Gathering and Interpreting Components of Diverse International Courts to Create a New Judicial Framework:

A Case Study of the ICTY, SCSL, and IST

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INTRODUCTION

"We must ensure that anyone, on any side, who commits war crimes, crimes against humanity or other violations of international human rights or humanitarian law is brought to justice. This is a shared responsibility for this Council, for United Nations Member States, for the international community as a whole." **Ban Ki Moon, September 10, 2010, Human Rights Convention**

When contemplating the issue of law, I like to compare any legal court to a musical orchestra. There are many similarities to a successful court and a successful orchestra. Yes, music and law might be two different matters, but their appeals and measures are one in the same. Music will tend to remind us of our past, our memories. We feel emotions to the patterns of the music, we understand that there is some meaning to the artist's work. This is the *psychological appeal* in which we, the audience, come into contact with. We know that many classical artists such as Chopin, Beethoven, Tchaikovsky, Brahms, and Bach composed works of art that still make a lasting impression today. However, even today's best contemporary classical musicians can fail at trying to resurrect those masterpieces. Our minds can determine the separation of a work of art and something less feasible.

This idea can be attributed similarly with international law and more specifically, with my topic of international courts. The psychological appeal is an effect that also draws proportionally with international courts. Legal scholars ask themselves whether these courts represent themselves as being legitimate, efficient, and influential on international society. Impact is extremely crucial to any international court. Setting international precedents constitutes laws that will set foundations in which all of history will be written. However, the

only way an international court can accomplish such an achievement is through its *strategic planning and implementation* of components that are necessary to ensure success. This is the realistic flow of the court, the same goes for an orchestra. The orchestra needs all components to work together. The conductor facilitates the music's flow among the woodwinds, bass, percussions, and strings to make the music happen. All these musicians work together to make the music sound as good as possible. The court also needs its components to work together. Clearly, components such as lawyers, judges, and witnesses among the court must work together. However, other components must successfully adapt to the court in order to allow the court to become successful. These other components include funding, location, time-span, size, internal structure, and sentencing. The more successful the components, then more successful is the court. This is how international law creates definite precedents that influence the globe. By these means, international law develops, and, in my opinion, creates beautiful works of legal art.

It is in these components that I will illustrate the successes of international courts. By researching, outlining, and interpreting components of the International Criminal Court of the Former-Yugoslavia, the Special Court for Sierra Leone, and the Iraqi Special Tribunal, I will sort these components and determine which are successful and which ones are not. Finally, by researching these components, I will determine which components future international courts should consider in their framework. By taking these successful steps, I hope to not to create the next successful court, but to come as close as possible. As a young legal scholar, I hope my work today will someday grow into a flourished orchestra.

HISTORICAL BACKGROUND

A professor once said that the idea of a thesis or graduate dissertation is to expand humanity's knowledge. Even the slightest gain of understanding expands the "sphere of knowledge". This is what this thesis is aimed to do. In all respect, international tribunals consist of a fairly new area of study. The subject of *Institutional Design* among international tribunals began after World War I, making it close to a hundred years old. International law and international tribunals are fundamental in maintaining a stable foundation for our (western) concept of justice. But what makes them stable? Why have they come to life? Why are international tribunals so pivotal in stabilizing the order of human civilization? Well, this thesis is aimed to not only expand the "sphere of knowledge", but it is to do so by answering these questions.

As stated in the opening chapter, every court has special components that make them successful. By analyzing these components, we can recognize why they make the court successful or not. There are four specific components that this thesis will focus on for every court that will be examined. In specific order they comprise of *legitimacy, location, funding, and time-span*. By using these components we will be able to examine which worked and which one did not. Eventually, this will lead us into the final conclusion, the New Court.

The final part of this thesis will entail the concluding effects of all components that *successfully* helped the international tribunal in its agenda. By taking these components, we will be able to craft a formula to create a *New Judicial System* for future international tribunals. By taking the past experiences of previous international tribunals, and by understanding them, we will be able to decide which components make them successful. A good example of these components includes the tribunal's location. As you will see further on in the text, evidence

suggests that the location of an international tribunal should be within the country in which the crimes were committed.

Before we jump into analyzing the tribunals, we must first look at the recent history among international tribunals and what conflict, biases, and progression they brought. Here we will discuss the major topics among past international tribunals. First, let us begin with the first major conflict in which international law truly began to flourish. **World War I** and the horrors it brought by its trench warfare equated to an event that spawned the largest loss of life during the time. The victorious allies wanted to assure that Germany would pay dearly for the war. In all respect, Germany did. The **Versailles Treaty**, signed by all the Allies, brought Germany to its knees. Germany was never allowed to have a large military again, all land taken during the conflict was to be given back, and severe financial reparations were to be made. Even after all this was done, the **League of Nations** eventually collapsed and Versailles became a total disaster in regards to controlling Germany. The rise of the Third Reich and Hitler's triumph as Germany's dictator proved to the international community that treaties were not necessarily a component of restraint. Countries did not abide. After the even more traumatic event of **World War II**, the time finally came for a solid international foundation in which international law can set foot on. Indisputably, the **Nuremburg and Tokyo Tribunals** showed the international community that the Allies have finally created a system in which crimes against humanity and war crimes were no longer acceptable. Those who committed these crimes were to be punished. But the criticisms of this system began to rise. Nuremburg brought criticism regarding the *legitimacy* of the tribunal. The first criticism was that of retroactivity and the legitimacy of the law. In other words, how can the Nazi's pay for crimes if there was no legal system and laws to do so during the time the acts were committed? These international laws were new and crafted

by the victorious allies of WWII. The issue here is if the laws were to be same if the Nazi's were to have won the war. This is the *bias* of the winner. In extension, another problem arose from these arguments. Nazi criminals facing trial not only used this theory in their defense, they were also beginning to stall the process. By "hijacking" the court, the Nazi criminals were able to disrupt the international court and even distort the image of the tribunal. As stated, their defense usually consisted of the tribunal's illegitimacy because of these new laws. Senior Nazi officials also defended themselves by stating that they were just "following orders". Nevertheless, all Nazi criminals were prosecuted and the establishment of international laws against genocide, crimes against humanity, and war crimes finally became fulfilled. This also helped bring the establishment of the **United Nations**.

The United Nations and its capability faced certain challenges once again during the Bosnian War (1992-'95). For the first time since Nuremburg and Tokyo, the United Nations opened another tribunal, the **International Criminal Tribunal for the former Yugoslavia (ICTY)**. Once again criticisms rose and one major player exited from the game. The United States failed to stand behind the international court. This became fundamental because of how large of a part the United States has in the United Nations. This ultimately weakened the foundation of international law. But the United States based its decision by one factor. That was whether the United States would too become an eventual victim of the international court. We must remember that even the United States might break international law. Hence the biases of the courts influence these decisions. During the same time we have another international court, that being of the **International Criminal Tribunal for Rwanda**, which also faced major criticism of the international legal system. The issue of exclusive jurisdiction among captured criminals rose after the Rwandan Genocide. Just as in Nuremburg, the United Nations held a

stronger stance in prosecuting Rwandan criminals because the UN had the more influential criminals. But the problem arose from the Rwandan government in trying to have their own separate national court to indict the criminals. This posed an interesting argument of whether the international community should allow nations to have their own domestic courts outside of the UN. It is an issue of sovereignty. Not all international tribunals face increasing scrutiny as those mentioned before. For the **Special Court for Sierra Leone (SCSL)**, many positive aspects come about. The arrest of Charles Taylor along with his recent indictment has shown the world that international tribunals once again serve a great purpose to the international community. Taylor's arrest is the first conviction of an ex-leader by an international tribunal since the end of World War II. Along with this major historic event is that of the court's system itself. The SPCL is special in its outreach program. The outreach program, as the essay will mention later, consists of a very intricate program that allows every Sierra Leonean citizen to cooperate with the court. This outreach program is one of a kind and revolutionary in terms of institutional design. The most recent court in this essay is the **Iraqi Special Tribunal (IST)**. The IST shows how an ex-leader can be captured, indicted, and convicted within only a matter of two years. However, the IST is not an extension of the United Nations. The United States held the largest portion of jurisdiction of the court for obvious reasons. Its legitimacy is scrutinized because of harsh conditions encountered by defense councils. It's hard to establish an international agreement that a tribunal such as the IST is stabilized and proper when you have defense attorneys assassinated. In conclusion, these are some of the problems that will be mentioned throughout this essay. By understanding some basic components of these international courts and their effectiveness, you will be able to comprehend the rest of this essay.

CHAPTER 1

The International Criminal Court of the Former Yugoslavia (ICTY)

The development of the International Criminal Court of the Former Yugoslavia (ICTY) set a pivotal foundation for international law. The capability for the United Nations to come to a resolution and create the first judicial framework for an actual court on legitimate grounds is something never seen before by the international community. The horrors committed during the Bosnian War, such as the Srebrenica Massacre, showed the world that there was once again an answer for international justice since the horrors of WWII. This first chapter of my thesis will explain the effective components of the ICTY as well as several components that have strained the court's appearance. Overall, I come to the conclusion that the ICTY is one of the more successful courts in contemporary time. Also, one cannot stress enough of how the court must be held in high regard. There should be much respect towards the individuals who seek to ensure that justice is brought to those who deserve it.

Many positive elements of the ICTY can be taken to help fashion future courts that I envision. The key components that I will discuss in this chapter include the court's location, funding, and time-span. All of these components somehow affect the court's appearance and status in fundamental ways. We will see why the legitimacy of the court is superb, how the location of the court sparked major controversy, how the funding of the court correlates directly with its main goals, and how the ICTY's long time span affects the court's legitimacy.

Legitimacy

Legitimacy of an international court seems to *always* be scrutinized. Even at Nuremburg, many defendants argued that the tribunal was illegitimate on the basis that the prosecution was acting on laws that did not exist during the time in which the violations were committed. In this thesis, legitimacy of an international court is defined as impartial and unbiased towards both the prosecution and defendants. However, it is the international community that judges whether legitimacy is at hand or not. When discussing the ICTY, the debate whether the court was legitimate began before the court even opened its doors. Slobodan Milosević, the ex-leader of Serbia, stated that the court did not constitute a legitimate judicial body. Obviously, Milosević's defense is similar to ex-Nazis and their Nuremburg's defense. The biggest issue revolved around the court is the issue of retroactivity. Milosević would *hijack* the court with this defense. His attorneys argued that the judicial proceedings were illegal on the basis that the laws were created after the crimes even supposedly committed. Another issue is that of the court's representation. The question remained of what the court's agenda was. What purpose did the court want to fulfill? Greg Lombardi, a former Georgetown Law School graduate, stated an interesting issue in his work titled *The Legitimacy and the Expanding Power of the ICTY*:

> The longevity of the legitimacy debate is a product of the continuing tension inherent in the dual form of the Tribunal. The Security Council labored to create a tribunal with circumscribed powers and a limited lifespan that would serve the Council's political goal—to restore international peace and security. But to achieve that goal, the Tribunal had to be seen as independent and impartial. The institution that resulted is a strange creation. (Lombardi 887)

Lombardi argues that the court has a duality issue, that with the **United Nations Security Council's (UNSC)** agenda and that with its own agenda. Lombardi goes on to say that the UNSC would rather have the ICTY complete the judicial proceedings as fast as possible, end further conflict, and maintain further world peace. However, the ICTY and its agenda had

another way of looking at the situation. The ICTY would instead not want to focus on any time-span, but instead look towards convicting criminals in a suitable manner that would establish clear legitimacy of the court. In other words, there was no rush. The ICTY did not want political interferences within the court. The court's objective was to take as much time as necessary to complete the convictions of Serbian war criminals.

The legitimacy of the court, is however, clearly demonstrated. The court has prosecuted hundreds of criminals for crimes against humanity and war crimes. The arrests, indictments, and convictions of former leaders such as Milosević, Radovan Karadžić, and Ratko Mladić demonstrate how the ICTY can bring justice for the thousands of individuals who fell victim to the Serbian War and the atrocities it brought. There will always be debate on whether the ICTY is a legitimate international court. But, if you look closely at the details, you will see that the tribunal is impressive in its facts and agenda. The component of legitimacy for the ICTY is of positive statue and the majority of the international community thinks so as well.

Location

Set up in 1993, the ICTY, under Resolution 827 of the United Nations Security Council, was created in order to "prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991" (Article 1, *Statute of the International Tribunal for the Former Yugoslavia*). The tribunal is an *ad hoc* court set up in The Hague, Netherlands. It is the first major international court to be established outside the boundaries of the associated country in which major international crimes were committed since Nuremburg and the Tokyo Tribunals as mentioned beforehand. Because the trial's location was set beyond Yugoslavia's border, many questions rose from international critics, even from the victims themselves.

The sole purpose for the trial's location in The Hague was a consequence of one massive problem. The atrocities in which the captured and those evading captured committed were still occurring at that time. War was still ongoing. Dr. Steven Roach, author of the book *Governance, Order, and the International Criminal Court*, writes "...[T]he argument that an ICC may have deterred the worst in abuses in the former Yugoslavia is undermined by the fact that the ICTY was in fact created in 1993, two years before the Srebrenica massacre took place."(Roach 141). Many critics of the court would state that the trial would not function properly because of that fact. However, the location was set and justice had to be served. As stated before, an issue with the location of the ICTY came in the form of legitimacy for the victims and the criminals. How can a trial such as the ICTY be legitimate and work properly under these circumstances? Dr. Neil Kritz in his article titled *War Crimes and Truth Commissions: Some Thoughts on Accountability Mechanisms for Mass Violations of Human Rights* argues:

> When an international tribunal determines that it cannot hold its sessions in the country where the alleged crimes took place, it is extremely important to ensure maximum access for the people of that country—again, both the victims and the perpetrators—through means other than physical attendance at hearings. Efforts undertaken to broadcast proceedings from the Hague into the former Yugoslavia, or from Arusha into Rwanda [ICTR], and to enable witnesses to participate in some ICTY hearings via video links, are important steps in this direction. (pg. 5)

The ability for technology to connect the former Yugoslavia to The Hague was pivotal for the trial's successes. It brings victims to testify and helps them psychologically recover from the tragedies suffered. It demonstrates a modern and technologically advanced style of bringing justice. These are instances where distance did not matter. Ideally, justice was given to those already sentenced through these methods. But did the trial affect all citizens of the Ex-Yugoslavia territories? Were opinions swayed negatively by having the ICTY's location in The Hague? An interesting account of this is portrayed in Erna Paris's book titled *The Sun Climbs Slow*. Paris, an American journalist who witnessed the trial's beginnings writes how many local residents of Bosnia found no interest in the proceedings. Some individuals were disgusted to acknowledge the court's existence. Paris recounts how in 2005 the Serb government finally admitted to the truth about war crimes after a video was shown in a local court of the 1995 Srebrenica massacre. The video showed several individuals thrown to the ground and shot shortly after. The local response to the video was and still is controversial. Paris writes:

> In Serbia, the video elicited outrage. The timing couldn't have been worse for the government; an opinion poll published by the Belgrade-based Strategic Marketing Research just two months earlier had revealed that more than 50 percent of respondents either did not know about war crimes in Bosnia, or did not believe that they had taken place. (pg. 187)

Stories of such local attitudes towards the ICTY were very common and still are today. The majority of the population expressed resentment and even considered the ICTY to be a prejudiced and illegitimate court. Strategic Marketing Research, the same company that Erna Paris mentions in the above quote conducted a similar survey a year later in 2006. A survey of

1,400 respondents, ages 16 and up, within the country of Serbia were asked whether they considered their view of the ICTY positive or negative. The survey was taken on April 4th to April 16th, 2006.As shown in **Figure 1 on pg. 41**, probably the most important statistic in this survey is the 78% of "the majority" respondents that thought negatively or very negatively of the ICTY. That is a pretty incredible number. But how can that be? How is it that the majority of Serbs think negatively of the ICTY and some not even acknowledge that war-crimes occurred? I argue that it is the location of the trial that sparked this grotesque mind-set. It is the removal of realistic and psychological impacts of the court. I firmly believe that removing the trial from the war torn country of ex-Yugoslavia created an atmosphere of denial and local dismissal of international legitimacy. By the court not being realistically implicated in the territory, then major media sources were not able to televise or report on the issue. Furthermore, victims and other national folk were not able to attend the trials and witness firsthand justice being served. If the court was located within the territory of Serbia, in the area of conflict, just like Nuremburg was located in ex-Nazi Germany 70 years ago, or more recently, the Iraqi Special Tribunal in Baghdad, then national outlook on the trial would have held more legitimacy. This is why the location of the ICTY represents a negative component. Sure, war was still on-going when the trials began, but the U.N. could have moved the ICTY back into ex-Yugoslavia. Now they are paying a price.

Funding

When it comes to funding international trials, many different pieces and components must be taken into consideration. For example, those in the United Nations made many crucial decisions on how expansive/expensive the ICTY was to be. The tribunal required staff, equipment, transportation, construction, etc. The designers of the ICTY were aiming to make an impact for the international community. The United Nations with its Security Council wanted to ensure that justice was served for the perpetrators. Because of these promises, along with couple others major components, it is no wonder why the trial has blown the lid off of costs.

Let's get to the numbers. The budget for the ICTY in 2011 was an astounding $301,895,900. Even more profound is the total cost for the ICTY since its founding in 1993. The sum of every budget every year since 1993 adds up to an incredible $2,115,085,922 (*http://www.icty.org*). To view each year separately, refer to **Figure 2on pg. 41**. It would not be totally dismissible to fashion an argument that these numbers represent the true cost of justice in a modernized post-war period. Several points to correlate with this argument is the facts that the ICTY required many employees to assess the crimes, gather evidence, build a case, and finally try the criminals involved. It takes many personnel to do these tasks. As of January 2012, the ICTY employs over 869 staff members, representing 76 different nationalities. As I discuss later, this is a triumph in international representation. It is also a process of many travel expenses. The ICTY website states that over 4,000 witnesses have been flown to The Hague from all over the world in order to give testimonies. With all this being said, I argue that the ICTY's funding constitutes a *positive* component.

The most important factor for this argument is the ability for the funds (the $2 Billion) to actually get judicial work done. Since 1993, over 160 persons have been charged with crimes,

60 have been convicted, and 40 are still on trial, surpassing any previous international tribunal in individuals tried (*http://www.icty.org).* In the future, more cases will be brought to light and many victims will finally receive reconciliation. As long as the United Nations funds the ICTY, the resources will be there, time can be extended, and criminals will be punished. Some might say that 160 persons convicted is not too high of a number, especially with an annual budget of over $300 million. However, one might forget that the ability for the ICTY to convict a single individual requires an extensive process. There are multiple steps to gain a conviction of a criminal, and, just like in a regular domestic court, the trial might extend years because of a not-guilty plea along with an appeal process. The ICTY has as many as 18 different legal steps in convicting a suspect assuming that the individual pleads not guilty and requests an appeal process. We see this issue today with Ratko Mladić whose case will not begin until May 2012, exactly one year after his capture. Also, the ICTY is still responsible for 40 cases that are still pending. This means that there is more work to be done.

Another benefit from the ICTY's large budget comes in the form of international representation and cooperation. As I mentioned before, over 76 countries have been represented in the ICTY. The court's judges range from countries such as Malta, France, China, Pakistan, The Bahamas, and even Madagascar. One could call the ICTY a true international tribunal. It is a cooperative effort never seen before on the world stage. Major UN member countries even cooperated in apprehending any criminals caught in their territory. For example, countries such as Germany implemented laws that required the apprehension and imprisonment of any suspects that were thought to have committed crimes during the Bosnian War. Statute 3, Article 1 of the Republic of Germany Law on Cooperation with the International Tribunal in respect of the Former Yugoslavia states:

> (1) For the purpose of prosecuting an offence falling within the jurisdiction of the Tribunal, or for the purpose of enforcing a punishment imposed for such an offence, at the request of the Tribunal, any persons residing within the area where this law is in effect shall be placed in confinement and committed to the custody of either the Tribunal or the country which has assumed responsibility for enforcing a sentence imposed by the Tribunal.

The German law depicts the utmost cooperation with the ICTY, an act that was implemented in 20 other countries excluding the United States. This international representation is fundamental to the ICTY because it shows *legitimate progress* on defining international justice. This is how we as a globalized world will be able to define justice on a global scale. Isn't the United Nations aim to rid the world of injustices anyway? It is through these efforts that the international community will be able to shape a world without genocide. If the ICTY becomes internationally acclaimed for the successful prosecution of *every* major criminal from former Yugoslavia, then the world could state that the ICTY is the *magnum opus* in the art of designing international courts. But let us remember that it is only through large funding and successful cooperation that something of this nature is able to be done.

With all this praise also must come a little controversy. It is not difficult for one to be skeptical of a budget that exceeds $300,000,000 for a single year. One may ask whether there is overspending and even the possibility of individuals who take advantage when creating or requesting budget proposals. Probably the biggest issue is the "risk that those who have only experienced the luxuries of a billion dollar budget may not understand how the job can be done for a fraction of the price" (Skilbeck 8). In other words, could those individuals who have worked in the ICTY for several years submit themselves to achieving the same results with a lower budget? Obviously the doors to the ICTY will eventually be shut and funding must slowly decrease. So the answer to that question is an absolute yes. For those who argue against the large budget and insist that the funding leads to wasteful spending, the following can be said:

The large budget compliments the goals of the ICTY, which is to try and convict war criminals for massive amounts of horrendous crimes never committed since WWII.

So the question for this paper is whether this large budget is legitimate and whether it constitutes a proper component for an international court. I argue that if the United Nations is able to give such high funds, then the ICTY can display its effectiveness. The ICTY is, overall, an effective court because of these funds. Also, the budget helps bring in international actors from around the world. That's the whole idea of an international tribunal. It brings individuals together to set foundations and define international law itself.

Time-span

An interesting component of a court, that many won't come to realize, is the time-span of the actual court. If a legal scholar wants to see a quick and decisive court, then one shouldn't go as far as Nuremburg. Nuremburg began in August 8th, 1945 with major ex-Nazi officials finally being brought before international judges. The tribunal lasted until October 16th, 1946 when their executions and punishments were carried out. Just over one year long, the international tribunal was able to sentence and convict an entire country after one of the most devastating wars the world has ever seen. For legal scholars, Nuremburg is one of the greatest achievements in international law, even with some of its minor flaws. For the ICTY, time is seen as more of a troubling issue. The court has been in existence close to twenty years. The long time-span of the ICTY strains funding and implores frail facility to carry out punishments against another country. However, the long time-span is due to many problems in which there are no current solutions. The first issue involves criminals that elude law enforcement for years.

It's hard to convict war criminals if they are constantly hiding. Just ask Louise Arbour. Arbour is a renowned Canadian prosecutor that served as Chief Prosecutor for **the ICTR (International Criminal Tribunal for Rwanda)** and the ICTY. She was appointed in 1996 when international scrutiny of the court began to escalate. However, with her effort, Arbour was able to indict the former President of Serbia, Slobodan Milosevic. When Arbour first arrived she realized that the tribunal was in a state of disparity. There were few arrests, many criminals were still at large, and the court's internal sources began to decry governments for lack of interests in capturing the evading criminals. Without criminals in courtrooms, the ICTY's reputation would diminish and there would be no work to be done. However, Louise Arbour's determination to capture criminals resulted in a new plan. John Hagan, professor of sociology and law at

Northwestern University, writes in his detailed book title *Justice in the Balkans* of Arbour's challenges. In an interview with Arbour, she mentions:

> I had to plead with the judges to give me a little time, to try to think of a way to make these arrests happen; that was the first thing. And they agreed to give me a chance when I got there. I had no particular plan, but I had to work on it. The second thing was that I became absolutely persuaded that if we were going to make it happen, we had to stop talking, we have to stop talking to the NGOs. We're not going to make arrests if we spend our time talking to the press. (Hagan 100)

Hagan eventually goes on and describes that there had to be a "secret atmosphere" in which secret indictments were to be given in order to capture these criminals. These secret indictments would then keep the press from circulating around the arrest issue. It proved to be avital move by Arbour. The first successful secret arrest of a war criminal involved Slavko Dokmanovic, the ex-mayor of Vukovar. Vukovar was a site of a major massacre. Dokmanovic was apprehended secretly by Polish GROM forces after he was persuaded to enter Croatia for negotiations. The arrest showed that Arbour's determination for the court's success was high. Even though arrests were beginning to rise, there was still much work to do.

This brings us to the concluding subject of the ICTY's time span as a whole and what it means to the international community. Today the ICTY is performing the last stages of its judicial schedule. With the arrest of Goran Hadzic last July, the last of the 161 indicted individuals have finally been apprehended. This is the largest amount of individuals ever to be tried by an international court (*www.icty.org*). Since December 2011, the ICTY has predicted that the court's completion is due around 2016. This means that the court's existence will span to 23 years total. This is different from Nuremburg or the Iraqi Special Tribunal (IST) mostly because of the larger number of accused. Both Nuremburg and the IST lasted close to 3 years each and both had a lesser amount of accused individuals. However, along with the large amount of the ICTY's indicted individuals comes the extensive legal process for each. More

specifically, the ICTY's post-trial appeals process constitutes a major reason why the court's existence is longer than most *ad hoc* tribunals. The United Nations along with the Secretary-General agreed that an appeals component of the ICTY constitutes international human rights. The appeals are made if there have been any errors with the judicial process during criminal proceedings. Obviously, as most attorneys and legal scholars understand, appealing the court is a "final move" for convicted criminals. It is exploited in order to reduce a sentence or prove innocence. The most common time it takes to convict an individual is about 5 years including the appeals process. It is a longer process because of appeals. Nuremburg, Tokyo, and Iraq all did not have a legal appeals process. This sparks the questionable debate of whether these trials were legitimately structured toward *true justice*. However, other than appeals, national interests in cases will also extend time during the court process. As an example, the Republic of Croatia acted against the ICTY in order to appeal a subpoena that was written for the disclosure of documents (Schabas 411). The ability for nations to participate in the ICTY is legal under Rule 108*bis* of the ICTY RPE. Therefore with the 161 individuals, most of whom are now in the judicial process, along with the appeals process, and national participation, the 23 year long time span is explicable.

With all this being said, I conclude with a few remarks. We must remember that the ICTY is the largest international tribunal the world has ever seen. In addition, with the large amount of national participants, long judicial process, and other time extending issues, the 23 year long existence of the ICTY is understandable. Though there are many who criticize the ICTY in its vast funding and long existence, I believe that we must understand that the ICTY is the only and best contemporary solution to the international law issue. In extension, the ICTY has set the strongest foundation for international law.

CHAPTER 2

The Special Court for Sierra Leone (SCSL)

As a student of international law, the multiplicity of contemporary events and tragedies tend to have reoccurring themes. International scholars know too well of wars, genocide, and abuses of human rights. However, one civil war seems to stand out when taking into account horrific acts of atrocities. From 1991 to 2002, the civil war in Sierra Leone resulted in the loss of 50,000 lives. The use of child soldiers, rape, and mass murder throughout the civil war makes it an event that no human can truly comprehend. Charles Taylor, the infamous leader of the National Patriotic Front of Liberia, committed some of the most heinous crimes including the administration of drugs to children in order for them to fight without fear. Taylor's capture and sentence this year has become one of the greatest accomplishments for the SCSL. As we will see, the SCSL demonstrates the ability to be a very successful court. The components discussed in the SCSL section will comprise of location, efficiency and legitimacy. We will see how the location of the SCSL differs from the ICTY and what the local attitude for the trial consists of. The efficiency and legitimacy of the court also hold valuable content that makes the SCSL a special kind of international court.

Legitimacy

When discussing any international tribunal, every scholar tends to ask themselves whether a tribunal is legitimate. This is also the case of the SCSL. The SCSL is viewed skeptically by many. This is due to circumstances such as a low number of criminals indicted and the small budget (both will be mentioned later). But with all that put aside, there is one major reason why the SCSL "qualifies as being a legitimate international tribunal".

The one way that a court becomes legitimate is its ability to be internationally recognized as a functioning and efficient court that brings true justice to those who committed crimes. As I will also mention later, the court does focus purely on indicting ex-leaders and commanders who committed crimes. Even though many who fought during the civil war will go unpunished, the court's legitimacy is still intact with the convictions of major war criminals. The international community believes this to be true. A good example is given with two authors who studied the subject of legitimacy of the SCSL. Marlies Glasius and Tim Meijers, in their work titled *Constructions of Legitimacy: The Charles Taylor Case*, write:

> Trials are supposed to be communicative spectacles that close with the infliction of shame, sanction and stigma, thus aligning crime with punishment in people's mind. The prosecution put Charles Taylor forwards as the 'father' of the RUF, to whom they owed a patrimonialist allegiance. (pg. 247)

Glasius and Meijers go on to state how the court's legitimization is brought to life with the idea of "expressivist potential". Expressivist potential to Glasius and Meijers explains that the court's appearance as being successful is directly related to how people perceive the court. The only way that the court can be seen as successful is if top leaders are convicted, in this case, Charles Taylor. Therefore, because Taylor was convicted and sentenced, the population of Sierra Leone sees the court as legitimate. In extension, to fulfill this argument, Taylor is the first ex-leader of a country to be convicted and sentenced by an international tribunal since the *Nuremburg Trials*.

Location

Unlike the ICTY, the Special Court for Sierra Leone was located in Freetown, the capital of Sierra Leone. I find this extremely crucial component for the court's success. It all started with President Ahmad Tejan Kabbah of Sierra Leone. President Kabbah began serving as president beginning from 1996. One of his most significant promises was to end the civil war in which his country was engulfed in. He succeeded. After the war, Kabbah wrote a letter to the U.N. Security Council and requested that an international court be established to try and convict those who committed crimes. Kabbah in the letter stated:

> As you are aware, the atrocities committed by the RUF (Revolutionary United Front) in this country for nearly 10 years in its campaign of terror have been described as the worst in the history of civil conflicts....[t]he mandate of the court could be designed to be narrow in order to prosecute the most responsible violators and the leadership of the RUF. (Schabas 35)

Kabbah's request also goes on to say how the court can focus on a limited number of those to be tried in order to make the tribunal faster than the ICTY. This request is different than any other tribunal. It shows two major points in which President Kabbah displayed in his letter. First is that of international cooperation and use of the United Nation's system of international law. Second is the clear display of reservation and protection of national sovereignty. It is fundamental that any future international courts operate in such a fashion. The United Nations branch of international law is obviously a critical component in serving justice throughout the international community, however, it is evident that national sovereignty cannot be brushed aside for that devastated country. President Kabbah surely understood this point. This is why the Special Court for Sierra Leone's location was based in Freetown. As we've seen with the ICTY, the court's location in The Hague causes the majority of the local population's attitude to be more negative towards the court. The ICTY's location in The Hague seems to make the tribunal dismissive to locals within Ex-Yugoslavia. This is quite different for Sierra Leone. Because the

court's location is set within Sierra Leone itself, the local attitude is more positive. In his *Report on the Special Court for Sierra Leone,* Antonio Cassese observes and reports how the court's location seems to affect the country positively. Cassese writes:

> The decision to establish the Special Court in Freetown, the capital of Sierra Leone, immediately bolstered the ability of the Court to have a significant impact on the affected population. As expected, this has made the Court much more accessible to the local population. Victims and other members of the public can attend the hearings and watch the proceedings firsthand. Local media representatives have direct access to the proceedings and regularly report on them. Moreover, the Court's early focus on outreach projects has created an enviable model for future international courts. (Cassese 13)

Cassese reports and analyzes the court critically in a way to bolster the court's future agenda. The location of the SCSL is one of Cassese's main focuses in positive components of the court. When you think about it, this does make sense. The court's location among the population allows a more intimate relationship between the locals and the court. The most important reason why this occurs is because of the newly created *outreach programs* that allow locals to cooperate with the court. The SCSL is very focused on the outreach program. The program includes sessions with " the police, the army, the bar association, journalists, victims groups, and students at every level; [it also includes] the creation of brochures, and radio and video programs in the country's four main languages" (Arzt 230). The outreach program is essential to the court because it promotes the court's work and lets every citizen cooperate. This is different from the ICTY. The ICTY has never been able to have such a commitment to local outreach mostly because of the ICTY's location at The Hague. This is quite phenomenal. It is almost obvious that the location of an international court can alter the public's perception of that specific court.

To further back my argument on this topic, I have found a survey taken by *Gallup* from 2008. The poll took 1,000 Sierra Leonean and Liberian adults, ages 15+, that were asked two questions. The questions both involved former Liberian leader Charles Taylor. Taylor is undoubtedly the most notorious of all criminals in which the SCSL convicted. Taylor led the

NPFL during the conflict in Sierra Leone, massacring thousands in his wake. Nevertheless, the results of the survey can be seen on **Figures 3 & 4 on pg. 42**. The first question asked whether the apprehension of Charles Taylor symbolized a good thing. The vast amount of Sierra Leoneans agreed that the trial of Charles Taylor represented a positive aspect (93%). The second question I find more interesting. It asked whether Taylor, if convicted, should be executed, given a prison sentence, or be let free. Once again, the vast majority of Sierra Leoneans (97%) agreed that Taylor should either have been executed or given a prison sentence. But, oddly enough, thirty-three percent of Liberians believed that Taylor should have been let free. I find this odd because Taylor's atrocities impacted many Liberians negatively. Could it be that the trial's location in Freetown have made one out of every three Liberians feel more complacent towards Taylor? I believe so. Had the trial been held in Liberia, I think that the public reaction would most likely have reverse effects. These effects being that more Liberians would favor Charles Taylor's indictment while Sierra Leoneans would have less interest in the court. Overall, *Gallup*'s polls are very interesting and very supportive to this thesis's argument.

In conclusion, I find that the location of the SCSL is a positive component of the court. We see this with the court's profound upbeat effect among the local population. The outreach program that allows locals to participate with the court's agenda is a clear demonstration.

Funding

The budget of the SCSL differs drastically with the ICTY. Not only does the SCSL have a much smaller budget than the ICTY, but it also gradually reduces more every year than the ICTY. If you take a look on **Figure 5 pg. 43**, you will see the budget for the SCSL during its third year. **Figure 6 pg. 43** shows how the United States, Netherlands, and Great Britain contribute a majority of the funding. This is an interesting finding because of how the United States doesn't always find agreement towards international courts. This issue relates to the **International Criminal Court (ICC)** and possible indictment against United States soldiers or politicians in future global disputes. The total budget for the 2004-2005 year was at $32,534,571. When comparing to the ICTY's third year budget (**Figure 2**), you will see that this number is actually *more* than the ICTY. However, while the ICTY's budget increases every year, the SCSL's budget decreases every year. You see this decrease on **Figure 7 on pg. 44**.The reason for this decrease in funding is due to the court's specifications and agenda in which the United Nations approved.

With this small budget comes a very important question. Does a smaller budget for the SCSL constitute less justice done for the crimes and atrocities experienced during the civil war? In reality, there is no accurate number that can portray crimes committed during a war. However, it's hard to believe that such a small number can amount to the same results that the ICTY produced. To note, the United Nations Security Council decided that the SCSL would constitute a smaller court and prosecute less individuals. There are much less employees, including only three trial judges and five appellate judges (Dougherty 321). This means less prosecutions and less justice for victims. It's a critical evaluation of the budget, but it makes sense. The court indicts only a few significant individuals. Though this still makes a big impact

as convicting any ex-leader would do, we must still remember that other soldiers who committed crimes will remain free. The budget shows how much difference there is relating to the ICTY. There is less funding and there is less judicial action.

In summary, the court's budget is quite small compared to that of the ICTY. Because of this smaller amount there are fewer prosecutions. The United Nations, by example of this budget, demonstrates how it can be constricted financially. In truth, with a bigger budget, more work can be done in the future. However, today that budget is not an example of a positive component among the court. This brings us to the next section.

Time-span

Unlike the ICTY, the SCSL limits the number of individuals they prosecute. The individuals they prosecute are limited to "those who bear the greatest responsibility for serious violations of international humanitarian law" (Special Court Statute Art. 1). We must also remember the large number of children soldiers involved during the conflict. Under Article 7 of the Statute of the Special Court for Sierra Leone, it specifically states that "the court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime" (Special Court Statute Art. 7). Because of these two articles, the focus of the court narrows down to only a small specific number of individuals, hence the small budget that the SCSL encompasses. With all this being said, we must ask ourselves whether such a small budget and narrow prosecution focus is justifiable for the aim of international law. Does the simplification of the court bring about "true justice"? For example, when discussing the time-span of the court, we see a small amount of prosecutions with a couple of years. Within a matter of only three and a half years, only 13 indictments occurred (Artz, 228). In addition, the court has existed for over ten years (est. January 16, 2002). The long time-span of the SCSL is a consequence of certain criminals who still remain on the run from authorities. Today there are still six individuals that have been summoned to the court, however, they elude government forces and remain in hiding (*Decision on the Report of the Independent Council*). It is the same story that we've seen with the ICTY. The court's existence is lengthened because of those who evade the judicial process.

CHAPTER 3

The Iraqi Special Tribunal

Most of us today remember the horrible atrocities committed by Al-Qaeda on September 11th, 2001. The day symbolized the beginning of a new era. There was a new global stage and states had to decide whether or not "terrorism" constituted a threat to their respective country. As President George W. Bush stated in an address to a joint session of Congress on September 20, 2001 said, "Either you are with us, or you are with the terrorists" (*Bush's Address to a Joint Session of Congress and the American People, 2001).* It was again a case with the West facing a new enemy, one that did not have borders, but one that consisted of extremely deadly individuals who would do anything to cripple the Western structure. Eventually, a country would fall to Western forces and not only lose their leaders, but become an experiment in "democratization". Iraq is important to this essay because the tribunal that followed the war constitutes a different approach than the previous courts that we have seen. The United Nations did not participate in the war and therefore did not participate in the trials. Russia and China both held a firm position against the Iraq War and therefore decided against a United Nations resolution. This also followed to the interesting debate of whether the **Iraqi Special Tribunal (IST)** was legitimate. Out of all three courts mentioned in this essay, the IST faces the most skepticism in its legitimacy. Again, also discussed will be the IST's location in Baghdad, high amount of funding, and quick time-span. All issues have some sort of skepticism.

Legitimacy

The capture of Saddam Hussein in December, 2003 invited another critical moment for international law. The issue became one of difficulty because the international community preferred a trial that involved the United Nations. However, the United States government acknowledged the fact that any trials held by an international tribunal would be lengthy in time-span and possibly more expensive. Instead, the United States along with the new puppet-Iraqi government constructed the Iraqi Special Tribunal, a quick solution to the Ba'athist problem. But quick solutions usually tend to be problematic. The IST showed the international community that a tribunal's legitimacy can be severed. The court's non-U.N. affiliation, security issues, and poor implementation of Saddam's execution make the IST less legitimate than our previously discussed courts.

After World War II, the United States pledged with the United Nations that any future conflicts resulting in military tribunals would be held as international in scope, in other words, with the United Nations. However, Iraq did not become a United Nations court. But why? The answer revolves around the refusal of American legislation. At the time, President George W. Bush and fellow Republicans did not ratify any proposals to support the United States in any international court, specifically the **International Criminal Court (ICC)**. Today, President Obama is reinstating talks between the United States and ICC (*www.state.gov*). President Bush understood the fact that the United States could possibly be charged by the ICC if any crime committed by American/Ally forces came to light. In extension, this is why the court operated domestically without any international cooperation other than with Coalition forces. Without international cooperation and the exclusion of the United Nations, the court lacked international legitimacy. This is a major criticism of the court.

Another issue with the Iraqi Special Tribunal was the issue of security, more specifically, security for the defense council which defended ex-Iraqi leaders. A complete list and guide of the accused is provided in **Figure 8** on **pg. 44**. Saddam Hussein and eight other defendants had a total of 22 lawyers, including Ramsey Clark, former Attorney General for the Johnson Administration. In two years (2005-2006), three defense attorneys were killed and one was seriously injured. The deaths of these attorneys were meant to intimidate Saddam and those on trial. After the attacks, the defense council pleaded for security protection. On December 5, 2005, one month after 3 defense attorneys were killed, Ramsey Clark pleaded to the court that "[t]he defense cannot participate in this case until there is protection in place for these lawyers and their families"(*Speech to the Court,* 2006). Saddam and other defendants staged hunger strikes to protest the legitimacy of the trial and the deaths of their attorneys. These deaths created a severe tear in the tribunal's image as fair and justified. As scholars Miranda Sissons and Ari S. Bassin state in their work titled *Was the Dujail Trial Fair?*:

> The Dujail trial was an opportunity to provide a new paradigm of Iraqi justice, based on the rule of law. But despite good intentions and genuine efforts by many judges, the proceedings were marred by political interventions that damaged the Tribunal's independence and undermined the final result. Fairness and credibility were tainted by a host of political, capacity and procedural issues. (pg. 14)

The Dujail trial was the main groundwork within the IST to convict Saddam Hussein and his followers for crimes against humanity. However, Sissons and Bassin acknowledge the fact that much interference within the court "tainted" the plausibility of the court. The authors mention the defense attorney's deaths but also, for example, discuss how political issues caused judges to resign from their posts. Rizgar Mohammed Amin, the chief justice for the IST, resigned on January 14th, 2006 because of these certain "political issues". When a chief justice resigns from his post in such a manner, better days don't usually follow and the international community

raises an eyebrow. Other members of the court were also shortly prohibited because of their possible association with the Ba'athist Party. With all these events occurring during the trial, it should not be surprising that the execution of Saddam himself would also bring criticism from the international community.

Saddam Hussein was sentenced to hang on December 30th, 2006. He was given back to the Iraqi government from coalition forces. During the execution, an individual who participated in witnessing the execution took amateur video on his cell phone. The video showed Saddam being mocked by his captors before he falls through the gallows and is executed. The video would soon spread all over the internet and public disgust would later ensue. The majority of the world's reaction took a strong stance against the execution of the former leader. Terry Davis, Secretary General of the Council of Europe would state in a press release:

> ”The trial of Saddam Hussein was a missed opportunity in a country which does not have many opportunities. It was an opportunity for Iraq to join the civilized world. The former Iraqi dictator was a ruthless criminal who deserved to be punished, but it was wrong to kill him. Saddam Hussein is no longer paying for his crimes; he is simply dead, while ordinary Iraqis continue to face their daily ordeal of violence and chaos. What they need is justice, reconciliation and peace, not hangings and revenge. The death penalty is cruel and barbaric, and I call on the Iraqi authorities to abolish it. It is late, but not too late, for Iraq to join the great majority of civilized and democratic countries in the world who have already abolished the death penalty.”

Leaders of India, Sri Lanka, Germany, Portugal, Italy, Iran, Egypt, etc. also had similar reactions to the execution. However, President George W. Bush along with other Coalition leaders would express that the Iraqi people have "spoken" and that Saddam faced "true justice". One must think that this is the discourse that these Coalition leaders had no choice but to take. Nevertheless, the damage was done and the legitimacy of the court was further ruined. It is in these manners discussed that portray the IST as illegitimate to the international community.

Location

Just as with the SCSL, the IST was located in the capitol city of the state which experienced conflict. Placing the IST in Baghdad was a decision made by both the United States and puppet-Iraqi governments. That decision would prove to be skeptical in the eyes of many international agents. In this section, the thesis will describe why the IST was placed within the boundaries of Iraq and in the hands of Iraqi and American legal experts. Also discussed will be the skepticisms of having a domestic tribunal rather than a United Nations sponsored international tribunal.

So why would the United States and Iraqi government both agree on a domestic tribunal rather than an international tribunal? The answer is that of time and that of punishment. President George W. Bush and his advisors understood that if Hussein and his other co-defendants were brought to an international tribunal, then the time it would take for a conviction would be longer than that of a domestic Iraqi tribunal. Also, the ICC along with any other United Nations affiliated tribunal would not impose the death penalty as it is against the United Nation's policy (*U.N. General Resolution 65/206)*. Though international proponents wanted an international tribunal for Hussein, the fact that many of these proponents did not engage in any military activity during the war didn't help their argument. This is why the United States and the U.S. sponsored interim-Iraqi government vied for a domestic tribunal. But the international dispute against a domestic tribunal was evident. University of Georgia International Law scholar David Gersh discusses this, he writes:

> The decision to try Saddam before the Iraqi Special Tribunal has generated much criticism. Human rights organizations are skeptical about the ability of Iraqi judges to handle a complex trial without international assistance and, regardless of that ability, believe that broad international participation is necessary to ensure the legitimacy of the trial. (pg. 273)

Gersh has a very clear stance that in order to ensure a court's legitimacy, then there must be "broad" international participation. The IST featured the United States and Iraqi personnel running the majority of its operations. Undeniably, to Gersh, the representation of two countries on behalf of Hussein does not constitute a legitimate court. In all, the IST should have been an international tribunal. Not only does the court fail to reach legitimization by the standards of a large amount of international agents, but the progress of international cooperation through international organizations, such as the United Nations, is slowly hindered. Future "international" criminal tribunals should take into consideration this assessment in the future.

Funding

Because the IST is affiliated with the countries of Iraq and the United States, the budget is therefore comprised of contributions from both of these states. If we recount the budget of the Special Court for Sierra Leone, we remember that the budget never exceeded $40 million. The total budget for Iraqi Special Tribunal for 2005 was over $143 million. More than three times the amount of the SCSL. As shown on **pg. 45**, **Figure 9** shows how the United States contributed 90% of the budget of the IST ($128 million), while Iraq contributed a dismal 10% ($15 million). So why the need for the United States to contribute so much to the tribunal? This is a major topic that the thesis will explain.

Indisputably, the mission of the United States in Iraq was not only to bring peace and democracy to the Iraqi people, but also to bring Saddam Hussein to justice. The trial was to be shown on television screens all around the world. The courthouse had to be built to perfection. Ramsey Clark stated that the "Iraqi courthouse cost American taxpayers over $138 million to be built and situated in the Green Zone" (Clark, Doebbler, pg. 45). From 2004 to 2005, the United States budget towards the IST went from $75 million to $128 million (Sission, Bassin, pg. 275). The importance of a successful trial was the main reason why the budget amounted to such high dollar amounts. However, as Ramsey Clark writes, the majority of the funding went towards anything but the defense council. Much of the funding went towards the Regime Crimes Liaison Office (RCLO) which consisted of mostly American personal that had backgrounds in the Department of Justice, Federal Bureau of Investigation, or U.S. Marshals. The United States government wanted to ensure that the world watched as Saddam and his colleagues were brought to justice for their crimes.

With these ramifications came the consequences of legitimacy concerns. Saddam understood the fact that his defense council was brushed aside in funding. It gave him another reason to devise hunger strikes and rebellious acts. But with all this taken into consideration, the funding of the court was correlated to the successful completion of the trials. In all respect, the funding of the court brought results. The defendants were found guilty during the *Dujail Trial* and sentenced as shown in **Figure 8**. As we will see in the next section, the successful funding is also a main proponent of the court's quick time-span.

Time-span

On December 10th, 2003, the **Coalition Provisional Authority (CPA)** announced the creation of the IST. As stated before, the creation of the IST was intended to bring ex-Ba'athist leaders to justice for crimes committed during the dates of July 17, 1968 (Ba'ath Party Rise) to May 1, 2003. Amazingly, unlike any other of our tribunals discussed, the tribunal's goal of prosecuting these leaders lasted until 2006, only three years. The relatively quick time-span of the IST is associated with the notions of high funding and less bureaucracy. Remember, the IST was mostly comprised of legal scholars of both the United States and Iraq. Both prosecution teams knew what they were doing and the experience was definitely there. Considering that the elite prosecution team had to face the defense council was also no difficult task. As mentioned, Saddam's defense council not only faced a tough dilemma in proving innocence, but they were slowly being murdered out in the streets of Baghdad. The United States" hegemonic-like" hold over the IST took the trial straight to the executioner. There were no delays like that of the ICTY and SCSL. The criminals were captured and their attorneys had scarcely any chance in defending them with the atmosphere that the United States created, both politically and culturally. In all, the tribunal was speedy, but the question is whether "true-justice" existed.

CHAPTER 4

Combining Successful Components to Form a Successful Court

Finally, with the ending of this thesis, we will now observe which components make a successful court. We can now see what components can constitute a successful tribunal court system. It may be possible that in future tribunals, this outline may create an improved, more efficient, and more legitimate tribunal. In order to make the thesis a little more organized for the reader, here is a quick bullet point structure that will be further discussed in the next few pages:

- Legitimacy = International cooperation is key; the United Nations should be involved with the judicial process of the tribunal. This equates to international approval.
  Examples: ICTY & SCSL

- Location = As shown in previous studies, the tribunal's location must be within the state in which the conflict took place. This benefits the locals and helps legitimize the court.
  Examples: SCSL & IST

- Funding = The amount of funding for a court should be correlated to the work that must be done. Appropriate funding is a major factor to accomplishing the job.
  Examples: ICTY & IST

- Time-span = The aim of a successful time-span is to exact a suitable amount of time and effort to ensure a system of true justice. This is blurred with the Iraqi Special Tribunal.
  Examples: ICTY & SCSL

Legitimacy (ICTY & SCSL)

Throughout this study, it became clear that a criminal tribunal must have an affiliation with the United Nations. Not only does the United Nations ensure more international cooperation, but the retroactivity of a legal foundation is already in place. If there happens to be another criminal tribunal (like the possibility of Syria's President Bashar al-Assad), then the precedent of past trials can sentence those criminals. When you look at both the ICTY and the SCSL you see that both courts are extensions of the United Nations. The criticisms of these court are much less than that of the IST. The SCSL and its showcase of Charles Taylor showed the world how international cooperation can sentence an ex-leader. The same can be said with the ICTY. The criticisms of the IST, however, are more in number. The reason for the criticism is mostly due to the fact that the United States and Iraq were the only two countries partaking in the judicial process. **So, in conclusion, legitimacy of a tribunal is its ability to be internationally recognized through its international participation.**

Location (SCSL & IST)

The location of a court is extremely pivotal. The ability for a court to reconcile the horrendous effects of genocide and war crimes for its victims is what justice is all about. Not only should the international community witness the tribunal, but the country affected by the war crimes should have front row seats. Through the data gathered by *Rueteurs* and the *Strategic Puls Group*, we see how tribunals located away from the victims (ICTY) results in negative public perception of the court. Trials located within the devastated country tend to have more positive public perception. The SCSL shows this with its public outreach program. **Essentially**, **the court should be situated locally.**

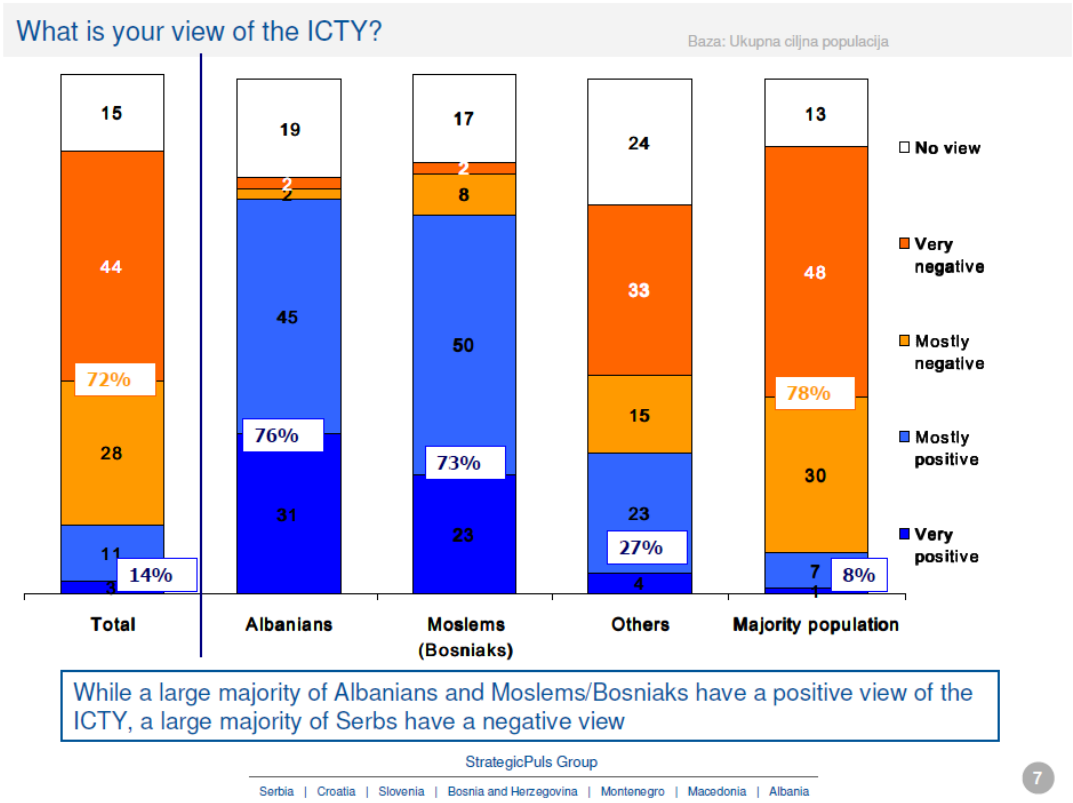
Funding (ICTY, SCSL, IST)

So how can funding make a positive component of a tribunal? The answer lies within the scope of the tribunal itself. The main focus is on the appropriate amount of funding that is necessary to complete the tribunal's undertaking. The ICTY sentenced over 150+ individuals, therefore the large budget. The expenses of the tribunal are great because of many factors such as travel, judicial process, etc. The IST was also a tribunal of great expenditure but the costs are attributed to making the tribunal a "show" for the world. The system had to be perfect and Hussein had to be convicted, no matter what the cost nor international scrutiny. The SCSL had a smaller budget ($30+ million), but when analyzing the court's goals, we see that it is much smaller than that of the ICTY and IST. There were only a few individuals tried and smaller amounts of employees in which to work with. Overall, with this being said, **the tribunal's aim is to have a budget that correlates with the tribunal's assignment and objective.**

Time-Span (ICTY & SCSL)

When discussing the appropriate time-span needed to ensure a more efficient and effective tribunal, it has been shown that the time must be equivalent to that of an appropriate and just sentence. What a tribunal does not want to do is have a speedy trial that might spark international outcry. This is exactly what we saw with Saddam Hussein and the IST. For the ICTY and the SCSL we have a more just and efficient tribunal that allows for the defendants to represent themselves before an "international court" with an agenda for true justice. So, as stated, **the time needed to convict a war criminal must correlate to a just conviction**.

Figure 1



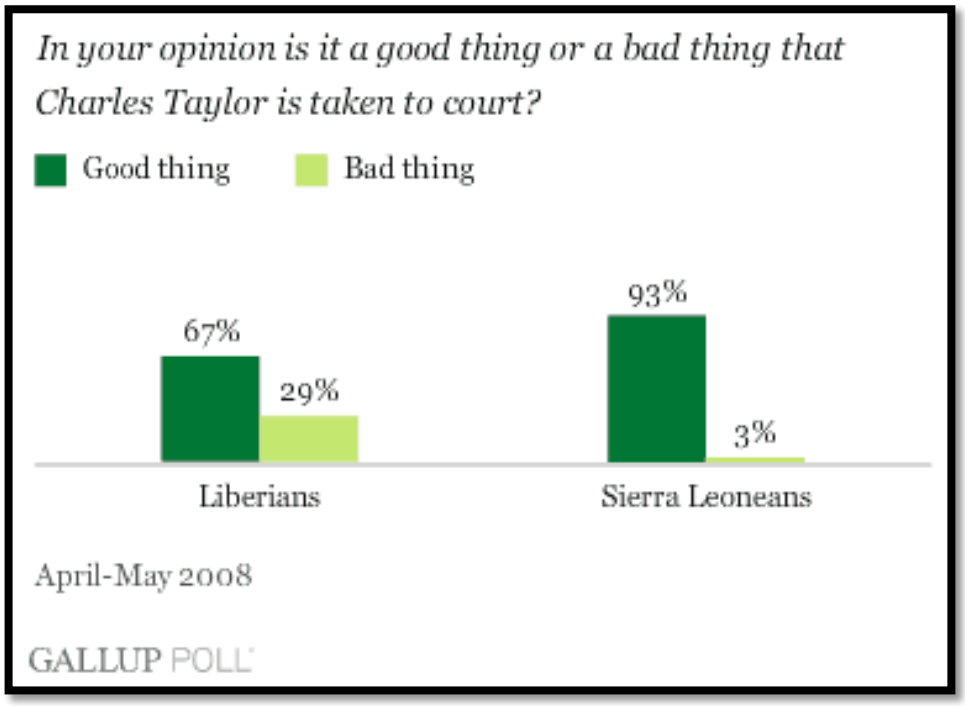
***From www.strategicpulsgroup.com**

Figure 2

REGULAR BUDGET FOR THE ICTY:					
1993	**1994**	**1995**	**1996**	**1997**	**1998**
$276,000	$10,800,000	$25,300,000	$35,430,622	$48,587,000	$64,775,300
1999	**2000**	**2001**	**2002-2003**	**2004-2005**	**2006-2007**
$94,103,800	$95,942,600	$96,443,900	$223,169,800	$271,854,600	$276,474,100
2008-2009	**2010-2011**				
$342,332,300	$301,895,900				

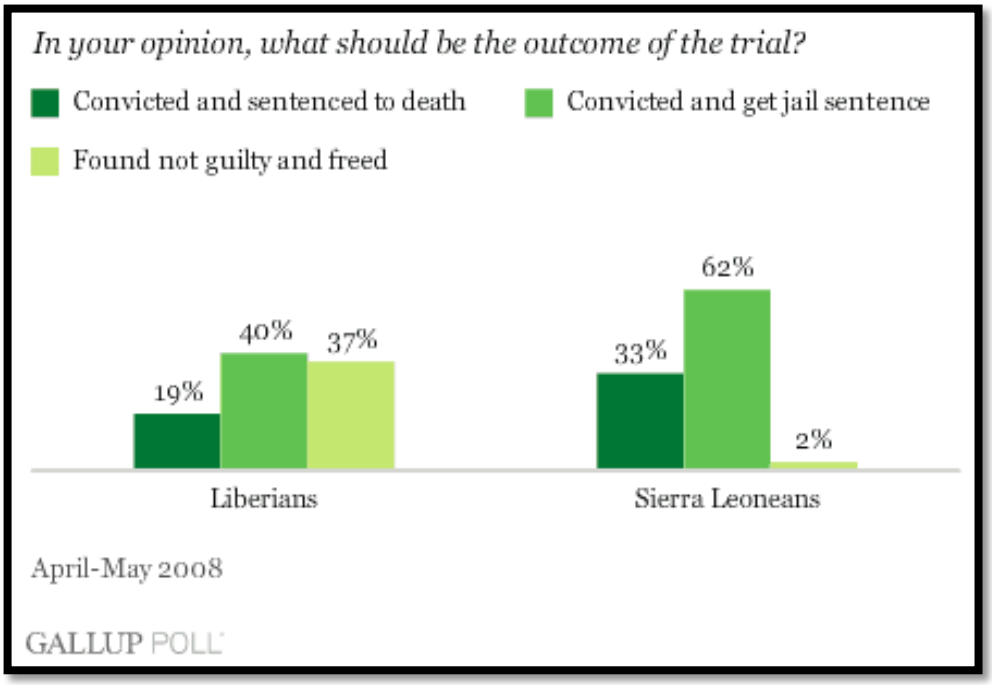
***From www.icty.org**

Figure 3



***Rueters.com

Figure 4



***Rueters.com

Figure 5

SCSL Budget 2004-2005	
Approved Year 2 Budget	$32,534,571
ActualYear2Expenditure	$28,297,574
TotalYear2Pledges	$13,594,997
TotalRevenuesforYear2	$38,815,536

***From the Second Annual Report of the President of the SCSL, 2005**

Figure 6

Contributions by Country	
Country	**Amount**
Australia	66,370
Canada	1,053,619
Czech Republic	70,000
Denmark	645,189
Finland	320,000
Germany	584,000
Greece	25,000
Ireland	855,920
Israel	10,000
Italy	323,440
Luxembourg	51,927
Mauritius	1,500
Mexico	6,000
Netherlands	10,602,999
Nigeria	90,000
Norway	500,000
Oman	10,000
Senegal	55,274
South Africa	30,000
Spain	126,290
Sweden	1,163,436
United Kingdom	6,783,980
United States	15,000,000
Total:	**38,374,944**

*** From the Second Annual Report of the President of the SCSL

Figure 7

2011-2012 Budget for the SCSL

Representation of Budget Decrease from 2004-2005

Years	Freetown	The Hague	Total
2011	**$6,387,400**	**$9,626,000**	**$16,013,400**
2012	**$1,802,900**	**$2,885,700**	**$4,688,600**

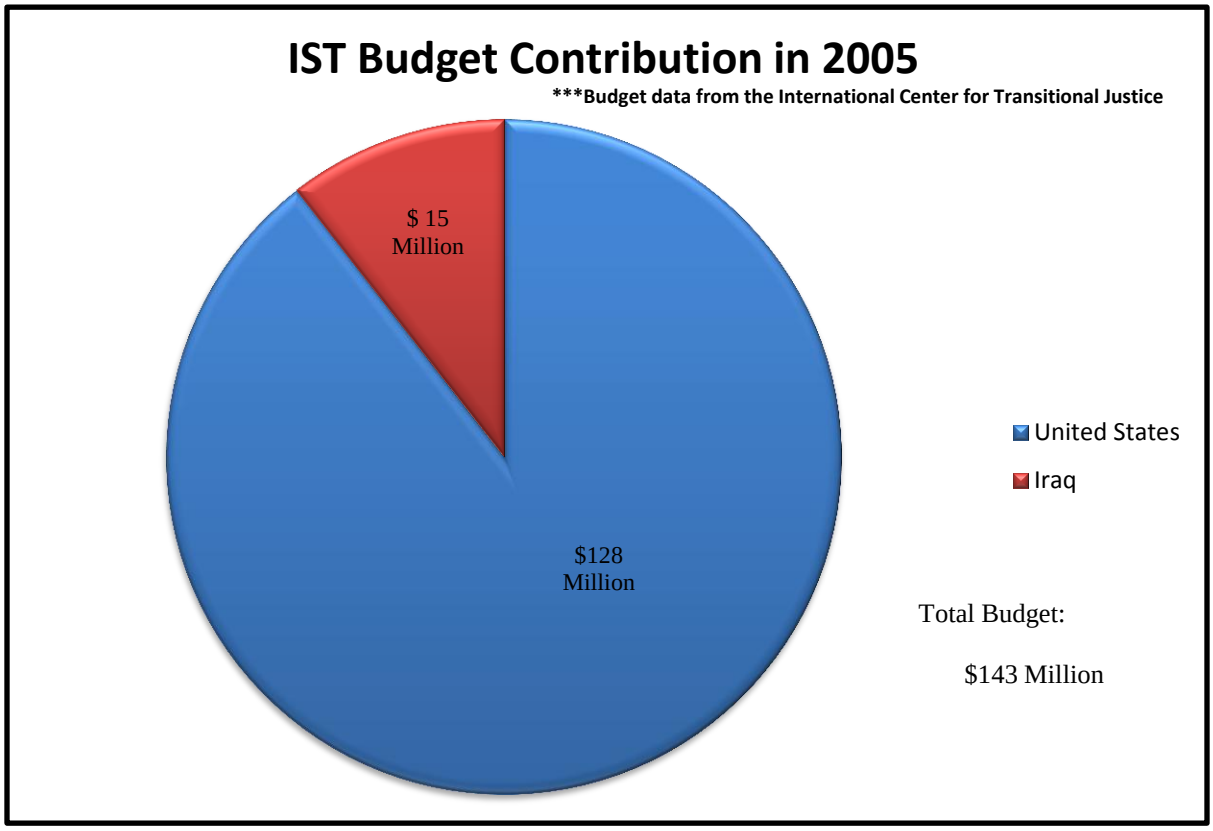
***From Eighth Annual Report of the President of the Special Court for Sierra Leone**

Figure 8 (Second Chart on next page)

Iraqi Special Tribunal *Dujail Trial* Defendants
1. Saddam Hussein = Ex-Leader of Iraq (refused council in the beginning)
2. Taha Yassin Ramadan = Ex- Vice President of Iraq
3. Barzan al-Tikriti = ½ Brother of Hussein / Ex-Head of Intelligence (IIS)
4. Awad Hamed al- Bandar = Former Chief Judge of Iraq
5. Abdullah Kadhem Roweed Al- Musheikhi = Ba'ath Party Official
6. Mizer Abdullah Roweed Al-Musheikhi = Ba'ath Party Official
7. Ali Daeem Ali = Ba'ath Party Official
8. Mohammed Azawi Ali = Ba'ath Party Official

Iraqi Special Tribunal *Dujail Trial* Sentences
1. Saddam Hussein: Death by hanging (Executed Dec 30th, 2006)
2. Taha Yassin Ramadan = Death by hanging (Executed January 2007)
3. Barzan al-Tikriti = Death by hanging (Executed January 2007)
4. Awad Hamed al- Bandar = Death by hanging (Executed January 2007)
5. Abdullah Kadhem Roweed Al- Musheikhi = 15 year sentence
6. Mizer Abdullah Roweed Al-Musheikhi = 15 year sentence
7. Ali Daeem Ali = 15 year sentence
8. Mohammed Azawi Ali = Acquitted for lack of evidence

Figure 9



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