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# Constructions of Legitimacy: The Charles Taylor Trial

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## Abstract<sup>1</sup>

This article examines the discourses of the prosecution and the defence in the case of Charles Taylor before the Special Court for Sierra Leone. It contributes to current debates about the legitimacy and utility of international criminal justice, which have tended to neglect the examination of actual trials, and particularly the role of the defence. We draw on the legal doctrine of 'expressivism' to theorize the connection between normative legitimacy, actual support and the utility of international criminal justice as dynamic and partly determined in court. We conclude that the Taylor trial demonstrates three interrelated obstacles to the fulfilment of the expressivist promise: that a tension between criminal proceedings against a single person and truth telling about mass violence necessarily exists; that discourses do not appeal to all audiences equally, and that those which appeal to western audiences are likely to be privileged; and that these weaknesses will usually be exposed and exploited by the defence, weakening the legitimacy of case and court. In order to develop expressivism as an empirical theory, the elements of the actors, the audiences and the stage in the posited 'courtroom drama' require further research.

**Keywords:** Charles Taylor, SCSL, expressivism, legitimacy, international criminal justice

## Introduction

In the last few years, the literature on international criminal courts has shifted from a lawyer-dominated enthusiastic appraisal of their innovative features to a more critical evaluation by social scientists. Among policy makers, the ground is also shifting. African Union states, once enthusiastic supporters of the International Criminal Court (ICC), have refused to help serve the arrest warrant

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against Sudanese President Omar al-Bashir, and western donors are questioning whether sponsoring expensive tribunals is the best use of funds for postconflict societies.<sup>2</sup> It could be argued without exaggeration that the courts themselves are as much on trial as the accused. In the light of the highly ambitious expectations with which they were set up, the subsequent disenchantment should come as no surprise. UN Security Council Resolution 1315 (2000), for instance, promoted the establishment of the Special Court for Sierra Leone (SCSL),

recognizing that, in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.

The academic literature has in recent years come to question all the effects the Security Council so confidently ‘recognizes.’ It comprises virulent debates on whether international criminal courts are indeed experienced, by local populations in particular, as a credible system of justice and accountability,<sup>3</sup> and whether they contribute to reconciliation and lasting peace.<sup>4</sup> While this literature has thrown up valuable insights into the problematic sociopolitical character of such courts, the debates on the relative advantages of global versus local justice, and on the relation between peace and justice, are threatening to come to a polemical stalemate.<sup>5</sup>

These recent debates on the social value of international criminal courts have to date remained rather disconnected from the detailed examination of what actually happens in the courtroom, which tends to be left to legal scholars.<sup>6</sup> More particularly, while prosecutors are credited with some agency in influencing the perceived legitimacy of courts, primarily outside the courtroom, the potential role

<sup>2</sup> Sara Kendall, ‘Donors’ Justice: Recasting International Criminal Accountability,’ *Leiden Journal of International Law* 24(3) (2011): 585–606.

<sup>3</sup> See, for instance, Tim Allen, *Trial Justice: The International Criminal Court and the Lord’s Resistance Army* (London: Zed Books, 2006); Donna E. Arzt, ‘Views on the Ground: The Local Perception of International Criminal Tribunals in the Former Yugoslavia and Sierra Leone,’ *Annals of the American Academy of Political and Social Science* 603(1) (2006): 226–239; Adam Branch, ‘Uganda’s Civil War and the Politics of ICC Intervention,’ *Ethics and International Affairs* 21(2) (2007): 179–198; Maxine Kamari Clarke, *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa* (New York: Cambridge University Press, 2009); Victor Peskin, ‘Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme,’ *Journal of International Criminal Justice* 3(4) (2005): 950–961.

<sup>4</sup> See especially, Kasaija Phillip Apuuli, ‘The ICC Arrest Warrants for the Lord’s Resistance Army Leaders and Peace Prospects for Northern Uganda,’ *Journal of International Criminal Law* 4(1) (2006): 179–187; Helena Cobban, ‘Think Again: International Courts,’ *Foreign Policy* 153 (2006): 22–28; Julie Flint and Alex de Waal, ‘Case Closed: A Prosecutor Without Borders,’ *World Affairs* 171(4) (2009): 23–38; Jack Snyder and Leslie Vinjamuri, ‘Trials and Errors: Principle and Pragmatism in Strategies of International Justice,’ *International Security* 28(3) (2003): 5–44.

<sup>5</sup> Kimberley Theidon, Editorial Note, *Whose Justice? Global and Local Approaches to Transitional Justice*, special issue of *International Journal of Transitional Justice* 3(3) (2009): 295–300.

<sup>6</sup> Exceptions include Tim Kelsall, *Culture under Cross-Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press, 2009); Gerry J. Simpson, *Law, War and Crime: War Crimes Trials and the Reinvention of International Law* (Cambridge: Polity Press, 2007); Nancy A. Combs, *Guilty Pleas in International Criminal Law: Constructing a Restorative Justice Approach* (Stanford, CA: Stanford University Press, 2007).

of the defence in undermining such legitimacy within the context of the trial has been largely neglected. Here, an important explanation for why the legitimacy of these courts has been contested in practically every trial may be missed.

In a wider research project, we consider how notions of justice and legitimacy are constructed in the course of trial proceedings by examining the discourses of both prosecutors and high-profile accused persons. The underlying assumption is that while the court cases are ostensibly only concerned with establishing the legal guilt or innocence of the accused, the prosecution and the defence are simultaneously constructing narratives about the political legitimacy of the accused as an actor in a past or ongoing conflict, as well as the political legitimacy of the court itself as another such actor. Hence, the trial can be seen as a discursive battle for legitimacy.

This article will limit itself to analysing the narratives of the prosecution and the defence in the case of Charles Taylor before the SCSL. The Taylor trial lends itself particularly well to such an examination. Charles Taylor is only the second former head of state on trial before an international tribunal, after the five-year trial of Slobodan Milošević, which ended without a verdict when he died in 2006. Taylor's is both the most high-profile and the last case before the SCSL, and it may hold lessons regarding the political implications of court rhetoric in potential ICC cases against al-Bashir or Saif al-Islam Gaddafi. At the time of writing, both sides have finished their final pleas and await the verdict of the SCSL judges.

In our next section, we briefly discuss the concept of legitimacy and the value of the theory of expressivism to our understanding of the legitimacy of international criminal courts. We then spell out our understanding of discourse analysis and our methodological operationalization. The third section describes the background to the conflict, the SCSL and the Taylor case. The fourth and fifth sections present the discourses of the prosecution and the defence, respectively. Finally, employing the notion of expressivism, we assess how these competing discourses have affected the legitimacy of the SCSL and the Taylor trial in particular.

## Legitimacy and Discourse Analysis

### Legitimacy

Elsewhere, we have applied Allen Buchanan and Robert Keohane's distinction between normative and sociological legitimacy<sup>7</sup> to international criminal courts.<sup>8</sup> Normative legitimacy derives from the position that a court has moral authority to concern itself with the case in question. It may rely on backward-looking arguments, such as retribution, accountability or official truth telling, or on forward-looking, consequentialist arguments, such as preventive effects, reconciliation effects, closure for victims or instilment of respect for the rule of law.

<sup>7</sup> Allen Buchanan and Robert O. Keohane, 'The Legitimacy of Global Governance Institutions,' *Ethics and International Affairs* 20(4) (2006): 405–437.

<sup>8</sup> Tim Meijers, 'Legitimacy, International Courts and Citizenship' (MA thesis, University of Amsterdam, 2010).

Sociological legitimacy, or acceptance of the authority of courts and their trials and verdicts, is an empirical question for the social scientist and has many faces. A realist approach to sociological legitimacy would be that the only relevant acceptance is that of powerful actors in international politics, who accept and indeed support a court only for their own ends. A critical theory approach, paradoxically, is based on the same assumption, but stresses the discursive framework used to obscure and depoliticize such realities. A cosmopolitan approach would be to suggest that a court represents ‘the international community’ or perhaps even ‘mankind,’ but would be likely to infer such acceptance on the basis of a normative argument, rather than taking global opinion polls. A communitarian approach focuses on acceptance by the population affected by the violent acts that are being adjudicated. A victim-centred approach, finally, stresses acceptance by and utility value for the direct victims of the crimes.

While many acknowledge the interconnection between the normative and sociological legitimacy of international criminal courts, the ‘expressivist’ doctrine in legal sociology is a rare attempt to theorize this connection. It constructs the relation between court cases and their audiences as dynamic. As Mark Drumbl notes,

Expressivists contend that trial, conviction, and punishment appreciate public respect for law . . . Expressivism also transcends retribution and deterrence in claiming as a central goal the crafting of historical narratives, their authentication as truths, and their pedagogical dissemination to the public.<sup>9</sup>

It does so by means of its performance value:

Trials can educate the public through the spectacle of theatre – there is, after all, pedagogical value to performance and communicative value to dramaturgy. This performance is made all the more weighty by the reality that, coincident with the closing act, comes the infliction of shame, sanction, and stigma upon the antagonists.<sup>10</sup>

Through truth telling and shaming perpetrators, international trials can contribute to restoring faith in, and exercise of, the rule of law. In Drumbl’s account, this function can be simultaneously achieved across different audiences: local, national and global.

Our intention is not to test support for the SCSL or the Taylor trial with its potential audiences. Instead, we examine how legitimacy is constructed and challenged in the discourses of the prosecution and the defence. In doing so, we seek to establish the extent to which what is said and done during the trial confirms Drumbl’s argument that international criminal trials are an exercise in expressivism, and that as such they can contribute to establishing and disseminating a historical truth, attaching stigma to perpetrators and restoring faith in

<sup>9</sup> Mark A. Drumbl, *Atrocity, Punishment, and International Law* (New York: Cambridge University Press, 2007), 173.

<sup>10</sup> *Ibid.*, 175.

the rule of law. This list does not exhaust the potential functions ascribed to such trials by expressivism. Diane Amann names the same functions but also considers whether ‘international criminal adjudication can “recompense, repair, help victims,”’<sup>11</sup> and pacify them, although she finds the latter claim ‘somewhat breathtaking, and belied by the prolongation of conflict in the Balkans.’<sup>12</sup> While we do consider the invocation of victims and of reconciliation in the discourses, we focus primarily on truth and shaming as vehicles for restoring faith in the rule of law. We have made this choice, first, because these are the functions most directly related to the in-trial discourses and, second, because these can be considered the more basic and minimal requirements for the fulfilment of the expressivist potential.

## Discourse Analysis

The approach to discourse analysis proposed here draws on critical linguistics and poststructuralism, but has a more functional orientation, focusing on what discourses are designed to accomplish.<sup>13</sup> It is less concerned with ways in which social actors are themselves constituted by discourse, but instead concentrates on the constructive use of language,<sup>14</sup> treating texts as organized rhetorically, establishing a particular version of social reality in competition with others.<sup>15</sup>

The main method of discourse analysis has been close textual analysis. We downloaded the entire set of SCSL transcripts concerning the Taylor trial, covering June 2007 to March 2011 and amounting to almost 50,000 pages. Since we were only interested in the discourses of the prosecution and the defence, transcripts that dealt primarily with witness statements were excluded, except in cases where the prosecution or the defence used these as occasions for more extensive (in Sandra Harris’ term, ‘narrative’)<sup>16</sup> statements of their own.<sup>17</sup> This left us with approximately 30 percent of the transcripts, which we subjected to a close reading.<sup>18</sup> On the basis of this analysis, two master

<sup>11</sup> Diane Marie Amann, ‘Assessing International Criminal Adjudication of Human Rights Atrocities,’ *Third World Legal Studies* 16(1) (2003): 174.

<sup>12</sup> Amann’s own evaluation of the ‘expressivist record’ of international criminal adjudication at the time she wrote was highly critical, yet holding out hope for advances. Her approach differs from ours in that she considers challenges to expressivism in the architecture of international criminal law, rather than in the actual messaging going on in trial proceedings.

<sup>13</sup> Rosalind Gill, ‘Discourse Analysis,’ in *Qualitative Researching with Text, Image and Sound: A Practical Handbook for Social Research*, ed. Martin Bauer and George Gaskell (London: Sage, 2000).

<sup>14</sup> Jonathan Potter, Margaret Wetherell, Ros Gill and Derek Edwards, ‘Discourse: Noun, Verb or Social Practice?’ *Philosophical Psychology* 3(2) (1990): 205–217.

<sup>15</sup> Michael Billig, *Ideology and Opinions: Studies in Rhetorical Psychology* (London: Sage, 1991).

<sup>16</sup> Sandra Harris, ‘Fragmented Narratives and Multiple Tellers: Witness and Defendant Accounts in Trials,’ *Discourse Studies* 3(1) (2001): 57.

<sup>17</sup> Since there was a substantial amount of material to analyse from the ‘direct speech’ of the prosecution on the one hand and the defendant and his lawyer on the other hand, we did not analyse whether or to what extent both sides tried to or succeeded in making points indirectly through the questioning of witnesses.

<sup>18</sup> About one-third of this material, or 10% of the total pages, were read by both of us for intersubjective validation of the analysis and coding.

coding frames,<sup>19</sup> one for the prosecution and one for the defence, were drawn up and continually adjusted until theoretical saturation was reached.

Subsequently, the entire set of transcripts was subjected to certain word searches that emerged from the manual coding as particularly salient. Press interviews with the chief defence counsel were also analysed, and visits were made to the SCSL in order to directly observe the ‘courtroom drama.’<sup>20</sup>

On the side of the prosecution, we coded speeches by the entire team, but with an emphasis on Stephen Rapp, who opened the case as chief prosecutor in 2007, and Brenda Hollis, initially the principal attorney, who took over as chief prosecutor in February 2010. We found that while each prosecutor had a slightly different personal style, there was a remarkable continuity in the discourses of the prosecutorial team throughout the case. On the defence side, we concentrated on Charles Taylor’s speeches about himself in the six months he was on the stand as the main defence witness, but also included statements by his chief defence counsel, Courtenay Griffiths. Again, we found much overlap, and in particular many instances where Griffiths elicited statements from Taylor that he then used as a point of departure for furthering an argument.

## The Conflict, the Court, the Case

The war in Sierra Leone started in 1991, when Foday Sankoh launched an attack from neighbouring Liberia with his Revolutionary United Front (RUF) against the Momoh government.<sup>21</sup> After a series of coups, President Ahmad Tejan Kabbah was elected, but his government, too, was overthrown by the Armed Forces Revolutionary Council (AFRC), which forged an alliance with the RUF. In 1998, Kabbah was restored to power by a West African intervention force, but the AFRC and the RUF attacked Freetown in January 1999. Finally, with the help of civil militias, Economic Community of West African States (ECOWAS) and UN troops (mostly British) drove the RUF back and a new peace was agreed at Lomé in 1999. Sporadic fighting continued until 2002.

The RUF and the AFRC committed large-scale atrocities. The most common atrocity was amputation: thousands lost arms, legs, ears or other parts of their bodies. Child soldiers were used on a large scale; girls and women were systematically raped and kidnapped to become ‘bush wives’; people were forced to do slave labour; and villages were burned to the ground.

<sup>19</sup> The master frame, too long to reproduce, will be available on our websites: University of Amsterdam, ‘Dr. M.E. (Marlies) Glasius,’ <http://home.medewerker.uva.nl/m.e.glasius/>; Université Catholique de Louvain, ‘Tim Meijers,’ <http://uclouvain.be/373611.html> (accessed 22 February 2012).

<sup>20</sup> We attended hearings on 3 March 2010, 8 and 9 February 2011, 25 February 2011 and 11 March 2011. The transcripts in the Taylor case are available at Special Court for Sierra Leone, ‘Taylor Trial Transcripts,’ <http://www.sc-sl.org/CASES/ProsecutorvsCharlesTaylor/Transcripts/tabid/160/Default.aspx> (accessed 22 February 2012).

<sup>21</sup> This paragraph draws mostly on Lansana Gberie, *A Dirty War in West Africa: The RUF and the Destruction of Sierra Leone* (Bloomington, IN: Indiana University Press, 2005).

The president of neighbouring Liberia, Charles Taylor, was allegedly connected with some of these rebel forces in Sierra Leone, especially with the RUF. The allegations range from close involvement in the West African diamond trade to arms trading to supply the rebels to being the direct leader of, and the mastermind behind, these forces. As will be discussed below, the extent of Taylor's actual involvement in the war in Sierra Leone has not been easy to establish. Although it is widely believed and claimed that he played a central role, there is little documentary evidence of his involvement, and in fact most official documentation refers to Taylor in his role as a negotiator for peace.

After being reinstated, President Kabbah requested that the UN establish a court to put to trial RUF members for 'crimes against the people of Sierra Leone and for the taking of United Nations peacekeepers as hostages.'<sup>22</sup> The SCSL, tasked with trying those who bore the greatest responsibility for war crimes, was established by an agreement between the UN and Sierra Leone.<sup>23</sup>

One of the consequences of the Court being 'special' is that, unlike the International Criminal Tribunals for the former Yugoslavia and Rwanda, it is not part of the UN budget but dependent on donations. From its creation in July 2002 to February 2011, the SCSL received \$240,261,862 in financial support, of which about one-third came from the US. In 2010, the crucial year in the Taylor trial, the US share of the budget increased to 52 percent.<sup>24</sup> This has sparked considerable controversy and doubts about the independence of the Court. The SCSL's budget is also very lean. At times, it has had barely enough money to keep its doors open.<sup>25</sup>

The Court has indicted 13 people, three of whom died or disappeared before they could appear before it. Apart from the Taylor trial, the SCSL conducted three other cases against members of the different warring factions and all of them have been completed. The Court is primarily located in Freetown, but the Taylor trial takes place in The Hague for security reasons.<sup>26</sup> Taylor, after having fought a civil war with his rebel group, the National Patriotic Front of Liberia (NPFL), for almost a decade, was elected president of Liberia in 1997. He was forced out of office in 2003 and after several years of international pressure on Nigeria, where he was living in exile, he was arrested and brought to The Hague.

In the next two sections, we identify and analyse the main themes in the discourses of the prosecution and the defence. While they are too different

<sup>22</sup> 'Fifth Report of the Secretary General on the United Nations Mission in Sierra Leone,' quoted in Lansana Gberie, 'Briefing: The Special Court of Sierra Leone,' *African Affairs* 102(409) (2003): 639.

<sup>23</sup> Celina Schocken, 'The Special Court for Sierra Leone: Overview and Recommendations,' *Berkeley Journal of International Law* 20 (2002): 436–461.

<sup>24</sup> 'SCSL Consolidated Contributions' (14 April 2011), received from SCSL Outreach Officer Solomon Moriba, on file with authors.

<sup>25</sup> Avril McDonald, 'Sierra Leone's Shoestring Special Court,' *International Review of the Red Cross* 84(845) (2002): 121–143.

<sup>26</sup> Some argue, however, that it was done for the stability of the region. See, for example, Sarah Kendall, 'Contested Jurisdictions: Legitimacy and Governance at the Special Court for Sierra Leone' (PhD diss., University of California, Berkeley, 2009).

from each other to be rendered as mirror images, we do highlight some common themes. In the prosecution's discourse, we discuss first the characterization of the crimes committed in Sierra Leone, then the manner in which the prosecution establishes Taylor's responsibility for these crimes, his personality and his motivations, and finally the purpose of the trial itself. In our discussion of the defence's discourse, we do the same, adding also the defence's contextualization of Taylor and his arrest in his view of international relations.

## The Prosecution's Discourse

### Terror in Sierra Leone

The first of the 11 counts in the indictment against Taylor is 'acts of terrorism.'<sup>27</sup> This phrase, referring to Article 3(d) of the SCSL statute, is striking because the legal basis for the charge lies in the Geneva Conventions, which do not mention any such crime. Indeed, terrorism is not known as a crime under the statutes of the two *ad hoc* Tribunals or the ICC.

The prosecution's argument is that Taylor and his associates waged a campaign of 'terror'<sup>28</sup> against the population of Sierra Leone, 'terrorising'<sup>29</sup> it, which makes Taylor guilty of 'terrorism.'<sup>30</sup> The designation has little legal value, since the 'acts of terrorism' are subsequently translated into distinct elements that actually constitute crimes under international law. In the indictment, the only separately listed act of terrorism is burning of civilian property. Nonetheless, it constitutes the first count in the indictment, before murder, rape or sexual slavery are mentioned.

In her summary of the prosecution's case, Hollis argued that 'terror may also mean or include extreme fear.'<sup>31</sup> She went beyond the case's temporal and territorial jurisdiction to argue that this was Taylor's primary purpose, in the Liberian as in the Sierra Leonian war. She also cross-examined Taylor at some length on the meaning of terrorism and got him to agree that 'terror is fear'<sup>32</sup> and that to 'instil fear, that's an act of terror.'<sup>33</sup> The allegation of the use of terror, intended to create or instil fear,<sup>34</sup> was then associated with a phrase from the RUF rebels' own vocabulary – 'making fearful' – which could apply to people, areas or the campaign itself.

<sup>27</sup> *Prosecutor v. Charles Ghankay Taylor*, Amended Indictment, Case No. SCSL-03-01-T (16 March 2006).

<sup>28</sup> A term used by the prosecution at least 107 times in the court transcripts, of which 43 times occurred in the closing pleas alone (see master frame).

<sup>29</sup> *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-T, Court Transcript (hereinafter 'Transcript'): 303/11; 24137/2, 8, 18; 24168/25; 31846/1; 32224/8; 32325/12; 33409/16–17, 21, 25; 49207/5.

<sup>30</sup> Transcript: 272/12, 24; 31584/29; 31585/1, 5, 13, 25; 31587/4, 10, 25; 31588/24; 31590/1.

<sup>31</sup> Transcript: 24135/18.

<sup>32</sup> Transcript: 31585/29; 31588/5.

<sup>33</sup> Transcript: 31588/28–29.

<sup>34</sup> Forty-three instances (see master frame).

A few themes related to 'making fearful' were evoked by the prosecutors. The first is the January 1999 AFRC and RUF attack on Freetown, which, according to various prosecution witnesses, Taylor ordered should be 'more fearful than any other,' either to save ammunition or to assure victory,<sup>35</sup> particularly by burning down houses and killing civilians. The second theme is the RUF's practice of amputations,<sup>36</sup> the 'trademark atrocity of Sierra Leone,'<sup>37</sup> and of carving its acronym on people's skin.<sup>38</sup> The third refers to the RUF's practice of displaying human body parts at crossroads and checkpoints.<sup>39</sup> The prosecution connects this back to the Liberian war:

Indeed, Mr Taylor told you that there were checkpoints in Liberia with skulls, not human heads, that skulls were used as symbols of death, that he saw them, he drove by them. They were used as symbols and he saw nothing wrong with using them.<sup>40</sup>

The fourth theme is a single, particularly gruesome incident used by the prosecution to symbolize the 'terrorism' or 'making fearful' of the RUF, and hence of Taylor. It concerns the testimony of a woman who heard the cries of children being killed, was forced to carry a bag filled with human heads, discovered her own children's head among them as she was made to empty the bag and was forced to laugh about the discovery.<sup>41</sup>

### Father/Brother/Chief Taylor

Taylor's only formal, public relationship with the leadership of the RUF was that of ECOWAS-appointed negotiator or 'point president for peace.'<sup>42</sup> The prosecution thus could not rely on his formal status to prove his position at the top of a chain of command responsible for war crimes. Instead, it drew on patrimonialist ideas, emphasizing the father-son relationship Taylor had with leaders of the RUF.<sup>43</sup> In part based on witness testimony, Taylor was often referred to as the

<sup>35</sup> Transcript: 24139/29-24140/1; 24169/7; 24175/12; 24176/16; 24184/8; 49160/29-49161/1; 49167/6.

<sup>36</sup> A direct connection to instilling fear is made in Transcript: 24136/28-29; 24137/25; 24138/3-4; 49227/26. For the numerous other references to amputations, see master frame.

<sup>37</sup> Transcript: 24331/26-27.

<sup>38</sup> A direct connection to instilling fear is made in Transcript: 303/7-11; 24138/3-4, 7-11; 31591/13, 16, 19-20. Other references to the practice are made at Transcript: 303/1-4; 24151/6-9; 49149/7-8; 49204/7-8.

<sup>39</sup> Transcript: 5863/7, 12-13; 24138/16-19, 27-28; 24139/13-14, 22-23; 31592/2-4; 46192/24, 29; 49179/13-14, 17-19; 49180/4, 6-7.

<sup>40</sup> Transcript: 49179/16-20.

<sup>41</sup> Described by prosecutors in Transcript: 24136/8-18; 31589/7-31591/6-9. At 31589/4 and 49180/19-20, prosecutors describe an apparently separate incident of a mother forced to laugh as her child is buried alive.

<sup>42</sup> This expression, introduced by the defence, becomes the butt of sarcasm by the prosecution team, who use the term mockingly at least 40 times.

<sup>43</sup> Interestingly, Tim Kelsall has criticized the prosecution in the Civil Defence Forces case before the SCSL precisely for ignoring patrimonialism and principal agent problems in its assumption that formal military structures resembled those in modern western states. Kelsall, *supra* n 6.

'father'<sup>44</sup> and occasionally the 'godfather'<sup>45</sup> of the RUF. He was sometimes also the (senior) brother<sup>46</sup> of RUF leaders, or the chief.<sup>47</sup> The RUF forces collectively become 'his children,'<sup>48</sup> evoking the prevalence of child soldiers in the conflict, as well as allocating responsibility to the 'parent.' RUF leader, Sam Bockarie, in particular, was frequently called Taylor's son,<sup>49</sup> or 'favourite son.'<sup>50</sup> Foday Sankoh, on the other hand, was Taylor's 'brother,' 'bound together to fight,' with Taylor as the big or senior brother, or the mentor.<sup>51</sup>

## The Bitterness of War

In establishing Taylor's responsibility for the war in Sierra Leone, the prosecution's case relied not only on what Taylor may have done in private, but also on what he had said in public. In 1991, Taylor warned in a speech recorded by BBC Radio that Sierra Leone, like Liberia, would 'taste the bitterness of war.'<sup>52</sup> The recording itself has been lost, but 25 witnesses were found who remember hearing it. In her closing plea, the chief prosecutor quoted a witness who claims to remember the speech:

There was a man they used to call Charles Taylor. He said that that war that had come to Liberia, we would taste the bitterness of that one in Sierra Leone. So if indeed the war came to Sierra Leone and I am like this, this is my own portion of the bitterness that I tasted. Both of my hands were amputated. What he said was what came to pass. Those were his children who did that.<sup>53</sup>

## Taylor: The Man and His Motives

The prosecution team argued that the campaign of terror was the means of Taylor's joint criminal enterprise with the RUF, and the end was to get hold of Sierra Leone's diamonds. This motive is the most dominant theme in the prosecutors' discourse. The connection between Taylor and diamonds was made more than 300 times in their speeches.<sup>54</sup> The allegation is of limited legal relevance: neither the sale of arms to rebels nor the receipt of diamonds is a war crime. Moreover, evidence of Taylor's receipt of the diamonds remains somewhat

<sup>44</sup> Transcript: 24178/10, 12–13; 49152/3; 49153/1, 3; 49154/7; 49154/21; 49185/5; 49191/21–22; 49213/6; 49214/10; 49215/28; 49242/27; 49243/15; 49284/15. Also 'Pa,' 'the Papay' or 'our father across.'

<sup>45</sup> Transcript: 24181/14; 49152/3; 49153/16, 26.

<sup>46</sup> Transcript: 49152/9, 15; 49205/12; 49241/28; 49242/10, 19, 20; 49243/1.

<sup>47</sup> Transcript: 291/28; 310/15; 9954/7; 24181/6; 49152/4, 10; 49154/7; 49257/3.

<sup>48</sup> Transcript: 49148/23–24; 49149/21.

<sup>49</sup> Transcript: 24178/12–13; 49152/20–21; 49153/29; 49154/15; 49159/26; 49216/20–21; 49284/3.

<sup>50</sup> Transcript: 49153/29; 49154/15; 49159/26.

<sup>51</sup> Transcript: 24180/14.

<sup>52</sup> Transcript: 24167/17; 49148/20, 22; 49148/29; 49149/19; 49164/12; 49182/28–29; 49256/18; 49257/4, 5, 12.

<sup>53</sup> Transcript: 49148/22–23.

<sup>54</sup> See master frame. The delivery of diamonds to Taylor in exchange for the delivery of arms and ammunition to the RUF, described by various witnesses, is mentioned 34 times.

tenuous (hence the calling of supermodel Naomi Campbell as a prosecution witness).<sup>55</sup> The prosecution did not have a pronounced narrative about why Taylor wanted the diamonds; he was never described as having a particularly luxurious lifestyle.

Nonetheless, the prosecution presented all the crimes committed by the RUF in Sierra Leone as part of a grand plan. While the crimes were occasionally described as random, indiscriminate or senseless,<sup>56</sup> they were mostly constructed as purposive and instrumental, following from Taylor's 'knowing, wilful, conscious'<sup>57</sup> actions. One of the few points of agreement between the prosecution and the defence appears to be that Taylor is an educated, intelligent and strategic thinker,<sup>58</sup> a rational man not motivated by revenge, sadism or other irrational sentiments.

This assessment also informed the attitude to ethnic divisions in Liberia ascribed to Taylor. Taylor was not described as harbouring hatred towards any particular ethnic group in Liberia or Sierra Leone, but as instrumentalizing existing divisions:

He knew the Gios were bitter against the Krahns and joined the NPFL for revenge. Mr Taylor harnessed his fighters' thirst for revenge and then unleashed them on Liberia, intending that they use that thirst for revenge to spread terror so he could control the much larger population in that country. And similarly, he unleashed his NPFL on the civilian population of Sierra Leone.<sup>59</sup>

A final element in the portrayal of Taylor's cold-hearted rationality, with the additional advantage of accounting for certain weaknesses in the prosecution's chain of evidence, was the charge that he systematically killed compromising associates:

These men were eliminated so as not to expose the accused, which behaviour goes to the accused's consciousness of his criminal responsibility for the crimes in Sierra Leone that come under the jurisdiction of this Court.<sup>60</sup>

Hollis drew together the motifs of intentionality, patrimonial control, terror as an instrument and the quest for diamonds at the beginning of her closing plea:

All of those horrors were the bitterness of war that Charles Taylor inflicted on the people of Sierra Leone through his children, his proxy forces, the RUF and later the AFRC/RUF alliance and through his Liberian subordinates. Charles Taylor, this intelligent, charismatic manipulator had his proxy forces and members of his Liberian

<sup>55</sup> The gift of rough diamonds to Naomi Campbell in South Africa is put forward as proof that Taylor was travelling with them and exchanged them for arms, which were delivered to him on his final stop in this tour, in Burkina Faso.

<sup>56</sup> Transcript: 196/20–21; 299/1–2; 295/22; 296/27; 307/6; 49212/21.

<sup>57</sup> Transcript: 49141/26–27; 49144/10–11; 49146/26–27; 49148/9; 49150/17; 49309/15–16; 49312/16–17, 21; 49313/2, 5.

<sup>58</sup> Transcript: 32351/27–29; 32337/11–12; 32351/28–29; 32352/2; 32453/14; 32460/22; 49312/18–19.

<sup>59</sup> Transcript: 49178/25–49179/2. See also Transcript: 32242–32244; 32249/8–9; 2308/23–27; 33963/4–5.

<sup>60</sup> Transcript: 277/5–8. Other allusions to Taylor's killing associates to wipe out traces are at Transcript: 278/21–22; 280/5; 295/3–4; 5896/29–5897/1; 5898/19; 49186/7–9; 49190/15–19; 49192/23–26; 49239/10–12; 49284/3.

forces carry out these crimes against helpless victims in Sierra Leone to achieve the objectives he shared with other members of the joint criminal enterprise in which he participated, to forcibly control the people and territory of Sierra Leone and to pillage its resources, in particular its diamonds. And they would do this through their agreed criminal means, the campaign of terror he waged on the innocent people of Sierra Leone with all its attendant crimes. All this suffering, all these atrocities to feed the greed and lust for power of Charles Taylor.<sup>61</sup>

## The Purpose of the Trial

The prosecution had relatively little to say about the purpose of the Taylor trial. Mostly, it took the setting it found itself in for granted. Nevertheless, a few passages in the opening statement and closing plea give some clues.

In the opening statement, the chief prosecutor indicates a few times who the trial is for: 'It is, above all else, that we are seeking justice for the people of Sierra Leone that we are all here today.'<sup>62</sup> Later, he elaborates that

they are the ones who still bear the scars of this brutal conflict and for whom this process of accountability, no matter what the eventual outcome, will have its greatest meaning.<sup>63</sup>

The trial is to show the people of Sierra Leone that 'there are those in this world who are ready to uphold the law,'<sup>64</sup> and the eventual judgement is expected to give them 'some small measure of closure.'<sup>65</sup> No clear distinction was made between specific victims and the affected population at large; the Sierra Leonian people as a whole were constructed as victims of Charles Taylor.

A second purpose, suggested by the only Sierra Leonian member of the prosecution team, Mohamed Bangura, is truth telling. Both in the opening and in the closing plea, Bangura refers to a Sierra Leonian saying:

'Net long so tay, doh mus clean.' No matter how long the night, light will come. For years the accused's crimes have remained in the dark. Today we start to shed light on his responsibility for the suffering of the people of Sierra Leone.<sup>66</sup>

The third purpose is to strengthen the rule of law by enacting the rule of law. In its opening plea, the prosecution promised to

seek at all times to ensure that it embodies the fundamental principles of fairness, due process and justice that, along with the other trials at the Special Court, will help ensure a future respect for law and the maintenance of a just and peaceful and safe society. In that regard we understand that justice is a system that we must all obey and that no individual is above the law and can be in a position to walk away from the system of justice.<sup>67</sup>

<sup>61</sup> Transcript: 49149/19–29–49150/4.

<sup>62</sup> Transcript: 269/10–11.

<sup>63</sup> Transcript: 330/17–22.

<sup>64</sup> Transcript: 331/10–11.

<sup>65</sup> Transcript: 331/2.

<sup>66</sup> Transcript: 313/6–10; 49184/26–491845/3.

At the end of the trial, fair trial was evoked again and contrasted to divine justice on the one hand and the arbitrary exertion of power by a man like Taylor on the other:

God's justice is mysterious. Today, Charles Taylor appears before you to face human justice. Through criminal proceedings that have been most fair to him, decided by impartial and independent judges on the basis of the evidence before you. Not by the whim of a man with a gun or a machete or a man with an insatiable greed for wealth and power. Today, Mr Taylor faces human justice, based on your assessment of the evidence adduced in this trial.<sup>68</sup>

## The Defence Discourse

### Statesman

The defence tried to create an image of Taylor as a man on a mission to save his country and his people, a presidential figure who aimed to develop his country economically and bring democracy and the rule of law. To be the leader of Liberia was Taylor's calling:

People that become presidents don't just get up one morning and say, 'I guess I want to try it.' It's something that starts at a very early age, a determination to doing something for your people. You see society, you grow up and you want to do something. You prepare yourself all your life to do it.<sup>69</sup>

In the civil war he fought with his NPFL, Taylor's aim was to remove President Samuel Doe from power because his regime was cruel and undemocratic. Taylor was fighting to have fair elections, to 'rebuild'<sup>70</sup> torn Liberia, make 'good governance'<sup>71</sup> possible and bring peace to the subregion and Sierra Leone.<sup>72</sup> Taylor depicted his revolution as 'non-ideological'<sup>73</sup> and 'not socialist'<sup>74</sup> (in fact, Taylor said he is 'capitalist to the core').<sup>75</sup> He noted the lack of evidence of massive crimes committed in Liberia and that people in his ranks who committed crimes were punished in courts martial, stating that there were no unpunished crimes in Liberia:<sup>76</sup> 'In my area I resist to the very last breath in my body that I encouraged impunity. Never. That's why I won during elections.'<sup>77</sup>

<sup>67</sup> Transcript: 268/7–14.

<sup>68</sup> Transcript: 49280/20–27.

<sup>69</sup> Transcript: 25598/19–25.

<sup>70</sup> Transcript: 25242/4; 24332/13; 25109/26; 25428/2; 25672/15; 26068/23.

<sup>71</sup> Transcript: 26112/28–29. 'Good governance' is mentioned 13 times by Taylor in his testimony and many more times in official documents read out by Griffiths as evidence.

<sup>72</sup> Transcript: 24316/1–5; 24332/14; 24333/2; 25295/11–12; 25335/15–16; 26042/2; 26624/3; 26893/23; 26894/9; 27269/14–15; 27688/11; 28327/25; 29735/3; 33596/29; 35117/11.

<sup>73</sup> Transcript: 24573/24–25; 24574/1–5.

<sup>74</sup> Transcript: 24955/14–15; 24565/6–7; 28934/22–26; 32072/7.

<sup>75</sup> Transcript: 28933/22–26.

<sup>76</sup> Twenty-two references (see master frame).

<sup>77</sup> Transcript: 32242/8–11.

## Humble Background

While examining Taylor, his lawyer, Griffiths, took us back to Taylor's youth. The defence painted a picture of Taylor as a self-made man coming from a humble<sup>78</sup> background, living in a 'mud house' with 'no running water'<sup>79</sup> and not even owning shoes until he 'was a big boy.'<sup>80</sup> While going to university in the US, Taylor worked several jobs to pay for tuition: mopping floors and doing dishes.<sup>81</sup> They emphasized also that his mother is a Liberian native and his father an Americo-Liberian descendant from liberated slaves, uniting in Taylor the two traditionally conflicting groups in Liberia, polarized by President Doe.<sup>82</sup>

## Bringer of Peace to Sierra Leone

Taylor claimed that his contact with the RUF began only when he became a member of the 'committee of five,' a council of West African presidents concerned with the Sierra Leone crisis. He emphasized that he was asked to join the committee because of his 'experience as a former rebel.'<sup>83</sup> Against what the prosecution made of his involvement, he argued that he played a crucial constructive role in the peace process.

He argued that his efforts as a member of this committee were thoroughly misunderstood and misconstrued by the international community, if not used against him:

After we fought all these years, after we got these people out, they said oh, okay. Fine. You were able to get them out because you are controlling the people. That's what they did.<sup>84</sup> Because Taylor got things done as a member of the committee of five, others believed that he must therefore have been in charge of the RUF. But this powerful Charles Taylor is an hallucination.<sup>85</sup>

Taylor never denied that terrible crimes were committed in Sierra Leone. In fact, he said he was 'shocked'<sup>86</sup> by the cruelties committed, and argued that he tried to prevent and limit the crimes: 'My actions where transparent, they were open and to the point and we got results, and I feel very proud of what I did.'<sup>87</sup>

<sup>78</sup> Transcript: 24363/25.

<sup>79</sup> Transcript: 24362/1–3.

<sup>80</sup> Transcript: 24362/17–18.

<sup>81</sup> Transcript: 24377/3.

<sup>82</sup> Especially at Transcript: 24639/2–8, but also 24469/22–28; 24482/13–15.

<sup>83</sup> Transcript: 24316/10; 25184/28–29; 27271/21; 32392/14; 35066/25.

<sup>84</sup> Transcript: 27141/12–15.

<sup>85</sup> Transcript: 32200/27.

<sup>86</sup> Transcript: 25863/18; 26049/6; 26050/8; 26229/27–28; 29048/4; 31107/3.

<sup>87</sup> Transcript: 30025/1–3.

## Pan-Africanist

Taylor pressed the point that he is a pan-Africanist,<sup>88</sup> like Nelson Mandela, fighting for an independent Africa:

My interests with their whole discussions at the time was the interests in having Africa break away from the stranglehold that exists until today. Because let me say here and now I am a pan-Africanist, I have always been and will always be.<sup>89</sup>

He claimed he tried to end western domination and paternalism on his continent:

We went to school with these Europeans and Americans, we made better grades than they made. They come to our countries, they sit on top of us, because they have a little bit of money, as though they know it all and they do not. I believe that Africans are capable of solving their own problems. This is that whole pan-African attitude that remains in me today.<sup>90</sup>

## Relationship to the US

It is not only his love for Africa that Taylor professed in court. At several points in his testimony, Taylor emphasized his love and admiration for the US and for the historical special relationship between the US and Liberia – ‘America’s little child,’<sup>91</sup> its ‘slave-child,’ the ‘country of freed slaves.’<sup>92</sup> Taylor clearly admires the US: he pointed out on several occasions that the US is an inspiration for reform in Liberia.

At other times, Taylor suggested that ‘the United States has not been the friend that she is capable of being to Liberia.’<sup>93</sup> Taylor emphasized that he is not anti-American: ‘I am not and will never be anti-American. I just want America to come up to the plate. If you are going to use Liberia as your little back yard garden, well then you do something for Liberia.’<sup>94</sup> As Prosecutor Nicholas Koumjian noted, however, ‘Taylor goes back and forth in this schizophrenic defence as far as whether he’s a great friend of the United States or the United States is out to get him.’<sup>95</sup> Taylor at times argued that the US not only refused to support him but also turned against him because he stood up for Liberia, defending its economic interests regarding, for example, off-shore oil.<sup>96</sup>

<sup>88</sup> Pan-Africanism is mentioned 80 times by Taylor and Griffiths (documents in evidence excluded) in cross-examination (see master frame).

<sup>89</sup> Transcript: 24400/1–6.

<sup>90</sup> Transcript: 24400/10–15.

<sup>91</sup> Transcript: 24408/26; 24405/5–7. Elsewhere, Taylor argued Liberians should not be treated like children. Transcript: 24655/5; 24655/10–11.

<sup>92</sup> Transcript: 24403/4–6, 11–12; 24655/10–11.

<sup>93</sup> Transcript: 24403/4–6

<sup>94</sup> Transcript 24405/1–4

<sup>95</sup> Transcript 49238/25–28

<sup>96</sup> For a discussion on Taylor’s conflict with Mobil Oil, see Transcript: 32151/17 onwards.

The United States was not used to Liberian governments before mine telling them yes or no. It was, 'Yes, sir. Yes, sir. Yes, sir.' And I guess to a great extent they were stunned. And so the decision [to oust me from power] was taken.<sup>97</sup>

Taylor was confronted with arms embargoes, trade embargoes, International Monetary Fund sanctions and other measures. He also indicated the US' influence in funding opposition parties and arming rebels, such as Liberians United for Reconciliation and Democracy, which attacked Liberia from neighbouring Guinea. The 'pressure cooker was put on'<sup>98</sup> and Liberia was 'squeezed'.<sup>99</sup>

My government was a democratically elected government. My government was under attack. What would you do as a friend? You help the democratically elected government. No, you help the rebels. [...] The die was cast, we were going to be destroyed anyway and it happened eventually. I'm here.<sup>100</sup>

### Terrorism and Pan-Africanism

Building on the character sketch above, Taylor and Griffiths argued that the prosecution unjustly portrayed Taylor as a demon and a terrorist:

You come into Africa, the African got a leader in Liberia, a President, who is eating human beings. 'So whatever we do to him, Africa, don't be sorry. This guy deserves it.' So you demonise and you move in for the kill and you bring him before a Court.<sup>101</sup>

Taylor takes the label 'terrorist' as a badge of honour placing him in the same camp as, for example, Mandela.<sup>102</sup> Griffiths asks, 'Nelson Mandela was called a terrorist at one time, wasn't he, Mr Taylor?'<sup>103</sup> He suggests that it is purely in the eyes of those in power, those who want to get rid of him, that Taylor is a terrorist:

We've seen this throughout history. When leaders are sought for one reason or another, they destroy you... Mandela was supposed to be a total – you know, he was a criminal and he – in fact, he was a terrorist, spent 27 years in jail.<sup>104</sup>

In addition, the defence repeatedly suggested that the 'terrorist' label is applied to all those who fight for African rule in Africa. Pan-Africanist Muammar Gaddafi

<sup>97</sup> Transcript: 31368/4.

<sup>98</sup> Transcript: 31525/15

<sup>99</sup> Transcript: 26453/12; 26711/5; 26453/12; 26697/25; 26697/15; 26698/17; 26757/8; 26757/10; 27473/1.

<sup>100</sup> Transcript: 27706/29

<sup>101</sup> Transcript: 29970/17–20. For more on demonization, see Transcript: 33037/9; 25496/27; 25496/4; 25496/10; 25848/18–25.

<sup>102</sup> Relations with and respect for Mandela are mentioned 25 times in cross-examination (see master frame).

<sup>103</sup> Transcript: 25495/9–10.

<sup>104</sup> Transcript: 29970/10–12.

was portrayed as another misunderstood hero, wrongfully depicted as a terrorist by the West.<sup>105</sup> Taylor declared:

Africa has to be free. Africa has to determine its own destiny. Yes, things are rough and yes, we are pushed around. But our actions cannot be – should not be – construed as terrorism.<sup>106</sup>

## Racism

At times, Taylor and his lawyer went further to portray the prosecution as racist. Griffiths read out a comment made by Prosecutor David Crane, ‘Believe me, the trick to getting a West African leader’s attention is cash, plain and simple,’ and asked, ‘What do you say to that Mr Taylor?’ Taylor answered: ‘One word: racist.’<sup>107</sup> Griffiths had alluded to the significance of race in this case before. Taylor – the black African – is being put on trial by white westerners:

Like an illegal immigrant, refugee or worse, and for those of an historical mind, in reverse, he was taken in chains from the shores of Africa to Holland, thousands of miles away. The country of one of the colonisers of the black race for centuries. A historically familiar journey for some.<sup>108</sup>

Griffiths was clearly referring to the Dutch role in the slave trade.

The defence argued that the prosecution talked about Africans as if they are greedy and cruel barbarians who cannot take care of themselves, who are only after money, complaining that African leaders are depicted as silly and easily fooled by Taylor: ‘In fact, it’s insulting to some of these African leaders to believe that these powerful leaders are a bunch of donkeys that Taylor is just dictating to. It’s total nonsense.’<sup>109</sup> The defence alleged that the prosecution depicts Taylor as ‘a bloodthirsty, sadistic African,’<sup>110</sup> perhaps worse and more exotic than the Nazis:

This is racist. I can say it. It is as racist as it ever gets. David Crane goes before the US House of Representatives and is saying the best way to get to an African leader is through his pocket. All the murderous regimes of Europe throughout World War II coming on, nobody is eating human beings and burying pregnant women and being as sadistic as this. It’s an African – this is as racist as it gets and that’s how I feel about it.<sup>111</sup>

<sup>105</sup> At the time when Taylor was in the witness box, in the autumn of 2009, Gaddafi’s global reputation, while always contested, was of course considerably less problematic than it has become since.

<sup>106</sup> Transcript: 25496/25–28.

<sup>107</sup> Transcript: 31482/1–2. For more discussion of the trial being racist, see Transcript: 24308/2; 29905/8; 29905/11–12; 29905/16; 29969/17–20; 24294/8–13.

<sup>108</sup> Transcript: 24294/8–13.

<sup>109</sup> Transcript: 35369/1–3.

<sup>110</sup> Transcript: 29904/26.

<sup>111</sup> Transcript: 29904/23–29.

## The Court as an Instrument of Regime Change

Taylor and Griffiths turned the accusation of Taylor being responsible for prolonging the war in Sierra Leone around and suggested that Crane had knowingly ‘scuppered’ peace for Liberia in 2003 by issuing the indictment against Taylor during peace negotiations in Ghana, in order ‘to humble and humiliate him before his peers, the leaders of Africa, and to serve notice to Taylor and others that the days of impunity in Africa were over.’<sup>112</sup> Griffiths demanded, ‘Why not declare the end of impunity for all international wrongdoers? Why just Africa?’<sup>113</sup>

Both Crane’s rhetoric and the fact that the prosecution labelled Taylor a terrorist, instead of a fighter for Africa, fits the story of the defence that the SCSL is an instantiation of western attempts to control Africa. Griffiths did not shun strong language in his closing statement:

We submit that it’s to the shame of this Prosecution that it has besmirched the lofty ideals of international criminal law by turning this case into a 21st century form of neo-colonialism.<sup>114</sup>

He further stated that ‘whether you are princess or prostitute, whether you are the President of the United States or the President of Liberia, the law is above you.’<sup>115</sup> He then noted that this has not been the case in Africa, as the continent has been singled out by international criminal institutions like the ICC, which has so far only indicted Africans:

The tribunals which are but an instrument of diplomacy in the hands of powerful states are, in fact, not administering law at all but, instead, providing spurious cover for their paymasters, thereby prostituting the legal process.<sup>116</sup>

When asked by Judge Teresa Doherty, ‘Are you suggesting that the judges are in the pay of some government?’<sup>117</sup> Griffiths shied away from attacking the judges head on. However, in a BBC interview conducted months earlier, he voiced a similar ‘concern’: ‘These judges are under considerable pressure to convict. A lot of money has been invested in these proceedings by the United States, the United Kingdom and other western countries.’<sup>118</sup> Implying that the SCSL is neither impartial nor independent, but political, he invoked WikiLeaks to suggest that ‘this is not a trial at all, but the abuse of legal forms to achieve a predetermined end: The conviction of the accused and his incarceration for a long time.’<sup>119</sup> On the day the prosecution was to give its closing statement,

<sup>112</sup> Crane quoted by Griffiths, Transcript: 24291/26–28.

<sup>113</sup> Transcript: 24292/1.

<sup>114</sup> Transcript: 49389/26–29.

<sup>115</sup> Transcript: 49389/5–7

<sup>116</sup> Transcript: 49396/15–19.

<sup>117</sup> Transcript: 49396/23–24.

<sup>118</sup> Thijs Bouwknecht, ‘Taylor Trial under Spotlight: Interview,’ *Radio Netherlands Worldwide*, 25 August 2010.

<sup>119</sup> Transcript: 49396/10–14.

Griffiths walked out of court and was consequently held in contempt. His ostensible reason was that he had not been allowed to file his final brief, which was delivered late because he wanted to include reflections on recent WikiLeaks regarding Taylor.<sup>120</sup>

Neither Taylor nor Griffiths went all the way in stating what their arguments seem to imply, that the entire SCSL is political. They never accused the judges of being partial or questioned the legitimacy of international criminal justice as such. In fact, both voiced their sympathy for the idea:

I [Taylor] hope and pray for a fair trial that will perhaps bring to an end the cycles of injustice. I stand ready to participate in such a trial and let justice be done for myself and for those who have suffered far more than me in Liberia and Sierra Leone.<sup>121</sup>

The prosecution, however, was not spared, with both men claiming that the team was part of a plan of regime change<sup>122</sup> and an international conspiracy to get rid of Taylor. As all the chief prosecutors and most of the prosecution team are Americans, Griffiths and Taylor argued that the 'prosecution is political'<sup>123</sup> and an 'American goon squad',<sup>124</sup> with the team and the SCSL being nothing but a continuation of the US' past actions against Taylor's government. Taylor suggested that the case against him is built upon false information spread by the US government while Taylor was still in power, when it wanted him out.<sup>125</sup>

## Conclusion: Expressivism Accomplished?

We now assess the rhetorical approaches of the prosecution and the defence (Table 1) against their sociopolitical background in order to establish the 'expressivist potential' of the Taylor trial in terms of establishing and disseminating historical truths, attaching stigma to perpetrators and strengthening faith in the rule of law among different audiences. As outlined above, expressivism stresses the crafting of historical narratives and their pedagogical dissemination to the public as the *raison d'être* of criminal trials. Trials are supposed to be communicative spectacles that close with the infliction of shame, sanction and stigma, thus aligning crime with punishment in people's minds.

The prosecution put Charles Taylor forward as the 'father' of the RUF, to whom they owed a patrimonialist allegiance. If we assume that Tim Kelsall and many other Africanists who stress the importance of patrimonialism for African politics

<sup>120</sup> See 10 March 2009 cable passed to the *Telegraph* by WikiLeaks: 'Pro-Taylor Elements Still a Force to Be Reckoned With,' *Telegraph*, 11 February 2011. Eventually, the Appeals Chamber upheld Griffiths' appeal.

<sup>121</sup> Transcript: 250/28–251/4.

<sup>122</sup> Term used 36 times by Taylor and Griffiths (see master frame).

<sup>123</sup> Transcript: 49397/8. In fact, there has been one British chief prosecutor, Desmond de Silva.

<sup>124</sup> Transcript: 32283/19–23.

<sup>125</sup> *Ibid.*

**Table 1. Main Discursive Motifs, Taylor Trial**

Prosecution	Defence
<b>Taylor as leader</b>	
Father/brother/chief	Statesman
'Harnesses his fighters' thirst for revenge'	'Good governance'
Eliminating associates 'to wipe out traces'	'No impunity': courts martial
<b>Taylor's motives</b>	
'Knowing, wilful, conscious'	'Rebuild Liberia'
'Lust for power'	Calling to 'do something for his people'
Greed: diamonds	'Non-ideological' and 'not socialist'
<b>Taylor and the Sierra Leone war</b>	
Bitterness of war	'Experience as a former rebel'
'Point president for peace': ridiculed	'Point president for peace': 'role misinterpreted'
<b>Taylor and terrorism</b>	
'Making fearful'	Pan-Africanist/'end western domination'
Freetown attack 'more fearful than any other'	Mandela 'was called a terrorist' too; Gaddafi
Amputations: 'trademark atrocity'	'A bloodthirsty, sadistic African': prosecution racist
Human heads, intestines displayed at checkpoints	'Eating human beings'
Mothers forced to laugh at death of children	
<b>Victims</b>	
'Helpless victims in Sierra Leone'	Taylor 'shocked' by crimes
<b>Taylor and the US</b>	
'Schizophrenic attitude'	Admiration and disappointment
'Conspiracy theorist'	'Stood up' to US
<b>Purpose of trial</b>	
'Justice for the people of Sierra Leone'	Western instrument to control Africa
'Shed light on his responsibility'	'Regime change'
'Help ensure a future respect for law'	'Prostituting the legal process' to their 'paymasters'

are right, this portrayal would in principle resonate well with West African audiences, who would recognize 'big man' politics as the dominant form, as well as with western audiences, who have been taught that this is how 'Africa' works. Indeed, the defence does not challenge this element of the discourse. At the same time, however, Kelsall points out the principal agent problem in patron–client relations, particularly in jungle warfare. In the prosecution's discourse, the father–son relationship becomes one of one-sided blind obedience, rather than a negotiation to mutual advantage between two parties, clad in customary role-play.

Taylor's 'bitterness of war' speech, a rare public reference to his alleged designs on Sierra Leone, may well live on in the collective memory of Sierra Leonians. As such, its use by the prosecution could be considered an element of the pedagogical dissemination expressivism has in mind. Arguably, appeal to and strengthening of such a collective memory could have purposes of memorialization and reconciliation. However, this reconciliation may come at

the expense of, rather than through, complete truth telling, as it externalizes all responsibility for the war conveniently to a figure outside the Sierra Leonean polity.

The centrality of the ‘acts of terror’ count in the case against Taylor can hardly be seen as anything other than a post-9/11 American obsession. It is not part of a cosmopolitan human rights vocabulary and is not a crime under the statutes of other international criminal tribunals. However, the prosecution made a skilful effort to ‘vernacularize’ the charge of terror by attaching it to the phrase ‘making fearful,’ which it demonstrated was widely used by the RUF.

The prosecution’s emphasis on diamonds as Taylor’s prime motivation for involvement in the Sierra Leone war could make sense to audiences in West Africa, as well as in the West. The term ‘blood diamonds’ is primarily associated with Sierra Leone (indeed, the Hollywood film with that title is set there), and even Taylor agreed that diamonds were a prime cause of the war. However, the prosecution did not make much effort in explaining why Taylor wanted diamonds. As quoted above, the prosecution mentioned both greed and lust for power as motives, but neither was elaborated on. No reference was made to the luxuriousness of Taylor’s lifestyle, nor did the prosecution explain why he would go to the trouble of arming the RUF in exchange for diamonds and then of selling diamonds in order to procure further arms. It remains nebulous whether fuelling the conflict was an intermediate aim, with the ultimate aim being self-enrichment, or whether the extraction and sale of diamonds was an intermediate aim, with the ultimate aim being control over Sierra Leone as well as Liberia. Hence if we liken Taylor’s portrayal to that of a Hollywood villain, the final speech in which either his boundless greed or his bent for world domination are exposed is missing. This makes the singling out of Taylor as the *sole* villain, at the expense of agency among his associates, all the more problematic.

The prosecution did not give us a Taylor fuelled by ethnic hatred. This sets him apart from most portrayals of war criminals, from the Nazis to the defendants in the Yugoslav and Rwandan Tribunals and the first ICC trial against Thomas Lubanga. While this makes sense, as there appears to be no evidence of Taylor attempting to dehumanize any particular ethnic group, it points to a bigger problem for the prosecution in terms of its expressivist task. The evidence that war crimes took place in Sierra Leone is assembled easily enough. Unlike in the case of the Holocaust, however, no written plans have been unearthed that prove intent to commit mass murder. Unlike in the Yugoslav and Rwandan cases, there is not even evidence of murderous or dehumanizing language being used in reference to a particular population. The only direct evidence linking murder, maiming, rape and pillage in Sierra Leone to Taylor comes from the testimony of the president’s blood-steeped former accomplices, such as convicted RUF leader Issa Sesay and Liberian commander Zigzag Marzah.

We now turn our attention to the narrative presented by the defendant and his lawyer. The defence takes Taylor’s apparent lack of ethnic grudges, recognized by the prosecution, a step further: the child of an Americo-Liberian father and a

native mother, he unites in his person the two groups whose previous feuding tore Liberia apart. On the stand, Taylor comes across as a would-be international statesman more than the charismatic 'leader of the people' seen in Yugoslav trials. He appears at times to want to appeal to all Africans, and at other times even more widely to the 'international community.' This is consistent with his nonethnic profile and provides a credible motive for his involvement in the Sierra Leonian peace process.

Taylor's account of his humble origins and his 'calling' to lead his country to become more developed could appeal to Americans, to Liberians and arguably even to Sierra Leonians, whose lack of social mobility is often cited as one of the causes of the war.<sup>126</sup> His schizophrenic attitude to the US, embracing its values but feeling slighted and neglected in return, would be intelligible to Liberians in particular. However, the broader story is that Taylor was ultimately betrayed by the Americans because he stood up to them, particularly by resisting oil concessions. The supposed consequences are likened to the 'regime change' visited upon Saddam Hussein, an argument with potential appeal to a much broader non western, and even western, audience. This turns the 'terror' charge upside down, turning the accusation against the 'war on terror' instead. Taylor is compared not to Saddam but to universal saint Nelson Mandela and one-time pan-Africanist her Muammar Gaddafi.

The charge of racism levied against the prosecution fits only very partially with the prosecution's narrative, which did not overplay Taylor's proximity to ritual cruelties, constructing a rational, calculating universal villain rather than a depraved, barbaric African. Nonetheless, especially in the context of the wider defence discourse, the charge of racism may resonate with African audiences.

The defence's most powerful charge, against the independence of the SCSL and of its close proximity to US interests, has much to back it up. First, there is the prominent role of the US in the creation and funding of the Court. Second, there is the almost entirely American composition of the prosecution team. Third, there is the prosecution's discourse, which framed the alleged crimes in terms of terror and terrorism rather than war crimes or crimes against humanity and thereby echoed the dominant American foreign policy preoccupation of the last decade. These elements made it relatively easy for Taylor and his defence to frame the SCSL as a political project, where one of the stakeholders in the conflict is funding and arranging the prosecution of another stakeholder. By depicting the prosecution as a political instrument, Taylor and his lawyer thus undermined the legitimacy of the Court and the trial with some success.

As we have shown by means of discourse analysis, the Taylor trial demonstrates three interrelated obstacles to the fulfilment of the expressivist promise. Each of these manifests in the courtroom itself as much as outside it, and each is also likely to characterise other international criminal trials to a greater or lesser extent.

<sup>126</sup> See, Paul Richards, *Fighting for the Rain Forest: War, Youth and Resources in Sierra Leone* (Oxford: James Currey, 1998); Gberie, supra n 21.

First, a necessary tension exists between criminal procedure and historical truth telling in the case of mass violence. In a single trial, the prosecution's job is to place maximum responsibility with a single person or a small group. In reality, however, crimes against humanity can only be perpetrated through the mediation of many people. In the Taylor case, the RUF rebels were largely portrayed as mindless killing machines who voluntarily laid all their diamonds at Taylor's feet. During the RUF leaders' trials, meanwhile, full responsibility was placed with the RUF leadership and Taylor was a marginal figure. Different truths for different trials do not serve the aim of truth telling well.

Second, discourses cannot be expected to appeal unproblematically to all audiences all the time. Western audiences are likely to be privileged by prosecutors since international criminal courts, precarious as they are, rely to a greater or lesser extent on the support of western powers. As shown, US involvement in the SCSL and the Taylor trial was particularly damaging to the legitimacy of the process, because the SCSL could with some credibility be portrayed as the Americans' plaything, with American funding and American prosecutors leveling 'American' accusations of terrorism. This can be considered harmful to the success of Taylor's stigmatization and to restoring faith in the rule of law with African, and particularly Liberian, audiences.

Finally and most importantly, these and other weaknesses will almost certainly be skilfully exposed by the defendant and his lawyers in court. Criminal trials in general and high-profile international criminal trials in particular are an antagonistic game. Not one but two opposing narratives and sets of truths are put forward to the public. They have to be: if a defendant like Taylor were not granted ample opportunity to present his or her side of the story, the legitimacy of trial and court would certainly be damaged (the trial of Saddam Hussein springs to mind). This procedural fairness, however, may be a necessary but insufficient condition for perceived legitimacy: a trial without it will certainly not be capable of coming across as fair, but fair procedure may not be convincing enough in itself when the defendant has a strong story about the illegitimacy of the trial. Taylor has a particularly strong story, but we would argue that international criminal trials are 'political'<sup>127</sup> and controversial enough that his case is not exceptional in this respect. The judges are presented with a catch-22: giving the defendant free rein to challenge the legitimacy of the court may damage it, but restricting the accused's freedom to speak would be sure to damage it even more. This problem is compounded when the evidence for responsibility higher up the chain of command, or even outside the chain of command, as in the Taylor trial, is problematic, as is common enough in war crimes trials that go beyond physical perpetrators.

Legal expressivism provides a fruitful way of theorizing the potential socio-political effects of international criminal trials because it actually gives an account

<sup>127</sup> Sarah M.H. Nouwen and Wouter G. Werner, 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan,' *European Journal of International Law* 21(4) (2010): 941–965.

of the mechanism (messaging and play staging) through which such effects can be reached. In order to work not just as a normative but also as an empirical theory, however, it requires further development. In particular, Drumbl's account of trials as theatrical spectacles provides an appropriate metaphor, but a better theory on the role of the actors, the audience and the stage in this theatre needs to be developed.

In terms of actors, it must be recognized that defendants are not always content with the part implicitly assigned to them by the expressivists, bowing their head in shame and silently awaiting judgement for several years. Instead, the Taylor trial shows how they may disturb and contest the presentation of what happened during a conflict, the role of the defendant in it and the legitimacy of the trial itself. Expressivists put much emphasis on the judges' verdict as the moment in which the naming and shaming is communicated, but it is doubtful whether this undoes at one stroke the years of undermining that have preceded it.

As crucial as the authors sending the message are those who are the subject of the expressivist potential of trials: the audience. The audience is not a uniform group; it consists of different groups with their own backgrounds, experiences and allegiances. We have discussed the different audiences the two sides in the Taylor case appeared to be addressing and have speculated to what extent different types of messages might resonate with them. Further research could clarify the extent to which the 'messages' of a trial are indeed heard, validated and reproduced by different audiences.

Finally, there is the 'stage.' International criminal courts are not institutions that can take their legitimacy for granted. If the defendant succeeds in delegitimising the court in the eyes of (some of) the audiences, the entire expressivist potential towards those audiences will be undermined. If the court is not taken seriously, truth telling and stigmatization of particular behaviours cannot succeed.

Further research on the elements of actors, audiences and stage in high-profile international criminal trials can provide further guidance on whether the obstacles to expressivism we have identified can under certain circumstances be overcome or whether they are structural features.