 3, ¶¶ 31, 39-40.

90. *Id.* ¶ 39.

91. Taylor Trial Judgment, *supra* note 3, at 40; see *March 1996*, SIERRA LEONE NEWS, <http://www.sierra-leone.org/Archives/slnews0396.html> (last visited Mar. 1, 2015).

92. See Taylor Trial Judgment, *supra* note 3, ¶ 40; see also *March 1996*, *supra* note 91.

93. Taylor Trial Judgment, *supra* note 3, ¶ 40.

94. Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, R.U.F.-S.L., art. 1, 13-14, Nov. 30, 1996, available at

end of the war, that accord proved to be a ploy for Sankoh to regroup and rearm his men who were, at the time, close to military defeat with the help of South African mercenaries—as President Kabbah lamented much later.<sup>95</sup> The agreement collapsed shortly thereafter.<sup>96</sup> The civil war resumed.

### *B. The AFRC Coup and the End of the Sierra Leone War*

In the meantime, widespread dissatisfaction in Sierra Leone Army (“SLA”) ranks grew to a boiling point. President Kabbah had continued the prior NPRC government establishment of local militias to provide security at the communal level.<sup>97</sup> This was prompted by doubts about the loyalty of some SLA forces, a phenomenon that caused locals to label them *sobelis*: soldiers by day, rebels by night.<sup>98</sup> The creation of a parallel militia implied a lack of trust in the army. Consequently, on May 25, 1997, a group of mutineers overthrew the Kabbah Government.<sup>99</sup> A few days later, the Armed Forces Revolutionary Council (“AFRC”) assumed power in Sierra Leone and invited the RUF to form a coalition government.<sup>100</sup> Major Johnny Paul Koroma, who was sprung from a notorious national maximum-security prison where he was incarcerated, became president.<sup>101</sup> Kabbah escaped to neighboring Guinea, where he set up a government in exile in Conakry.<sup>102</sup> From there, he directed his deputy defense minister, Sam Hinga Norman, to consolidate the different traditional hunters from various tribal groups in Sierra Leone to form a civil defense militia.<sup>103</sup> Their job was to continue the fight against the AFRC/RUF and to restore his government to power.<sup>104</sup>

But the international community refused to recognize the illegal AFRC/RUF regime. As part of this, the United Nations imposed sanctions on Sierra Leone in October 1997.<sup>105</sup> ECOWAS negotiated a six-month peace plan, aimed at the early return of constitutional governance to Sierra Leone, which collapsed nearly immediately.<sup>106</sup> In early February 1998, working with the CDF militia, ECOMOG

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<http://www.sierra-leone.org/abidjanaccord.html>.

95. H.E. ALHAJ AHMAD TEJAN KABBAH, TWO DECADES OF CONFLICT AND DEMOCRACY IN SIERRA LEONE: A PERSONAL EXPERIENCE 3 (Institute for Security Studies ed., 2012), available at [http://www.issafrica.org/uploads/SitRep2012\\_12Apr.pdf](http://www.issafrica.org/uploads/SitRep2012_12Apr.pdf).

96. Taylor Trial Judgment, *supra* note 3, ¶ 40.

97. *Id.* ¶ 42.

98. SIERRA LEONE TRC REPORT, *supra* note 62, at 198.

99. Taylor Trial Judgment, *supra* note 3, ¶ 42.

100. *Id.* ¶¶ 42–43.

101. 2 HUMAN RIGHTS WATCH, SIERRA LEONE: GETTING AWAY WITH MURDER, MUTILATION, RAPE, NEW TESTIMONY FROM SIERRA LEONE 3(A), III (1999) [hereinafter SIERRA LEONE: GETTING AWAY WITH MURDER (1999)], available at [http://www.hrw.org/reports/1999/sierra/SIERLE99-02.htm#P142\\_28430](http://www.hrw.org/reports/1999/sierra/SIERLE99-02.htm#P142_28430).

102. SIERRA LEONE TRC REPORT, *supra* note 62, at 248.

103. Taylor Trial Judgment, *supra* note 3, ¶ 42; SIERRA LEONE TRC REPORT, *supra* note 62, at 248.

104. SIERRA LEONE: GETTING AWAY WITH MURDER (1999), *supra* note 101.

105. Taylor Trial Judgment, *supra* note 3, ¶ 44.

106. JULIUS MUTWOL, PEACE AGREEMENTS AND CIVIL WARS IN AFRICA: INSURGENT MOTIVATIONS, STATE RESPONSES, AND THIRD PARTY PEACEMAKING IN LIBERIA, RWANDA, AND SIERRA LEONE 252-53 (Cambria Press ed., 2009).

forces expelled the junta from Freetown,<sup>107</sup> and on March 10, 1998, Kabbah was reinstated.<sup>108</sup> The fighting continued. However, due to several peace initiatives and the government's two-track political and military strategy to ending the war, peace talks resumed in Togo in May 1999.<sup>109</sup> A comprehensive peace agreement was negotiated after several weeks.<sup>110</sup> President Kabbah and Foday Sankoh signed it at Lomé, Togo on July 7, 1999 ("Lomé Accord"), and although aspects of it discussed further below proved to be controversial, it did provide a basic foundation for the final end of the war.<sup>111</sup>

The Lomé Accord obliged the parties to an immediate ceasefire, provided for the transformation of the RUF into a political party, and required the demobilization of combatants.<sup>112</sup> There were also power-sharing provisions, including four senior cabinet and four junior cabinet posts for the RUF, with Sankoh receiving the putative position of vice president and chairman of the country's mineral resources commission and others in the rebel organization appointed to the remaining positions.<sup>113</sup> In lieu of prosecutions, the Lomé Accord also mandated the establishment of a truth commission for victims and perpetrators of human rights violations to tell their stories.<sup>114</sup> In probably the most derided provision, which expanded the scope of a similar clause that first surfaced in the Abidjan Accord, the agreement also granted a blanket amnesty to Sankoh personally and all other combatants and their collaborators.<sup>115</sup> They were promised immunity from prosecution for all their depraved actions throughout the war.<sup>116</sup> If this was the bitter pill that had to be swallowed for the sake of peace, so be it, the Kabbah government's logic went. It was a decision that, even after parts of the Lomé Accord collapsed, the president and his supporters continued to defend as necessary at the time. The United Nations and several African and powerful Western States, including the United States, endorsed the agreement.<sup>117</sup>

But, in a move that surprised participants, a last minute caveat was hastily entered during the signing of the agreement by Ambassador Francis G. Okelo, the U.N. special representative, at the talks. The United Nations, which was road testing a new policy on amnesties, declared its understanding that no amnesty would apply in respect of any international crimes committed during the conflict.<sup>118</sup> That

107. Taylor Trial Judgment, *supra* note 3, ¶ 48.

108. *Id.*

109. SIERRA LEONE: GETTING AWAY WITH MURDER (1999), *supra* note 101.

110. Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, R.U.F.-S.L., July 7, 1999, *available at* <http://www.sierra-leone.org/lomeaccord.html> [hereinafter Lomé Peace Agreement].

111. *Id.*

112. *Id.* arts. I, III, XV, XVI.

113. *Id.* art. V.

114. *Id.* art. VI.

115. *Id.* art. IX.

116. *Id.*

117. *Id.* at Annex 1.

118. U.N. S.C., Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, para. 22, U.N. Doc. S/200/915 (Oct. 4, 2000). Many have described this statement as a

decision, which effectively limited the amnesty to the domestic crimes committed under Sierra Leonean law, would later prove to have been an important one. It provided the foundation for the legal conclusion by the SCSL Appeals Chamber that none of the accused persons before the tribunal in Freetown were entitled to any form of immunity from prosecution because a State, such as Sierra Leone, could not bring “into oblivion and forgetfulness a crime, such as a crime against international law, which other States are entitled to keep alive and remember.”<sup>119</sup>

In May 2000, a renegade faction of the RUF operating in northern Sierra Leone disarmed and held hostage around five hundred U.N. peacekeepers.<sup>120</sup> Several of the peacekeepers were murdered.<sup>121</sup> This angered many Sierra Leoneans, including the Kabbah government, which saw it as a repudiation of core aspects of the Lomé Accord.<sup>122</sup> Some civil society organizations and parliamentarians came together and organized the largest rally in the country’s history with over 100,000 participants.<sup>123</sup> They marched to Sankoh’s residence to say enough was enough.<sup>124</sup> Everyone was sick of the malevolent behavior of the RUF. In the chaos that followed after the demonstrators arrived at Sankoh’s house, in the posh West End of Freetown, some shots were fired into the crowd, seemingly by the rebel leader’s security detail.<sup>125</sup> Twenty-two unarmed protesters were killed while fifteen were wounded.<sup>126</sup> Government forces placed Sankoh under arrest.<sup>127</sup> He was subsequently detained at an undisclosed location.

### *C. The Establishment of the Special Court for Sierra Leone*

With the combination of pressure for criminal prosecutions, coming from human rights groups within and outside Sierra Leone, a fed-up Kabbah wrote a letter to the United Nations in June 2000 requesting international help to establish an independent special court to try the “RUF leadership” and their “accomplices” and

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“reservation.” But that may not be an accurate description as that term is understood in treaty law. The United Nations was not a party to the treaty and was instead a witness and moral guarantor to it. *See id.* ¶¶ 23-34.

119. *Prosecutor v. Kallon*, Case No. SCSL-2004-15-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, ¶¶ 67, 88 (Mar. 13, 2004). The Appeals Chamber position was reiterated, *inter alia*, in *Prosecutor v. Kondewa*, Case No. 14-AR72, Decision on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by the Lomé Accord (May 25, 2004). For thoughtful commentary on the implications of these decisions, *see* Leila N. Sadat, *The Lomé Amnesty Decision of the Special Court for Sierra Leone*, in *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW 311-24* (Charles C. Jalloh ed., 2014).

120. Taylor Trial Judgment, *supra* note 3, ¶ 67.

121. SIERRA LEONE TRC REPORT, *supra* note 62, at 358.

122. *See* Ahmad Tejan Kabbah, Pres. His Excellency the President’s Address to the Opening of the Fourth Session of the First Parliament of the Second Republic of Sierra Leone (June 16, 2000), available at <http://www.sierra-leone.org/Speeches/kabbah-061600.html>.

123. SIERRA LEONE TRC REPORT, *supra* note 62, at 412.

124. *Id.*

125. *Id.* at 435, 437.

126. *Id.* at 435-36.

127. *Id.* at 444-46.

“collaborators.”<sup>128</sup> The U.N. Security Council acceded to the request.<sup>129</sup> It thus adopted Resolution 1593 asking the Secretary-General to negotiate a treaty with the government of Sierra Leone to establish an independent tribunal to prosecute those most responsible for the atrocities.<sup>130</sup>

Following relatively smooth negotiations compared to the Cambodia Tribunal, in January 2002,<sup>131</sup> the United Nations and Sierra Leone signed the first bilateral penal treaty<sup>132</sup> between the United Nations and one of its member states to establish an ad hoc tribunal. This treaty created a special court to prosecute those bearing greatest responsibility for crimes against humanity, war crimes, and other serious violations of international humanitarian law, specified in Articles 2 to 4 of the Statute of the SCSL, and several offenses under Sierra Leonean law relating to abuse of children and arson mentioned in Article 5.<sup>133</sup> The Secretary-General described it as a *sui generis* court with a mixed jurisdiction and composition.<sup>134</sup> The tribunal, which was the first modern one to be based in the country where the crimes were committed since the Nuremberg and Tokyo trials, was to be funded by donations, last for three years, and began operations towards the end of 2002.<sup>135</sup> It would go on to prosecute several individuals, from the RUF, AFRC, and CDF warring factions and, at the height of its operations, had two trial chambers and an appeals chamber hearing several joint trials.<sup>136</sup> In a symbolic act, which seemed to advertently or

128. Permanent Representative of Sierra Leone to the U.N., Letter dated June 12, 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2000/786, Annex (Aug. 10, 2000).

129. S.C. Res. 1315, U.N. Doc S/RES/1315 (Aug. 14, 2000).

130. *Id.* at ¶¶ 1, 3.

131. Compare Agreement between the United Nations and the Government of Sierra Leone and Statute of the Special Court for Sierra Leone, ICRC (Jan. 16, 2002), <http://www.icrc.org/ihl/INTRO/605?OpenDocument>, with *Enemies of the People: Interview: David Scheffer of Cambodia Tribunal; Monitor*, PBS (July 12, 2011), available at [http://www.pbs.org/pov/enemies/khmer\\_rouge\\_tribunal\\_update.php#](http://www.pbs.org/pov/enemies/khmer_rouge_tribunal_update.php#).

132. Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Jan. 16, 2002, 2178 U.N.T.S. 138 [hereinafter U.N. & Sierra Leone Agreement]; see also Statute of the Special Court for Sierra Leone, Jan. 16, 2002, 2178 U.N.T.S. 138 [hereinafter SCSL Statute].

133. U.N. & Sierra Leone Agreement, *supra* note 132, arts. 2-5.

134. U.N. Secretary-General, *Rep. of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, ¶ 9, U.N. Doc. S/2000/915 (Oct. 4, 2000).

135. See *The Special Court for Sierra Leone: Its History and Jurisprudence*, SPECIAL COURT FOR SIERRA LEONE: RESIDUAL SPECIAL COURT FOR SIERRA LEONE, <http://www.rscsl.org/> (last visited Mar. 1, 2015). For more on the jurisdiction of the SCSL, see generally Charles C. Jalloh, *Special Court for Sierra Leone: Achieving Justice?*, 32 MICH. J. OF INT’L L. 395 (2011). Discussion of the SCSL’s deeply problematic “greatest responsibility” personal jurisdiction can be found in Charles C. Jalloh, *Prosecuting Those Bearing “Greatest Responsibility”: The Lessons of the Special Court for Sierra Leone*, 96 MARQ. L. REV. 863 (2013). As to the fascinating issues including the U.S. foreign policy stances that affected the ultimate form the SCSL would take, see David J. Scheffer, *ALL THE MISSING SOULS: A PERSONAL HISTORY OF THE WAR CRIMES TRIBUNALS* 296 (2012). For a wide comprehensive study of the tribunal’s legacy after completion of its work, see generally Charles C. Jalloh, ed., *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW* (2014).

136. INTERNATIONAL CRIMINAL PROCEDURE: PRINCIPLES AND RULES 516 (Göran Sluiter et al. eds., 2013).

inadvertently underscore the importance of his trial, Taylor was the only accused person that the SCSL tried alone.<sup>137</sup>

#### IV. THE CONTROVERSIAL INDICTMENT AND ARREST OF CHARLES TAYLOR

##### *A. SCSL Indicts Charles Taylor; Nigeria Offers Safe Haven*

On March 7, 2003, at the SCSL prosecution's request, Judge Bankole Thompson approved a seventeen count indictment against Taylor.<sup>138</sup> The indictment was accompanied by an arrest warrant and request for the suspect's arrest and transfer.<sup>139</sup> The documents were placed under seal. On June 12, 2003, the chamber formally granted a request unsealing them.<sup>140</sup>

The first indictment against Taylor charged him with individual criminal responsibility pursuant to Articles 6(1) and 6(3) of the SCSL Statute.<sup>141</sup> Under Article 6(1), the prosecution alleged that Taylor, by his acts or omissions, planned, instigated, ordered, committed, aided and abetted, or otherwise participated with Sankoh in a common plan involving the crimes charged in eighteen counts.<sup>142</sup> In addition to, or in the alternative, pursuant to Article 6(3), the prosecution claimed that Taylor was criminally responsible as a superior for the crimes alleged in the indictments.<sup>143</sup> The prosecution averred that he knew, or had reason to know, that his subordinates in the RUF and the AFRC/RUF coalition were about to carry out the crimes, or had done so, but that he failed to take the necessary measures to prevent the acts or to punish the perpetrators.<sup>144</sup>

Taylor's indictment was amended twice, first on March 16, 2006, and again on May 29, 2007.<sup>145</sup> The final version on which he was tried contained a total of three international crimes and eleven counts.<sup>146</sup> In five counts he was charged with *crimes*

137. *Id.*

138. Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Indictment, ¶¶ 32-59 (Mar. 7, 2003), <http://www.rscsl.org/Documents/Decisions/Taylor/003/SCSL-03-01-I-001.pdf>; Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Decision Approving the Indictment and Order for Non-Disclosure (Mar. 7, 2003), <http://www.rscsl.org/Documents/Decisions/Taylor/003/SCSL-03-01-I-003.pdf>.

139. Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Order for the Disclosure of the Indictment, the Warrant of Arrest and Order for Transfer and Detention and the Decision Approving the Indictment and Order for Non-Disclosure (June 12, 2003), <http://www.rscsl.org/Documents/Decisions/Taylor/006/SCSL-03-01-I-006.pdf>.

140. *Id.*

141. SCSL Statute, *supra* note 132, art. 6(1), (3).

142. *Id.* art. 6(1); Taylor, Case No. SCSL-2003-01-I, Indictment, ¶ 26.

143. SCSL Statute, *supra* note 132, art. 6(3); Taylor, Case No. SCSL-2003-01-I, Indictment, ¶ 27.

144. Taylor, Case No. SCSL-2003-01-I, Indictment, ¶ 27.

145. Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Decision on Prosecution's Application to Amend Indictment and on Approval of Amended Indictment (Mar. 16, 2006), <http://www.rscsl.org/Documents/Decisions/Taylor/074/SCSL-03-01-I-74.pdf>; Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Decision on Prosecution Motion Requesting Leave to Amend Indictment (May 25, 2007), <http://www.rscsl.org/Documents/Decisions/Taylor/255/SCSL-03-01-PT-255.pdf>.

146. Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Prosecution's Second Amended Indictment (May 29, 2007), <http://www.rscsl.org/Documents/Decisions/Taylor/255/SCSL-03-01-PT-263.pdf>.

against humanity, punishable under Article 2 of the SCSL Statute, namely: murder (Count 2); rape (Count 4); sexual slavery (Count 5); other inhumane acts (Count 8); and enslavement (Count 10).<sup>147</sup> Five other counts charged what are typically referred to as *war crimes*, or in more technical jargon, violations of Common Article 3 and Additional Protocol II of the Geneva Conventions, which are punishable under Article 3 of the SCSL Statute,<sup>148</sup> namely: acts of terrorism (Count 1); violence to life, health and physical or mental well-being of persons, in particular murder (Count 3); outrages upon personal dignity (Count 6); violence to life, health and physical or mental well-being of persons, in particular cruel treatment (Count 7); and pillage (Count 11).<sup>149</sup> Finally, the last count alleged his commission of *other serious violations of international humanitarian law*, punishable under Article 4 of the SCSL Statute, and in particular, conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities (Count 9).<sup>150</sup> None of the charged crimes involved any of the Sierra Leonean offenses in Article 5 of the SCSL Statute.<sup>151</sup>

In terms of geographic and temporal scope, the prosecution alleged that the crimes underlying the counts were committed between the beginning of the temporal jurisdiction of the SCSL on November 30, 1996 and the end of the Sierra Leone conflict on January 18, 2002.<sup>152</sup> Yet, during the trial, the prosecution presented much evidence that dated back to the period just before the beginning of the war in March 1991. That material was not generally used when determining his individual responsibility. The locations pleaded in the Indictment covered five of Sierra Leone's largest districts from north to south and east to west, namely: Bombali, Kailahun, Kenema, Kono, Port Loko districts, the Western Area, as well as the capital Freetown.<sup>153</sup>

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147. SCSL Statute, *supra* note 132, art. 2; Taylor, Case No. SCSL-2003-01-I, Decision on Prosecution's Application to Amend Indictment and on Approval of Amended Indictment; Taylor, Case No. SCSL-2003-01-I, Decision on Prosecution Motion Requesting Leave to Amend Indictment.

148. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3, Aug. 12, 1949, 75 U.N.T.S. 31; Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, art. 3, June 8, 1977, 1125 U.N.T.S. 609; SCSL Statute, *supra* note 132, art. 3.

149. Taylor, Case No. SCSL-2003-01-I, Decision on Prosecution's Application to Amend Indictment and on Approval of Amended Indictment; Taylor, Case No. SCSL-2003-01-I, Decision on Prosecution Motion Requesting Leave to Amend Indictment.

150. SCSL Statute, *supra* note 132, art. 4; Taylor, Case No. SCSL-2003-01-I, Decision on Prosecution's Application to Amend Indictment and on Approval of Amended Indictment; Taylor, Case No. SCSL-2003-01-I, Decision on Prosecution Motion Requesting Leave to Amend Indictment.

151. Taylor, Case No. SCSL-2003-01-I, Decision on Prosecution's Application to Amend Indictment and on Approval of Amended Indictment; Taylor, Case No. SCSL-2003-01-I, Decision on Prosecution Motion Requesting Leave to Amend Indictment.

152. Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Prosecution's Second Amended Indictment (May 29, 2007), <http://www.rscsl.org/Documents/Decisions/Taylor/255/SCSL-03-01-PT-263.pdf>.

153. *Id.*

*B. The Question of Peace for Liberia versus Justice in Sierra Leone*

Taylor's indictment was first made public by the SCSL prosecution on June 4, 2003.<sup>154</sup> He had travelled to Accra, Ghana to attend peace talks that had been convened in the hope of ending the brutal civil war prevailing in Liberia at the time.<sup>155</sup> The SCSL prosecutor, David Crane, arranged for the indictment to be hand-delivered to the Ghanaian High Commission in Freetown as well as transmitted directly to the Foreign Ministry in Accra.<sup>156</sup> Crane requested the Ghanaian authorities to arrest Taylor and transfer him into the custody of the SCSL.<sup>157</sup> He also issued a press release announcing the indictment.<sup>158</sup>

The publication of the Taylor indictment was a big surprise to Ghana, host of the Liberian peace talks, as well as to the Government of Sierra Leone which had a last minute warning of it when Crane gave a courtesy telephone call to the acting president, Vice-President Solomon Berewa, who warned him that "it would be a matter of indiscretion to serve the indictment on Charles Tylor at that summit meeting, and such action would create huge embarrassment for President Kabbah [who was attending the Accra meeting] and confusion in the entire meeting."<sup>159</sup> It was considered a public embarrassment for the Ghanaian and other ECOWAS governments which were not aware of it in advance. President John Kufour of Ghana, the chair, felt betrayed by his international community partners for springing a surprise on his government when negotiations had made great progress—something that might have angered him even more given Berewa's disclosure that "finding an exit strategy for Charles Taylor to vacate the Presidency of Liberia" was even on the summit agenda.<sup>160</sup> Those delicate negotiations, which were taking place

154. Clarence Roy-Macaulay, *Sierra Leone Court Indicts Liberia Leader*, GUARDIAN (June 4, 2003), available at <https://www.globalpolicy.org/component/content/article/163/29115.html> (quoting Prosecutor David Crane).

155. Abdoulaye W. Dukulé, *West Africa: Taylor at Accra Peace Talks: "Honourable Exit or Extended Mandate?"*, ALLAFRICA (June 4, 2003), <http://allafrica.com/stories/200306040021.html>.

156. James L. Miglin, *From Immunity to Impunity: Charles Taylor and the Special Court for Sierra Leone*, 16 DALHOUSIE J. LEGAL STUD. 21, 26 (2007).

157. See Davan Maharaji, *Liberian President is Sought on War Crimes Indictment*, L.A. TIMES, June 5, 2003, <http://articles.latimes.com/2003/jun/05/world/fg-indict5>.

158. Press Release, Special Court for Sierra Leone the Office of the Prosecutor, Statement of David M. Crane Chief Prosecutor (June 5, 2003) [hereinafter Press Release of David M. Crane's Statement], available at <http://www.rscsl.org/Documents/Press/OTP/prosecutor-060503.pdf>. See also *Prosecutor v. Taylor*, Case No. SCSL-2003-01-I, Order for the Disclosure of the Indictment, the Warrant of Arrest and Order for Transfer and Detention and the Decision Approving the Indictment and Order for Non-Disclosure (June 12, 2003), <http://www.rscsl.org/Documents/Decisions/Taylor/006/SCSL-03-01-I-006.pdf>.

159. SOLOMON E. BEREWA, A NEW PERSPECTIVE ON GOVERNANCE LEADERSHIP, CONFLICT AND NATIONAL BUILDING IN SIERRA LEONE 181 (2011); PRISCILLA HAYNER, NEGOTIATING PEACE IN LIBERIA: PRESERVING THE POSSIBILITY FOR JUSTICE 8 (2007), available at [https://www.ictj.org/sites/default/files/ICTJ-Liberia-Negotiating-Peace-2007-English\\_0.pdf](https://www.ictj.org/sites/default/files/ICTJ-Liberia-Negotiating-Peace-2007-English_0.pdf); Kathy Ward, *Might vs. Right: Charles Taylor and the Sierra Leone Special Court*, 11 HUM. RTS. BRIEF 8, 8 (2003).

160. BEREWA, *supra* note 159, at 182; Lansana Gberie, Jarlawah Tonpoh, Efam Dovi & Osei Boateng, *Charles Taylor: Why Me?*, NEW AFRICAN MAGAZINE, May 2006, 4-5; Transcript of Record at



as serious fighting occurred on the outskirts of Monrovia between Taylor forces and other factions, were considered by many states as the best hope for the restoration of peace to war torn Liberia.<sup>161</sup>

Not surprisingly, except perhaps to Crane, who seemingly made a calculated decision to leak the indictment apparently even before securing a judicial order to that effect, President Kufour refused to act on the warrant.<sup>162</sup> Instead, after some initial confusion as to whether they had even received an official copy of the indictment let alone had time to study or act on it, he gave Taylor his presidential aircraft to fly him home to Liberia.<sup>163</sup> The Accra Ceasefire Agreement was signed by the Liberian Government and two other factions on June 17, 2003.<sup>164</sup> For various reasons, including the military and political pressure on Taylor and perhaps even the indictment, he agreed to resign from the Presidency of Liberia several months later on August 11, 2003.<sup>165</sup> He took up residence in Nigeria, believing that by agreeing to exit the political scene under African Union and ECOWAS led political arrangements, he would be spared ultimate prosecution at the SCSL.<sup>166</sup>

The political fallout from the indictment was immediate. Some diplomats condemned Crane's actions as ill-timed and naïve, a form of obstructionism that could stand in the way of peace in Liberia where a humanitarian catastrophe was taking place and where Taylor was still an influential player.<sup>167</sup> The other side of the story, from the SCSL side, was that justice had to be served on behalf of the people of Sierra Leone. Interestingly, similar arguments about tribunal prosecutors jeopardizing the prospects for peace among warring parties were to be echoed many years later in the Uganda and Darfur situations after the ICC's first prosecutor, Luis Moreno-Ocampo, secured arrest warrants for elusive Lord's Resistance Army rebel leader Joseph Kony and Sudanese President Omar Al Bashir.<sup>168</sup> Such claims have since become integral features of the peace versus justice dilemma for international criminal courts albeit on a different permutation typically focusing on the same instead of two different countries. In any event, in each of the Uganda and Sudan situations, but for the international warrants, the parties likely would have reached agreement to end the bloodshed. That is how the argument is usually presented in a curious counterfactual that is by its nature hard to debunk.

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31505, *Prosecutor v. Taylor*, SCSL-03-01-T (Nov. 10, 2009) [hereinafter Transcript of Record—Nov. 10, 2009], available at <http://www.rscsl.org/Documents/Transcripts/Taylor/10November2009.pdf>.

161. See HAYNER, *supra* note 159, at 8.

162. *Id.*

163. Miglin, *supra* note 156, at 26-27.

164. Permanent Rep. of Ghana to the United Nations, Letter dated June 18, 2003 from the Permanent Rep. of Ghana to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2003/657 (June 18, 2003).

165. The Accra Comprehensive Peace Agreement was signed just days later, on August 18, 2003, bringing an end to Liberia's 15 year civil war. See LIBERIAN TRC REPORT, *supra* note 1, at 169.

166. Transcript of Record—Nov. 10, 2009, *supra* note 160, at 31529-30.

167. See HAYNER, *supra* note 159, at 9-10.

168. See Charles C. Jalloh, *Regionalizing International Criminal Law?*, 9 INT'L. CRIM. L. REV. (2009) 445, 489-491 (discussing the criticisms of the ICC in the Uganda Situation).

Taylor, for his part, apparently agreed to resign so that a final Liberia peace agreement could be concluded. He also played an important role during the RUF-Kabbah negotiations of the Lomé Accord in the summer of 1999. The record is unclear as to whether he agreed to resign Liberia's presidency *before* he was indicted in Sierra Leone or *afterwards*. If the former, which can be supported by Vice-President Berewa's contention that the issue of Taylor's exit was already on the ECOWAS heads of states' agenda, the concern about the effect of unveiling an indictment on a prospective prosecution would obviously be higher. It may perhaps suggest that a promise of non-prosecution was used as a carrot. On the other hand, if he agreed after the indictment was unveiled, it could suggest that the stick of prosecution could be used to hasten the departure of a recalcitrant leader who could otherwise jeopardize the chances of long-term peace.

Whatever the case, as Taylor dilly-dallied from resigning in the wake of the publication of his sealed indictment, thousands more were killed near Monrovia.<sup>169</sup> He was probably seeking to stay on until he could secure the guarantees he felt were necessary to secure his position, which according to him, was a promise that he would not be prosecuted by the SCSL.<sup>170</sup> He would later testify during his trial that had he known he would be apprehended and sent to the tribunal in Freetown, contrary to the political deal sanctioned by African and powerful Western States that his indictment would become "moot," he would not have resigned from Liberia's presidency.<sup>171</sup> He would have fought to the end. Although we will never know if this would have actually happened, taking Taylor's statement at face value raises some valid concern whether future rebels might refuse to sign agreements to make way for peace because of the Taylor precedent. If so, even though each conflict situation will probably be different in its own way and will have to be assessed in light of its specificities, the implications for short term peace may prove to be dire. The reality is that a political settlement, amongst warring adversaries, is often the only real option for a final termination of bloody rebel-led conflicts in which neither side is positioned to claim clear military victory.

On the other hand, much like the ICC prosecutor would later respond to those who advanced the peace-justice argument after indictments for persons in Uganda and the Sudan, Crane retorted that he had both the legal and moral obligation to follow evidence of international crimes falling within his jurisdiction.<sup>172</sup> To him, with the indictment in place, it was important that anyone negotiating with Taylor know his status as an alleged war criminal. This was obviously calculated to weaken Taylor's bargaining position and to perhaps even render his relevance to a final political settlement nugatory. Furthermore, in another point that was later echoed by the ICC prosecutor, the SCSL prosecutor insisted that he could only fulfill his responsibilities if the international community showed the political will necessary

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169. Mutuma Ruteere, *Liberia*, in *ENCYCLOPEDIA OF HUMAN RIGHTS* (Oxford Univ. Press ed., 2009).

170. Charles C. Jalloh, *Charles Taylor and the Delayed Special Court for Sierra Leone Judgment*, *JURIST* (Feb. 23, 2012), <http://jurist.org/forum/2012/02/charles-jalloh-taylor-scsl.php>.

171. Transcript of Record—Nov. 10, 2009, *supra* note 160, at 31503.

172. Press Release of David M. Crane's Statement, *supra* note 158.

to carryout arrests requested by the tribunal rather than giving “weak excuses.”<sup>173</sup> He therefore urged all supporters of the SCSL to not further disappoint the people of Sierra Leone.<sup>174</sup>

Crane seemed well-meaning and within his mandate as a prosecutor. However, in retrospect, it appears that he went about the revelation of the Taylor indictment in a way that rubbed many key states, especially crucial African partners, the wrong way. He might have miscalculated the full diplomatic implications and the political backlash that the announcement of the indictment would entail. Maybe, like Ocampo’s move much later on against President Al Bashir at the ICC, Crane felt that the political tide had turned against Taylor, making it easy to secure his arrest. If that was so, this proved to be a wrong assessment.

With hindsight, a more cautious rather than messianic approach would have likely yielded faster results to get the concerned African states behind the idea of arresting Taylor. Many of those same countries were already sick of Taylor’s wars. These included Nigeria, the regional superpower, which had expended much political and military resources in an attempt to restore peace first to Liberia and then Sierra Leone.<sup>175</sup> Privately, if not publicly, many of them would probably have welcomed the chance to help apprehend and turn him over to the SCSL to answer international crimes charges. Whatever the case, it seems that the SCSL indictment helped to fast-track Taylor’s political demise. It apparently served as a credible threat to the alternative of his continuing a war he was not equipped to win against insurgents in Liberia. The ICC prosecutor could have learned from the SCSL’s initial mishandling of the Taylor arrest warrant regarding how to avoid antagonizing the African Union member states (“AU states”) that were more likely to help him secure Al Bashir’s arrest.<sup>176</sup> To date, nearly six years after Al Bashir’s indictment, AU states have decided that none of them would arrest him and thereby refused to turn him over to the ICC.<sup>177</sup> Even though there is a legal obligation to do so under the Rome Statute and in light of the decisions of the judges on the point, the unfortunate effect has been that—at least for now—Al Bashir can call the Court’s bluff. This seems to be an example of how the ICC prosecution is reinventing the

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173. *Id.*

174. *Id.*

175. See LIBERIAN TRC REPORT, *supra* note 1, at xxiv.

176. The Liberian TRC Report has argued that Crane’s indictment of Taylor had the effect of excluding him from the peace negotiations. See LIBERIAN TRC REPORT, *supra* note 1, at 169.

177. *AU Chief Condemns Bashir Warrants*, ALJAZEERA (July 27, 2010), <http://www.aljazeera.com/news/africa/2010/07/2010726423699861.html>. For scholarly assessments of the Africa-ICC tension, including a discussion of the Al Bashir arrest controversy from multiple perspectives, see *Regionalizing International Criminal Law?*, *supra* note 168; Charles C. Jalloh, *Universal Jurisdiction, Universal Prescription? Assessing the African Union Perspective on Universal Jurisdiction*, 21 CRIM. L. FORUM.1 (2010). See also Dapo Akande, *The Legal Nature of Security Council Referrals to the ICC and the Impact on Al Bashir’s Immunities*, 7 J. OF INT’L. CRIM. JUST. 333-352 (2009); Dire Tladi, *The African Union and the International Criminal Court: The Battle for the Soul of International Law* 34 SOUTH AFRICAN YRBK OF INT’L. L. 57 (2009); Dire Tladi, *Cooperation, Immunities and Article 98 of the Rome Statute: Confronting the Complexities of Interpretation*, 11 J. OF INT’L. CRIM. JUST. 199 (2013).

wheel rather than learning from the rich experiences of the ad hoc tribunals that preceded it.

*C. Nigeria Asylum Unravels, the Noose Tightens Around Taylor, and the Dramatic Arrest*

The immediate impact of Crane's attempt to cajole or shame Ghana into arresting Taylor was to delay instead of hastening his arrest. It would take another three years, much diplomatic and other advocacy efforts, as well as changed circumstances in Liberia, West Africa, and in U.S. foreign policy under the Bush Administration before Nigeria would eventually surrender Taylor to the SCSL at the end of March 2006.<sup>178</sup> To be sure, amongst Sierra Leonean civil society, especially war victim groups, there was popular support for Taylor's arrest. Similarly, in Nigeria, Taylor's stay at a government-furnished mansion in the southern city of Calabar became controversial, especially after a case was initiated in the local High Court by two Nigerian businessmen who had been amputated by RUF forces in Sierra Leone.<sup>179</sup> They argued that Nigeria could not harbor Taylor by granting him asylum, and that by doing so instead of prosecuting or extraditing him to the SCSL to face charges, their rights under the Nigerian Constitution and international law had been violated.<sup>180</sup> Various local and international human rights groups intervened in support.<sup>181</sup> The court agreed to hear the matter and the government appealed.<sup>182</sup>

Meanwhile, within some government circles in the ECOWAS region, political pressure for Taylor's arrest slowly began to gain some momentum.<sup>183</sup> As one of the conditions of Taylor's asylum in Nigeria, he agreed to stay out of Liberian politics.<sup>184</sup> But, by around the middle to late 2005, claims had emerged that he was still seeking to meddle in politics not only in Liberia but in other countries in the

178. Press Release, Special Court for Sierra Leone the Office of the Prosecutor, Statement by Special Court Prosecutor Desmond de Silva, QC Welcoming the Nigerian Announcement of the Transfer of Charles Taylor (Mar. 25, 2006), available at <http://www.rscsl.org/Documents/Press/OTP/prosecutor-032506.pdf>.

179. See Babatunde Fagbohunlu, *Challenging Taylor's Asylum in Nigeria*, in INT'L JUST. AND TRANSNAT'L REMEDIES 62, 64 n.1, (Open Society Foundation 2005) (stating "*Suit No FHC/ABJ/M/216/04* and *Suit No FHC/ABJ/M/217/04* commenced by way of Originating Summons filed by David Anyaele and Emmanuel Egbuna against Charles Taylor, the Federal Commissioner for Refugees, the Eligibility Committee for Refugees, the National Commission for Refugees, the President of the Federal Republic of Nigeria, and the Attorney-General of the Federal Republic of Nigeria."), available at <http://www.opensocietyfoundations.org/sites/default/files/fagbohunlu.pdf>.

180. *Id.* at 63.

181. *Id.* at 62.

182. *Id.* at 63.

183. See *Liberia: West African Leaders Call for Review of Taylor's Asylum Deal*, IRIN NEWS (Aug. 1, 2005), <http://www.irinnews.org/printreport.aspx?reportid=55662>.

184. Craig Timberg, *A Warlord's Exile Divides His Hosts: Liberian Ex-President Charles Taylor Doing Business as Usual in Nigeria*, WASH. POST (Oct. 9, 2005), [http://www.washingtonpost.com/wp-dyn/content/article/2005/10/08/AR2005100801243\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/10/08/AR2005100801243_pf.html); Douglas Farah, *A Protected Friend of Terrorism*, WASH. POST (Apr. 25, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/04/24/AR2005042400893.html>.

West Africa sub-region.<sup>185</sup> This included Cote D'Ivoire where, though this was never proved, he was even alleged to have backed a coup plot.<sup>186</sup> The SCSL Prosecutor later tried to link his activities to those of Al Qaeda, another assertion that was never substantiated publicly.

Further afield, in Europe and the United States, various resolutions were passed by Parliament and Congress respectively.<sup>187</sup> A prelude to this turn of events was that, in late 2003, the United States announced a \$2 million reward for information leading to Taylor's capture.<sup>188</sup> This was part of the Rewards for Justice Program,<sup>189</sup> which the United States had been operating to encourage arrests of fugitives wanted by ad hoc tribunals. But public announcement of the decision to include the SCSL's star indictee in the mix was not backed with a serious diplomatic push for his apprehension. It would take another two years, until the passage of the resolution in Europe in February 2005<sup>190</sup> that similarly supportive action was taken by the British parliament.<sup>191</sup> All these resolutions urged the Nigerian authorities to send Taylor to the SCSL. Still, despite their apparent political weight, the Bush Administration did not say much until around January 2006, when U.S. Secretary of State Condoleezza Rice announced that the United States was keen to see Taylor transferred to the SCSL.<sup>192</sup>

At the level of the U.N. Security Council, which has the primary responsibility for the maintenance of international peace and security, a travel ban had been placed on Taylor and his senior associates by March 2001.<sup>193</sup> They had repeatedly and flagrantly violated U.N. sanctions, including the illegal supply of arms, ammunition, and other logistical and communications equipment to the RUF in Sierra Leone.<sup>194</sup> By the end of November 2005, the Security Council was ready to take a further step by which it authorized U.N. peacekeepers to apprehend Taylor in the event he was to return to Liberia.<sup>195</sup> The peacekeepers were to transfer him to the SCSL.<sup>196</sup> This confounded Taylor, who wondered how he could be arrested when he was not even

185. Timberg, *supra* note 184; Farah, *supra* note 184.

186. Timberg, *supra* note 184.

187. Resolution on the Special Court for Sierra Leone: The Case of Charles Taylor, EUR. PAR. DOC. P6\_TA (2005)0059 (2005); H.R. Con. Res. 127, 109th Cong. (2005).

188. In *\$87.5 Billion Bill, \$2 Million Bounty for Exiled Liberian*, N.Y. TIMES (Nov. 10, 2003), <http://www.nytimes.com/2003/11/10/world/in-87.5-billion-bill-2-million-bounty-for-exiled-liberian.html>.

189. REWARDS FOR JUSTICE, <http://www.rewardsforjustice.net/> (last visited Mar. 1, 2015).

190. Resolution on the Special Court for Sierra Leone: The Case of Charles Taylor, *supra* note 187.

191. U.N. Special Court for Sierra Leone, EARLY DAY MOTION 1375, H.C. (June 10, 2003), available at <http://www.parliament.uk/edm/2002-03/1375>.

192. Felix Onuah, *Wanted Liberian Warlord Disappears in Nigeria*, WASH. POST (Mar. 28, 2006), [http://www.washingtonpost.com/wp-dyn/content/article/2006/03/28/AR2006032800390\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/03/28/AR2006032800390_pf.html).

193. See U.N. S.C. Res. 1343, para. 7(a), U.N. Doc. S/RES/1343 (Mar. 7, 2001).

194. *Id.* para. 2(b).

195. U.N. S.C. Res. 1638, para. 1, U.N. Doc. S/RES/1638 (Nov. 11, 2005).

196. *Id.*; For commentary, see generally Micaela Frulli, *A Turning Point in International Efforts to Apprehend War Criminals: The U.N. Mandates Taylor's Arrest in Liberia*, 4 J. INT'L CRIM. JUST. 351-61 (2006).

in Liberia. But, in retrospect, he realized it meant that the groundwork was being laid.

The Nigerian government under President Olesugun Obasanjo, which had initially insisted that it would not turn over Taylor to the SCSL (because it did not want to be seen as reneging on an African Union and ECOWAS agreement to keep Taylor), announced that it would honor a democratically-elected Liberian government's request for it to do so.<sup>197</sup> This opened the door for a potential transfer. The momentum for Taylor's arrest seemed inexorable. The time was coming. In the meantime, Liberia held transitional elections as per the Accra Peace Accord. Ellen Johnson Sirleaf won the vote, becoming Africa's first female head of state.<sup>198</sup> On March 5, 2006, the new Liberian president, in a not entirely selfless decision given her initial support to Taylor for the establishment of the NPFL, requested the Nigerian authorities to turn over Taylor to her government.<sup>199</sup> She did so reportedly because of unrelenting pressure from several of Liberia's crucial development partners, including the United Nations, the United States, and the European Union.<sup>200</sup> On March 25, 2006, President Obasanjo informed Johnson Sirleaf that Liberia was "free to take former President Charles Taylor into its custody,"<sup>201</sup> but by not arresting Taylor, Nigeria raised questions about whether it was still seeking to shield the suspect.

The final act in the Taylor arrest drama was Obasanjo's visit to Washington. He was scheduled to meet with President George Bush at the White House on March 29, 2006.<sup>202</sup> Just a couple of days before, on March 27, Nigeria, in an apparent face saving ploy, had announced that Taylor had suddenly "escaped" from his villa in Calabar.<sup>203</sup> The United States warned of "consequences" if Taylor was not turned over.<sup>204</sup> The day before the White House meeting, it was made abundantly clear that Bush would cancel the meeting with Obasanjo if the Taylor issue was not resolved.<sup>205</sup> Abuja, which had expressed dismay at the "persistent pressure" it was receiving "to violate the understanding of 2003," reversed course.<sup>206</sup> Only hours

197. Onuah, *supra* note 192.

198. Ernest Harsch, *Liberian Woman Breaks the 'Glass Ceiling,'* AFRICA RENEWAL (Jan. 2006), <http://www.un.org/africarenewal/magazine/january-2006/liberian-woman-breaks-%E2%80%98glass-ceiling%E2%80%99>.

199. Press Release, Human Rights Watch, Liberia: President Requests Surrender of Taylor (Mar. 17, 2006).

200. *Johnson-Sirleaf Describes Attempts to Come to Terms with Liberia's Violent Past*, PBS NEWSHOUR (Mar. 23, 2006), [http://www.pbs.org/newshour/bb/africa-jan-june06-liberia\\_3-23/](http://www.pbs.org/newshour/bb/africa-jan-june06-liberia_3-23/).

201. See Statement by the Federal Government of Nigeria—Former President Charles Taylor to the transferred to the custody of the Government of Liberia, Mar. 25, 2006. See also Bernard Hibbitts, Nigeria to Hand over War Crimes Indictee Taylor to Liberia, JURIST (Mar. 25, 2006), <http://jurist.org/paperchase/2006/03/breaking-news-nigeria-to-hand-over-war.php>.

202. Dino Mahtani & Guy Dinmore, *US Raps Nigeria As Liberian Warlord Vanishes*, FIN. TIMES (Mar. 29, 2009), <http://www.ft.com/cms/s/0/df754e2-bebf-11da-b10f-0000779e2340.html#axzz3R5wz3R00>.

203. See Onuah, *supra* note 192.

204. See *id.*

205. Mahtani & Dinmore, *supra* note 202.

206. *Court Calls for Arrest of Liberian Ex-Leader*, WASH. POST (Mar. 27, 2006),

later, on March 29, Nigerian forces “found” Taylor at a remote border post close to Cameroon.<sup>207</sup> He was arrested with sacks of money (\$50,000), allegedly given to him by Obasanjo, and immediately put under guard in a military jet and flown to Monrovia.<sup>208</sup> Obasanjo met with Bush while Taylor was on his way to Liberia, where he was arrested, upon arrival, by U.N. peacekeepers on the tarmac at Monrovia’s Robertsfield International Airport and transferred onto a U.N. helicopter.<sup>209</sup> He was flown to the SCSL premises at New England in Freetown.<sup>210</sup> Nearly the whole of Sierra Leone celebrated.<sup>211</sup>

The prosecution was anxious to have Taylor arraigned. Taylor was not in a rush. He had arrived with only the clothes on his back, so he insisted to the Defense Office that his clothing be brought in from Nigeria.<sup>212</sup> That was duly brought, at his own expense, by one of his former chiefs of protocol who flew on the earliest available flight.<sup>213</sup>

On April 3, 2006, a date negotiated between the Defense Office and the Office of the Prosecutor, a still visibly shaken Taylor was arraigned before Presiding Judge Richard Lussick of Trial Chamber II and read out his charges.<sup>214</sup> He pleaded “most definitely. . . not guilty.”<sup>215</sup> In later trial testimony, he would invite Obasanjo to tell the truth about his so-called escape.<sup>216</sup> He then explained that he had effectively been duped by an African “brother.”<sup>217</sup> Taylor, pressed as to reasons why, then suggested that Nigeria might have given him up because of its hope to secure a permanent seat on the Security Council, which was being discussed at the time, and Obasanjo’s desire to run for a third term in office without U.S. opposition.<sup>218</sup>

## V. CONTROVERSIAL PRELIMINARY ISSUES BEFORE THE CHARLES TAYLOR TRIAL

### *A. Taylor Claims Immunity from Prosecution*

In the Taylor case, unlike most other international criminal trials, some of the preliminary legal issues were raised before he was even arrested. The first of these occurred when, as President of Liberia, he hired a Sierra Leonean lawyer, Terence

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<http://www.washingtonpost.com/wp-dyn/content/article/2006/03/26/AR2006032600928.html>.

207. Amin George Forji, *Nigerian Police Arrest Fugitive Liberian Warlord*, OHMYNEWS (Mar. 30, 2006),

[http://english.ohmynews.com/articleview/article\\_view.asp?article\\_class=3&no=282501&rel\\_no=1](http://english.ohmynews.com/articleview/article_view.asp?article_class=3&no=282501&rel_no=1).

208. Transcript of Record—Nov. 10, 2009, *supra* note 160, at 31521-22.

209. *Id.* at 31522.

210. *Id.*

211. *Id.* at 31526.

212. *Id.* at 31522.

213. *See generally id.*

214. Personal observation of this author, who was present in the courtroom, during Taylor’s arraignment. *See also* Transcript of Record at 4-13, Prosecutor v. Taylor, Case No. SCSL-03-01-T (Apr. 3, 2006), <http://www.rscsl.org/Documents/Transcripts/Taylor/3April2006.pdf>.

215. *Id.* at 15.

216. Transcript of Record—Nov. 10, 2009, *supra* note 160, at 31523-24.

217. *See id.* at 31517-21.

218. *Id.* at 31520.

Terry, to seek a quashing of the SCSL indictment.<sup>219</sup> This was done even as Liberia also planned, ultimately unsuccessfully, to pursue the arguably better alternative of initiating legal proceedings against Sierra Leone at the International Court of Justice ("ICJ").<sup>220</sup> The essence of Liberia's claim was that the SCSL's issuance of an international arrest warrant against Taylor violated a fundamental rule of international law which provided for Taylor's immunity, as a head of state, from criminal proceedings in foreign criminal jurisdictions.<sup>221</sup> Sierra Leone had also violated the rule prohibiting it from exercising judicial power on the territory of another state, in as much as Liberia was not a party to the United Nations-Sierra Leone Agreement establishing the SCSL.<sup>222</sup> As the tribunal was not a U.N. organ, and also not an established international penal court, it could not impose legal obligations on a third state like Liberia.<sup>223</sup> But that process did not go far because Sierra Leone's consent was required for the ICJ to have jurisdiction and was not given.<sup>224</sup>

On July 23, 2003, at the SCSL itself, Terry filed a motion submitting that Taylor, who was a sitting head of state at the time the alleged crimes were committed, was absolutely immune from any exercise of jurisdiction by the SCSL.<sup>225</sup> He relied on the ICJ ruling in the *Congo v. Belgium* (Arrest Warrant) case to argue that the indictment was invalid under international law.<sup>226</sup> In that dispute, the World Court had decided the question whether Belgium, by merely issuing and circulating an arrest warrant for the Congolese Minister for Foreign Affairs, Abdoulaye Yerodia, had violated customary international law.<sup>227</sup> Although the Court determined that, due to the principle of sovereign equality, foreign ministers and other high ranking officials such as heads of state were shielded from prosecution before the *national courts* of other states, it identified four exceptions under which such exercise of jurisdiction would be permissible.<sup>228</sup> As part of this,

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219. Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Decision on Immunity from Jurisdiction, at 3015 (May 31, 2004), <http://www.eccc.gov.kh/sites/default/files/Taylor.pdf>.

220. *Id.* at 3016. See also Charles C. Jalloh, *Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone*, 8 ASIL INSIGHTS 9 (2004), available at <http://www.asil.org/insights/volume/8/issue/21/immunity-prosecution-international-crimes-case-charles-taylor-special>.

221. *Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone*, *supra* note 220.

222. Taylor, Case No. SCSL-2003-01-I, Decision on Immunity from Jurisdiction, at 3018, 3039.

223. *Id.* at 3039.

224. Press Release, Int'l Court of Justice, Liberia Applies to the International Court of Justice in a Dispute with Sierra Leone Concerning an International Arrest Warrant Issued by the Special Court for Sierra Leone Against the Liberian President (Aug. 5, 2003), available at <http://www.icj-cij.org/presscom/index.php?pr=1027&pt=&p1=6&p2=1>.

225. Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Applicant's Motion made under Protest and without Waiving of Immunity, 3 (July 23, 2003), <http://www.rscsl.org/Documents/Decisions/Taylor/024/SCSL-03-01-I-015.pdf>.

226. Case Concerning the Arrest Warrant of 11 April 2000 (*DRC v. Belgium*), 2002 I.C.J. 121, 3 (Feb. 4), available at <http://www.icj-cij.org/docket/files/121/8126.pdf>.

227. *Id.* at 4.

228. *Id.* ¶ 27.



the ICJ determined that an incumbent foreign minister or head of state may be subject to prosecution before *certain international penal courts*, where such courts possess jurisdiction.<sup>229</sup> It cited as examples of this the ICTY and ICTR as well as (at the time) the future ICC.<sup>230</sup> Taylor's attorney submitted that because the SCSL lacked the Chapter VII powers of the ICTY and ICTR, it was more akin to a national court of Sierra Leone, and consequently, that it lacked jurisdiction over Taylor.<sup>231</sup>

In resolving the preliminary motion, which was forwarded to the Appeals Chamber, two questions were central: firstly, whether Taylor, who was at the time of the decision no longer holding office as president, was entitled to immunity from the legal processes of the SCSL; and secondly, whether the SCSL was a national or international criminal tribunal.<sup>232</sup> The prosecution made both procedural and substantive arguments.<sup>233</sup> It suggested, with regards to the former, that it was wrong for Taylor to challenge the tribunal's jurisdiction before personally submitting to it.<sup>234</sup> On the merits, the prosecution argued that the SCSL, which was not part of the Sierra Leonean judiciary and was created as an independent tribunal under international law, could not be subject to the same limitations as the ICJ had found applicable to the *national courts* of states such as Belgium.<sup>235</sup>

In its decision on the motion, which has been controversial among commentators since it was handed down, the Appeals Chamber denied the defense motion.<sup>236</sup> It examined the Nuremberg and Tokyo tribunal precedents, as well as the rulings in the *Arrest Warrant* and *Pinochet* cases, alongside the briefs filed by Amicus Curiae Phillip Sands and Diane Orentlicher.<sup>237</sup> It then concluded that "the principle seems now established that the sovereign equality of states does not prevent a Head of State from being prosecuted before an international criminal tribunal or court."<sup>238</sup> In effect, the SCSL was an international criminal tribunal exercising an international mandate over international crimes. The tribunal, being international, therefore fell within one of the four exceptions that the ICJ had identified.<sup>239</sup> As a consequence, although no longer a president entitled to *ratione personae* immunity after having left office, Taylor's official status as a sitting president when the criminal proceedings were initiated was not a bar to his prosecution.<sup>240</sup> His case was, therefore, properly within the SCSL's jurisdiction.<sup>241</sup>

229. *Id.* ¶¶ 58, 61.

230. *Id.* ¶ 61.

231. Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Decision on Immunity from Jurisdiction, at 3018 (May 31, 2004), <http://www.scsldocs.org/documents/view/1609-1303>.

232. *Id.* ¶¶ 20, 33, 37.

233. *Id.* ¶ 5.

234. *Id.* ¶ 16.

235. For further discussion of the parties' submissions in detail, see *Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone*, *supra* note 220.

236. Taylor, Case No. SCSL-2003-01-I, Decision on Immunity from Jurisdiction, ¶ 53.

237. *Id.* ¶ 50.

238. *Id.* ¶ 52.

239. *Id.* ¶ 50.

240. *Id.* ¶¶ 47, 59.

241. *Id.* ¶ 53. See generally Sarah M.H. Nouwen, *The Special Court for Sierra Leone and the*

The Court notably failed to properly account for the germane issue of Liberia's third party status to the bilateral treaty that had created the SCSL.

When Taylor eventually appeared before the SCSL, during his arraignment on April 3, 2006, he again raised the question of his immunity.<sup>242</sup> He stated that he did not recognize the court's jurisdiction since he believed his status entitled him to immunity.<sup>243</sup> Judge Richard Lussick reminded Taylor that he had previously contested that issue and lost.<sup>244</sup> As far as the judge was concerned, the matter had been "thrashed out" by the Appeals Chamber.<sup>245</sup> But Taylor was free to file motions to revisit the issue after first pleading to the charges, which he thereafter did.<sup>246</sup> Interestingly, the defendant never again asserted immunity, even during the appeal of his conviction. It seemed as if he realized that any further attempt to assert immunity would not lead to a different outcome for his case. So he essentially gave up the fight.<sup>247</sup>

### *B. The Debate about Where to Try Taylor*

After his arrest and arraignment, at the seat of the SCSL in Freetown, yet another controversy arose in the Taylor case related to the venue of his trial.<sup>248</sup> All the other SCSL suspects were tried in the Sierra Leonean capital.<sup>249</sup> But, even before his initial appearance, Taylor knew that his case would be different. This was confirmed when it was rumored that he would likely be transferred to The Hague. For that reason, on the very first day that he appeared before the SCSL, Taylor expressed preference to be tried in Sierra Leone.<sup>250</sup> Taylor noted particular concern about his fair trial rights and ability to obtain witnesses.<sup>251</sup> The proximity of the

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*Immunity of Taylor: The Arrest Warrant Case Continued*, 18 LEIDEN J. INT'L L. 645, 651 (2005); *contra* James L. Miglin, *From Immunity to Impunity: Charles Taylor and the Special Court for Sierra Leone*, 16 DALHOUSIE J.L. STUD. 21 (2007); Micaela Frulli, *Piercing the Veil of Head of State Immunity: The Taylor Trial and Beyond*, in THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW 325-339 (Charles C. Jalloh ed., 2014). *See generally* Annie Gell, *Lessons from the Trial of Charles Taylor at the Special Court for Sierra Leone*, in THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW 642-62 (Charles C. Jalloh ed., 2014) (providing a post-trial completion analysis).

242. Transcript of Record at 14, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T (Apr. 3, 2006), <http://www.rscsl.org/Documents/Transcripts/Taylor/3April2006.pdf>.

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. *See* Dapo Akande, *International Law Immunities and the International Criminal Court*, 98 AM. J. INT'L L. 407, 407-33 (2004) (for a lucid exposition on the question of immunity).

248. *See* Charles C. Jalloh, *Special Court for Sierra Leone Dismisses Taylor Motion against Change of Venue*, 10 ASIL INSIGHTS (2006), available at <http://www.asil.org/insights/volume/10/issue/15/special-court-sierra-leone-dismisses-taylor-motion-against-change-venue>.

249. Tristan McConnell, *Liberia: Warlord on Trial*, MINNPOST, July 14, 2009, at 1, available at <http://www.minnpost.com/global-post/2009/07/liberia-warlord-trial>.

250. Transcript of Record—Nov. 10, 2009, *supra* note 160, at 31547-53.

251. *Id.*

SCSL to his home country, Liberia, where he had most of his family, was also naturally important to him.<sup>252</sup>

In fact, the day after Taylor's arrival in Freetown, the President of the SCSL submitted requests to the Netherlands and the ICC to facilitate the relocation of the trial to The Hague.<sup>253</sup> At that point, the ICC had an empty courtroom without any defendants. Under the SCSL Statute and Rules, the SCSL could sit outside Sierra Leone whenever this would be necessary for the exercise of its functions.<sup>254</sup> The Dutch government immediately agreed to host the trial, provided certain conditions could be fulfilled.<sup>255</sup> This included acceptance by another state to host Taylor in the event he was convicted.<sup>256</sup> The ICC, after carrying out internal consultations and notifying its states' parties, none of which objected to the idea, also consented to the use of its facilities.<sup>257</sup> A delay of several weeks then followed when no African or other country volunteered to detain a convicted Taylor until the British government offered to do so on June 15, 2006.<sup>258</sup>

While the security rationale offered for moving the trial seemed to have merit, there was considerable pushback from it, especially from within the human rights community in Sierra Leone and the United States. Matters were not helped by the government appearing to contradict the SCSL position. Key officials, including the vice president who had been Sierra Leone's minister of justice and attorney general during the establishment of the tribunal, Solomon Berewa, stated publicly that he did not think security was an issue.<sup>259</sup> But, he changed his mind just days later.<sup>260</sup> It was unclear what motivated the new stance. It has been suggested that maybe there was new information suggesting such threats were credible.<sup>261</sup> The more likely scenario might have been that the decision had already been taken outside of Sierra Leone, perhaps in Washington, which enjoys considerable influence driving the official policies of Monrovia and the United Nations.

The views of the Liberian government, which was not a party to the SCSL process as such, were also relevant, though complicated. On the one hand, the newly

252. *Id.*

253. Press Release, *supra* note 20.

254. *Id.*; Special Court for Sierra Leone R. P. & EVID. 4.

255. Permanent Rep. of the Netherlands to the U.N., Letter dated 31 March 2006 from the Permanent Rep. of the Netherlands to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2006/207 (Apr. 3, 2006).

256. *Id.* at 3.

257. Press Release, Security Council, Security Council Approves Trial Transfer of Former Liberian President Charles Taylor to Netherlands, U.N. Press Release SC/8755 (June 16, 2006).

258. *Trying Charles Taylor in The Hague: Making Justice Accessible to Those Most Affected*, 2 HUMAN RIGHTS WATCH 1, 1 (2006), <http://www.hrw.org/reports/2006/06/21/trying-charles-taylor-hague>.

259. See generally Lydia Polgreen & Marlise Simons, *Sierra Leone Asks to Move Liberian's Trial*, N.Y. TIMES (Mar. 31, 2006), <http://www.nytimes.com/2006/03/31/world/africa/31liberia.html?fta=y&r=0>.

260. *UN Agrees to Hague Trial for Taylor*, ALJAZEERA (June 16, 2006), <http://www.aljazeera.com/archive/2006/06/2008410113020793618.html>.

261. See generally *Trying Charles Taylor in The Hague*, *supra* note 258, at 2-3.

elected President Sirleaf was concerned about security, given that Taylor retained some domestic political support in the country.<sup>262</sup> On the other hand, his prosecution at the SCSL was not her priority.<sup>263</sup> The business of governing Liberia was more important than the fate of a single Liberian who happened to be a former enemy. Yet, to rebuild Liberia, she needed foreign aid from friendly governments, especially the United States. In the end, the compromise was that President Johnson Sirleaf would request that Nigeria transfer Taylor to the SCSL.<sup>264</sup> She was unequivocal that, for security reasons, she preferred he not be tried next door in Sierra Leone.<sup>265</sup> For the SCSL prosecution, whose work would have been considered a failure by many in Sierra Leone and overseas if it did not get to try its number one suspect, the movement of the key case to another venue seemed like a price worth paying in exchange for Liberia's request for his arrest and transfer into its custody.<sup>266</sup>

At the U.N. Security Council, urgent consultations followed Taylor's arrest and arraignment at the SCSL in order to resolve the conditions that the Dutch government had imposed before it would accept the trial. In Security Council Resolution 1688, which paved the way for Taylor's transfer to The Hague, the Security Council determined that Taylor could not be tried in the West Africa "subregion due to the security implications."<sup>267</sup> The decision also determined that Taylor's "continued presence" in the sub-region was "an impediment to stability and a threat to the peace of Liberia and of Sierra Leone and to international peace and security."<sup>268</sup> It further noted that it was "not feasible for the trial of former President Taylor to be hosted at the premises of the [ICTR] due to its full engagement on the completion strategy."<sup>269</sup> This implied that some consideration was given to the idea of trying Taylor somewhere else in Africa. Yet, the actual extent of that evaluation is largely unknown.

We can accept that, under prevailing international law, the Security Council does—and more normatively, should—enjoy wide discretion to make determinations of what constitute threats to international peace and security. All the more so because, as the ICTY Appeals Chamber confirmed in the *Tadic* case, the

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262. *Id.* at 3.

263. *Taylor 'not priority' for Liberia*, BBC NEWS (Jan. 27, 2006, 4:02 PM), <http://news.bbc.co.uk/2/hi/africa/4655186.stm>.

264. *Liberia: President Requests Surrender of Taylor*, HUMAN RIGHTS WATCH (Mar. 17, 2006), <http://www.hrw.org/news/2006/03/17/liberia-president-requests-surrender-taylor>.

265. *Id.*

266. Press Release, Special Court for Sierra Leone, The Prosecutor's Meeting with Civil Society of Sierra Leone, 31 March 2006, at 5 (Apr. 12, 2006) (on file with the Special Court for Sierra Leone's Office of the Prosecutor), available at <http://www.rscsl.org/Documents/Press/OTP/prosecutor-041206.pdf>.

267. See S.C. Res. 1688, pmbi., U.N. Doc. S/RES/1688 (June 16, 2006).

268. *Id.* The Dutch Government had apparently insisted that the resolution, which was drafted by Britain, be adopted under Chapter VII authority. This would enable it to have the legal basis for subsequent actions under national law. Russia did not oppose the motion, which passed unanimously with 15 votes, but observed that this was an "exceptional" decision that did not set a "precedent for resolving similar issues in the same way." See U.N. SCOR, 61st Sess., 5467th mtg. at 2, U.N. Doc. S/PV.5467 (June 16, 2006).

269. S.C. Res. 1688, *supra* note 267.

U.N. body is often faced with fluid situations.<sup>270</sup> It is thus generally better placed to determine, as a political and legal matter under Chapter VII of the U.N. Charter, what amounts to threats or breaches to the peace and security of the world.<sup>271</sup> And, equally importantly, it is better placed to determine what forcible and non-forcible measures to take to redress such security concerns.<sup>272</sup> That is, in many ways, the essence of its mandate.

Nonetheless, the Security Council's determination that sending Taylor to the ICTR or another African State was not feasible seems somewhat contestable. The ICTR reportedly was quickly consulted.<sup>273</sup> It replied to the Secretary-General that it was engaged upon its completion strategy.<sup>274</sup> It is unclear whether further reasons were given or whether further consultations took place. However, the fact that the completion plan was in place did not mean that the SCSL needed to encumber the ICTR in any significant way for the purposes of carrying out its single Taylor trial in Arusha, or more to the point, that alternative arrangements could not have been made for another trial venue in Tanzania. It is also unclear whether the Security Council considered other African States, including those in west, east or even central Africa, for the purpose of hosting the trial and whether it sought AU support for the idea of an in continent trial. Working with the United Nations, one might have expected that the SCSL could have more easily made arrangements for the Taylor trial in an African country with closer proximity to Freetown. Even more importantly, especially for a tribunal operating on donations and the goodwill of states, the cost of such an undertaking would have also been cheaper for the SCSL than the financial burden that later resulted from use of the ICC facilities.

In any event, based on what the public knows, a critical look at the security rationale for moving the Taylor case casts serious doubt on its veracity. For one thing, the SCSL had in its custody other personalities who enjoyed more popular support in Sierra Leone.<sup>275</sup> Yet, none of them were transferred out of Sierra Leone. If anything, the threats from the supporters of Sankoh, the erstwhile leader of the RUF who eventually died in custody, were probably greater than that of Taylor, at least to Sierra Leoneans.<sup>276</sup> Thousands of former RUF combatants, including notorious commanders, roamed the streets of Freetown freely. Similarly, Norman, the deputy minister, was seen as a national hero for leading the CDF against the RUF.<sup>277</sup> He too was detained at the SCSL facilities in Freetown.<sup>278</sup> Although it is true that after his arrest, the tribunal did briefly explore the prospect of transferring

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270. Prosecutor v. Tadic, Case No. IT-94-1-I, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶¶ 29, 31 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

271. *Id.* ¶¶ 33-36.

272. *Id.*

273. See generally S.C. Res. 1688, *supra* note 267, at 2.

274. See generally *id.*

275. See Tejan-Cole, *supra* note 79, at 219-20.

276. And, clearly, Taylor's case had the transborder dimension of having to account for Liberia's security fears where claims of a threat from within would perhaps be more credible. *Id.*

277. *Comment to Norman's Price for Loyalty*, NEW VISION (Feb. 2, 2006) (on file with the Special Court for Sierra Leone's Press and Public Affairs Office).

278. *Id.*

him to the ICTR for security considerations,<sup>279</sup> in the end, he was kept in the same place of detention as Taylor and the rest of the other Sierra Leoneans. There were no serious security incidents from troublemaker supporters. Yet, with Taylor, on June 20, 2006, despite civil society's and his own attempt to forestall that decision in the hope of remaining in Freetown, he was secretly transferred to The Hague.<sup>280</sup>

Finally, without oversimplifying the matter, the SCSL was ensconced in a "heavily fortified" compound with twenty-four hour security provided by hundreds of seasoned U.N. peacekeepers.<sup>281</sup> Among the visible security was a high barbed-wire fence, video surveillance equipment, metal detectors, guard posts with armed soldiers, and even an armored personnel carrier.<sup>282</sup> On top of that, only a stone's throw away from the SCSL building in New England were two of Sierra Leone's largest army bases: Wilberforce and Murray Town Barracks. They too could provide security backup. In other words, I am skeptical that—for all its significance for Sierra Leoneans—less drastic measures than transferring Taylor out of Sierra Leone were fully explored and first exhausted by the SCSL and the U.N. Security Council before Taylor was sent to The Hague. Criminal justice, whether at the national or international levels, aspires to give victims a measure of justice. That justice is obviously better served and more likely better received, as the U.N. Secretary-General has concluded in a review of best practices, if those victims get a chance to see their alleged number one tormentor face justice. To the extent that criminal trials bring closure, witnessing justice first hand is more likely to bring such closure to the victims and their families.

On the other hand, to be fair to the SCSL, it is plausible that it had intelligence through governments giving credible warnings about security threats that followed Taylor's arrest and incarceration in Freetown. But, if any such a thing existed, the information was never made public. Indeed, even as many Sierra Leonean parliamentarians and civil society rallied against Taylor's transfer outside the country, the SCSL failed to mount a robust effort to justify or explain the decision to move the trial to the Netherlands. The lack of transparency exacerbated the suspicions of the real motive behind the move, which was to get the defendant into its custody without necessarily worrying about where he would be tried. In the end, although there would have been some who breathed easier after the trial was moved outside West Africa, many Sierra Leoneans were left frustrated with the decision to take Taylor to Europe.<sup>283</sup> It is unfortunate that, especially when combined with the general lack of accessibility of his trial, the people in Sierra Leone and Liberia who

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279. *Id.*

280. *The Prosecutor vs. Sam Hinga Norman, Moinina Fofana and Allieu Kondewa: The Defence Case*, Special Court for Sierra Leone: Residual Special Court for Sierra Leone, <http://www.rscsl.org/CDF.html> (last visited Mar. 1, 2015); Lansana Fofana, *Mixed Feelings over Charles Taylor's Transfer*, Inter Press Service (June 20, 2006), <http://www.ipsnews.net/2006/06/west-africa-mixed-feelings-over-charles-taylors-transfer-to-the-hague/>.

281. See Tejan-Cole, *supra* note 79, at 220.

282. *Id.*

283. *Sierra Leone: The Justice Experiment*, ALLAFRICA (Aug. 4, 2006), <http://allafrica.com/stories/200608040839.html>.

were more likely to have been sobered by the lesson of seeing Taylor in the dock were cheated of that opportunity. In short, to have maximized the impact of the historic trial, the proceedings should have been held locally. This after all was said to be a core advantage of the SCSL, sitting in the *locus criminis*, over its sister ICTY and the ICTR—both of which had been criticized for their geographic distance to the communities in whose names they were asked to render credible justice.

As a former SCSL and Sierra Leonean prosecutor Abdul Tejan-Cole has rightly argued, the choice to move Taylor's case to Europe served not only to highlight the complex politics involved in high profile mass atrocity cases, but also to blur the line between the legal and political.<sup>284</sup> Another Sierra Leonean lawyer, Alpha Sesay, was even more critical. He suggested that transferring the trial of the star accused outside the country undermined the "whole reason for having the Court in Sierra Leone in the first place,"<sup>285</sup> and in particular, deprived his alleged victims "of the justice that they deserve."<sup>286</sup> I share in these views of my compatriots.

Other negative impacts of the change of venue of the Taylor trial can be discerned. These include the manifold increase in the cost of the trial for the SCSL, the complications that arose in dealing with witnesses who had to travel outside of West Africa to testify, and the confusion and disagreements between the SCSL and the ICC over who had responsibility for Taylor's conditions of detention. Many additional controversies arose, including whether a video camera should record his confidential meetings with his lawyers,<sup>287</sup> whether he was entitled to family visits paid by the SCSL,<sup>288</sup> whether he was entitled to culturally appropriate African instead of Dutch food alien to his Liberian palate,<sup>289</sup> whether he should receive conjugal visits from his wife,<sup>290</sup> and so on. On top of all these, once the ICC had its own cases, the SCSL was asked to move out.<sup>291</sup> This forced the SCSL to relocate mid-trial to the premises of the Special Tribunal for Lebanon, where the case was completed.<sup>292</sup> These challenges added yet more avoidable delays and controversies to the trial.

284. See Tejan-Cole, *supra* note 79, at 219-20.

285. Alpha Sesay, *Liberia: Trying Charles Taylor: Victims' Justice Cannot Be Fully Achieved At the Hague*, ALLAFRICA (Apr. 19, 2006), <http://allafrica.com/stories/200604190306.html>.

286. *Id.*

287. Katy Glassboro, 'Turf War' Over Charles Taylor Case, 104 ACR 2 (2007), available at <https://iwpr.net/global-voices/turf-war-over-charles-taylor-case>.

288. See generally Prosecutor v. Taylor, Case No. SCSL-03-01-PT, Public Defence Application Requesting Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court of Sierra Leone Dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, 3624 (Dec. 14, 2006).

289. Alexandra Hudson, *ICC Enlists Expert Help to Cater for Taylor*, GOOGLEGROUPS (June 6, 2007, 1:06 PM), <https://groups.google.com/forum/#!topic/croatian-news/g5Dz9bgYYsk>.

290. *Id.*

291. Charles C. Jalloh, *Charles Taylor and the Delayed Special Court for Sierra Leone Judgment*, JURIST 7 (Feb. 23, 2012, 6:00 PM), <http://jurist.org/forum/2012/02/charles-jalloh-taylor-scsl.php>.

292. *Id.*

## VI. THE CONTROVERSIES AT THE OPENING AND CLOSING OF THE CHARLES TAYLOR TRIAL

Both the opening and closing of the Taylor trial were highly dramatic affairs. While the first was a result of a strategy that the accused had devised with his *provisional* defense counsel, Karim Khan, the second can be attributed to his defense team which failed to turn in the final trial brief when it was due. The latter situation, which will be considered after discussion of the first, was then compounded by a short-sighted decision of the majority of Trial Chamber II to reject Taylor's final brief. This caused a disruption requiring the Appeals Chamber to intervene before deliberations on his guilt or innocence could begin. The final dramatic scene, as the curtain was drawn on the case, came from an even more surprising quarter: a judge.

### *A. The Dramatic Courtroom Walkout and the Ensuing Delay*

Monday, June 4, 2007, was supposed to be the big day for the prosecution. All openings of major trials are. It is typically a day for the prosecution to outline the barebones of its case against the defendant, sometimes with great rhetorical flourish, more for public than judicial consumption. The defendant and his lawyer generally sit in the courtroom and listen to the allegations without much interruption, save for exceptional circumstances. They would later get their turn to set out the defense case, and commensurately, would enjoy the same courtesy. But, in the kind of dramatic twist that came to characterize each stage of the Taylor case, when the matter of *Prosecutor v. Charles Ghankay Taylor* was called around 10:30 a.m. that morning in ICC Courtroom I in The Hague, Khan gave a bombshell of an explanation for his client's absence from the courtroom: Taylor was not coming to court, and even worse, had no plans to return.<sup>293</sup> Instead, in a letter Khan passionately read out to the court, Taylor explained that he had been denied equality of arms with the prosecution as well as adequate time and facilities to prepare his defense as well as ability to consult the Court's Principal Defender, Vincent Nmehielle.<sup>294</sup> As he believed he would not receive a fair trial, he would henceforth not participate in a sham process.<sup>295</sup> He also fired Mr. Khan in favor of representing himself personally.<sup>296</sup>

The problem for the judges was that Taylor was not in court. This meant that barring proceeding without him or his being dragged into the courtroom, as the prosecution suggested, the opening could not proceed. Instead of ordering that Taylor be forced to court, which would have caused a problematic spectacle of a defendant bound and gagged, the trial chamber sensibly responded with an order

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293. See Transcript of Record at 242, *Prosecutor v. Taylor*, SCSL-03-01-T (Jun. 4, 2007), <http://www.rscsl.org/Documents/Transcripts/Taylor/4June2007.pdf>; see also David Pallister & Chris McGreal, *Taylor Boycotts War Crimes Trial*, *GUARDIAN* (June 4, 2007), <http://www.theguardian.com/world/2007/jun/04/westafrica.libya>.

294. *Id.*

295. *Id.*

296. *Id.*



assigning Mr. Khan to represent the defendant.<sup>297</sup> But he insisted that it would be unethical for him to do so, even after he was threatened with contempt of court, as this would mean that he had been forced upon the defendant who no longer wanted his legal representation.<sup>298</sup> Khan claimed that he was barred by both the SCSL code of conduct for defense counsel and the rules of his national bar from accepting the appointment once his services had been terminated by his client.<sup>299</sup> The presiding judge was not deterred, countering that “your Code of Conduct cannot override a court order which I made a few minutes ago.”<sup>300</sup> The judge asked Mr. Khan to sit down. She then invited the prosecution to continue with its opening statement, and at that point, Taylor’s defense counsel dramatically picked up his materials and walked out of the courtroom.<sup>301</sup> It was at that stage, consistent with SCSL and other *ad hoc* tribunal practice that I was asked to take charge of the proceedings for the duration of the opening statements and until replacement counsel was assigned.<sup>302</sup>

The SCSL’s American chief prosecutor, Stephen Rapp, then read out his opening statement.<sup>303</sup> I did not make any objections. After the prosecution opening concluded, the chamber adjourned the proceedings, but not before inquiring into and ordering that all of Taylor’s complaints be swiftly addressed by the SCSL Registrar and the Defense Office.<sup>304</sup> The latter prepared an internal report setting out its independent views of the merits of the defendant’s concerns, which then formed the basis for resolution of the thorny issues. Taylor’s risky gamble, which had been largely forced by the short sighted decisions of the then SCSL Acting Registrar who had failed to heed the Defense Office’s warnings, had paid off.

In short order, by early August 2007, the Defense Office—which had now been allocated more money for the Taylor Defense team—had found and assigned new defense counsel for Mr. Taylor.<sup>305</sup> It was the kind of handsomely paid defense team that the public defender’s office had always internally insisted that Taylor needed to receive a fair trial.<sup>306</sup> All the more so given the size and complexity of his case and its geographic divorce from the seat of the SCSL in Freetown and the *locus commissi delicti*. Led by Courtenay Griffiths, an unassuming but “silver-tongued” British Queen’s Counsel with a baritone voice, the team would later prove its mettle vigorously testing the prosecution case in the courtroom. Ironically, the new defense

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297. Pallister & McGreal, *supra* note 293.

298. Richard J. Wilson, ‘Emaciated’ Defense or a Trend to Independence and Equality of Arms in Internationalized Criminal Tribunals?, 15 HUMAN RIGHTS BRIEF, no. 2 (2008), at 2, available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1014&context=hrbrief>.

299. *Id.*

300. *Id.*

301. Jason McClurg, *New Defense Counsel Appointed for Charles Taylor*, INT’L ENFORCEMENT LAW REPORTER (Sept. 2007), available at <http://www.rscsl.org/Clippings/2007/2007-08/pc2007-8-24.pdf>. See also Wilson, *supra* note 298.

302. McClurg, *supra* note 301.

303. *Id.*

304. Wilson, *supra* note 298. See Transcript of Record at 242, Prosecutor v. Taylor, SCSL-03-01-T (Jun. 4, 2007), <http://www.rscsl.org/Documents/Transcripts/Taylor/4June2007.pdf>.

305. McClurg, *supra* note 301.

306. *Id.* See also Wilson, *supra* note 298.

team—unlike the previous provisional counsel—was given several months to study the thousands of pages of disclosure and to prepare for the cross examination of prosecution witnesses.<sup>307</sup> With Taylor's goals to have a top notch defense team, and adequate time for them to prepare having been achieved, I convinced the suspect to end his boycott and return to court to participate in his trial. It was a big moment for the SCSL trial of Taylor. The prosecution held press conferences, painting Taylor's actions as those of the devious manipulator that he was. But, once he got what he wanted, this claim was effectively repudiated. Taylor did not engage in any of the antics or contumacious behavior we have witnessed in other high profile international criminal tribunal cases like *Milošević*<sup>308</sup> at the ICTY. The trial was adjourned for a few months. This experience suggests the need to keep an open mind when fair trial complaints are raised by defendants as there will be times, such as in Taylor, when these concerns have validity and are not aimed at manipulating the process for political gain.

### *B. Of Flirtatious Warlords, Super Models, and "Dirty Looking" Stones*

In early January 2008, the Taylor case resumed.<sup>309</sup> The prosecution called its first of ninety-four witnesses.<sup>310</sup> Ninety-one of those witnesses were so-called crime base or linkage witnesses, while three were experts.<sup>311</sup> A key highlight to the trial, at least for the Western media, which had largely ignored the oral evidence phase of the Taylor case up to that point, was the intrigue surrounding the testimony of British supermodel Naomi Campbell and American Hollywood star Mia Farrow. An apparently fearful Campbell testified about receiving rough "dirty-looking stones" or "pebbles" from an unknown person—a reference to the diamonds that Taylor gifted to Campbell after "mildly flirting" with her at a dinner hosted in Pretoria by then South African President, Nelson Mandela, on September 26, 1997.<sup>312</sup> Besides the viva voce witnesses, nearly eight hundred prosecution exhibits were admitted

307. Eric Witte, *Court Delays Taylor Trial until January 7, 2008*, INT'L JUSTICE MONITOR (Aug. 20, 2007), <http://www.ijmonitor.org/2007/08/court-delays-taylor-trial-until-january-7-2008/>.

308. For references by the Tribunal of Milošević misusing hearings and cross-examinations as a platform for making political speeches, see *Prosecutor v. Milošević*, Case No. IT-02-54-T, Initial Appearance (Int'l Crim. Trib. for the Former Yugoslavia July 3, 2001); *Prosecutor v. Milošević*, Case No. IT-02-54-T, Status Conference (Int'l Crim. Trib. for the Former Yugoslavia Oct. 30, 2001); *Prosecutor v. Milošević*, Case No. IT-02-54-T, Open Session (Int'l Crim. Trib. for the Former Yugoslavia Nov. 10, 2004); *Prosecutor v. Milošević*, Case No. IT-02-54-T, Hearing (Int'l Crim. Trib. for the Former Yugoslavia Nov. 10, 2004); *Prosecutor v. Milošević*, Case No. IT-02-54-T, Pre-Defense Conference (Int'l Crim. Trib. for the Former Yugoslavia June 17, 2004). See Charles C. Jalloh, *Does Living by the Sword Mean Dying by the Sword?*, 117 PENN ST. L. REV. 707, 707-53 (2013) (discussing the issues of disruption that arose in that case and several others in international criminal law and the implications of the rights of defendants).

309. Wilson, *supra* note 298.

310. OPEN SOCIETY JUSTICE INITIATIVE, *THE TRIAL OF CHARLES TAYLOR BY THE SIERRA COURT FOR SIERRA LEONE: THE JUDGMENT 4* (Open Society Justice Initiative ed., 2012).

311. *Id.*

312. Transcript of Record at 45819-20, *Prosecutor v. Taylor*, SCSL-03-01-T (Aug. 10, 2010), [http://www.scsldocs.org/transcripts/Charles\\_Taylor/2010-08-10](http://www.scsldocs.org/transcripts/Charles_Taylor/2010-08-10).

into evidence, five of which were expert reports.<sup>313</sup> The crux of the prosecution case took just over a year, closing finally on February 27, 2009.<sup>314</sup>

For its part, the defense case opened on July 13, 2009.<sup>315</sup> Twenty-one witnesses were called.<sup>316</sup> Taylor, in remarkably lengthy testimony, spent over seven months on the stand between July 14, 2009 and February 18, 2010.<sup>317</sup> It seems highly uncertain that giving such testimony was a wise decision. Not to be outdone by the prosecution, the defense tendered about 740 exhibits, bringing to over 1,500 the documents and photographs relating to Taylor's case.<sup>318</sup> In a trial that in fact lasted a total of 420 days, over the course of four calendar years, closing arguments were finally heard in February and March of 2011.<sup>319</sup> By that point, the trial chamber had issued nearly three hundred decisions on interlocutory matters.<sup>320</sup>

Though the two last incidents that punctuated the end of Taylor's trial did not match the kind of high drama that characterized the opening of his case on June 4, 2007, when Taylor refused to attend proceedings and his assigned counsel walked out of the courtroom, they were dramatic nevertheless. In the first of these, the responsibility lay with defense lawyers, not their client. They finalized the closing brief and filed it about two weeks later than the chamber had specified.<sup>321</sup> As a result, two of the three trial chamber judges rejected the brief, holding that the defense counsel had forfeited its chance to have the chamber use the brief during its deliberations.<sup>322</sup> In stark contrast, in a lucid dissenting opinion, Judge Julia Sebutinde found that the interests of justice and demands of a fair trial for Taylor mandated that the chamber accept his brief even if it was late and contravened an earlier order made by the judges.<sup>323</sup> She offered compelling arguments which turned on the substantive right of the accused to a fair trial to support her dissent, pointing out that a procedural irregularity such as a late filing of a brief by an accused person's counsel is insufficient to displace the fundamental fair trial rights he was guaranteed under the Statute of the SCSL.<sup>324</sup>

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313. Prosecutor v. Taylor, SCSL-03-1-T, Judgment Summary, ¶ 5 (Apr. 26, 2011), [http://www.globalsecurity.org/military/library/report/2012/charles-taylor-judgement-summary\\_20120426.pdf](http://www.globalsecurity.org/military/library/report/2012/charles-taylor-judgement-summary_20120426.pdf).

314. *Id.*

315. *Id.* ¶ 6.

316. *Id.*

317. *Id.*

318. Taylor, SCSL-03-1-T, Judgment Summary, ¶¶ 6, 8.

319. *Id.* ¶¶ 7-8.

320. *Id.* ¶ 8.

321. Prosecutor v. Taylor, SCSL-03-1-T, Decision on Late Filing of Defense Final Trial Brief, ¶ 3 (Feb. 7, 2011), <http://www.rscsl.org/Documents/Decisions/Taylor/1191/SCSL-03-01-T-1191.PDF>. Of course, in other contexts too, lawyers sometimes miss deadlines that have cost their clients and raised issues of professional responsibility. See, for a thoughtful article on this point, Rosario L. Schrier and Annette Torres, *Before Midnight: Deadlines, Diligence, and the Practice of Law* THE FEDERAL LAWYER 68-73 (Dec. 2014).

322. *Id.* at 33946.

323. *Id.* ¶¶ 6-17.

324. *Id.*

Of course, on one level, the argument could be made that such a position encourages defense lawyers to flout court orders. At the same time, the other side of the issue is to consider the weight of failure to comply with this particular order for the defendant. Certainly, as officers of the court, the majority court could have chosen to show their approbation by sanctioning counsel by withholding fees, fining them, or reporting them to their national bars for failure to abide by its deadlines. This might have been the better approach as it would also recognize that the interests of the defendant were substantially different, in such an instance, from those of his lawyers.

In any event, given the majority ruling, both Griffiths and Taylor refused to come to court, with counsel stating that he would not participate in any “farcical”<sup>325</sup> closing arguments until the defense final brief was accepted.<sup>326</sup> The Taylor defense thereafter appealed the majority trial chamber decision.<sup>327</sup> And, sure enough on March 3, 2011, the Appeals Chamber unanimously overturned the erroneous majority ruling.<sup>328</sup> The appellate court found it only fair that the trial judges receive the final brief alongside that of the prosecution.<sup>329</sup> This was duly done. The final defense oral arguments took place just days later.<sup>330</sup> The chamber then retired for deliberations until they scheduled the judgment day. That prompted a minor controversy because the day happened to be the one before Sierra Leone’s national anniversary.<sup>331</sup> The defense unsuccessfully argued for a date change to avoid the specter that a Taylor conviction would be perceived as a gift to Sierra Leoneans for their national day celebrations.<sup>332</sup>

On April 26, 2012, just over a year after the conclusion of the prosecution and defense cases, the long awaited verdict in the Taylor case was issued.<sup>333</sup> Trial Chamber II, sitting in The Hague and comprised of Judges Richard Lussick, Julia Sebutinde, and Teresa Doherty, issued a unanimous judgment.<sup>334</sup> As was widely

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325. Transcript of Record at 49290, 49294-95, *Prosecutor v. Taylor*, SCSL-03-01-T (Feb. 9, 2011), [http://www.scsldocs.org/transcripts/Charles\\_Taylor/2011-02-09](http://www.scsldocs.org/transcripts/Charles_Taylor/2011-02-09).

326. *See id.* ¶¶ 49294-25.

327. *Prosecutor v. Taylor*, SCSL-03-1-T, Decision on Defense Motion Seeking Leave to Appeal the Decision on Late Filing of Defense Final Trial Brief, at 2 (Feb. 11, 2011), <http://www.scsldocs.org/documents/view/6483-18783>.

328. *Prosecutor v. Taylor*, SCSL-03-01-T, Decision on Defense Notice of Appeal and Submission Regarding the Decision on Late Filing of Defense Final Trial Brief, ¶ 67 (Mar. 3, 2011), <http://www.scsldocs.org/documents/view/6513-6513>.

329. *Id.*

330. *The Prosecutor vs. Charles Ghankay Taylor: Closing Arguments*, SPECIAL COURT FOR SIERRA LEONE: RESIDUAL SPECIAL COURT FOR SIERRA LEONE, <http://www.rscsl.org/Taylor.html> (last visited Mar. 1, 2015).

331. Charles C. Jalloh, *Scheduling Judgment Day: Ending the Charles Taylor Trial*, JURIST (Mar. 29, 2012), <http://jurist.org/forum/2012/03/charles-jalloh-scsl-judgment.php>.

332. *Id.*

333. Marlise Simons, *Ex-President of Liberia Aided War Crimes, Court Rules*, N.Y. TIMES (Apr. 26, 2012), [http://www.nytimes.com/2012/04/27/world/africa/charles-taylor-liberia-sierra-leone-war-crimes-court-verdict.html?pagewanted=all&\\_r=0&pagewanted=print](http://www.nytimes.com/2012/04/27/world/africa/charles-taylor-liberia-sierra-leone-war-crimes-court-verdict.html?pagewanted=all&_r=0&pagewanted=print).

334. Faith Karimi & Moni Basu, *Court Finds Charles Taylor Guilty of Aiding War Crimes*, CNN (Apr. 26, 2012, 7:14 PM), <http://www.cnn.com/2012/04/26/world/africa/netherlands-taylor-sentencing/>.

reported thereafter, the judges found Taylor guilty of five counts of crimes against humanity, five counts of war crimes, and one count of other serious violations of international humanitarian law.<sup>335</sup> Most of the acts were perpetrated by the RUF rebels acting in concert with mutinying elements of the Sierra Leone Army known as the AFRC in the period between November 30, 1996 and January 18, 2002.<sup>336</sup> Taylor was convicted as a secondary perpetrator (i.e. as a planner, aider and abettor) of murder, rape, enslavement, sexual slavery, acts of terrorism, pillage, outrages upon personal dignity, violence to life, health, and physical or mental well-being of persons.<sup>337</sup> He was also found guilty of conscripting or enlisting children under fifteen years of age into the service of armed forces, or groups, and using them to participate actively in hostilities.<sup>338</sup> In an interesting twist, the judges refused to use JCE and the prosecution failed to prove Taylor's command responsibility—both modes of liability that everyone had expected would be crucial to the outcome of the case.

*C. Dissension on the Bench: A Regular (Not) Alternate Judge?*

But if the Trial Chamber was trying to avoid its significant conviction from being overshadowed by doctrinal or other debates about the shifting JCE theories or criminal participation that the prosecution advanced against Taylor from the beginning through to the end of trial, this was not destined to be. On this occasion, the seeds of the final trial drama came from within the judicial chamber itself. After the presiding judge concluded delivery of the oral summary of the unanimous three-judge verdict convicting Taylor, and as the judges were rising to leave the courtroom, Alternate Judge Sow, who had been the fourth judge sitting on the case, attempted to make a public statement that he called a "dissenting opinion." To him, the prosecution evidence was insufficient to convict Taylor.<sup>339</sup> He then insinuated that a grave procedural irregularity had occurred in that the trial chamber reached its guilty findings without serious deliberations.<sup>340</sup> The curtain was drawn. Judge Sow's microphone was cut off, and in the subsequent published transcript of that day's hearing, his statement was not included because the hearing was considered closed.

This unfortunate incident immediately triggered another firestorm of controversy among legal commentators. These turned largely on the propriety of Sow's decision to make a statement, given the established norm of silence by

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335. *Id.*; OPEN SOCIETY JUSTICE INITIATIVE, BRIEFING PAPER: THE TRIAL OF CHARLES TAYLOR BY THE SPECIAL COURT FOR SIERRA LEONE: THE APPEAL JUDGMENT (2013), available at [http://www.opensocietyfoundations.org/sites/default/files/charles-taylor-appeal-brief-20130924\\_0.pdf](http://www.opensocietyfoundations.org/sites/default/files/charles-taylor-appeal-brief-20130924_0.pdf).

336. See OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 335.

337. *Id.*; Karimi & Basu, *supra* note 335.

338. See OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 335.

339. U.C. Berkeley War Crimes Studies Center, *Special Report on Rule 98 Pleadings in the Prosecutor v. Charles Taylor: Defense Motion for Acquittal on Basis of Insufficient Evidence*, INT'L JUSTICE MONITOR (Aug. 17, 2009), <http://www.ijmonitor.org/2009/08/special-report-on-rule-98-pleadings-in-the-prosecutor-v-charles-taylor-defense-motion-for-acquittal-on-basis-of-insufficient-evidence/>.

340. See OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 335.

alternate judges in international criminal courts. Of course, the SCSL Statute<sup>341</sup> provided for alternate judges and its rules mandated that reserve judges be present for deliberations, but clarified that they “shall not be entitled to vote”<sup>342</sup> on the outcome of the trial. This makes sense because the alternate judge should be able to step in at a moment’s notice to ensure the continuity of a trial if, for whatever reason such as grave illness, death or sudden mental infirmity, one of the three regular judges were unable to continue sitting.<sup>343</sup> That, of course, was never the situation during the Taylor case.

Some commentators, like William Schabas, seemed sympathetic to Sow’s decision to speak.<sup>344</sup> Others, such as Michael Bohlander and I, faulted Sow for speaking out.<sup>345</sup> As I argued more fully elsewhere, Judge Sow was certainly entitled to formulate his views on the sufficiency, or lack thereof, of the prosecution evidence against Taylor. He was probably also equally entitled to share those views with his judicial colleagues during the chamber’s private deliberations. But it was improper to express those opinions in public, keeping in mind that the rules do not contemplate a substantive role for him in determining whether Taylor was guilty or not guilty.<sup>346</sup> Indeed, given the various limitations imposed by the SCSL Statute and the Rules, Sow’s statement amounted to a public statement or comment. Unlike his contention, his remarks did not assume the legal character of a “dissenting opinion”—at least as that term is understood in international criminal courts.

Furthermore, and even worse, in addition to violating basic provisions of the statute and rules, his statement was inappropriate because it threatened to undermine public confidence in the fairness of the Taylor case and to tarnish the credibility of the SCSL’s process.<sup>347</sup> Of course, the argument could always be made in defense of Alternate Judge Sow that he might have taken up the unusual role of a judicial “whistleblower” because the regular judges engaged in highly irregular practice. Say, for instance, that the chamber failed to comply with its own rules of procedure by not engaging in meaningful deliberations on the accused’s criminal culpability—as required by the hierarchically superior SCSL Statute. This odd situation would found a stronger claim to justify his far reaching public allegation. It might also have been easier to accept this if he had provided concrete evidence that could be independently verified by third parties. And, whatever the case, he would likely have gained greater sympathy from independent observers for his unusual move if

341. Statute of the Special Court for Sierra Leone art. 12, Jan. 16, 2002, 2178 U.N.T.S. 138.

342. Special Court for Sierra Leone R. P. & EVID. 16bis.

343. *Id.*

344. William A. Schabas, *What Happened to Judge Sow?*, PHD STUDIES IN HUMAN RIGHTS (May 25, 2012), at <http://humanrightsdoctorate.blogspot.com/2012/05/what-happened-to-judge-sow.html>.

345. Michael Bohlander, *More on Judge Sow and the Special Court for Sierra Leone*, PHD STUDIES IN HUMAN RIGHTS (Oct. 8 2012), <http://humanrightsdoctorate.blogspot.com/2012/10/more-on-judge-sow-and-special-court-for.html>; Charles C. Jalloh, *The Verdict(s) in the Charles Taylor Case*, JURIST (May 14, 2012), <http://jurist.org/forum/2012/05/charles-jalloh-taylor-verdict.php>.

346. *The Verdict(s) in the Charles Taylor Case*, *supra* note 345.

347. Charles C. Jalloh, *The Verdict in the Charles Taylor Case and the Alternate Judge’s “Dissenting Opinion”*, EJIL: TALK! (May 11, 2012), <http://www.ejiltalk.org/the-verdict-in-the-charles-taylor-case-and-the-alternate-judges-dissenting-opinion/#more-4965>.

he had provided a reasoned opinion explaining his legal and factual conclusions about the Taylor case. He did not, at least publicly.

Not surprisingly, although I was uncomfortable with information that later emerged about aspects of the disciplinary process that was subsequently used to declare Judge Sow unfit to sit as a judge, he seemed to have invited some sanction.<sup>348</sup> He later gave a media interview elucidating his views. But additional substance that would have justified his decision to speak out still appeared lacking.<sup>349</sup> It was an unfortunate end to his otherwise important service during the bulk of the historic Taylor trial. He was rumored to be the only judge to not miss a single day of hearings during a four-year period.

In any event, on May 30, 2012, the Trial Chamber (now sitting without Judge Sow) sentenced Taylor to fifty years imprisonment.<sup>350</sup> Both the prosecution and the defense appealed.<sup>351</sup> The prosecution alleged four errors while the defendant raised forty-five grounds.<sup>352</sup> The bulk of the prosecution appeal asserted that the trial chamber should have, in addition to finding Taylor guilty of planning as well as aiding and abetting, also convicted him for ordering and instigating the commission of crimes in Sierra Leone.<sup>353</sup> They also contested the trial chamber ruling that evidence regarding certain locations not mentioned in the indictment could be admitted, and finally, sought an increase in his sentence from fifty to eighty years, which in their view better reflected the gravity of his crimes and overall criminal culpability.<sup>354</sup>

The defense appeal raised numerous issues. These tended to center on the chamber's evaluation of the evidence, some of its factual findings that the RUF/AFRC operational strategy, which was known to Taylor and conceived with substantial help by him, marked a deliberate terroristic campaign against Sierra Leonean civilians.<sup>355</sup> They also claimed that the chamber had misapplied the law of individual criminal responsibility, that Taylor's fair trial rights were violated in the entry of cumulative convictions, and further, that the trial judges erroneously used improper aggravating factors such as his head of state status while ignoring

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348. See Charles C. Jalloh, *Why the Special Court for Sierra Leone Should Establish and Independent Commission to Address Alternate Judge Sow's Allegation in the Charles Taylor Case*, JURIST (Oct. 1, 2012), <http://jurist.org/forum/2012/10/charles-jalloh-sow-scsl.php>.

349. Interview with Justice Sow, Special Court for Sierra Leone Justice, in *New African Magazine* (Nov. 18, 2012), available at <http://www.mediafire.com/view/?yb038o4vtrv87s8>.

350. Transcript of Record at 49751, *Prosecutor v. Taylor*, Case No. SCSL-2003-01-T (May 30, 2012), [http://www.scsldocs.org/transcripts/Charles\\_Taylor/2012-05-30](http://www.scsldocs.org/transcripts/Charles_Taylor/2012-05-30).

351. *Prosecutor v. Taylor*, Case No. SCSL-03-01-A, Judgment, ¶ 15 (Sept. 26, 2013), <http://www.rscsl.org/Documents/Decisions/Taylor/Appeal/1389/SCSL-03-01-A-1389.pdf>.

352. *Id.* ¶ 723.

353. *Id.* ¶¶ 579-95.

354. For a summary of the parties' key appeal points, and the appeals chamber rulings, see Charles C. Jalloh, *Prosecutor v. Taylor Case Report*, 108 AM. J. INT'L L. 58, 59 (2014).

355. *Id.*

favorable mitigating factors in arriving at his manifestly unreasonable sentence.<sup>356</sup> They also used some of Judge Sow's contentions to challenge the guilty verdict.<sup>357</sup>

Finally, as with the other controversies that came to be associated with the pre-trial and trial phases of his case, during the *appeal* phase, the delivery of the judgment in the Taylor case in September 2013 was marked with some rancor—at least among some international criminal lawyers—about the proper legal standard for aiding and abetting as a mode of responsibility in international criminal law. Other developments at the ICTY, especially in the *Perišić*<sup>358</sup> case, had suggested that aiding and abetting required that the accused person's contribution to the commission of the crimes could be punished only if the abettor specifically directed his assistance towards the commission of the offenses in issue.<sup>359</sup> This was significant for the Taylor case since, with the exception of his involvement in planning a few incidents, his conviction turned primarily on the trial chamber determination that he had *aided and abetted* the RUF's commission of crimes in Sierra Leone.

In their judgment released in September 2013, the SCSL Appeals Chamber denied nearly all the substantial defense appeals save for minor reversals of convictions entered against Taylor regarding one or two locations in Kono in Sierra Leone.<sup>360</sup> They also rejected the *Perišić* articulation of the legal standard for aiding and abetting liability, finding it inconsistent with customary international law.<sup>361</sup> Any practical assistance by an aider-abettor which had a substantial effect on the commission of crimes will incur individual criminal responsibility.<sup>362</sup> Regarding the sentence of fifty years, it was within the trial court's discretion to decline to factor into mitigation Taylor's insincere expressions of remorse.<sup>363</sup> Save for one exception, they also rejected all the prosecution's appeal.<sup>364</sup>

Overall, taking the totality of the circumstances, including the gravity of Taylor's conduct, the Appeals Chamber upheld his conviction and the sentence. Within a few days afterwards, Taylor was transferred to the United Kingdom to serve out his sentence.<sup>365</sup> Although under standard tribunal practice he would be eligible for release after serving about one third of his sentence, at the age of seventy years old when he was convicted, it is unlikely that Taylor will see the light of day outside

356. *Id.* at 63.

357. *See generally* *Prosecutor v. Taylor Case Report*, *supra* note 354.

358. *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-A, Judgment (Feb. 28, 2013), [http://www.icty.org/x/cases/perisic/acjug/en/130228\\_judgment.pdf](http://www.icty.org/x/cases/perisic/acjug/en/130228_judgment.pdf).

359. *Id.* ¶ 16.

360. *See* *Prosecutor v. Taylor*, Case No. SCSL-03-01-A, Judgment, ¶ 15 (Sept. 26, 2013), <http://www.rscsl.org/Documents/Decisions/Taylor/Appeal/1389/SCSL-03-01-A-1389.pdf>.

361. *Id.* ¶¶ 473-81.

362. *Id.*

363. *Id.* ¶¶ 689-96. *See* Kevin J. Heller, *The Taylor Sentencing Judgment: A Critical Analysis*, 11 J. OF INT'L. CRIM. JUST. 835-855 (2013) (commenting on the Taylor sentence).

364. *Id.*

365. *Liberia's Charles Taylor Transferred to UK*, BBC (Oct. 15, 2013), <http://www.bbc.com/news/world-africa-24537834>.



HMS Falkland where he has been housed in a hospital for his own safety. Thus ends the story of one of Africa's most notorious warlords.

## VII. CONCLUSION

This article has showed that Taylor's status as the only non-Sierra Leonean to be tried by the SCSL, for acts he did not personally carryout in Sierra Leone, his stature as a sitting head of state at the time of his indictment, the transfer of his trial from Freetown to the Hague and his imprisonment in the United Kingdom were the key reasons why the case will be remembered as particularly controversial. But, as this article also showed, the Taylor case had a penchant for generating controversy—sometimes because of mistakes made by tribunal officials or decisions made by the accused and his counsel. Indeed, at each step of the three main stages of the trial process before the SCSL—pre-trial, trial, and appeal—the case generated its own legal and political controversies: whether in relation to the timing of his indictment as possibly obstructing peace negotiations aimed at ending Liberia's devastating civil war; or, whether as an incumbent head of state international law conferred immunity from prosecution on him; or, whether he should be allowed to live in Nigeria unmolested or to be tried in Freetown or The Hague. These controversies often posed unprecedented political, legal and even diplomatic and other practical challenges for the prosecution, the judges, and tribunal administrators. These types of challenges, which occur at the intersection of international law and international politics, should thus be expected to be part of the experience required in the management of trials of other former heads of state or government in other international criminal courts.

The Taylor case concluded about a year ago with the final appeals chamber judgment issued in September 2013. It is still somewhat premature to definitively assess the full impact of the trial for Sierra Leone and his native Liberia, all of which are now enjoying relative serenity in the Mano River Basin of West Africa compared to the tumultuous decade of the 1990s. Yet, as the dramatic last finale for the SCSL which concluded his trial and then closed its doors in December 2013, the case was a major milestone. Partly because nearly all the other SCSL indictments related to suspects who were present in Sierra Leone, they were swiftly arrested and transferred to the custody of the tribunal. Much like the other aspects of his trial, when it came to Taylor, matters were markedly different. In fact, although the first actual indictee of the SCSL with the case number 2003-001, he was the last person to be tried by the SCSL. This was obviously not scripted. However, the coincidence of the delayed arrest and trial after the Freetown cases had been completed gave the effect of a crescendo to one of Beethoven's concertos. Here, finally, was the Sierra Leone tribunal's most important case involving its most important accused.

From the prosecution's perspective, the conviction of Taylor was a success, even if a somewhat qualified one.<sup>366</sup> And, from the perspective of the defendant

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366. William A. Schabas, *Charles Taylor Judgment Suggests a More Modest Level of Participation in the Sierra Leone Conflict*, PHD STUDIES IN HUMAN RIGHTS (Apr. 28, 2012), <http://humanrightsdoctorate.blogspot.com/2012/04/charles-taylor-judgment-suggests-more.html>.

who had insisted on his innocence, it was a major loss. For the judges, it was the court's longest and most voluminous trial, with the most public spotlight and perhaps even the most external and internal pressure to get things right. Yet, they shifted through mountains of oral and documentary evidence and issued a reasoned opinion that generally satisfied the requirements of a fair trial under the law. Interestingly, the Taylor case was the only one in the SCSL where the bench was unanimous on all issues—three judges at the trial as well as five in the appeals chamber; a total of eight judges. There were no formal dissents, as there were in all the other AFRC, RUF, and CDF cases.

Finally, in terms of wider significance, since World War II, there have been several international tribunal prosecutions of former heads of state or government. At Nuremberg, German Admiral-turned-head of state Karl Doenitz who stepped in to replace Adolf Hitler after his suicide was prosecuted. In the ICTY, former Yugoslav President Slobodan Milošević, was tried but died of illness before his judgment could be rendered. At the ICTR, Rwandese politician Jean Kambanda, who was prime minister during the genocide, pled guilty to orchestrating genocide and crimes against humanity at the ICTR on May 1, 1998. At the ICC, former President Laurent Gbagbo (Ivory Coast) will soon be on trial while Sudan's President Al Bashir remains at large, despite an indictment containing genocide and crimes against humanity charges against him. Viewed against this backdrop, the historic nature of Taylor being the first former president since Nuremberg to have been indicted, to contest the charges, and to be fully tried and then convicted before an international criminal court becomes self-evident. If nothing else, the case affirms that when there is political will, no immunity will attach to a current or former president when he is tried before an international court for international crimes. *Prosecutor v. Charles Ghankay Taylor* may thus go down in history as a sizeable drop in the anti-impunity bucket, whose ripples will be felt by future African warlords and rebel leaders as well as many other heads of state or government further afield. The implications of Taylor are certainly clear for the leaders of States that are in the habit of aiding and abetting rebels and providing arms, ammunition and other logistics to rebel groups for personal, political, economic or other gains. Although not free of difficulty, given all the legal and political controversies that surrounded it, the trial may even prove to be a giant step towards the idea that no man or woman—no matter how powerful—is above the reach of international criminal law. At least sometimes.<sup>367</sup>

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367. I say sometimes both to signal the lack of accountability for others from more powerful states which are undermining the presumed neutrality and thus legitimacy of modern international criminal law, but also to clarify that even within the context of Sierra Leone and Liberia, impunity seems to have prevailed for the crimes in Liberia. For the thoughtful suggestion that it might have been better to take a more regional instead of country specific approach to transitional justice in both Sierra Leone and Liberia, see Matiangai Sirleaf, *Regional Approach to Transitional Justice? Examining the Special Court for Sierra Leone and the Truth and Reconciliation Commission for Liberia*, 21 FL. J. OF INT'L. L. 2 (2009).