

# Losee, Chad

## Prosecutor Discretion at the Special Court for Sierra Leone

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Some have argued that, once established, international criminal tribunals, like the one established in Sierra Leone, are not responsive to external influence given their independence and insulation.<sup>1</sup> I tested this hypothesis as the null by comparing the discretion granted international prosecutors by court creators with the latitude actually exercised. Are prosecutors really intractable? Or, do prosecutors consider the preferences of external actors when they make their investigative decisions?

The Special Court for Sierra Leone (SCSL) is charged with administering justice in a post-conflict state, thousands of perpetrators contributed to the war crimes and crimes against humanity. As a simple matter of fact, the chief prosecutor at SCSL did not have the resources (funding, time, or otherwise) to prosecute each violator of international law. The decision of whom to indict and whom to look over was inherently and intensely political.

I hypothesized that because states design these courts—including their rules, mandates, and funding mechanisms—they do so in a way which grants continued leverage over outcomes. As a result, SCSL prosecutor strategy is likely to reflect key state preferences. I have used a process-tracing approach to examine SCSL in relation to the international tribunals of the Former Yugoslavia (ICTY) and Rwanda (ICTR), earlier international tribunals. Specifically, I have considered the factors theorized to influence prosecutor behavior to determine their effect on actual outcomes.

The results of this analysis confirm in large measure my hypothesis that states used their power over SCSL's institutional design to guarantee continued leverage over court outcomes. In contrast to ICTY and ICTR, SCSL has a more limited mandate and a funding mechanism based on voluntary rather than assessed contributions. The former ensured that SCSL would have fewer indictments than its sister tribunals (see Table 1), while the latter allowed state contributors to promise or withhold funding to push prosecutor behavior in a preferred direction.

I found evidence in support of my second hypothesis that prosecutor behavior at the SCSL reflected the preferences of key states. David Crane, chief prosecutor at SCSL, perceived significant political threats intended to deter him from indicting key players in the Sierra Leonean conflict. In the end, he chose not to indict two heads of state, Blaise Compaore of Burkina Faso and Muammar Qaddafi of Libya, for fear of “politically undermin[ing] the work of the tribunal.”<sup>2</sup> That is, key state contributors to the SCSL (see Table 2) opposed and successfully deterred Crane from issuing their indictments.

Crane did not always bow to state wishes in his investigations and indictments. Despite strong United States (US) opposition, Crane indicted Charles Taylor in 2003, the sitting President of Liberia. In this case, Crane had the support of other state donors and the US Congress even though the administration was vehemently opposed. Given the preference heterogeneity, Crane

had more political leverage in fulfilling his mandate to prosecute those bearing the greatest responsibility for the violence in Sierra Leone.

I have been fortunate to present the results of this query in a variety of fora. In February and March 2007, I discussed my findings in a panel at the Utah Conference for Undergraduate Research and at the “To the Power of 2 Mentored Learning Symposium.” Then, in April, I traveled to Chicago to present my research at the Midwest Political Science Association National Conference, generally regarded the second most important national conference for political scientists. I have been accepted to a panel by the International Studies Association, an organization which brings together social scientists from a variety of disciplines, at their annual conference to be held in San Francisco next March. Finally, Dr. Darren Hawkins and I are working on a co-authored draft of the findings to be submitted to a second tier political science journal in the upcoming year.

Table 1 – SCSL’s prosecutor is charged with investigating and indicting “those bearing the greatest responsibility” for international crimes, language that is purposefully more narrow than the mandate of SCSL’s predecessor tribunals, ICTY and ICTR. The language and other temporal and budgetary constraints have resulted in fewer indictments at SCSL than at ICTY or at ICTR.

	ICTY & ICTR	SCSL
Mandate	“Those most responsible”	“Those bearing the greatest responsibility”
Indictments	+100 each	13

Table 2 – Top contributors to the Special Court for Sierra Leone in its first three years of operation.<sup>3</sup>

SCSL Contributors	Total State Contribution	Percent of Total
United States	\$22,000,000	32.47%
Netherlands	\$14,597,172	21.54%
United Kingdom	\$10,393,280	15.34%
Total	\$46,990,452	69.35%

<sup>1</sup>Alter, Karen J. 2006. Delegation to international courts and the limits of re-contracting political power, In *Delegation and agency in international organizations*, eds. Darren G. Hawkins, David A. Lake, Daniel L. Nielson and Michael J. Tierney, 312-338. Cambridge: Cambridge University Press.

<sup>2</sup> Congress, House, Committee on International Relations, *The Impact of Liberia’s Election on West Africa: Hearing before the Subcommittee on Africa*, 109th Cong., 2nd sess., 8 February 2006.

<sup>3</sup> Annual Report of the President of the Special Court. Available at <<http://sc-sl.org/documents.html>>.