

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,²⁸⁵ historically served as an absolute shield for state leaders in the judicial processes of foreign courts.²⁸⁶ 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.”²⁸⁷ However, the twentieth-century mass atrocities during the World Wars triggered a normative shift toward individual accountability for serious international crimes.²⁸⁸ This shift has created one of the most profound tensions in contemporary international criminal law: the conflict between sovereign

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²⁸⁵ M. CHERIF BASSIOUNI, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW 73 (2d rev. ed. 2012).

²⁸⁶ 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>.

²⁸⁷ 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>.

²⁸⁸ *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>.

immunity and accountability for core crimes²⁸⁹—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.²⁹⁰ 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.”²⁹¹ 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.²⁹² 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.²⁹³

It was the Special Court for Sierra Leone (SCSL), the first hybrid tribunal, that first 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.²⁹⁴ 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

²⁸⁹ 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).

²⁹⁰ NUREMBERG HUMAN RIGHTS CTR., FED. FOREIGN OFF., & GOETHE INST., *From Nuremberg to The Hague* 1 (2020), <https://www.corteidh.or.cr/tablas/24618.pdf>.

²⁹¹ Charter of the International Military Tribunal art. 7, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 284.

²⁹² 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].

²⁹³ Case Concerning the Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 3 (Feb. 14).

²⁹⁴ 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.²⁹⁵ 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.²⁹⁶

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

²⁹⁵ 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).

²⁹⁶ *Id.* at ¶ 52.

persistent challenges of enforcement that reveal the enduring interplay between law and geopolitics.

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.²⁹⁷ Taylor had received military training in Libya; however, he was schooled with advanced education in the United States.²⁹⁸ 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;²⁹⁹ however, the execution was carried out by a splinter group of the NPFL led by Prince Johnson.³⁰⁰ By 1997, Taylor transitioned from a head of state to president following an easy victory in the Presidential election,³⁰¹ a position he held until his involuntary resignation in 2003.³⁰² Taylor's presidency followed his reputation as a warlord and a hub for a transnational criminal network, including drug trafficking and mercenary bases.³⁰³

²⁹⁷ 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*].

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ 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].

³⁰² Liberian President Taylor Steps Down, THE GUARDIAN (Aug. 11, 2003), <https://www.theguardian.com/world/2003/aug/11/westafrica>.

³⁰³ 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.³⁰⁴ 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.³⁰⁵ 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.³⁰⁶ The leader of the RUF, Foday Sankoh, received guerrilla training together with Taylor in Libya.³⁰⁷ 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.³⁰⁸

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.³⁰⁹ Notably, however, only Charles Taylor was indicted by the SCSL.³¹⁰ This decision led to accusations that the Court was engaging in selective justice.³¹¹ Defenders of the Court argued that its mandate was to prosecute those who bore the "greatest responsibility,"³¹² and that Taylor's considerable influence over the RUF and its leader, Foday Sankoh, made him the rebellion's chief collaborator.³¹³

³⁰⁴ See Jalloh, *Law and Politics*, *supra* note 13, at 1.

³⁰⁵ 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].

³⁰⁶ Coalition for Int'l Justice, *supra*.

³⁰⁷ SIERRA LEONE TRC REPORT.

³⁰⁸ JOE A. D. ALIE, SIERRA LEONE SINCE INDEPENDENCE: HISTORY OF A POSTCOLONIAL STATE 147–48 (2015).

³⁰⁹ DAVID M. CRANE, EVERY LIVING THING: FACING DOWN TERRORISTS, WARLORDS, AND THUGS IN WEST AFRICA — A STORY OF JUSTICE 7 (2020).

³¹⁰ *Id.*

³¹¹ 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.

³¹² 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.

³¹³ *Charles Taylor (Liberian Politician)*, EBSCO RSCH. STARTERS, <https://www.ebsco.com/research-starters/biography/charles-taylor-liberian-politician> (last visited Dec. 31, 2025).

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 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.”³¹⁴ It resulted in approximately two million casualties, including deaths and widespread displacement, mutilation, rape, and amputation.³¹⁵ However, the amputation sadly became its horrific global signature.³¹⁶ 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.”³¹⁷

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.³¹⁸ The initial onslaught targeted Bomaru Village in Sierra Leone's Kailahun District, an eastern region that shares a border with Liberia.³¹⁹ Their leader, Foday Sankoh, was a former military corporal who had served a seven-year prison sentence for attempting to overthrow President Momoh's

³¹⁴ 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).

³¹⁵ *Id.*

³¹⁶ *WNT: Sierra Leone Amputees*, ABC NEWS (Dec. 15, 2000), <https://abcnews.go.com/WNT/story?id=131404>.

³¹⁷ 10 *Facts About Child Soldiers in Sierra Leone*, THE BORDEN PROJECT, <https://bordenproject.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.

³¹⁸ SIERRA LEONE TRC REPORT.

³¹⁹ *Id.*

predecessor;³²⁰ he later prepared for the rebellion mission by undergoing guerrilla training in Libya.³²¹

Although Sankoh claimed to be fighting the bad governance that had crippled Sierra Leone since 1961,³²² his RUF rebellion primarily victimized and terrorized the very civilians it claimed to liberate, from its initial attack to its final moments.³²³ 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:³²⁴ British colonial rule lasted for 151 years,³²⁵ whereas the period of self-rule at the war's outset was only 31 years.³²⁶ 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.³²⁷ 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.³²⁸ As also highlighted above, the RUF received crucial support from a

³²⁰ *Id.*

³²¹ *Id.*

³²² 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>.

³²³ 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).

³²⁴ Alie, *supra* at 48.

³²⁵ *Id.* at 1-27.

³²⁶ *Id.* at 48.

³²⁷ *Id.*

³²⁸ *Id.* at 147-48.

transnational network, most significantly from Liberian President Charles Taylor, who provided arms and resources in exchange for diamonds.³²⁹

Sierra Leone's government became more unstable after a 1992 coup by the National Provisional Ruling Council (NPRC).³³⁰ 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 the state administration, including the war against the rebellion.³³¹ Likewise, the rebels also employed mercenary fighters from Burkina Faso, Libya, and primarily Liberia in their quest to control the diamond mines.³³² 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.³³³ The United Nations eventually imposed a diamond certification scheme (Resolution 1306) to curb this trade,³³⁴ a measure that Peter Penfold, then the British High Commissioner to Sierra Leone, credited with helping to end the war.³³⁵

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 his election; second, the Revolutionary United Front (RUF), which started the conflict; and third, the Civil Defence Forces (CDF),³³⁶ largely made up of the "Kamajors" tribal militia.³³⁷

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.³³⁸ This widespread suspicion earned such soldiers the nickname "Sobel"—soldiers by

³²⁹ Crane, *supra* note 25, at 7.

³³⁰ ABDULAI O. CONTEH, *ESSAYS ON THE SIERRA LEONE CONSTITUTION* 1991 31 (2001).

³³¹ AHMAD TEJAN KABBAB, *COMING FROM THE BRINK IN SIERRA LEONE* 41-42 (2010).

³³² SIERRA LEONE TRC REPORT.

³³³ Crane, *supra* note 25, at xi.

³³⁴ S.C. Res. 1306 (Jul. 5, 2000).

³³⁵ Penfold, *supra* note 30, at 184.

³³⁶ SIERRA LEONE TRC REPORT.

³³⁷ Fighters, drawn from the Mende tribe in the Southern and Eastern provinces of Sierra Leone, SIERRA LEONE TRC REPORT.

³³⁸ Taylor Trial Judgment, ¶¶ 23, 25.

day, rebels by night.³³⁹ 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.³⁴⁰ However, Koroma was imprisoned at the time of the coup by the Kabbah administration for attempting a coup in 1996.³⁴¹ The AFRC/RUF junta remained in power until its removal in 1998 by ECOWAS's military wing, the Economic Community of West African States Monitoring Group (ECOMOG).³⁴²

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%.³⁴³ Accordingly, the Special Court for Sierra Leone (SCSL) prosecuted the principal political and military leaders from each of these warring factions.³⁴⁴

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.³⁴⁵ President Kabbah signed on behalf of the government, and Foday Sankoh represented the RUF.³⁴⁶ The agreement was facilitated by the international community, principally through the UN and the ECOWAS.³⁴⁷

³³⁹ SIERRA LEONE TRC REPORT, at 198.

³⁴⁰ Taylor Trial Judgment, ¶¶ 23, 25.

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ SIERRA LEONE TRC REPORT.

³⁴⁴ Crane, *supra* note 25m, at 32.

³⁴⁵ 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).

³⁴⁶ 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].

³⁴⁷ Alie, *supra* at xi.

In a bid to secure peace, the accord established a power-sharing National Unity Government.³⁴⁸ 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.³⁴⁹ This placed the rebels in direct control of the very resources that had fueled the conflict. As such, Charles Jalloh, an international law expert, described this action as akin to “putting the bank robber in charge of the vault.”³⁵⁰ Additionally, the RUF received a share of four ministerial and deputy positions.³⁵¹

The most controversial provision was the blanket amnesty for all atrocities committed by RUF combatants and their collaborators.³⁵² While the government defended the compromise as necessary to save lives and end the violence, this amnesty faced significant opposition.³⁵³ 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.³⁵⁴ This pivotal objection is widely viewed as the legal foundation that later enabled the SCSL to bypass the amnesty and prosecute perpetrators.³⁵⁵ It is interesting to note that the amnesty provision was not a novelty in the country's peace proposals.³⁵⁶ The earlier agreements of the Abidjan Accord and the Guinea Peace Plan contained similar amnesty clauses,³⁵⁷ yet the United Nations raised no objection at the time.³⁵⁸ 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.³⁵⁹

³⁴⁸ *Id.*

³⁴⁹ Lomé Peace Agreement, art. V.

³⁵⁰ Jalloh, *Law and Politics*, *supra* note 13, at 229.

³⁵¹ Lomé Peace Agreement, art. V.

³⁵² *Id.*, art IX.

³⁵³ Jalloh, *Law and Politics*, *supra* note 13, *supra* at 43.

³⁵⁴ 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).

³⁵⁵ Prosecutor v. Kallon, Case No. SCSL-2004-15-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, ¶¶ 67, 88 (Mar. 13, 2004).

³⁵⁶ Jalloh, *Law and Politics*, *supra* note 13, at 229.

³⁵⁷ Abidjan Peace Accord, art 14; Guinea Peace Plan, art 14.

³⁵⁸ 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).

³⁵⁹ AHMAD TEJAN KABBAH, *COMING FROM THE BRINK IN SIERRA LEONE: A MEMOIR* 163–64 (2010).

Though the war formally ended with President Kabbah's symbolic Krio declaration, "*Di wah dohn dohn*" ("The war is over"), in January 2002,³⁶⁰ 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.³⁶¹ I argue that the government, facing a 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.³⁶² It became the third modern ad hoc tribunal, following the International Criminal Tribunal for the Former Yugoslavia (ICTY, 1993)³⁶³ and the International Criminal Tribunal for Rwanda (ICTR, 1994),³⁶⁴ both of which were influenced by the precedent of the International Military Tribunal at Nuremberg.³⁶⁵

However, the SCSL was groundbreaking as the first hybrid tribunal, deriving its legal authority from both international criminal law and Sierra Leonean domestic law.³⁶⁶ Its mandate was to prosecute those bearing the "greatest

³⁶⁰ *Id.* at 174.

³⁶¹ *Id.* at 165–210.

³⁶² 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).

³⁶³ 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].

³⁶⁴ Statute of the International Criminal Tribunal for Rwanda, U.N. Doc. S/RES/955 Nov. 8, 1994 [hereinafter ICTR Statute].

³⁶⁵ 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).

³⁶⁶ 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).

responsibility” for atrocity crimes,³⁶⁷ a narrower scope than the “most responsible” standard of the ICTY and ICTR.³⁶⁸ Notably, the SCSL was the first tribunal since Nuremberg to prosecute and convict a serving head of state,³⁶⁹ and, like Nuremberg, it was situated within the territory where the atrocities occurred.³⁷⁰ In contrast, the ICTY and ICTR were based in The Hague, Netherlands, and Arusha, Tanzania, respectively.³⁷¹

The court’s creation came by a decisive shift in President Kabbah’s stance toward accountability.³⁷² Initially supportive of reconciliation, however, Kabbah moved toward judicial justice due to three key events:³⁷³ 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);³⁷⁴ and the resulting intensification of domestic and international demands to override the Accord’s amnesty provision due to the foregoing reasons.³⁷⁵ Yielding to this pressure, Kabbah formally requested UN assistance in prosecuting the RUF and its collaborators.³⁷⁶

This move drew mixed reactions. Observers like Charles Jalloh interpreted President Kabbah’s request that the court have a limited personal jurisdiction

³⁶⁷ 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.

³⁶⁸ 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*].

³⁶⁹ 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>.

³⁷⁰ Nmehielle & Jalloh, *Legacy*, *supra* note 84, at 339.

³⁷¹ 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).

³⁷² Jalloh, *Law and Politics*, *supra* note 13, at *supra* at 229.

³⁷³ Kabbah, *supra* at 163-64 & 325-31.

³⁷⁴ *Id.* at 157-64.

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 332-31.

focused on those “most responsible violators and the leadership of the RUF” as potentially amounting to a form of victor’s justice.³⁷⁷ In practice, the broad prosecutorial approach, which included cases against all warring factions, even government officials, undermined the criticism of victor’s justice.³⁷⁸

As a hybrid tribunal, the SCSL introduced several novel features.³⁷⁹ It was the first tribunal established by a bilateral treaty (the Government of Sierra Leone and the UN) rather than a UN Security Council resolution under Chapter VII, like the ICTY and ICTR.³⁸⁰ In this light, its statute provided it with jurisdiction over crimes under international criminal law and Sierra Leonean criminal law.³⁸¹ 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.³⁸² 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.³⁸³ Furthermore, the tribunal operated concurrently with, though independently of, the national Truth and Reconciliation Commission (TRC).³⁸⁴ 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.³⁸⁵ As a result, it made history as the first international criminal tribunal to convict an African head of state for war crimes.³⁸⁶ 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.³⁸⁷ Additionally, the SCSL became the first tribunal to issue a conviction for the recruitment and use of child

³⁷⁷ Nmehielle & Jalloh, *Legacy*, *supra* note 84, at 74-75.

³⁷⁸ Penfold, *supra* note 30, at 188-89.

³⁷⁹ Nmehielle & Jalloh, *Legacy*, *supra* note 84, at 55.

³⁸⁰ *Id.* at 338.

³⁸¹ SCSL Statute art 3-5.

³⁸² Nmehielle & Jalloh, *Legacy*, *supra* note 84, at 60.

³⁸³ *Id.* at 57.

³⁸⁴ Crane, *supra* note 25, at 14.

³⁸⁵ Tejan-Cole, *supra* note 82, at 1.

³⁸⁶ Gberie, *supra* note 85.

³⁸⁷ *Id.*

soldiers against the three leaders of the AFRC, Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu.³⁸⁸ The court also issued the first-ever conviction for forced marriage, recognizing it as a separate crime against humanity distinct from sexual slavery.³⁸⁹ Finally, the SCSL became the first modern international tribunal to complete its mandate and transition to a residual court.³⁹⁰

The SCSL derived its mandate from the bilateral treaty and its annexed Statute.³⁹¹ Like the ICTY and ICTR, the SCSL exercised subject matter (*ratione materiae*), personal (*ratione personae*), temporal, and territorial (*ratione loci*) jurisdiction.³⁹²

As mentioned above, the SCSL's subject matter jurisdiction covered crimes under both international and Sierra Leonean law.³⁹³ 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.³⁹⁴ Domestic offenses under Sierra Leonean law concerned the abuse of girls under fourteen and the wanton destruction of property.³⁹⁵ In practice, however, the Prosecutor relied solely on international law for the indictments, rendering the domestic provisions functionally redundant.³⁹⁶ 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.³⁹⁷

³⁸⁸ *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>.

³⁸⁹ 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>.

³⁹⁰ Residual Special Court for Sierra Leone, *Fact Sheet* (last visited Mar. 5, 2025), <https://rscsl.org/>.

³⁹¹ Nmehielle & Jalloh, *Legacy supra* note 84, at 73; Tejan-Cole, *supra* note 82, at 1.

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ SCSL Statute art 3. & 4.

³⁹⁵ *Id.* art 5.

³⁹⁶ Nmehielle & Jalloh, *Legacy supra* note 84, at 73.

³⁹⁷ Statute of the Special Tribunal for Lebanon art. 1-2, S.C. Res. 1757, annex (May 30, 2007). [hereinafter Lebanon Statute].

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.³⁹⁸ 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.³⁹⁹ 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,⁴⁰⁰ but the SCSL could seek UN Security Council authorization to prosecute if that state proved unwilling.⁴⁰¹ Although this caveat is not novel to other peacekeeping agreements, its inclusion is significant;⁴⁰² this means the Court failed to fulfill its core mandate of accountability, regardless of the perpetrator’s status.⁴⁰³ Particularly, until the end of the Court’s mandate in 2013,⁴⁰⁴ 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.⁴⁰⁵ The Court’s temporal jurisdiction was limited to atrocities committed after 30 November 1996,⁴⁰⁶ rather than the war’s start on 23 March 1991.⁴⁰⁷ This shortness attracted significant criticism.⁴⁰⁸ 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.⁴⁰⁹ Some critics suggested this limitation revealed a bias toward atrocities in the Western Area at the expense of the eastern provinces, where the war

³⁹⁸ Nmehielle & Jalloh, *Legacy supra* note 84, at 73–81.

³⁹⁹ WILLIAM A. SCHABAS, *THE UN INTERNATIONAL CRIMINAL TRIBUNALS* 139 (2006).

⁴⁰⁰ SCSL Statute art 1(2).

⁴⁰¹ *Id.*

⁴⁰² Nmehielle & Jalloh, *Legacy supra* note 84, at 80.

⁴⁰³ SCSL Statute art 1(2).c

⁴⁰⁴ Residual Special Court for Sierra Leone, *Fact Sheet* (last visited Mar. 5, 2025), <https://rscsl.org/>.

⁴⁰⁵ SIERRA LEONE TRC REPORT.

⁴⁰⁶ SCSL Statute art 1; Jalloh, *Legacy supra* note 84, at 73; Tejan-Cole, *supra* note 82, at 1.

⁴⁰⁷ Nmehielle & Jalloh, *Legacy supra* note 84, at 81.

⁴⁰⁸ *Id.* at 83–84.

⁴⁰⁹ *Id.* at 84.

began.⁴¹⁰ 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.⁴¹¹

Finally, the SCSL's territorial jurisdiction (*ratione loci*) was defined by Article I of its Statute as covering the territory of Sierra Leone.⁴¹² Chapter VII of the Statute refers to the established boundaries of the country under international law.⁴¹³ 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.⁴¹⁴

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.⁴¹⁵ It bars a court from exercising jurisdiction over such a person.⁴¹⁶ 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.⁴¹⁷ This concept underpins the sovereign equality of member states under Article 2 (1) of the UN Charter.⁴¹⁸

⁴¹⁰ *Id.* at 83-84.

⁴¹¹ 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).

⁴¹² SCSL Statute art 1.

⁴¹³ *Id.* at Chapter VII.

⁴¹⁴ Nmehielle & Jalloh, *Legacy supra* note 84, at 85-86.

⁴¹⁵ 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.

⁴¹⁶ *Id.*

⁴¹⁷ ROBERT CRYER ET AL., AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE 540 (2014).

⁴¹⁸ U.N. Charter art. 2, ¶ 1.

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.⁴¹⁹ Subjecting a foreign state's official acts to another state's domestic law could elevate the latter over the former.⁴²⁰ The rationale is that this promotes international stability and peace. As a matter of customary international norm, these high-level officials are granted a cloak of immunity.⁴²¹ 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.⁴²²

They base this claim on the statutes of international *ad hoc* tribunals, the ICC Statute, relevant case law, and conventions.⁴²³ 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.⁴²⁴ Similar to the SCSL, the ICC is treaty-based, but unlike the *ad hoc* tribunals, it is permanent.⁴²⁵ Article 27 of the ICC Statute states that immunities attached to an official position are no

⁴¹⁹ William S. Dodge, *A Primer on Foreign Official Immunity*, TRANSNAT'L LITIG. BLOG (May 23, 2022), <https://tlblog.org/foreign-official-immunity/>.

⁴²⁰ *Id.*

⁴²¹ 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>.

⁴²² 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).

⁴²³ *Id.*

⁴²⁴ 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.

⁴²⁵ 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.

bar to the Court's exercise of jurisdiction.⁴²⁶ 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,⁴²⁷ also enshrined in Article IV of the Genocide Convention of 1948.⁴²⁸ The rationale is that since immunity is created by international law, it can be limited and deemed inapplicable to war crimes, crimes against humanity, crimes against peace, and genocide.⁴²⁹

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.⁴³⁰

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.⁴³¹

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.⁴³² He was charged with three counts of murder,

⁴²⁶ Rome Statute art. 27.

⁴²⁷ I.M.T. Charter art. 7.

⁴²⁸ 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 Crimes?*, LAWFARE (Nov. 21, 2025, 2:00 PM), <https://www.lawfaremedia.org/article/the--end-of-immunity--for-leaders-who-commit-international-crimes>.

⁴²⁹ Sadat, *supra* note 138, at 96.

⁴³⁰ Sterio, *supra* note 144.

⁴³¹ 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>.

⁴³² 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].

persecution, and deportation related to conflicts in Bosnia and Herzegovina, Croatia, and Kosovo.⁴³³ After his arrest and transfer in 2002, Milosevic argued the ICTY lacked jurisdiction over him as a former president.⁴³⁴ The Trial Chamber 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.⁴³⁵

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.⁴³⁶ 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.⁴³⁷ 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.⁴³⁸

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,⁴³⁹ a decision that restricted the universal jurisdiction for serious international crimes.⁴⁴⁰ However, the ruling

⁴³³ 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.

⁴³⁴ 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*].

⁴³⁵ *Id.*

⁴³⁶ R. v. Bow St. Metro. Stipendiary Magistrate, *ex parte* Pinochet Ugarte (No. 3) [2000] 1 A.C. 147 (H.L.) (U.K.).

⁴³⁷ *Id.*

⁴³⁸ *Id.*

⁴³⁹ *Arrest Warrant*, *supra* note 9.

⁴⁴⁰ 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>.

maintains the exception that sovereign immunity is not a bar to prosecution for such crimes in an international court.⁴⁴¹

The case concerned an arrest warrant issued by Belgium against the Congolese Foreign Minister, Mr. Abdoulaye Yerodia Ndombasi, for alleged violations of international humanitarian law. The ICJ ruled that certain high-ranking officials, including heads of state and foreign ministers, enjoy full immunity from criminal jurisdiction in other states' courts while in office.⁴⁴² The Court's rationale was to ensure the smooth operation of international relations.⁴⁴³

During Taylor's immunity hearing before the SCSL Appeals Chamber, both parties referenced the *Yerodia* judgment.⁴⁴⁴ Although not binding on the SCSL, ICJ rulings are persuasive authority in international law,⁴⁴⁵ including before the SCSL.⁴⁴⁶

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.⁴⁴⁷ Like Milosevic, Taylor challenged his indictment on sovereign immunity grounds, but he did so while still serving as President of Liberia.⁴⁴⁸

⁴⁴¹ Arrest Warrant, *supra* note 9; Lori Fisler 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.

⁴⁴² Arrest Warrant, *supra* note 9.

⁴⁴³ Damrosch, *supra* note 157.

⁴⁴⁴ Prosecutor v. Taylor, *supra* note 11.

⁴⁴⁵ 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>.

⁴⁴⁶ SCSL Statute art 20 (3).

⁴⁴⁷ 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/>.

⁴⁴⁸ 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).

On 23 July 2003, Taylor's lawyer filed a motion challenging the indictment and the approved arrest warrant.⁴⁴⁹ However, the Appeals Chamber, rather than the Trial Chamber, ultimately decided the motion following a referral by the Trial Chamber under Rule 72(E) of the Court's Procedure.⁴⁵⁰ 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.⁴⁵¹ However, the verdict against him legitimized his arrest warrant and paved the way for prosecution, obligating states to arrest him under international law.⁴⁵²

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.⁴⁵³

First, citing the ICJ's *Yerodia* ruling, the defense argued that Taylor, as a serving head of state, enjoyed absolute immunity from criminal prosecution.⁴⁵⁴ The defense argued that the indictment violated customary international law, as established in the ICJ's *Yerodia* ruling.⁴⁵⁵ 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.⁴⁵⁶

⁴⁴⁹ 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 2023 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).

⁴⁵⁰ 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.

⁴⁵¹ Crane, *supra* note 25, 151-52.

⁴⁵² *Id.*

⁴⁵³ Taylor, Motion to Quash Indictment based on Immunity.

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.*

Consequently, the defense contended that this personal immunity must prevail over competing values, including individual criminal responsibility for atrocity crimes.⁴⁵⁷ 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.⁴⁵⁸ Therefore, even if the acts were proven, Taylor could not be held criminally responsible for actions considered to be official in character.⁴⁵⁹

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.⁴⁶⁰ Consequently, they contended that the SCSL would require an immunity waiver from Liberia to legitimately exercise jurisdiction over President Taylor.⁴⁶¹ 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.⁴⁶² 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.⁴⁶³ 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.⁴⁶⁴

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.⁴⁶⁵ This characterization might have drawn explicit inspiration from the *Yerodia* ruling's central distinction between national and

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ 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>.

⁴⁶⁵ *Id.*

international forums for immunity purposes.⁴⁶⁶ 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.⁴⁶⁷ 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.⁴⁶⁸ Consequently, while acknowledging that a UN Security Council's Chapter VII resolution could override personal immunity, the defense contended the SCSL lacked this privileged authority, having been established outside the Chapter VII framework.⁴⁶⁹

The Prosecution responded to the Defense's motion with both procedural and substantive counterarguments.⁴⁷⁰ 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.⁴⁷¹ They contended that its inclusion was irrelevant and that its submissions should be excluded.⁴⁷² The Trial Chamber agreed, striking the joint claim brought by the Liberian Government.⁴⁷³

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.⁴⁷⁴ They reasoned that, at the time the motion was filed, Taylor had not yet appeared before the Tribunal nor entered a plea.⁴⁷⁵

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ 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>.

⁴⁷¹ *Id.*

⁴⁷² *Id.*

⁴⁷³ 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>.

⁴⁷⁴ Prosecutor v. Taylor, *supra* note 186.

⁴⁷⁵ *Id.*

Consequently, they contended he should be denied the procedural right to challenge the court's jurisdiction at that stage.⁴⁷⁶

On substantive grounds, the Prosecution countered that the SCSL could not be categorized as exercising Sierra Leone's domestic judicial power.⁴⁷⁷ They asserted that the Tribunal was not a national court but one that existed and functioned under international law.⁴⁷⁸ As mentioned above, this characterization was crucial to distinguish the case from the ICJ's *Yerodia* ruling, which concerned immunity before foreign domestic courts.⁴⁷⁹ The prosecution argued that the customary international law exception to immunity applies specifically to international tribunals.⁴⁸⁰ This principle, they contended, was explicitly codified in Article 6(2) of the SCSL Statute, which waives immunity for any official irrespective of status.⁴⁸¹

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.⁴⁸² 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.⁴⁸³

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.⁴⁸⁴ They argued that as a treaty-based institution meeting international convention standards, the SCSL possessed competence and jurisdiction analogous to the ICTY, ICTR, and

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

⁴⁷⁹ Arrest Warrant, *supra* note 9.

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.*

⁴⁸² *Id.*

⁴⁸³ *Id.*

⁴⁸⁴ *Id.*

ICC.⁴⁸⁵ Finally, they noted that Taylor was indicted for crimes committed on Sierra Leonean territory under Article 1(1) of its Statute.⁴⁸⁶ Therefore, transmitting the indictment to Ghana did not violate Ghana's sovereignty, as no immunity barred the proceeding under customary international law.⁴⁸⁷

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 an international tribunal, and whether customary international law granted Taylor immunity before such a body.⁴⁸⁸

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.⁴⁸⁹ 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.⁴⁹⁰

The analysis then centered on the international community's role, particularly that of the UN Security Council and the Secretary-General.⁴⁹¹ 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.⁴⁹² 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).

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

⁴⁸⁸ 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>.

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

⁴⁹² *Id.*

Therefore, the Chamber concluded that the SCSL was an international court. It must be noted that had 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.⁴⁹³ 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 7 of the Nuremberg (IMT) Charter.⁴⁹⁴ The Chamber declared the SCSL an international tribunal authorized to exercise jurisdiction over Taylor for war crimes.⁴⁹⁵

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.⁴⁹⁶ 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.⁴⁹⁷ The Appeals Chamber rejected this motion, ruling that Article 10 of the SCSL Statute explicitly prohibited the Tribunal from recognizing any

⁴⁹³ *Id.*

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.*

⁴⁹⁶ 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).

⁴⁹⁷ *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.

amnesty for the international crimes under its jurisdiction.⁴⁹⁸ 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 from power in 2003,⁴⁹⁹ he remained in exile in Nigeria for nearly three years.⁵⁰⁰ 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.⁵⁰¹ 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.⁵⁰²

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.⁵⁰³ The prosecution presented extensive evidence from 100 witnesses.⁵⁰⁴ In his defense, Taylor claimed his prosecution was politically motivated and that he acted as a peacemaker.⁵⁰⁵ 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.⁵⁰⁶

⁴⁹⁸ *Id.*

⁴⁹⁹ Crane, *supra* note 25, at 131-49.

⁵⁰⁰ *Id.* at 277-304.

⁵⁰¹ *Id.*

⁵⁰² *Id.*

⁵⁰³ 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>.

⁵⁰⁴ *Id.*

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.*

Both sides appealed the verdict.⁵⁰⁷ 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.⁵⁰⁸ The Appeals Chamber rejected these arguments, upholding both the conviction and the 50-year sentence as fair and reasonable.⁵⁰⁹

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.⁵¹⁰ The Appeals Chamber ruling on Taylor's indictment significantly advanced the jurisprudence on customary law exceptions to immunity under international law.⁵¹¹ This area of law is now well-settled following the ICC Appeals Chamber ruling in the Omar al-Bashir case.⁵¹² 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.⁵¹³ 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.⁵¹⁴

Since then, the ICC has continued to pursue accountability against heads of state. This trajectory is marked by the recent arrest in March 2025, of former Philippine President Rodrigo Duterte for crimes against humanity related to his

⁵⁰⁷ *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>.

⁵⁰⁸ Prosecutor v. Taylor, Case No. SCSL-03-01-A, Judgment (Sept. 26, 2013),

<https://www.rscsl.org/Documents/Decisions/Taylor/Appeal/1389/SCSL-03-01-A-1389.pdf>.

⁵⁰⁹ *Id.*

⁵¹⁰ 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).

⁵¹¹ *Id.*

⁵¹² *Id.*

⁵¹³ 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.

⁵¹⁴ 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).

“war on drugs.”⁵¹⁵ 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.⁵¹⁶

Before this, several African leaders—including former Ivorian President Laurent Gbagbo,⁵¹⁷ former Kenyan President Uhuru Kenyatta,⁵¹⁸ and former Kenyan Deputy President William Ruto⁵¹⁹—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,⁵²⁰ presents a complex dilemma in balancing peace and justice. While exile proved an effective strategy to end the country’s second civil war in 2003,⁵²¹ justice for the Liberian war’s victims remains “largely elusive.”⁵²² Neither Liberia nor the ICC has held

⁵¹⁵ 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>.

⁵¹⁶ *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>.

⁵¹⁷ Prosecutor v. Gbagbo & Blé Goudé, Case No. ICC-02/11-01/15.

⁵¹⁸ Prosecutor v. Kenyatta, Case No. ICC-01/09-02/11 (Int’l Crim. Ct.).

⁵¹⁹ Prosecutor v. Ruto & Sang, Case No. ICC-01/09-01/11 (Int’l Crim. Ct.).

⁵²⁰ Crane, *supra* note 25.

⁵²¹ Accra Comprehensive Peace Agreement, Liberia, Aug. 18, 2003, available at <https://peaceaccords.nd.edu/accord/accra-peace-agreement>.

⁵²² 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>.

perpetrators accountable. However, renewed hope emerged in 2024 with President Joseph Boakai's signing of an executive order to establish a war crimes tribunal.⁵²³ 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.⁵²⁴ He could and should face trial for crimes committed in Liberia, distinct from his Sierra Leone convictions, without 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.⁵²⁵ His removal from power and subsequent prosecution became the SCSL's most significant success, which Thierry Cruvellier termed 'the crown jewel' of the Court.⁵²⁶ 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.⁵²⁷ 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.⁵²⁸ 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 2017,⁵²⁹ followed by the collective withdrawal announced

⁵²³ *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>.

⁵²⁴ Jalloh, *Law and Politics*, *supra* note 13, at 43.

⁵²⁵ Crane, *supra* note 25.

⁵²⁶ 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>.

⁵²⁷ Christa-Gaye Kerr, *Sovereign Immunity, the AU, and the ICC: Legitimacy Undermined*, 41 MICH. J. INT'L L. 195, (2020).

⁵²⁸ *Id.*

⁵²⁹ *Situation in the Republic of Burundi*, INT'L CRIM. CT., <https://www.icc-cpi.int/situations/burundi>.

in September 2025 by three members of the Alliance of Sahel States—Mali, Burkina Faso, and Niger.⁵³⁰ However, according to Article 127 of the Rome Statute, a withdrawal takes effect one year after official notification.⁵³¹ Therefore, the withdrawal for these three states is scheduled to take effect in September 2026.

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 Duterte⁵³² and the 2023 warrant issued for Russian President Vladimir Putin, which together are cited to demonstrate the Court's expanding global focus.⁵³³ 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.⁵³⁴ 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.⁵³⁵ This political challenge persists even for former presidents, as seen in the case of al-

⁵³⁰ *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/>.

⁵³¹ Rome Statute of the International Criminal Court art. 127, July 17, 1998, 2187 U.N.T.S. 90.

⁵³² *Prosecutor v. Duterte*, *supra* note 231.

⁵³³ *Situation in Ukraine*, *supra* note 232.

⁵³⁴ 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/>.

⁵³⁵ 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>.

Bashir, who has evaded arrest for years despite being removed from office in 2019.⁵³⁶ In this sense, the law provides the authority, but politics dictates its efficacy on the international plane.⁵³⁷ As discussed above, Taylor's own arrest required a shift in regional politics and sustained Western pressure.⁵³⁸ This enforcement gap 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

⁵³⁶ *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]).

⁵³⁷ Monica Hakimi, *Why Should We Care About International Law?*, 118 MICH. L. REV. 1283 (2020), <https://repository.law.umich.edu/mlr/vol118/iss6/17/>.

⁵³⁸ See Crane, *supra* note 25.

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.