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Leiden  
The Netherlands

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Glasius, M.; Meijers, T.; Heller, K.; Mégret, F.; Nouwen, S.; Ohlin, J.; Robinson, D.

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## **s.VII Anxieties, Ch.29 Inequality of Arms Reversed?: Defendants in the Battle for Political Legitimacy**

**Marlies Glasius, Tim Meijers**

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Edited By: Kevin Heller, Frédéric Mégret, Sarah Nouwen, Jens Ohlin,  
Darryl Robinson

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## (p. 678) Chapter 29 Inequality of Arms Reversed?

### Defendants in the Battle for Political Legitimacy

#### I. Courts as Communicative Institutions

PUTTING ourselves in the shoes of first-time visitors without expert knowledge, we explored the ICC's website in April 2017. We watched a brief animation explaining the work of the ICC, in which a voiceover spoke of 'ratifying', 'states parties', 'retroactive jurisdiction', and '2010 amendments'. Both the 'news' and the 'highlights' section told us that the 'International Criminal Court marks Genocide Awareness and Prevention Month: Victims must come first'. Invited by a tweet to view the latest instalment of an 'in the courtroom' programme on YouTube, we watched an intro of split screen images of people in robes, accompanied by chase-scene music. This was followed, anti-climactically, by a drowsy male voiceover with a French accent, while the camera panned around the courtroom, showing three blue-robed judges (all white men), sundry black-robed officials, and an African man in a suit staring at a computer screen—we think he may be the defendant. Next we saw a pixelated image representing a protected witness, a radio operator, we were told. The rest of the visuals oscillated between pixelated witnesses and people in robes watching computer screens. Our experience illustrates a common finding of social scientists across different international criminal courts: they are typically not good at telling a compelling story about what they do to a wider audience. They seem committed to being as boring and impenetrable as possible.<sup>1</sup>

(p. 679) Nevertheless, we consider international criminal courts as in essence communicative institutions. As we have argued elsewhere, international trials and punishments can constitute suitable responses to episodes of mass violence through their expressive potential.<sup>2</sup> The meticulous presentation of evidence and witness statement communicates truths about at least some of the events that happened during a conflict, and who is—or is not—responsible. It also expresses condemnation of the acts committed. We emphasize the importance of the trial, not just the punishment, as a form of expressive messaging, insisting on the communicative aspects of the judicial process: it can communicate by example how to conduct a fair trial. This communicative potential goes beyond simply sending messages. Rather, as institutions of transitional justice, courts ideally have the potential to contribute to—or should at least aim to contribute to—the transition of violent or repressive contexts to human-rights respecting polities.

We do not take the expressive function of international criminal justice for granted. Instead, we attempt to disentangle what courts *should aim to* communicate from what messages they actually communicate, and to what audiences. There are multiple obstacles to realizing the expressivist potential of international criminal proceedings occurring at different steps in the communicative process. Sometimes the problem is the absence of appropriate means of communication. In certain countries, there might be no critical press to speak of, or there is only limited press freedom. Communication with a population living in poverty, with a limited infrastructure, and low literacy rates raises additional challenges.

In this chapter, we focus on the main 'sending side' obstacle to courts serving their expressive function: due to the adversarial nature of criminal justice proceedings, the messages coming out of the court are not univocal but multi-vocal and often conflicting. Even if we assume that prosecutors and judges can be interested in, and adept at, communicating factual truths and procedural fairness, theirs are not the only voices emerging from the courtroom. The trial offers a stage *not just* for messages conducive to confronting and overcoming the past, but also to the alternative readings and messages voiced by the defence. Defendants, especially high-profile defendants like Karadžić, Taylor,

or Milošević are not passive bystanders listening to the charges made against them. Rather, they seize the opportunity offered by the proceedings to send alternative messages. To be sure, this is not true for all cases. Before the Kenya cases, most defendants at the ICC did not challenge the legitimacy of the Court. When they do mount such a challenge, however, defendants often excel at putting their finger on the weak spots not (p. 680) just in the prosecution's case and rhetoric, but in the international criminal court's right to operate. We focus on these 'defiant defendants'.<sup>3</sup>

In our next section, we will elaborate on why this is so, referring to this structural advantage of defendants in international criminal trials as 'inequality of arms reversed': while defence teams in international trials regularly complain that they cannot match the legal resources of the office of the prosecution, we insist that when it comes to *communicative* resources,<sup>4</sup> defendants have certain typical advantages. Indeed, Martti Koskenniemi<sup>5</sup> has suggested that international criminal trials, faced with high-profile and charismatic defendants, are basically doomed: either they silence the defendant's political rhetoric and become show trials, or they let him pinpoint the bias and inconsistencies in their institutional set-up, and their legitimacy will equally be imperilled. In our next section, we will consider this 'inequality of arms reversed' from the perspective of defendants, from the perspective of prosecutors, and—zooming out—from the perspective of the political contexts in which international criminal courts and trials operate. We will illustrate how defendants Charles Taylor and Radovan Karadžić have used these advantages.

However, *contra* Koskenniemi, we do not believe the message-sending potential of international criminal courts to be doomed by reverse inequality. In Parts III, IV, and V we will put forward three arguments for believing that communicative outcomes of international criminal trials are contingent, not predetermined. In Part III, we will suggest that judgments about the legitimacy of such trials are neither binary nor definitive, audiences and their interpretations vary over time and place. In Part IV, we will argue that, despite certain disadvantages, it is a mistake to think that prosecutors are inevitably incapable of making arguments politically and culturally attuned to local, conflict-affected audiences. We will illustrate this point by drawing on the prosecution's discourse regarding the charge of 'acts of terror' in the Taylor case. In Part V, we will turn to the defence, and suggest that the defendant's own position during a long drawn-out trial rarely remains immutable, the procedure itself may very well have an effect on his attitude. This is exemplified by charting Radovan Karadžić's demeanour over the course of his trial. In our conclusion, we will contend that prosecutors and judges can, and perhaps should, acknowledge the political dimension of international criminal justice procedures, and confront the politics of the defendant head on. This does not, in a context of procedural fairness, turn international criminal trials into show trials.

## **(p. 681) II. Equality of Arms Reversed**

### **A. Defiant Defendants**

Defence teams often complain that the principle of equality of arms is violated in international criminal courts: the defence team is relatively small, it has a limited budget, it does not have enough time to prepare given the enormity and complexity of the charges.<sup>6</sup> These complaints have merit in many cases when it comes to the *legal* battle fought out in court. The office of the prosecutor may well have larger resources to draw on.<sup>7</sup> But when it comes to the *political* battle the defendant engages in, both about the conflict and the legitimacy of the Court itself, it is actually the defence that has a clear advantage. For defiant defendants, the primary audience they seek to address is not necessarily the judges on the bench, but their local constituency. They have a long-standing relationship with that audience, and know how to address it. The prosecution, and sometimes the entire Court, is

fitted into their political story about the conflict, and associated with the defendant's pre-existing enemies.

Obviously, given that this is primarily what the trial is about, defendants will present a competing reading of the truth of the counts in the indictment, going against the prosecution's reading of the defendant's guilt. In doing so, they will often construct an alternative reading of the events that occurred during the conflict, and their role. This alternative reading of who did what to whom during the conflict is not just heard by the judges, but by local audiences as well, either directly through court transmissions, or more often via local media. Indeed, it may be tailored to them. Much more than the prosecution, defendants seize this opportunity to bring the politics of the conflict into the courtroom.

But defendants can go beyond merely presenting an alternative reading of the sources and development of the conflict, they can also aim to depict the Court and—in particular—the prosecution as being *part of*, and partial in, the conflict that provides the context for allegations of war crimes or crimes against humanity. They not only try to undermine the narrative of the prosecution, but—beyond that—try to delegitimize the prosecution, and even the Court. The most famous defiant defendants, including Hermann Göring, Slobodan Milošević, Vojislav Šešelj, Nuon Chea, and most recently Laurent Gbagbo, were all leading figures on their own country's political stage for many years before coming to trial. They are skilled at political oratory and know their own constituencies. Moreover, defendants' courtroom discourses do not come out of nowhere: there are important continuities with their earlier rhetoric as politicians which (p. 682) may give them a certain authority with some constituencies. We will illustrate these points by examining the defence strategies of Charles Taylor before the Special Court for Sierra Leone, and Radovan Karadžić before the Yugoslavia Tribunal, from a communicative, political perspective.

In the Taylor case, his lawyer Courtenay Griffith put Taylor on the stand and examined him as a defence witness in his own case for more than six months, thus giving him a platform to speak in court. Together, they depicted the prosecutor as being partial in the conflict, siding with one of the warring parties, and being of bad moral character. Particularly telling is Griffiths' reference to the slave trade when describing how Taylor was brought to court in The Hague, 'he was taken in chains from the shores of Africa to Holland, thousands of miles away. The country of one of the colonizers of the black race for centuries. A historically familiar journey for some'.<sup>8</sup> Additionally, the prosecution is portrayed as trying to delegitimize attempts at African emancipation.<sup>9</sup>

Taylor went a step further: the prosecution, in his representation, was not merely a political opponent, it represented the continuation of the conflict by other means. The US turned against Taylor, the Taylor defence argued, because he stood up for Liberia, defending its economic interests:<sup>10</sup> 'The United States was not used to Liberian governments before mine telling them yes or no. It was, "Yes, sir. Yes, sir. Yes, sir." And I guess to a great extent they were stunned. And so the decision [to oust Taylor from power] was taken'.<sup>11</sup> The Taylor prosecution is an instrument of regime change,<sup>12</sup> a continuation of the US's past attempts to get Taylor out of the way. The largely American prosecutorial team is referred to as 'political',<sup>13</sup> and—more colourfully—as an 'American Goon-Squad'.<sup>14</sup> Moreover, Taylor argues that the prosecution is engaged in racist and demonizing as well as neo-colonial practices. Griffiths puts to Taylor that the prosecution depicts him as a 'a bloodthirsty, sadistic African', to which Taylor replies:

This is racist. I can say it. It is as racist as it ever gets. David Crane goes before the US House of Representatives and is saying the best way to get to an African leader is through his pocket. All the murderous regimes of Europe throughout World War II coming on, nobody is eating human beings and burying pregnant women and being

as sadistic as this. It's an African—this is as racist as it gets and that's how I feel about it.<sup>15</sup>

(p. 683) Karadžić argued that the prosecution used Muslim 'war tricks' and thus became a 'participant in the war' trying 'to draw this Chamber and this Tribunal into a war that seems to be ongoing in that way'.<sup>16</sup> In an interview Karadžić emphasized that he saw the trial as a continuation of the war, claiming that 'this trial is my shift on the front lines'.<sup>17</sup> Another way Karadžić tried to delegitimize the prosecution was by claiming that the accusation was in fact accusing the entire Serbian population of Bosnia-Herzegovina. He claimed, up to the very last moments of the trial, that the indictment falsely accused him 'and Serbs in general'.<sup>18</sup> Of course, this is technically false, the indictment is about Karadžić's role in the conflict, not about all Serbs or even all Serbs involved in the conflict. But what matters is not so much the truth of the claims, but rather that they are believed. By sketching a picture of the prosecution as an enemy of the Serb people, Karadžić was actively trying to delegitimize the Court in the eyes of the Serbs. The main defendant can, then, present himself as a martyr, facing the Court in order to defend the honour of his people and sacrifice himself to make sure the truth about the case is heard *even* if this will most likely lead to conviction.<sup>19</sup>

Mostly, it is the prosecution that is identified with the enemy, but occasionally the accusation extends to the Court as such. Karadžić said early on in his case that he was 'deeply convinced that this court is representing itself falsely as a court of the international community, whereas it is in fact a court of NATO whose aim is to liquidate me'.<sup>20</sup> The Taylor defence remained a little more ambiguous, especially in court. But in an interview, Taylor's lawyer Courtenay Griffiths did hint that the 'judges are under considerable pressure to convict. A lot of money has been invested in these proceedings by the United States, the United Kingdom and other western countries'.<sup>21</sup>

That Karadžić's and Taylor's team had audiences outside of the courtroom in mind manifests itself in their attitude to the press. Karadžić saw this battle outside of the courtroom as one of the central aspects of the trial, as he emphasized on several occasions. He was clearly aware that the antagonistic nature of the trial gave him a podium. In the closing statement, he remarked somewhat sarcastically that 'it is a shame that this is not a trial by jury because the OTP would fare better. Such courts do not judge the accused. They judge the skills of the parties, whereas the accused sits there like a potted flower just listening. So if this was a trial by jury, Mr. Tieger [the prosecutor] would easily win (p. 684) against me'.<sup>22</sup> Karadžić was far from a potted flower. Besides being a dominant presence in court, he went to great lengths to get access to the media. Tellingly, he titled his motion requesting access to the media *equality of arms in contact with the media*.<sup>23</sup> This is where, for him, the real fight was fought. The trial, as far as he was concerned, was really not so much about him and his role, but about getting the truth about the conflict out, and thus contributing to a sustainable peace in Bosnia Herzegovina:

[F]irst of all, to determine the truth, the truth about our conflict, to determine the truth as I say, and then to defend myself in the second place. I'm not defending myself in actual fact. What I am defending are the people over there who suffered.<sup>24</sup>

He insisted that 'if I can have a fair trial and bring out the truth, it will be a step towards reconciliation', whereas the prosecution's 'lies' and 'false indictment' were a threat to peace.<sup>25</sup>

Taylor too, through his charismatic lawyer, Courtenay Griffiths, clearly aimed to address audiences outside of court with his messages about his role in the conflict and the illegitimacy of the prosecution and—at times—the bench. Griffiths knew how to get Taylor's case into the spotlight. He managed to steal the lime-light from the prosecution on the day of their closing statement by walking out of court, officially because the judges had not

allowed him to deliver his final brief.<sup>26</sup> But the effect was that Griffiths was being held in contempt and the Wiki-leaks cables were the talk of the day, and not the prosecution's closing statement.

We see then, that defendants set great store by (continued) communication with local audiences outside of the Court, that in doing so they have a clear story to tell about the trial as a continuation of the conflict by other means, and the prosecution and sometimes the entire Court as being in league with the enemy.

## **B. Prosecutors**

Some international criminal prosecutors are more rhetorically gifted than others. But even when they are excellent speakers, their expertise is in legal, courtroom rhetoric. In some countries, prosecutors regularly go on to have political careers, but it is never the (p. 685) other way around: unlike defiant defendants, international criminal prosecutors are never ex-politicians. As a consequence of their legal training and lack of political experience, they tend to think of themselves as being concerned solely with the application of the law: they do not see themselves as political actors.<sup>27</sup> Their primary focus is to get the defendant convicted, not to win the hearts and minds of local audiences. Even a relatively showy prosecutor like the ICC's Moreno-Ocampo, for example, when asked in an interview about criticisms to the effect that the prosecution should provide more information to journalists, responded: 'My main objective is to apply the law. I help journalists, but I'm not responsible for communication!'<sup>28</sup>

It is not the case that prosecutors refrain from constructing a political narrative altogether: they clearly tell a story—one that is radically different from the story the defence tells—about the role of the defendant in the conflict. But when it comes to the legitimacy of the trial itself, and the alleged political nature of the trial and the prosecution, the prosecution remains virtually silent. There is great asymmetry, for instance, between the elaborate reflections by Karadžić<sup>29</sup> and Taylor<sup>30</sup> on the nature of the ICTY and SCSL respectively, and the almost complete silence on these issues on the side the prosecution.

## **C. Political Contexts of Courts**

Beyond the political talent, experience, and familiarity of defiant defendants, and the self-limitation by prosecutors in telling a story about their own political position regarding the prior conflict, reverse inequality is in part due to the inevitably political circumstances in which international criminal courts operate, that manifest themselves in three ways.

First of all, there is the fact that the creation of international criminal courts is often a political act. This was certainly true for the Yugoslavia Tribunal, the Rwanda Tribunal, and the Special Court for Sierra Leone. Although the ICC, due to its permanent nature, can perhaps shed some of this political pedigree, the cases where the Court prosecutes after a referral from the Security Council have an undeniable political genesis. (p. 686) Self-referral situations also come with ready-made suspicions of bias in favour of government agents and against government opponents.

Second, the courts invert within political constraints. For the special courts, their jurisdiction is limited and not all prosecutions that might conceivably fall within their jurisdiction may be politically prudent. A prime example here is of course the ICTY's controversial decision not to open investigations into the NATO bombings in Kosovo. The ICC faces similar jurisdictional and political limits. Beyond the eye-catching threats of withdrawal by several African states, the ICC depends on state cooperation—both from signatories and other states, such as the United States—when it comes to arrests, witnesses, and evidence. It is possible that the re-opened preliminary examination of UK

actions in Iraq, or the Mavi Marmara incident, may yet lead to investigations being opened and trials pursued, but at the time of writing the ICC was still failing to get out of Africa.

Third, there is the budget. The SCSL never had stable funding and was dependent on donations. These came mostly from one particular country, namely the United States. This of course lent credibility to Taylor's narrative that the US had been out to get him from the very beginning. The SCSL may be an extreme case, but even in the case of the much more multilateral funding for the ICC, political agendas cannot be absent from the Assembly of States Parties' oversight over the budget.<sup>31</sup>

As we have shown, defiant defendants have clear advantages over the prosecution in the battle for political legitimacy. They are experienced politicians who know their prospective audiences; while the prosecution and the bench alike consist of professional lawyers who typically have neither the skill nor the intention to focus on making their discourses resonate with populations outside the courtroom. In addition, defendants get to focus and embellish on the political roots, constraints, and biases of legal institutions.

Does it matter whether these obstacles are overcome? Overcoming them is not crucial to delivering a fair trial to the defendant, or to securing conviction of those guilty of the crimes listed in the indictment. So, from a strictly legalistic view of international criminal courts, this kind of inequality of arms is not particularly worrisome. This is not what the trial is about.

But if one believes that courts have an expressivist mission,<sup>32</sup> and potentially have a role to play in post-conflict transitions and entrenchment of the rule of law, successful messaging to politically undermine the messages of the prosecution and—ultimately—the (p. 687) judges is very problematic. For courts to play an expressive and potentially transformative role, it matters that they are seen as legitimate by audiences in post-conflict situations. These audiences are unlikely to accept and internalize messages from a discredited institution.

We have shown that, due to their own characteristics, the characteristics of prosecutors, and the character of international criminal courts, defiant defendants have distinct advantages in the battle for political legitimacy. However, we do not conclude that the communicative outcome of international criminal trials is bound to favour the defendant. In the next three parts, we will elaborate and illustrate three counter-arguments: legitimacy is multi-faceted and fluid, not binary; prosecutors can and do sometimes produce discourses that resonate with post-conflict audiences; and defiant defendants may find it hard to keep up their defiance through years of trial.

### **III. Legitimacy is Multi-Faceted, Contingent, and Fluid**

As we have argued so far, the primary threat to the realization of the expressive and symbolic potential of courts stems from the defendants' capacity to question and create doubt about the legitimacy of the case presented by the prosecution, and the Court in general. Elsewhere we have elaborated on the *normative* legitimacy of international criminal courts,<sup>33</sup> but here we are primarily concerned with unpacking *sociological* legitimacy. Sociological legitimacy, or acceptance of the authority of courts and their trials and verdicts, we argue, is not binary. International criminal justice has multiple audiences, each of which may be internally divided, and their assessment of legitimacy will vary depending on who and where they are, but also when they are, i.e., over time.

Those who argue that international criminal justice has an inherent legitimacy problem, ripe for political exploitation by defendants, tend to focus on short-term and local legitimacy. Koskeniemi for instance wrote at the beginning of the Milošević trial that: '[i]f Milošević succeeds in becoming a representative of one, perhaps disputed but still respectable, view of [Balkan] history he will have attained two victories', namely to deprive a judgment against him of moral rightness as well as achieve martyrdom for himself.<sup>34</sup> As it



happened, Milošević managed to deprive the ICTY from even handing down any verdict, but the point here is that Koskenniemi's 'if' should in fact be read as an open question, the answer to which may vary within and between audiences as well as over time.

The history of international criminal justice is still relatively short, but the Nuremberg experience would suggest that the hindsight reputation of a Tribunal may improve spec(p. 688) tacularly even with the very group that the defendant claims to represent.<sup>35</sup> A close reading of the Göring trial especially shows his discursive tactics to be very similar to those of today's defiant defendants. The normative legitimacy of the Nuremberg Tribunal he disputed was in many ways more problematic than that of the ICTY or the ICC. Yet Göring's view of history has not become respectable in Germany (although its currency may again be on the rise!), and he is not remembered as a martyr today. Milošević's legacy and that of the ICTY will not necessarily follow the same path, but they could do so, depending on social, political, and cultural developments in Serbia and its neighbours. While the show trials of Zinoviev and Kamenev are unlikely to ever be revisited and rehabilitated, in Russia or beyond, the long-term acceptance of the ICTY trials in the region is still an open possibility.

In the short term, the question whether 'inequality of arms reversed' has an impact on the way local populations think of courts is more easily assessed. Thanks especially to the Human Rights Center at Berkeley, there are numerous surveys and some more in-depth insights into the attitudes of violence-affected populations to transitional justice in general and international criminal justice in particular. Their most consistent finding, however, seems to be that local populations typically have little awareness or knowledge of international criminal trials at all.<sup>36</sup> Moreover, these surveys give us relatively little insight into the resonance of specific discourses by defendants and prosecutors in specific cases. Still, there is plenty of anecdotal evidence that in some cases, the defendants are absolute winners with their local constituencies. This has often been the story in the successor states to the former Yugoslavia, but the strongest example perhaps is that of former ICC indictees William Ruto and Uhuru Kenyatta, both charged with crimes related to electoral violence. Despite early popular support for prosecutions,<sup>37</sup> these reconciled rivals appear to have won national elections primarily *because of* their joint opposition to the ICC.<sup>38</sup>

While it is clear that local legitimacy is heavily contested, and defendants may often have an advantage as well as a stronger interest in winning over this audience than the prosecution, we know next to nothing about legitimacy with non-local audiences. Stepping away from our own professional preoccupations, we may safely assume that (p. 689) most of the world population most of the time does not know or care about the particular discourses of defendants and prosecutors in international criminal justice cases beyond their own politics. They simply have other priorities.

More interesting unknown territory are the views of 'international justice elites' who may have a stake in, and influence on, international criminal justice. These include policy-makers in justice department, diplomats, officials at intergovernmental organizations, human rights defenders, academics, and practising lawyers. We do not know how well these elites follow individual trials, and what informs their views. They may be the liberal ideologues, with a natural bias against human-rights violating 'others', and a blind spot for structural causes of violence, that critical legal scholars sometimes make them out to be,<sup>39</sup> or they may have more nuanced or divided views. If there is disenchantment, has it preceded or followed the political disavowal of the ICC in recent years, particularly but not exclusively in Africa? There is simply no empirical baseline of surveys or structured interviews equivalent to the work of Pham, Vinck, and Stover that focuses on these elites. This should be an urgent area of further empirical research for those who take a sociological view of international criminal justice.

## IV. Resonant Prosecution Discourses

There is a view in the critical literature on international criminal justice that prosecutors are often either unwilling or unable to appeal to local audiences, and prefer to address these international justice elites instead. Kelsall has devoted a book-length study to the various ways in which the Special Court for Sierra Leone, and its prosecution in particular, failed to understand and appeal to local norms and understandings of violence.<sup>40</sup> Mégret, while recognizing that the outcome of what he calls 'stigmatization practices' remains contingent, also assumes the 'inability of the ICC to speak quite the language of stigma spoken within given societies'.<sup>41</sup> Kendall and Nouwen<sup>42</sup> argue that the Rwanda Tribunal's legacy work has been 'primarily oriented toward international criminal law's sites of production in The Hague and elsewhere, and even more broadly toward global policymakers, who establish and fund international criminal tribunals'.

It is intuitive that prosecutors may be more attuned to the norms and ways of thinking of international justice elites than to those of local audiences, and there is much anecdotal (p. 690) evidence pointing in this direction. If it were the case that international prosecutors always—consciously or unconsciously—aim to appeal to international justice elites, whereas defendants just aim to appeal to their own local support base, the answer to the legitimacy conundrum would be as analytically elegant as normatively troubling. If this were so, 'equality of arms' would be the wrong metaphor altogether, because prosecutor and defendant would only appear to be doing battle. In reality, they would be talking past each other, each addressing, beyond the judges sitting before them, an entirely different audience. But like any other stylized local/global opposition, this is too pat, too deterministic.

In order to demonstrate the more open, less predetermined nature and reception of rhetorical struggles between prosecutor and defendant, we will present a case that can serve as a counterexample: the discourses<sup>43</sup> surrounding 'acts of terrorism' in the Special Court for Sierra Leone (SCSL)'s case against Charles Taylor, and their reception by local elites in Liberia. We present this as a 'Sinatra case'<sup>44</sup>: a least-likely case for the local resonance of a prosecutorial discourse, for several reasons. The main financial backer of the SCSL, which largely relied on voluntary contributions, was the United States, and despite the formal hybridity of the Court, the prosecutorial team was almost entirely made up of Americans. As mentioned earlier, it had a well-documented history of failing 'in crucial ways to adjust to the local culture in which it worked',<sup>45</sup> and more particularly to recognize the local political ramifications of its prosecutorial strategies. While the SCSL's outreach in Sierra Leone was better thought-out and more grounded in local civil society than the outreach efforts of the ICTY or the ICC,<sup>46</sup> its outreach in Taylor's home country Liberia was virtually non-existent.<sup>47</sup> Liberia, moreover, founded by African Americans without consultation of the majority indigenous population, has a more problematic relation with the United States than any other West African nation. Moreover, the first charge against Charles Taylor was the peculiar crime of 'acts of terrorism', which could easily be considered as more connected to the US obsession with terrorism than to the interrelated wars of West Africa's recent past, and would therefore be an unlikely crime to find local resonance.

(p. 691) Nonetheless, the prosecution in the Taylor case did make a concerted effort to 'vernacularize' the concept of terror and relate it to local idioms. While the defence engaged in the opposite move of associating terror with terrorists and with antagonism to the United States, we found the prosecution's framing clearly resonated with local elite respondents.<sup>48</sup> Like the defendants in the three preceding group trials at the SCSL, Charles Taylor was charged with 'acts of terrorism', with a reference to the Geneva Conventions and Additional Protocols. And as with the defendants in the AFRC and RUF trials, with

whom he was alleged to be acting in a joint criminal enterprise, it was the first count listed against him.

In her summary of the prosecution case, prosecutor Hollis at once transposed the term 'terrorism' from the indictment into 'terror', and argued that 'terror may also mean or include extreme fear'.<sup>49</sup> The prosecutor went beyond the case's temporal and territorial jurisdiction to argue that instilling fear was Taylor's primary tactic, in the Liberian as in the Sierra Leonean war. She also cross-examined Taylor himself at some length on the meaning of terror, and got him to agree that 'terror is fear'<sup>50</sup> and that to 'instill fear, that's an act of terror'.<sup>51</sup> The allegation of the use of terror, intended to create or instil fear, was then associated in the prosecution's speeches with a phrase from the RUF rebels' own vocabulary, 'making fearful', which could apply to people, areas, or the campaign itself. A few themes related to 'making fearful' were evoked by the prosecutors. The first was the AFRC/RUF attack on Freetown of January 1999 that, according to various prosecution witnesses, Taylor ordered should be made 'more fearful than any other', either to save ammunition or to assure victory,<sup>52</sup> particularly by burning down houses and killing civilians. The second theme was that of the RUF's practice of amputations,<sup>53</sup> the 'trademark atrocity of Sierra Leone',<sup>54</sup> and of carving its initials into people's skin with a knife.<sup>55</sup> The third referred to the RUF practices of displaying human body parts at crossroads and checkpoints.<sup>56</sup> The fourth was a single, particularly gruesome incident used (p. 692) by the prosecution to symbolize the 'terrorism' or fearfulness of the RUF, and hence also of Charles Taylor: it concerns the testimony of a woman who heard the cries of children being killed, was forced to carry a bag filled with human heads, discovered her own children's heads among them as she was made to empty the bag, and was forced to laugh about the discovery.<sup>57</sup> Thus, the prosecution made a skilful effort to 'vernacularize' the charge of terrorism, by attaching it to the phrase 'making fearful', which it demonstrated was widely used by the RUF, and using Charles Taylor's cross-examination to strengthen the credibility of this connection.

Indeed, Liberian opinion-leaders, asked about their perceptions of the Charles Taylor trial,<sup>58</sup> nearly all had a strong, sometimes visceral reaction to the question: 'What does the word "terror" mean to you?' A youth leader said it meant '[e]xtreme wickedness, lack of fear of God. Terror, terrorism, it comes from Al-Qaeda, we didn't know it was also in Africa. It gives me the jitters, it makes me reflect on the past'.<sup>59</sup> A young NGO worker paused before saying '[i]t means a lot. To clearly define what it is, what it does, I cannot say because there is so much trauma. I can say it is the worst side of human beings'.<sup>60</sup> According to a student leader and strong critic both of Charles Taylor and of the United States, it meant 'destruction of lives, killing indiscriminately, civilians in the community, defenceless, harmless people. It is not having the right to freely express yourself, having your civil liberties trampled upon'.<sup>61</sup> A women's rights activist said '[t]error is so frightening, so intimidating, without sensitivity, cold'.<sup>62</sup>

In answering the question whether Charles Taylor was a terrorist, respondents were clearly aware of the post 9/11 global context of such a designation, but disagreed about whether it was appropriate to apply it to Charles Taylor. The women's rights activist cited above said that '[t]errorist is a different thing [from terror]. It is a phrase that we have heard since 9/11 ... I wouldn't call Taylor a terrorist, not in the same context as Zarkawi'.<sup>63</sup> Similarly, the student leader said '[s]o he wreaked terror, but again, the word has so many different meanings. Post 9/11 it has a different connotation. For the Americans the (p. 693) definition is anyone with an explosives jacket'.<sup>64</sup> According to a human rights worker too, '[w]hat it means is someone out of touch with the US'.<sup>65</sup> On the other hand, another NGO worker held that '[b]ecause the definition of terror was not in the public language, [Taylor] has not been seen as a terrorist, but from the perspective of where we are now, of course he is a terrorist'.<sup>66</sup> And a development worker believed that '[t]errorists are people who go into

another country, disturb peaceful citizens, destabilize',<sup>67</sup> a guarded but clear enough reference to Taylor.

We do not try to argue here that the prosecution and conviction of Charles Taylor was broadly construed as legitimate in Liberia. Instead, we make a smaller and more precise claim that has a direct bearing on the 'inequality of arms reversed' problem: even in the most unlikely circumstances, prosecutorial teams can be interested in, and indeed capable of, making locally resonant arguments. Even a defendant with vastly superior local knowledge, considerable rhetorical skills, and extensive leeway to tell his story in court, such as Charles Taylor, cannot be assumed to have an automatic competitive advantage in resonating with the local audience he may be seeking to address.

## V. Defendant Tamed by the Process

In this part we want to explore another mechanism that may affect the impact of 'inequality of arms reversed' on the expressive potential of international criminal courts. The defiant defendant, while initially coming into the courtroom with the single-minded aim of exposing the illegitimacy of the proceedings, may over the long months and (usually) years of trial sessions get drawn into the procedural games he set out to reject, and be tamed by them. We will illustrate this point by looking closely at the shifting attitude of the self-representing defendant Radovan Karadžić during his trial.

As we have noted above, Karadžić early in his trial seemed to follow a similar strategy to Milošević, Šešelj, and later Mladić: full-blown defiance in the face of the Court. In the pre-trial proceedings, he attacked the Court head on:

I'm deeply convinced that this Court is representing itself falsely as a court of the international community, whereas it is in fact a court of NATO whose aim is to liquidate me. It is, therefore very hard for me to express my standpoint on anything before this is cleared up. I have stopped using a false name so I think all parties should do the same.<sup>68</sup>

(p. 694) And:

I will defend myself before this institution as I would defend myself before any natural catastrophe, to which I also deny the right to attack me.<sup>69</sup>

Additionally, Karadzic asked to have one of the judges removed because of a worry about partiality.<sup>70</sup> Yet already in his opening statement, we find a different defendant. Although Karadžić continued to challenge the *jurisdiction* of the Court over his case, based on the alleged deal with Richard Holbrooke that granted him immunity, he no longer pointed his arrows at the judges and the Court in general. It was—as we pointed out earlier—the *prosecution* that received Karadžić's scorn, and the *prosecution* that was being accused of betraying the ideals of international justice. Indeed, Karadžić moved on to that it 'is with great enthusiasm that I [Karadžić] am preparing for these proceedings', and that he has been 'acting in good faith in order to create a process, a trial, that is going to be important to us, the people back there, and also for international justice and international law'.<sup>71</sup>

In the closing statement, finally, Karadžić and his lawyer Robinson behaved very 'professionally'—i.e., they focused almost exclusively on the terms of the indictment. It is only at the very end that Karadžić took a few stabs at the prosecution—repeating his complaints that they tried to incriminate 'me and Serbs in general'.<sup>72</sup> It was the prosecution that through its unfair treatment risked undermining the point of international criminal justice.<sup>73</sup> He affirmed the importance of having accountability through international

criminal justice, and at no moment attacked either the legitimacy or the legality of the Court itself:

I am in favour of international justice. There must be courts that would make sure that a criminal who gets into power does not kill people, but it would be a huge failure of that international justice if wrong decisions were made by a court like that.<sup>74</sup>

We do not, of course, know *why* Karadžić opted not to obstruct the Courts' proceedings during the entire trial. Perhaps it is because continued non-cooperation with the Court, even if appreciated by his target audience, would effectively deprive him of the opportunity to tell his story about the conflict and the case. Or perhaps Karadžić could not resist showing off his rapidly achieved legal prowess. Whatever the reason, this formal cooperation inevitably sent a message. A defendant taking the stand as a witness, or engaging with the evidence offered by the prosecution, as spokesperson of his own (p. 695) defence team, grants an air of legitimacy to the proceedings and constrains the extent to which he can undermine the proceedings as such.

Given the length and nature of the proceedings, they may 'tame'—or at least constrain—the defendant to some extent. At the same time, in our other exemplary case, Charles Taylor remained antagonistic towards the Court and the prosecution until the very end. Both Taylor and his team backed off from attacking the judges' partiality head on in court, but then Griffiths did cast aspersions on the impartiality of the bench in the media. While we should not generalize too much from just two cases, it is remarkable that it is the self-representing Karadžić who is to some extent transformed through the trial, while Taylor, supported by his flamboyant QC, remained defiant from beginning to end.

## VI. Conclusion

To conclude, we think that high-profile defendants do have the upper hand in the battle for local legitimacy, and that this poses a considerable threat for the expressivist enterprise. If the defiant defendant succeeds in undermining the perceived legitimacy of the international criminal justice institution in the eyes of key local audiences, the Court's messages—about what happened during the conflict, who is guilty, and how to respond to violence through impartial procedures—will not be heard or internalized.

Yet we have also tried to show that there are reasons not to be deterministic about this outcome. Insofar as audiences for international criminal trials have been researched, the focus has been too exclusively on the short-term responses of directly affected communities, not on *longue durée* interpretations or broader audiences. We have also shown that prosecutors *can* connect to local populations even if faced with a high-profile defendant with plenty of ammunition to shed doubt on the legitimacy of the Court. Finally, we have suggested that by having to interact in a courtroom situation on a daily basis for an extensive period of time, some defiant defendants (such as Karadžić) come to implicitly or even explicitly affirm the legitimacy of the Court. These mechanisms may balance out inequality of arms reversed *without* requiring the prosecutor or the judges to engage directly with the political challenges raised by the defence.

In addition, we would suggest that, rather than continuing to claim that international criminal prosecutions have nothing to do with politics, prosecutors and to some extent even judges should play a more active role in countering the political and delegitimizing messages of the defendants. An expressivist understanding of the function of international criminal justice would have them explain that the trial *does* have a political purpose, to teach the rule of law by example, but that this purpose can only be achieved through

procedural fairness and acceptance of the possibility of acquittal. Such an understanding of politics in the courtroom need not turn international criminal trials into show trials.

(p. 696) The exact direction and limits of a more political conception of international criminal justice, the tensions and prioritization between procedural and expressivist demands, and the proper distinctions between prosecutorial and judicial responsibilities all require more work in legal theory and philosophy. Nonetheless, some steps are unproblematic. While high-profile defendants do an excellent job of pointing out structural biases in international criminal justice, they also cross the line into innuendo and falsehood. Prosecutors and judges often remain passive in light of such challenges. They can do much more to counter such misinformation, without turning their case into a political trial. They could defend the purposes of trial as they see them, and make their case to publics outside the courtroom, using the Court as a stage to address these audiences but also by following the lead of the defiant defendant by engaging actively with the media. Judges and prosecutors should articulate and communicate a vision about what they wish their trial to express. This could change the way international courts are perceived and understood by different present and future audiences. But it requires them to get out of their comfort zones, recognizing, reflecting on, and embracing the extra-judicial dimension of international criminal trials.

## Footnotes:

<sup>1</sup> See also Chapter 25 by Wouter Werner and Sophia Stolk, 'Moving Images: Modes of Representation and Images of Victimhood in Audio-Visual Productions' in this volume.

<sup>2</sup> Tim Meijers and Marlies Glasius, 'Trials as Messages of Justice: What Should Be Expected of International Criminal Courts' (2016) 30(4) *Ethics and International Affairs* 429 (hereafter Meijers and Glasius, 'Trials as Messages of Justice'). For similar expressivist defences of international criminal justice, see also Mark Drumbl, *Atrocity, Punishment and International Law* (CUP 2007); Robert Sloane, 'The Expressive Capacity of International Law' (2007) 43 *Stanford J of Intl L* 39; Diane Marie Amann, 'Group Mentality, Expressivism, and Genocide' (2002) 2(2) *Intl Crim L Rev* 93; Mirjan Damaska 'What is the Point of International Criminal Justice?' (2008) 83 *Chicago-Kent L Rev* 329; Bill Wringe 'Why Punish War Crimes' (2006) 25(2) *Law and Philosophy* 159.

<sup>3</sup> Frédéric Mégret, '"Bring Forth the Accused!" Defendant Attitudes and the Intimate Legitimacy of the International Criminal Trial' (2005) 36(3) *Ariz. J. Int'l & Comp. L.* 397 (hereafter Mégret, '"Bring Forth the Accused"').

<sup>4</sup> By communicative resources, we mean rhetorical advantages, not actual monies that a defendant may be able to spend on communication outside the courtroom.

<sup>5</sup> Martti Koskeniemi, 'Between Impunity and Show Trials' (2002) 6 *Max Planck YB of United Nations Law* 1 (hereafter Koskeniemi, 'Between Impunity and Show Trials').

<sup>6</sup> Karadžić complained several times about inequality of arms, for example by pointing out that his family is translating documents for him. See *The Prosecutor v. Karadžić*, IT-95-5/18, 991/3-8; 991/17-992/3; 2376/7-8; 2380/4-14; 2382/9-10; 2260/17-18; 2261/1-2; 12,945/1-2.

<sup>7</sup> See for instance Geert-Jan Alexander Knoop, 'The Dichotomy Between Judicial Economy and Equality of Arms Within International and Internationalized Criminal Trials: A Defense Perspective' (2005) 28(6) *Fordham Intl L Rev* 1566.

<sup>8</sup> *The Prosecutor v. Charles Ghankay Taylor* (Trial Transcript) SCSL-2003-01-PT, (13 July 2009) 24294, lines 8-13 (Trial Chamber II).

- <sup>9</sup> *The Prosecutor v. Charles Ghankay Taylor* (Trial Transcript) SCSL-2003-01-PT, 29970, lines 10–12.
- <sup>10</sup> For Taylor’s perspective on his conflict with Mobil Oil, see *The Prosecutor v. Charles Ghankay Taylor* (Trial Transcript) SCSL-2003-01-PT, 32151, lines 17–ff.
- <sup>11</sup> *The Prosecutor v. Charles Ghankay Taylor* (Trial Transcript) SCSL-2003-01-PT, 31368, line 4.
- <sup>12</sup> Taylor and Griffiths use this term 36 times during the trial, see master frame, attachment to Marlies Glasius and Tim Meijers, ‘Constructions of Legitimacy: The Charles Taylor Trial’ (2012) 6(2) *Intl J of Transitional Justice* 229 (hereafter Glasius and Meijers, ‘Constructions of Legitimacy’).
- <sup>13</sup> *The Prosecutor v. Charles Ghankay Taylor* (Trial Transcript) SCSL-2003-01-PT, 49397, line 8.
- <sup>14</sup> *The Prosecutor v. Charles Ghankay Taylor* (Trial Transcript) SCSL-2003-01-PT, 32283, lines 19–23.
- <sup>15</sup> *The Prosecutor v. Charles Ghankay Taylor* (Trial Transcript) SCSL-2003-01-PT, 29904, lines 23–29. As we have pointed out elsewhere, this charge on behalf of the defence team does not fit the prosecution’s narrative: it does not depict Taylor as barbaric or sadistic, but rather as a rational and calculating villain (Glasius and Meijers, ‘Constructions of Legitimacy’ (n 12) 250).
- <sup>16</sup> *The Prosecutor v. Radovan Karadžić* (Trial Transcript) IT-95-5/18, (1 March 2010) 841, lines 1–5.
- <sup>17</sup> Marcus Papadopoulos, ‘Interview with Radovan Karadzic: the other side of the Bosnian Story’ (*Serbianna*, 14 May 2011) <<http://serbianna.com/analysis/archives/896>> accessed 28 June 2018.
- <sup>18</sup> *The Prosecutor v. Radovan Karadžić* (Trial Transcript) IT-95-5/18, 48,027, line 3.
- <sup>19</sup> Karadžić pointed out, in his closing statement, that he knew that having a lawyer would have served his case better. *The Prosecutor v. Radovan Karadžić* (Trial Transcript) IT-95-5/18, 48,030 (‘I care more about the truth than about the form. I know that justice and the law are not always the same thing, but I care more for justice and the truth, and that’s why I chose to represent myself, not because I’m such a fool’ lines 19–24).
- <sup>20</sup> *The Prosecutor v. Radovan Karadžić* (Trial Transcript) IT-95-5/18, (29 August 2008) 30, lines 17–22.
- <sup>21</sup> Thijs Bouwknegt, ‘Taylor Trial under Spotlight: Interview’ (*Radio Netherlands Worldwide*, 25 August 2010) <<https://bouwknegt.wordpress.com/2010/09/14/taylor-trial-under-spotlight-interview-courtenay-griffiths/#more-43>> accessed 28 June 2018.
- <sup>22</sup> *The Prosecutor v. Radovan Karadžić* (Trial Transcript) IT-95-5/18, 48,025, lines 12–16.
- <sup>23</sup> Karadžić requests for open communication with the press: *The Prosecutor v. Radovan Karadžić* (Motion for equality of Arms in contact with news media) IT-95-5/18-PT, (1 May 2009); see also *The Prosecutor v. Radovan Karadžić* (Pre-Trial Transcript) IT-95-5/18-PT, (6 May 2009) 228–9 for Karadžić’s arguments with regard to publicity.
- <sup>24</sup> *Prosecutor v. Radovan Karadžić* (Trial Transcript) IT-95-5/18, 43, lines 13–17.
- <sup>25</sup> *Prosecutor v. Radovan Karadžić* (Trial Transcript) IT-95-5/18, (1 March 2010) 840, lines 19–24.

- <sup>26</sup> See, e.g., Afua Hirsch, 'Charles Taylor's defence lawyer storms out of war crimes court' (*The Guardian*, 8 February 2011) <<https://www.theguardian.com/world/2011/feb/08/charles-taylor-defence-walks-out-court>> accessed 28 June 2018.
- <sup>27</sup> See, e.g., Sarah Nouwen and Wouter Werner 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan' (2010) 21(4) *The European J of Intl L* 941, 942. Although the ICTY *did* get involved considerably in politics, for example by playing a role in the admission talks of Serbia to NATO and the European Union. See Marlene Spoerri and Annette Freyberg-Inan 'From Prosecution to Persecution: Perceptions of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in Serbian Domestic Politics' (2008) 11(4) *J of Intl Relations and Development* 350.
- <sup>28</sup> 'Moreno Ocampo: Impunity was once the rule, now it's the exception' (*Radio Netherlands Worldwide*) <<https://www.rnw.org/archive/moreno-ocampo-impunity-was-once-rule-now-its-exception>> accessed 28 June 2018.
- <sup>29</sup> Tim Meijers and Marlies Glasius, 'Expression of Justice or Political Trial? Discursive Battles in the Karadžić Case' (2013) 35(3) *Human Rights Q* 720, 742-5.
- <sup>30</sup> Glasius and Meijers, 'Constructions of Legitimacy' (n 12) 240-1.
- <sup>31</sup> Sara Kendall, 'Commodifying Global Justice: Economies of Accountability at the International Criminal Court' (2015) 13 *J of Intl Crim Justice* 113.
- <sup>32</sup> We defend our particular version of the expressivist role for international courts in Meijers and Glasius, 'Trials as Messages of Justice' (n 2) in which we argue that international criminal trials might—and should aim to—contribute to transitional justice by sending messages that reaffirm the legal order, establish truths, recognize the wrong done to the victims, and educate the general public. These messages are primarily aimed at contributing to the (re-)establishment of well-functioning societies (437-38). However, the concern raised here is a worry for expressive and communicative views on the goal of criminal justice proceedings more generally.
- <sup>33</sup> Meijers and Glasius, 'Trials as Messages of Justice' (n 2).
- <sup>34</sup> Koskenniemi, 'Between Impunity and Show Trials' (n 5) 32.
- <sup>35</sup> Susanne Karstedt, 'The Nuremberg Tribunal and German Society: International Justice and Local Judgement in Post-conflict Reconstruction' in David A Blumenthal and Timothy L H McCormack (eds), *The Legacy of Nuremberg: Civilising Influence or Institutionalised Vengeance?* (Brill 2007).
- <sup>36</sup> Phuong Pham and others, 'Forgotten Voices: A population-based survey of attitudes about peace and justice in northern Uganda' (1 July 2015) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1448371](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1448371)> accessed 28 June 2018; Patrick Vinck and others, 'Living with Fear: a population-based survey on attitudes about peace, justice, and social reconstruction in eastern Democratic Republic of the Congo' (19 August 2008) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1447623](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1447623)> accessed 28 June 2018; Patrick Vinck and Phuong Pham, 'Outreach Evaluation: The International Criminal Court in the Central African Republic' (2010) 4(3) *Intl J of Transitional Justice* 421.
- <sup>37</sup> Frédéric Mégret 'Practices of Stigmatization' (2013) 76(3-4) *Law and Contemporary Problems* 287, 315 fn118 (hereafter Mégret, 'Practices of Stigmatization').
- <sup>38</sup> Sara Kendall '“UhuRuto” and other Leviathans: the International Criminal Court and the Kenyan Political Order' (2014) 7(3) *African Journal of Legal Studies* 399, 406-12.



- <sup>39</sup> See for instance Immi Tallgren, 'The Sense and Sensibility of International Criminal Law' (2002) 13(3) *European J of Intl L* 565; more recently Christine E. J. Schwöbel 'The Comfort of International Criminal Law' (2013) 24(2) *Law and Critique* 169. Both texts tend to conflate characteristics of international criminal law with the imputed ideology of its practitioners.
- <sup>40</sup> Tim Kelsall, *Culture under Cross-Examination* (CUP 2009) (hereafter Kelsall, *Culture*).
- <sup>41</sup> Mégret, 'Practices of Stigmatization' (n 37) 317.
- <sup>42</sup> Sara Kendall and Sarah Nouwen, 'Speaking of Legacy: Towards an Ethos of Modesty at the International Criminal Tribunal for Rwanda' (2016) 110(2) *American J of Intl L* 212, 230–1.
- <sup>43</sup> See Glasius and Meijers, 'Constructions of Legitimacy' (n 12) for a longer discussion of our approach to discourse analysis.
- <sup>44</sup> Jack Levy, 'Case Studies: Types, Designs, and Logics of Inference' (2008) 25(1) *Conflict Management and Peace Science* 1 ('if I can make it there, I can make it anywhere') 12.
- <sup>45</sup> Kelsall, *Culture* (n 40) 3. See also Sara Kendall, 'Contested Jurisdiction: Legitimacy and Governance at the Special Court for Sierra Leone' (PhD Thesis, U of California, Berkeley 2009) especially ch 4.
- <sup>46</sup> Rachel Kerr and Jessica Lincoln, 'The Special Court for Sierra Leone: Outreach, Legacy and Impact: Final Report' (February 2008) War Crimes Research Group, Department of War Studies, Kings College, London <<http://www.rscsl.org/Documents/slfinalreport.pdf>> accessed 28 June 2018; Donna Arzt, 'Views on the Ground: the Local Perception of International Criminal Tribunals in the Former Yugoslavia and Sierra Leone' (2006) 603 *The Annals of the American Academy of Political and Social Science* 226; Michael Scharf and Ahran Kang, 'Errors and Missteps: Key Lessons the Iraqi Special Tribunal Can Learn from the ICTY, ICTR and SCSL' (2005) 38(3) *Cornell Intl L J* 911, 917–18.
- <sup>47</sup> Marlies Glasius, '“It Sends a Message”: Liberian Opinion Leaders' Responses to the Trial of Charles Taylor' (2015) 13(3) *J of Intl Crim Justice* 419 (hereafter Glasius, '“It Sends a Message”').
- <sup>48</sup> For a more detailed discussion of prosecution and defence discourses on terror, see Marlies Glasius, 'Terror, Terrorizing, Terrorism: Instilling fear as a crime in the cases of Radovan Karadzic and Charles Taylor' in Dubravka Zarkov and Marlies Glasius (eds), *Narratives of Justice In and Out of the Courtroom* (Springer 2014) 45–61.
- <sup>49</sup> *The Prosecutor v. Charles Ghankay Taylor* (Trial Transcript) SCSL-2003-01-PT, 24135, line 18. Transcripts available at <[http://www.rscsl.org/Taylor\\_Transcripts.html](http://www.rscsl.org/Taylor_Transcripts.html)> accessed 28 June 2018; coding frames available at authors' personal websites.
- <sup>50</sup> *The Prosecutor v. Charles Ghankay Taylor* (Trial Transcript) SCSL-2003-01-PT, 31585, line 29; 31588, line 5.
- <sup>51</sup> *ibid* 31,588, lines 28–29.
- <sup>52</sup> *ibid* 24,139, lines 29 to 24,140 line 1; 24,169, line 7; 24,175, line 12; 24,176, line 16; 24,184, line 8; 49,160, lines 29 to 49,161, line 1; 49,167, line 6.
- <sup>53</sup> A direct connection to instilling fear is made in *ibid* 24,136, lines 28–29; 24,137, line 25; 24,138, lines 3–4; 49,227, line 26. For the numerous other references to amputations, see coding frame.
- <sup>54</sup> *The Prosecutor v. Charles Ghankay Taylor* (Trial Transcript) SCSL-2003-01-PT, 24331, lines 26–27.

- <sup>55</sup> A direct connection with instilling fear is made in *ibid* 303, lines 7-11; 24,138, lines 3-4, 7-11; 31,591, lines 13, 16, 19-20. Other references to the practice are made at 303, lines 1-4; 24,151, lines 6-9; 49,149, lines 7-8; 49,204, lines 7-8.
- <sup>56</sup> *ibid* 5863, lines 7, 12-13; 24,138, lines 16-19, 27-28; 24,139, lines 13-14, 22-23; 31,592, lines 2-4; 46,192, lines 24, 29; 49,179, lines 13-14, 17-19; 49,180, lines 4, 6-7.
- <sup>57</sup> Described by prosecutors in *ibid* 24,136, lines 8-18; 31,589, lines 7 to 31,591, lines 6-9. Prosecutors describe an apparently separate incident of a mother forced to laugh as her child is buried alive in *ibid* 31,589, line 4; 49,180, lines 19-20.
- <sup>58</sup> We base our analysis on 20 interviews conducted in 2011, with individuals who, in one sense or another, could be considered opinion leaders within Liberia, and all of whom had followed the Taylor trial that was then in progress to some extent. The individuals interviewed included men and women ranging in age from their 20s to their 60s, including youth and student leaders, employees of non-governmental organizations, radio and print journalists, businessmen and women, politicians, religious leaders, and a senior civil servant. They held a variety of views regarding Taylor, ranging from being direct opponents and victims to close associates, but the majority of respondents had mixed views and no direct experience of Taylor. See Glasius, ‘ ‘It Sends a Message” ’ (n 47) for a longer discussion of the fieldwork and sampling.
- <sup>59</sup> Interview with AZ, youth leader (23 May 2011).
- <sup>60</sup> Interview with JS, NGO worker (20 May 2011) (hereafter Interview with JS).
- <sup>61</sup> Interview with JJ, student leader (20 May 2011) (hereafter Interview with JJ).
- <sup>62</sup> Interview with MF, women’s rights activist (16 May 2011).
- <sup>63</sup> *ibid*.
- <sup>64</sup> Interview with JJ (n 73).
- <sup>65</sup> Interview with DJ and HG, human rights workers (16 May 2011).
- <sup>66</sup> Interview with JS (n 72).
- <sup>67</sup> Interview with LT, development worker (19 May 2011).
- <sup>68</sup> *The Prosecutor v. Radovan Karadžić* (Trial Transcript) IT-95-5/18, (29 August 2008) 30, lines 17-22. Also quoted in Mégret, ‘ ‘Bring Forth the Accused” ’ (n 3) 425.
- <sup>69</sup> *The Prosecutor v. Radovan Karadžić* (Trial Transcript) IT-95-5/18, (31 July 2008) 20, lines 16-18.
- <sup>70</sup> ICTY President Fausto Pocar did indeed reassign the case to a different chamber, but gave a technical reason to avoid acknowledging the charge of bias.
- <sup>71</sup> *The Prosecutor v. Radovan Karadžić* (Trial Transcript) IT-95-5/18, (2 March 2010) 990, lines 23-24.
- <sup>72</sup> *ibid* 48027.
- <sup>73</sup> *ibid* 48027, 48029.
- <sup>74</sup> *ibid* (2 October 2014) 48031, lines 10-15.