

CHARLES TAYLOR'S TRIAL JUDGMENT AND THE ISSUE OF THE PRINCIPLE OF COMMAND RESPONSIBILITY

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ABSTRACT: *The Principle of command/Superior responsibility is a criminal responsibility of a military commander or a civilian superior for crimes committed by subordinates (militaries or other civilians) under their control if he knew or had reason to know that were committed and that he failed to prevent or to punish the perpetrators. Command responsibility is reflected in two forms: The direct responsibility for action arise when the superior orders the commission of crimes to his subordinates, participates or to aid and the indirect liability by omission, engaged after a failure of the superior to prevent the actions of his troops on the field of Battle or repress their commission. Applying the principle need to meet certain conditions: the Superior-subordinate relationship link the accused and those who committed crimes and the knowledge of the Superior that his subordinate has committed or has a guilt part in the commission of crimes, the failure of the Superior to take necessary and reasonable measures to prevent or to punish those crimes incurs his criminal liability. The main purpose of the present Article is to demonstrate how the criminal liability of Charles Taylor has been retained by the judges of the Sierra Leone's special tribunal under the principle of command responsibility.*

KEYWORDS: Command Responsibility, Charles Taylor's Trial Judgment; War Crimes; Crimes against Humanity; Violation of the Humanitarian Law; Special Tribunal for Sierra Leone.

INTRODUCTION

The command responsibility mean criminal responsibility of a military commander or a civilian superior for crimes committed by subordinate members of the armed forces or other civilians under their control if he knew or had reason to know that crimes were committed and that he failed to prevent or punish them after their occurrence. This doctrine, which has its origins in military law, has been recognized in international law since the aftermath of the First World War with the Treaty of Versailles of 1919 which established the League of Nations (LN). Since then, the principle has occupied a prominent place in international humanitarian law and in criminal practice; it had undoubtedly a foundation in many conventions specifically in the four Geneva Conventions of 1949 and reaffirmed in the First Additional Protocol to the Convention Geneva. In terms of authority, it is important to note that the principle was first applied to certain defendants in the wake of the Second World War by the Criminal Court of Nuremberg and Tokyo before being taken over by the statutes of the ad hoc international criminal tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The International Criminal Court also did not remain on the sidelines in the consideration of the doctrine of command responsibility. Article 28 of the Rome Statute which established the court provides the possibility to prosecute individuals criminally responsible on the basis of command responsibility. In light of all the

above, we can easily say that the doctrine of command responsibility has become nowadays the cornerstone of the application and enforcement of the international humanitarian law.

However, despite the stubborn determination and efforts provided by the international community to prosecute those perpetrators of heinous crimes against humanity, it is important to mention that the world still continues to be the theater of bloody conflicts. Indeed still in its mission to prevent and punish violations of humanitarian law in the world, the international community to each violation response by setting up a court judging the authors as appropriate. It's in this sense that the Security Council of UN decides to extend the list of special ad hoc courts following recent serious violations of international humanitarian law during the bloody conflict that shook the nation of Sierra Leone between 1991 and 2002 and resulting in more than 50,000 deaths in the country. Accordingly, the Security Council of the United Nations adopted the resolution 1315 (2000) of 14 August 2000 which mandated the UN Secretary-General to establish a special court for the Sierra Leone. Indeed following a bilateral agreement signed on January 16, 2002, between the Government of Sierra Leone and the UN and ratified by the Parliament of Sierra Leone in March of the same year, the SCSL was officially established in July 2002. The court's mission is to pursue and prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law in the territory of Sierra Leone since 30 November 1996. The sir Kanghai Charles Taylor former Liberian president heavily involved in the hostilities was the first person prosecuted and tried by the court on the basis of the principle of "the greatest responsibility" provided by the statute of the court. We clarify in this regard that the trial of Charles Taylor began on June 4, 2007, and ended before the second Trial Chamber of the Special Court for Sierra Leone on 26 April 2012.

In the context of the application of the principle in Taylor trial, we will, in general, rely on the procedure adopted by the court in the judgment of Taylor and then see how the doctrine has been applied in particularly through the trial. To do this, we will address the issue in its roots, that is to say, from the issuance of the arrest warrant against Taylor to the final verdict of his trial. In this context, we will first present briefly the facts which are the basis of the case and then focus on crimes reproached to Taylor on the basis of command responsibility (Chapter I). Then we will relate The role of Taylor in the Sierra- Leonean conflict before analyzing the establishment of his responsibility (chapter II), in accordance with the procedure and the reasoning adopted by the court.

Chapter I: Factual background and crimes alleged to Taylor on the basis of command responsibility.

First, we are going to remind the facts (Section 1) in order to draw crimes alleged to the accused on the basis of command responsibility (Section 2)

Section 1: factual background

Here, we'll focus on the accused (I) and give a summary of the charges against him (II)

I. Taylor from the power to the Tribunal

Came to power following a military coup carried against the regime of Samuel Doe, Taylor was the president of Liberia from August 2, 1997, to August 11, 2003. Before his accession to power, Taylor directed a militia Revolutionary, National Patriotic Front of Liberia (NPFL)), during which he would have maintained a relationship with the leader of the Revolutionary United Front of Sierra Leone (RUF), Foday Sankoh which led with the other militia leaders

war in Sierra Leone from 1991 to 2002 which resulted in more than fifty thousand deaths. According to the indictment, Taylor first met Foday Sankoh in Libya in the 1980s where they all had a military and ideological training and lay the foundations of their enterprise. Taylor would indeed provide material and financial support, as well as ammunition Foday Sankoh's Revolutionary United Front followed by a military training of the military faction of URF. The objective of Taylor through its support to Sankoh is to destabilize the regime in power and to seize mineral resources available in the country. In addition, Taylor had encouraged and even extended the same support to other military factions which worked with Sankoh. With the encouragement and support of Taylor, the Revolutionary Armed militias have carried out attacks against civilians, medical personnel and peacekeeping forces of the UN in the districts of Bo, Kono, Kenenma, Bombali, Kailahun, and Freetown. At the end of the conflict in 2002, the UN decided to establish a Special Court for Sierra Leone, on Sierra Leonean government's request charged to try those who bear the greatest responsibility for serious violations of International law during the conflict. Strongly suspected of being involved in the conflict in Sierra Leone, the SCSL has adopted an indictment May 7, 2003, with an arrest warrant issued against Taylor by the UN. The latter resigned from power after two months, under international pressure and was exiled to Nigeria. At the request of President Elene Johnson, the Nigerian authorities arrested Taylor on March 29, 2006, and delivered him directly to the SCSL, located in Freetown. But for security reasons, Taylor was transferred to The Hague 30 June 2006 where his judgment began June 4, 2007 before the first Trial Chamber in the headquarters of the SCSL in The Hague. Before the court, the counts against him must be recognized. (II)

II. Brief summary of the charges against Taylor

The accused is facing 11 charges provided and punishable under Articles 2, 3 and 4 of the Statute of the SCSL.

The 11 charges are the following:

- Murder; rape; sexual slavery; other inhumane acts and enslavement (article 2 of the statute);
- Acts of terrorism; violence to life; health and physical or mental well-being of persons, in particular murder; outrages upon personal dignity in particular cruel treatment and pillage (article 3 of the statute);
- Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities and other charges under article 4 of the statute. These various allegations constitute the elements of the crimes charged under the acts of his subordinates (section2)

Section 2: The crimes alleged against Taylor on the basis of command responsibility

The crimes reproached to Taylor are the result of the acts of his presumed subordination in the conflict in Sierra Leone.

I: Crimes against humanity

Crimes against humanity are defined in Article 2 of the Statute of the SCSL as follows:

“The following crimes as part of a widespread or systematic attack against any civilian population:

- a. Murder;
- b. Extermination;
- c. Enslavement;
- d. Deportation;
- e. Imprisonment;
- f. Torture;
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual Violence;
- h. Persecution on political, racial, ethnic or religious grounds;
- i. Other inhumane acts”.

According to the accusation, these crimes were committed by military factions under the command of Taylor on Sierra Leonean territory in many districts of the country, in Freetown and western area. For example: Between 30 November 1996 and about 18 January 2002, member of RUF,AFRC,AFRC/RUF junta or alliance, and/or Liberian fighters assisted and encouraged by, acting in concert with, under the direction and/or subordinate of the accused, committed widespread acts of sexual violence against civilian women and girls and raped in the following districts: Kono district(between 1 February 1998 and between 31 December 1998), district of Kailahun (between about 30 November 1996 and between about 18 January 2002), in Freetown and western area (between about 21 December 1998 and about 21 February 1999)¹

Apart from crimes against humanity, Taylor is also accused of war crimes

II. War crimes

War crimes are defined in Article 3 of the Statute of the SCSL as follows: “the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims and of Additional Protocol II thereto of 8 June 1977”. These violations shall include:

- a. Violence to life, health and physical or mental well-being of persons, in particular, murder as
Well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- b. Collective punishments;
- c. Taking of hostages;
- d. Acts of terrorism;

¹ See introductory part of the judgment of the second Trial Chamber, introduction, chapter A on the summary of charges against the accused. see the Court web site: www.scsl.org

- e. Outrages upon personal dignity, in particular, humiliating and degrading treatment, rape, Enforced prostitution and any form of indecent assault;
- f. Pillage;
- g. The passing of sentences and the carrying out of executions without previous judgment Pronounced by a regularly constituted court, affording all the judicial guarantees which are Recognized as indispensable by civilized peoples;
- h. Threats to commit any of the foregoing acts.

Some of these crimes like violence to life, health and physical or mental well-being of a person, in particular, cruel treatment; outrages upon personal dignity were committed by a member of RUF,AFRC,AFRC/RUF junta, and/or Liberian fighters assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the accused alliance in these places: Kono District(between about 1 February and about 31 December 1998),District of Kailahun (between about 30 November 1996 and about 18 January 2002),in Freetown and Western area(between about 21 December 1998 and about 28 January 1999.)²

The status of the SCSL located war crimes from the angle of violation of Article 3 common to the Geneva Conventions of 12 August 1949 and Additional Protocol II of 8 June 1977. "Serious violation of the Geneva Conventions of 12 August 1949, namely, any of the acts referred to in Article 8-2 (a) against persons or protectors well by the provisions of the Geneva Conventions (GC), other serious violations of the laws and customs of international armed conflicts within the established framework of international law, namely, any one of the acts referred to in Article 8.2 (b); In the case of armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949 Namely any of the acts referred to in Article 8.2 (c)" The third element of the series of crimes charged against Taylor by the court is related to other serious violations of international humanitarian law (section 3).

Section 3: Other serious violations of international humanitarian.

In the light of Article 4 of the Statute of the SCSL are qualified for serious violations of international law the following acts:

- a. Intentionally directing attacks against the civilian population as such or against individual Civilians not taking direct part in hostilities;
- b. Intentionally directing attacks against personnel, installations, material, units or vehicles Involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter Of the United Nations, as long as they are entitled to the protection given to civilians or civilian Objects under the international law of armed conflict;
- c. Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.³

² Ibid, paragraph A

³ Ibid, paragraph A

For this category of crimes provided for in Article 4 of the Statute may concern almost all the various crimes under the Statute. Because all crimes are constituted serious violations of international humanitarian law although the status has counted some specifications of such crimes. An important element of these crimes of enlisting children under the age of 15 years in the military factions in Sierra Leone to take part in hostilities has lasted throughout the period of the conflict.⁴

In the end, it should be noted that Taylor is accused of crimes of omission to prevent the crimes cited above, and engage his individual criminal responsibility⁵ on the basis of Article 6 (1) of the Statute.

We will then look at the role of the accused in conflict prior to study how its liability was established by the court (Chapter II)

Chapter 2: The role of Taylor in Sierra Leone conflict and the establishment of Taylor criminal responsibility

We first focus on the role of the accused in the conflict in Sierra Leone (section1) then analyze the establishment of his criminal responsibility (Section 2)

Section 1: The role of Taylor in the conflict in Sierra Leone

The indictment charges the accused of playing roles: supplier of arms and ammunition to armed groups in Sierra Leone and to have moral support, financial and material support to armed factions in Sierra Leone.

I. supplier of arms and ammunition

The prosecution holds that the accused has provided weapons and ammunition to armed factions involved in the war. Indeed, the prosecution argued that the accused ordered the RUF to monopolize the diamond fields of Sierra Leone and thereafter, it will provide the RUF with arms and ammunition in exchange for diamonds. In addition, in the same vein, the charge holds that the accused contributed to the procuring organization and a large consignment of arms and ammunition from Burkina Faso that was provided to the forces of the AFRC/RUF in exchange. In addition, a source of evidence for the prosecution, during the administration of Issa Sesay, he used to go to the farm of Taylor at Malkei to get supplies of ammunition⁶.

In light of this, the Trial Chamber has no reason to doubt his account that on Bockarie's instructions Tamba brought a supply of ammunition from the Accused during the Junta period. Further, there is evidence that Bockarie was communicating with the Accused in relation to arms and ammunitions requests during this period.⁷

It should be noted that as expected the role of Taylor was not limited to supporting arms and ammunition brings the military factions in Sierra Leone.

⁴ Ibid, paragraph A

⁵ Individual responsibility of the accused is engaged on the basis of command responsibility for failing to prevent criminal acts of his alleged subordinates during the conflict.

⁶ Charles Ghankai TAYLOR case No SCSL-03-01-T, Trial chamber II Judgment, 18 May 2012, page NO,42210 (TF1-567, Transcript 4 July 2008, p. 12996-13000.)

⁷ Ibid, page 42283

II. Moral support, financial and material provided to armed factions in Sierra Leone

In this way, it is important to note that according to the prosecution, From August 1990, Camp Naama was used as the training base for both NPFL and RUF fighters. Approximately 300 RUF fighters comprising Sierra Leoneans and Liberians were trained at Camp Naama, including persons who later became senior members of the RUF, such as Sam Bockarie, Issa Sesay, and Morris, Kallon Philip Palmer, Augustine Gbao and Mike Lamin⁸. Otherwise the prosecution claim that after the initial attack in March 1991, the Accused sent NPFL troops including radio operators and commandos from Liberia to reinforce the RUF forces fighting on the front lines in Sierra Leone, and created and equipped a special unit known as “Black Gadaffa” tasked with regaining the border areas of Sierra Leone and preventing ULIMO from cutting off the Liberia-Sierra Leone supply channels⁹. The Prosecution further claims that Taylor’s forces remained in Sierra Leone, directing and participating in the fighting and the crimes committed against civilians; and that even after the NPFL’s withdrawal from Sierra Leone in June 1992, the Accused continued his involvement, participation and concerted action within the RUF¹⁰ and was in contact with Sankoh through radio communication, checking on the situation within the RUF¹⁰. The Prosecution further claims that during the Freetown Invasion Bockarie went to Monrovia to take instructions from the accused and that during the second half of 1998 the Accused held clandestine meetings with Bockarie aimed at refining and implementing the plan after the failed Fitti-Fatta mission¹¹. The Prosecution further alleges that Taylor convinced the RUF to participate in the peace talks in order to ensure that the RUF would survive to continue its fight to control the Sierra Leonean people and territory and for plundering the resources of Sierra Leone¹². The Prosecution alleges that the Accused, Sankoh and NPFL commanders planned the March 1991 invasion of Sierra Leone at a meeting chaired by the Accused in Voinjama in Liberia’s Lofa County in March 1991. In addition, the TF1-371 testified that Bockarie told him that he had sought material assistance from the Accused in 1997 when he was at Kenema. In other terms, The Prosecution contends that the Accused had control over the leaders of the groups that were perpetrating horrific crimes and there is far more evidence linking the Accused to the crimes committed in Sierra Leone rather than Gadhafi and Compaoré, and that the majority of the assistance provided by other individuals went through the Accused.

Section2: The establishment of Taylor command responsibility

According to article 6 of the STSL: “A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or

⁸ Ibid,page.40607(Isaac Monger, Transcript 10 March 2008, pp. 5666-5667; Foday Lansana, Transcript 20 February 2008, p. 4374; TF1-371, Transcript 24 January 2008, pp. 2204, 2206-2208 (CS); DCT-025, Transcript 17 March 2010, p. 37411; TF1-168, Transcript 21 January 2009, pp. 23203-23204 (CS); TF1-362, Transcript 27 February 2008, p. 4805 (CS); TF1-367, Transcript 20 August 2008, p. 14096. Dauda Aruna Fornie, Transcript 1 December 2008, pp. 21301)

⁹ Ibid, page 40611

¹⁰ Ibid page 40611

¹¹ Ibid Prosecution Final Trial Brief, Para 158-175, 1201.,Fitti-Fatta is a type of mission directed by Bockarie during the invasion of Freetown against the SLA

¹² Ibid, page 40616

had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof....”

I. The analysis of elements of superior responsibility under the article 6 (3) of the statute

In the light of the article 6(3) of the statute, three conditions must be met in order to engage the responsibility of the superior: Subordinate relationship between the accused and the perpetrators, the knowledge of the accused of the acts of subordinates and the failure of the accused to prevent or to punish the acts of subordinates

1.1. Subordinate relationship between Taylor and crimes perpetrators

To fully develop the subordinate relationship, the court shall conduct a study of leadership and command structure, an analysis of the chain of command.

In this context, firstly, The Prosecution submits that around March 1998, as part of the restructuring of the AFRC/RUF alliance after the ECOMOG Intervention, Bockarie was promoted to Chief of Defence Staff for the whole movement, which made him the “highest man” and “the leader” in charge of all the RUF, AFRC and STF forces. Bockarie was also, at the same moment, promoted to “General”. The Prosecution submits that this promotion was either a direct promotion from Taylor or a joint decision between Taylor and Koroma¹³. Moreover, the Trial Chamber has found that Bockarie met the Accused in February/March 1998 when the Accused instructed Bockarie to maintain the hold over Kono¹⁴. But in his defense, the Accused denied that he promoted Sam Bockarie when they met for the first time in Monrovia in February 1998 after the ECOMOG Intervention. The chamber evokes that in the testimonies, several versions have been given. In light of these many different versions, the Trial Chamber is unable to find beyond a reasonable doubt that the Accused promoted Bockarie, as alleged by the Prosecution.

Secondly, the Prosecution’s alleged that Taylor promoted Bockarie to two-star general after the Freetown Invasion, the Prosecution relies on the evidence of TF1-371 to support this proposition.

Thirdly, the Prosecution submits that after Sankoh’s arrest and detention in May 2000, Charles Taylor designates Issa Sesay to take over the leadership of the RUF, and Taylor told them that the RUF needed new leadership because “Sankoh was too old, stubborn and lazy”.

The defense rejects this argument and submits that the Prosecution’s evidence is highly suspect and contested¹⁵. Most importantly, however, even assuming *arguendo* that these allegations were true, the defense submits that the fact that orders were allegedly issued and followed does not, *ipso facto*, establish effective control in this case where the Accused was a civilian leader in a different country altogether.

Finally, the prosecution alleges that during the Operations in Liberia and Guinea during Issa Sesay’s leadership of the RUF, in obedience to Taylor’s instruction, Sesay provided significant RUF manpower to fight for the Accused in Liberia and in Guinea under the command of the

¹³ Prosecution Final Trial Brief, Para 56, 147-148, 450, 454-455.

¹⁴ Military Operations: Operations in Kono (Early 1998); Diamonds: Alleged Delivery of Diamonds to the Accused, February 1998-July 1999.

¹⁵ Defense Final Trial Brief Para. 1293.

Accused's subordinates. The Prosecution submits that assistance to the Accused was one of the reasons why the RUF was slow to disarm¹⁶. In conclusion, at the outset, the Trial Chamber recalls that evidence in the record shows that Taylor was referred as "Pa", the "father", "Papay", "godfather", or "Chief", by RUF members. These words show how the RUF respect Taylor, and these terms are used in Africa to designate a leader, but these references are insufficient to establish that Taylor has de facto authority over the RUF. The Trial Chamber has found that Foday Sankoh and the Accused met in the late 1980s in Libya, where a number of West African revolutionaries were trained.

Definitively, the Trial Chamber finds that the RUF and later the AFRC/RUF's interests were intrinsically linked to the interests of the Accused, and their relationship was established by a synergy and complementarity of these interests. The Accused provided ongoing advice and guidance to the RUF leadership and had significant influence over the RUF and AFRC, but he did not have effective control over them, and the relationship cannot be defined within the framework of a superior-subordinate command structure¹⁷.

The accused "knew" or "had reason to know"

The superior must know or have reason to know of the commission of offenses by subordinates, this is one of the legal requirements of superior responsibility as provided by Article 6 (3) of the Statute: that "he or she knew or had reason to know that the subordinate was about to commit such acts or had done so. "

Thus, based on disposal of Article 6 (3) the court examined the measures in which the accused was aware of the atrocities committed in Sierra Leone by the armed factions.

First, to the question of the parties' arguments, the prosecution argued that Taylor was well aware of the notorious reputation of the RUF and their violence against the civilian population, including the crimes enumerated in the indictment. The prosecution argued that the accused is a leader well informed of the situation by the RUF, but as well as involved in political and diplomatic negotiations between ECOWAS and the RUF when he was president of Liberia accused was receiving information from the UN and its agencies.

In response, the defense said they agreed with the arguments of the charge, respect of which the accused had knowledge of certain crimes already committed by the RUF including looting campaign waged against civilians, but the RUF is not well structured with reporting and monitoring mechanisms that have kept Taylor informed of all activities. Moreover, defense support that as president of Liberia, Taylor is geographically excluded from theaters of crimes¹⁸.

The accused himself, states that before 1997, it was not in a position to be aware of the crimes that took place in Sierra Leone when he was not elected president. The prosecution refers to Resolution 1132 of 8 October 1997 of the UNSC through which the Council condemns the situation in Sierra Leone as a threat to peace and said he was deeply concerned by the continuing violence and loss of life in Sierra Leone and consequences for neighboring countries, as evidence of knowledge of the crimes by the accused¹⁹.

¹⁶ Prosecution Final Trial Brief, Para 389-392.

¹⁷ Peace Process: Release of UNAMSIL Peacekeepers (2000).

¹⁸ Defense Final Trial Brief, paras 566, 1152, 1257, 1333, 1349-1350.

¹⁹ Exhibit P-069, "United Nations Security Council Resolution 1132, 8 October 1997", p. 2.

In its deliberations, the Trial Chamber holds that under the scale of atrocities committed in Sierra Leone and disclosure by international organizations (IOs), nongovernmental organizations (NGOs) such as Amnesty International, Human Rights Watch UNHCR and national and international media, the accused was well aware of the crimes committed by rebel factions in Sierra Leone. The trial chamber was indeed based primarily on the significant numbers of reports prepared in 1997 by ECOWAS and the various UN agencies which certify that the crimes committed in Sierra Leone took an international dimension. The Chamber also noted the report prepared by the Department of Humanitarian Affairs of the UN dated June 4 to 5, 1997 about the killing of civilians, looting and amputations in Sierra Leone. The chamber has also referred to the message to the nations delivered by the RUF in which he apologized for the atrocities committed by its forces, including rapes and killings²⁰.

In view of the foregoing, the chamber concluded in fact that it is beyond reasonable doubt that the accused was aware of the crimes committed by the forces of the RUF / AFRC against civilians, including killings, abductions of civilians, including children, rape, amputations, and looting, from August 1997, when he became President of Liberia.

The failure of the accused to prevent or to punish the acts of subordinates

In the light of Article 6 (3) and talking about responsibility, the superior must have failed to take necessary and reasonable measures to prevent the commission of crimes or to punish the perpetrators of such crimes.

The question of whether the accused has taken necessary and reasonable measures to prevent acts or punish the perpetrators has not been discussed by the court. Nevertheless, in the indictment, the prosecution submits that the accused failed to take the provisions referred to in Article 6 (3) to prevent the commission of crimes and punish the perpetrators, even though those authors are under his command.

The defense responded with the assertion that, under Article 6 (3) of the Statute, the superior is required to take these measures when he has effective control over subordinates, perpetrators of crimes. The defense said the accused was never able to control the actions of the RUF because it is a force disorganized, unstructured and it is not able to keep inform the accused of criminal acts. So the accused cannot in these circumstances take measures to prevent the crimes or punish the perpetrators of which he has no control. The defense argues that despite everything, the accused did his best to stop the hostilities in Sierra Leone through various declarations of denunciations of the acts of the RUF and its active participation in the peace process in Sierra Leone conjointly with the ECOWAS.

The Trial Chamber accepts the accused was actively involved in the peace process but has not taken that into account, something that the defense has so denounced. However, the Trial Chamber concluded that in referring to Article 6 (3) of the Statute, the "effective control" of subordinates by the accused is a sine qua none condition to take preventive measures for the acts subordinates²¹. Indeed, the chamber in its prior conclusions has already excluded the existence of a superior-subordinate relationship between the accused and the perpetrators (RUF) by lack of "effective control" on the part of the accused.

²⁰ Ibid, pp. 32378-32379

²¹ Applicable Law: Law on Individual Criminal Responsibility.

Ultimately, the Trial Chamber concluded that it must be shown that the accused has effective control over the perpetrators, and the "effective control" is the material ability to prevent or repress the commission of the offense.

We will now focus on the determination of the criminal responsibility of the accused

II. The basis of criminal responsibility of the accused

In accordance with the Statute of the Tribunal and the indictment, the Trial Chamber first considered the individual criminal responsibility of the accused on the basis of Article 6 (1) then the chamber focused on the analysis of its superior responsibility on the basis of Article 6 (3) of the Statute.

Individual criminal responsibility

At the end of Article 6 (1) of the Statute, the individual criminal responsibility includes responsibility for Joint criminal enterprise (JCE) (1) and responsibility for planning, inciting, organizing, aiding and abetting (2).

The responsibility of the accused for JCE

It should first be noted that the responsibility for JCE²² needs the meeting of these following elements: a plurality of persons (1) the existence of a plan, design or purpose which amounts to or involves the commission of a crimes under the Statute (2) and the participation of the accused in the common plan, design or purpose. Moreover, it should be noted that the principle that a person may be held liable for participating in a joint criminal enterprise provided for by customary international law.

And pursuant to indictment, the accused is charged with joint criminal enterprise on the basis of Article 6 (1) for the crimes referred to in Article 2.3 and 4 of the Statute, the Prosecution reproached the accused of having participated in a JCE²³. Indeed, the prosecution argued that within the framework of the invasion of Freetown by the NPFL, the accused had met several times Foday Samkoh, Samba Sanyang Kukoi Dr. Manneh (Gambia dissident) in Libya, Burkina Faso, Voinjama to form a joint plan of military aid²⁴.

In these allegations, the defense argued that the prosecution has not provided credible evidence attesting that the accused is engaged in a common plan of criminal nature with the aforementioned individuals.

The Trial Chamber notes that the Prosecution failed to provide convincing evidence of the meeting between the accused, the RUF and Kukoy Samba and that their meeting aims to draw any criminal action. The chamber has retained then it had certainly a relation of aid between the accused and the RUF, but it is not clearly mentioned that mutual aid is likely to create a common plan that may be qualified to JCE²⁵.

Individual criminal responsibility for having planned, instigated, ordered, aided and abetted the commission of the crimes.

²² Joint Criminal Enterprise

²³ Prosecution Final Trial Brief, paras 574-587

²⁴ Ibid, paras 51-53.

²⁵ Pre-Indictment Period (1998-1996): Conclusion.

In the light of Article 6 (1), is individually criminally responsible "that person who planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime."

It is on the basis of this article that the prosecution reproached to the accused of planning, instigating and ordered the preparation of the crimes provided for in Article 2.3 and 4 of the Statute and of aiding and encouraging their execution²⁶. In this context, the prosecution argued that in the context of aiding and abetting, the accused has provided practical assistance followed by a moral support to the RUF, which had a significant effect on the perpetration and substantial crimes mentioned in the indictment.

The defense denies all the allegations of the prosecutor against the accused by stating that the accused has at no time aided and abetted the commission of any of the crimes listed in the indictment, nor provided any form of assistance to the RUF as alleged by the prosecutor. Moreover, the defense argues to convince the chamber that Taylor is actually responsible for encouragement, support, and planning commission of crimes within the meaning of Article 6 (1) of the Statute, the accusations must prove beyond reasonable doubt that the assistance, encouragement and moral support planning or other of the accused had a substantial effect on the commission of the crimes listed in the indictment (actus Reus)²⁷, the prosecution must bring the knowledge by the accused of the state of mind which animates the principal perpetrator in the commission of the crime (mens rea).

After an appropriate analysis of the material elements (eg, use by the RUF and AFRC / RUF of the weapons, ammunition, logistics and equipment ... from the accused) and mental (eg, knowledge of the crimes by the accused, including the mental state of the authors) of said charges, the Trial Chamber found beyond reasonable doubt that the accused is criminally responsible under Article 6 (1) of the Statute for knowingly aiding and abetting the crimes mentioned across the 11 counts.

The superior responsibility

In the indictment, it is held against the accused of having occupied a position of superior responsibility and exercising command and control over subordinates, members of the AFRC/RUF and their allies, Liberian fighters. It is thus held the accused is responsible for the criminal acts of his subordinates when he knew or had reason to know that subordinates were about to commit such acts or had done it and that the accused did not take the necessary and reasonable measures to prevent acts or punish the perpetrators.

It is in the light of the foregoing that the prosecution argued the accused had materialized his power over the AFRC / RUF, therefore it has been established beyond reasonable doubt that the accused had exercised the authority of fact on the members of the RUF and after AFRC / RUF. Indeed, the indictment charges the accused of being responsible for the crimes listed in Articles 2, 3 and 4 of the Statute, committed²⁸ by his subordinates in Sierra Leone.

The defense denies the criminal responsibility of the accused based on a relationship of subordination between the accused and the perpetrator. The defense argues that in the light of

²⁶ Taylor trial judgment, SCSL 03-01-T, Prosecution Final Trial Brief, paras 600-601.

²⁷ Taylor trial judgment, SCSL 03-01-T, applicable Law: Law on Individual Criminal Responsibility.

²⁸ Taylor trial judgment, SCSL 03-01-T, prosecution Final Trial Brief, Para. 622.

Article 6 (3), for it to have the superior responsibility, it should show that the accused knew or had reason to know that the subordinate was about to commit the criminal act, or it had already committed. The defense then argues that there was no relationship of subordination between the accused and the perpetrators and that given the nature of unstructured AFRC / RUF, they are not able to inform the accused of their crimes and the defense added that under the position of president of another country, its geographical position puts him out of the theaters of atrocities, so it is deprived of necessary and reasonable measures to prevent acts and punish the perpetrators. The defense also states that it has not been demonstrated beyond reasonable doubt that the accused knew or had reason to know of the criminal acts and did not take steps to prevent or punish the perpetrators²⁹.

The second Trial Chamber holds first that for the subordinate relationship, certainly there was a close relationship between the accused and Foday Sankho during the period prior to the indictment, but the evidence shows that the relationship between the accused and Foday does not reveal effective control of the accused on the acts of Sankho, which excludes a subordinate relationship between the accused and Foday³⁰. In addition, the Chamber stated that after the arrest of Foday, the accused freed advice and instructions to Sam Bockari who took control of AFRC / RUF, but the evidence showed that the advice of the accused was not transformed into decisions or enforceable order against Bockari. This explains the absence of subordination because it is Sam Bockarie who has always ensured the control AFRC / RUF and not Taylor. Indeed, the Chamber argues that the moment when the accused does not control the AFRC / RUF, he did not have effective control over its members, then he cannot be able to take some necessary and reasonable measures to prevent their criminal actions or to apply sanctions to that effect.

Chamber ultimately concluded that the prosecution has not proved beyond reasonable doubt that the accused is individually criminally responsible for the crimes referred to in Article 2.3 and 4 of the Statute and mentioned in the indictment to have occupied a position of superior responsibility or to exercise a command and a control over the military junta RUF, AFRC, AFRC / RUF, or allied and / or fighters Liberians.

In its reasoning, the Court seems to focus more on the relationship of subordination characterized by the requirement of effective control of the accused over perpetrators, to decide of his superior responsibility. It is clear from this decision that the Tribunal gave more importance to the first element of the doctrine (the subordinate relationship) than the other two (the superior knowledge and his failure to take preventive measures to prevent acts or punish the authors), to establish the liability of superior. In the final analysis, the court recognized the responsibility of Taylor as a civilian supervisor for knowingly aided and abetted the commission of the crimes committed by the armed factions in Sierra Leone.

CONCLUSION

The doctrine the doctrine of command responsibility knows a few obstacles in its application which are especially the circumstances that limit its application. In this perspective, the first thing that strikes us is lies at the ICC Statute. As a permanent court, it must have universal jurisdiction, which leaves no margin state. To do this, we strongly recommend at first an

²⁹ Ibid, paras 1333-1334

³⁰ Taylor trial judgment, SCSL 03-01-T, leadership and Command Structure: Conclusion.

amendment of article I of the Staff Regulations concerning the jurisdiction of the court, to expand the list of offenses which the court has jurisdiction. Then extend the jurisdiction of the court to the offender arising from States not parties to the Rome Statute as violations of humanitarian law occurring in all corners of the world. For this, we suggest the introduction into the statute of a provision relating to the jurisdiction of the court for violations of the laws and customs of war, so the court would have jurisdiction over crimes committed by individuals from a State not the signatory of the Rome Statute.

On the other hand, a question may arise as far it concerns the elements of superior responsibility (the subordinate-relationship, the knowledge of the superior and his failure to take measures to prevent acts or punish the perpetrators). In fact, are these necessary elements to engage the responsibility of superior cumulative or only one of them is sufficient to engage the responsibility of the superior?

Regarding the image of the doctrine in the special case of Taylor judgment, it is worth remembering that the court defies the principle of jurisdictional immunity of heads of state because Charles Taylor is the first head of state to be prosecuted, judged and sentenced for facts which occurred during the period that he performed the function of head of State. This principle has been raised by the prosecutor in the case of France and Colonel Gaddafi about the attack perpetrated against a unit UTA that killed 170 people in the “Ténéré” desert in Niger. So the judgment of Taylor is still a significant break through the doctrine and a major achievement for the SCSL and development for the DIP and IHL.

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