

Head of State Immunity in International Criminal Law

A Case Study on Charles Taylor

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HEAD OF STATE IMMUNITY

Louis XIV's infamous statement, '*L'etat c'est moi*', accurately portrays how the idea of Head of State immunity was viewed in the past when it came to International Criminal Law. The Head of State was considered to be the State itself and therefore, as the State was immune, so was the Head of State in whose person the sovereign power of the State is invested.

The Nuremberg Trials, critical to the development of modern International Criminal Law, did not accept this notion of Head of State immunity. Although Hitler had committed suicide and therefore could not be brought before the Nuremberg Tribunal, in his place stood Karl Dönitz who according to Hitler's last will and testament was to succeed him as Führer. Although he was the official Head of State, the International Military Tribunal in Nuremberg found him guilty and he was sentenced to ten years' imprisonment.¹ Principle III of the Principles of Nuremberg, which were adopted by the United Nations International Law Commission in 1950,² clearly states that:

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.³

¹ 'Admiral Karl Dönitz (1891 - 1980)' *BBC News* <http://www.bbc.co.uk/history/historic_figures/donitz_karl_admiral.shtml> accessed 19 October 2013

² 'Principles of the Nuremberg Tribunal, 1950' <<http://deoxy.org/wc/wc-nurem.htm>> accessed 19 October 2013

³ Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal 1950 Principle III

The idea of Head of State immunity in International Criminal Law was tested in the International Court of Justice (hereinafter referred to as 'ICJ'), in *Democratic Republic of Congo v Belgium*, also known as the Yerodia Case.⁴ The case arose when a Belgian Court issued an arrest warrant against Yerodia Ndombasi, who at the time was the Minister for Foreign Affairs of the Democratic Republic of Congo. In retaliation, the Democratic Republic of Congo requested the ICJ to quash the arrest warrant on the basis that Yerodia enjoyed ministerial immunity. Inter alia, the ICJ finally decided that Belgium's issuance of an arrest warrant against Yerodia violated Belgium's international obligations towards the Democratic Republic of Congo. The ICJ made it clear that sitting Heads of State and foreign ministers enjoy immunity from the jurisdiction of foreign domestic courts including immunity from prosecution for international crimes. However in its findings, the Court indicated that if the Head of State or foreign minister is to be prosecuted in front of an *international tribunal*, they cannot benefit from Head of State immunity.

THE CASE OF CHARLES TAYLOR

*Prosecutor v Charles Ghankay Taylor*⁵ is a recently decided case that involves the issue of Head of State immunity in International Criminal Law. Charles Taylor was the President of the state of Liberia, a country that shares a border with Sierra Leone. Taylor was accused of helping Sierra Leonean rebels who were enslaving people to work in diamond mines. In return for his help, the rebels gave Charles Taylor a significant amount of diamonds, known as blood diamonds. On 4 June 2003 the Special Court for Sierra Leone (hereinafter referred to as 'SCSL') indicted Charles Taylor on eleven counts.⁶ Taylor fled to Nigeria, however he was finally arrested and brought before the SCSL.

One of the issues that was brought up was whether the SCSL was, in fact, an international tribunal. The Yerodia case had established that it was only such an international tribunal that would be able to prosecute a Head of State under International Criminal Law. The SCSL is a hybrid court that was 'established by an Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000'.⁷ The SCSL declared itself an international criminal tribunal and decided, therefore, that it could

⁴ *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)* Judgment, I.C.J. Reports 2002, p 3 <<http://www.icj-cij.org/docket/files/121/8126.pdf>> last accessed 19 October 2013

⁵ *Prosecutor v Charles Ghankay Taylor* [2012] Special Court for Sierra Leone Trial Chamber II SCSL-03-01-T <<http://www.sc-sl.org/LinkClick.aspx?fileticket=k%2bo3KREPCQ%3d&tabid=107>> accessed 19 October 2013

⁶ Alpha Sesay, 'Trial Background' <<http://www.charlestaylortrial.org/trial-background/>> accessed 19 October 2013

⁷ Statute of the Special Court for Sierra Leone 2002

prosecute Charles Taylor. Another question raised was whether Charles Taylor could be prosecuted in the SCSL, as he was a Liberian national not a Sierra Leonean national. The Court ruled that Charles Taylor fell under its jurisdiction because, even though he was not from Sierra Leone himself, in its Statute the SCSL 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'.⁸ It was decided that Charles Taylor fell under this competence as he had committed acts that violated humanitarian law within Sierra Leone. Charles Taylor pleaded not guilty to all counts in the indictment.⁹

The situation in West Africa gave rise to the bid to have Taylor's trial moved to The Hague as it was feared that it would spark renewed conflict in the region. The Dutch Government accepted hosting the trial on the condition that another country would agree to take the accused after the trial had finished.¹⁰ On 15 June 2006, the United Kingdom agreed to this condition and passed new legislation that would allow Taylor to be imprisoned in the United Kingdom if he were to be found guilty in The Hague.¹¹ The United Nations then passed Security Resolution 1688 on 16 June 2006 which allowed a chamber of the SCSL to 'sit outside of its jurisdiction'¹² on the premises of the International Criminal Court. Security Resolution 1688 also requested the states to co operate to ensure Taylor's appearance in the Netherlands. After a number of interruptions, including Taylor's boycotting of the proceedings because he felt that he would not receive a fair trial,¹³ the trial officially began on 7 January 2008.

The Prosecution charged Charles Taylor with eleven counts:

Five counts of crimes against humanity (murder, rape, sexual slavery, other inhumane acts and enslavement); five counts of war crimes (acts of terrorism, murder, outrage upon personal dignity, cruel treatment, pillage); and one count of other serious violation of international humanitarian law (enlisting children under the age of 15 years into armed forces).¹⁴

The Defence did not deny that crimes against humanity had in fact been carried out in Sierra Leone; however it insisted that Charles Taylor was not responsible

⁸ Ibid, Article 1(1)

⁹ *Prosecutor v Charles Ghankay Taylor* [2012] Special Court for Sierra Leone Trial Chamber II SCSL-03-01-T < <http://www.sc-sl.org/LinkClick.aspx?fileticket=k%2b03KREEPQ%3d&tabid=107>> accessed 19 October 2013

¹⁰ Sesay (6)

¹¹ International Tribunals (Sierra Leone) Act 2007

<http://www.legislation.gov.uk/ukpga/2007/7/pdfs/ukpga_20070007_en.pdf> accessed 20 October 2013

¹² UN Security Resolution 1688 2006 < <http://www.un.org/News/Press/docs/2006/sc8755.doc.htm>> accessed 19 October 2013.

¹³ 'Taylor, Charles' (The Hague Justice Portal)

<<http://www.haguejusticeportal.net/index.php?id=6414>> accessed 20 October 2013

¹⁴ Ibid

for these crimes. The Defence also stated that Charles Taylor had 'played a substantial role in fostering peace and security in Sierra Leone'¹⁵ and that Taylor was being prosecuted on 'the basis of political motives and interests'.¹⁶

On 26 April 2012, after months of deliberations, Taylor was found guilty by the SCSL for aiding and abetting on all eleven charges and for planning attacks on a number of Sierra Leonean towns including Freetown, Kono, and Makeni. On May 30 2012 the judges sentenced Taylor to fifty years' imprisonment. The case was appealed¹⁷ but on 26 September 2013 the Appeals Chamber of the SCSL confirmed the decision.¹⁸ Taylor expressed his wish to serve his sentence in Rwanda rather than in the UK because he believed that it would be easier for his family to visit him in Rwanda and because he 'feared being attacked in a British prison'.¹⁹ However, as had been previously agreed, on 15 October 2013 Taylor was taken to the United Kingdom and handed over to prison service representatives to begin serving his fifty year sentence.

EFFECTS OF THE TRIAL

Charles Taylor's case is relevant to the issue of Head of State immunity in International Criminal Law as he is the 'first former Head of State to be convicted for war crimes by an international criminal tribunal since Nuremberg in 1946'.²⁰ In 2012 Human Rights Watch released a report entitled 'Even a 'Big Man' Must Face Justice'.²¹ In it, Human Rights Watch affirmed that one of the most important results of this trial was its enforcement of the idea of accountability for one's crimes, immaterial of whether one is or was a Head of State or not. Human Rights Watch concluded that Taylor's trial developed further respect for human rights and the

¹⁵ *Prosecutor v Charles Ghankay Taylor* [2012] Special Court for Sierra Leone Trial Chamber II Judgment Summary <<http://www.sc-sl.org/LinkClick.aspx?fileticket=86ronQUtKo8=>> accessed 20 October 2013

¹⁶ Ibid

¹⁷ Alpha Sesay, 'Prosecution and Defense to Appeal Charles Taylor Judgment and Sentence' (charlestaylortrial.org) <<http://www.charlestaylortrial.org/2012/07/20/prosecution-and-defense-to-appeal-charles-taylor-judgment-and-sentence/>> accessed 20 October 2013

¹⁸ Alpha Sesay, 'Appeals Chamber Upholds Taylor's Jail Sentence' (charlestaylortrial.org) <<http://www.charlestaylortrial.org/2013/09/26/appeals-chamber-upholds-taylors-jail-sentence/>> accessed 20 October 2013

¹⁹ 'Liberia's Charles Taylor prefers Rwandan jail to UK' (bbc.co.uk 2013) <<http://www.bbc.co.uk/news/world-africa-24520489>> accessed 20 October 2013

²⁰ 'Prosecutor Hollis Welcomes the Historic Final Judgment in the Charles Taylor case PRESS RELEASE' (sc-sl.org) <<http://www.sc-sl.org/LinkClick.aspx?fileticket=aZeuIE4mUa4%3d&tabid=53>> accessed 20 October 2013

²¹ Human Rights Watch, 'Even a 'Big Man' Must Face Justice' (hrw.org 2012) <<http://www.hrw.org/sites/default/files/reports/sierraLeone0712ForUpload.pdf>> accessed 20 October 2013

notion of rule of law. Even a 'charismatic leader'²² such as Taylor could be brought to trial and convicted for sowing 'violence and chaos.'²³

Charles Taylor's case is a reflection of the growing trend in International Law whereby all persons are accountable for their crimes, even if they are Heads of State or former Heads of State. In the words of the Chief Prosecutor for the SCSL, Brenda J Hollis:

The Appeals Chamber today confirmed what the Trial Chamber made clear, that Heads of State will be held to account for war crimes and other international crimes. No person, no matter how powerful, is above the law. Today's judgment affirms that with leadership comes not just power and authority, but also responsibility and accountability.²⁴

²² Ibid 40

²³ Ibid 40

²⁴ 'Prosecutor Hollis Welcomes the Historic Final Judgment in the Charles Taylor case PRESS RELEASE' (sc-sl.org) <<http://www.sc-sl.org/LinkClick.aspx?fileticket=aZeuIE4mUa4%3d&tabid=53>> accessed 20 October 2013