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Might v. Right: Charles Taylor and the Sierra Leone Special Court

by Kathy Ward

IN JUNE 2003, THE SPECIAL COURT FOR SIERRA LEONE (Special Court) announced it had indicted Liberian President Charles Taylor on war crimes charges related to his role in the war in Sierra Leone. The announcement came just as Taylor arrived in Ghana for peace talks, which diplomats hoped would bring a quick end to the Liberian war and would provide Taylor with a graceful exit from power. When news of the indictment broke, Taylor rushed back to Liberia to avoid the possibility of arrest in Ghana. Although the peace talks quickly resumed without Taylor, accusations flew that the Court had ruined the best chance for quick peace in Liberia. A maelstrom of conflicting reports and opinions left many confused as to whether the indictment was separate from or a part of larger political efforts to remove Taylor.

Now officially in exile in Nigeria, Taylor—a successful coup leader, fugitive from justice in the U.S., and winner of dubious presidential elections in Liberia—now hopes to evade the Court, where he faces serious charges related to his connections with rebels in Sierra Leone. Despite the political effects of the indictment, the indictment is the act of an authorized criminal investigator and the product of efforts to bring the rule of law to bear on those most responsible for the horrors of the Sierra Leone civil war. While Charles Taylor has temporarily eluded the reach of the Court, this article discusses how he came to be in his present situation and the ways in which legal proceedings and political efforts have and will continue to interact in the future.

THE SETTING: THE WAR IN SIERRA LEONE, THE CREATION OF THE SPECIAL COURT AND THE RISING RECOGNITION OF CHARLES TAYLOR'S ROLE

THE WARS OF THE SMALLER NATIONS of West Africa normally do not attract much international attention. An earlier incarnation of the Liberian civil war in the early 1990s led to a West African peacekeeping force that later conformed into a UN peacekeeping force. But it was not until the media bombarded the international community with images of civilian victims of the Sierra Leone rebels' amputation campaigns that leadership beyond West Africa began to invest significant time and resources to resolve the region's conflicts. The UN Security Council approved a significant peacekeeping force for Sierra Leone. When it failed, Britain stepped in with its own forces to restore stability and to give the UN force a second life. Notably, these events led world leaders to conclude that there could be no lasting peace for Sierra Leone without a means of bringing those to justice most responsible for the atrocities in the civil war. Looking to create a court that would achieve this mission and provide international legitimacy without the bureaucracy of the ad hoc tribunals for Rwanda and the former Yugoslavia, the Security Council approved the creation of a hybrid Special Court. This Court would combine international and Sierra Leonean staff and rely on voluntary funding to fulfill its mandate to "prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996."

At about the same time the UN Security Council began to take serious action on the war in Sierra Leone, some Council members also turned their attention to Liberia. Growing recognition that Taylor and his regime lay at the heart of the widening spiral of fighting in the region developed into a movement to confront him. The initial result was a

series of economic measures imposed by the Security Council. These measures included an arms embargo, diamond embargo, and a travel ban against Taylor and other members of his inner circle. The hope was that these measures would strangle the flow of arms that fueled Taylor's military activities in the region, and that the diamond and travel bans would limit his funding and force him to stop fueling rebel wars in neighboring countries. Unfortunately, the arms embargo was never fully enforced, diamond smuggling continued, other sources of Taylor's income remained untouched, and the fighting persisted.

While international frustration with Taylor grew, the Sierra Leone Special Court began its work by setting up its operations in record time and announcing indictments that clarified the Prosecutor's intent to indict the most senior leadership of all parties responsible for the atrocities in the Sierra Leone war. While the earliest indictments were of Sierra Leonean citizens, the Court's mandate granted it broader indictment powers. Prosecutor David Crane, through statements and the early indictments, started accusing Taylor of being the center point of a joint criminal enterprise.

At the same time, governments of neighboring countries explored other means of removing Taylor. Following Taylor's practice of supporting rebel movements abroad to destabilize neighboring governments, Taylor's opponents backed two Liberian rebel groups in their campaigns to oust Taylor. The largest rebel group, Liberians United for Reconciliation and Democracy (LURD), received support from Guinea, which eventually allowed it to reach the outskirts of the Liberian capital of Monrovia. There was also significant evidence that Sierra Leone provided assistance to LURD and speculation that the United States had provided some form of support as well. The smaller Liberian rebel group, the Movement for Democracy in Liberia (MODEL), found backing in Cote d'Ivoire and eventually took control of significant stretches of Liberia, including the second city of Buchanan. These campaigns greatly reduced Taylor's control over the country, effectively restricting his firm grasp to little more than Monrovia. By the middle of this year, LURD forces were regularly threatening the capital area itself.



*Liberian refugees, displaced by the violence of Charles Taylor and others.
Credit: Tim Curry*

Taylor, however, continued to demonstrate a keen ability to survive through a tight grip on political power, sanctions busting, and a series of convenient alliances. It remained unclear whether the rebel movements would unseat him. Moreover, many members of the international community worried that a military victory by either rebel party would not bring Liberia real peace and a better government. Seizing on Taylor's weakened position, regional and Western diplomats, including those from the United States, launched intensified efforts to reinvigorate the Liberian peace process. During the year diplomats found glimmers of hope in reported plans by Taylor to commit to the peace process and to address serious problems in Liberian governance, including security sector reform. Combined with the added pressure from the rebel military campaigns, international diplomats built arrangements for a new round of peace talks involving all the major parties. By June, the stage was set for top-level negotiations in Accra, Ghana. West African leaders and U.S. diplomats undertook a concerted campaign to convince Taylor to personally participate in the Accra talks. Taylor agreed. Some diplomats considered the Accra talks the best chance in years to create a peaceable, durable solution for Liberia that could also remove Taylor by allowing him a graceful exit from the presidency as part of a negotiated settlement.

THE INDICTMENT

AS MILITARY AND DIPLOMATIC WORK HEATED UP, so did the Prosecutor's work at the Sierra Leone Special Court. By early 2003, the Court had already announced the indictments of senior leaders of both rebel and pro-government groups in Sierra Leone. Taylor loomed as an un-indicted kingpin in the rebel network, yet Prosecutor Crane's repeated on-the-record statements made his interest in Taylor unmistakable. Taylor's potential indictment was also discussed in off-the-record meetings.

THE INDICTMENT PROCESS OF THE SPECIAL COURT

The Special Court's indictment process is like that of the ad hoc international tribunals for Rwanda and the former Yugoslavia. The Prosecutor conducts investigations of possible indictees. If he or she determines there is "sufficient evidence to provide reasonable grounds for believing that the suspect has committed a crime [within the Court's jurisdiction]," he or she may prepare an indictment. The prosecutor then assembles the outline of the case into a proposed indictment and submits the draft indictment to the presiding trial judge for review. The prosecutor also submits a proposed arrest warrant. The presiding judge then decides whether to approve the indictment and warrant. There is intentionally no role for politicians in the process. Similarly, the power to request an amendment subsequent to an approved indictment rests solely with the prosecutor.

In defining the responsibility of the prosecutor, the Statute of the Special Court specifically states, "[h]e or she shall not seek or receive instructions from any Government or from any other source." In other words, while its work may have political effects, the task of the prosecutor of the Special Court is a legal one and is limited to events in the Sierra Leone war. The prosecutor does not have the authority to alter his other actions based on the dictates of politicians involved in diplomatic efforts to bring lasting peace to Liberia. Similarly, diplomats do not have the authority to order indictments or cut deals with indictees to remove or reduce the charges against them. That authority rests with the Court and particularly with the prosecutor. This separation of authorities—and the insulation of the criminal legal process from the vagaries of politics—is a critical component to ensure the trials resulting in verdicts will help move Sierra Leone from a cycle of violence to a more stable environment in which law provides an alternative to gun barrel justice.

The Special Court does not have its own police force to enforce its arrest warrants. It also does not have a mandate under Chapter VII of the United Nations Charter, meaning that it cannot rely on its mandate to compel governments to arrest indictees wanted by the court. Therefore, the Special Court is largely reliant upon the good will of governments to execute its arrest warrants.

The prosecutor of the Special Court, like his Rwanda and former Yugoslav counterparts, has the power to keep an approved indictment "sealed." Approved indictments may be kept under wraps if, for example, the prosecutor believes public knowledge of the indictment could significantly undermine the likelihood of obtaining custody of the indictee. This was the case in Taylor's indictment. As presiding judge of the Special Court Trial Chamber, Judge Bankole Thompson signed Taylor's indictment on March 3, 2003 and his arrest (and transfer) warrant on March 7, 2003. The Court kept the indictment sealed, explaining later that because Taylor was a sitting head of state and the subject of a United Nations Security Council travel ban, it waited for one of Taylor's infrequent known trips out of Liberia in the hope that the country he visited would assist the Court in executing the warrant.

The prosecutor believed that the June peace talks in Accra created that opportunity. As part of a larger study of the Special Court, the International Crisis Group learned the following facts:

The Court gave 24 hours' notice to diplomatic missions and UN security in Monrovia, that the Prosecutor intended to announce the Taylor indictment when it was clear that he was traveling to Accra. In a June 4 press release, the Court's Registrar stated that "copies of all the relevant documents were served this morning personally on the Ghanaian High Commissioner in Freetown. In addition, copies of those documents were electronically transmitted to the Ghanaian Ministry of Foreign Affairs and acknowledgment of receipt of those documents has been received by telephone from a senior official in that ministry."

That same day, a Ghanaian Foreign Ministry official denied receiving any documents relating to the arrest warrant. The Court said it did not notify Ghana earlier because it could not be certain officials would not warn Taylor.

It is important to note that this is not the first time an international court has indicted an individual for war crimes committed as a sitting head of state. The International Criminal Tribunal for the former Yugoslavia (ICTY) established this precedent when it indicted Slobodan Milosevic, who now stands on trial in The Hague on war crimes charges. The ICTY statute expressly states that "The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment." The Special Court's statute includes a similar provision that is even clearer: "The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment."

The situation around the release of the Taylor indictment was even more complicated. There was substantial evidence that Western diplomats also helped convince Taylor to attend the Accra peace talks and pressed Ghana to guarantee his immunity. The prosecutor, rightly, was not part of this process. Thus, by the time Taylor boarded a plane to Accra, the political and legal processes had competing demands. The political process wanted Taylor free and protected so he could participate in the talks that the diplomats hoped would bring peace to Liberia. While the Special Court wanted him seized during this unusual trip out of the country and saw the trip as perhaps the only chance it would have to secure help in obtaining custody of Taylor. However, it is also impor-

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tant to remember that on a deeper level both processes had the common goal of removing Taylor from power. While some diplomats apparently dismissed the Taylor indictment as naïve, the common goal remained.

In the end, the Ghanaians did not detain Taylor and instead allowed him to return to Liberia. The fighting continued and the humanitarian crisis worsened until a new round of diplomatic and military efforts eventually led to a deal in which Taylor went into exile in Nigeria. The details of the exile agreement were not made public, although they are generally taken to include a ban on Taylor participating in the governance of Liberia while in exile. Some Nigerian officials publicly declared that part of the deal was that the international community would not press the government of Nigeria to turn Taylor over to the Special Court.

Some analysts believe the way in which the indictment was unsealed prolonged the war. They think Taylor really was ready to give up power and keep his promises, despite his long track record of lying and clinging to power through any means. Others disagree, citing that same track record (and now Taylor's subsequent behavior in exile), as evidence that the Accra talks were not likely to produce the results the diplomats sought.

WHAT DOES THE STATUS QUO MEAN?

SINCE TAYLOR WENT INTO EXILE, a rocky form of peace has been established in parts of Liberia. Vice president Moses Blah has taken over the presidency and is the caretaker of the government until a longer-term transitional government takes over later this year. West African troops have established a level of control over Monrovia, although most of the country remains beyond their reach and there is evidence of continued fighting. The UN Security Council has passed a resolution authorizing a UN mission in Liberia, including the deployment of up to 15,000 UN peacekeepers. UN Secretary-General Kofi Annan has appointed Jacques Klein to run this UN operation. Klein held a number of international leadership positions in the Balkans, including serving as the UN Secretary-General's Special Representative and Coordinator of UN Operations in Bosnia. Klein appears ready to use the strong leadership style he honed in the Balkans to take control of the UN mission and to bring about stability and progress as quickly as possible.

Dealing with Charles Taylor is a critical part of Klein's vision of stability. The media has reported that Taylor has been trying to keep his hand in Liberian affairs—including the running of the government—from his exile in Nigeria. This led Nigerian President Obasanjo to speak to Taylor in mid-September, warning him that these activities must stop. At the same time, Klein has called Taylor's continued presence at large a threat to peace in Liberia and has already started to press for his turnover to the Special Court.

That Taylor has continued to interfere in Liberia despite his promises and his exile deal should come as no surprise. His personal history of lying and clinging to power would have made a complete break unlikely. Moreover, he operates in an environment where pledges and laws have had little success at truly controlling the actions of political and military leaders. The rule of law has had very limited influence in this environment.

In short, the continuation of the current status quo promises to have a negative effect on both Liberia and Sierra Leone. It leaves at large the man most responsible for the Liberian crisis and it leaves him beyond the reach of the Special Court. It sends a message to Sierra Leoneans that the rule of law does not apply to those who wield the most control and the perception that accountability is only for underlings. It also leaves the people of Liberia with the impression that yet another corrupt Liberian leader is beyond the reach of the laws of Liberia and the laws of the international community. This impression undermines the rule of law.

The deal also leaves the Government of Nigeria with a distasteful houseguest that many Nigerians would rather not have in their country. Palpable tension remains between Taylor and many Nigerians who still hold him responsible for the deaths of Nigerian peacekeepers the last time Nigeria intervened to stop fighting in Liberia. Now, the Nigerian government is prevented by Taylor's immunity from bringing charges related to those deaths and is stuck defending Taylor's very comfortable life in a villa in Nigeria free from fear of prosecution.



These Liberian refugees may be able to return if Charles Taylor is prevented from instigating further violence in Liberia.
Credit: Tim Curry

Finally, the current situation sends a potentially dangerous message to others who might consider leadership by thuggery in Liberia. The lesson is that if you are bad enough and powerful enough, you can ignore the law and negotiate a comfortable exile. It is perhaps too early to tell what effect this will have on "little Taylors"—people who would choose to ignore the law in Liberia on a smaller scale. With a largely destroyed justice system disrespected throughout the Taylor regime, there seems little doubt that the rule of law faces an uphill battle in Liberia, not to mention that Taylor's current situation does little to encourage good behavior by others.

TAYLOR BEHIND BARS: CAN THE STATUS QUO BE CHANGED?

MANY ANALYSTS HAVE ASKED if things could have gone differently when Taylor went to Ghana in June. Had Kofi Annan intervened—wearing his dual hats as UN Secretary-General and as a respected Ghanaian—perhaps Ghana would have detained Taylor. However, as ICG fairly noted, it probably would not have resulted in an arrest. Strong links of solidarity and brotherhood among West African heads of state meant that one West African president would not easily hand another over to the Special Court.

Given Taylor's behavior in Nigeria, the deal with him should be considered null and void. It is hard to imagine how Taylor's interference from exile in the governance of Liberia could be anything but a violation of the first order. The whole point of his exile was to take him out of the

picture in Liberia. Nigeria and others involved in the deal may feel they are in an awkward position now. But they should not feel that way. Taylor's behavior, by any rules of agreement, releases them from any obligations they made to shield him from the Court. In fact, they should see Taylor's behavior as the perfect excuse to bring Taylor to justice before the Court.

A Chapter VII UN Security Council resolution would make the job even easier for the politicians in view of the earlier exile deal. If the Security Council acted under its coercive Chapter VII authority and ordered all member states to cooperate with the Special Court, including turning over indictees on their territory, the Nigerians would have another way of justifying Taylor's turnover. They could also use such a resolution as leverage to press Taylor to "voluntarily" turn himself in. Given Taylor's track record, that last scenario seems unlikely unless he adopts the pose of a wronged victim who submitted himself to the Special Court in order to further peace in Liberia.

Bringing Taylor to face the charges at the Special Court would send an important message throughout the region. It would make it clear that power does not buy immunity from charges for war crimes. It would set an important precedent by holding a leader accountable for criminal charges and demonstrate that leaders are subject to the law. It may also have a deterrent effect on others who would use similar tactics to further their personal goals, and who, based on the impunity that has reigned to date, would otherwise not fear being held accountable before the law.

In short, options still exist that could bring Taylor before the Special Court and put him behind bars. And while the passage of time may make it easier to take these steps, there is little good reason to wait. What is most required is a level of will and backbone on the part of key West African governments and the West (including the United States). Whether that exists remains to be seen. But until that backbone is found the stability of Liberia and the prospects for the rule of law in Liberia and Sierra Leone will suffer. [HRB](#)

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