

345)

SCSL-03-01-T

12515

(12515-12521)



THE SPECIAL COURT FOR SIERRA LEONE

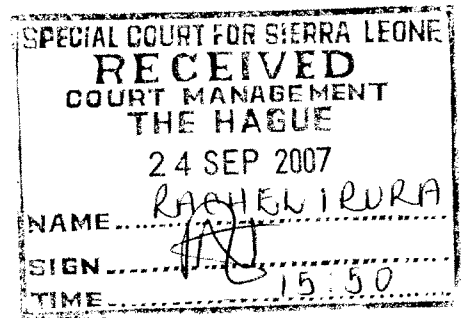
In Trial Chamber II

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

Registrar: Mr. Herman von Hebel

Date: 24 September 2007

Case No.: SCSL-2003-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE REPLY TO THE REGISTRAR'S SUBMISSION PURSUANT TO
RULE 33(B) IN RELATION TO DEFENCE MOTION SEEKING SPECIAL MEASURES
WITH REGARD TO RESOLUTIONS 1521(2003) AND 1532(2004)
OF THE UNITED NATIONS SECURITY COUNCIL**

Office of the Prosecutor

Mr. Stephen Rapp
Ms. Brenda J. Hollis
Mr. Mohamed Bangura
Ms. Leigh Lawrie

Counsel for Mr. Charles G. Taylor

Mr. Courtenay Griffiths, QC
Mr. Terry Munyard
Mr. Andrew Cayley
Mr. Morris Anyah

I. Introduction and Background

1. On 4 June 2006, the Defence filed a *Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council (Rule 8 and 54 of the Rules of Procedure and Evidence)* (“Motion”).¹ The Prosecution initially served its Response on 15 June 2007² and subsequently served a modified version of the Response on 3 September 2007.³ The Defence’s *Reply to the Prosecution’s Response to “Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council”* was filed on 6 July 2007.⁴
2. On 17 September 2007, the Registrar filed a Rule 33(B) Submission and attached correspondence between the then Acting Registrar and the Chairman of the Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia (“Committee”), dated 22 and 30 June 2007, respectively.⁵

II. Submissions

3. The Defence recognizes that there is no time limit within which the Office of the Registrar must file a submission pursuant to Rule 33(B). However, the Defence would like to note at the outset that its Motion has been pending since 4 June 2007. The Letters to and from the Committee⁶ which form the basis of the Registrar’s Submission are dated the 22nd and 30th of

¹ *Prosecutor v. Taylor*, SCSL-03-01-PT-277, Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council (Rule 8 and 54 of the Rules of Procedure and Evidence), 4 June 2007. Note that the Motion was reserved on 30 August 2007 with former Lead Counsel’s signature attached and the affidavits properly noted as *ex parte* and confidential.

² *Prosecutor v. Taylor*, SCSL-03-01-T-298, Prosecution’s Response to “Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council (Rule 8 and 54 of the Rules of Procedure and Evidence)”, 15 June 2007.

³ *Prosecutor v. Taylor*, SCSL-03-01-T-333, Confidential Prosecution Motion for Leave to Substitute an Amended Version of the Prosecution’s Response to “Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council” filed on 15 June 2007, 3 September 2007. The Defence appreciates the Prosecution’s efforts to modify their Response in order to respect the Defence’s intention that the affidavits be considered *ex parte* and confidential.

⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-314, Public Reply to the Prosecution’s Response to “Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council”, 6 June 2007 (“Reply”).

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-343, Public Registrar’s Submission Pursuant to Rule 33(B) in Relation to Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council, 17 September 2007 (“Submission”).

⁶ Submission, Appendices I and II (“Letters”).

June, respectively. Yet the Submission was not filed until 17 September 2007, more than 10 weeks later.

4. As indicated in its Motion and as reiterated in its Reply,⁷ the Defence has grave concerns about the prejudicial nature the travel ban and assets freeze have on Mr. Taylor's fair trial rights, due to the chilling effect they have on potential defence witnesses' willingness to testify for the Accused. It is therefore unfortunate that the Submission was not filed in a more timely manner, especially since the Letters are relevant to the matter *sub judice* and the Office of the Registrar has had them since the end of June. Furthermore, the belated service of the Letters on the Defence on 12 September 2007 is also a source of concern, considering that they squarely implicate the Accused's right to a fair trial and should, as such, have been served on the parties with some degree of expediency.
5. With respect to the substance of the Letters, the Defence does not object to their content *at this point in time* (emphasis added). It may well be the case that objections to the procedures that are set out in the Letters may arise, to the extent that protective measures are requested and granted in respect of any prospective witness that is on the travel ban and assets freeze lists; but for now, the Letters may appropriately be viewed as laying out a procedure by which witnesses who are listed on the Travel Ban may travel to The Hague for purposes of giving testimony, either for the Prosecution or for the Defence, in Mr. Taylor's trial. The Letters confirm that as envisaged in paragraph 9 of Security Council Resolution 1688 (2006), witnesses whose presence at the trial are required are exempted from the travel ban imposed by paragraph 4 of Security Council Resolution 1521 (2003).
6. This reassurance, however, does nothing to assuage Defence concerns about the chilling effect the threat of both the travel ban and the assets freeze have on obtaining the cooperation of witnesses to agree to testify. The Defence never doubted that if witnesses on the travel ban agreed to testify on Mr. Taylor's behalf that they would not be allowed to travel for that limited purpose.⁸ The difficulty faced by the Defence is that potential defence witnesses are scared to testify for fear of being placed on either the travel ban or the assets freeze lists.

⁷ Reply, see, e.g., paras. 9 - 14.

⁸ Motion, paras. 18 - 20.

7. These objectively valid fears that prospective Defence witnesses no doubt have are said to be “unfounded”⁹ in the Submission which goes on to state that names are “maintained or added to the list only where the individuals constitute a threat to the peace or are undermining the peace process in Liberia”.¹⁰ The Submission, however, ignores the fact that one of the criteria set out in paragraph 4(a) of Resolution 1521 (2003) for determining who constitutes such a threat to the peace include “senior members of former President Charles Taylor’s government and their spouses and members of Liberia’s former armed forces who retain links to former President Charles Taylor”.¹¹
8. Despite Defence assertions to the contrary, the Special Court has deemed Mr. Taylor to constitute a threat to the peace and security of West Africa. In fact, the location of Mr. Taylor’s detention and the venue of Mr. Taylor’s trial were transferred from Freetown to The Hague precisely because the Security Council and the Special Court (acting through the President) decided that “the continued presence of former President Taylor in the sub-region is an impediment to stability and a threat to the peace of Liberia and of Sierra Leone and to international peace and security in the region”.¹²
9. Therefore, the Defence submits that a reasonably prudent person could interpret the travel ban language regarding threats to the peace and security of Liberia and those who “retain links” to former President Taylor (who himself has already been deemed by the Security Council to be a threat to the peace of Liberia) and arrive at a conclusion that agreeing to testify on behalf of former President Taylor could result in their name being placed on the travel ban list. This is all the more probable, given the complete lack of information regarding why and how the names of selected individuals have been placed on the list by the Security Council Committee.¹³ *The Guidelines of the Committee for the Conduct of its Work*

⁹ Submission, paras. 12 and 13.

¹⁰ Submission, para. 13 (emphasis added).

¹¹ Resolution 1521(2003), para. 4(a).

¹² *Prosecutor v. Taylor*, SCSL-03-01-PT-108, Order Changing Venue of Proceedings, 19 June 2006, page 3 (citing Security Council Resolution 1688 (2006)).

¹³ Motion, paras. 31-39.

as consolidated, revised, and adopted by the Committee on 12 June 2007, does nothing to elucidate the selection criteria.¹⁴

10. The Defence appreciates the sentiments that are expressed in paragraph 15 of the Submission to the effect that “Any witnesses who appear for either of the parties in the proceedings would be contributing to a fair trial (a credible system of justice) and the overall aim of promoting peace and reconciliation” as envisaged by Security Council Resolution 1315(2000) regarding the establishment of the Special Court.¹⁵ However, this sentiment does not bind the Security Council’s interpretation of its own travel ban and assets freeze criteria. Nor does such sentiment mollify the fears of potential defence witnesses. It remains for the Defence to request on behalf of the pool of prospective Defence witnesses the appropriate assurances from the Security Council Committee that testifying on behalf of former President Taylor in The Hague will not result in the inclusion of a witness’ name on the travel ban or assets freeze list. Alternatively, and if a witness’ name is already on such a list, that testifying on behalf of former President Taylor in The Hague will not result in the indefinite maintenance of their name on the travel ban or assets freeze list.

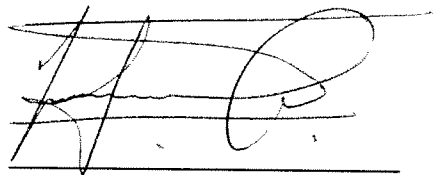
III. Conclusion

11. The Defence is of the view that neither the Submission nor the Letters in any way mitigate the forcefulness of the Defence’s previous submissions regarding the chilling effect that the threat of the travel ban and the assets freeze are having on potential defence witnesses.
12. Consequently, the Defence prays that the Trial Chamber requests the states forming the Security Council to suspend the Travel Ban (Resolution 1521) and the Assets Freeze (Resolution 1532) during Mr. Taylor’s trial. The Defence also prays that the Trial Chamber request from the Security Council, communication of the evidence supporting the inclusion of the names of individuals already appearing on the Travel Ban and Assets Freeze lists.

¹⁴ Security Council Committee Established Pursuant to Resolution 1521(2003) Concerning Liberia, *Guidelines of the Committee for the Conduct of its Work* as consolidated, revised and adopted by the Committee on 12 June 2007, paras. 14, 15. Online: <http://www.un.org/sc/committees/1521/pdf/GuidelinesFinal.pdf>.

¹⁵ Submission, para. 15.

Respectfully submitted,



for

Mr. Courtenay Griffiths, Q.C.
Lead Counsel for Charles Ghankay Taylor

Done this 24th of September 2007

Table of Authorities

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-PT-108, Order Changing Venue of Proceedings, 19 June 2006

Prosecutor v. Taylor, SCSL-03-01-PT-277, Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council (Rule 8 and 54 of the Rules of Procedure and Evidence), 4 June 2007

Prosecutor v. Taylor, SCSL-03-01-T-298, Prosecution's Response to "Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council (Rule 8 and 54 of the Rules of Procedure and Evidence)", 15 June 2007

Prosecutor v. Taylor, SCSL-03-01-T-314, Public Reply to the Prosecution's Response to "Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council", 6 June 2007

Prosecutor v. Taylor, SCSL-03-01-T-333, Confidential Prosecution Motion for Leave to Substitute an Amended Version of the Prosecution's Response to "Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council" filed on 15 June 2007, 3 September 2007

Prosecutor v. Taylor, SCSL-03-01-T-343, Public Registrar's Submission Pursuant to Rule 33(B) in Relation to Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council, 17 September 2007

Security Council Resolutions and Related Information

Security Council Resolution 1315 (2000).
Online: <http://daccess-ods.un.org/TMP/7156513.html>.

Security Council Resolution 1521 (2003).
Online: <http://daccess-ods.un.org/TMP/5163138.html>.
The Travel Ban list is online at: http://www.un.org/sc/committees/1521/1521_list.htm.

Security Council Resolution 1532 (2004).
Online: <http://daccess-ods.un.org/TMP/4547640.html>.
The Assets Freeze list is online at: http://www.un.org/sc/committees/1521/1532_afl.htm.

Security Council Resolution 1688 (2006).
Online: <http://daccess-ods.un.org/TMP/855835.8.html>.

Council Committee Established Pursuant to Resolution 1521(2003) Concerning Liberia, *Guidelines of the Committee for the Conduct of its Work* as consolidated, revised and adopted by the Committee on 12 June 2007. Online: <http://www.un.org/sc/committees/1521/pdf/GuidelinesFinal.pdf>.