

I. INTRODUCTION

1. The Prosecution opposes Mr. Taylor's Request¹ to the extent that it would involve a reopening of the appellate process by means of amending the notice of appeal and the potential filing of an additional brief with response and reply submissions. However, the Prosecution recognises the significance of the deviation from established jurisprudence contained in the *Perišić* Appeal Judgement² and suggests that Taylor's concerns about fundamental fairness and the interests of justice can be adequately addressed by allowing Taylor and the Prosecution to file a single written submission addressing the significance, if any, of the *Perišić* Appeal Judgement to the issue of 'specific direction' in regard to Taylor's aiding and abetting liability.

II. TAYLOR FAILS TO ESTABLISH 'GOOD CAUSE' TO RE-OPEN APPELLATE PROCEEDINGS

2. Taylor relies on an ICTY Appeals Chamber decision in support of his contention that good cause has been met to vary his grounds of appeal.³ However, that same decision cautioned that the criteria for variation of grounds of appeal should be "interpreted restrictively" where amendments would require briefs to be revised and re-filed.⁴ The ICTY Appeals Chamber further stated that allowing variations at such stages of the appeal proceedings "would leave appellants free to change their appeal strategy and essentially restart the appeal process at will, interfering with the expeditious administration of justice and prejudicing the other parties to the proceedings."⁵ The Prosecution submits that the less drastic remedy of allowing one directed additional written submission would not occasion such abuse.

3. Taylor suggests that good cause to vary his notice of appeal is established on the basis that he had no reason to believe that the ICTY Appeals Chamber would deviate from its pronouncement in the *Mrkšić* Appeal Judgement,⁶ which had represented the accepted and

¹ Request for Leave to Amend Notice of Appeal, SCSL-03-01-A-1383, 3 April 2013 ("Taylor Request to Amend").

² Prosecution Motion for Leave to File Additional Written Submissions Regarding the ICTY Appeals Judgement in *Perišić*, SCSL-03-01-A-1381, 14 March 2013 ("Prosecution Motion for Additional Written Submissions").

³ Taylor Request to Amend, para. 5.

⁴ *Prosecutor v. Šainović et al.*, IT-05-87-A, Decision on Dragoljub Ojdanić's Second Motion to Amend his Notice of Appeal, 4 December 2009 ("*Ojdanić* Decision"), para. 8.

⁵ *Ojdanić* Decision, para. 8.

⁶ Taylor Request to Amend, paras. 7, 12.

consistently applied jurisprudence of aiding and abetting.⁷ While the Prosecution agrees that the *Perišić* Appeal Judgement deviates from this accepted and consistently applied position, it must be remembered that Taylor himself notes that he “contested the correctness of the *Mrkšić* pronouncement within the context of Ground 16 of its appeal”,⁸ and previously pointed out that “[t]he ICTR Appeals Chamber has so far declined to follow the 3-2 pronouncement in *Mrkšić* and has subsequently reaffirmed the *actus reus* of aiding and abetting must be ‘specifically aimed’ at the crime”.⁹

4. Similarly, Taylor’s erroneous suggestion that this Appeals Chamber “does not now have before it any ground of appeal that squarely corresponds to the law as proclaimed in *Perišić*”,¹⁰ as *Perišić* maintained ‘specific direction’ to be an element of the *actus reus* rather than *mens rea*, does not establish good cause to recommence the appellate process. This suggestion ignores that the issue of the role of ‘specific direction’ in relation to aiding and abetting liability is before this Chamber, as made clear by Taylor’s acceptance that the pronouncement in *Perišić* was “highly relevant to Ground 16 and other grounds” of his appeal.¹¹ It also ignores that throughout the appellate submissions, Taylor acknowledged the jurisprudence which placed ‘specific direction’ in the *actus reus* and not the *mens rea* of aiding and abetting. Finally, the suggestion ignores that, in his submissions, Taylor made reference to the dissenting opinion of the *Perišić* Trial Chamber on the issue of ‘specific direction’ and the questions which had been posed by the *Perišić* Appeals Chamber regarding ‘specific direction’ in advance of the *Perišić* Appeal Judgement.¹²

5. The further suggestion that good cause is established because the Trial Chamber failed to analyse whether the assistance Taylor provided was ‘specifically directed’ to the commission of crimes¹³ also fails to establish good cause for so drastic a remedy. Were the Appeals Chamber to agree with Taylor, contrary to the Prosecution’s position, that this was

⁷ See, e.g., Oral Argument Transcript, 22 January 2013, pp. 49840-49858; Prosecution Respondent’s Submissions, SCSL-03-01-A-1350, 23 November 2012, paras. 276-321.

⁸ Taylor Request to Amend, para. 8.

⁹ Corrigendum to Appellant’s Submissions of Charles Ghankay Taylor, SCSL-03-01-A-1331, 8 October 2012 (“Taylor Appeal Brief”), fn. 862.

¹⁰ Taylor Request to Amend, para. 15.

¹¹ Taylor Request to Amend, para. 14.

¹² See, e.g., Taylor Appeal Brief, para. 417; Submissions in Reply of Charles Ghankay Taylor, SCSL-03-01-A-1353, 30 November 2012 (“Taylor Reply Brief”), para. 52.

¹³ Taylor Request to Amend, para. 13.

an error, it can consider this question in its appellate review.¹⁴ Moreover, prior to the oral hearings in this case in January, the parties were expressly asked by the Appeals Chamber to answer “[w]hether the Trial Chamber’s findings meet the “specific direction standard.”¹⁵

6. In addition, in his appellate submissions, Taylor also dealt at length with the alleged “precise error” committed by the Trial Chamber,¹⁶ i.e., that the Trial Chamber allegedly found that “general assistance was sufficient to impose liability for aiding and abetting.”¹⁷

7. Hence, it is clear that Taylor had sufficient opportunity to address the issue of ‘specific direction’, an opportunity of which he took full advantage during oral arguments,¹⁸ and in his written appellate submissions.¹⁹

8. While the ICTR Appeals Chamber has suggested that in some circumstances a development of the Tribunal’s jurisprudence subsequent to the filing of a notice of appeal may constitute ‘good cause’ for an amendment,²⁰ such amendment is not justified in the current proceedings, wherein the role played by ‘specific direction’ in the mode of liability of aiding and abetting was one that was addressed throughout the appellate proceedings.

III. CONCLUSION

9. For the reasons discussed above, the Prosecution opposes Mr. Taylor’s Request as good cause has not been established to justify the re-opening of the appellate process. However, Taylor’s concerns in respect of fundamental fairness and his acknowledgement of the inconsistency and confusion inherent in the *Perišić* Appeal Judgement²¹ justify the less drastic remedy of allowing him and the Prosecution to file one additional written submission regarding the import, if any, of the *Perišić* Appeal Judgement. Such a lesser remedy is warranted on the basis that the *Perišić* Appeal Judgement was delivered after the completion of the submissions in this case and addresses the issue of ‘specific direction’, albeit in a

¹⁴ *Prosecutor v. Perišić*, IT-04-81-A, Judgement, 28 February 2013, para. 43.

¹⁵ Scheduling Order, SCSL-03-01-A-1355, 30 November 2012, para. 2 (iii).

¹⁶ *See, e.g.*, Taylor Appeal Brief, paras. 314-318, 388-393, 437-446, 448-459; Taylor Reply Brief, paras. 67-71.

¹⁷ Taylor Request to Amend, para. 13.

¹⁸ *See, e.g.*, Oral Argument Transcript, 22 January 2013, pp. 49899-49909.

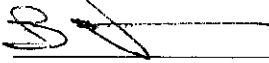
¹⁹ *See, e.g.*, Taylor Reply Brief, paras. 52-53.

²⁰ *Renzaho v. The Prosecutor*, ICTR-97-31-A, Decision on Renzaho’s Motion to Amend Notice of Appeal, 18 May 2010, para. 11.

²¹ Taylor Request to Amend, para. 15.

manner which deviates substantially from previously accepted international criminal jurisprudence.

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For the Prosecution,



Brenda J. Hollis
The Prosecutor

List of Authorities

SCSL

Prosecutor v. Taylor, SCSL-03-01

Filings

Request for Leave to Amend Notice of Appeal, SCSL-03-01-A-1383, 3 April 2013

Prosecution Motion for Leave to File Additional Written Submissions Regarding the ICTY Appeals Judgement in *Perišić*, SCSL-03-01-A-1381, 14 March 2013

Scheduling Order, SCSL-03-01-A-1355, 30 November 2012

Submissions in Reply of Charles Ghankay Taylor, SCSL-03-01-A-1353, 30 November 2012

Prosecution Respondent's Submissions, SCSL-03-01-A-1350, 23 November 2012

Corrigendum to Appellant's Submissions of Charles Ghankay Taylor, SCSL-03-01-A-1331, 8 October 2012

Transcripts

Oral Argument Transcript, 22 January 2013

ICTR

Renzaho v. The Prosecutor, ICTR-97-31-A, Decision on Renzaho's Motion to Amend Notice of Appeal, 18 May 2010

<http://www.ictrcaselaw.org/docs/20100518-doc-9731-en-01.PDF>

ICTY

Prosecutor v. Perišić, IT-04-81-A, Judgement, 28 February 2013

http://www.icty.org/x/cases/perisic/acjug/en/130228_judgement.pdf

Prosecutor v. Šainović et al., IT-05-87-A, Decision on Dragoljub Ojdanić's Second Motion to Amend his Notice of Appeal, 04 December 2009

<http://www.icty.org/x/cases/milutinovic/acdec/en/091204.pdf>