



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 9 FEBRUARY 2011
9.00 A.M.
PROSECUTION FINAL SUBMISSIONS

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding
Justice Richard Lussick
Justice Julia Sebutinde
Justice El Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg
Ms Erica Bussey

For the Registry:

Ms Fidelma Donlon
Mr Alhassan Fornah
Ms Rachel Irura

For the Prosecution:

Mr James Johnson
Ms Brenda J Hollis
Mr Nicholas Koumjian
Mr Mohamed A Bangura
Mr Christopher Santora
Ms Leigh Lawrie
Ms Maja Dimitrova

For the Office of the Principal Defender: Ms Claire Carlton-Hanciles

1 Wednesday, 09 February 2011

2 [Open session]

3 [In the absence of the accused]

4 [Upon commencing at 9.05 a.m.]

09:05:40 5 PRESIDING JUDGE: Good morning. I'll take appearances.
6 Before I do so, I note the absence of the accused. However, I
7 will invite the Principal Defender to address us on that issue
8 when I take appearances. Please, Ms Hollis.

9 MS HOLLIS: Good morning, Madam President, your Honours,
09:06:02 10 opposing counsel. This morning for the Prosecution, Brenda J
11 Hollis, Nicholas Koumjian, Mohamed A Bangura,
12 Christopher Santora, Leigh Lawrie. We are also joined by the
13 chief of prosecutions, James Johnson, and today with us also is
14 our case manager, Maja Dimitrova.

09:06:24 15 PRESIDING JUDGE: Thank you, Ms Hollis. Ms Hanciles.

16 MS CARLTON-HANCILES: I appear for the Office of the
17 Principal Defender this morning.

18 PRESIDING JUDGE: Thank you.

19 I'm not sure if LiveNote is working properly. I appear to
09:06:55 20 have some record but not all, but Madam Court Manager you can
21 alert us if there is a problem, please. Ms Hanciles, I apologise
22 for interrupting you. I note the accused is not present in
23 court.

24 MS CARLTON-HANCILES: I have no information as to why the
09:07:11 25 accused is not in court, your Honour, this morning.

26 PRESIDING JUDGE: Ms Hanciles, yesterday I addressed you in
27 the capacity of duty counsel following the deliberate absenting
28 of himself and withdrawal by Mr Griffiths, lead counsel. I note
29 you make your appearance this morning as representing the

1 principal defender. However, the direction of the Court
2 yesterday was for your appearance as duty counsel and we were
3 grateful for your very quick response to that. But for purposes
4 of record, I don't think you can say you're representing the
09:08:08 5 Principal Defender. You are the Principal Defender -

6 MS CARLTON-HANCILES: The Office of Principal Defender,
7 your Honour.

8 PRESIDING JUDGE: But the Office of Principal Defender is
9 an organ within the Court; it's not a party to the proceedings
09:08:23 10 and therefore I consider that your appearance today is in the
11 capacity of duty counsel as directed by the Court.

12 MS CARLTON-HANCILES: Yes, your Honour.

13 PRESIDING JUDGE: And I will now revert to what you've
14 already informed us which is that you have no knowledge of the
09:08:38 15 reason for the absence of Mr Taylor here. I can only guess that
16 he has not been brought to the Court from the detention centre,
17 and in the past we have been informed, usually through a note, if
18 there is a reason for that. I would be grateful if you could
19 check with the security if such a note has been delivered.

09:09:07 20 MS CARLTON-HANCILES: Yes, your Honour.

21 Your Honour, if you'll excuse me again I -- just a quick
22 confirmation from within the well of the Court and I am informed
23 that there is no information. They were just informed that he
24 was not going to be brought today.

09:09:52 25 PRESIDING JUDGE: Thank you. I will then note that
26 Mr Taylor has opted not to come because we have not been given,
27 for example, the medical note that we have seen in the past, and
28 accordingly, I will rule that pursuant to Rule 60, the matter
29 will proceed.

1 MS CARLTON-HANCILES: Yes, your Honour.

2 [Trial Chamber confers]

3 PRESIDING JUDGE: Did you wish to say something?

09:11:16

4 MS CARLTON-HANCILES: No, your Honour, I thought you wanted
5 to address me. May I sit, your Honour?

6 PRESIDING JUDGE: I beg your pardon?

7 MS CARLTON-HANCILES: May I sit down?

09:11:30

8 PRESIDING JUDGE: Yes. Just to ensure that we are all
9 aware that you're here in that capacity, and you have a duty upon
10 you to represent the interests of the accused.

09:11:50

11 When we adjourned yesterday, I had indicated there was a
12 possibility that some of my learned colleagues may have questions
13 of the Prosecution, and before inviting any address by the
14 Defence, those would be dealt with. And I will now clarify if
15 there are questions.

16 Justice Sebutinde has a couple of questions, I understand.

09:12:31

17 JUDGE SEBUTINDE: My questions are directed to the head of
18 the Prosecution team, Ms Hollis. And really they arise out of
19 your final trial brief. The first two questions relate to counts
20 1 and 11, namely the count on terror and the count on pillage.

09:13:06

21 Now, these two counts, as you know, arise out of violations
22 of Additional Protocol II to the Geneva Conventions, now, which
23 crimes arise out of a non-international armed conflicts,
24 according to Additional Protocol II. That is one side. What
25 I did notice from your final trial brief is that the Prosecution
26 did not characterise the nature of the armed conflict per se in
27 your final trial brief, and the reasoning continues in this way:
28 The Prosecution submits that the accused is criminally
29 responsible for crimes pursuant to Article 6(3) of the Statute

1 which in effect means that he had effective control over the
2 members of the RUF who committed crimes in Sierra Leone.

3 Now, this obviously would have an impact on the nature of
4 the armed conflict. In other words, according to the Tadic
09:13:49 5 jurisdiction decision, the overall control of one state over an
6 armed opposition group of another state, internationalises the
7 armed conflict. And so my question is: What consequences would
8 such a conclusion have on the overall control of - or the alleged
9 overall control of the accused over the RUF on the count - count
09:14:20 10 1 on terror and count 11 on pillage. That's my first question.

11 And perhaps I'll pause before I pose my second question. If you
12 haven't understood, I could repeat the question.

13 MS HOLLIS: I do very well, I do very well. Thank you,
14 Justice Sebutinde. And your Honours, may the Prosecution address
09:14:51 15 one matter before I address your question, with leave of the
16 Court? And that is, the Prosecution, of course, is mindful that
17 it is for your Honours to determine how to proceed and we are not
18 questioning that. We do, however, have what we think is an
19 unanswered question in relation to Mr Taylor's absence this
09:15:12 20 morning. And that is that we were informed yesterday that he
21 left because he was ill, and we wonder if there should not be a
22 doctor's report to ensure that his absence is truly voluntary and
23 not because he is ill.

24 We are hesitant to move forward in any substance if indeed
09:15:37 25 Mr Taylor is ill and there has simply been some administrative
26 oversight that has precluded your Honours from being given notice
27 of that. And I simply raise that as a matter for your Honours to
28 consider to ensure that there are no administrative issues that
29 might impact the integrity of today's proceedings.

1 PRESIDING JUDGE: Thank you for that observation,
2 Ms Hollis. I did ask Ms Hanciles if there is a medical report
3 because we have seen such reports in the past when Mr Taylor has
4 been unwell and has sought - been unable to come to court.

09:16:16 5 I understand that that's a procedure within the detention. I
6 have not seen anything in writing to confirm that. I've been
7 told that there is no such note. However, I will consult with my
8 colleagues to see a way forward and to answer your question.

9 [Trial Chamber confers]

09:17:49 10 PRESIDING JUDGE: Ms Hollis, I am grateful for you putting
11 on record those concerns. Yesterday, Mr Griffiths indicated in
12 his submissions to the Court that he and his client would be
13 leaving the Court, and Mr Taylor absented himself following the
14 first break in the proceedings. As I've already noted there has
09:18:13 15 not been any documentation to support an indication that he is
16 unable to come for reasons of illness or other pertinent issues,
17 and therefore, in our view, there is no evidence to support any
18 view that he may be unable to come through sickness or otherwise.
19 And in the circumstances, the ruling that I've made that we
09:18:42 20 proceed pursuant to Rule 60 will stand.

21 JUDGE LUSSICK: Just one other thing I'd mention, that
22 Mr Taylor does not go unrepresented today. There is duty counsel
23 there as well, Ms Hollis, in case you still have some misgivings.

24 MS HOLLIS: Not at all, Justice Lussick, thank you very
09:19:01 25 much, your Honours. In response to Justice Sebutinde's question,
26 of course when we look at the Statute, Article 3 covers both
27 violations of Common Article 3 as well as Additional Protocol II
28 and Common Article 3, of course, applies regardless of the
29 characterisation of the conflict. And so these crimes would be

1 applicable whether you would consider this conflict to be
2 internal or international. Also the jurisprudence indicates that
3 a conflict can be both internal and international at the same
4 time. In addition to that, we would suggest that what we have in
09:19:45 5 this instance is not a state, as we had in the case of Prosecutor
6 v Tadic, it's not the instance of a state being involved in
7 another country. What we have is an instance of this accused who
8 was the President of Liberia, but used his powers in a way that
9 was not sanctioned by the state. And, indeed, used portions of
09:20:12 10 the state mechanism, if you will, but not in a way that was
11 sanctioned by the state.

12 So that what we have here is Mr Taylor using his Liberian
13 subordinates and misusing the power of his office and his
14 authority in Liberia in order to become a part of, assist and
09:20:32 15 continue the campaign of terror and the pillage that occurred in
16 Sierra Leone. So we believe that our Statute does allow us to
17 proceed on these charges. Even should your Honours, as I say,
18 come to the conclusion that indeed it was the state of Liberia
19 instead of Mr Taylor and his rogue elements who were engaged in
09:20:58 20 this conduct with his proxy forces in Sierra Leone. That because
21 of Article 3, nonetheless, this - of Common Article 3,
22 nonetheless Article 3 crimes would apply and that would be,
23 Madam Justice Sebutinde, how we would respond to that question.

24 JUDGE SEBUTINDE: Ms Hollis, you've fallen short of
09:21:23 25 characterising the nature of the armed conflict according to the
26 Prosecution. There is no doubt that the judges will find what
27 they will find, but still, you fall short of saying this is how
28 the Prosecution characterises the conflict in Sierra Leone
29 vis-a-vis the participation of the accused.

1 MS HOLLIS: All right. I have set out what I think the law
2 has to say about whatever the characterisation is. In our view,
3 in the view of the Prosecution, the conflict in Sierra Leone was
4 not of an international character because Mr Taylor was acting
09:22:03 5 independent and in violation of his duties as President of
6 Liberia. And those elements within the government and within the
7 country that he used to further his conduct in Sierra Leone were
8 also in violation of their duties in Liberia. We do not
9 characterise the Government of Liberia as having been involved in
09:22:27 10 the conflict in Sierra Leone. Of course, before he became
11 President, he was the head of the NPFL, a faction, and the
12 question does not arise. During his presidency that is how we
13 would characterise the conflict. And nonetheless, if others
14 would differ on that characterisation, Article 3 in our view
09:22:49 15 would still apply, and make these crimes those for which he could
16 be held accountable.

17 JUDGE SEBUTINDE: Thank you for that clarification. My
18 second and last question relates to the phenomenon of joint
19 criminal enterprise as pleaded in your final trial brief. In
09:23:07 20 comparison to the notion as contained in the Trial Chamber's
21 decision of 27 February 2009, which was upheld by the Appeals
22 Chamber. In that decision, we held that the common purpose - the
23 joint criminal purpose, sorry, the joint criminal enterprise, or
24 the common purpose of the RUF was to terrorise the civilian
09:23:34 25 population, period. And this was upheld by the Appeals Chamber.
26 Now, in comparison, in paragraph 574 of your final trial brief,
27 this is what you write, and I quote:

28 "The ultimate objective of the JCE was to forcibly control
29 the population of the territory of Sierra Leone -- the population

1 and territory of Sierra Leone, and to pillage its resources, in
2 particular, diamonds."

3 Now, the elements that you put forward in paragraph 574 are
4 at variance with what the Appeals Chamber has upheld. Could you
09:24:17 5 please comment on this discrepancy?

6 MS HOLLIS: Thank you, Madam Justice. We do not view that
7 as a discrepancy because we believe, when you look at joint
8 criminal enterprise, you look at, depending on the facts of the
9 case, you look at two different elements. You look at the
09:24:37 10 ultimate objectives, and we suggest to you that in this case
11 Mr Taylor, the RUF, and the AFRC/RUF alliance, all agreed to the
12 ultimate objectives. The ultimate objectives being forcibly to
13 control the population and territory of Sierra Leone and the
14 pillage of its resources, in particular diamonds, as Madam

09:25:02 15 Justice has indicated. So there is the element of what are the
16 ultimate objectives. And then there is the consideration of what
17 are the criminal means by which those ultimate objectives are to
18 be reached. And there was a focus on the criminal means by which
19 the ultimate objectives were to be reached, in our view. And the
09:25:26 20 criminal means by which the objectives were to be reached - and
21 which we believe the evidence proves overwhelmingly - Mr Taylor
22 and the other members of the JCE agreed to and participated in.
23 The criminal means were terror and the attendant crimes that we
24 have charged.

09:25:47 25 So in our view the analysis of joint criminal enterprise
26 looks at ultimate objectives, which we have discussed, as well as
27 the criminal means by which to achieve those objectives. What
28 must most certainly be clear is that the accused, and the others,
29 must agree and participate in the criminal means if the

1 objectives themselves are not criminal. We believe the evidence
2 here proves that the accused and the other members of the JCE
3 agreed and participated in the criminal means but they also
4 agreed as to the ultimate objectives. And in our view, pillage
09:26:27 5 is also a criminal offence, so that one of the ultimate
6 objectives to which they agreed was also a crime. So that is how
7 we would respond to that question, Madam Justice.

8 JUDGE SEBUTINDE: Thank you, Ms Hollis, that really does
9 clarify things for me. And I thank you. It's been helpful.

09:26:49 10 MS HOLLIS: Thank you.

11 PRESIDING JUDGE: Thank you, Ms Hollis, we have no other
12 questions arising from your submissions yesterday.

13 MS HOLLIS: Thank you.

14 PRESIDING JUDGE: And I'm grateful for the clarifications.

09:27:02 15 MS HOLLIS: Thank you, Madam President. Thank you, your
16 Honours.

17 PRESIDING JUDGE: Ms Hanciles, as you're aware, today was
18 set for, and I quote, "the Defence to present its oral
19 arguments." There are arguments relating to Rule 86 which I will
09:27:20 20 not go into until I hear anything you wish to say in your
21 capacity as representing the accused.

22 MS CARLTON-HANCILES: Well, the counsel who were assigned
23 this in this matter are still counsel on record and they have not
24 withdrawn from the matter. They have only withdrawn their
09:27:38 25 participation at this stage and that is what lead counsel has
26 informed me. So they are still counsel on record and as such, I
27 am here as duty counsel to only hold sway and take any directives
28 from the Court. And I am informed that they have filed an
29 application for leave this morning of the decision which denied

1 the - their final trial brief. Thank you.

2 [Trial Chamber confers]

3 PRESIDING JUDGE: Can I please put on record that we have
4 just been presented with a document which, it states, that
09:34:35 5 Mr Taylor has waived his right to be present. I can only guess
6 it's come from the detention centre although it's not headed in
7 that way, thereby confirming that there is not a medical or other
8 issue.

9 [Trial Chamber confers]

09:36:00 10 PRESIDING JUDGE: In the light of this document, and in the
11 light of Mr Griffiths's statement yesterday that he was not
12 coming to court, and the indication from duty counsel,
13 Ms Hanciles, that she has no instructions relating to today's
14 appearances by the Defence, we are of the opinion that this
09:36:19 15 matter, by majority, that this matter should be stood over to
16 11.30 on Friday, in view of the original order of the 22nd of
17 October 2010, that the Prosecution may present oral arguments in
18 rebuttal and the Defence may present oral arguments in rebuttal.
19 Ms Hollis, you will note that I have said 11.30 which is the time
09:36:46 20 set for Defence. However, I do so in the light of the fact that
21 there are no arguments before you to rebut. If that changes, I
22 will review this decision.

23 Just a moment, please.

24 [Trial Chamber confers]

09:38:00 25 PRESIDING JUDGE: I will adjourn the Court now until Friday
26 at 11.30. Please adjourn court.

27 [Proceedings adjourned at 9.38 a.m., to be
28 reconvened on Friday, 11 February 2011, at
29 11.30 a.m.]