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# The Arrest Warrant Against The Liberian President, Charles Taylor

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On June 4, 2003, the Special Court for Sierra Leone (SCSL) issued an arrest warrant against Charles Taylor, the incumbent President of Liberia. When the warrant was issued, Mr. Taylor was traveling to Ghana for talks with Liberian rebel groups to end a four-year civil war that has destabilized West Africa.

The indictment against Mr. Taylor had been issued on March 7, 2003, [1] but was kept sealed until the Special Court Prosecutor saw in Mr. Taylor's trip an opportunity to apprehend him. [2] The warrant was served on the authorities of Ghana, and transmitted to Interpol.

At the opening of the peace conference in Accra, in the presence of numerous African leaders, Mr. Taylor announced that he would step down by the end of his mandate in January 2004. Just after being applauded, he left the conference abruptly and boarded a Ghanaian plane to fly back to Liberia. Ghanaian authorities did not apprehend him.

On June 17, 2003, Liberia's Defense Minister and the rebels signed in Accra a peace agreement. The agreement provides for an immediate ceasefire, and within 30 days, the deployment of monitors to the front lines. These monitors will facilitate the subsequent deployment of peace-keepers, and a transitional government to replace Mr. Taylor's. As news of the agreement was released, Mr. Taylor warned that there will be no peace in Liberia unless the indictment against him is dropped.

Mr. Taylor's arrest warrant is the most recent step in the trend towards securing international criminal responsibility of (former) high-ranking officers in a State - such as the Head of State, Head of Government and the Minister of Foreign Affairs.

Recently, the International Court of Justice dealt with the scope of immunity from criminal jurisdiction in national courts for incumbent high-ranking State officers. In the Arrest Warrant of 11 April 2000 case (Congo v. Belgium, 2002), the Court found that the issue and circulation, by a Belgian magistrate, of an arrest warrant against the incumbent Minister of Foreign Affairs of the Democratic Republic of Congo failed "to respect the immunity from criminal jurisdiction and the inviolability [of] the incumbent Minister under international law." [3] The Arrest Warrant case has been the object of another ASIL Insight. [4]

What makes the arrest warrant for the President of Liberia a special case is that it was issued by the SCSL, a judicial body established by a treaty concluded between the United Nations and the Government of Sierra Leone. [5] The question is whether the status of the SCSL allows it to derogate from the immunity of incumbent heads of states. In other words, can the SCSL do what Belgium was not allowed to do?

In the Arrest Warrant case, the ICJ found that there are certain exceptions to the principle of immunity of incumbent holders of high-ranking State offices. One of these exceptions is that an incumbent "may be subject to criminal proceedings before certain international criminal courts, where they have jurisdiction. Examples include the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda . . . , and the future International Criminal Court." [6] The statute of each of these courts indeed provides that the official position of any accused person as Head of State or Government shall not relieve such person of criminal responsibility nor mitigate punishment. [7]

One of the most intriguing questions raised by the arrest warrant against Mr. Taylor is whether the SCSL is such a "certain international criminal court" and thus is capable of derogating from the principle of immunity. Article 6 (2) of the Statute of the SCSL contains a provision similar to that of the ICTY and ICTR Statutes: "The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment."

However, there is one crucial difference between the ICTY and ICTR and the SCSL. The UN Security Council, acting under its Chapter VII powers, created both the ICTY and ICTR. [8] Thus, all members of the United Nations are obliged to cooperate with these tribunals, which means, amongst other things, arresting

and surrendering any indictees, including Heads of States who are within their jurisdiction. [9] The SCSL is not a creature of the Security Council. Its powers derive from a treaty that binds only the United Nations and the Government of Sierra Leone. All other states, including Ghana and Liberia, are third parties to the treaty, and as such are not bound by it.

In the relevant resolutions, the Security Council never invoked its Chapter VII powers to call upon all member States to cooperate with the SCSL. [10] In the preamble of the latest resolution dedicated to the situation in Liberia, [11] it does call on all states "in particular the Government of Liberia, to cooperate fully with the [SCSL]." However, the same demand does not appear in the body of the resolution beginning "Acting under Chapter VII of the Charter". So far, the Security Council has not gone as far as providing the SCSL full Chapter VII backing for various political reasons, including the concern that by doing so it might undercut international efforts to reach a cease-fire in Liberia.

The absence of Security Council Chapter VII backing makes the SCSL more like the International Criminal Court than the ICTY in this respect: While the Statute of the ICC denies immunity to Heads of State, in principle it cannot affect the immunity of Heads of States of non-parties. States that are parties to the Statute would violate international law if they hand over a Head of State of a non-party to the ICC. The situation for the SCSL seems to be the same.

Does this mean that the SCSL, and possibly the two entities that created it (Sierra Leone and the United Nations) have breached international law just as Belgium breached international law when it issued and circulated an arrest warrant against the incumbent Minister of Foreign Affairs of the Democratic Republic of Congo? If one considers the SCSL as an international legal person (like some treaty-based international organizations), it would arguably be bound by customary law, including international law on immunities. As to Sierra Leone, it might be argued that what Sierra Leone could not have done unilaterally, it cannot do by participating in the creation of an international court. However, there is one relevant difference between the facts of the Arrest Warrant case and the indictment of Mr. Taylor. The Security Council's support for the Court and its express call to Liberia to cooperate (even if not under Chapter VII) give indictments by the SCSL a degree of legitimacy that unilateral state action lacks.

The questions of the international legal status of the SCSL, its obligations under international law and any remaining obligations of the founding entities are complicated by the hybrid nature of the Court. The SCSL is one of a new brand of internationalized criminal bodies, composed of both international and national judges and applying international as well as national law. It shares these features with the Serious Crimes Panels in the District Court of Dili (East-Timor), the Panels in the Courts of Kosovo, and the Extraordinary Chambers in the Courts of Cambodia. Each of these courts is located between the international and national legal order and principles of international law that were developed for an interstate context may not apply automatically in regard of them.

If Charles Taylor steps down as president of Sierra Leone, his blanket immunity from prosecution would be terminated. However, under the ruling of the ICJ in the Arrest Warrant case, immunity would still cover acts committed while in office in his official capacity. Nevertheless, he could be prosecuted for acts committed in the almost eight months running between November 30, 1996 (the date on which the SCSL's jurisdiction became effective) and July 24, 1997 (the date on which Mr. Taylor was declared President).

The retention of the immunity of former heads of states for acts committed in their official capacity has been one of the most critiqued parts of the ICJ judgment. The judgment also leaves open some room for doubt as to what exactly are acts committed in an official capacity. The indictment in the SCSL notes that Mr. Taylor's support of the rebels in Sierra Leone was motivated by the desire to obtain access to the mineral wealth (in particular the diamond wealth) of Sierra Leone. The question can be asked whether acts so motivated are, acts in an official capacity.

Currently pending before the ICJ is the Certain Criminal Proceedings in France (Republic of the Congo v. France) case. [12] The facts are similar to those in the Arrest Warrant case. Congo seeks the annulment of the investigation and prosecution measures taken by the French judicial authorities against the President of the Republic of the Congo, the Minister of the Interior, and other individuals including the Inspector-General of the Congolese Armed Forces and the Commander of the Presidential Guard. [13] . On June 18, 2003, the Court rejected the request for the indication of provisional measures. Considering the circumstances of the case, it seems unlikely that, in the merits phase, it will answer the questions raised by the SCSL's proceedings against Charles Taylor.

In sum, the practice of States and courts in this area remains fluid and clear standards have not yet emerged, but the immunity of high States' officials is gradually being reduced.

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[1] Sierra Leone's decade-long civil war actually begun in neighboring Liberia. In 1989, the National Patriotic Front of Liberia (NPFL) led by Charles Taylor begun an uprising against the government of the incumbent Liberian Samuel Doe. On March 23, 1991, mercenaries loyal to Charles Taylor, invaded Sierra Leone. A group calling itself the Revolutionary United Front (RUF), led by Foday Sankoh, soon took credit for the invasion. The RUF has battled the Sierra Leone Government and UN troops for the whole of the 1990s.

Foday Sankoh is currently awaiting trial in custody of the SCSL..

[2] The timing and methods of unsealing the indictment and issuing of the arrest warrant is questionable. The SCSL Prosecutor gave the indictment to the press while Taylor was traveling to Ghana, but, there are seemingly no instructions to lift the non-disclosure order. The indictment was posted on the SCSL website soon after the press conference, but it has been removed subsequently ( as of this date it is still not posted). The arrest warrant was seemingly served on Ghana by the SCSL in the morning of June 4, 2003. However, Ghanaian authorities deny having received it until Taylor had already left. In the words of the Prosecutor, "the timing of this announcement was carefully considered in the light of the important peace process begun this week. . .It is imperative that the attendees know they are dealing with an indicted war criminal". BBC News, June 4 2003, "Arrest warrant of Liberian Leader" <http://news.bbc.co.uk/1/hi/world/africa/2961390.stm> (<http://news.bbc.co.uk/1/hi/world/africa/2961390.stm>).

[3] Arrest Warrant of April 11th 2000 (Democratic Republic of the Congo v. Belgium), Judgment, Merits, para. 78.D.2, 41 ILM 536 (2002).

[4] See ASIL Insight, World Court Orders Belgium to Cancel an Arrest Warrant Issued Against the Congolese Foreign Minister (Feb. 2002).

[5] Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, (January 16, 2002). Text available at: <http://www.sierra-leone.org/specialcourt/ta.html> (<http://www.sierra-leone.org/specialcourt/ta.html>). (Site last visited August 15, 2002). See ASIL Insight, The Special Court for Sierra Leone (Oct. 2000).

[6] Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, Merits, para. 61.

[7] Art. 6(2) of the ICTY and ICTR Statutes; art. 27 of the ICC Statute.

[8] SC Res. 827 (1993); SC. Res. 955 (1994).

[9] Charles Taylor is not the first Head of State to be indicted for war crimes. Slobodan Milosevic was still the President of Yugoslavia when he was indicted by the ICTY.

[10] SC Res. 1478 (2003); 1470 (2003); 1436 (2003); 1408 (2002), 1400 (2002).

[11] SC Res. 1478 (2003), of May 6, 2003. The same text and positioning can be found in SC Res. 1408 (2002).

[12] See ASIL Insight, Prorogated and Universal Jurisdiction in the International Court: The Congo v. France (April 2003).

[13] Certain Criminal Proceedings in France (Republic of the Congo v. France).

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