

Case No. SCSL-2003-01-PT

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

Friday, 21 July 2006  
11.30am  
STATUS CONFERENCE  
TRIAL CHAMBER II

SITTING IN THE HAGUE,  
NETHERLANDS

Before:

Judge Lussi ck

For the Registry:

Mr Herman von Hebel

For the Prosecution:

Ms Brenda J Hollis

For the Accused:

Mr Karim Khan

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 35  
OPEN SESSION

case

2 number SCSL-03-1-PT, the Prosecutor against Charles Ghankay  
3 Taylor.

appears

4 JUDGE LUSSICK: For the record, Ms Brenda Hollis  
11:29:52 5 for the Prosecution, and Mr Khan for the accused Taylor. Good  
6 morning.

7 MR KHAN: Good morning.

and,

8 JUDGE LUSSICK: This is that long overdue Status  
9 Conference that we attempted to hold a month ago in Freetown

agenda

11:30:14 10 as has been indicated to the parties, we will follow the  
11 preliminary agenda that was originally ordered for the Status  
12 Conference in Freetown. Once we have gone through those  
13 items, any other issues that either party wishes to raise, we  
14 will deal with them.

11:30:42 15 Now, the first item was be - I'm getting a lot of  
16 interference on this microphone - I don't know if anybody else  
17 is, but it's quite distracting.

parties

18 The first item on the agenda is an update from the  
19 on compliance with disclosure obligations under Rules 66, 67

and

11:31:16 20 68 and outstanding issues, if any, in relation thereto. Mr  
Khan,

21 in relation to this particular agenda item we have noted your  
22 Defence submission on behalf of the accused in respect of  
23 preliminary motions whereby you advised that you have received  
24 disclosure from the Prosecution on 17 May and you do not

intend

11:31:51 25 to file any preliminary motions but that during the pre-trial  
26 stage the Defence will try, with the Prosecution, to narrow

the

27 issues in dispute and, where possible, agree upon admissions  
28 pursuant to Rule 65bis and 73bis. So we've noted that, Mr

Khan,

29 and I don't know whether you would be filing any special

defence

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 36  
OPEN SESSION

do

1 or alibi defence under Rule 67. I presume you won't, but what  
2 you say on that?

filings

3 MR KHAN: Your Honour, at this moment in time it is not  
4 our intention to file preliminary motions or any special

11:32:41 that

5 regarding special defences. As indicated in the submission

are

6 was filed, the Defence do look forward, once investigations

7 completed, to challenging the Prosecution indictment in trial  
8 itself.

Getting

9 JUDGE LUSSICK: I see. Yes, thank you, Mr Khan.

11:33:00

10 back to Rule 67, can I take it that, at least at this stage,  
11 there won't be any special defences filed and no alibi  
12 particulars to provide?

13 MR KHAN: That's correct, Your Honour.

11:33:17

14 JUDGE LUSSICK: Thank you. And, Ms Hollis, what about  
15 exculpatory material under Rule 68?

to

16 MS HOLLIS: Yes, your Honour, as part of the initial  
17 disclosure made to the Defence we included what we considered

to

18 be potential Rule 68 material as well, and we are continuing

19 put together packages of disclosure. We have worked out

11:33:39 to

20 disclosure modalities with Defence counsel and will continue  
21 provide that material.

22 JUDGE LUSSICK: Yes, thank you, Ms Hollis.

23 MR KHAN: Your Honour, perhaps if you may indulge me,  
Page 3

for 24 there may be one matter arising out of that, and I don't ask  
11:33:58 25 any specific relief at the moment, and in fairness I have not  
26 raised it previously with my learned friend, but I will be  
27 suggesting to the Prosecution that in due course perhaps a  
for 28 disclosure officer is appointed who can take responsibility  
the 29 signing off on all the exculpatory evidence. I know that in

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 37  
OPEN SESSION

similar 1 Yugoslav case of Sefer Halilovic the Trial Chamber made  
2 orders. That way, of course, one individual has the  
3 responsibility of certifying that they have reviewed all the  
4 record and documents in the possession of the Prosecution and  
11:34:37 5 certify that all exculpatory evidence in particular has been  
Honour, 6 properly served on the Defence in a timely manner. Your  
my 7 I just raise that now. I will discuss it in more detail with  
8 learned friend a little later.  
that 9 JUDGE LUSSICK: Thank you for that, Mr Khan. To me,  
11:34:54 10 sounds a very practical suggestion. What I am going to ask  
now 11 I think flows from the first agenda item. It could be  
premature, 12 but I understand, Mr Khan, that the disclosure to you was  
quite 13 voluminous. Is it too early for you to estimate how long the  
14 Defence would need to complete its investigations?  
11:35:27 15 MR KHAN: Your Honour, it is voluminous, and I've tried  
to

16 have a very cursory look at the documents with some perhaps  
17 rather feeble attempt at the moment in separating the welter  
18 evidence which constitutes the crime base, with the nexus  
19 evidence relating to my client. But, your Honour, I do think  
11:35:48 20 that the pre-trial stage is going to take probably - at least  
the  
21 earliest one would think the trial could start is around July  
of  
22 next year. Your Honour, if one looks at other cases before  
the  
23 Yugoslav Tribunal and the ICTR, as well of course of the  
Special  
24 Court, I think the average is about a year and a half,  
al though  
11:36:13 25 in the ICTR they have cases like Karemera, seven years two  
months  
26 pre-trial stage. Your Honour, it is not our intention to seek  
27 that long, but I would think that a year and a three months, a  
28 year and a half, pre-trial preparation for a case of this size  
29 and magnitude, particularly given the geographical  
di spl acement

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 38  
OPEN SESSION

1 from Sierra Leone, which puts us in a somewhat more awkward  
2 position than other accused persons before the Freetown court,  
3 who are united geographically with their client and united  
4 geographically with the crime base, I do think the earliest  
this  
11:36:51 5 trial could properly start is around July of next year, and  
6 that's with due diligence, of course, on the part of the  
Defence.

7 That said, your Honour, it's a matter that could be  
8 discussed and kept under review. It is my, with the greatest  
Page 5

9 humility, respectful submission that, often, time given in the  
11:37:10 10 pre-trial stage is time saved during trial, particularly when  
11 facts there is a genuine willingness between the parties to agree  
12 germane which are not in issue and to focus on what is genuinely  
13 and in issue.

14 Your Honours, I will be submitting in due course that we  
do  
11:37:29 15 proper time for pre-trial preparation, particularly in a case  
16 or that the Prosecution has been investigating for the last three  
17 to four years. We come to it fresh, and we need to set up a team  
18 huge start looking at the work that the Prosecution have had the  
19 benefit of undertaking for the last three or four years. Your  
11:37:46 20 Honour, I don't think I can assist further at this point.

21 what JUDGE LUSSICK: Yes, thank you, Mr Khan. Ms Hollis,  
22 do you say about that projected date of commencement?

23 MS HOLLIS: Your Honour, we believe that trial would be  
24 able to begin much sooner than that, and we believe that trial  
11:38:04 25 would be able to begin the beginning of the year, perhaps  
26 a February. We certainly agree with the Defence that they need  
27 the reasonable amount of time to prepare. The amount of time that  
28 they need to prepare, of course, will depend in large part on  
29 extent to which we are able to reach agreement on facts and

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 39  
OPEN SESSION

1 matters of law. And we are in the process now of preparing  
Page 6

2 proposed agreed facts and matters of law for Defence  
3 consideration and hope to be able to provide that to the  
Defence  
4 in the near future.

11:38:36 5 So, once we are able to undertake discussions on that,  
we  
6 would have, I think, a more informed opinion about the  
7 commencement of trial, but it is the Prosecution's view that a  
8 trial start date of February of next year would be a  
reasonable  
9 start date.

11:38:54 10 JUDGE LUSSICK: Thank you, Ms Hollis. Yes, Mr Khan?

11 MR KHAN: Your Honour, perhaps just by way of  
comparison,  
12 I have figures from a whole variety of international cases,  
but  
13 just confining myself at the moment, with your leave, to the  
14 Special Court of Sierra Leone, a much simpler case,  
11:39:11 15 geographically confined, the AFRC case, with which your Honour  
of  
16 course is intimately familiar, the pre-trial stage was one  
year  
17 and 11 months. Your Honour, the case of Chief Hinga Norman,  
18 again simply confined to the territory of Sierra Leone, with  
no  
19 additional time needed for Defence counsel and investigators  
to  
11:39:33 20 scurry around between The Hague and the Freetown court, that  
was  
21 one year two months and 19 days. So, your Honour, if we were  
due  
22 to start in July or thereabouts of next year it would be  
almost  
23 the same as a far simpler geographically confined and  
restricted  
24 case of Hinga Norman, and far shorter than the amount of time  
the  
11:39:57 25 Court gave the AFRC case of Brima.

26 Your Honour, it is again far less than was given to the  
27 case of Fatmir Limaj in the Yugoslav context or Haradinaj or  
28 Prlic - the list is endless.

29 Your Honour, it is rather like the chicken and the egg

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 40  
OPEN SESSION

1 situation. There is a genuine willingness on the part of the  
2 Defence to agree certain facts, but we can't agree facts  
without  
3 proper preparation, because, your Honour, as you are aware  
from  
4 domestic context, as well as your international experience,  
facts  
11:40:33 5 which are seemingly innocuous may become very much live issues  
in  
6 the trial once an investigation is complete and, similarly,  
facts  
7 which may appear to be clearly in issue can become by the  
wayside  
8 once a defence investigation is completed.

9 So, your Honour, when I talk about limiting the issues  
in  
11:40:59 10 trial, that's going to be limited after the Defence  
investigation  
11 is complete. It would be reckless, in my respectful  
submi ssi on,  
12 for any Defence counsel dealing with even the most simplest of  
13 cases to agree in the dark, blind - agree facts which may well  
be  
14 in issue. So, your Honours, I will ask in due course for  
proper  
11:41:22 15 time.

16 February 2007 is simply untenable, in my submission. I  
am  
17 aware that the Prosecutor's press officer or political  
secretary  
18 has been giving releases talking about a January start date.  
19 We've moved down to February, which is a bit more reasonable.



11:41:40 20 Your Honour, a little more reasonableness will not come amiss.  
21 JUDGE LUSSICK: This is the first pre-trial proceeding,  
22 apart from the arraignment of course, so I think that at this  
23 stage we ought to keep open the date of commencement, and see  
24 what is achieved in the pre-trial stage itself. I quite agree  
11:42:12 25 with what counsel says, that pre-trial matters can save a lot  
of  
26 hearing time. If facts are agreed, or even if matters in  
issue  
27 can be isolated, it can save a lot of hearing time. I  
certainly  
28 would not suggest to you, Mr Khan, that you are not going to  
get  
29 adequate time to prepare your case. And what I think this  
Court

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 41  
OPEN SESSION

1 should do is simply monitor the progress of the pre-trial  
2 developments, and it's a little bit premature now to go  
3 estimating commencement dates for the trial. But, as I say,  
4 that's a matter I would like to keep open. I think we could,  
11:43:05 5 perhaps towards the end of the year, come up with a fairly  
be  
6 accurate estimate, once we have disposed of matters that can  
7 disposed of, and the parties are in a much better position to  
8 know exactly the extent of the dispute.

9 MR KHAN: Your Honour, I'm much obliged.

11:43:34 10 JUDGE LUSSICK: That seems to dispose of the second  
parties  
11 preliminary agenda item, which was an indication from the  
12 as to how soon they will be able to proceed with the trial.

13 There was an added agenda item from the Prosecution  
Page 9

whi ch

assi gn

i t

i t

submi ssi on,

of

are

♀

14 reads as follows: "The status and efforts to permanently  
15 counsel to represent the accused in this case, including when  
16 is expected the Defence team will be assembled." I don't know  
17 whether you have any comments on that at all at this stage,  
18 Mr Khan.

19 MR KHAN: Your Honour, one is always gratified when the  
11:44:21 20 Prosecution show such a caring interest in the Defence team.

21 Your Honour, efforts are ongoing. A legal assistant has been  
22 requested, but the legal team will be finally composed, when  
23 is finally composed with the agreement of the client. At this  
24 point there is simply no prejudice, in my respectful

11:44:47 25 to the Prosecution. Efforts are under way to prepare and  
26 organise this case. The current composition is not delaying  
27 matters, but, your Honour, it is of course a matter which is  
28 great concern to the client. It is no secret that attempts  
29 being made to obtain private funds, to get funds together to

SCSL - TRIAL CHAMBER II

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 42  
OPEN SESSION

manner

all

Afri ca

11:45:24 5 to Europe, and it's been made even more difficult by the

client 6 detention regime operating in The Hague. Simply put, my  
phone 7 cannot receive phone calls in the same way that he received  
before 8 calls in Freetown, in the same way that all other accused  
9 the Special Court can make and receive phone calls. So, your  
11:45:47 10 Honour, that has had a practical effect in delaying attempts  
to 11 see what is the state of play regarding funding, because of  
12 course it is not within my personal gift, it is not within the  
13 personal gift of my client. Funds have to be brought together  
client 14 and that is being made more arduous by the inability of my  
11:46:07 15 to receive phone calls that all other detainees before the  
16 Special Court are able to receive.  
17 Your Honour, as an aside, messages - so there is no  
18 misrepresentation - the procedure is that people that want to  
staff 19 speak to my client leave a message with the ICC detention  
11:46:25 20 and then he has a certain number of minutes every month that  
he 21 can phone them back. The difficulty is two-fold at least: one  
is 22 the financial aspect. Calls are extremely expensive to Africa  
- 23 I'm told approximately 10 Euros for three or four minutes - so  
it 24 is extremely expensive to call. But the second is the delay  
in 25 transmitting the messages. There have been occasions where, I  
11:46:52 26 told, a two-day delay has arisen between somebody ringing and  
am 27 leaving a message and the message being conveyed to my client.  
28 Your Honour, even when a few hours is the delay, very  
often 29 the people then that need to be spoken to - and all these are

1 monitored calls; there is no objection at all to that  
monitoring  
2 of the phone calls - but very often when my client then seeks,  
at  
3 his own expense mostly, to ring these individuals, they are no  
4 longer contactable because of the delay.  
11:47:26 5 I will address you in further detail a little later,  
with  
6 your permission, but these are all matters that have been  
raised  
7 by the Defence with the Registry of the Court to look into in  
8 discharge of their own responsibilities as the custodian of  
9 Mr Taylor's rights in the pre-trial stage, from an  
administrative  
11:47:46 10 point of view. And, your Honours, I will address you, perhaps  
11 with your leave, a bit later on those issues.  
12 JUDGE LUSSICK: We will come back to that once we get  
13 through the agenda items. Ms Hollis, did you want to add  
14 anything to that suggested agenda item you put forward?  
11:48:09 15 MS HOLLIS: No, your Honour, and we are appreciative of  
16 the update given by Defence counsel, and we are certainly not  
17 speaking as a party that has a right to go behind what is  
going  
18 on. However, the status of those efforts is particularly  
19 relevant to when a trial could be reasonably said to start,  
and  
11:48:22 20 that's why the agenda item was proposed.  
21 JUDGE LUSSICK: Yes, I understand. Thank you.  
22 The next agenda item, I would imagine, has probably been  
23 covered already, as much as it can be, and that is an  
indication  
24 from the parties of points of agreement or disagreement on  
11:48:50 25 matters of law and fact. I don't know if either party has  
26 anything more to add. No? Thank you.

with, 27 The fourth agenda item you might be able to help us  
indication 28 Ms Hollis, or you may not. That item is a preliminary  
29 from the Prosecution on the number of witnesses it intends to

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 44  
OPEN SESSION

to 1 call viva voce and the number of witnesses for whom it intends  
the 2 tender evidence pursuant to Rule 92bis. Is it too early in  
3 proceedings for you to give that estimate?

of 4 MS HOLLIS: If I could give general comments, it may be  
11:49:33 5 assistance to the Trial Chamber.

6 JUDGE LUSSICK: Yes.

as 7 MS HOLLIS: Of course the number of witnesses that we  
8 would call would depend upon agreed facts and matters of law  
are 9 well as perhaps judicial notice taken by the Chamber, so we

11:49:46 10 unable to give an exact number. In a fully litigated case we  
11 would anticipate that there could be as many as 180 witnesses.  
12 The way the Prosecution would like to approach such a fully  
13 litigated case would be to present a large amount of that  
14 evidence under Rule 92bis in written form, either prior

testimony 15 of these witnesses or statements of the witnesses, and the  
11:50:11 great  
16 majority of this evidence would be evidence relating to the

crime 17 base and the contextual elements of the crimes. Approximately  
a 18 third would relate to evidence pertaining to this

to 19 accused's individual criminal responsibility. We would hope

11:50:35 20 be able to put a great deal of the contextual elements  
evidence

21 and crime base evidence in via Rule 92bis.

22 In addition to that, with regard to live witnesses, we  
23 would also like to pursue the possibility of doing that both  
by  
24 video link for witnesses as well as live testimony here in  
court.

11:50:58 25 So we think that that would help to make the proceedings more  
26 efficient, even were it the case that we had to call a large  
27 number of witnesses.

28 JUDGE LUSSICK: I think the Rule 92bis documents are  
29 matters that possibly could be the subject of negotiations

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 45  
OPEN SESSION

will 1 between counsel at the pre-trial stage and, if necessary, I  
could 2 make appropriate orders. But it may not be necessary; it  
3 be a matter of agreement.

4 What do you say to that, Mr Khan?

11:51:33 5 MR KHAN: Well, your Honour, no objection at all to the  
for 6 92bis proposal. It's only proper practice, in my submission,  
that 7 the parties, in fulfilment of professional responsibilities,  
the 8 issues that are peripheral or that can be agreed as part of  
to 9 background tapestry are agreed, and the Defence will be alive  
11:51:56 10 its obligations, professionally, regarding that.

11 There is great concern, however, regarding the second  
Page 14

limb

or

future

11:52:17  
Defence

possible

Honours,

11:52:37

11:52:55  
Honour,

12 of my learned friend's proposal - an anticipated willingness  
13 eagerness by the Prosecution to rely upon video link evidence.  
14 Your Honour, this is perhaps a matter to be litigated at a  
15 date, but if I may be permitted to put down a marker, the  
16 for Mr Taylor would view with the greatest concern any  
17 attempt to conduct this trial by remote control.

18 Your Honour, it is very important, and there is numerous  
19 studies to that effect - it is very important for Your  
20 as finders of fact, as well as counsel who are cross-examining  
21 witnesses or examining witnesses in-chief, to view their  
22 demeanour in person, because at the end of the day, of course,  
23 Your Honours, you are tasked with the responsibility of  
24 determining where the locus of truth lies.

25 One of the principal weapons in your armoury, your  
26 is the collective wisdom, knowledge and experience that your  
27 Honours bring to this Court.

28 Your Honour, it is extremely important that witnesses  
29 appear live, wherever possible. If, of course, there is a

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 46  
OPEN SESSION

can

witnesses,

Honours,

1 witness in an extremely frail state, a particular situation  
2 be looked at on its merits. But as a starting point,  
3 in the Defence's submission, should appear before your

4 and before counsel for both parties.

11:53:30 5 Your Honour, the Defence of Mr Taylor are extremely

for

6 grateful that your Honour has taken the trouble to come over

7 this Status Conference from Freetown. We do realise it caused

and

8 administrative inconvenience as well as personal difficulty,

9 we are grateful for you and the Registry in facilitating that.

11:53:51 10 had

Your Honour, we were extremely concerned with a proposal that

Defence

11 been if not bandied about, that had been mooted, that the

link,

12 for Mr Taylor would attend this Status Conference by video

13 with the Prosecution and your Honours in the rather cosy

matter

14 environment or clement environment of Freetown. That's a

11:54:18 15 we

that we would not have been happy to proceed with. We think -

rights,

16 do submit that has major implications towards equality of

17 equality of arms.

18 Your Honours, perhaps the weather in The Hague at the

danger,

19 moment is rather warm and nice, but there was a very real

11:54:33 20

in that avenue being pursued, that the Defence, in every way,

21 would be left out in the cold of Europe while the real events

22 were proceeding in Freetown. So, your Honour, we are grateful

23 with the manner that you have decided to deal with this Status

of

24 Conference today, and I think that perhaps the specific merits

11:54:51 25 any

any application can be dealt with when the Prosecution make

26 application regarding video link, but they should not be

27 surprised that the Defence will fight that as an issue of

28 principle.

29 JUDGE LUSSICK: Thank you, Mr Khan. Is there anything



1 else that you wanted to add on to that video link mention?

2 MS HOLLIS: Very briefly. Your Honour will not be  
3 surprised that the Prosecution's position on video link is  
4 different than that espoused by Defence counsel. We do

believe

11:55:22  
judge

5 that it is live testimony which affords you the ability to

6 the demeanour and we would be happy for this to be a litigated  
7 issue. We do believe - and what we envision - in case it is

not

8 clear, what we envision is that the Court, the accused and the  
9 counsel would be here, but the witnesses would be elsewhere,  
10 predominantly Freetown. Thank you, your Honour.

11:55:40

11 JUDGE LUSSICK: Yes, thank you. I can see that this

would

12 be a litigated matter and it may get to the stage, Mr Khan,

where

13 you would consider filing a Rule 73 motion and obtaining a  
14 definitive decision from the Court on the use of video links.

In

11:56:06

15 any event, that is something along the way from here at the  
16 moment.

17 MR KHAN: Thank you, your Honour.

18 JUDGE LUSSICK: That finishes the preliminary agenda

that

19 I wanted to raise at this first Status Conference, but the

only

11:56:26  
in

20 other matter is any issues now that the parties wish to raise  
21 relation to the case. What about the Prosecution? I'm

talking

22 generally now rather than specific agenda items.

23 MS HOLLIS: Your Honour, the Prosecution has no

additional

24 issues at this time.

11:56:46 25 JUDGE LUSSICK: Thank you. Mr Khan?  
26 MR KHAN: Your Honour, briefly, I did touch, on the  
last 27 occasion that we appeared together in Freetown, on the issue  
of 28 conditions of detention. Your Honour, these are matters that  
to 29 have been raised with the Registry, but your Honour may wish

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 48  
OPEN SESSION

1 have a brief overview of developments.  
2 Your Honour, if that's of assistance, I can very briefly  
3 review some of the problems that remain. Your Honour, the  
4 principal concern is that there is still a wide disparity in  
11:57:22 5 treatment afforded to detainees before the Special Court for  
6 Sierra Leone in Freetown and those that are afforded to my  
in 7 client, a detainee of the Special Court for Sierra Leone here  
8 The Hague. Your Honour, those differences are multifarious.  
9 They extend, as I mentioned earlier, to the making and  
receiving 10 of phone calls. They continue to the lock-down hours. The  
11 amount of time that my client is made to remain locked in a  
room 12 is far more draconian despite, I think, the intervention of  
the 13 ICRC - are far more draconian than operates in Freetown.  
The 14 The starting point will not surprise you, your Honour.  
11:58:08 15 starting point of the Defence is that all things being equal  
16 Mr Taylor should be afforded the same rights, the same  
of 17 privileges, the same regime in accordance with the presumption

18 innocence and equality of treatment that are afforded to all  
19 other detained persons under the custody of the Special Court  
for  
11:58:32 20 Sierra Leone.  
21 Your Honour, there is an issue regarding food. This is  
22 still a rather Eurocentric detention facility. There is one  
only 23 other detainee at the moment of the ICC. Mr Taylor is the  
24 detainee, of course, from Sierra Leone. The diet is European;  
11:58:50 25 the dietary facilities are very different from Freetown.  
26 Your Honour, all these matters need to be addressed.  
27 Your Honour, I won't go through all the minutiae. Suffice it  
to  
28 say that the Registry is seized of the matter. Progress is  
going 29 on, but extremely slowly. These are matters that, on many

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 49  
OPEN SESSION

of 1 occasions - they are not rocket science - that with a modicum  
2 goodwill, a modicum of commonsense between the parties, the  
3 Special Court and the ICC, and a willingness to resolve these  
4 issues, they can, in my respectful submission, all be resolved  
11:59:39 5 without a huge amount of controversy. But there must be a  
do 6 willingness on both sides - the ICC and the Special Court - to  
7 so.  
8 Your Honour, the other matter goes to the resources that  
9 are provided to the Defence. Your Honour, under the MOU -  
under  
11:59:55 10 the memorandum of understanding between the ICC and the  
Special

strange  
Honour,  
at  
12:00:17  
particular,  
12:00:40  
aspects  
services  
12:01:02  
the

11 Court which is, in fact, on a reading at least, a rather  
12 document because on various places it seems to give all the  
13 responsibility to the ICC and on other occasions it tells the  
14 Special Court that they are fully responsible, but, your  
15 under that memorandum of understanding the Court is obligated  
16 6.4, and I'll read it out:  
17 "The Special Court shall retain full legal control and  
18 authority over the detainee and shall assume full legal  
19 responsibility for the custody of the detainee. In  
20 the Special Court shall remain fully responsible for all  
21 arising out of the provision of the day-to-day detention  
22 and facilities under this Article, including the well-being of  
23 the detainee."  
24 Your Honour, at the moment, there is nobody that has a  
25 particular responsibility, as I understand it, to look after  
26 welfare of my client from an administrative point of view. Of  
27 course he has a lawyer. But, your Honour, there is a whole  
28 panoply of other matters that other detainees in Freetown are  
29 afforded that Mr Taylor is not. I understand that there are

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 50  
OPEN SESSION

the  
1 resource implications, but this of course is a corollary of  
2 transfer to The Hague. I think there is one Registry official  
3 here who is trying to look at accommodation issues, look at  
4 premises issues, look at technical issues, so there's an awful  
Page 20

12:01:39 5 lot for one person. I think that, in due course, your Honour,  
it  
6 may well be the case that further infrastructure is required  
to  
7 ensure that the basic rights of Mr Taylor are afforded from an  
8 organisational point of view from the Court.  
9 Your Honour, if I may be permitted, I think there is a  
12:01:56 10 proposal that some detention officers from Freetown may be -  
at  
11 least proposed from the Defence - that some detention officers  
12 from Freetown or internationals from Freetown come over, or be  
13 seconded to the ICC to provide additional resources to assist  
the  
14 ICC in taking care of Mr Taylor. Your Honour, one of the  
reasons  
12:02:19 15 for the very long lock-down - at the beginning, it was 16  
hours  
16 on a Saturday, 14 hours on Sunday - was resources on the  
weekend.  
17 There was overtime, I presume, and therefore they had less  
staff  
18 on duty, which was resolved by making sure that the detainees  
19 were deprived of movement rights of that severity.  
12:02:45 20 Your Honour, as far as you are able in your dealings  
with  
21 the Registry, and as far as you are able to use your influence  
22 when it comes to resource allocation, I do impress upon your  
23 Honours, as you would be aware, of the need to ensure that  
these  
24 type of matters are given a priority from the Court. And  
there  
12:03:03 25 may well be financial implications for the Court, but I think  
one  
26 cannot shy away from that.  
27 Your Honour, the only other point I would make, with  
your  
28 leave, arises out of the comments of the Secretary-general of  
the  
29 United Nations, his Excellency Kofi Annan, when he visited the

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 51  
OPEN SESSION

1 Court on 3 July. Your Honour, the Defence of Mr Taylor would  
2 fully endorse the eloquent comments of lead counsel for Mr  
Sesay  
3 that were made I believe on 5 July before Trial Chamber I.  
4 Your Honour, if I can read out what the Secretary-General said  
12:03:50 at 5 when he addressed the court staff in Freetown in Sierra Leone  
6 the court premises. Your Honour, I will read out only the  
7 relevant section. The Secretary-General said:  
8 "We now have a court which is alive, a court that is  
9 putting on trial criminals who have done lots of damage to the  
12:04:12 destroyed 10 country; criminals who have terrorised the population,  
11 the economy and the social fabric of this country that we are  
12 trying to put together. It is also important that it was this  
13 court that indicted Charles Taylor, who was a powerful warlord  
in  
14 the region and a former head of State. And that also sends a  
12:04:37 ever 15 message around the continent and around the world that who  
16 you are, how ever powerful you are, you may have to account  
for  
17 your misdeeds."  
18 Your Honour, shocking comments from the leader, the head  
19 civil servant of a United Nations supposedly intent on  
ensuring  
12:05:02 20 and establishing the rule of law, not only in the continent of  
21 Africa but everywhere in the world. For the political head of  
22 the United Nations to be permitted to come to the court and  
speak  
23 to court staff, members of chambers staff, Registry staff and  
24 members of the Prosecution in these terms is not just  
unseemly;

12:05:26 25 it is repugnant to justice, in my submission.  
26 Your Honour, it is not only repugnant because it has the  
27 potential to give a sense of unfairness, it is repugnant, in  
my  
28 submission, because those type of comments coming from the  
most  
29 senior members of the United Nations creates a chilling effect

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 52  
OPEN SESSION

1 not just for Defence investigations, not just for the Defence  
2 gaining cooperation from witnesses, but the willingness of  
3 witnesses to speak to the Defence is often totally ignored -  
it  
4 is not as if the Prosecution have difficulties - for people to  
be  
12:06:12 5 brave enough to come and speak to the Defence for an  
individual  
6 who has already, in many quarters, been hung, drawn and  
quartered  
7 should not be lost upon this Trial Chamber.

8 Your Honour, in addition to that, it sends a signal to  
9 members of staff, some of whom may be very experienced and may  
be  
12:06:33 10 immune from such protestations from such an eminent person as  
the  
11 Secretary-General, but of course it is a court that also has  
more

12 junior members fulfilling extremely important jobs. And for  
13 those individuals to have a signal that individuals who are  
14 presumed innocent, whose guilt has not been pronounced in  
12:06:50 15 relation to any of the trials - the CDF, the AFRC, the RUF or  
16 Mr Taylor - by any court of law, that these individuals have  
17 already been found to be guilty by the Secretary-General is

18 downright unacceptable.

lamentable 19 Your Honour, it is a lamentable day - that was a

12:07:13 20 day for international justice when the Secretary-General made  
at 21 those remarks. It is unfortunate perhaps that nobody present

22 the time had the fortitude to stand up and distance themselves  
do 23 from those wholly unacceptable comments. But, your Honour, I

24 invite your Honour and Trial Chamber II to do exactly that, to  
12:07:32 25 distance yourselves, in the most unequivocal way, from the

26 comments of the Secretary-General of the United Nations which  
27 made inroads and arrogated to himself a fact-finding

the 28 responsibility that lies only with you after you have heard

29 evidence of the Prosecution, after it has been tested by the

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 53  
OPEN SESSION

1 Defence, and after you have heard the Defence evidence and  
2 deliberated properly and carefully to the required standard.

possible, 3 Your Honour, I would invite your Honour, today if

4 but otherwise at a suitable opportunity after conferring with  
12:08:09 5 other members of Trial Chamber II, to dissociate and depart  
from

unfortunate 6 the comments of the Secretary-General as being most

7 and downright unacceptable. Your Honour, those are my

8 submissions on the additional matter that I wished to bring to  
9 your Honour's attention.

12:08:33 10 JUDGE LUSSICK: Thank you, Mr Khan. Ms Hollis, I'll  
give



Khan 11 you an opportunity if you wish to say something on what Mr  
12 has just raised.  
Chamber 13 MS HOLLIS: Very briefly, your Honour. This Trial  
14 and the Special Court do not work for the Secretary-General.  
You 15 are professional judges; you are independent. The Prosecution  
12:08:52 16 sees no reason for you to affirm that. We all work under that  
17 premise and actually, your Honour, in candour to the Court,  
18 I find the points raised by the Defence perhaps more in the  
frame 19 of a political commentary than raising legitimate issues here.  
12:09:16 20 We certainly believe that this Court will continue to act  
21 independently regardless of who may make any comments that  
22 prejudice a person appearing before you. Thank you, your  
Honour.  
23 JUDGE LUSSICK: Yes. Thank you, Ms Hollis.  
24 MR KHAN: Your Honour, with the greatest of respect,  
12:09:33 25 I simply must respond to that. Your Honour, they may have a  
26 political impact, but then this whole Court does, because the  
27 reason we are here today was not the result of any legal  
28 decision, any legal scrutiny of the merits of this trial  
taking  
29 place here in Europe or in Freetown with the other detainees.  
It

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 54  
OPEN SESSION

decisions 1 was the result of political machinations or political  
2 in New York by politicians, so there is a political context.  
3 But, your Honour, it would be as unacceptable for the  
4 Secretary-General, speaking in an official capacity to  
Page 25

officials

12:10:08 5 of the Court, to make these allegations as it would be for me  
to  
6 go to Sierra Leone or go to Liberia and say that anybody who  
7 speaks for the Defence is a liar and slander them or make  
8 accusations against them.

9 The Prosecution would be the first to stand up and say:  
12:10:23 10 The Defence are making comments that have a chilling effect on  
11 the preparation of the Prosecution. I'm doing no more, your  
the 12 Honour, than saying what is sauce for the goose is sauce for  
13 gander, to use, with the greatest of respect, an American  
14 expression.

12:10:46 15 JUDGE LUSSICK: The matters raised by Mr Khan fall  
under  
16 two heads. I'll address very briefly the latter matter that  
has  
17 just been mentioned. I think I should emphasise here  
something  
18 that we are all very familiar with, and that is that among the  
19 fundamental rights guaranteed to Mr Taylor under our Statute  
is

12:11:15 20 the right to be presumed innocent until proven guilty. I  
can't  
21 emphasise strongly enough that Mr Taylor will be tried in this  
22 Court in Trial Chamber II; he won't be tried in the media, and  
he  
23 won't be tried by the content of what people say outside the  
24 Court.

12:11:40 25 Myself and my colleagues, as Mr Khan has already pointed  
focus,  
26 out, are professional judges and our focus, and our only  
his  
27 is to ensure that Mr Taylor receives a fair trial, which is  
28 right under the Statute and by all humanitarian laws. He is  
and  
29 entitled to be presumed innocent and to receive a fair trial,

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 55  
OPEN SESSION

1 that's what's going to happen. As professional judges we are  
2 totally uninfluenced by what people might say outside of the  
3 courtroom.

12: 12: 39 4 Now, Mr Khan, the other head of matters - you've raised  
5 quite a few concerns relating to conditions of detention, and  
6 I fully appreciate what you say that perhaps conditions here

are

7 different from Freetown, and I would not like anybody

listening

8 to those submissions to think that Freetown is the Riviera of

the

9 detention system, but certainly it does have different rules

than

12: 13: 13 10 Mr Taylor is experiencing here.

trial

11 Now, as you know, unless these conditions go to fair

12 issues, my Trial Chamber is fairly circumscribed as to what it

13 can order, because the jurisdiction on detention matters goes

14 through another channel. As you know, there is a complaints

12: 13: 39 15 procedure under the rules of detention and, if satisfaction is

way

16 not gleaned using that system, the complaints can find their

17 to the President rather than the Trial Chamber.

18 But, of course, as I have already said, if any of these

19 conditions affect Mr Taylor's right to a fair trial, then my

12: 14: 08 20 Trial Chamber can deal with the matters. So if you are of  
that

21 view, you can apply to the Trial Chamber at any time.

22 MR KHAN: I'm most grateful, your Honour.

orders.

23 JUDGE LUSSICK: And we will issue the appropriate

24 What I am suggesting at the moment that might improve

12: 14: 36 25 matters is if I refer this whole transcript to the Registrar  
and

26 ask him to address the issues raised by the Defence today. If  
27 you think there are any specific orders that this Court can  
make  
28 in relation to those matters today, by all means submit them  
and  
29 I will see whether we can make them.

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 56  
OPEN SESSION

1 MR KHAN: Your Honour, I'm most grateful. If I may say  
2 so, that is extremely constructive. Your Honour, we are of  
3 course alive to the various options that we have. I did  
allude  
4 to the fact that the issuance of receiving phone calls does  
have  
5 an impact on the preparedness of the Defence to have  
12:15:16 information  
6 regarding the availability of private funds. But, your  
Honours,  
7 at this moment in time I think we are content to leave this  
8 matter to the Registry of the Special Court to discuss with  
their  
9 counterparts, the Registry and detention officials of the ICC,  
12:15:37 of  
10 and hopefully between the two of them - between the two organs  
11 the two different courts - a mutually satisfactory and  
sensible  
12 solution can be reached, as I said, with good sense and  
goodwill.  
13 Your Honours, if that fails, of course, we may have to bother  
the  
14 Trial Chamber and of course perhaps the President, your  
Honour,  
12:15:57 15 but I am grateful for the indication.

16 JUDGE LUSSICK: Thank you, Mr Khan. I will direct that

brought 17 today's transcript and the matters raised by Mr Khan be  
you 18 to the Registrar's attention. I repeat what I say, Mr Khan:  
the 19 are free to apply at any time if you need the assistance of  
12:16:20 20 Trial Chamber.

21 MR KHAN: I'm obliged.

22 JUDGE LUSSICK: There's only one other matter now. Now  
23 that we have started the pre-trial procedure, I would like to  
24 keep a finger on the pulse of how matters are developing. So  
12:16:36 25 I think it is appropriate today to fix another date for a  
parties 26 pre-trial conference. I would like to be guided by the  
27 to some extent here. I had in mind perhaps another pre-trial  
28 conference towards the end of September, but I am open to  
29 whatever submissions the Defence and Prosecution may have as

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 57  
OPEN SESSION

1 regards dates. Ms Hollis, do you have any views on what is an  
2 appropriate time for another pre-trial?

for 3 MS HOLLIS: We have no preference as to the next date  
4 a pre-trial. We are perfectly happy to appear whenever the  
12:17:24 5 Chamber sets a schedule, and the end of September would be  
fine 6 as far as we're concerned.

7 JUDGE LUSSICK: Thank you. What about you, Mr Khan?

ask. 8 MR KHAN: Your Honour, it is most gracious of you to  
9 Your Honour, whatever is convenient for the Court would be  
12:17:41 10 convenient for us. September seems a sensible period of time.

11 JUDGE LUSSICK: The Trial Chamber will issue a formal  
12 scheduling order, but the date I'm thinking of is Friday,  
13 29 September, unless either party has some other commitments  
on  
14 that date.

12:18:13 15 If there are no other matters, we will adjourn the Court  
16 today. As I said, the Court will issue a formal scheduling  
on 17 order, but I will appoint now a Status Conference to be held  
18 Friday, 29 September, and it will be, I presume, in this same  
19 courtroom here at The Hague.

12:18:46 20 MR KHAN: I do apologise. There was at least one  
21 oversight on my part. It is a matter that the Registry are  
22 intimately aware of, but as the transcript is going to them  
attention 23 formally, I would ask, with your leave, that particular  
24 be made regarding securing visas for Mr Taylor's family. They  
12:19:06 25 are all outside of The Netherlands. His wife is six months  
26 pregnant and, of course, there is not a huge window of  
to 27 opportunity for her to travel here before it becomes difficult  
28 get on an aeroplane. So, your Honours I know that the  
Registrar 29 and the Deputy Registrar are alive to this issue. I think

SCSL - TRIAL CHAMBER II

♀

CHARLES GHANKAY TAYLOR  
21 July 2006

Page 58  
OPEN SESSION

1 meetings are planned, but as the transcript is going to be  
2 delivered, I think it is only right that the client remind me  
3 that that is a matter that is of extreme importance to him,  
given 4 the fact that he has not had the opportunity to say goodbye to  
12:19:43 5 his family before he left Africa. He is, of course, keen on

6 seeing his wife and family again.

7 JUDGE LUSSICK: Thank you, Mr Khan.

8 MR KHAN: I'm grateful. I apologise for omitting it  
9 earlier.

12:19:55 10 JUDGE LUSSICK: As a matter of fact I do know something  
is  
11 being done about those visas, but I do agree it is a very  
benefit  
12 important matter to Mr Taylor, and I emphasise, for the  
urgent  
13 of the Registry, that they ought to give this matter some  
today,  
14 attention. Mr Taylor now has been one month in The Hague

12:20:20 15 I think, so as I say, the transcript will be referred to the  
as  
16 Registrar, and I would urge him to look into this visa matter  
17 a matter of urgency.

18 I think that concludes our business today. We will  
adjourn  
19 these proceedings until 29 September. Thank you.

12:20:41 20 [12:20 p.m.]

21 (The Trial Chamber adjourned until 29 September 2006)

22

23

24

25

26

27

28

29