Chapter 5

A Political Tool? The Politics of Case Selection at the Special Court for Sierra Leone

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The establishment of a truth and reconciliation commission (TRC) and a war crimes court (the Special Court for Sierra Leone or SCSL) in Sierra Leone has been described as a transitional justice (TJ) model that advances both justice and reconciliation.[2] Whether these institutions have been a 'success' has been highly contested within Sierra Leone and among external TJ observers. This chapter focuses on the politics informing the most prominent process in Sierra Leone: the Special Court.[3] The chapter claims that the independence or otherwise of SCSL case selection is a key indicator of success. It considers the interests of the actors who designed the Court and traces the manifestation of those interests in key elements of institutional design and function. Its findings support a more realist explanation of the Court's creation and function than the normative aspirations espoused by the Court and repeated by other observers 'that no one was beyond the court's reach'.[4] I argue that the politics of the Court's creation compromised its capacity to independently pursue its mandate – to pursue those most responsible for crimes. This was a Court, I argue, designed to assist other US and British instruments of regime change strategy in Liberia and regime protection in Sierra Leone.

I begin by examining how US policy towards Sierra Leone and neighbouring Liberia determined Sierra Leone's TJ processes. I also examine Britain's role in shaping US policy. I argue that a shift in US support from the Revolutionary United Front (RUF) to the British-backed Kabbah government caused a shift in preference from a legally established truth

commission to a war crimes court and a military solution. The British government was instrumental in securing this policy shift, seeking to shape partisan politics in Washington DC as well as Sierra Leone's domestic security and political dynamics. Within Sierra Leone, they constructed a narrative attributing sole blame for the 1999 Lomé Peace Agreement's breakdown to the RUF. The British also sought to strengthen the Kabbah government's military position by procuring West African military support, providing military support and coordination themselves, antagonizing RUF combatants, and shifting the allegiance of the Sierra Leone army towards the Sierra Leonean government. Most importantly, the British government used US Republican control of UN funding to compel the Clinton administration to shift support from Charles Taylor and the RUF to the Kabbah government.

This chapter notes that Sierra Leone experienced two separate conclusions to the conflict and two separate TJ processes. The first was the 1999 Lomé Peace Agreement, which established a power-sharing government, provided amnesty for crimes, and established a TRC. The second was a conclusive military victory for one party to the conflict, imposing peace as well as a criminal process that gave amnesty to many elements of the victorious party. I argue in this chapter that Sierra Leone's TJ processes, in particular the SCSL, were selected and designed based on their expediency to external political actors, rather than their TJ merits. I further argue that the expediency of the Court compromised its independence and its ability to succeed in prosecuting those bearing greatest responsibility. The SCSL, its financial supporters, the UN Security Council, and much of the literature emphasize the 'compliance pull' of recognizing and acting against international crimes.[5] Changes in the local, regional, and international security and political landscapes reshaped TJ goals and altered calculations about amnesty and justice. There were a limited number of states in a position to influence these shifts, but those that were had considerable power. Sierra Leone's

TRC and the SCSL, in particular, can be understood, like domestic institutions, as bureaucracies vulnerable to state manipulation.[6]

The US, the UK, and the Lomé Peace Accord

The US–Liberian relationship has a complex history. The US government, after 1997, had engaged the RUF's Liberian supporter, Charles Taylor. Taylor had won 75 per cent of the vote in Liberia's July 1997 presidential election, causing alarm for Kabbah and his British supporters in Freetown. This was somewhat out of character as the US had previously viewed Taylor and his Liberian National Patriotic Front (NPFL) insurgency as a conduit of French encroachment into the US sphere of influence in West Africa. However, George H. W. Bush's administration decided that Liberia no longer constituted the US 'special sphere' or protectorate.[7] This view was reinforced by Taylor's 1998 visit to Paris to declare Liberian plans for privatization and for French business to spearhead that process.[8]

Taylor received an official red carpet state welcome from President Chirac in Paris where the French foreign ministry stated its willingness to participate in Liberia's reconstruction and to develop a French-speaking environment. Taylor's strong 1997 election victory and consolidation of support from previous political and military interlocutors caused the US government to see Liberia's move to the French sphere as a fait accompli and of little geopolitical significance.[9] The marginal nature of US commercial interests in Liberia allowed Taylor to placate US irritation by addressing US security and strategic concerns.[10] Despite the emerging US support of Taylor, the US accommodated British-led sanctions on Taylor's then ally, the Armed Forces Revolutionary Council (AFRC/RUF) Junta, in Freetown while Russia, France, and China blocked the use of force or the threat of force against the RUF citing issues of state sovereignty.[11] At the time, China and France were the largest recipients of Liberian

timber. France received 37 per cent of Liberia's official exports in 1999.[12] Britain pressured Nigeria to lead Economic Community of West African States (ECOWAS) sanctions against the AFRC and send troops under ECOWAS auspices to reinstate Kabbah in violation of the ECOWAS Protocol on Non-Aggression.

On 1 June 1997 Kabbah stated, over the British-funded 98.1FM radio station, that any person remaining in Freetown would be treated as a collaborator by government-aligned attacking forces.[13] The attacking force consisted of Nigerian-led peacekeepers supported by the British-supported Civil Defence Forces (CDF). British support violated UN sanctions that the British had proposed and implemented in October 1997.[14] The British government encouraged Anthony Buckingham, a British national whose company held a diamond-mining concession in Sierra Leone, to use the private military company 'Sandline' to provide troops, arms, and equipment and to plan and coordinate pro-government attacks against the AFRC. UK military support for the operation violated a then active UK arms embargo on Sierra Leone as well as the UN embargo led by Britain.[15]

Despite Charles Taylor's francophone orientation, he solicited US support via the Congressional Black Caucus leadership in Washington DC.[16] In February 1998, while the British were employing a mercenary force to remove the AFRC and secure Tony Buckingham's diamond-mining concessions, President Taylor was striking a personal bond with US Special Envoy for the Promotion of Democracy and Human Rights in Africa, Jesse Jackson.[17] After Sani Abacha's death, the Economic Community of West African States Monitoring Group (ECOMOG) support declined, limiting Kabbah's capacity to control Freetown. In January 1999, former AFRC and other Sierra Leone Army (SLA) soldiers invaded Freetown causing Kabbah and the British government to concede a diplomatic solution as the only military option available.[18] Taylor had lobbied US Congressional Black Caucus Chairman, Rep Donald Payne, to convince Jackson to push for negotiations and not

military assistance to ECOMOG.[19] Jackson persuaded Kabbah, without giving him the opportunity to consult his ministers, to go with them to Lomé and negotiate with Sankoh.[20] Kabbah and Sankoh eventually agreed on power sharing, amnesty for crimes committed, a TRC, and the replacement of ECOMOG by a UN force. Article VI (2) of the Agreement describes the TRC as one of several 'structures for national reconciliation and the consolidation of peace'.[21]

The Lomé Peace Agreement indicates the interest of both parties in entrenching the military status quo through a legalized agreement.[22] The RUF leadership and the US government, represented by Jesse Jackson and US Ambassador to Sierra Leone, Joseph Melrose, wished to politically entrench favourable military power by acquiring shared political power and procuring external legitimacy and material support. The UK and the Kabbah government viewed the agreement unfavourably but were overwhelmed by US coercion. They secured what Duncan Snidal would suggest was a credible commitment from a stronger military party to cease hostilities.[23] Jesse Jackson sought to lock in the US commitment by pledging US funding for 30 per cent of the disarmament and demobilization process.[24] He had some success: US Secretary of State, Madeleine Albright, stated in October 1999 that 'Sankoh is delivering the right message' and that she 'hoped very much he will continue to intensify his efforts to ensure full adherence to the Lomé Accord'.[25] Sankoh's post as Minister of Minerals and Mines further incentivized the peace agreement's implementation. However, RUF combatants viewed the Lomé Accord as requiring disarmament and loss of rent-seeking power so RUF elites could profit from government positions. Key battlefield commanders independently began imposing rents on mining and other activities, diminishing Sankoh's command control.[26] Only half of the pledged US$50 million for disarmament and demobilization had been received by mid-December 1999,

despite a supporting UN Security Council resolution that also established a peacekeeping mission.[27]

In February 2000, as the RUF's reluctance to disarm without the promised payment and educational provisions became clear, the Security Council expanded the United Nations Mission in Sierra Leone (UNAMSIL) to law enforcement with 11,000 troops.[28] The UK government initiated a sophisticated campaign to shift US policy by shaping the Sierra Leonean security situation and mobilizing Republican opposition in Washington. The British government also shaped a narrative that human rights groups and lower-level State Department bureaucrats would adopt.[29] The narrative emphasized crimes committed by the RUF since Lomé and omitted crimes committed by the CDF (supported by the Kabbah and UK governments). CDF crimes went unreported by human rights groups and government agencies on both sides of the Atlantic.[30] The US took the position that atrocities committed after Lomé were not covered by the amnesty as a gulf opened between more engaged US actors in Freetown and some State Department personnel who adopted the British narrative that Lomé was failing due to the RUF.[31]

In February 2000, Kabbah's government passed the Truth and Reconciliation Commission Act, establishing a TRC to be funded by governmental and international non-governmental agencies.[32] The Commission's members were to be appointed 'after a selection process involving both national and international expertise' and involving a selection panel on which all the protagonists to the conflict and other interested parties would be represented.[33] The institutional design, incorporating a power-sharing agreement, represented both parties' interests and accommodated a direct role for civil society in personnel appointment.

However, the UK government was not satisfied with the negotiated peace and the TRC required by it. British efforts to shift the power dynamic started to focus on Liberia as well as

on Sierra Leone. British armed forces began to liaise with a group of militant anti-Taylor Liberian diaspora called the Liberians United for Reconciliation and Democracy (LURD).[34] Most critically, the British government brought the issue of US support for Charles Taylor to Republican Senator Judd Gregg's attention.[35] Gregg's staffer noted: 'We sat down with the British Ambassador on Sierra Leone and he took a very different position to the Clinton position and there was a mutual commiseration and there was a negotiation as to how do we do something about the US policy.'[36] Senator Gregg was the chairman of the US Senate Homeland Security Appropriations Sub-committee. He used this position to block $96 million for disarmament and demobilization funds earmarked for Sierra Leone without hearings, debates, or votes.[37] Gregg opposed the Lomé accord, an RUF role in government, and Charles Taylor's role in the region.[38] He blocked payments on $1.77 billion that the US owed to the UN and refused budgetary approval until US policy towards the region changed.[39]

Identifying and tracing the roles of Gregg, the British government, and Sierra Leone's security and political developments illuminates the causes of a shift in preferences from power sharing to a conclusive military victory for one party to the conflict, and, linked to this, from a truth commission to a war crimes court. Kabbah used RUF non-compliance to justify continued non-implementation of his Lomé obligation to provide specific RUF postings in the government.[40] RUF elements, exercising a great deal of autonomy from the leadership, refused to disarm while corresponding compensation or education remained unavailable. Non-compliance from both sides fomented tensions. The British-driven narrative citing RUF non-disarmament as the sole driver of post-Lomé instability continued to be adopted by the mass media and international civil society. Little attention was drawn to the non-disarmament of the CDF, lack of provision of disarmament and demobilization programmes, or the Kabbah government's refusal to provide all agreed RUF government postings.

In the first week of May 2000, RUF combatants, under UNAMSIL pressure to disarm without compensation, seized over 550 UNAMSIL peacekeepers. The British government and mass media attributed sole blame to the RUF leadership for the incident in which four peacekeepers were killed and three injured.[41] Jesse Jackson, unaware of Sankoh's lack of command authority over RUF subordinates, continued to assure Sankoh of his immunity while requesting the peacekeepers' release.[42] Both the US and British governments condemned the RUF for behaviour violating international norms. However, the US government continued to support Taylor and, by extension, the RUF.[43] Kabbah began to utilize distrust between Johnny Paul Koroma and Sankoh to procure Koroma's and the SLA's allegiance, causing a major shift in Sierra Leone's security dynamic, which dramatically weakened the RUF. The SLA began operating alongside the CDF in Freetown, enabling senior RUF figures' arrest, and in some cases murder alongside Sankoh's house arrest.[44] On 8 May 2000, under President Kabbah's instruction to deploy, British soldiers, the CDF and SLA, (under British command) attacked Sankoh's residence under cover of civilian protest at continued peacekeeper detention.[45] The RUF marched on Freetown in response but were met and repelled by a coalition of SLA, CDF, ECOMOG, and British troops coordinated, armed, and trained by the British.[46] In support of the UK position, Judd Gregg called for 'an international war crimes tribunal to investigate and punish atrocities committed by the RUF to be set up', the first time such a tribunal was publicly proposed.[47] Both the military dynamic on the ground and the diplomatic environment in Washington were shifting against the Clinton administration (Table 5.1).

Table 5.1 Military allegiances in Sierra Leone's conflict in May 1997

France (and US, peripherally)	UK
APC (political party)	SLPP (political party)
RUF	CDF
SLA	

By May 2000, Sierra Leone's security reconfiguration appeared as shown in Table 5.2.

Table 5.2 Military allegiances in Sierra Leone's conflict in May 2000

France (and an increasingly cautious US)	UK
APC (political party)	SLPP (political party)
RUF	CDF
	SLA
	ECOMOG

International media, human rights groups, and the United Nations Security Council (UNSC) held Sankoh responsible for the insecurity of early May, adopting the Kabbah government's explanations of fluid events that were difficult to verify.[48] British intelligence officers fed the media stories alleging evidence proving Charles Taylor's role in the RUF's

diamond trade.[49] The absence of protest at the Kabbah government's detention of 180 suspected RUF members, including the Freetown leadership, reinforced the RUF's diplomatic stigmatization.[50] That stigmatization enabled ostensibly impartial UNAMSIL peacekeepers to fight alongside SLA and CDF forces against the RUF, which still controlled half the country and an estimated 90 per cent of the diamond trade.[51]

The dramatic change in Sierra Leone's security situation and severe embarrassment surrounding US failure to meet its UN obligations caused the Clinton administration to change policy on 3 June 2000. Judd Gregg and US Ambassador to the UN, Richard Holbrooke, along with their respective staffers, met to discuss US policy towards Sierra Leone and Liberia.[52] Gregg, still convinced by the UK position, insisted that the US was using taxpayer dollars for ill-informed policy and that money owed to the UN would remain withheld until the policy was adjusted to seek Taylor's removal from power in Liberia and the RUF's defeat.[53] Holbrooke agreed, suggesting a four-pronged approach, including increased military aid to Guinea to enable an insurgency into Liberia, economic sanctions to weaken Taylor's capacity to repel an insurgency, and the RUF's capacity to repel peace enforcement; a war crimes tribunal that would indict Taylor and legitimize his diplomatic and economic isolation; proactive United States Agency for International Development (USAID) and Central Intelligence Agency (CIA) support of Liberian political opposition.[54] With the continued absence of funding for disarmament, the Clinton administration officially indicated its shift in policy in a letter to Senator Gregg from Ambassador Holbrooke. The letter stated that Sankoh should have no political future, that the UN should try to disrupt the RUF's hold on diamonds, and that the US should come up with a strategy to deal with Liberian President Charles Taylor.[55]

The US government's position thus changed from supporting a negotiated peace to seeing the military vanquishing of the RUF as necessary. Linked to this was a shift in

perception of the combatants towards a view that the RUF and Taylor were solely responsible and liable to prosecution for war crimes. There was therefore a seismic shift in TJ policy in Sierra Leone, from truth and amnesty to prosecution. The political drivers of this shift are missed in TJ literature, which explains the shift in terms of normative pressure and excludes the state's self-interest.[56]

Designing the SCSL

From June 2000, international and domestic attention and resources focused on designing a war crimes court. On 5 June, the US State Department announced it was in consultation with the UN and the UK to bring perpetrators of crimes in Sierra Leone to justice, indicating that crimes committed since Lomé were not covered by the Accord.[57] Jesse Jackson was fired as Special Envoy for the Promotion of Democracy and Human Rights in Africa and the next day US senator Judd Gregg released $368 million in peacekeeping funds Jackson had been blocking ($96 million for Sierra Leone). Gregg demanded accountability in Sierra Leone while stating he had received an assurance that Sankoh would play no role in Sierra Leone's future, that the Lomé Accord was hopefully dead, and that RUF control over diamonds would be broken.[58]

However, the political environment in the US was changing. The incoming Bush administration held deep antipathy towards the International Criminal Court (ICC), which some saw as a suitable venue for trials of crimes in Sierra Leone. The Bush administration preferred Security Council–established courts over which it enjoyed greater influence. Three permanent Security Council members – France, Russia, and China – opposed a UN-established and UN-funded tribunal for Sierra Leone, as they viewed it as 'dealing with Liberia through the back door'.[59] China and Russia, in particular, were alarmed as to a

perceived legal trend that impinged upon state sovereignty.[60] They demanded that the US and Britain fund the court themselves – a position the US and Britain accepted as it eliminated key transaction costs and they were also weary of the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) costs.[61] If the US and the UK paid, they did not have to bear the cost of bargaining with civil society actors and Security Council states. The only substantive negotiations required of the UK and the US were with a weak Sierra Leonean government they could coerce into compliance.[62] Similarly, the UN Secretariat, civil society, and disinterested members of the Security Council played peripheral designing roles. Three important instruments of control the US and the UK gained over case selection, absent from the UNSC-established ICTR and ICTY, were enhanced control over jurisdiction, the selection of key personnel, and subsequent financial leverage over those personnel. Functional controls provided an insurance policy against prosecutorial action against the US, the UK, and their post-conflict domestic ally, the Sierra Leone People's Party (SLPP).

A strong US–UK relationship, with interests now aligned, and the relative weakness of other voices defined the design of the SCSL. On 8 June, UK representative to the UN, Jeremy Greenstick, announced an expanded UNAMSIL force and stated that justice would be pursued for the peacekeeper attacks, international law violations, and the illegal RUF trade of diamonds for arms.[63] The US government met with Sierra Leone's Attorney General, Solomon Berewa, who, on behalf of the Sierra Leonean government, suggested he serve as co-prosecutor of an international tribunal.[64] The British and Sierra Leonean governments sought to locate the Court within the Sierra Leonean legal system, thus providing them with the greatest possible cooperative control over prosecution case selection.[65] The US government rejected their position, preferring a 'co-establishment process'.[66] The British

government continued to assert the need to avoid a prosecutor who might engage in sensitive investigations, including British culpability.[67]

On 12 June, President Kabbah wrote to the UN Security Council requesting it to set up a 'Special Court for Sierra Leone' to 'try to bring to credible justice those members of the RUF and their accomplices responsible for committing crimes against the people of Sierra Leone and for the taking of UN peacekeepers as hostages'.[68] The Secretary General sent a senior legal officer to Freetown to meet with the Sierra Leonean government who expressed a clear preference for 'a national court with a strong international component'.[69] After a closed session on 21 June, the Security Council found that the RUF had violated the Lomé Peace Agreement and demanded that the peacekeeper hostage takers be 'brought to justice'.[70]

Holbrooke's plan was materializing by July 2000. The LURD, who now enjoyed US as well as British support and would also commit international crimes, attacked North Western Liberia from Guinea.[71] 'Guinean' forces were provided with increased US military training and ammunition for the offensive against Taylor.[72] Continuing UN sanctions impeded the Liberian government from legally acquiring arms to defend its territory. Conscious that more than a quarter of US hydrocarbon supplies would soon be procured from the region (greater than that procured from the Middle East), that lucrative fields exist off the Liberian[73] and Sierra Leonean coasts, and that China was emerging as an influential Liberian partner,[74] securing stability became a greater US priority.[75] Despite ECOWAS, French, Chinese, and Russian support, Liberia failed to change UK and US opposition to removing sanctions.[76]

On 14 August 2000, the UN Security Council requested that the UN Secretary General create a Special Court for Sierra Leone by negotiating an agreement with Sierra Leone's government.[77] By November 2000, an overwhelmed RUF signed a ceasefire agreement requiring disarmament and granting diamond-mining control to UN peacekeepers. By May

2001, sanctions limiting Taylor's fiscal capacity to purchase weapons were introduced to accompany his legal exclusion from the armaments marketplace.[78]

Defining the parameters of the SCSL's jurisdiction

The British narrative informing the Court's design was evident in the UNSC resolution that commended Sierra Leone's government and ECOWAS for bringing lasting peace.[79] The resolution made ambitious claims about the Court's potential – that it would pave the way for a 'credible system of justice and accountability', end impunity, enable reconciliation, and restore peace.[80] The resolution assumed that Kabbah was not culpable for crimes and that he intended to refrain from shaping prosecution case selection.

Once Security Council consensus had been reached on the Court's creation and financial independence from UN coffers, Britain and the US largely controlled the Court's design.[81] Negotiation of the Court's legal framework and constitutive instruments occurred in September 2000 at UN headquarters and in Freetown with Sierra Leonean Attorney General, Solomon Berewa, and President Kabbah.[82] The meetings suggested that a comprehensive public information campaign would be required to persuade Sierra Leoneans of the court's fair nature and the merit of a limited number of accused.[83] However, Kabbah's meagre influence over the Court's design left him and his government on the prosecution's jurisdictional radar. Consequently, Kabbah's government refused to commit to cooperation with the SCSL until the Court was established and the prosecutor appointed.[84] In addressing the Lomé amnesty, despite conceding amnesty in the Conakry Accord, the Secretary General asserted that the UN consistently maintained a position excluding amnesty for international crimes.[85]

In the years within the jurisdiction of the Court (30 November 1996 onward), the TRC attributed 57 per cent of abuses to the RUF, 30 per cent to the SLA, and 12 per cent to the CDF with a negligible percentage committed by ECOMOG forces.[86] Whom to prosecute for those crimes was the cause of UN Secretariat–Security Council contention. The Secretary General recommended extending jurisdiction to 'those most responsible' including those in 'political or military leadership' roles including both a 'leadership or authority position' rather than the Security Council's interpretation of 'those who bear the greatest responsibility' with reference to 'command authority'.[87] The Secretary General also noted the Court's functional vulnerability due to dependence on contributions of personnel, equipment, services, and funds from states not party to the agreement.[88] The Security Council rejected jurisdiction over 'those most responsible', preferring 'those who played a leadership role' excluding the various armed groups' financiers and political supporters, which would include British support of the CDF.[89] The Secretary General accepted the 'persons who bear the greatest responsibility' threshold, but stated that it did not limit jurisdiction to political and military leaders only.[90] Instead, he said, determination of the phrase 'falls initially to the prosecutor and ultimately to the Court itself'. He stated that paragraph two of the proposed amendment which says 'those leaders . . . who have threatened the establishment of and implementation of the peace process in Sierra Leone' is a guide for the prosecutor and not an element of the crime itself.[91] This placed aiding and abetting actors, including Taylor, Compaoré, Gaddafi, the UK government, and the Sierra Leonean government, within the prosecutor's jurisdiction.

This issue was not resolved, but the prosecution ended up following the Security Council's command responsibility preference, ostensibly excluding ostensible political or financial supporters. The SCSL prosecutor's selection demonstrated US concerns shared by Britain and Kabbah about the sovereignty costs of an independent prosecutor potentially

pursuing cases impinging upon Anglo-American interests. The US Whitehouse asked Department of Defence (DOD) lawyer David Crane if he would 'help set up an experiment we've got going in West Africa'.[92] After the August 2001 Security Council resolution endorsing the SCSL, Crane began utilizing DOD intelligence information to identify those he believed to be the most responsible for crimes committed during the conflict.[93]

The conflict's conclusion

The anticipated accused were placed under increasing pressure through 2001 by state supporters of the Court. In January 2001, military, economic, political, and legal pressure procured Taylor's public renouncement of his support for the RUF and Sam Bockarie's apparent expulsion from Liberia.[94] In March 2001, French, Russian, and Chinese support was acquired for UN arms, diamonds, and military training sanctions on Liberia as well as travel bans on cited Liberian government members.[95]

In May 2001, a ceasefire agreement allowed SLA troops to occupy RUF positions and only obligated government consideration of releasing detained RUF. At that time, Guinean attacks, sanction-imposed cessation or reduction of Liberian support, increased UNAMSIL capacity, fleeing disarmed RUF combatants, the threat of British force deployed in Freetown, and recurring British military flights over RUF positions meant interim leader Issa Sesay faced military annihilation. Sesay accepted Sankoh not being released as had been promised, relinquished all RUF areas of control to the government, promised full participation in disarmament, demobilization, and reintegration, and allowed deployment of UNAMSIL peacekeepers to diamondiferous areas.[96] Hoping to avoid SCSL prosecution, Sesay cast himself as peacemaker. He also supported a UNAMSIL presence that deterred Guinean attacks and allowed UNAMSIL-regulated RUF mining.[97]

SCSL jurisdictional constraints

The agreement between the UN and the government of Sierra Leone on the Court's establishment was signed on 16 January 2002. The Sierra Leonean government ratified the agreement.[98] The Court's temporal jurisdiction, beginning on 30 November 1996, excluded key actors in command control positions, including former National Provisional Ruling Council (NPRC) chairman and head of state, Valentine Strasser, and senior NPRC official, Julius Maada Bio. Strasser and other senior NPRC officers had dissidents killed without trial during their time in power and wielded command control over the armed forces. Britain provided Strasser asylum. The temporal mandate also focused the prosecution disproportionately on criminality relating to capturing and retaining mineral-rich areas.[99]

The statute provided peacekeepers and government-aligned private military contractors ad hoc amnesty. The statute places peacekeepers within their sending state's primary jurisdiction and requires Security Council approval for Court jurisdiction, enabling alleged perpetrators such as ECOMOG commander, Colonel Maxwell Khobie, to evade prosecution.[100] Article 1 also provides ad hoc immunity to British private military contractors, and army and diplomatic personnel who directed, financed, and, in some instances, engaged in hostilities where abuse was perpetrated.[101] The prosecution cited an absence of information as justification for failing to seriously consider culpability above Hinga Norman in the CDF.[102] The TRC, with dramatically less investigative capacity, identified and reported multiple incidents, demonstrating a clear case for Kabbah's aiding and abetting of, and command control over, the CDF.[103]

Another jurisdictional constraint is the mode of liability for an accused. The designing actors, after excluding prosecution of British and government-aligned mercenaries, enabled the 'aiding and abetting' mode of liability, rather than only planning, instigating, ordering, or committing abuse. The prosecution of Charles Taylor is the most conspicuous case here, as

proving that abuse occurred is not a significant obstacle since the instances alleged are the same instances of abuse the Court held to have occurred in the RUF and AFRC cases.[104] Aiding and abetting require only that substantive material support is provided to an armed group and that one knows or ought to know that the group has committed or will commit crimes. Taylor, unlike the others accused, was found to have only substantial influence over the RUF/AFRC, not to bear individual criminal responsibility, and not to hold effective control over the leadership of the RUF or AFRC.[105]

The court's structure and mandate set parameters restraining the prosecutor's jurisdiction to those bearing the greatest responsibility for crimes committed, other than external private military and peacekeeping personnel who supported the preferred party to the conflict. Functional and fiscal elements, some of which were built into the court's design, further impeded the pursuit of persons within these parameters.

SCSL functional controls

Article 2 of the SCSL agreement stipulates that the Secretary General and the President of Sierra Leone will appoint key Court personnel.[106] As they funded the Court, the British and US governments had the informal power to recommend critical Court appointments to the Secretary General and to withhold or threaten funding to procure politically favourable case selection.[107] The US recommended the DOD lawyer David Crane as the court's first Chief Prosecutor. The Secretary General viewed Crane's curriculum vitae unfavourably, requiring Secretary of State Colin Powell and others to persuade him.[108] The Sierra Leonean government appointed the Deputy Prosecutor, Desmond de Silva. President Kabbah and de Silva were former colleagues in the same chambers in London.[109] Despite clear cause for perceived bias, de Silva accepted the position. The US was also able to appoint a number of

key prosecution personnel.[110] Similarly to de Silva, the Court's first President, Geoffrey Robertson, accepted his position despite his public assertions as to the RUF's guilt prior to taking up his position as President.[111] While the SCSL's design reflected the US and British positions, consultation with the Sierra Leonean government allowed interested actors, including the President and Vice President, to protect themselves through cooperation, while deploying the Court against a political threat – Sam Hinga Norman.[112] Despite Kabbah's clear command control as Minister of Defence and President, and the TRC's overwhelming evidence of his aiding and abetting in war crimes, the Court refrained from indicting or seriously investigating him. The British government and Kabbah had a shared interest in shaping CDF case selection to prevent their own prosecution. The British-seconded Inspector General of Police allocated Sierra Leonean investigators to the prosecution who led investigations, including those of the CDF. After 30 to 45 days in Sierra Leone, the prosecution had determined what crimes and which persons would be prosecuted.[113]

Prosecution case selection was also shaped via provision of information. David Crane cites the intelligence available at the US DOD as critical to his case selection. After September 2001, when informed that he was likely to be appointed, Crane had had almost a year to examine DOD information. He stated that after seeking NGO corroboration of DOD information, he held 'a four corners idea as to who bore the greatest responsibility' before going to Sierra Leone to begin investigations.[114] A former prosecution investigator noted that it was already clear who would be pursued upon the prosecutor's arrival in Sierra Leone.[115] Crane formed a view of the conflict as beginning because of individual criminal gain.[116] He viewed the RUF case as the 'blood diamond story' – 'the movie for real' in which RUF motives 'all boiled down to a commodity, generally diamonds' and the RUF leadership's personal criminal gain.[117] He also viewed the conflict as 'a good news story' because 'the good guys [Kabbah and the British Government] won'. Once in Sierra Leone, the prosecution

was also contacted by British intelligence (MI6).[118] MI6 Meetings were held in Europe and West Africa. British and American intelligence officers shared intelligence on RUF procurement of financial, military, and logistical support with the prosecution.[119]

Two other elements of the Court's design affected prosecution case selection: Court location and financial dependence. The prosecution was constrained by its extraordinary dependence on US financial support and cooperative support from the Sierra Leonean government. Crane travelled to Washington three to four times a year to request financial support for the Court. That financial dependence constrained RUF case selection. Crane, upon determining that Muammar Gaddafi and Blaise Compaoré were just as culpable as Taylor, was instructed by both the US Department of State and Senator Gregg's office not to pursue either Gaddafi or Compaoré and to stay focused on Taylor.[120] Those offices made clear that pursuit of Compaoré, Gaddafi, or weapons trader Ibrahim Bah would cause cessation of court funding from the US government.[121] Compaoré and the weapons trader, Ibrahim Bah, who organized the facilitation of arms through Burkina Faso to the RUF, were originally thought to be within the political parameters of indictment.[122] Their cooperation with the US government on terrorism (Bah was on the payroll of US intelligence), as well as the anticipated political and diplomatic fallout of indicting more than one head of state outweighed, in the view of the US, the good of holding the two accountable.[123] Upon being appointed prosecutor, Stephan Rapp considered indicting 'at least one additional person'.[124] Rapp declined to proceed on practical grounds citing time-limited resources, but it is likely that the person he considered indicting was Kabbah as he viewed the TRC report, which is highly critical of Kabbah, as indicating the scale of the various parties' culpability.[125] Part of the reason for this was the Court's location in Sierra Leone, which heightened its dependence on support from Kabbah's government. Kabbah wielded the option, if confronted by politically sensitive case selection, to expel court personnel and close the Court – instruments

unavailable to Rwandan and Balkan governments under ICTY and ICTR investigation. Senior prosecution personnel therefore viewed Kabbah as beyond their reach, particularly after the removal of ICTR prosecutor, Carla del Ponte.[126] Hollis, in this book, asserts that the evidence to indict Kabbah was not there. Yet evidence was clearly identified by the TRC of both command control and aiding and abetting.[127] A former investigator had 'the door closed in their face', when pursuing evidence of Kabbah's culpability.[128] Alongside the conflict of interest of Sierra Leone police officers investigating their own head of state, it seems that the prosecution avoided serious investigation of evidence easily obtained by the TRC.

The fact that senior State Department and congressional personnel confirm the motivation to establish the Court as a part of a strategy of regime change in Liberia, and that the prosecutor was told not to pursue Compaoré, Gaddafi, and Bah demonstrates discriminatory prosecution case selection. Hollis asserts in this book that the evidence was not there to pursue those figures. The prosecutor, the State Department personnel, and the Senate staffers confirm that the prosecutor was told not to pursue evidence incriminating those actors and to focus on Charles Taylor. The evidence was insufficient because the prosecutor was instructed not to try to find it. Surprisingly, despite the publication of this information and Taylor's defence citing it in submissions,[129] Taylor's defence neglected to use the selective prosecution precedent in Celebici to have the case thrown out.[130] The Celebici precedent provides judicial oversight of case selection – oversight that the Taylor defence, as well as the CDF and RUF defence, failed to fully explore. By calling the former prosecutor, Crane, or other personnel, Taylor's defence could have demonstrated 'unlawful or improper (including discriminatory) intent' of the prosecutor and the clear refrain from prosecuting 'other similarly situated persons'.[131] Speaking before the Security Council in 2012, SCSL prosecutor, Brenda Hollis, stated that the Court's most important legacy 'will be the achievement of our mandate: to prosecute those who bear the greatest responsibility'.[132]

Whether via jurisdictional constraint or functional pressure, the prosecution was unable or unwilling to pursue key persons bearing greatest responsibility. Its legacy is that it pursued only those it was politically expedient to prosecute.

Conclusion

The success of Sierra Leone's TJ experience needs to be considered in the context of its political drivers. This chapter demonstrates that the nature of those drivers aligned more with realist state self-interest than with liberal emerging norms. Consideration of success, therefore, must evaluate conflicts of interest among the actors who designed the Court as well as the personnel who staffed it. If success is independently pursuing its mandate to prosecute those bearing greatest responsibility in spite of political opposition to do so, the SCSL cannot be considered a success. In bending to the self-interest of the US government in avoiding the prosecution of Blaise Compaoré, Ibrahim Bah, and Muammar Gadaffi, the prosecution compromised the emerging norm of independent prosecution of international crimes cases. The norm was similarly compromised by accommodation of the Kabbah and British governments' realist self-interest in avoiding the prosecution of Kabbah or the British government or commercial actors – interests built into the Court's jurisdiction and function. The nature of Sierra Leone's TJ processes was assured in mid-2000 when Richard Holbrooke met Senator Gregg. The UK had propagated a narrative of sole RUF culpability. The embarrassment of blocked UN funds combined with the declining influence of Taylor in Sierra Leone rendered the Clinton administration's pro-Taylor policy expendable. These two shifting variables constituted exogenous shocks sufficient to shift Sierra Leone's post-conflict TJ course away from a power-sharing government, blanket amnesty, and a TRC towards military resolution and the prosecution of the defeated. In the case of Sierra Leone, the

British government enjoyed what Paul Pierson calls 'first mover's benefit'.[133] Greater engagement in Sierra Leonean domestic politics positioned the UK to shape local and global narratives depicting fluid events. Their narrative, combined with a US Senate ally, triggered Clinton administration policy revision favourable to the UK. That revision constructed TJ processes, particularly the SCSL, in a way that compromised their independence, and therefore their success.

Despite international divisions, the Court agreement was commonly characterized as 'an agreement between all members of the UN and Sierra Leone'.[134] This analysis reinforced false perceptions of broad-based and objective foreign involvement in the Court's creation, design, and function. The literature has roundly neglected the role of key actors in shaping the court and its processes.[135] Similarly, commentators routinely address issues relating to SCSL processes, jurisprudence, and jurisdiction as if the Court were created out of utilitarian or moral motives, emphasizing the role of norms and norm entrepreneurs.[136] These analyses are commonly devoid of local and international historical context, leading to strong (but wrong) claims as to the commitment of the international community to hold perpetrators accountable, no matter how rich, powerful, or feared they might be.[137]

One key indicator of TJ success is the extent to which it pursues cases, adjudicates, finds facts, or otherwise behaves in a manner that confronts the interests of the powerful while advancing TJ goals. The assertiveness of US policy allowed it to nearly singlehandedly construct Sierra Leone's TJ 'rules and arrangements'.[138] The Sierra Leonean case exemplifies what US hegemonic power can achieve, to either provide stability, peace, and directed justice, or to disrupt efforts by a lesser power to affect its preferred outcome.

Another lesson of the historical antecedents to Sierra Leone's TJ process is the absence of any accountability for the SCSL's design and operation. The TRC bore some greater accountability through local and international consultation on design prior to the US policy

shift. After the US changed position to align with Britain, the American and British governments behaved strategically and disguised realist intentions with claims that they were supporting international norms. In fact, the SCSL model was employed because of its cost and because it offered the US and UK governments significant influence over its operation. To the extent the Court achieved its politically intended purpose – to assist regime change in Liberia and help stabilize Sierra Leone – it can be considered a success. The Court attached a level of stigma to Taylor that assisted other instruments in politically, economically, and militarily isolating him and forcing him to abandon power in Liberia. In Sierra Leone, the Court removed the RUF and AFRC leadership as political actors for Kabbah's government, along with Kabbah and Berewa's internal SLPP adversary, Sam Hinga Norman. The Court served to reinforce Kabbah's grip on power, and with it Britain's position as first patron.

The Special Court's key lesson for advocates of impartial international criminal justice is that the narratives accompanying TJ processes demand historical interrogation. A critical lesson for civil society actors who genuinely seek normative advance is that they must engage with court design in a manner that seeks to limit constraints on prosecution case selection independence – whether jurisdictional or functional. Transitional processes should be viewed in the context of larger geopolitical goals. It is in this context that the success of Sierra Leone's TJ experience must be judged.

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[2] E. Evenson (2004) 'Truth and Justice in Sierra Leone: Coordination between Commission and Court', *Columbia Law Review* 104, 730.

[3] Mahony and Sooka, in this book, consider many of the TRC's constraints within the context this chapter provides.

[4] Amnesty International (2012) 'Taylor Verdict Sends Message That No One Is Above the Law', 28 April; L. Gberie (2014) 'The Special Court for Sierra Leone Rests – For Good', *Africa Renewal*, 6 April.

[5] The court's primary financial supporters include the governments of the US, the UK, and the Netherlands; C. Schocken (2002) 'The Special Court for Sierra Leone: Overview and Recommendations', *Berkeley Journal of International Law* 20(2), 436–461; International Center for Transitional Justice (2013) 'Sierra Leoneans Reflect on SCSL in "Seeds of Justice"', 11 July, ictj.org; UN Security Council (UNSC) (2000) 'Security Council Resolution 1306', S/RES/1306.

[6] D. Hawkin, D. Lake, D. Nielson, and M. Tierney (2006) *Delegation and Agency in International Organizations* (New York: Cambridge University Press).

[7] Mahony's interview with Nicholas Rostow, former Senior Policy Adviser to the US Permanent Representative to the United Nations and General Counsel, US. Mission to the United Nations, 9 November 2012, Washington, DC.

[8] Star Radio (30 September 1998) 'Liberian Daily News Bulletin', All Africa.com

[9] Mahony's interview with Lawrence Wilkerson, former Chief of Staff to Secretary of State, Colin Powell, 7 July 2014, Washington, DC.

[10] *Prosecutor v Charles Taylor*, SCSL-2003-01-T, 'Transcript', 9 November 2009, p. 31354.

[11] L. Gberie (1997) 'The May 25 Coup d'Etat in Sierra Leone: A Militariat Revolt?', *Africa Development* 22(3–4), 170; Mahony's interview with former Tunisian delegate to the UNSC, 11 June 2009, The Hague, The Netherlands; BBC News (2000) 'Britain's Role in Sierra Leone', 10 September.

[12] Global Witness (2001) 'Taylor-made: The Pivotal Role of Liberia's Forests and Flag of Convenience in Regional Conflict', globalwitness.org, p. 17.

[13] TRC Report, Vol. 3A, 2004, p. 298.

[14] Gberie, 'The May 25 Coup d'Etat', p. 166; interview with former Tunisian delegate; BBC News, 'Britain's Role in Sierra Leone'.

[15] Gberie, 'The May 25 Coup d'Etat', p. 166; interview with former Tunisian delegate; BBC News, 'Britain's Role in Sierra Leone'.

[16] K. Timmerman (2003) 'Liberia and Blood Diamonds', *Insight Magazine*, 25 July; I. Rashid (2000) 'The Lomé Peace Negotiations', Conciliation Resources.

[17] TRC Report, Vol. 3A, pp. 291–292; D. Francis (1999) 'Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?', *Third World Quarterly* 20(2), 328; Legg and Ibbs (27 July 1998) 'Report of the Sierra Leone Arms Investigation', *House of Commons*, HC 1016, p. 28; D. Keen (2005) *Conflict and Collusion in Sierra Leone* (Oxford: James Curry), p. 218; Timmerman, 'Liberia and Blood Diamonds'; Rashid, 'Paying the Price'.

[18] IRIN (1999) 'IRIN Update 420 for 11 March 1999', University of Pennsylvania – African Studies Centre; TRC Report, Vol. 3A, 2004, pp. 324–325; Keen, *Conflict and Collusion*, p. 250.

[19] Rashid, 'Paying the Price'.

[20] Timmerman, 'Liberia and Blood Diamonds'; Rashid, 'Paying the Price'; Keen, *Conflict and Collusion*, p. 251.

[21] Lomé Peace Agreement, July 1999, Lomé, Togo.

[22] M. Kahler (2000) 'The Causes and Consequences of Legalization', *International Organization* 54(3), 662.

[23] Kahler, 'Causes and Consequences', p. 663.

[24] Timmerman, 'Liberia and Blood Diamonds'.

[25] N. Amishi (2000) 'How U.S. Left Sierra Leone Tangled in a Curious Web', *New York Times*, 4 June.

[26] TRC Report, Vol. 3A, pp. 351, 355.

[27] UN (22 October 1999) 'UN Mission for Sierra Leone to Aid with Implementation of Lomé Peace Agreement', SC/6742; US Committee for Refugees (15 December 1999) 'Sierra Leone's Path to Peace: Key Issues at Year's End', Press Release.

[28] UN (7 February 2000) Press Release, SC/6801.

[29] D. Scheffer (2012) *All the Missing Souls: A Personal History of the War Crimes Tribunals* (Princeton, NJ: Princeton University Press), p. 313.

[30] Interview with member SCSL-OTP, 26 August 2010, via telephone; Amnesty International (1 November 1998) 'Sierra Leone: 1998 – A Year of Atrocities Against Civilians', p. 2; HRW (July 1999) 'Sierra Leone: Getting Away with Murder, Mutilation, Rape', hrw.org

[31] On a visit to Freetown, US Ambassador for War Crimes, David Scheffer informed the US Ambassador that the RUF were spitting in their face through their failure to comply. Scheffer, *All the Missing Souls*, pp. 315, 319.

[32] Truth and Reconciliation Commission Act, 2000.

[33] TRC Act (2000), Memorandum of Objects and Reasons Appended to the Act.

[34] International Crisis Group (ICG) (2002) 'Liberia: The Key to Ending Regional Instability', *Africa Report* 43.

[35] Mahony's interview with Kevin Linskey, former staffer to Senator Judd Gregg, 13 December 2010, Washington, DC.

[36] Mahony's interview with Linskey.

[37] T. Weiner (2000) 'Solitary Republican Senator Blocks Peacekeeping Funds', *New York Times*, 19 May.

[38] T. Weiner (2000) 'G.O.P. Senator Frees Millions for U.N. Mission in Sierra Leone', *New York Times*, 7 June; Sierra Leone Web (June 2000) Archive sierraleoneweb.org

[39] Weiner, 'Solitary Republican'; Mahony's interview with Victoria Holt, Former staffer to US Ambassador to the UN, Richard Holbrooke, 13 January 2011, via phone.

[40] TRC Report, Vol. 3A, p. 249; UN (19 May 2000) 'Fourth Report of the Secretary General on the United Nations Mission in Sierra Leone', S/2000/455, p. 3.

[41] TRC Report, Vol. 3A, pp. 358, 415–421, 245–249.

[42] Timmerman, 'Liberia and Blood Diamonds'.

[43] TRC Report, Vol. 3A, p. 373; interview with former Tunisian delegate; UN (4 May 2000) 'Statement by the President of the Security Council', s/prst/2000/14.

[44] TRC Report, Vol. 3A, pp. 405–406, 233, 393, 377.

[45] Initial reports suggested the RUF first opened fire. However, the TRC's investigation found that SLA/CDF elements were the first to open fire on the compound procuring an RUF return of fire. A civilian participant in the protest also observed British soldiers that the civilian stated, were clearly in command of the CDF and SLA combatants. TRC Report, Vol. 3A, pp. 415–421, 245–249; Interview with Sierra Leonean civilian participant in the 8 May 2000 protests, 17 April 2015, Washington D.C.

[46] TRC Report, Vol. 3A, pp. 331, 457–458; ICG, 'Liberia: The Key'; BBC News, 'Britain's Role in Sierra Leone'.

[47] J. Gregg, (2000) 'A Graveyard Peace', *The Washington Post*, 9 May.

[48] UN (2000) 4139th meeting of the UNSC, S/PV.4139; UN (2000) 'Secretary General Pleads with Council not to Fail People of Sierra Leone, Africa', Press Release, SC/6857; Scheffer, *All the Missing Souls*, pp. 320–330; Mahony's interview with member SCSL-OTP, 26 August 2010, via telephone.

[49] *The Washington Post* reported that documents were found at Sankoh's house referring to Charles Taylor's role in trading diamonds with the RUF. The letter in fact referred to a Charles who was the son of the head of the diamond buyers' association in Antwerp, see *Taylor* Transcript, pp. 31248–31251.

[50] TRC Report, Vol. 3A, pp. 449, 451, 454.

[51] TRC Report, Vol. 3A, p. 460. See, for example, T. Karon (2000) 'In Sierra Leone: Saving Hostages May Cost Dearly', CNN 16 May; BBC News (2000) 'India Concerned about Hostage Peacekeepers', 9 June.

[52] Mahony's interview with Holt; Mahony's interview with Linskey; Mahony's interview with Former staffer to Senator Judd Gregg, US Senate, 13 December 2010, via telephone; Scheffer, *All the Missing Souls*, p. 322.

[53] Mahony's interview with Holt; Mahony's interview with Linskey.

[54] Mahony's interview with Holt; Mahony's interview with Linskey.

[55] Mahony's interview with Holt; Mahony's interview with Linskey.

[56] A. Smith (2013) 'The Expectations and Role of International and National Civil Society in the SCSL', in C. C. Jalloh (ed.) *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law* (Cambridge: Cambridge University Press), p. 47.

[57] Smith, 'The Expectations and Role', p. 47.

[58] Smith, 'The Expectations and Role', p. 47.

[59] Interview with former Tunisian delegate.

[60] Interview with former Tunisian delegate.

[61] Interview with former Tunisian delegate.

[62] D. Drezner (2008) *All Politics Is Global: Explaining International Regulatory Regimes* (Princeton, NJ: Princeton University Press).

[63] Sierra Leone Web Archive.

[64] Scheffer, *All the Missing Souls*, pp. 323, 328.

[65] Scheffer, *All the Missing Souls*, pp. 323, 330.

[66] Scheffer, *All the Missing Souls*, pp. 330–331.

[67] Scheffer, *All the Missing Souls*, p. 331.

[68] UN (2000) 'Letter Dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations Addressed to the President of the Security Council', S/2000/786, p. 2.

[69] UN (2000) *Fifth Report of the Secretary-General on United Nations Mission in Sierra Leone*, 31 July, S/2000/751.

[70] UN (2000) Official communiqué of the 4163rd meeting of the UNSC, S/PV.4163, p. 21.

[71] ICG, 'Liberia: The Key', p. 24; Mahony's interview with Linskey.

[72] ICG, 'Liberia: The Key', p. 24; Mahony's interview with Linskey; *Taylor* Transcript, pp. 31332–31333; US House of Representatives (8 February 2006) 'The impact of Liberia's election on West Africa', Hearing before Subcommittee on Africa, Global Human Right, and International Relations.

[73] An estimated 1.5 billion barrels of oil is estimated to be in Liberian waters. US-based company Chevron and a Nigerian firm Oranto have subsequently been provided concessions

by Ellen Johnson-Sirleaf's Liberian government; *The Analyst* (1 September 2010) 'Oil Manoeuvres: Hopes, Woes, Worries in Wait'.

[74] This emerging influence is perceived to be arousing Chinese commercial interests as well as China's first foray into peacekeeping.

[75] US House of Representatives, 2006; National Energy Policy Development Group (May 2001) Report of the National Energy Policy Development Group, US Government Printing Office, Chapter 8.

[76] Interview with former Tunisian delegate; *Taylor* Transcript, pp. 31338–31339.

[77] UNSC (14 August 2000) 'Security Council Resolution 1315 (2000)', S/RES/1315.

[78] UN (7 May 2001) 'Security Council Liberia Diamond Ban and Travel Ban Come into Force', Press Release, SC/7058.

[79] UNSC Resolution 1315.

[80] UNSC Resolution 1315.id.

[81] Interview with former Tunisian delegate; Scheffer, *All the Missing Souls*, pp. 334–339.

[82] UN (4 October 2000) 'Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone', S/2000/915, paras 5–6.

[83] UN, 'Report of the Secretary-General', para. 7.

[84] UN, 'Report of the Secretary-General', para. 8.

[85] UN, 'Report of the Secretary-General', paras 22–23.

[86] TRC Report, Vol. 2, p. 39.

[87] UN, 'Report of the Secretary-General', paras 31–32.

[88] UN, 'Report of the Secretary-General', para. 55.

[89] UN, 'Letter Dated 22 December 2000 from the President of the Security Council Addressed to the Secretary-General', S/2000/1234.

[90] UN, 'Letter Dated 12 January 2001 from the Secretary-General addressed to the President of the Security Council', S/2001/40.

[91] UN, 'Letter dated 12 January 2001'.

[92] D. Crane (2010) 'The Investigation, Indictment, and Arrest of Charles Taylor: A Regional Approach to Justice' (The Baldy Centre for Law and Social Policy, University of Buffalo).

[93] Crane, 'The Investigation'; Mahony's interview with David Crane, former Chief Prosecutor, SCSL, 17 May 2007 and 17 August 2010, via telephone.

[94] UN, 'Ninth Report of the Secretary-General on the United Nations Mission in Sierra Leone', 14 March 2001, S/2001/228, p. 5.

[95] Interview with former Tunisian delegate; UNSC (2001) 'Security Council Resolution 1343', 7 March.

[96] TRC Report, Vol. 3A, p. 461.

[97] Keen, *Conflict and Collusion*, p. 269.

[98] Sierra Leone practises dualism, which means that treaties must receive a constitutional and fortiori parliamentary blessing before they can be applied at national level; N. Udombana (2003) 'Globalization of Justice and the Special Court for Sierra Leone's War Crimes', *Emory International Law Review* 17, 8.

[99] US House of Representatives, 2006.

[100] Article 1(2–3), SCSL Statute; former prosecution investigator, 2010; Mahony's interview with Alhaji Ibrahim Ben Kargbo, President, Sierra Leone Association of Journalists, 4 April 2007, Freetown, Sierra Leone; Mahony's interview with Gavin Simpson, Author, SLTRC report, 30 March 2007, Freetown, Sierra Leone.

[101] *House of Commons* (27 July 1998); Legg and Ibbs, 'Report', p. 28.

[102] Mahony's interview with Crane; interview with Stephen Rapp, former Chief Prosecutor, SCSL-OTP, 3 April 2007 and 3 February 2013, Freetown, Sierra Leone; interview with Desmond de Silva, former Deputy and Chief Prosecutor, SCSL-OTP, 16 April 2007, London.

[103] TRC Report, Vol. 3A, pp. 273, 283, 285–286.

[104] See the incidents in the RUF (excluding counts relating to Freetown in January and February 1999) and AFRC indictments. *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-A, Appeals Chamber, Judgment, 26 October 2009; *Prosecutor v Sesay, Kallon and Gbao*, SCSL-2004-15-PT, Amended Indictment, 2 August 2006; *Prosecutor v Brima, Kamara and Kanu*, SCSL-2004-16-PT, Amended Indictment, 18 February 2005; *Prosecutor v Brima, Kamara and Kanu*, SCSL-2004-16-A, Appeals Chamber, Judgment, 22 February 2008; *Prosecutor v Charles Taylor*, SCSL-03-01-PT, Prosecution Second Amended Indictment, 29 May 2007, 9.

[105] *Prosecutor v Charles Taylor*, SCSL-03-01-PT, Judgment, 18 May 2012, 2466–2468.

[106] SCSL (2000) Statute of the Special Court for Sierra Leone, Freetown, Sierra Leone.

[107] Mahony's interview with former Registrar, Robin Vincent, 2007, Freetown, Sierra Leone.

[108] Mahony's interview with Rostow.

[109] UK Parliament, Select Committee on Standards and Privileges, minutes of evidence, 19 July 2005.

[110] Mahony's interview with Rostow.

[111] Robertson was excluded from sitting on the RUF case as a consequence of his assertions of RUF guilt. He later resigned.

[112] Interview with former Tunisian delegate; SCSL Statute; Special Court Agreement, 2002 (Ratification) Act.

[113] Mahony's interview with Crane.

[114] Mahony's interview with Crane.

[115] Interview with former prosecution investigator, 2010.

[116] Crane, 'The Investigation'.

[117] Crane, 'The Investigation'; US House of Representatives Committee on the Judiciary (8 April 2008) 'Subcommittee on Crime, Terrorism, and Homeland Security, Prosecuting the use of children in times of conflict', Testimony of David Crane.

[118] Mahony's interview with Crane.

[119] *Taylor* Transcript, 9 November 2009, p. 31446.

[120] Crane, 'The Investigation'; Mahony's interview with Michael Miklaucic, former Deputy Ambassador at Large for War Crimes Issues, US Department of State, 20 September 2011; Mahony's interview with former staffer to Senator Judd Gregg, 12 July 2012, Washington, DC; Mahony's interview with Crane; Chief Prosecutor, David Crane also stated this in an interview with *The Times* newspaper (25 February 2011) 'Prosecutor reveals how Britain let Gaddafi off', *The Times*.

[121] Crane, 'Prosecutor Reveals'; Mahony's interview with Crane; Mahony's interview with Miklaucic.

[122] Mahony's interview with former SCSL prosecution investigator, 26 August 2010.

[123] Mahony's interview with former SCSL prosecution investigator; According to intelligence reports, Bah had been given $10,000 by US officials who also bought him a plane ticket to Abidjan where he spoke to US officials in January 2002 as well as in Ouagadougou in February. See: *Taylor* Transcript, pp. 31451–31453.

[124] S. Rapp (2013) 'The Challenge of Choice in the Investigation and Prosecution of International Crimes in Post-Conflict Sierra Leone', in Jalloh (ed.), *The Sierra Leone Special Court*, p. 25.

[125] Rapp, 'The Challenge of Choice', p. 25. The Report (Vol. 3A) documents President Kabbah's trip to the CDF base zero on Bonthe Island with supplies for the CDF and his

organization of support before and after Operation Black December in which mass abuses occurred and their occurrence was communicated to the President (pp. 283, 285–286). Kabbah's leadership role and the CDF's chain of command are also documented (p. 273).

[126] Interview with former senior SCSL prosecution member, 18 May 2007; Carla Del Ponte (2009) *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity. A Memoir* (New York: Other Press).

[127] TRC Report, Vol. 3A, pp. 273, 283, 285–286.

[128] Interview with member SCSL-OTP, 26 August 2010.

[129] C. Mahony (2012) 'Prioritising International Sex Crimes before the Special Court for Sierra Leone: One more Instrument of Political Manipulation?', in M. Bergsmo (ed.) *Thematic Prosecution of International Sex Crimes* (Beijing: Torkel Opsahl Academic E-Publisher) pp59-84; *Prosecutor v Taylor*, Sentencing brief on behalf of Charles Ghankay Taylor, SCSL-03-01-T, 10 May 2012, pp. 79–80.

[130] *Prosecutor v Delalic, Mucic, Delic, and Landzo* (Celebici case), IT-96-21-A, Appeals Chamber, Judgment, 20 February 2011, para. 611.

[131] Celebici case, para. 611.

[132] UNSC (2012) '6844th Meeting of the Security Council, The Situation in Sierra Leone', S/PV.6844. See also Hollis in this book.

[133] P. Pierson (2004) *Politics in Time: History, Institutions, and Social Analysis* (Princeton, NJ: Princeton University Press).

[134] H. Steiner, P. Alston and R. Goodman (2008) *International Human Rights in Context: Law, Politics, Morals* (Oxford: Oxford University Press), p. 1239.

[135] Smith, 'The Expectations and Role', p. 47.

[136] See, for example, Jalloh (ed.), *The Sierra Leone Special Court*.

[137] Jalloh, *The Sierra Leone Special Court*; T. Perriello and M. Wierda (2004) *The Special Court for Sierra Leone: The First 18 Months* (New York: International Centre for Transitional Justice); E. Higonnet (2005) 'Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform' (Yale Law School Student Scholarship Series 6); No Peace Without Justice (2003) 'Final Narrative Status Report July 2002–October 2003'; B. Dougherty (2004) 'Right-sizing International Criminal Justice: The Hybrid Experiment at the Special Court for Sierra Leone', *International Affairs* 80(2), 311–328; L. Gberie (2003) 'Briefing: The Special Court of Sierra Leone', *African Affairs* 102(4), 637–648; Sigall Horovitz (2006) 'Transitional Criminal Justice in Sierra Leone', in N. Roht-Arriaza and J. Mariezcurrena (eds) *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (New York: Cambridge University Press) pp54-55; J. Poole (2002) 'Post-Conflict Justice in Sierra Leone', in M. C. Bassiouni (ed.) *Post-Conflict Justice* (Ardsley, NY: Transnational Publishers) pp563-592; W. Schabas (2003) 'The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone', *Human Rights Quarterly* 25(4), 1035–1066; C. Bhoke (August 2006) 'The trial of Charles Taylor: Conflict Prevention, International Law and an Impunity-free Africa', ISS Paper, p. 127.

[138] J. Goldstein (2005) *International Relations* (New York: Pearson-Longman), p. 83.