

CASE REPORT: *THE PROSECUTOR V. CHARLES GHANKAY TAYLOR*: THE TREATMENT OF HEAD OF STATE IMMUNITY UNDER INTERNATIONAL CRIMINAL LAW BY THE SPECIAL COURT FOR SIERRA LEONE

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Introduction

The doctrine of head-of-state immunity, a feature of the Westphalian system of sovereign equality,¹ historically served as an absolute shield for state leaders in the judicial processes of foreign courts.² It aimed to promote the smooth operation of international relations based on the principle *par in parem non habet imperium*, meaning “an equal has no authority over an equal.”³ However, the twentieth-century mass atrocities during the World Wars triggered a normative shift toward individual accountability for serious international crimes.⁴ This shift has created one of the most profound tensions in contemporary international criminal law: the conflict between sovereign immunity and accountability for core

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¹ M. CHERIF BASSIOUNI, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW 73 (2d rev. ed. 2012).

² Merve Gertik, *An Analysis of the Concept of Head of State Immunity in the Post-Westphalian World Order*, 25 LAW & JUST. REV. 107 (2023), <https://dergipark.org.tr/en/pub/ljr/article/1267888>.

³ Deepshikha Gupta, *LLB SNBP Module 6: Law of Diplomatic Immunity & Consular Relations*, STUDOCU (Nov. 22, 2025), <https://www.studocu.com/in/document/savitribai-phule-pune-university/llb/llb-snbp-module-6-law-of-diplomatic-immunity-consular-relations/146465893>.

⁴ *Genocide War Crimes and Crimes Against Humanity*, LAWTEACHER (Feb. 2, 2018), <https://www.lawteacher.net/free-law-essays/international-law/genocide-war-crimes-and-crimes-against-humanity-international-law-essay.php>.

crimes⁵—a tension further heightened by the current rising nationalism around the world.

The position from the post-World War II tribunal (The Nuremberg Tribunal) to the permanent International Criminal Court (ICC) demonstrates an inclination toward the erosion of the immunity shield before international judicial bodies.⁶ Article 7 of the Nuremberg Charter declared that “The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.”⁷ The actualization of this principle, however, against a sitting head-of-state, happened decades later. The first major milestone was the International Criminal Tribunal for the former Yugoslavia’s (ICTY) indictment of Slobodan Milošević in 1991 while he was President of the Federal Republic of Yugoslavia.⁸ Furthermore, the seminal obiter dictum of the International Court of Justice (ICJ) in the *Arrest Warrant Case* (Congo v. Belgium 2002) reinforces the notion of non-application of sovereign immunity before international tribunals.⁹

It was the Special Court for Sierra Leone (SCSL), the first hybrid tribunal, that delivered the most definitive consequential ruling against head-of-state immunity under customary international law prior to the ICC Appeals Chamber 2019 intervention in the Omar al-Bashir case.¹⁰ The SCSL’s indictment of the Liberian President, Charles Ghankay Taylor, served as a defining legal test. Charged with war crimes and crimes against humanity committed during Sierra

⁵ Michelle Burgis-Kasthala & Barrie Sander, *Contemporary International Criminal Law After Critique: Towards Decolonial and Abolitionist (Dis-)Engagement in an Era of Anti-Impunity*, 22 J. INT’L CRIM. JUST. 127, 127–50 (2024).

⁶ NUREMBERG HUMAN RIGHTS CTR., FED. FOREIGN OFF., & GOETHE INST., *From Nuremberg to The Hague* 1 (2020), <https://www.corteidh.or.cr/tablas/24618.pdf>.

⁷ Charter of the International Military Tribunal art. 7, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 284.

⁸ Leila Nadya Sadat, *The Trial of Slobodan Milošević*, ASIL INSIGHTS, Vol. 7, Issue 10 (Oct. 15, 2002), <https://www.asil.org/insights/volume/7/issue/10/trial-slobodan-milosevic> [Last visited Dec. 30, 2025].

⁹ Case Concerning the Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 3 (Feb. 14).

¹⁰ Astrid Reisinger Coracini & Jennifer Trahan, *The Case for Creating a Special Tribunal to Prosecute the Crime of Aggression Committed Against Ukraine (Part VI): On the Non-Applicability of Personal Immunities*, JUST SECURITY (Nov. 8, 2022), <https://www.justsecurity.org/84017/the-case-for-creating-a-special-tribunal-to-prosecute-the-crime-of-aggression-committed-against-ukraine-part-vi-on-the-non-applicability-of-personal-immunities/> (last visited Dec. 29, 2025).

Leone's civil war, Taylor's defense filed a preliminary objection grounded in sovereign immunity, challenging the authority of the court to hold "those who bear the greatest responsibility" accountable.¹¹ The SCSL Appeals Chamber's 2004 decision, which rejected Taylor's motion to quash his indictment on immunity grounds, was more than a procedural ruling; it was a landmark affirmation that there is no immunity for core crimes, regardless of the individual's status.¹²

This article provides an analysis of the Taylor case with a specific focus on the immunity ruling as a landmark ruling in the law governing the immunity of heads of state before international criminal tribunals. It argues that the SCSL Appeals Chamber's decision served as the critical bridge between the established legal framework from the post-World War II period and the current operations of the ICC, providing the convincing reasoning authority that, for the need for individual accountability to triumph over immunity, subsequent tribunals have ever since relied upon. The article has four parts.

Part I establishes the factual and legal background, detailing the rise of Charles Taylor and the origin of the civil war in Sierra Leone. It also discusses the hybrid nature of the SCSL due to its location within the territory of the crimes. Part II constitutes the core legal analysis, assessing the SCSL Appeals Chamber's decision on immunity. It carefully examines the defense's three-pronged argument based on customary international law, sovereign equality, and the SCSL's purported status as a "national court." It further analyzes the Chamber's reasoning in rejecting each claim, with particular emphasis on its interpretation of the ICJ's Arrest Warrant dictum. Part III traces the immediate and enduring legacy of the decision. It follows the political and legal saga of Taylor's exile, arrest, and eventual conviction, analyzing how the immunity ruling paved his path to justice. It then assesses the decision's profound jurisprudential legacy, demonstrating its direct citation and application by the ICC in the Al-Bashir case, thereby cementing its place as a precedent in customary international law. Part IV explores the criticism of the Taylor precedent, including the dilemma of Taylor's exile, the African Union's disapproval of selective justice, and the persistent challenges of enforcement that reveal the enduring interplay between law and geopolitics.

¹¹ *Prosecutor v. Taylor*, Case No. SCSL-2003-01-I, Decision on Immunity from Jurisdiction, ¶ 51 (Special Ct. for Sierra Leone App. Chamber May 31, 2004).

¹² *Id.* at ¶ 52.

I. Factual and Institutional Backdrop: Conflicts, Diamonds, and a Novel Court

A. *Charles Taylor and the Sierra Leonean Conflict*

Charles Ghankay Taylor's path to power and his role in the Sierra Leonean Civil War are crucial to understanding the severity of the charges against him and the political implications of his prosecution.

An erstwhile Liberian bureaucrat, Taylor launched a rebellion in 1989 that led to a bloody civil war in Liberia after escaping from prison in the United States, where he was awaiting extradition back to Liberia on corruption allegations charges.¹³ Taylor had received military training in Libya; however, he was schooled with advanced education in the United States.¹⁴ By 1990, the armed rebellion under the National Patriotic Front (NPFL) rewarded him with the seat of power (as the head of state) following the violent killing of President Samuel Doe;¹⁵ however, the execution was carried out by a splinter group of the NPFL led by Prince Johnson.¹⁶ By 1997, Taylor transitioned from a head of state to president following an easy victory in the Presidential election,¹⁷ a position he held until his involuntary resignation in 2003.¹⁸ Taylor's presidency followed his reputation as a warlord and a hub for a transnational criminal network, including drug trafficking and mercenary bases.¹⁹

¹³ Charles C. Jalloh, *The Law and Politics of the Charles Taylor Case*, 43 DENV. J. INT'L L. & POL'Y 1 (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2524366 [hereinafter *Law and Politics*].

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber Judgment, ¶¶ 23, 25 (Special Ct. for Sierra Leone May 18, 2012), <http://www.scsldocs.org/documents/view/6662-19559> [hereinafter Taylor Trial Judgment].

¹⁸ Liberian President Taylor Steps Down, THE GUARDIAN (Aug. 11, 2003), <https://www.theguardian.com/world/2003/aug/11/westafrica>.

¹⁹ Coalition for Int'l Justice, *Following Taylor's Money: A Path of War and Destruction*, ALLAFRICA (2005), <https://allafrica.com/download/resource/main/main/idadcs/00010642:e0bc9e66f665f2c7b2fb8a942ff328ea.pdf>.

Taylor's involvement in Sierra Leone's conflict was driven by a mix of personal vendetta, political strategy, and economic greed.²⁰ He held a grudge against the Sierra Leonean President Joseph Momoh for providing a military base for West African peacekeeping forces that countered his rebellion.²¹ More consequentially, Taylor saw the destabilization of Sierra Leone as an opportunity to plunder its alluvial diamond fields, using the revolutionary United Front (RUF) rebel group as a proxy.²² The leader of the RUF, Foday Sankoh, received guerrilla training together with Taylor in Libya.²³ Acting as the RUF's primary sponsor, Taylor provided weapons, training, and camps in Liberia in exchange for diamonds, which fueled his war machine and personal wealth.²⁴

However, other African leaders were also implicated in the Sierra Leonean conflicts. The then-President of Burkina Faso, Blaise Compaoré, and Libya's former leader, Colonel Muammar Gaddafi, were likewise accused of participating in the same transnational war network.²⁵ Notably, however, only Charles Taylor was indicted by the SCSL.²⁶ This decision led to accusations that the Court was engaging in selective justice.²⁷ Defenders of the Court argued that its mandate was to prosecute those who bore the "greatest responsibility,"²⁸ and that Taylor's considerable influence over the RUF and its leader, Foday Sankoh, made him the rebellion's chief collaborator.²⁹

In the author's view, both positions have merit. Yet a third perspective may also be considered: prosecuting three sitting African heads of state for atrocities in

²⁰ See Jalloh, *Law and Politics*, *supra* note 13, at 1.

²¹ Sierra Leone. Truth and Reconciliation Commission, *Witness to truth: Rep. of the Sierra Leone Truth and Reconciliation Comm'n* 97, LIB/MM/INTL/1/14 (2004) [hereinafter SIERRA LEONE TRC REPORT].

²² Coalition for Int'l Justice, *supra* note 19.

²³ SIERRA LEONE TRC REPORT.

²⁴ JOE A. D. ALIE, *SIERRA LEONE SINCE INDEPENDENCE: HISTORY OF A POSTCOLONIAL STATE* 147–48 (2015).

²⁵ DAVID M. CRANE, *EVERY LIVING THING: FACING DOWN TERRORISTS, WARLORDS, AND THUGS IN WEST AFRICA — A STORY OF JUSTICE* 7 (2020).

²⁶ *Id.*

²⁷ Charles C. Jalloh, *The Law and Politics of the Charles Taylor Case*, 43 *Denv. J. Int'l L. & Pol'y* 229 (2015) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2524366.

²⁸ Statute of the Special Court for Sierra Leone art. 1, Jan. 16, 2002, 2178 U.N.T.S. 138, available at: <https://www.rscsl.org/Documents/scsl-statute.pdf>; Crane, *supra* note 25, at 12.

²⁹ *Charles Taylor (Liberian Politician)*, EBSCO RSCH. STARTERS, <https://www.ebsco.com/research-starters/biography/charles-taylor-liberian-politician> (last visited Dec. 31, 2025).

Sierra Leone would have posed an extremely heavy burden for the tribunal. Targeting the principal collaborator may therefore have been seen as a more prudent and politically feasible strategy.

1. *The Origin of the Sierra Leonean Civil War*

The Sierra Leone Civil War (1991–2002) was a devastating conflict notorious for its extreme brutality and its financing through “blood diamonds.”³⁰ It resulted in approximately two million casualties, including deaths and widespread displacement, mutilation, rape, and amputation.³¹ However, the amputation sadly became its horrific global signature.³² The conflict was also infamous for the recruitment of child soldiers and the practice of forced marriage, whereby victims were referred to as “bush wives.”³³

On 23 March 1991, the RUF initiated the war by launching its first attack from Liberia against the All Peoples’ Congress (APC) government of President Joseph Saidu Momoh.³⁴ The initial onslaught targeted Bomaru Village in Sierra Leone’s Kailahun District, an eastern region that shares a border with Liberia.³⁵ Their leader, Foday Sankoh, was a former military corporal who had served a seven-year prison sentence for attempting to overthrow President Momoh’s predecessor;³⁶ he later prepared for the rebellion mission by undergoing guerrilla training in Libya.³⁷

³⁰ PETER PENFOLD, ATROCITIES, DIAMONDS, AND DIPLOMACY: THE INSIDE STORY OF THE CONFLICT IN SIERRA LEONE 7, 184 (2013); See *Press Briefing*, AMNESTY INT’L AFR 51/006/2010, at 1 (Aug. 4, 2010), <https://www.amnesty.org/en/wp-content/uploads/2021/07/afr510062010en.pdf> (last visited Dec. 14, 2025).

³¹ *Id.*

³² *WNT: Sierra Leone Amputees*, ABC NEWS (Dec. 15, 2000), <https://abcnews.go.com/WNT/story?id=131404>.

³³ 10 *Facts About Child Soldiers in Sierra Leone*, THE BORGES PROJECT, <https://borgenproject.org/10-facts-about-child-soldiers-in-sierra-leone/> (last visited Nov. 14, 2025); Rachel Slater, *Gender Violence or Violence Against Women? The Treatment of Forced Marriage in the Special Court for Sierra Leone*, MELBOURNE LAW SCHOOL 1 (2011), https://law.unimelb.edu.au/_data/assets/pdf_file/0010/1687384/Slater.pdf.

³⁴ SIERRA LEONE TRC REPORT.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

Although Sankoh claimed to be fighting the bad governance that had crippled Sierra Leone since 1961,³⁸ his RUF rebellion primarily victimized and terrorized the very civilians it claimed to liberate, from its initial attack to its final moments.³⁹ I hold the view that, while Sankoh cited decades of post-independence maladministration as justification for the war, this rationale is substantially flawed. Scholars such as the historian Joe A.D. Alie, who similarly attribute the conflict solely to the failures of post-colonial leaders, overlook a critical historical imbalance:⁴⁰ British colonial rule lasted for 151 years,⁴¹ whereas the period of self-rule at the war's outset was only 31 years.⁴² This does not absolve the failures of post-independence governments. However, I am convinced that the backward state of the nation must also be traced directly to colonialism, which endured far longer than self-rule. At independence, the British provided no foundation for sustainable governance or accountability.⁴³ Therefore, any declaration of war's blame should be directed in significant part toward the legacy of British misrule.

As mentioned above, the conflict was fueled by the country's diamond wealth, with the RUF seizing mines in the mineral-rich Eastern Province to fund its rebellion.⁴⁴ As highlighted above, the RUF received crucial support from a transnational network, most significantly from Liberian President Charles Taylor, who provided arms and resources in exchange for diamonds.⁴⁵

Sierra Leone's government became more unstable after a 1992 coup by the National Provisional Ruling Council (NPRC).⁴⁶ The junta hired foreign mercenary groups, including the Gurkha Security Guard and Executive Outcomes, to combat the RUF and protect diamond interests, as it relied on diamond exports to fund

³⁸ M. Zubairu Wai, *Understanding Contemporary Conflicts in Africa: The Sierra Leone Civil War and its Challenge to the Dominant Representations of African Conflicts*, IDRC Doctoral Res. Award No. 103342-9990675-067, Tech. Rep. (July 12, 2008) <https://idl-bnc-idrc.dspacedirect.org/server/api/core/bitstreams/faa857f4-35f8-471d-b29f-ae9ccf523c74/content>.

³⁹ Michael Chege, *Sierra Leone: The State that Came Back from the Dead*, 25 WASH. Q. 147 (2002), https://ciaotest.cc.columbia.edu/olj/twq/sum2002/twq_sum2002b.pdf (last visited Dec. 10, 2025).

⁴⁰ Alie, *supra* note 24, at 48.

⁴¹ *Id.* at 1-27.

⁴² *Id.* at 48.

⁴³ *Id.*

⁴⁴ *Id.* at 147-48.

⁴⁵ Crane, *supra* note 25, at 7.

⁴⁶ ABDULAI O. CONTEH, *ESSAYS ON THE SIERRA LEONE CONSTITUTION* 1991 31 (2001).

the state administration, including the war against the rebellion.⁴⁷ Likewise, the rebels also employed mercenary fighters from Burkina Faso, Libya, and primarily Liberia in their quest to control the diamond mines.⁴⁸ Internationally, diamonds mined by the RUF were traded through networks involving figures like Taylor, Libya's Gaddafi, and Burkina Faso's Compaoré, reaching Western markets.⁴⁹ The United Nations eventually imposed a diamond certification scheme (Resolution 1306) to curb this trade,⁵⁰ a measure that Peter Penfold, then the British High Commissioner to Sierra Leone, credited with helping to end the war.⁵¹

During the decade-long civil war, the combatants formed three main factions based on their cooperation and alliances: first, the official Sierra Leone Army (SLA) alongside the Armed Forces Revolutionary Council (AFRC), a breakaway group of soldiers that overthrew President Tejan Kabbah's government in 1997, one year after his election; second, the Revolutionary United Front (RUF), which started the conflict; and third, the Civil Defence Forces (CDF),⁵² largely made up of the "Kamajors" tribal militia.⁵³

It is crucial to note that even before his overthrow, President Kabbah's government increasingly relied on the Kamajors for national security rather than the official army, due to a profound distrust of the Sierra Leone Army's (SLA) loyalty and suspicions that many soldiers were collaborating with rebels.⁵⁴ This widespread suspicion earned such soldiers the nickname "Sobel"—soldiers by day, rebels by night.⁵⁵ This distrust directly contributed to the 1997 coup, which established a junta alliance between the Armed Forces Revolutionary Council (AFRC) and the RUF, led by Major Johnny Paul Koroma.⁵⁶ However, Koroma was imprisoned at the time of the coup by the Kabbah administration for attempting a coup in 1996.⁵⁷ The AFRC/RUF junta remained in power until its removal in 1998

⁴⁷ AHMAD TEJAN KABBAH, COMING FROM THE BRINK IN SIERRA LEONE 41-42 (2010).

⁴⁸ SIERRA LEONE TRC REPORT.

⁴⁹ Crane, *supra* note 25, at xi.

⁵⁰ S.C. Res. 1306 (Jul. 5, 2000).

⁵¹ Penfold, *supra* note 30, at 184.

⁵² SIERRA LEONE TRC REPORT.

⁵³ Fighters, drawn from the Mende tribe in the Southern and Eastern provinces of Sierra Leone, SIERRA LEONE TRC REPORT.

⁵⁴ Taylor Trial Judgment, ¶¶ 23, 25.

⁵⁵ SIERRA LEONE TRC REPORT, at 198.

⁵⁶ Taylor Trial Judgment, ¶¶ 23, 25.

⁵⁷ *Id.*

by ECOWAS's military wing, the Economic Community of West African States Monitoring Group (ECOMOG).⁵⁸

In its aftermath, the Truth and Reconciliation Commission (TRC) attributed the recorded atrocities among the factions as follows: the RUF was responsible for 60%, the SLA and AFRC for 16%, and the CDF for 6%.⁵⁹ Accordingly, the Special Court for Sierra Leone (SCSL) prosecuted the principal political and military leaders from each of these warring factions.⁶⁰

2. *End of the Sierra Leone Civil War (Di Wah Dohn Dohn)*

The Lomé Peace Accord of 1999 ultimately ended Sierra Leone's prolonged civil war, something the Abidjan Accord of 1996 and the Guinea Peace Plan failed to achieve.⁶¹ President Kabbah signed on behalf of the government, and Foday Sankoh represented the RUF.⁶² The agreement was facilitated by the international community, principally through the UN and the ECOWAS.⁶³

In a bid to secure peace, the accord established a power-sharing National Unity Government.⁶⁴ The political incentives granted to the RUF were substantial: its leader, Foday Sankoh, was appointed Co-Vice President and was also given control of a newly formed Mineral Commission responsible for the country's mineral resources.⁶⁵ This placed the rebels in direct control of the very resources that had fueled the conflict. As such, Charles Jalloh, an international law expert,

⁵⁸ *Id.*

⁵⁹ SIERRA LEONE TRC REPORT.

⁶⁰ Crane, *supra* note 25m, at 32.

⁶¹ Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, Sierra Leone-RUF, Nov. 30, 1996, U.N. Doc. S/1996/1034. [hereinafter Abidjan Peace Accord]; Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, Sierra Leone-RUF, Apr. 22, 1998. [hereinafter Guinea Peace Accord]; Joe A. D. Alie, *Sierra Leone Since Independence: History of a Postcolonial State* 209-232 (2015).

⁶² Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, Sierra Leone-RUF, July 7, 1999 [hereinafter Lomé Peace Agreement].

⁶³ Alie, *supra* note 24, at xi.

⁶⁴ *Id.*

⁶⁵ Lomé Peace Agreement, art. V.

described this action as akin to “putting the bank robber in charge of the vault.”⁶⁶ Additionally, the RUF received a share of four ministerial and deputy positions.⁶⁷

The most controversial provision was the blanket amnesty for all atrocities committed by RUF combatants and their collaborators.⁶⁸ While the government defended the compromise as necessary to save lives and end the violence, this amnesty faced significant opposition.⁶⁹ The United Nations, serving as one of the moral guarantors of the accord, entered a formal reservation stating it would not recognize immunity for serious war crimes and crimes against humanity.⁷⁰ This pivotal objection is widely viewed as the legal foundation that later enabled the SCSL to bypass the amnesty and prosecute perpetrators.⁷¹ It is interesting to note that the amnesty provision was not a novelty in the country’s peace proposals.⁷² The earlier agreements of the Abidjan Accord and the Guinea Peace Plan contained similar amnesty clauses,⁷³ yet the United Nations raised no objection at the time.⁷⁴ This change in stance can likely be attributed to mounting pressure from international human rights groups, which increasingly emphasized the need to end impunity for war crimes and crimes against humanity.⁷⁵

Though the war formally ended with President Kabbah’s symbolic Krio declaration, “*Di wah dohn dohn*” (“The war is over”), in January 2002,⁷⁶ the peace came at a high human cost and arguably too late. As noted by President Kabbah in his memoir, the nation had been devastated, and the ambitious terms granted to the RUF have been heavily criticized.⁷⁷ I argue that the government, facing a

⁶⁶ Jalloh, *Law and Politics*, *supra* note 13, at 229.

⁶⁷ Lomé Peace Agreement, art. V.

⁶⁸ *Id.*, art IX.

⁶⁹ Jalloh, *Law and Politics*, *supra* note 13, at 43.

⁷⁰ U.N. Secretary-General, Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, ¶ 22, U.N. Doc. S/2000/915 (Oct. 4, 2000).

⁷¹ Prosecutor v. Kallon, Case No. SCSL-2004-15-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, ¶¶ 67, 88 (Mar. 13, 2004).

⁷² Jalloh, *Law and Politics*, *supra* note 13, at 229.

⁷³ Abidjan Peace Accord, art 14; Guinea Peace Plan, art 14.

⁷⁴ Peter Penfold, *International Community Expectations of the Sierra Leone Special Court: The Sierra Leone Special Court and its Legacy*, in *THE IMPACT OF THE SIERRA LEONE SPECIAL COURT ON INTERNATIONAL CRIMINAL LAW* 24 (Charles C. Jalloh ed., 2014).

⁷⁵ AHMAD TEJAN KABBAH, *COMING FROM THE BRINK IN SIERRA LEONE: A MEMOIR* 163–64 (2010).

⁷⁶ *Id.* at 174.

⁷⁷ *Id.* at 165–210.

failed state, had its hands forced and prioritized an immediate end to hostilities through dialogue over the contentious terms of the agreement.

B. The Special Court for Sierra Leone: A Hybrid Innovation

The SCSL was established on 16 January 2002, by a bilateral treaty between the government of Sierra Leone and the United Nations.⁷⁸ It became the third modern ad hoc tribunal, following the International Criminal Tribunal for the Former Yugoslavia (ICTY, 1993)⁷⁹ and the International Criminal Tribunal for Rwanda (ICTR, 1994),⁸⁰ both of which were influenced by the precedent of the International Military Tribunal at Nuremberg.⁸¹

However, the SCSL was groundbreaking as the first hybrid tribunal, deriving its legal authority from both international criminal law and Sierra Leonean domestic law.⁸² Its mandate was to prosecute those bearing the “greatest responsibility” for atrocity crimes,⁸³ a narrower scope than the “most responsible” standard of the ICTY and ICTR.⁸⁴ Notably, the SCSL was the first tribunal since

⁷⁸ Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 2178 U.N.T.S. 137 (Jan. 16, 2002) [hereinafter SCSL Statute]; The Statute is appended to the Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, U.N. Doc. S/2000/915 (Oct. 4, 2000).

⁷⁹ Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 7, U.N. Security Council Resolution 827, U.N. Doc. S/RES/827 (May 25, 1993) [hereinafter ICTY Statute].

⁸⁰ Statute of the International Criminal Tribunal for Rwanda, U.N. Doc. S/RES/955 Nov. 8, 1994 [hereinafter ICTR Statute].

⁸¹ See *Challenges to Criminal Justice System: The Lasting Impact of Nuremberg on International Criminal Justice*, THE LAW INSTITUTE (Nov. 30, 2023), <https://thelaw.institute/challenges-to-criminal-justice-system/lasting-impact-nuremberg-international-criminal-justice/> (last visited Dec 20, 2025).

⁸² Abdul Tejan-Cole, *The Special Court for Sierra Leone: Conceptual Concerns and Alternatives*, 1 AFR. HUM. RTS. L.J. 1 (2001), <https://www.ahrlj.up.ac.za/tejan-cole-a> (last visited Dec. 30, 2025).

⁸³ According to David Crane in his memoir *Every Living Thing: Facing Down Terrorists, Warlords, and Thugs in West Africa—A Story of Justice*, the SCSL's Founding Chief Prosecutor, the mandate to prosecute only those bearing the ‘greatest responsibility’ was what made the tribunal's work achievable. He explained that shifting the standard from “most responsible” to “greatest responsibility” narrowed the pool of potential indictees from roughly one hundred to about two dozen. SCSL Statute art 1.

⁸⁴ Vincent O. Nmehielle & Charles Chernor Jalloh, *The Legacy of the Special Court for Sierra Leone*, 30 FLETCHER F. WORLD AFF. 170, 75-76 (2020) [hereinafter *Legacy*].

Nuremberg to prosecute and convict a serving head of state,⁸⁵ and, like Nuremberg, it was situated within the territory where the atrocities occurred.⁸⁶ In contrast, the ICTY and ICTR were based in The Hague, Netherlands, and Arusha, Tanzania, respectively.⁸⁷

The court's creation came by a decisive shift in President Kabbah's stance toward accountability.⁸⁸ Initially supportive of reconciliation, however, Kabbah moved toward judicial justice due to three key events:⁸⁹ the killing of twenty-one peaceful protesters at Sankoh's residence in May 2000, who were protesting the RUF's violation of the Accord; the RUF's abduction of roughly 500 UN peacekeepers (during this period, Sierra Leone had the largest peacekeeping force in the world);⁹⁰ and the resulting intensification of domestic and international demands to override the Accord's amnesty provision due to the foregoing reasons.⁹¹ Yielding to this pressure, Kabbah formally requested UN assistance in prosecuting the RUF and its collaborators.⁹²

This move drew mixed reactions. Observers like Charles Jalloh interpreted President Kabbah's request that the court have a limited personal jurisdiction focused on those "most responsible violators and the leadership of the RUF" as potentially amounting to a form of victor's justice.⁹³ In practice, the broad prosecutorial approach, which included cases against all warring factions, even government officials, undermined the criticism of victor's justice.⁹⁴

As a hybrid tribunal, the SCSL introduced several novel features.⁹⁵ It was the first tribunal established by a bilateral treaty (the Government of Sierra Leone

⁸⁵ Lansana Gberie, *The Special Court for Sierra Leone Rests—For Good*, AFRICA RENEWAL (Mar. 24, 2014), <https://africarenewal.un.org/en/magazine/special-court-sierra-leone-rests-good>.

⁸⁶ Nmehielle & Jalloh, *Legacy*, *supra* note 84, at 339.

⁸⁷ Press Release, International Criminal Tribunal for the former Yugoslavia, Registrars of ICTY and ICTR Sign Statement of Co-operation (Sept. 21, 2001), <https://www.icty.org/en/press/registrars-icty-and-ict-r-sign-statement-co-operation>. (last visited Nov. 3, 2025).

⁸⁸ Jalloh, *Law and Politics*, *supra* note 13, at 229.

⁸⁹ Kabbah, *supra* note 47, at 163-64 & 325-31.

⁹⁰ *Id.* at 157-64.

⁹¹ *Id.*

⁹² *Id.* at 332-31.

⁹³ Nmehielle & Jalloh, *Legacy*, *supra* note 84, at 74-75.

⁹⁴ Penfold, *supra* note 30, at 188-89.

⁹⁵ Nmehielle & Jalloh, *Legacy*, *supra* note 84, at 55.

and the UN) rather than a UN Security Council resolution under Chapter VII, like the ICTY and ICTR.⁹⁶ In this light, its statute provided it with jurisdiction over crimes under international criminal law and Sierra Leonean criminal law.⁹⁷ Furthermore, its mixed composition allowed the Sierra Leonean government to appoint judges and senior officials, a power the Rwandan and Yugoslavian governments did not exercise.⁹⁸ It was also the first modern international tribunal, since Nuremberg, to be situated at the site of the atrocities, a symbolic choice that enabled victims to witness justice being done.⁹⁹ Furthermore, the tribunal operated concurrently with, though independently of, the national Truth and Reconciliation Commission (TRC).¹⁰⁰ This differed from the South African approach after apartheid, where a TRC was created without an accompanying court.

The SCSL also advanced new legal theories, advancing jurisprudence on head-of-state immunity, crimes against women, and the use of child soldiers.¹⁰¹ As a result, it made history as the first international criminal tribunal to convict an African head of state for war crimes.¹⁰² This was only the second conviction of a head of state by an international court since the post-World War II Nuremberg trials, which convicted Germany's Admiral Karl Dönitz.¹⁰³ Additionally, the SCSL became the first tribunal to issue a conviction for the recruitment and use of child soldiers against the three leaders of the AFRC, Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu.¹⁰⁴ The court also issued the first-ever conviction for forced marriage, recognizing it as a separate crime against

⁹⁶ *Id.* at 338.

⁹⁷ SCSL Statute art 3-5.

⁹⁸ Nmehielle & Jalloh, *Legacy*, *supra* note 84, at 60.

⁹⁹ *Id.* at 57.

¹⁰⁰ Crane, *supra* note 25, at 14.

¹⁰¹ Tejan-Cole, *supra* note 82, at 1.

¹⁰² Gberie, *supra* note 85.

¹⁰³ *Id.*

¹⁰⁴ *Sierra Leone: Landmark Convictions for Use of Child Soldiers*, HUMAN RIGHTS WATCH (June 20, 2007), <https://www.hrw.org/news/2007/06/20/sierra-leone-landmark-convictions-use-child-soldiers>.

humanity distinct from sexual slavery.¹⁰⁵ Finally, the SCSL became the first modern international tribunal to complete its mandate and transition to a residual court.¹⁰⁶

The SCSL derived its mandate from the bilateral treaty and its annexed Statute.¹⁰⁷ Like the ICTY and ICTR, the SCSL exercised subject matter (*ratione materiae*), personal (*ratione personae*), temporal, and territorial (*ratione loci*) jurisdiction.¹⁰⁸

As mentioned above, the SCSL's subject matter jurisdiction covered crimes under both international and Sierra Leonean law.¹⁰⁹ International crimes included crimes against humanity, violations of Common Article 3 to the Geneva Conventions and Additional Protocol II (constituting war crimes), and other serious breaches of international humanitarian law.¹¹⁰ Domestic offenses under Sierra Leonean law concerned the abuse of girls under fourteen and the wanton destruction of property.¹¹¹ In practice, however, the Prosecutor relied solely on international law for the indictments, rendering the domestic provisions functionally redundant.¹¹² It is worth noting that the SCSL's incorporation of national law later influenced the Special Tribunal for Lebanon (STL), which was mandated to prosecute crimes under Lebanese domestic law.¹¹³

The personal jurisdiction of the SCSL differed from that of the ICTY, ICTR, and STL in several modes. It was the first tribunal to prosecute individuals bearing the "greatest responsibility" for atrocities, a narrower and more demanding standard than the "most responsible" threshold used by the earlier tribunals.¹¹⁴

¹⁰⁵ Prosecutor v. Brima, Kamara & Kanu, Case No. SCSL2004-16-A, Judgment, ¶ 202 (Feb. 22, 2008) [hereinafter AFRC Appeals Chamber Judgment]; See Jennifer Gong-Gershowitz, *Forced Marriage: A "New" Crime Against Humanity?*, 8 NW.J. INT'L HUM. RTS. 2008 (Fall 2009), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1093&context=njihr>.

¹⁰⁶ Residual Special Court for Sierra Leone, *Fact Sheet* (last visited Mar. 5, 2025), <https://rscsl.org/>.

¹⁰⁷ Nmehielle & Jalloh, *Legacy supra* note 84, at 73; Tejan-Cole, *supra* note 82, at 1.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ SCSL Statute art 3. & 4.

¹¹¹ *Id.* art 5.

¹¹² Nmehielle & Jalloh, *Legacy supra* note 84, at 73.

¹¹³ Statute of the Special Tribunal for Lebanon art. 1-2, S.C. Res. 1757, annex (May 30, 2007). [hereinafter Lebanon Statute].

¹¹⁴ Nmehielle & Jalloh, *Legacy supra* note 84, at 73-81.

Furthermore, unlike the statutes of the ICTY and ICTR, the SCSL Statute was not expressly limited to “natural persons,” leaving open the theoretical possibility of prosecuting corporate entities involved in crimes such as the blood diamond trade.¹¹⁵ However, no corporation was prosecuted. The Statute also contained a unique exception for peacekeepers and related personnel: primary jurisdiction for any crimes they committed rested with their home state,¹¹⁶ but the SCSL could seek UN Security Council authorization to prosecute if that state proved unwilling.¹¹⁷ Although this caveat is not novel to other peacekeeping agreements, its inclusion is significant;¹¹⁸ this means the Court failed to fulfill its core mandate of accountability, regardless of the perpetrator’s status.¹¹⁹ Particularly, until the end of the Court’s mandate in 2013,¹²⁰ there was no public record of peacekeeping force personnel being prosecuted by their home countries for alleged atrocities in the Sierra Leone civil war, allegations that the TRC also documented.¹²¹ The Court’s temporal jurisdiction was limited to atrocities committed after 30 November 1996,¹²² rather than the war’s start on 23 March 1991.¹²³ This shortness attracted significant criticism.¹²⁴ Prominent figures, such as then-Attorney General (and future Vice President) Solomon Berewa and the prominent Sierra Leonean lawyer Abdul Tejan-Cole, argued that excluding the war’s first five years was a missed opportunity for accountability and created a selective historical record.¹²⁵ Some critics suggested this limitation revealed a bias toward atrocities in the Western Area at the expense of the eastern provinces, where the war began.¹²⁶ In defense of the restriction, the Office of the UN Secretary-General stated that a 1991 start date would have overstretched the Court’s capacity and undermined its achievable mandate.¹²⁷

¹¹⁵ WILLIAM A. SCHABAS, *THE UN INTERNATIONAL CRIMINAL TRIBUNALS* 139 (2006).

¹¹⁶ SCSL Statute art 1(2).

¹¹⁷ *Id.*

¹¹⁸ Nmehielle & Jalloh, *Legacy supra* note 84, at 80.

¹¹⁹ SCSL Statute art 1(2).c

¹²⁰ Residual Special Court for Sierra Leone, *Fact Sheet* (last visited Mar. 5, 2025), <https://rscsl.org/>.

¹²¹ SIERRA LEONE TRC REPORT.

¹²² SCSL Statute art 1; Jalloh, *Legacy supra* note 84, at 73; Tejan-Cole, *supra* note 82, at 1.

¹²³ Nmehielle & Jalloh, *Legacy supra* note 84, at 81.

¹²⁴ *Id.* at 83-84.

¹²⁵ *Id.* at 84.

¹²⁶ *Id.* at 83-84.

¹²⁷ U. N. Secretary-General, Eleventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, ¶ 48, U.N. Doc. S/2001/857 (Sep. 7, 2001).

Finally, the SCSL's territorial jurisdiction (*ratione loci*) was defined by Article I of its Statute as covering the territory of Sierra Leone.¹²⁸ Chapter VII of the Statute refers to the established boundaries of the country under international law.¹²⁹ In this respect, it was similar to the ICTY, whose jurisdiction was confined to the territory of the former Yugoslavia, and unlike the ICTR, which could prosecute crimes committed by Rwandans in neighboring states.¹³⁰

II. Legal Precedent: The Immunity Challenge and the SCSL's Landmark Ruling

A. *Doctrine of Head of State Immunity*

The Head-of-State immunity principle, also known as sovereign immunity, is an extraordinary procedural rule that attaches to the official capacity of an officeholder under customary international law.¹³¹ It bars a court from exercising jurisdiction over such a person.¹³² Its contemporary form is a fundamental principle of sovereignty, dating back to the Westphalian Treaty of 1648, which allows sovereign states to deploy emissaries without fear of foreign criminal or civil jurisdiction.¹³³ This concept underpins the sovereign equality of member states under Article 2 (1) of the UN Charter.¹³⁴

Proponents of this view, therefore, argue that a Head of State and certain top officials, like foreign ministers, should enjoy full immunity for acts or omissions committed in office—immunity categorized as either functional or personal.¹³⁵ Subjecting a foreign state's official acts to another state's domestic law could elevate the latter over the former.¹³⁶ The rationale is that this promotes

¹²⁸ SCSL Statute art 1.

¹²⁹ *Id.* at Chapter VII.

¹³⁰ Nmehielle & Jalloh, *Legacy supra* note 84, at 85-86.

¹³¹ Aya Tochigi, Note, *Removing Head of State Immunity: Utilizing Domestic Courts to Promote Access to Justice*, Student Works 27 (2012), https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1026&context=student_scholarship.

¹³² *Id.*

¹³³ ROBERT CRYER ET AL., AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE 540 (2014).

¹³⁴ U.N. Charter art. 2, ¶ 1.

¹³⁵ William S. Dodge, *A Primer on Foreign Official Immunity*, TRANSNAT'L LITIG. BLOG (May 23, 2022), <https://tlblog.org/foreign-official-immunity/>.

¹³⁶ *Id.*

international stability and peace. As a matter of customary international norm, these high-level officials are granted a cloak of immunity.¹³⁷ Against this backdrop, Charles Taylor's defense team challenged the SCSL's jurisdiction.

On the other hand, commentators such as Professor Leila Sadat advocate for piercing the veil of Head-of-State immunity to hold individuals responsible for atrocity crimes, crimes against humanity, and war crimes.¹³⁸

They base this claim on the statutes of international *ad hoc* tribunals, the ICC Statute, relevant case law, and conventions.¹³⁹ From the Nuremberg and Tokyo tribunals to the ICTY, ICTR, and SCSL, their statutes confirm that a Head of State cannot claim immunity from the court's jurisdiction.¹⁴⁰ Similar to the SCSL, the ICC is treaty-based, but unlike the *ad hoc* tribunals, it is permanent.¹⁴¹ Article 27 of the ICC Statute states that immunities attached to an official position are no bar to the Court's exercise of jurisdiction.¹⁴² The Nuremberg Tribunal adopted this position, ruling under Article 7 of its Statute that authors of international crimes cannot shield themselves behind their official position to escape punishment—a concept now known as the Nuremberg Principles,¹⁴³ also enshrined in Article IV of the Genocide Convention of 1948.¹⁴⁴ The rationale is that since immunity is created

¹³⁷ Dapo Akande & Sangeeta Shah, *Immunities of State Officials, International Crimes, and Foreign Domestic Courts*, 21 EUR. J. INT'L L. 815, 815 (2010), <https://doi.org/10.1093/ejil/chq080>.

¹³⁸ Leila Nadya Sadat, *Heads of State and Other Government Officials Before the International Criminal Court: The Uneasy Revolution Continues*, in THE ELGAR COMPANION TO THE INTERNATIONAL CRIMINAL COURT (Margaret M. deGuzman & Valerie Oosterveld eds., 2020).

¹³⁹ *Id.*

¹⁴⁰ Charter of the International Military Tribunal art. 7, Aug. 8, 1945, 59 Stat. 1544, 1546, 82 U.N.T.S. 279, 284; Charter of the International Military Tribunal for the Far East art. 6, Jan. 19, 1946, T.I.A.S. No. 1589, 4 Bevans 20; Statute of the International Criminal Tribunal for the Former Yugoslavia art. 7, ¶ 2, *annexed to* S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993); Statute of the International Criminal Tribunal for Rwanda art. 6, ¶ 2, *annexed to* S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8, 1994); Rome Statute of the International Criminal Court art. 27, ¶ 2, July 17, 1998, 2187 U.N.T.S. 90; SCSL Statute art 6 ¶ 2.

¹⁴¹ Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone art. 1, Jan. 16, 2002, 2178 U.N.T.S. 138; Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

¹⁴² Rome Statute art. 27.

¹⁴³ I.M.T. Charter art. 7.

¹⁴⁴ Convention on the Prevention and Punishment of the Crime of Genocide art. IV, Dec. 9, 1948, 78 U.N.T.S. 277; Milena Sterio, *The 'End of Immunity' for Leaders Who Commit International*

by international law, it can be limited and deemed inapplicable to war crimes, crimes against humanity, crimes against peace, and genocide.¹⁴⁵

B. Tribunals' Treatment of Sovereign Immunity Before Taylor

Since the twentieth century, a distinction has been made between proceedings before national and international courts regarding a sovereign immunity defense for serving heads of state accused of atrocity crimes. International criminal courts have consistently held that serving heads of state cannot rely on such immunity.¹⁴⁶

At the Nuremberg Trials, Grand Admiral Karl Dönitz, appointed head of state of Germany after Adolf Hitler's suicide, was the first former head of state tried for war crimes after World War II. Although in power only briefly, he was charged with crimes mainly committed before his presidency. The Tribunal found him guilty on two of three counts and sentenced him to ten years in prison.¹⁴⁷

On 27 May 1999, the ICTY issued an indictment for Slobodan Milosevic, President of the Federal Republic of Yugoslavia, making him the first serving head of state charged with war crimes.¹⁴⁸ He was charged with three counts of murder, persecution, and deportation related to conflicts in Bosnia and Herzegovina, Croatia, and Kosovo.¹⁴⁹ After his arrest and transfer in 2002, Milosevic argued the ICTY lacked jurisdiction over him as a former president.¹⁵⁰ The Trial Chamber

Crimes?, LAWFARE (Nov. 21, 2025, 2:00 PM), <https://www.lawfaremedia.org/article/the--end-of-immunity--for-leaders-who-commit-international-crimes>.

¹⁴⁵ Sadat, *supra* note 138, at 96.

¹⁴⁶ Sterio, *supra* note 144.

¹⁴⁷ United States v. Doenitz, 22 I.M.T. 589, Judgment, 589 (1946), <https://avalon.law.yale.edu/imt/juddoeni.asp>; Lansana Gberie, *The Special Court for Sierra Leone Rests—For Good*, AFRICA RENEWAL (Mar. 24, 2014), <https://africarenewal.un.org/en/magazine/special-court-sierra-leone-rests-good>.

¹⁴⁸ Prosecutor v. Milosevic Case Nos. ICTY-99-37-1 Warrant of Arrest Order of Surrender, para 1-4, (May. 24, 1999) [hereinafter *Milosevic Warrant of Arrest*].

¹⁴⁹ Prosecutor v. Milošević, Case No. IT-99-37-I, Amended Indictment, ¶¶ 1-5 (Int'l Crim. Trib. for the Former Yugoslavia May 22, 1999), https://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-ai010629e.htm.

¹⁵⁰ Prosecutor v. Milosevic, Case No. ICTY-99-37-PT.2, Decision on Preliminary Motions, ¶¶ 26-34 (Int'l Crim. Trib. for the Former Yugoslavia, Nov. 8, 2001) [hereinafter *Milosevic Preliminary Motions*].

rejected this, holding that Article 7(2) of the ICTY Statute—stating that official position does not exempt from criminal responsibility as reflected in customary international law.¹⁵¹

The *Pinochet* Case No. 3 in the English House of Lords established that former heads of state could be held responsible before a foreign national court for international law violations committed in office.¹⁵² In 1998, General Augusto Pinochet was arrested in England on a Spanish Court request concerning human rights violations in Chile during his rule (1974–1990). His defense argued for absolute immunity for official acts, even if they constituted international crimes.¹⁵³ The plaintiffs argued that such grave crimes concerned all nations, invoking universal jurisdiction where no state immunity applies. The majority held that crimes like torture are international crimes against humanity and cannot be classified as official acts; therefore, former heads of state are not immune from prosecution for them.¹⁵⁴

Conversely, the International Court of Justice (ICJ) in the *Arrest Warrant* case (*Democratic Republic of the Congo v. Belgium*) shielded a foreign minister from foreign domestic jurisdiction,¹⁵⁵ a decision that restricted the universal jurisdiction for serious international crimes.¹⁵⁶ However, the ruling maintains the exception that sovereign immunity is not a bar to prosecution for such crimes in an international court.¹⁵⁷

The case concerned an arrest warrant issued by Belgium against the Congolese Foreign Minister, Abdoulaye Yerodia Ndombasi, for alleged violations of international humanitarian law. The ICJ ruled that certain high-ranking

¹⁵¹ *Id.*

¹⁵² *R. v. Bow St. Metro. Stipendiary Magistrate, ex parte Pinochet Ugarte* (No. 3) [2000] 1 A.C. 147 (H.L.) (U.K.).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Arrest Warrant*, *supra* note 9.

¹⁵⁶ Sarah C. Rispin, *Implications of Democratic Republic of the Congo v. Belgium on the Pinochet Precedent: A Setback for International Human Rights Litigation?*, 3 *CHI. J. INT'L L.* 425 (2002), <https://chicagounbound.uchicago.edu/cjil/vol3/iss2/23>.

¹⁵⁷ *Arrest Warrant*, *supra* note 9; Lori Fidler Damrosch, *The Sources of Immunity Law – Between International and Domestic Law*, Columbia L. Sch. Pub. L. Working Paper, Paper No. 19-74 (2019), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=5288&context=faculty_scholarship.

officials, including heads of state and foreign ministers, enjoy full immunity from criminal jurisdiction in other states' courts while in office.¹⁵⁸ The Court's rationale was to ensure the smooth operation of international relations.¹⁵⁹

During Taylor's immunity hearing before the SCSL Appeals Chamber, both parties referenced the *Yerodia* judgment.¹⁶⁰ Although not binding on the SCSL, ICJ rulings are persuasive authority in international law,¹⁶¹ including before the SCSL.¹⁶²

C. *Taylor Claimed Sovereign Immunity from Prosecution at SCSL*

Charles Taylor was the second serving head of state indicted by a war crimes tribunal after Milosevic.¹⁶³ Like Milosevic, Taylor challenged his indictment on sovereign immunity grounds, but he did so while still serving as President of Liberia.¹⁶⁴

On 23 July 2003, Taylor's lawyer filed a motion challenging the indictment and the approved arrest warrant.¹⁶⁵ However, the Appeals Chamber, rather than

¹⁵⁸ Arrest Warrant, *supra* note 9.

¹⁵⁹ Damrosch, *supra* note 157.

¹⁶⁰ Prosecutor v. Taylor, *supra* note 11.

¹⁶¹ Jessica Betancourt, *Who Has the Final Say in International Law? An Examination of Judicial Review and UNSC Supremacy*, COLUM. J. TRANSNAT'L L.: BULLETIN BLOG (Oct. 16, 2023), <https://www.jtl.columbia.edu/bulletin-blog/who-has-the-final-say-in-international-law-an-examination-of-judicial-review-and-uns-c-supremacy>.

¹⁶² SCSL Statute art 20 (3).

¹⁶³ Lisa Gambone, *Delay in Trying a Head of State: Charles Taylor*, Foreign Pol'y Ass'n (Mar. 16, 2012), <https://fpa.org/delay-in-trying-a-head-of-state-charles-taylor/>.

¹⁶⁴ Micaela Frulli, *Piercing the Veil of Head-of-State Immunity: The Taylor Trial and Beyond*, in THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW 325 (Charles C. Jalloh ed., 2014).

¹⁶⁵ Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Defence Preliminary Motion Based on Lack of Jurisdiction (Immunity from Prosecution), ¶¶ 1-50 (July 23, 2003); "applicants motion made under protest and without waiving of immunity accorded to a Head of State President Charles Ghankay Taylor requesting that the Trial Chamber do quash the said approved indictment of 7th March 2003 of Judge Bankole Thompson and that she aforesaid purported Warrant of Arrest and Order for transfer and detention of other consequential and related ORDER(S) granted thereafter by either the said Judge Bankole Thompson OR Judge Pierre Boutet on 12th June 2003 against the person of the said President Charles Ghankay Taylor be declared null and void, invalid at their inception and that they be accordingly cancelled and/OR set aside as a matter of Law, (July 23, 2003)" Charles Chernor Jalloh, *The Legacy of the Special Court for Sierra Leone* 249 (2020).

the Trial Chamber, ultimately decided the motion following a referral by the Trial Chamber under Rule 72(E) of the Court's Procedure.¹⁶⁶ Had the Appeals Chamber ruled in his favor, as it did for the Applicants in *Yerodia's* case, the case might have been dismissed without a trial.¹⁶⁷ However, the verdict against him legitimized his arrest warrant and paved the way for prosecution, obligating states to arrest him under international law.¹⁶⁸

Taylor's defense made three principal arguments in their motion: the indictment violated customary international law, the principle of sovereign equality, and mischaracterized the SCSL's foundational status.¹⁶⁹

First, citing the ICJ's *Yerodia* ruling, the defense argued that Taylor, as a serving head of state, enjoyed absolute immunity from criminal prosecution.¹⁷⁰ The defense argued that the indictment violated customary international law, as established in the ICJ's *Yerodia* ruling.¹⁷¹ As mentioned above, in that case, the ICJ held that the practice of states grants personal immunity to heads of state and other high-ranking officials to preserve international peace and cooperation.¹⁷² Consequently, the defense contended that this personal immunity must prevail over competing values, including individual criminal responsibility for atrocity crimes.¹⁷³ They framed this immunity as a procedural bar that shielded Taylor from the SCSL's jurisdiction altogether, regardless of whether the alleged crimes occurred. The defense maintained that as an incumbent President of Liberia, neither his official nor his private acts were subject to the Court's jurisdiction.¹⁷⁴ Therefore, even if the acts were proven, Taylor could not be held criminally responsible for actions considered to be official in character.¹⁷⁵

¹⁶⁶ Rule 72(E) provides: "Preliminary motions made in the Trial Chamber prior to the Prosecutor's opening statement which raise a serious issue relating to jurisdiction shall be referred to a bench of at least three Appeals Chamber Judges, where they will proceed to a determination as soon as practicable."

¹⁶⁷ Crane, *supra* note 25, 151-52.

¹⁶⁸ *Id.*

¹⁶⁹ Taylor, Motion to Quash Indictment based on Immunity.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

Second, the defense argued that the indictment violated the principle of sovereign equality, which prohibits the court of one sovereign state from exercising authority over the head of state of another.¹⁷⁶ Consequently, they contended that the SCSL would require an immunity waiver from Liberia to legitimately exercise jurisdiction over President Taylor.¹⁷⁷ This argument fundamentally rested on the defense's characterization of the SCSL as a domestic court of Sierra Leone rather than a truly international tribunal.¹⁷⁸ From this premise, they asserted that the act of unsealing the indictment and attempting to serve an arrest warrant in Ghana, while Taylor was on official duty, constituted an infringement on the sovereignty of both Liberia and Ghana.¹⁷⁹ On this specific point, Professor Philippe Sands, in his *Amici Curiae* submission, offered a nuanced view: while the Special Court did not violate Ghana's sovereignty by transmitting the warrant, Ghana was under no obligation to enforce it.¹⁸⁰

The defense's third argument directly challenged the foundational status of the SCSL, asserting it was a national court of Sierra Leone rather than an international tribunal.¹⁸¹ This characterization might have drawn explicit inspiration from the *Yerodia* ruling's central distinction between national and international forums for immunity purposes.¹⁸² While conceding that UN Security Council Resolution 1315 provided the initial mandate for the Court's creation, the defense underscored a critical structural difference: unlike the ICTY and ICTR, the SCSL was established via a bilateral agreement wherein the UN merely provided technical support to a domestic Sierra Leonean process.¹⁸³ They pointed to the constitutive national legislation, the Special Court Agreement 2002 (Ratification) Act No. 9 of 2002, as proof that it was not created by a direct UN Security Council or UN General Assembly resolution.¹⁸⁴ Consequently, while acknowledging that a UN Security Council's Chapter VII resolution could override personal immunity,

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Submission of the Amicus Curiae on Head of State Immunity, (Oct. 23, 2003), <https://www.rscsl.org/Documents/Decisions/Taylor/Appeal/059/SCSL-03-01-I-039.pdf>.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

the defense contended the SCSL lacked this privileged authority, having been established outside the Chapter VII framework.¹⁸⁵

The Prosecution responded to the Defense's motion with both procedural and substantive counterarguments.¹⁸⁶ On procedural grounds, they first argued for the removal of the Government of Liberia from the motion, as it was not a party to the proceedings before the SCSL.¹⁸⁷ They contended that its inclusion was irrelevant and that its submissions should be excluded.¹⁸⁸ The Trial Chamber agreed, striking the joint claim brought by the Liberian Government.¹⁸⁹

The Prosecution also argued that Taylor's motion was procedurally defective as it was both premature and substantively insufficient to qualify as a proper preliminary objection.¹⁹⁰ They reasoned that, at the time the motion was filed, Taylor had not yet appeared before the Tribunal nor entered a plea.¹⁹¹ Consequently, they contended he should be denied the procedural right to challenge the court's jurisdiction at that stage.¹⁹²

On substantive grounds, the Prosecution countered that the SCSL could not be categorized as exercising Sierra Leone's domestic judicial power.¹⁹³ They asserted that the Tribunal was not a national court but one that existed and functioned under international law.¹⁹⁴ As mentioned above, this characterization was crucial to distinguish the case from the ICJ's *Yerodia* ruling, which concerned immunity before foreign domestic courts.¹⁹⁵ The prosecution argued that the customary international law exception to immunity applies specifically

¹⁸⁵ *Id.*

¹⁸⁶ *Prosecutor v. Taylor*, Case No. SCSL-2003-01-1, Prosecution Response to Defence Motion to Quash the Indictment Against Charles Ghankay Taylor, ¶ 1-50 (July 28, 2003), <https://www.rscsl.org/Documents/Decisions/Taylor/024/SCSC-03-01-I-016.pdf>.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Quash the Indictment and to Declare the Warrant of Arrest and all Other Consequential Orders Null and Void (Sept 19, 2003), <https://www.rscsl.org/Documents/Decisions/Taylor/024/SCSL-03-01-I-024.pdf>.

¹⁹⁰ *Prosecutor v. Taylor*, *supra* note 186.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Arrest Warrant, *supra* note 9.

to international tribunals.¹⁹⁶ This principle, they contended, was explicitly codified in Article 6(2) of the SCSL Statute, which waives immunity for any official irrespective of status.¹⁹⁷

Addressing the defense's claim that SCSL lacked Chapter VII authority, the prosecution submitted that a tribunal does not require such a specific mandate to exercise the customary law exception. They cited the International Criminal Court (ICC) as a key precedent, a treaty-based tribunal that holds such jurisdiction without a direct root in the UN Charter.¹⁹⁸ To further bolster this point, they referenced the trials of President Slobodan Milosevic before the ICTY and Prime Minister Jean Kambanda before the ICTR as direct demonstrations of the exception applying to international courts.¹⁹⁹

The prosecution further grounded the SCSL's authority in its creation by the international community, enacted through the UN Secretary-General under Security Council direction rather than Sierra Leonean law alone.²⁰⁰ They argued that as a treaty-based institution meeting international convention standards, the SCSL possessed competence and jurisdiction analogous to the ICTY, ICTR, and ICC.²⁰¹ Finally, they noted that Taylor was indicted for crimes committed on Sierra Leonean territory under Article 1(1) of its Statute.²⁰² Therefore, transmitting the indictment to Ghana did not violate Ghana's sovereignty, as no immunity barred the proceeding under customary international law.²⁰³

The Appeals Chamber's Ruling

The Appeals Chamber ruled that Taylor possessed no immunity from prosecution. Its analysis focused on two core issues: whether the SCSL constituted

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

an international tribunal, and whether customary international law granted Taylor immunity before such a body.²⁰⁴

The Chamber established that the decisive factor in determining a tribunal's power to displace immunity was the degree of international community involvement in its creation.²⁰⁵ It began by examining the SCSL's legal basis, noting its formation through a bilateral treaty between Sierra Leone and the United Nations, with a mandate to prosecute those who bear the greatest responsibility for atrocity crimes within Sierra Leone.²⁰⁶

The analysis then centered on the international community's role, particularly that of the UN Security Council and the Secretary-General.²⁰⁷ The Chamber reasoned that since immunities exist to foster international cooperation, they may only be waived in pursuit of broader international objectives, such as upholding law and order, not the interests of a single state.²⁰⁸ It found that the international community, acting through the UN Secretary-General, created the SCSL. The foundational treaty was concluded pursuant to UNSC Resolution 1315, which the Council adopted under its UN Charter mandate to address threats to international peace and security (Articles 1 and 24). Therefore, the Chamber concluded that the SCSL was an international court. It must be noted that had the SCSL been classified as a national court, the *Yerodia* doctrine would have applied and barred its jurisdiction.

Regarding the second issue of Taylor's immunity under customary law, the Chamber assessed whether Article 6(2) of the SCSL Statute was consistent with peremptory norms.²⁰⁹ It conducted a comparative analysis of the statutes of earlier international tribunals and found an identical principle of immunity waiver for serious international crimes in Article 7(2) of the ICTY Statute, Article 6(2) of the ICTR Statute, and Article 27(2) of the ICC Statute, all of which derive from Article

²⁰⁴ Prosecutor v. Taylor, Case No. SCSL-2003-01-I-A, Appeals Chamber, Decision on Immunity from Jurisdiction, ¶¶ 1-60 (May 31, 2004), <https://www.rscsl.org/Documents/Decisions/Taylor/Appeal/059/SCSL-03-01-I-059.pdf>.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

7 of the Nuremberg (IMT) Charter.²¹⁰ The Chamber declared the SCSL an international tribunal authorized to exercise jurisdiction over Taylor for war crimes.²¹¹

Based on this analysis, the Appeals Chamber definitively declared the SCSL an international tribunal authorized to exercise jurisdiction over heads of state. I agree with the ruling on two grounds: first, the SCSL's creation involved a high level of international involvement via a UN treaty involving over 100 member states, which perfectly ties with the exemption in *Yerodia's* case; second, the historical practice of immunity waivers in prior *ad hoc* tribunals and the *Milosevic* precedent demonstrated customary international law.

It is important to note that the SCSL's jurisdiction was also challenged on the grounds of the Lomé Peace Accord's controversial amnesty provision.²¹² Defendants Morris Kallon and Brima Bazzy Kamara argued that Article IX of the Lomé Agreement, which granted blanket amnesty to the warring factions, legally barred their trial.²¹³ The Appeals Chamber rejected this motion, ruling that Article 10 of the SCSL Statute explicitly prohibited the Tribunal from recognizing any amnesty for the international crimes under its jurisdiction.²¹⁴ This writer notes that, had this motion succeeded, Charles Taylor would likely have been shielded from prosecution as well, given that the amnesty's broad language specifically included "collaborators."

III. The Path to Conviction and the Jurisprudential Legacy

A. *From Exile to Conviction*

Although the immunity ruling was precedential, it did not immediately bring Taylor to court. While his earlier arrest warrant contributed to his removal

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² Leila Nadya Sadat, *The Lomé Amnesty Decision of the Special Court for Sierra Leone*, in *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW* 311 (Charles C. Jalloh ed., 2014).

²¹³ Prosecutor v. Kallon & Kamara, Case No. SCSL-2004-15-AR72(E) & SCSL-2004-16-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, ¶¶ 1-93 (Mar. 13, 2004), https://www.worldcourts.com/scsl/eng/decisions/2004.03.13_Prosecutor_v_Kallon_4.pdf.

²¹⁴ *Id.*

from power in 2003,²¹⁵ he remained in exile in Nigeria for nearly three years.²¹⁶ His eventual arrest in March 2006, while attempting to flee across the Cameroonian border, was the result of intense international pressure and a change of political will in Nigeria and Liberia.²¹⁷ His transfer to the SCSL and the subsequent decision to hold his trial in The Hague for security reasons underscored that legal rulings require political enforcement.²¹⁸

The trial of Taylor, now a former President of Liberia, commenced on 4 June 2007, on eleven counts of war crimes, crimes against humanity, and other serious violations.²¹⁹ The prosecution presented extensive evidence from 100 witnesses.²²⁰ In his defense, Taylor claimed his prosecution was politically motivated and that he acted as a peacemaker.²²¹ The Trial Chamber eventually found him guilty on all counts for aiding and abetting the RUF, but rejected the prosecution's claim of his effective control over the rebel group, sentencing him to 50 years' imprisonment.²²²

Both sides appealed the verdict.²²³ The prosecution challenged the legal findings on liability and sentencing, while the defense raised 42 grounds, alleging factual errors, procedural irregularities, and an unreasonable sentence.²²⁴ The Appeals Chamber rejected these arguments, upholding both the conviction and the 50-year sentence as fair and reasonable.²²⁵

²¹⁵ Crane, *supra* note 25, at 131-49.

²¹⁶ *Id.* at 277-304.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ Prosecutor v. Taylor, Case No. SCSL-03-01-T, Judgement, ¶¶ 1-5 (May 18, 2012), <https://www.rscsl.org/Documents/Decisions/Taylor/1283/SCSL-03-01-T-1283.pdf>.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *The Trial of Charles Taylor before the Special Court for Sierra Leone: the Appeal Judgment*, OPEN SOC'Y JUST. INITIATIVE (Sep. 2013), <https://www.justiceinitiative.org/publications/trial-charles-taylor-special-court-sierra-leone-appeal-judgment>.

²²⁴ Prosecutor v. Taylor, Case No. SCSL-03-01-A, Judgement (Sept. 26, 2013), <https://www.rscsl.org/Documents/Decisions/Taylor/Appeal/1389/SCSL-03-01-A-1389.pdf>.

²²⁵ *Id.*

B. Cementing the Precedent: From SCSL to ICC and Beyond

The Taylor immunity decision's greatest impact lies in its incorporation into contemporary international law, notably at the ICC.²²⁶ The Appeals Chamber ruling on Taylor's indictment significantly advanced the jurisprudence on customary law exceptions to immunity under international law.²²⁷ This area of law is now well-settled following the ICC Appeals Chamber ruling in the Omar al-Bashir case.²²⁸ The ICC issued an indictment and arrest warrant for al-Bashir while he was the sitting Head of State of Sudan for war crimes in Darfur.²²⁹ Relying on the Taylor precedent, its Appeals Chamber subsequently ruled that states like Malawi and Jordan were obligated under international law to arrest him during his visits.²³⁰

Since then, the ICC has continued to pursue accountability against heads of state. This trajectory is marked by the recent arrest in March 2022, of former Philippine President Rodrigo Duterte for crimes against humanity related to his "war on drugs."²³¹ Also, in March 2023, the Court issued an arrest warrant for Russian President Vladimir Putin for war crimes against humanity related to the invasion of Ukraine.²³²

²²⁶ Harmen van der Wilt, *Immunities and the International Criminal Court*, in THE CAMBRIDGE HANDBOOK OF IMMUNITIES AND INTERNATIONAL LAW 595 (Tom Ruys, Nicolas Angelet & Luca Ferro eds., 2019).

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Prosecutor v. Al Bashir, ICC-02/05-01/09, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir (Mar. 4, 2009), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2009_01517.PDF.

²³⁰ Prosecutor v. Al Bashir, Case No. ICC-02/05-01/09, Decision on the Cooperation of the Republic of Malawi Regarding Omar Al Bashir's Arrest and Surrender to the Court, ¶ 43 (Nov. 14, 2014).

²³¹ Prosecutor v. Rodrigo Roa Duterte, Case No. ICC-01/21-01/25, Public Redacted Version of "Prosecution's Application for a Warrant of Arrest for Rodrigo Roa Duterte" (Nov. 14, 2025), <https://www.icc-cpi.int/sites/default/files/2025-11/DuterteEng.pdf>.

²³² *Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, INT'L CRIM. CT. (Mar. 17, 2023), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>.

Before this, several African leaders—including former Ivorian President Laurent Gbagbo,²³³ former Kenyan President Uhuru Kenyatta,²³⁴ and former Kenyan Deputy President William Ruto²³⁵—have appeared before the ICC for crimes related to election violence.

IV. Weighing Its Criticism and Enduring Dilemmas

Although the Taylor immunity trial is a landmark legal success, it is entangled in complex political and practical challenges that merit critical examination.

A. The Exile Dilemma: Peace Without Justice in Liberia Versus Peace with Justice in Sierra Leone

In the context of Liberia, the use of exile as a political tool to remove Charles Taylor, which led to his arrest and conviction by the SCSL,²³⁶ presents a complex dilemma in balancing peace and justice. While exile proved an effective strategy to end the country's second civil war in 2003,²³⁷ justice for the Liberian war's victims remains "largely elusive."²³⁸ Neither Liberia nor the ICC has held perpetrators accountable. However, renewed hope emerged in 2024 with President Joseph Boakai's signing of an executive order to establish a war crimes tribunal.²³⁹ On this note, I foresee a groundbreaking development in international law. Should Liberia establish this tribunal, Taylor would likely be a person of interest, considering his role in the civil war.²⁴⁰ He could and should face trial for crimes committed in Liberia, distinct from his Sierra Leone convictions, without

²³³ Prosecutor v. Gbagbo & Blé Goudé, Case No. ICC-02/11-01/15.

²³⁴ Prosecutor v. Kenyatta, Case No. ICC-01/09-02/11 (Int'l Crim. Ct.).

²³⁵ Prosecutor v. Ruto & Sang, Case No. ICC-01/09-01/11 (Int'l Crim. Ct.).

²³⁶ Crane, *supra* note 25.

²³⁷ Accra Comprehensive Peace Agreement, Liberia, Aug. 18, 2003, available at: <https://peaceaccords.nd.edu/accord/accra-peace-agreement>.

²³⁸ Ayen Deng Bior, *Liberia's Civil War Ended in 2003. Now It Wants to Try Its War Criminals*, CHRISTIAN SCI. MONITOR (Aug. 14, 2024, 2:28 p.m.

ET), <https://www.csmonitor.com/World/Africa/2024/0814/war-crimes-court-planned-for-Liberia>.

²³⁹ *Liberia: Renew Mandate to Establish War Crimes Court*, HUM. RTS. WATCH (Apr. 28, 2025), <https://www.hrw.org/news/2025/04/28/liberia-renew-mandate-establish-war-crimes-court>.

²⁴⁰ Jalloh, *Law and Politics*, *supra* note 13, at 43.

constituting double jeopardy, as the offenses involve different victims and locations. If this occurs, Taylor will establish another profound legal precedent.

In contrast, Sierra Leone achieved both peace and a measure of justice through Taylor's exile.²⁴¹ His removal from power and subsequent prosecution became the SCSL's most significant success, which Thierry Cruvellier termed 'the crown jewel' of the Court.²⁴² In summary, while Taylor's exile helped end violence in both Liberia and Sierra Leone, it provided only a political solution for Liberia, leaving justice deferred. For Sierra Leone, it enabled a landmark legal success, highlighting the uneven outcomes when exile precedes accountability.

B. The African Union's Selective Justice Criticism

The application of the Taylor precedent in the al-Bashir case fueled growing tensions between the African Union (AU) and the ICC.²⁴³ The AU accused the Court of undermining African sovereignty by disproportionately targeting its leaders, a criticism amplified by the prosecutions of Gbagbo, Kenyatta, and Ruto, which prompted threats of withdrawal from the Rome Statute.²⁴⁴ Even this boycott did not materialize in a wholesale fashion. Since then, four African countries have formally withdrawn from the ICC. This process began with Burundi in October 2017,²⁴⁵ followed by the collective withdrawal announced in September 2025 by three members of the Alliance of Sahel States—Mali, Burkina Faso, and Niger.²⁴⁶ However, according to Article 127 of the Rome Statute, a withdrawal takes effect one year after official notification.²⁴⁷ Therefore, the withdrawal for these three states is scheduled to take effect in September 2026.

²⁴¹ Crane, *supra* note 25.

²⁴² Thierry Cruvellier, *From the Taylor Trial to a Lasting Legacy: Putting the Special Court Model to the Test 1*, INT'L CTR. FOR TRANSITIONAL JUST. & SIERRA LEONE CT. MONITORING PROGRAMME (2009), <https://www.ictj.org/sites/default/files/ICTJ-SierraLeone-Taylor-Trial-2009-English.pdf>.

²⁴³ Christa-Gaye Kerr, *Sovereign Immunity, the AU, and the ICC: Legitimacy Undermined*, 41 MICH. J. INT'L L. 195, (2020).

²⁴⁴ *Id.*

²⁴⁵ *Situation in the Republic of Burundi*, INT'L CRIM. CT., <https://www.icc-cpi.int/situations/burundi>.

²⁴⁶ *Mali, Burkina Faso and Niger Announce Exit from International Criminal Court*, REUTERS (Sept. 23, 2025, 3:36 AM EDT), <https://www.reuters.com/world/africa/mali-burkina-faso-niger-announce-exit-international-criminal-court-2025-09-23/>.

²⁴⁷ Rome Statute of the International Criminal Court art. 127, July 17, 1998, 2187 U.N.T.S. 90.

To counter the perception of regional bias, one can point to the ICC's recent actions beyond Africa. These include the Prosecutor's 2025 application for an arrest warrant against former Philippine President Rodrigo Duterte²⁴⁸ and the 2023 warrant issued for Russian President Vladimir Putin, which together are cited to demonstrate the Court's expanding global focus.²⁴⁹ While this expansive approach to sovereign accountability for serious international crimes is commendable, I contend it is too early to deem the shift proportionate, considering the long list of African heads of state who have faced the force of the Court.

C. *The Persistent Enforcement Gap*

While the Taylor decision resolved the legal question of the admissibility of head-of-state accountability before international courts for breach of serious international crimes, it did not solve the operational problem of enforcement.²⁵⁰ As the ICC's struggles to secure the arrest of President Putin demonstrate, the ability of an international tribunal to apprehend a sitting head of state remains wholly dependent on the political will of states and international coalitions.²⁵¹ This political challenge persists even for former presidents, as seen in the case of al-Bashir, who has evaded arrest for years despite being removed from office in 2019.²⁵² In this sense, the law provides the authority, but politics dictates its efficacy on the international plane.²⁵³ As discussed above, Taylor's own arrest required a shift in regional politics and sustained Western pressure.²⁵⁴ This enforcement gap

²⁴⁸ Prosecutor v. Duterte, *supra* note 231.

²⁴⁹ Situation in Ukraine, *supra* note 232.

²⁵⁰ Chile Eboe-Osuji, *The Absolute Clarity of International Legal Practice's Rejection of Immunity Before International Criminal Courts*, Just Security (Dec. 8, 2022), <https://www.justsecurity.org/84416/the-absolute-clarity-of-international-legal-practices-rejection-of-immunity-before-international-criminal-courts/>.

²⁵¹ Tabitha Stuart, *The Enforcement Crisis of International Criminal Law: The Case of the Putin Arrest Warrant*, St. Andrews L. Rev. (Nov. 27, 2025), <https://www.standrewslawreview.com/post/the-enforcement-crisis-of-international-criminal-law-the-case-of-the-putin-arrest-warrant-1>.

²⁵² *Removal of President Omar al-Bashir and the Continued Pursuit of Justice*, U.S. HOLOCAUST MEM'L MUSEUM, <https://www.ushmm.org/genocide-prevention/countries/sudan/removal-of-president-omar-al-bashir> (last visited Jan. 10, 2026).

²⁵³ Monica Hakimi, *Why Should We Care About International Law?*, 118 MICH. L. REV. 1283 (2020), <https://repository.law.umich.edu/mlr/vol118/iss6/17/>.

²⁵⁴ See Crane, *supra* note 25.

reveals the limits of judicial pronouncements in the absence of a supranational enforcement mechanism.

Conclusion

The prosecution of Charles Taylor before the SLSC represents a pivotal moment in the development of individual accountability in international criminal law. The SCSL Appeals Chamber's 2004 ruling, which rejected head-of-state immunity for core international crimes, served as the critical jurisprudential link. It transformed the principle established at Nuremberg into a functional precedent for the modern era, providing the authoritative reasoning later adopted by the International Criminal Court in the *Al-Bashir* case and possibly beyond.

However, this landmark legal victory also illustrated a profound and enduring dilemma. While the Taylor decision resolved the legal question of admissibility, it could not solve the operational problem of enforcement. The subsequent struggles to arrest heads of state, such as former President Omar al-Bashir and sitting President Vladimir Putin, demonstrate that the efficacy of international justice remains intimately dependent on the political will of states. Law provides authority, but geopolitics dictates its practical force. This enforcement gap, coupled with the contentious use of exile and persistent accusations of selective justice from the African Union, reveals the complex interplay between legal norms and political reality.

Finally, the Taylor legacy is one of both profound achievement and solid limitation. It strengthened a transformative legal principle that heads-of-state immunity should not shield perpetrators of atrocity crimes, advancing the need for individual accountability. However, it also exposed the structural constraints of a legal system built on state cooperation, reminding us that the victory of law over impunity is an ongoing project, negotiated at the contentious intersection of justice, sovereignty, and power.