

The end of impunity?

Lessons from Sierra Leone

GILL WIGGLESWORTH

World attention was drawn to The Hague at the beginning of January 2008 when the delayed trial of Charles Ghankay Taylor,¹ the 59-year-old former President of Liberia (1997–2003), got under way in earnest. For security reasons the case is being heard there, but the trial is being conducted under the auspices of the Special Court of Sierra Leone, based in Freetown. This is one of several hybrid tribunals dealing with both international and domestic laws that have come into existence in recent years; other examples are the Extraordinary Chambers for Cambodia and the Serious Crimes Panels at Dili District Court in East Timor. It is undoubtedly true that the emergence of several international and hybrid criminal tribunals since the early 1990s has changed the character of international justice and made the rule of law more global in its reach. This in turn has led to an evolving international jurisprudence which has made it far more difficult for heads of state and other important political and military leaders to avoid losing their immunity from prosecution and subsequently facing the legal consequences of their actions if the political dice come to be loaded against them. No longer can the likes of Milosevic or Taylor expect to escape scot-free and make a discreet exit from the world stage.

The Special Court of Sierra Leone (SCSL) began its work in July 2002. It was the first mixed court to have judges and a deputy prosecutor from the country where the crimes were committed,² and it takes cognizance of the sovereignty of Sierra Leone by considering relevant national laws as well as violations of international humanitarian law. However, although the Special Court has concurrent jurisdiction with and primacy over Sierra Leone's courts, it lacks the power to assert its primacy over the national courts in other countries in connection with crimes committed in Sierra Leone as it was not established under the peace enforcement powers of the Security Council in Chapter VII of the United Nations Charter. It also lacks the power to request the surrender of an accused from any third state and to induce the compliance of that state's authorities with any such request. This was to prove highly significant when Charles Taylor, having already been indicted, took refuge in Nigeria after relinquishing power in Liberia. He was able to remain in exile in Nigeria for more than two and a half years.

¹ *The Prosecutor v. Charles Ghankay Taylor*, case no. SCSL-03-01-T. See court web page, <http://www.sc-sl.org>, last accessed 13 June 2008.

² See <http://www.sc-sl.org/documents/scsl-statute.html>. SCSL statute, arts 12(1) and 15(4).

The historical background: civil war in Sierra Leone

Compared to the wars in the Balkans, the conflict that took place in Sierra Leone has received much less public and media attention over the years, with the notable exception of Fergal Keane's reporting of the massacres that occurred in the capital, Freetown, at the beginning of 1999.³ Yet Taylor's case could prove pivotal, as he is the first former African head of state to face an international war crimes trial, and several key issues will be addressed during the process. However, it is impossible to gauge its importance without an understanding of the background events that led to his arrest and eventual trial.

After gaining independence in 1961, Sierra Leone experienced a succession of corrupt and authoritarian governments and the blurring of civilian and military authority. Unemployment spiralled upwards after 1985. During the 1980s both Foday Sankoh, the leader of the Revolutionary United Front (RUF), and Charles Taylor had undertaken military training in Libya and became close associates. When the RUF invaded eastern Sierra Leone in March 1991 from Liberia, Taylor supported its attempt to destabilize the government and provided arms, troops and a safe haven. In exchange he received conflict diamonds smuggled out of the eastern Kono region. This collaboration also served his political interests, since it was the Momoh government which had provided the Economic Community of West African States Ceasefire Monitoring Group (ECOMOG) with an airbase from which to launch attacks against Taylor and his National Patriotic Front of Liberia (NPFL). By the mid-1990s the government was increasingly reliant for support on a private security force and civilian militias such as the Civil Defence Force (CDF) rather than the army, the formal economy had collapsed, and the country existed primarily on grants and loans from the international community. President Kabbah was elected democratically in 1996 and in November the Abidjan Accord, which called for an immediate ceasefire, disarmament and demobilization, was signed. An amnesty was granted to the RUF and all other combatants, but the agreement did not last and in May 1997 the Armed Forces Revolutionary Council (AFRC) led by Johnny Paul Koroma overthrew President Kabbah. The RUF was quickly invited to form a new government. ECOMOG troops restored Kabbah to office in February 1998, but the government was virtually dependent on ECOMOG and civilian militias for support while the rebels controlled over half of the country.

The most notorious atrocities took place during the RUF assault on the capital, Freetown, in January 1999, which was repulsed by ECOMOG troops. Military stalemate ensued and, under mounting pressure from the UN and the international community, the Lomé Agreement was signed in July 1999 by President Kabbah and Sankoh, who had recently been released from gaol.⁴ Sankoh was pardoned, an amnesty was extended to all combatants, and a Truth and Reconciliation Commission (TRC) for Sierra Leone was set up. The arrival of a UN peacekeeping force,

³ BBC World Service, 2 March 1999, Africa, 'Agony words cannot describe': contains footage of horrific images filmed by Sorious Samura.

⁴ See <http://www.sierra-leone.org/lomeaccord.html>.

The end of impunity?

the United Nations Mission in Sierra Leone (UNAMSIL), failed to disarm the RUF and Sankoh was rearrested. Eventually the security situation stabilized and in June 2000 the President of Sierra Leone requested the assistance of the UN to establish a court to try those who had committed civil war atrocities.⁵ Resolution 1315, passed by the Security Council on 14 August 2000, authorized the Secretary General to begin negotiations with the Sierra Leonean government over the creation of the Special Court.⁶ The SCSL was formally established on 16 January 2002 as the result of an agreement signed by the UN with the government, to which the court's statute was attached, and implementing legislation followed.⁷ By early 2002 the demilitarization and demobilization of ex-combatants were completed; in May presidential and parliamentary elections took place, and Kabbah was duly re-elected president. Peace returned to the country and UNAMSIL successfully completed its mandate at the end of 2005.

The statistics regarding the eleven years of civil war in Sierra Leone are staggering. Mindless acts of violence against defenceless civilians were carried out under a thin veneer of ideology. An estimated 50,000 were killed (this figure is conservative) and hundreds of thousands of others had their arms, legs, ears, noses or lips hacked off. Women and girls were raped or forced into sexual slavery, and thousands were abducted. By the end of the conflict more than 2.6 million people, over half the country's estimated population of 4.7 million, had either become refugees in neighbouring countries or been internally displaced. The atrocities were committed both by the government-sponsored CDF and by the two main rebel groups, the RUF and the AFRC. They threatened not only the security of the state but also that of an enormous number of ordinary human beings.

The court's mandate

Although the civil war began in 1991, the temporal jurisdiction of the Special Court over international crimes starts halfway through the conflict on 30 November 1996, the date the Abidjan Accord was signed,⁸ in order not to overload the court with work in view of its uncertain funding. Many crimes committed in the provinces before 1996 thus fall outside the ambit of the court; but despite this rather arbitrary limitation on its role, in that it has to focus on violations of international humanitarian law committed during the last five years of the conflict, the SCSL was established with the full support of the Sierra Leonean government. Moreover, the prosecutor can rely on evidence relating to events before 1996 if it is relevant to the case before the court. This strategy, did, however, undermine the complementary relationship that was supposed to exist between the court and the somewhat wider mandate of the TRC, also an instrument of transitional justice, as the latter had a temporal jurisdiction that dated from the beginning of the conflict but

⁵ United Nations, letter from President of Sierra Leone to the Secretary General (2000), annex *S/2000/786*.

⁶ United Nations Security Council Resolution 1315 (2000), *S/Res/1315*.

⁷ See <http://www.sc-sl.org/documents/scsl-agreement.html>; United Nations, annex *S/2000/915*.

⁸ See art. 1(1) of the Statute documents.

extended only until 7 July 1999 rather than the actual end of the civil war.⁹ Based on the South African model, the TRC was finally inaugurated on 5 July 2002 and wound up its activities at the end of 2003. The two institutions worked in parallel during this period, but tensions arose as victims and potential witnesses feared that valuable information and self-incriminating testimonies before the TRC would be handed over to the Special Court. Moreover, the Special Court was not willing to allow the CDF indictee Sam Hinga Norman to testify before the commission in a public hearing; a private meeting was held to be acceptable, but Norman subsequently refused to testify on these terms.¹⁰

Under the terms of article 1(1) of its statute,¹¹ the Special Court has the power 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, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone'. The objective of the court is to prosecute individuals who were in leadership or command positions rather than the simple foot-soldiers and rank-and-file combatants who carried out the atrocities. This is a highly selective approach—but necessarily so, since trying all those who had committed crimes would have been an impossible task. Nor are some of Taylor's main aides in Liberia in any danger of being brought to account by the court. Significantly, the remit of the Special Court does not include the crime of genocide because the atrocities were random and not intended to destroy any particular group because of who they were. The attacks by the rebels were not aimed specifically at the Temne, Mende or Krio communities. The rebels sought their own personal enrichment rather than the imposition of a political ideology by the manipulation of ethnic hostility.

A former American prosecutor for the court, David Crane, has accused the Libyan leader Muammar Qadhafi of being behind over a decade of war in West Africa. Qadhafi has not been indicted by the court, but there has been speculation about an alleged hidden US agenda, fuelled by the training in revolutionary tactics and guerrilla warfare that the RUF leader, Foday Sankoh, and others received in Libya in the late 1980s. Bringing the political landscape up to date, there have also been allegations that Taylor himself both supported and gave safe haven to Al-Qaeda operatives before and after the attack on the Twin Towers in New York in September 2001.

The Special Court for Sierra Leone has a higher standard of indictment than either the International Criminal Tribunal for Rwanda (ICTR) or the International Criminal Tribunal for the former Yugoslavia (ICTY). The prosecutor must be 'satisfied in the course of an investigation that a suspect has committed a crime, or crimes within the jurisdiction of the Special Court' before he can present a case for indictment before the court.¹² However, in early March 2003 the Special Court

⁹ Art. 6, Truth and Reconciliation Commission Act 2000.

¹⁰ See Norman, CDF Appeals Chamber decisions, SCSL-03-08-PT-122, 28 Nov. 2003.

¹¹ See <http://www.sc-sl.org/documents/scsl-statute.html>.

¹² Rule 47 of the rules of procedure and evidence of the Special Court for Sierra Leone. See <http://www.sc-sl.org/documents/rulesofprocedureandvidence.pdf>.

The end of impunity?

issued its first indictments, not only against Charles Taylor but also against Samuel Hinga Norman of the CDF and several of the main protagonists in the RUF, namely, Sankoh, Bockarie, Sesay and Kallon, as well as Brima of the AFRC.¹³ Others were indicted at a later date. Thus the stage was set and, although certain key individuals subsequently died, consolidated indictments were later prepared and joint trials started involving the three militia groups. Taylor, the star defendant, who had found a safe haven in Nigeria after resigning the presidency in August 2003, would stand trial on his own if he was ever brought to court.

The legality of Taylor's indictment may prove to be very relevant to the relative strength or weakness of his defence at his substantive trial. The jurisdiction of the court was held to override the amnesties given in the earlier agreements at Abidjan and Lomé, which prevented domestic prosecutions,¹⁴ but the crucial argument is over his loss of personal immunity for crimes that took place while he was a sovereign head of state.¹⁵ Article 6(2) of the statute stipulates in language identical to that of the Rome Statute of the International Criminal Court (ICC) that '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.'¹⁶ An arrest warrant was originally issued against Taylor on 4 June 2003 following his arrival in Accra, Ghana, to attend peace talks that had been convened by other African leaders. Procedural mistakes meant that it was not executed and Taylor was able to return to Liberia to continue in his role as president until his resignation in August of that year. Warrants of arrest are not self-executing, and their implementation requires the cooperation of the receiving state. Taylor's main defence was that he was entitled to absolute personal immunity from criminal prosecution as Liberia's incumbent head of state at the time of his indictment.

The circumstances in which exceptions to immunity may be extended or denied depend on the nature of the offences and the character of the tribunal. The *Yerodia* case at the International Court of Justice (ICJ) in 2002 had highlighted the differences in the treatment of immunities before national and international courts.¹⁷ On 31 May 2004 the Appeals Chamber of the SCSL concluded that the official position of Charles Taylor as serving head of state of Liberia at the time of his indictment was not a bar to his prosecution, as 'the sovereign equality of states does not prevent a Head of State from being prosecuted before an international criminal

¹³ For the original Taylor indictment on 3 March 2003, see <http://www.sc-sl.org/documents/SCSC-03-01-I-001.html>. Sankoh was also indicted on the same day and the other indictments were issued on 7 March 2003.

¹⁴ Art. 10 of the SCSL statute; *Kallon and Kamara*, SCSL, Appeals Chamber decision, 13 March 2004, SCSL-04-15-PT-060I and II. Cf. art. IX of the Lomé Peace Agreement.

¹⁵ For the decision of 31 May 2004 on Taylor's immunity from jurisdiction, see <http://www.sc-sl.org/documents/Taylor/SCSL-03-01-I-059.pdf>. A summary is also available. See also Micaela Frulli, 'The question of Charles Taylor's immunity: still in search of a balanced application of personal immunities?', *Journal of International Criminal Justice* 2: 4, Dec. 2004, pp. 1118–29; Charles C. Jalloh, 'Immunity from prosecution for international crimes: the case of Charles Taylor at the Special Court for Sierra Leone', *ASIL Insight* 8: 21 (the American Society of International Law), Oct. 2004, at <http://www.asil.org/insights.htm>, last accessed 13 June 2008.

¹⁶ Art. 27 of the Rome statute; cf. art. 6(2), ICTR statute, and art. 7(2), ICTY statute.

¹⁷ Arrest warrant of 11 April 2000 (*Democratic Republic of Congo v. Belgium* (2002)) case. See ICJ judgment, 14 Feb. 2002, at <http://www.icj-cij.org/docket/files/121/8126.pdf>, last accessed 13 June 2008.

tribunal or court'.¹⁸ Furthermore, Taylor had ceased to be head of state at the time of the court's decision so that he no longer had any personal immunity.¹⁹

Yet the conservative approach taken by the ICJ on the issue of head-of-state immunity from prosecution by an international tribunal in the *Yerodia* case (which it was hoped would build on the progress made in the *Pinochet* case of 1999²⁰) does nothing to help strengthen the position of those who assert that Taylor has lost his immunity as a former head of state, as at the time of his original indictment he was still president of Liberia. Although the current legal trend seems to be to work towards ending the traditional immunity of both former and acting heads of state for certain international crimes, it is still far from being a *fait accompli* in customary international law. The immunity issue is likely to be hotly disputed in the Taylor case and represents dangerous territory for the prosecution. If the outcome falls in their favour there will have been a ruling of fundamental importance on the limits on the right to immunity of a head of state. The road will be open to prosecute other former African dictators such as Hissène Habré of Chad.

On the very same day, 31 May 2004, that Charles Taylor was held not to be entitled as a head of state to enjoy immunity from prosecution before an international court, the Special Court also reached a landmark decision on the recruitment of child soldiers, which was to play a central role in the prosecutions that followed. An estimated 10,000 child soldiers participated in the war in Sierra Leone; all the rebel militias abducted and forcibly recruited children to participate in the conflict or to exploit them for labour and sex. The court's original prosecutor, David Crane, decided to focus on bringing to account the adult leaders involved in the conflict. Article 4(c) of the Special Court's statute mirrors the provisions of the 1998 Rome Statute of the ICC in Article 8(2)(b)(xxvi)—and Article 8(e)(vii), which applies to non-international armed conflicts—holding that 'Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities' is a crime within the jurisdiction of the court. However, an attempt was made by one of the CDF defendants, Chief Samuel Hinga Norman, to challenge the court's jurisdiction to try him for crimes under article 4(c) on the ground that the crime of child recruitment had not formed part of customary international law at the times relevant to his indictment and that of the other CDF leaders, Fofana and Kondewa. The preliminary motion was referred directly to the Appeals Chamber (rule 72(E)), which ruled on 31 May 2004 that child recruitment was criminalized by November 1996 (the date at which the court's temporal jurisdiction began) and as such constituted a serious violation of international humanitarian law for which the SCSL was legally entitled to prosecute Norman.²¹ The Appeals Chamber backed up its decision by referring to various sources, including the 1949 Geneva Conventions and their 1977 Protocols,

¹⁸ See <http://www.sc-sl.org/documents/Taylor/SCSL-03-01-I-059.pdf>, para. 52

¹⁹ See <http://www.sc-sl.org/documents/Taylor/SCSL-03-01-I-059.pdf>, para. 59.

²⁰ *R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (Amnesty International and others intervening)* (No.3) (1999) 2 All E.R. 97 (HL).

²¹ Decision on preliminary motion based on lack of jurisdiction (child soldiers), 31 May 2004. See [http://www.sc-sl.org/documents/CDF/SCSL-04-14-AR72\(E\)-131-7383 and 7398.pdf](http://www.sc-sl.org/documents/CDF/SCSL-04-14-AR72(E)-131-7383 and 7398.pdf). A summary is also available online.

The end of impunity?

the 1998 ICC Rome Statute, ICTR and ICTY jurisprudence, and article 38 of the 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the involvement of children in armed conflict, as well as national legislation. There was, however, a strong dissenting judgment by Justice Robertson, who argued that this new crime acquired normative status in international law only when states signed the Rome Treaty in July 1998.²² It is open to question whether the SCSL has the jurisdiction to try any of the accused for crimes of this nature before the Rome Statute was concluded.

Although Kondewa was convicted on this count in August 2007,²³ the judgment came too late for Norman, who died in February 2007 while undergoing medical treatment. All the AFRC defendants were convicted on this count in June 2007, becoming the first people to be prosecuted for this crime by an international tribunal. The trio of RUF defendants have also been charged with the offence of recruiting child soldiers.²⁴ The ICC has taken a similar approach and indicted Thomas Lubanga Dyilo, a militia leader in the Democratic Republic of Congo, solely on counts of conscripting, enlisting and using child soldiers in armed conflict.²⁵ His trial had been expected to begin on 23 June 2008,²⁶ and another case is being prepared against two other individuals currently in the custody of the ICC. Attempts by the ICC to execute arrest warrants against the leader of the Lord's Resistance Army in Uganda, Joseph Kony, and three other senior commanders including Dominic Ongwen, himself formerly a child soldier, for similar offences have so far failed. Several of the indictees have apparently been killed. Peace talks to end the insurgency in northern Uganda, which might make domestic trials possible as an alternative to prosecution by the ICC itself, currently appear to be faltering. Nevertheless, this crime could potentially become a well-established basis for prosecution in African states and other contexts where the recruitment of child soldiers is the norm in guerrilla-type insurgencies.²⁷

Indicting Taylor and bringing him to trial

Taylor's criminal traits and his personal ambition were already apparent before the start of the civil war in Sierra Leone in 1991. Born near Monrovia, the Liberian capital, in 1948, he had been educated in the United States, gaining a degree in economics. In 1980 he returned to Liberia, where he worked as a procurement officer running the General Services Agency—which meant he controlled much of Liberia's budget; but in 1983 the President, Samuel Doe, sacked him for an alleged theft of \$900,000. He fled to the United States but was imprisoned; in September

²² See [http://www.sc-sl.org/documents/CDF/SCSL-04-14-AR72\(E\)-131-7430.pdf](http://www.sc-sl.org/documents/CDF/SCSL-04-14-AR72(E)-131-7430.pdf), esp. para. 38 onwards.

²³ His conviction was subsequently overturned by the Appeals Chamber in May 2008; see n. 55 below.

²⁴ See para. 68 of corrected amended consolidated indictment at <http://www.sc-sl.org/RUFdocuments/SCSL-04-15-T-619.pdf>.

²⁵ See Jason Morgan-Foster, 'ICC confirms charges against DRC militia leader', *ASIL Insight* 11: 6, 9 March 2007.

²⁶ This has now been postponed indefinitely. See ICC press release, 11 June 2008 at <http://www.icc-cpi.int/press/pressreleases/379.html>.

²⁷ For the Lubanga case, see ICC-01/04-01/06, and for the Ongwen case ICC-02/04-01/05, both available on the court website at <http://www.icc-cpi.int/cases.html>.

1985 he escaped from gaol while attempts were being made to extradite him back to Liberia. It was at this time that he underwent guerrilla training in Libya before returning to Liberia in 1989 to start a civil war, first in his own country and subsequently in Sierra Leone with the leader of the RUF there, Foday Sankoh, whom he had met while in Libya.

The initial 17-count indictment of Taylor was signed by the Special Court prosecutor on 3 March 2003 and confirmed by the Trial Chamber on 7 March, but ordered to be kept under seal. It was unsealed by the prosecutor on 4 June 2003, during Taylor's first trip out of Liberia since the signing of the indictment. On 16 March 2006 a judge of the Special Court approved an amended indictment reducing the number of counts to eleven; this, in a slightly amended form, is the one currently before the court.²⁸ Later that month, acting on a request by Liberian President Ellen Johnson-Sirleaf, the Nigerian government agreed that Taylor could stand trial. A few days later he disappeared from the villa in Nigeria where he had been living in exile, but he was subsequently arrested as he tried to cross the border into Cameroon and sent back to Liberia. On 29 March he was transferred to the Special Court by the UN peacekeeping force in Liberia.²⁹ At his initial appearance before the presiding judge of Trial Chamber II on 3 April 2006, Charles Taylor pleaded not guilty to all eleven counts in the indictment; he maintains this plea.

There were grave concerns that holding Taylor's trial in Sierra Leone would lead to renewed political unrest and instability, and it was considered wise to move the trial outside the country. The British government's decision on 15 June 2006 to offer detention facilities for Taylor were he convicted cleared the way for the relocation of his trial to The Hague, as the Netherlands was prepared to allow the trial to take place in that country only if he were imprisoned elsewhere. On 16 June 2006 the UN Security Council voted unanimously to adopt Resolution 1688 under Chapter VII of the UN Charter,³⁰ authorizing Taylor's transfer to The Hague to stand trial. It was not possible to try Taylor at the ICTR in Arusha, Tanzania, because that tribunal was very busy with its existing caseload, and there was no alternative international criminal tribunal in Africa that could take over Taylor's case. The solution arrived at was to use the facilities of the ICC for the trial while still conducting proceedings according to the statute and rules of the SCSL. The one major drawback of this arrangement is that the trial may seem remote from the places where the crimes were actually committed, which may undermine the value of the trial in the eyes of the people of West Africa. For this reason a great deal of effort has gone into setting up internet, audio and video facilities at the court which are accessible back in Sierra Leone and Liberia.

In broad terms, Taylor is alleged to have committed crimes against humanity, violations of article 3 common to the Geneva Conventions and of Additional Protocol II (commonly known as war crimes), and other serious violations of

²⁸ For the prosecution's second amended indictment, see <http://www.sc-sl.org/documents/Taylor/SCSL-03-01-PT-263.pdf>, dated 29 May 2007.

²⁹ Micaela Frulli, 'A turning point in international efforts to apprehend war criminals: the UN mandates Taylor's arrest in Liberia', *Journal of International Criminal Justice* 4: 2, May 2006, pp. 351–61.

³⁰ SC Res. 1688 (2006) under http://www.un.org/Docs/sc/unsc_resolutions06.htm.

The end of impunity?

international humanitarian law. These are in violation of articles 2, 3, and 4 of the statute of the Special Court.

The specific charges made against him are much more detailed. Crimes against humanity are dealt with in count 2 (murder), count 4 (rape), count 5 (sexual slavery and any other form of sexual violence), count 8 (other inhumane acts of physical violence) and count 10 (enslavement). Substantive charges based on the laws and customs of war are covered in count 1 (acts of terrorism), count 3 (violence to life, health and physical or mental well-being of persons, in particular murder), count 6 (outrages upon personal dignity), count 7 (violence to life, health and physical or mental well-being of persons, in particular cruel treatment), count 9 (conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities) and count 11 (pillage).

Taylor, it is alleged, is by his acts or omissions individually criminally responsible for these crimes under article 6.1 of the court's Special Statute and in addition, or alternatively, under article 6.3 of the same statute. He planned, instigated, ordered or committed them or otherwise aided and abetted their planning, preparation or execution, or participated in a common plan, design or purpose of which the crimes committed were, at the very least, a reasonably foreseeable consequence (article 6.1 applies). Under article 6.3 the charges are centred on the fact that he held positions of superior responsibility and exercised command and control over subordinate members of the RUF, AFRC, AFRC/RUF junta or alliance and/or Liberian fighters. Taylor is alleged to be responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.³¹ Failure to ensure the lawful conduct of his subordinates is one type of command responsibility which entails criminal liability.

Participation in a joint criminal enterprise?

The charge that Taylor was party to a joint criminal enterprise and ordered the atrocities from his base in Liberia lies at the heart of the indictment. Not only is Taylor alleged to have directly ordered crimes and to have aided and abetted them, he is also alleged to have participated in a joint criminal enterprise, the consequence of which was that many of the atrocities committed against the civilian population were either actions within the joint criminal enterprise or a reasonably foreseeable consequence of the joint criminal enterprise. As Courtenay Griffiths, Taylor's chief defence counsel, said to reporters last August: 'Nobody is denying that horrific acts were committed . . . the question is were those horrible things done at the behest of, under the orders of, within the knowledge of this defendant.'³² The main thrust of the prosecution case will indeed be based on this

³¹ See arts 33 and 34 of the indictment.

³² Quoted in 'Charles Taylor's new defence team gets more time to prepare', *International Herald Tribune (AP)*, 20 Aug. 2007.

line of attack, as was apparent from the prosecution's opening statement on 4 June. The prosecution seeks to

prove that the accused is responsible for the development and execution of a plan that caused the death and destruction in Sierra Leone. That plan, formulated by the accused and others, was to take political and physical control of Sierra Leone in order to exploit its abundant natural resources and to establish a friendly or subordinate government there to facilitate that exploitation.

Various individuals both in Liberia (not indicted in Sierra Leone) and in Sierra Leone (some of whom have been or are currently being tried by the court) who were party to Taylor's criminal conspiracy were named.³³

It is important to note that the statute of the Special Court was drafted in 2000, after the 1999 Appeals Chamber judgment in *Prosecutor v. Tadić* in which the ICTY had embraced the concept of joint criminal enterprise in three distinct categories.³⁴ Yet the statute, unlike the Rome Statute of the ICC,³⁵ contains no explicit reference to joint criminal enterprise or common plan liability—only to superior responsibility. This did not prevent the prosecutor in the SCSL from using the broadest category of joint criminal enterprise liability in Taylor's indictment. Indeed, subsequent judgments at the ICTY further lowered the subjective mental element requirement in such cases, holding that an accused must simply be aware that the crime eventually committed is a possible consequence of participation in the common plan. It is a form of guilt by association, requiring neither a shared intent nor personal knowledge of the crime in question.

Although it is highly controversial, the prosecutor of the SCSL has relied heavily on this somewhat elastic doctrine, and not only in the Taylor case.³⁶ The use of such a broad liability model, despite its flaws, helps to reduce the chances of an accused's acquittal.³⁷ At the very least, providing weapons and resources to the rebels while fully aware of the type of crimes they were likely to commit leaves Taylor liable to be convicted for aiding and abetting their joint criminal enterprise.³⁸

It is certainly true that the joint criminal enterprise theory of liability is not set out explicitly in the statute of the Special Court and depends on a rather liberal interpretation of the text, and this underpinned the line of reasoning taken by Trial Chamber II in the AFRC judgment. The charge of being involved in a joint criminal enterprise, which is such a central plank in the prosecution case against Charles Taylor, was held not to be an acceptable concept of criminal responsibility

³³ See transcript of prosecution opening statement at [http://www.sc-sl.org/Transcripts/Taylor/4 June 2007.pdf](http://www.sc-sl.org/Transcripts/Taylor/4%20June%202007.pdf), pp. 30, 36–41.

³⁴ *Prosecutor v. Tadić*, judgment, case no. IT-94-I-A, Appeals Chamber, 15 July 1999, esp. para. 228.

³⁵ Art. 25(3)(d) of the Rome statute.

³⁶ See the further amended consolidated indictment of Brima, Kamara and Kanu, 18 February 2005, at <http://www.sc-sl.org/documents/AFRC/SCSL-04-16-PT-147.pdf>; also the corrected amended consolidated indictment of Sesay, Kallon and Gbao, 2 August 2006, at <http://www.sc-sl.org/documents/RUF/SCSL-04-15-T-619.pdf>.

³⁷ Generally on this topic see Shane Darcy, 'Imputed criminal liability and the goals of international justice', *Leiden Journal of International Law* 20: 2, June 2007, pp. 377–404.

³⁸ *Tadić* 1999 Appeal, para. 229.

The end of impunity?

on the ground that the prosecutor had defectively pleaded it. An action has to be inherently criminal. The fact that the AFRC accused formed a common plan with the RUF 'to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas' (paras 33 and 34 of the indictment) failed to plead the necessary element that the common plan existed for the purposes of committing a substantive crime under the statute. Their uprising was not a crime in international law, and the prosecutor had not proved beyond reasonable doubt that the common plan involved crimes from its inception.³⁹ Much of the prosecution case against these field commanders was rejected because it could not be proved that they had either actually committed or ordered the commission of particular atrocities outside the capital, Freetown. Although the Appeals Chamber subsequently reversed the Trial Chamber's decision on the ground that the actions contemplated as a means to achieve the objective were crimes within the statute of the Special Court, the AFRC leaders were not convicted on this count.⁴⁰ Even more interesting is the fact that the RUF trial is being conducted in Trial Chamber I, which is not bound by the decision of Trial Chamber II, and the court could contradict the conclusions drawn by the latter on the issue of joint criminal enterprise in the AFRC case. A detailed analysis of the existing customary international law on individual criminal responsibility for participation in a joint criminal enterprise to commit a crime was made in the CDF trial, where the issue was considered admissible in relation to each count, but did not seem significantly to affect the final outcome.⁴¹ What is self-evident, however, is that, quite independently of the Tadić appeals judgment at the ICTY, the attitude of the Sierra Leone court towards the weight placed by the prosecution in the Charles Taylor case on his alleged participation in a joint criminal enterprise will play a crucial part in determining the final outcome of his trial. Taylor's involvement in atrocities in Sierra Leone was only indirect; unlike the AFRC leaders, he never actually set foot in Sierra Leone during the conflict and did not have troops there directly under his command. If the court insists on a strict evidentiary basis for this particular pleading to come into play, the prosecution will have a very difficult task to perform. Whatever the political motivations behind this charge against him, it remains open to the court to acquit Taylor partially or wholly if that is where the evidence leads.

The handling of witnesses

Much will turn on the testimony of the witnesses called by the prosecution. The court's prosecutor, Stephen Rapp, plans to call up to 144 witnesses. Of these, 59 are predominantly 'linkage' witnesses—as opposed to 77 'crime-based' witnesses (since the defence concedes that atrocities occurred)—whose evidence will address

³⁹ For the Trial Chamber's objections to the use of joint criminal enterprise in the indictment, see paras 56–85 of the AFRC judgment, <http://www.sc-sl.org/documents/AFRC/SCSL-04-16-T-628A.pdf>.

⁴⁰ See para. 84 of the Appeals Chamber judgment at <http://www.sc-sl.org/documents/AFRC/SCSL-04-16-A-675.1.pdf/>.

⁴¹ See pp. 60–78 of the judgment at <http://www.sc-sl.org/documents/CDF/SCSL-04-14-T-785A.pdf>.

the issue of Taylor's connection to the crimes in the indictment. Among their number is likely to be a former rebel general and 20 Liberian citizens. Most of the crime-based witnesses will testify in writing to speed up the process. There will also be eight expert witnesses such as the first witness, Ian Smillie, an expert on conflict diamonds.⁴² Essentially, the question is: was there an agreed plan between Taylor and the militia leaders which led to massive human rights abuses and violations of international criminal and humanitarian law in an attempt to gain and keep control of the diamond-rich districts in the east of Sierra Leone, such as Kono and Kenema, which he wished to exploit to his own advantage? The aim is to prove that Taylor planned and knew exactly what was going on inside the country; the prosecution's case is that the rebels in Sierra Leone were in very close contact with Taylor's presidential residence in Liberia, and that he provided them with arms, ammunition and communications equipment, as well as training, in exchange for diamonds smuggled out of Sierra Leone. Evidence will also be presented that shows Taylor used the RUF to fight opposition groups in his own country, and that his forces were also involved in conflicts in neighbouring Guinea and Côte d'Ivoire.

So potentially explosive is this testimony that many witnesses in the case will be allowed to give evidence without their identities being publicly revealed and under heightened security arrangements, although the court has set great store by its outreach and open justice initiatives. This is because of fears that witnesses who were once close to Taylor may be regarded as traitors for testifying against him and as a result may face intimidation and reprisals. Some, such as Moses Blah, Taylor's former vice-president, and Joseph D. 'Zigzag' Marzah, Taylor's former chief of operations and commander of a death squad, have received death threats.⁴³ Indeed, the prosecution claims that some members of the accused's inner circle were murdered because they were aware of the crimes perpetrated by the accused and might have exposed him. Moreover, many individuals associated with the Taylor regime are afraid to testify for the defence through fear of being subjected to a UN-imposed travel ban and seizure of their assets if they attend the tribunal in The Hague. This could put at risk the possibility of Taylor's having a fair trial unless the Security Council lifts the sanctions for those of his associates who are required to testify in person.

Article 17(2) of the court's statute attempts to balance the protection of a witness with the right to a public trial. Under the Special Court's rules of procedure and evidence, the judges can issue orders which protect witnesses by concealing their identity from the public (rules 75, 79) and can delay the disclosure of their identities to the defence (rule 69A), which also protects them from possible intimidation and retaliation.⁴⁴ Under rule 75(B)(iii), former child soldiers can testify via

⁴² See 'Chief prosecutor holds press conference', <http://www.charlestaylortrial.org>, 5 Jan. 2008. This is no longer available online.

⁴³ See 'Charles Taylor trial advances at sustained pace', Hiredelle News Agency (Lausanne), 15 May 2008, <http://allafrica.com/stories/200805160431.html>, last accessed 13 June 2008; "Death threats" to witnesses against Liberia's Taylor', Reuters, 20 March 2008, <http://www.alertnet.org/thenews/newsdesk/L20817080.htm>, last accessed 13 June 2008 (both available at <http://charlestaylortrial.org/news/>).

⁴⁴ See <http://www.sc-sl.org/documents/rulesofprocedureandevidence.pdf>.

The end of impunity?

one-way closed-circuit television which minimizes their direct confrontation with the accused. These rules are crucial, as former members of Taylor's inner circle may testify against the former warlord and president and he could denounce former allies in his defence against the charges he faces. It also reduces the degree of trauma experienced by former victims and survivors who have to appear in court. Furthermore, it is very important in the Taylor case that witnesses testify for both the prosecution and the defence, as the charges of command responsibility deal with situations and events where the accused was not present and this is the only way of finding out what actually happened. Whether the actual transcripts will be censored in any way is a different matter.

Funding problems

In the spring of 2006 the Special Court's annual budget was about \$25 million; it rose to \$36 million in 2007, a level still much lower than the individual budgets of the ICTR and ICTY. It is supported entirely by voluntary contributions from four major donors (the United States, the United Kingdom, the Netherlands and Canada), two regional donors (Sierra Leone and Liberia), and the Office of the Legal Adviser at the United Nations. This system of funding results in a very unstable financial basis for the court. The arrest of Charles Taylor in March 2006 and the postponement of the start to his trial until January 2008 means that the lifespan of the court will have to be considerably extended, until the end of 2009. Taylor also has a sizeable defence team of ten people—lead counsel, two supporting counsel and two legal assistants, two temporary legal assistants, one international senior investigator and two national investigators. The defence team and its office space in The Hague, Sierra Leone and Liberia costs the court \$100,000 per month.⁴⁵ Moreover, there are additional operational costs in transferring about 150 witnesses from Sierra Leone to The Hague, where they will stay in safe houses; and in making proceedings accessible for the people back home where the crimes were committed, a requirement which has been addressed by setting up video screenings and a website from which MP3 files of the trial sessions will be available for download, by translating the court proceedings into French, and by screening televised weekly summaries of court proceedings, using mobile video units to tour the country. These are all necessary activities, but are expensive in an operation running on such a shoestring budget. Finally, the outreach programme of the court, which is designed to inform the largely illiterate people of Sierra Leone about the court's work and to give them a sense of participation in the judicial investigations and trials, was not covered by its core funding. In June 2007 the Special Court asked for an additional \$60 million to enable it to complete its mandate as current funds were expected to be exhausted by November,⁴⁶ and in April 2008 the financial outlook was still uncertain as the court had guaranteed funding of only \$23 million, enough

⁴⁵ 'War crimes trial gives Taylor more legal funds', *Independent*, 7 July 2007.

⁴⁶ 'Donations shortage threatens Sierra Leone war crimes trial', *The Times*, 31 May 2007.

to last until the autumn.⁴⁷ The budget for 2008 is \$33 million, and \$20 million is expected to be needed in the concluding year, 2009.

Taylor is entitled to receive the money for his defence costs because the court has ruled that he is indigent, meaning he cannot pay for his own defence, and in fact he boycotted the opening day of his trial because he claimed he did not have enough money to fund a proper defence.⁴⁸ Arguably Taylor has significant personal assets, running into millions of dollars, stacked away in bank accounts around the world, from the profits he made out of conflict diamonds and his cut of lucrative contracts for timber and other resources in Liberia;⁴⁹ but until the court can prove that this is the case it is obliged to continue to pay for his defence. However, if Taylor's alleged loot is found by investigators and can be directly linked to him, the court has the power to make him pay back the money he has been given to fund his defence.⁵⁰

The AFRC, CDF and RUF cases

Since the creation of the Special Court 13 people have been indicted by it, and during the last year it has started to convict and pass sentence on some of the defendants. On 20 June 2007 three senior members of the AFRC—Alex Tamba Brima, aka 'Gullit'; Brima Bazzy Kamara; and Santigie Borbor Kanu, alias 'Five-Five'—were each convicted in Trial Chamber II on eleven counts of war crimes and crimes against humanity.⁵¹ A month later, on 19 July, Brima and Kanu were jailed for 50 years each and Kamara for 45 years. There were no mitigating circumstances; the accused had committed violations of human rights in which civilians were mutilated, and other civilians were killed and burned in their houses; an entire village, Karina, was exterminated. They were also the first people convicted by an international tribunal of recruiting child soldiers and had also abducted children for slavery, forcing them to work as labourers in diamond mines.⁵² On 22 February 2008 the Appeals Chamber unanimously upheld their convictions by the Trial Chamber and affirmed their sentences. They are likely to serve their prison sentences in Europe rather than Sierra Leone (as is the case in the Charles Taylor trial). However, an important finding of the court was that acts of forced marriage amount to a separate crime under international law, distinct from the crime of sexual slavery already recognized as a crime against humanity in article 2(g) of the court's statute. Although the provision did not need to be applied in this case, forced marriage was an inhumane act within the meaning of article 2(i) of the statute, which dealt with the residual category of crimes against humanity not specified elsewhere.⁵³ This is the first such finding by any international court.

⁴⁷ 'Money troubles at trial of first African leader to face a war crimes court', *The Times*, 22 April 2008.

⁴⁸ Art. 17(4)(d) of the statute applies.

⁴⁹ 'Court chases \$375m from Liberian Taylor's banks', Reuters, 8 May 2008, <http://www.alertnet.org/thenews/newsdesk/Lo8919636.htm>.

⁵⁰ 'Court grants Charles Taylor more money for defense in Sierra Leone war crimes trial', *International Herald Tribune (AP)*, 6 July 2007.

⁵¹ See <http://www.sc-sl.org/documents/AFRC/SCSL-04-16-T-628A.pdf>.

⁵² See <http://www.sc-sl.org/documents/AFRC/SCSL-04-16-T-624.pdf>.

⁵³ See <http://www.sc-sl.org/documents/AFRC/SCSL-04-16-A-675.1.pdf>, paras 175–203. Also Charles C. Jalloh

The end of impunity?

On 2 August 2007 Trial Chamber I handed down its first judgment, against two former leaders of the CDF militia. Moinina Fofana and Allieu Kondewa were convicted on four counts of murder, cruel treatment, pillage and collective punishments. Kondewa was convicted on an additional count for the recruitment of child combatants under the age of 15. They were found not guilty on two counts of crimes against humanity and one count of war crimes. In addition, Fofana was found not guilty on the charge of recruitment of child combatants. Justice Bankole Thompson, in a separate and partially dissenting opinion from the other two judges, found both accused not guilty and acquitted them on all eight counts.⁵⁴ On 9 October Fofana and Kondewa were given six- and eight-year gaol sentences to run from 29 May 2003, the date the two were taken into custody by the Special Court.⁵⁵ This case has proved controversial, as many Sierra Leoneans saw the CDF—also known as the Kamajor militia—as a force that fought to defend the civilian population against brutal rebel groups such as the RUF; the CDF's efforts to restore Sierra Leone's democratically elected government led to their receiving shorter sentences than might otherwise have been the case. This is also why there was a public outcry when Samuel Hinga Norman, the interior minister, who as deputy defence minister had led the CDF, was indicted in 2003. He died in custody in Dakar, Senegal, in February 2007 while awaiting a verdict.

However, in a majority judgment handed down on 28 May 2008 the Special Court Appeals Chamber held that the Trial Chamber had erred in considering political motives or fighting in a 'just' cause as mitigating factors in sentencing and more than doubled the sentences. Fofana's sentence was increased from six to 15 years and Kondewa's from eight to 20 years. The Special Court has, therefore, followed the approach taken by the ICTR and the ICTY, namely, that all parties in a conflict must abide by the same rules and be subject to the same punishments. Two new convictions were also entered against both men, for murder and inhumane acts as crimes against humanity, as they had deliberately directed attacks against the civilian population as well as military targets. However, their conviction for collective punishments was overturned, as was that of Kondewa for recruiting child soldiers.⁵⁶

The former leader of the AFRC, Johnny Paul Koroma—who seized power from the elected leader Ahmad Tejan Kabbah in 1997 and later formed an alliance with the RUF—is missing. As his fate is unknown, the indictment against him still stands. Both Foday Sankoh, the RUF leader, and his deputy commander Sam Bockarie (best known under his *nom de guerre* Mosquito) have died, in June and August 2003 respectively, and the indictments against them were withdrawn on 8 December 2003. Setting the Taylor case to one side, this leaves the court with the continuing trial of the three RUF defendants, namely, Issa Hassan Sesay (the RUF's final military leader); Augustine Gbao, the RUF's internal security chief;

and Janewa Osei-Tutu, 'Prosecutor v. Brima, Kamara, and Kanu: first judgment from the Appeals Chamber of the Special Court for Sierra Leone', *ASIL Insight* 12:10, 20 May 2008.

⁵⁴ See <http://www.sc-sl.org/documents/CDF/SCSL-04-14-T-785A.pdf>.

⁵⁵ See <http://www.sc-sl.org/documents/CDF/SCSL-04-14-T-796.pdf>.

⁵⁶ See press release of 28 May 2008 at <http://www.sc-sl.org/Press/pressrelease-052808.pdf>. The appeal judgment is now available online at <http://www.sc-sl.org/documents/CDF/SCSL-04-14-A-829.pdf>.

and a key battlefield commander, Morris Kallon.⁵⁷ This is nearly completed and judgment by the Trial Chamber is expected later in 2008.

Off to a false start: Taylor's trial delayed to January 2008

As for Taylor's trial, there were only three sittings of the court in 2007—on 4 June, 25 June and 3 July. The accused absented himself from the first two sittings and appeared briefly in court on 3 July. He had been represented by an assigned defence counsel, but on the opening day of the trial he dismissed this counsel, British barrister Karim Khan, and stated that he would represent himself at trial. It was clearly not in Taylor's best interests that he should represent himself, and no one wished to see a repeat of the Milosevic trial, where the accused's health completely collapsed under the strain of such a taxing ordeal. Under rule 45(E) of the court's rules of procedure and evidence, the Trial Chamber can refuse permission for counsel to withdraw from a case unless there are the most exceptional circumstances justifying it. The earlier Norman case in Trial Chamber I seemed to indicate that an accused's decision to represent himself does not constitute such circumstances, and that the lawyers are answerable to the court rather than the accused; this differs from the situation under English law, which requires them to be answerable solely to their clients.⁵⁸ However, Khan was not forced to continue in his role. On 25 June the presiding judge, Judge Sebutinde, determined that Taylor's refusal to appear was tantamount to boycotting the proceedings. While the trial could proceed in the absence of the accused under rule 60, there was clearly concern that the accused's fair trial rights under article 17 of the court statute would be violated if an interim duty counsel or defence team did not have adequate time or support to prepare their representation of Taylor properly. The prosecution team at that time was larger and had greater legal experience. On 3 July the court decided to postpone the trial proceedings until 20 August as there had to be some balance between the prosecution and defence teams. Taylor insisted on being represented by a leading Queen's Counsel, and this led to the appointment of Courtenay Griffiths QC as Taylor's chief defence counsel on 17 July. Subsequently, on 20 August 2007, the court decided to delay proceeding with the trial until 7 January 2008 to give the defence team more time to evaluate new evidence which had come to light in the form of a 20-box archive of the former president's papers and to prepare their case. The prosecution had had far longer to establish its case and supported the defence's request for a delay. At a final trial status conference held on 11 December 2007 the presiding judge confirmed that the trial would resume on 7 January 2008.⁵⁹

⁵⁷ Case no. SCSL-04-15-T.

⁵⁸ Decision on the application of Samuel Hinga Norman for self-representation under art. 17(4)(d) of the statute of the Special Court, case no. SCSL-04-14-T-125, 8 June 2004, esp. paras 23–5 and 30–2, available at <http://www/sc-sl.org/documents/CDF/SCSL-04-14-T-125.pdf>.

⁵⁹ For full details of the court's proceedings see <http://www.charlestaylortrial.org>. This is a website set up by Clifford Chance LLP, Open Society Justice Initiative and others to monitor the trial of Charles Taylor.

The end of impunity?

Where does this leave matters? As there has only been a six-month delay, the repercussions are not likely to be too serious unless some further and unexpected protracted interruption to the trial occurs. The fairness and transparency of the legal process have to be paramount in such a significant trial. If the current timeframe of 12–18 months is adhered to, the additional cost may not become too problematic an issue—at least no more than it is at present. It is nonetheless true that the periods of pre-trial detention were longer than originally anticipated in all the cases that have come before the court, as a result of the need to consider jurisdictional issues and to allow the defence to conduct its investigations. The appeals stage in the three cases being heard in Freetown is expected to be completed by the end of 2008, and the conclusion of the corresponding stage of the Taylor case is projected for the end of 2009, though this depends on how many delays there are in the actual court proceedings between now and then.

Looking to the future

While the Special Court of Sierra Leone is undoubtedly part of the radical transformation that the institutions, rules and procedures of international law have undergone since the mid-1990s, it is not without flaws, whatever the final outcome of Charles Taylor's trial. The fact that many of the accused have committed multiple crimes in many localities means that the few trials that do take place are costly and take a long time to reach a verdict on the basis of voluminous documentation and testimony. In fact, the shortest trial (that of the AFRC) has lasted over two years, with the end result that some of the most high-profile accused, such as Sankoh, have died before justice could be meted out to them. On a more positive note, there may be a greater fear of prosecution and less tolerance of impunity than in the past, particularly if Taylor is duly convicted; this in turn may lead to a greater level of peace and stability in the region and help the country to break with its recent past. What cannot be disputed is that well-developed standards of accountability are applied in customary international law, whichever tribunal is used, and that there is an increased commitment within the international community to the whole concept of international justice. It has become both more feasible and more credible. The Special Court also appears to have learned how to avoid the risk of facing disruptive tactics such as those employed by the defendants in the Milosevic and Saddam Hussein trials, with the result that the Taylor trial is progressing well.⁶⁰ The death penalty cannot be imposed on Charles Taylor under the terms of the Special Court's statute,⁶¹ but if he is convicted and sentenced the victims of the civil war will have received some measure of justice and the country should be able to focus on the urgent need to build a more viable political and economic future.

⁶⁰ See 'Taylor trial unique but sends key signal on impunity', Reuters, 18 May 2008, <http://www.reuters.com/article/newsOne/idUSL1228761320080518>, last accessed 13 June 2008 (see <http://charlestaylortrial.org/news/>). Also Michael P. Scharf, 'Chaos in the courtroom: controlling disruptive defendants and contumacious counsel in war crimes trials', *Case Western Reserve Journal of International Law* 39: 3, 2007, pp. 155–70.

⁶¹ Art. 19 of the statute of the SCSL permits only imprisonment and the forfeiture of any property, proceeds and assets acquired unlawfully or by criminal conduct.

The very specific and limited brief of the Special Court may mean that it is in some respects unique, representing a modified template of other international courts, which does not point the way forward in the long term. Impunity may have become a dirty word in international law, but processes have to be found which are both more efficient and less costly. Some, such as the journalist John Laughland, are highly critical, arguing that the Special Court and other modern international tribunals are too closely tied in with the western powers who are conducting what are really politically based show trials to demonstrate their superior status to poor and failed states.⁶² As such they are the instruments of victors' justice and the entire legal process therefore lacks independence and impartiality. Yet these new institutions are simply building on existing legal systems to try to create a better model for the future, and it is a matter of learning by experience. Apart from the reconciliation and healing that can be achieved on the African continent through the medium of truth commissions, there is a clear need for more practical solutions on the ground as the international community is reluctant to spend more money on setting up new institutions to administer post-conflict justice. Peace without justice can never be a lasting peace. One very strong suggestion is to set up and train rapid response teams who would go in as the first representatives of the international community and whose expertise and assistance would be deployed at the request of a state or the government in power to identify, collect and preserve the most perishable information—from mass grave sites, for example—which would be of evidentiary value in applying both retributive and restorative justice at a later stage.⁶³ The interests of both witnesses and victims would be protected and vast expenditure on institutional mechanisms of accountability might be avoided or at least scaled down. A feasibility study has been completed, but the project is not yet operational.

What will be the long-term legacy of Taylor's trial and of the court itself? Members of the local bar have worked on all the defence teams before the Special Court, because of the requirement that at least one member of each team have experience in Sierra Leonean law. These contacts 'could present the local judiciary with an alternative to the rule of bribery, the offerings of satellite dishes or tuition for a child's schooling abroad or any smaller token remotely affordable, that generally meant there was no reason to show up in court at all'.⁶⁴ The knowledge they will have gained of international and criminal law in practice will prove invaluable in the future as the rule of law is restored in the society as a whole, and this will also enable them to prosecute lesser offenders in the domestic courts after the Special Court has completed its task. Yet in a country such as Sierra Leone there is also clearly a need to incorporate traditional justice systems into the national judicial system, as only then will the full truth of what happened come to light and long-term peaceful coexistence, rather than the mere outward façade of reconciliation,

⁶² See John Laughland, *Travesty: the trial of Slobodan Milosevic and the corruption of international justice* (London/Ann Arbor: Pluto, 2007).

⁶³ See Justice Rapid Response website, <http://www.justicerapidresponse.org/index.htm>, last accessed 13 June 2008.

⁶⁴ Daniel Bergner, *Soldiers of light* (London: Penguin, 2005), p. 183.

The end of impunity?

become a real possibility. Retributive or victor's justice of the kind that is likely to fall on the head of Charles Taylor and other top commanders, if and when they are convicted and sentenced by the Special Court, may help assuage the conscience of the international community and offer some solace to their victims; but it is the long-term work done on the ground in the domestic courts and by those who are prepared to interact with the victims of the atrocities which will ultimately lead to a more healthy future for the country. As for whether the expectations of the people of Sierra Leone will be met in reality by the verdict of the court, helping to build a path towards long-term peace, reconciliation and social reconstruction, this remains to be seen.