Constructions of Legitimacy: the Charles Taylor Trial

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Abstract
This article examines the discourses of prosecution and defence in the case of Charles Taylor before the Special Court for Sierra Leone. It contributes to current debates about the legitimacy and utility of international criminal justice, which have tended to neglect the examination of actual trials, and particularly the role of the defence. We draw on the legal doctrine of ‘expressivism’ to theorise the connection between normative legitimacy, actual support and utility of international criminal justice as dynamic, and partly determined in court. We conclude that the Taylor case demonstrates three interrelated obstacles to the fulfilment of the expressivist promise. First, there is a necessary tension between criminal proceedings against a single person and truth-telling about mass violence. Second, discourses do not appeal to all audiences equally, and appeal to western audiences is likely to be privileged. Finally and most importantly, given the built-in antagonism of criminal procedure, these weaknesses will usually be exposed and exploited by the defence, weakening the legitimacy of case and court.

Keywords
International Criminal Justice, Legitimacy, SCSL, Liberia, Charles Taylor

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1. Introduction

In the last few years, the literature on international criminal courts has shifted from an enthusiastic appraisal of their innovative features dominated by lawyers to a more critical evaluation by social scientists. Among policy-makers, the ground is also shifting. African Union states, once enthusiastic supporters of the International Criminal Court, have refused to help serve the arrest warrant against Sudanese President Al-Bashir, and western donors are questioning whether sponsoring expensive tribunals is the best use of funds for post-conflict societies. It could be argued without exaggeration that the courts themselves are as much on trial as the accused. In the light of the highly ambitious expectations with which they were set up, the subsequent disenchantment should come as no surprise. Security Council Resolution 1315 (2000) for instance, decided to establish the Special Court for Sierra Leone,

Recognizing that, in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.1

The academic literature has in recent years come to question all the effects the Security Council so confidently ‘recognizes’. It comprises virulent debates on whether international criminal courts are indeed experienced, by local populations in particular, as a credible system of justice and accountability2 and whether they do contribute to reconciliation and lasting peace.3 While this

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literature has thrown up valuable insights into the problematic socio-political character of international criminal courts, the debates on the relative advantages of global versus local justice, and on the relation between peace and justice, are threatening to come to a polemical stalemate.4

These recent debates on the social value of international criminal courts have to date remained rather disconnected from the detailed examination of what actually happens in the courtroom, which tends to be left to legal scholars.5 More particularly, while prosecutors are credited with some agency in influencing the perceived legitimacy of courts, primarily outside the courtroom, the potential role of the defence in undermining such legitimacy within the context of the trial has been largely neglected. Here, an important explanation for why the legitimacy of these courts has been contested in practically every trial may be missed.

In a wider research project, we consider how notions of justice and legitimacy are constructed in the course of trial proceedings by examining the discourses of both prosecutors and high-profile accused persons. The underlying assumption is that, whilst the court cases are ostensibly only concerned with establishing the legal guilt or innocence of the accused, prosecution and defence are simultaneously also constructing narratives about the political legitimacy of the accused as an actor in a past or on-going conflict, as well as the political legitimacy of the court itself as another such actor. Hence, the trial itself can be seen as a discursive battle for legitimacy.

This article will limit itself to analyzing the narratives of the prosecution and defence in the case of Charles Taylor before the Special Court for Sierra Leone (further: SCSL). The Taylor case lends itself particularly well to such an examination. Charles Taylor is only the second former head of state on trial

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4 The ‘ending impunity’ claim is yet to be systematically considered.
before an international tribunal, after the five-year long trial of Slobodan Milosevic, which ended without a verdict when he died in 2006. His is both the most high-profile and the last case before the Special Court, and may also hold lessons regarding the political implications of court rhetoric in potential ICC cases against Al-Bashir of Sudan or Ghaddafi of Libya, should either ever come to trial. At the time of writing, both sides have just finished their final pleas and await the verdict of the judges.

In our next section, we briefly discuss the concept of legitimacy, and the value of the theory of expressivism to our understanding of legitimacy of international criminal courts. We then go on to spell out our understanding of discourse analysis and our methodological operationalisation. The third section describes the background to the conflict, the Court, and the case. The fourth and fifth section will present the discourses of the prosecution and defence respectively. Finally, employing the notion of expressivism, we will assess how the discourses of prosecution and defence have affected the legitimacy of the SCSL and the Taylor trial in particular.

2. Legitimacy and discourse analysis

Legitimacy
Elsewhere we have applied Buchanan and Keohane’s distinction between normative and sociological legitimacy⁶ to international criminal courts⁷. Normative legitimacy derives from the position that a court has moral authority to concern itself with the case in question. It may rely on backward-looking arguments such as retribution, accountability, or official truth-telling, or on forward-looking, consequentialist arguments such as preventive effects, reconciliation effects, closure for victims or instilment of respect for the rule of law.

Sociological legitimacy, or acceptance of the authority of courts and their trials and verdicts, is an empirical question for the social scientist, and has

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⁷ XXXXX
many faces. A realist approach to sociological legitimacy would argue that the only relevant acceptance is that of powerful actors in international politics, who would accept and indeed support the Court for their own ends. A critical theory approach, paradoxically, would depart from the same assumption, but stress the discursive framework used to obscure and depoliticize such realities. A cosmopolitan approach would be to argue that the Court represents ‘the international community’, or perhaps even ‘mankind’, but would be likely to infer such acceptance on the basis of a normative argument, rather than taking global opinion polls. A communitarian approach would focus on acceptance by the population affected by the violent acts that are being adjudicated. A victim-centred approach, finally, would stress the acceptance by and utility value for the direct victims of the crimes in question.

While many acknowledge the interconnection between normative and sociological legitimacy of international criminal courts, the ‘expressivist’ doctrine in legal sociology is a rare attempt to theorise this connection. It constructs the relation between court cases and their audiences as dynamic: ‘Expressivists contend that trial, conviction, and punishment appreciate public respect for law … Expressivism also transcends retribution and deterrence in claiming as a central goal the crafting of historical narratives, their authentication as truths, and their pedagogical dissemination to the public’. It does so by means of its performance value: ‘Trials can educate the public through the spectacle of theatre – there is, after all, pedagogical value to performance and communicative value to dramaturgy. This performance is made all the more weighty by the reality that, coincident with the closing act, comes the infliction of shame, sanction, and stigma upon the antagonists.’ In Drumbl’s account, this function can be simultaneously achieved across different audiences: local, national and global.

Our intention in the remainder of this article is not to test support for the SCSL or the Taylor case with all or indeed any of its potential audiences. Instead, we will examine how legitimacy is constructed and challenged in the

9 Drumbl, 175.
discourses of the prosecution and the defence in the Charles Taylor trial themselves. In doing so we seek to establish to what extent what is said and done in the Taylor trial confirms Drumbl’s argument that international criminal trials are an exercise in expressivism, and that as such they can contribute to restoring faith in, and exercise of, the rule of law.

Discourse analysis
The approach to discourse analysis proposed here draws on critical linguistics and post-structuralism, but has a more functional orientation, focusing on what discourses are designed to accomplish. It is less concerned with ways in which social actors are themselves constituted by discourse, but instead concentrates on the constructive use of language, treating texts as organised rhetorically, establishing a particular version of social reality in competition with others.

The main method of discourse analysis has been close textual analysis of court transcripts. Approximately 30% of the transcripts were analysed in this manner. On the basis of this analysis, two master coding frames, one for the prosecution and one for the defence, were drawn up and continually adjusted until theoretical saturation was reached. Additionally, the entire set of court transcripts, covering the period from June 2007 to March 2011 and covering almost 50,000 pages, was subjected to certain word searches that emerged from the manual coding as particularly salient. Interviews with the chief defence counsel were also analysed, and visits were made to the Court in order to directly observe the ‘courtroom drama’.

On the side of the prosecution, we have coded speeches by the entire team, but with an emphasis on Stephen Rapp who opened the case as chief

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13 The master frames, too long to reproduce, will be available on our personal website.
prosecutor in 2007, and Brenda Hollis, initially the principal attorney, who took over as chief prosecutor in February 2010. We found that whilst each prosecutor has a slightly different personal style, there was a remarkable continuity in the discourses of the prosecutorial team throughout the case. On the defence side, we have concentrated on the speeches made by Charles Taylor about himself in the six months he was in the stand as main defence witness, but also included statements by his chief defence counsel Courtenay Griffiths. Again, we found much overlap, and in particular many instances where Griffiths elicits statements from Taylor which he then uses as a point of departure for furthering a particular argument.

3. The Conflict, the Court, the Case
The war in Sierra Leone started in 1991, when Foday Sankoh launched an attack from neighboring Liberia with his Revolutionary United Front (RUF) against the Momoh government. After a series of coups, president Kabbah was elected. He would not stay in power for long: the Armed Forces Revolutionary Counsel (AFRC) overthrew the government and forged an alliance with the RUF. In 1998 Kabbah was restored to power by a West-African intervention force (ECOMOG), but the AFRC/RUF attacked Freetown in January 1999. Finally, with the help of civil militias, ECOWAS and UN-troops (mostly British) the RUF was driven back and a new peace was agreed at Lomé in 1999. Sporadic fighting continued until 2002.

The RUF and AFRC committed large scale atrocities. The most common atrocity was amputation: thousands lost arms, legs, ears or other parts of their bodies. Child soldiers were used on a large scale; girls and women were systematically raped and kidnapped to become ‘bush-wives’; people were forced to do slave labour; villages were burned down the ground.

After being reinstated, president Kabbah requested the United Nations to create a court to put to trial RUF members for ‘crimes against the people of Sierra Leone and for the taking of United Nations peacekeepers as hostages’.

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15 This paragraph draws mostly on Lansana Gberie, *A Dirty War in West Africa: The RUF and the Destruction of Sierra Leone* (Bloomington, Indiana University Press, 2005).
The Special Court, tasked with trying those who bore the greatest responsibility for war crimes, was established by an agreement between the UN and Sierra Leone.\textsuperscript{17}

One of the consequences of the court being ‘special’ is that – unlike the ICTY and the ICTR – it is not part of the UN budget, but dependent on donations. From its creation in July 2002 to February 2011 the SCSL has received $240,261,862 in financial support, of which about one third came from the United States. In 2010, the crucial year in the trial against Charles Taylor, the US share of the budget increased to 52%.\textsuperscript{18} This has sparked considerable controversy and doubts about the independence of the court. The Special Court’s budget is also very lean. At times it has had barely enough money to keep its doors open.\textsuperscript{19}

Thirteen people have been indicted, three of whom died or disappeared before they could appear in court. The court is primarily located in Freetown but the trial against Charles Taylor takes place in The Hague for security reasons.\textsuperscript{20} Taylor, after having fought a civil war with his rebel group the National Patriotic Front Liberia (NPFL) for almost a decade, was elected president of Liberia in 1997. He was forced out of office in 2003 and after several years of international pressure on Nigeria, where he was living in exile, he was arrested and brought to The Hague.

4. The prosecution’s discourse

The bitterness of war

In establishing Taylor’s responsibility for the war in Sierra Leone, the prosecution’s case relies not only on what Taylor may have done in private, but

\textsuperscript{18} ‘SCSL Consolidated Contributions’, 14 April 2011. Received from SCSL Outreach Officer Solomon Moriba. On file with authors.
\textsuperscript{19} Avril McDonald, ‘Sierra Leone’s Shoestring Special Court’, in \textit{International Review of the Red Cross}, \textbf{84}, 845 (2002), p. 140.
\textsuperscript{20} Some argue however, that it was done for the stability in the region. See for example Sarah Kendall, \textit{Contested Jurisdictions: Legitimacy and Governance at the Special Court for Sierra Leone}, Unpublished PhD Dissertation, University of California, Berkeley, p.75-78.
also on what he has said in public. In 1991, Taylor warned in a speech recorded by BBC radio that Sierra Leone, like Liberia, would ‘taste the bitterness of war’.\(^{21}\) The radio recording itself has been lost, but twenty-five witnesses were found who remember hearing it. In her closing plea, the chief prosecutor quotes a witness who claims to remember the speech:

There was a man they used to call Charles Taylor. He said that that war that had come to Liberia, we would taste the bitterness of that one in Sierra Leone. So if indeed the war came to Sierra Leone and I am like this, this is my own portion of the bitterness that I tasted. Both of my hands were amputated. What he said was what came to pass. Those were his children who did that.\(^{22}\)

Father/brother/chief Taylor

Charles Taylor’s only formal, public relationship with the leadership of the RUF was that of negotiator or ‘point president for peace’\(^{23}\) appointed by the heads of state of the Economic Community of West African States (ECOWAS). Hence, the prosecution could not rely on his formal status in order to prove his position at the top of a chain of command responsible for war crimes. Instead, it draws on patrimonialist ideas, emphasizing the father-son relation Taylor had with leaders of the RUF\(^{24}\). In part based on witness testimony, Taylor is often referred to as the ‘father\(^{25}\), and occasionally the ‘godfather\(^{26}\) of the RUF. He is sometimes also the (senior) brother\(^{27}\) of RUF leaders, or the chief\(^{28}\) – the latter leaving it ambiguous whether the meaning is simply ‘boss’ or whether the

\(^{21}\) Transcript, p. 24167/17; p. 49148/20, 22; p. 49148/29; p. 49149/19; p. 49164/12; p. 49182/28-29; p. 49256/18; p. 49257/4, 5, 12.
\(^{22}\) Transcript, p. 49148, 22-23.
\(^{23}\) This expression, introduced by the defence, becomes the butt of sarcasm by the prosecution, who use the term mockingly at least forty times.
\(^{24}\) Interestingly, Kelsall has criticized the prosecution in the CDF case before the SCSL precisely for ignoring patrimonialism and principal-agent problems in its assumption that formal military structures resembled those in modern western states. Kelsall, supra note 5, 71-104.
\(^{25}\) The Prosecutor of the Special Court v. Charles Ghankay Taylor, Court Transcript (Further: Transcript), p. 24178/10, 12-13; p. 49152/3; p. 49153/1, 3; p. 49154/7; p. 49154/21; p. 49185/5; p. 49191/21-22; p. 49213/6; p. 49214/10; p. 49215/28; p. 49242/27; p. 49243/15; p. 49284/15. Also ‘Pa’, ‘the Papay’, or ‘our father across’.
\(^{26}\) Transcript, p. 24181/14; p. 49152/3; p. 49153/16, 26.
\(^{27}\) Transcript, p. 49152/9, 15; p. 49205/12; p. 49241/28; p. 49242/10, 19, 20; p. 49243/1.
\(^{28}\) Transcript, p. 291/28; p. 310/15; p. 9954/7; p. 24181/6; p. 49152/4, 10; p. 49154/7; p. 49257/3.
traditional African meaning is intended. The RUF forces collectively become ‘his children’\textsuperscript{29}, evoking the prevalence of child soldiers in the conflict, as well as displacing responsibility towards the suggested ‘parent’. RUF leader Sam Bockarie in particular is frequently designated Taylor’s son\textsuperscript{30}, or ‘favourite son’\textsuperscript{31}. Foday Sankoh on the other hand is Taylor’s ‘brother’, ‘bound together to fight’, but with Taylor as the Big or senior brother, or mentor\textsuperscript{32}.

\textit{Taylor and terror}

The first of eleven counts in the indictment against Charles Taylor is ‘acts of terrorism’\textsuperscript{33}. This phrase, referring to article 3.d of the Special Court Statute, is striking because the legal basis for the charge lies in the Geneva Conventions, which do not mention any such crime. Indeed, terrorism is not known as a crime under the statutes of the Rwanda tribunal, the Yugoslavia tribunal or the International Criminal Court. It lies outside the usual jargon of international criminal justice.

The prosecution’s argument is that Charles Taylor and his associates waged a campaign of ‘terror’\textsuperscript{34} against the population of Sierra Leone, ‘terrorising’\textsuperscript{35} this population, which makes Taylor guilty of ‘terrorism’\textsuperscript{36}. The designation has little legal value, since the ‘acts of terrorism’ are subsequently translated into distinct elements that actually constitute crimes under international law. In the indictment, the only separately listed act of terrorism is burning of civilian property. Nonetheless, it constitutes the first count in the indictment, before murder, rape or sexual slavery is mentioned.

In her summary of the prosecution case, prosecutor Hollis argues that

\textsuperscript{29} Transcript, p. 49148/23-24; p. 49149/21.
\textsuperscript{30} Transcript, p. 24178/12-13; p. 49152/20-21; p. 49153/29; p. 49154/15; p. 49159/26; p. 49216/20-21; p. 49284/3.
\textsuperscript{31} Transcript, p. 49153/29; p. 49154/15; p. 49159/26.
\textsuperscript{32} Transcript, p.24180/14.
\textsuperscript{33} The Prosecutor v. Charles Ghankay Taylor, Amended Indictment, 16 March 2006.
\textsuperscript{34} A term used by the prosecution at least 107 times in the court transcripts, of which 43 times in the closing pleas alone, see master frame.
\textsuperscript{35} Transcript, p.303/11; p.24137/2, 8, 18; p. 24168/25; p. 31846/1; p. 32224/8; p. 32325/12; p. 33409/16, 17, 21, 25; p. 49207/5.
\textsuperscript{36} Transcript, p.272/12, 24; p.31584/29; p.31585/1, 5, 13, 25; p.31587/4, 10, 25; p. 31588/24; p.31590/1.
‘terror may also mean or include extreme fear’. The prosecution goes beyond the case’s temporal and territorial jurisdiction to argue that this was Taylor’s primary purpose, in the Liberian as in the Sierra Leonian war. She also cross-examines Taylor at some length on the meaning of terrorism, and gets him to agree that ‘terror is fear’ and that to ‘instil fear, that’s an act of terror’. The allegation of the use of terror, intended to create or instill fear, is then associated 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’ are evoked by the prosecutors. The first is the AFRC/RUF attack on Freetown of January 1999, which according to various prosecution witnesses, Taylor ordered that it be made ‘more fearful than any other’, either to save ammunition or to assure victory, particularly by burning down houses and killing civilians. The second theme is that of the RUF’s practice of amputations, the ‘trademark atrocity of Sierra Leone’, and of carving its initials into people’s skin with a knife. The third refers to the RUF practice of displaying human body parts at crossroads and checkpoints. The prosecution connects this back to the Liberian war to argue:

Indeed, Mr Taylor told you that there were checkpoints in Liberia with skulls, not human heads, that skulls were used as symbols of death, that he saw them, he drove by them. They were used as symbols and he saw nothing wrong with using them.

The fourth is a single, particularly gruesome incident used by the prosecution to

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37 Transcript, p.24135/18.  
38 Transcript, p.31585/29; p. 31588/5.  
40 Forty-three occurrences, see ...  
41 Transcript, p.24139/29-24140/1; p.24169/7; p.24175/12; p.24176/16; p.24184/8; p.49160/29-49161/1; p.49167/6.  
42 A direct connection to instilling fear is made at Transcript, p.24136/28-29; 24137/25; 24138/3-4; 49227/26. For the numerous other references to amputations, see master frame.  
43 Transcript, p. 24331/26-27.  
44 A direct connection with instilling fear is made at Transcript, p.303, 7-11; p.24138, 3-4, 7-11; p. 31591/13, 16, 19-20. Other references to the practice are made at p.303/1-4; p.24151/6-9; 49149/7-8; p.49204/7-8.  
46 49179/16-20.
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 head among them as she was made to empty the bag, and was forced to laugh about the discovery.  

Taylor: the man and his motives

The campaign of terror was the means of Taylor’s joint criminal enterprise with the RUF, the end was to get hold of Sierra Leone’s diamonds. This motive is the most dominant theme in the prosecutors’ discourse. The connection between Charles Taylor and diamonds is made more than three hundred times in their speeches. Legally, this argument is of little value to the case: neither the sale of arms to rebels nor the receipt of diamonds is in itself a war crime. Moreover, the evidence for Taylor’s receipt of the diamonds remains somewhat tenuous (hence the calling of supermodel Naomi Campbell as a prosecution witness), and the prosecution does not have a pronounced narrative about why Taylor wanted the diamonds: he is never described as having a particularly luxurious lifestyle.

Nonetheless, all crimes committed by the RUF in Sierra Leone are presented as part of a grand plan. While the crimes are occasionally described as random, indiscriminate or senseless, they are mostly considered purposive and instrumental, following from Taylor’s ‘knowing, willful, conscious’ actions. One of the few points of agreement between prosecutor and defendant appears to be that Taylor is an educated, intelligent and strategic thinker; a rational man, not motivated by revenge, sadism, or other irrational sentiments.

\[\text{47} \text{ Described by prosecutors at Transcript p. 24136/8-18; p. 31589/7 to 31591/6-9. At p. 31589/4 and p. 49180/19-20, prosecutors describe an apparently separate incident of a mother forced to laugh as her child is buried alive.}\]

\[\text{48} \text{ See master frame. The delivery of diamonds to Taylor in exchange for the delivery of arms and ammunition to the RUF, described by various witnesses, is mentioned thirty-four times}\]

\[\text{49} \text{ The argument is that the gift of rough diamonds to Naomi Campbell proves that Taylor was travelling with them, and exchanged them for arms, which were delivered to him on his final stop in this tour, in Burkina Faso.}\]

\[\text{50} \text{ Transcript p.196/20-21; p. 299/1-2; p. 295/22; p. 296/27; p. 307/6; p. 49212/21}\]

\[\text{51} \text{ Transcript p. 49141/26-27; p. 49144/10-11; p. 49146/26-27; p. 49148/9; p. 49150/17; p. 49309/15-16; p. 49312/16-17, 21; p. 49313/2, 5.}\]

\[\text{52} \text{ Transcript p. 32351/27-29; p. 32337/11-12; p. 32351/28-29; p. 32352/2; p. 32453/14; p. 32460/22; p. 49312/18-19.}\]
This assessment also informs the attitude to ethnic divisions in Liberia ascribed to Taylor. Taylor is not described as harboring hatred towards any particular ethnic group in Liberia or Sierra Leone. Instead, he instrumentalised existing divisions:

he knew the Gios were bitter against the Krahns and joined the NPFL for revenge. Mr Taylor harnessed his fighters' thirst for revenge and then unleashed them on Liberia, intending that they use that thirst for revenge to spread terror so he could control the much larger population in that country. And similarly, he unleashed his NPFL on the civilian population of Sierra Leone.53

A final element in the portrayal of Charles Taylor’s cold-hearted rationality, with the additional advantage of simultaneously exculpating the prosecution for certain weaknesses in its chain of evidence, is the charge that he systematically killed compromising associates: ‘these men were eliminated so as not to expose the accused, which behaviour goes to the accused's consciousness of his criminal responsibility for the crimes in Sierra Leone that come under the jurisdiction of this Court.’54

The motifs of intentionality, patrimonial control, terror as an instrument, and the quest for diamonds are all drawn together by chief prosecutor Hollis at the beginning of her closing plea:

All of those horrors were the bitterness of war that Charles Taylor inflicted on the people of Sierra Leone through his children, his proxy forces, the RUF and later the AFRC/RUF alliance and through his Liberian subordinates. Charles Taylor, this intelligent, charismatic manipulator had his proxy forces and members of his Liberian forces carry out these crimes against helpless victims in Sierra Leone to achieve the objectives he shared with other

54 Transcript p. 277/5-8. Other allusions to Taylor’s killing of associates to wipe out traces are at p. 278/21-22; p. 280/5; p. 295/3-4; p. 5896-7/29-1; p. 5898/19; p. 49186/7-9; p. 49190/15-19; p. 49192/23-26; p. 49239/10-12 and p. 49284/3.
members of the joint criminal enterprise in which he participated, to forcibly control the people and territory of Sierra Leone and to pillage its resources, in particular its diamonds. And they would do this through their agreed criminal means, the campaign of terror he waged on the innocent people of Sierra Leone with all its attendant crimes. All this suffering, all these atrocities to feed the greed and lust for power of Charles Taylor.55

The purpose of the trial

The prosecution has relatively little to say about the purpose of the trial of Charles Taylor. Mostly it takes the setting it finds itself in for granted. Nevertheless, a few passages in the opening statement and closing plea give some clues:

In the opening statement, the chief prosecutor points a few times at who the trial is for: ‘(i)t is, above all else, that we are seeking justice for the people of Sierra Leone that we are all here today.’56 Later, he elaborates that ‘(t)hey are the ones who still bear the scars of this brutal conflict and for whom this process of accountability, no matter what the eventual outcome, will have its greatest meaning.’57 The trial is to show the people of Sierra Leone that ‘there are those in this world who are ready to uphold the law,’58 and the eventual judgment is expected to give them ‘some small measure of closure’.59 No clear distinction is made between specific victims of specific crimes, and the affected population at large: the Sierra Leonian people as a whole are constructed as victims of Charles Taylor.

A second purpose, pointed at by the only Sierra Leonian member of the prosecution team, Bangura, is truth-telling. Both in the opening an in the closing plea he refers to a Sierra Leonian saying: “Net long so tay, doh mus clean.” No matter how long the night, light will come. For years the accused's crimes have remained in the dark. Today we start to shed light on his

55 Transcript p. 49149/19-29 to p. 49150/4.
56 Transcript, p. 269/10-11.
58 Transcript, p. 331/10-11.
59 Transcript, p. 331/2.
responsibility for the suffering of the people of Sierra Leone’.  

The third purpose is to strengthen the rule of law by enacting the rule of law. In its opening plea, the prosecution promises to seek at all times to ensure that it embodies the fundamental principles of fairness, due process and justice that, along with the other trials at the Special Court, will help ensure a future respect for law and the maintenance of a just and peaceful and safe society. In that regard we understand that justice is a system that we must all obey and that no individual is above the law and can be in a position to walk away from the system of justice.  

At the end of the trial, fair trial is evoked again, and contrasted to divine justice on the one hand, and the arbitrary exertion of power by a man like Charles Taylor on the other hand: 

God's justice is mysterious. Today, Charles Taylor appears before you to face human justice. Through criminal proceedings that have been most fair to him, decided by impartial and independent judges on the basis of the evidence before you. Not by the whim of a man with a gun or a machete or a man with an insatiable greed for wealth and power. Today, Mr Taylor faces human justice, based on your assessment of the evidence adduced in this trial.  

5. The defence discourse

*Statesman*

The defence tries to create an image of Taylor as a man on a mission to save his country and his people. A presidential figure who aimed to develop his country economically and bring democracy and the rule of law. Leading Liberia was his calling: ‘[P]eople that become presidents don't just get up one morning and say,
“I guess I want to try it.” It's something that starts at a very early age, a determination to doing something for your people. You see society, you grow up and you want to do something. You prepare yourself all your life to do it.63

In the civil war he fought with his NPFL, Taylor’s aim was to remove president Doe from power, because his regime was cruel and undemocratic. Taylor was fighting to have fair elections, to ‘rebuild’64 torn Liberia, make ‘good governance’65 possible and bring peace to the sub-region and Sierra Leone.66 He depicts his revolution as ‘non-ideological’67 and ‘not socialist’68 (in fact Taylor says he is ‘capitalist to the core’69). Taylor points out that there is no evidence of massive crimes committed in Liberia and that people in his ranks who committed crimes where punished in court-martials – there were no unpunished crimes in Liberia70. He did not tolerate such things: ‘So in my area I resist to the very last breath in my body that I encouraged impunity. Never. That's why I won during elections.’71

Humble background
While cross-examining Taylor, his lawyer Courtney Griffiths takes us back to Taylor’s youth and his early years. They paint a picture of Taylor as a self made man coming from a humble72 background living in a ‘mud house’ with ‘no running water’,73 – not even shoes to wear until he ‘was a big boy’74. While going to college in the US, Taylor worked several jobs to pay for tuition: mopping floors and doing dishes.75 They emphasize also that his mother is a Liberian native and his father an Americo-Liberian descendant from liberated

63 Transcript, p. 25598/19-25.
64 Transcript, p. 25242/4; p. 24332/13; p. 25109/26; p. 25428/2; p. 25672/15; p. 26068/23.
65 Transcript, p. 26112/28-29. ‘Good governance’ is mentioned 13 times by Taylor in his testimony and many more times in official documents read out by chief defence counsel Griffith as evidence.
66 Transcript p. 24316/1-5; p. 24332/14; p. 24333/2; p. 25295/11-12; p. 25335/15-16; p. 26042/2; p. 26624/3; p. 26893/23; p. 26894/9; p. 27269/14-15; p. 27688/11; p. 28327/25; p. 29735/3; p. 33596/29; p. 35117/11.
67 Transcript p. 24573/24-25; p. 24574/1-5.
68 Transcript p. 24955/14-15; p. 24565/6-7; p. 28934/22-26; p. 32072/7.
70 Twenty-two references, see master frame.
71 Transcript, p. 32242/8-11.
72 Transcript p. 24363/25.
73 Transcript p. 24362/1-3.
74 Transcript p. 24362/17-18.
75 Transcript p. 24377/3.
slaves: uniting in Taylor the two traditionally conflicting groups in Liberia, polarized by president Doe\textsuperscript{76}.

\textit{Bringer of peace to Sierra Leone}

Taylor claims his contacts with the RUF began only when he became a member of the ‘committee of five’ – a counsel of West African presidents concerned with the Sierra Leone crisis. He emphasizes that he was asked to join the committee because of his ‘experience as a former rebel’\textsuperscript{77}. Against what the prosecution makes of his involvement, he argues he played a crucial constructive role in the peace process.

His efforts made as a member of this committee – negotiating with the RUF and the AFRC – where thoroughly misunderstood and misconstrued by the international community. In fact they where used against him: ‘after we fought all these years, after we got these people out, they said ‘oh, okay. Fine. You were able to get them out because you are controlling the people.’ That’s what they did.’\textsuperscript{78} Because Taylor got things done as a member of the committee of five, others believed that he must therefore have been in charge of the RUF. But this ‘powerful Charles Taylor is an hallucination’\textsuperscript{79}. All his efforts as ‘point president for peace’\textsuperscript{80} where misconstrued: ‘nothing worked for us. Nothing worked. The good was turned bad.’\textsuperscript{81} Taylor never denies that terrible crimes were committed in Sierra Leone. In fact he says he was ‘shocked’\textsuperscript{82} by the cruelties committed, and argues that he tried to prevent and limit the crimes: ‘my actions where transparent, they were open and to the point and we got results, and I feel very proud of what I did’\textsuperscript{83}.

\textit{Pan Africanist}\textsuperscript{84}

Taylor presses the point that he is a pan-Africanist like Mandela, fighting for an

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\textsuperscript{76} Especially at Transcript p.24639/2-8, but also p. 24469/22-28; p. 24482/13-15.
\textsuperscript{77} Transcript p. 24316/10; p. 25184/28-29; p. 27271/21; p. 32392/14; p. 35066/25.
\textsuperscript{78} Transcript p. 27141/12-15.
\textsuperscript{79} Transcript p. 32200/27.
\textsuperscript{80} Transcript p. 33390/19, also discussed above.
\textsuperscript{81} Transcript p. 27153/23.
\textsuperscript{82} Transcript p. 25863/18; p. 26049/6; p. 26050/8; p. 26229/27-28; p. 29048/4; p. 31107/3.
\textsuperscript{83} Transcript p. 30025/1-3
\textsuperscript{84} Pan-Africanism is mentioned 80 times by Taylor and Griffiths (documents in evidence excluded) in cross-examination, see master frame.
independent Africa: ‘My interests with their whole discussions at the time was the interests in having Africa break away from the stranglehold that exists until today. Because let me say here and now I am a pan-Africanist, I have always been and will always be’.\textsuperscript{85} He tried to end Western domination and paternalism on his continent: ‘Well, the liberation of Africa, making sure that Africans solve their own problems. We went to school with these Europeans and Americans, we made better grades than they made. They come to our countries, they sit on top of us, because they have a little bit of money, as though they know it all and they do not. I believe that Africans are capable of solving their own problems. This is that whole pan-African attitude that remains in me today’.\textsuperscript{86}

\textit{Relationship to the US}

It is not only his love for Africa that Taylor professes in Court. At several points in his testimony Taylor emphasizes his love and admiration for the United States, and for the historic special relationship between Liberia and the US. Liberia is ‘America's little child’\textsuperscript{87}, its ‘slave-child’\textsuperscript{88} - the ‘country of freed slaves’. Taylor clearly admires the US – he points out on several occasions that the US were an inspiration for reform in Liberia.

However, ‘the United States has not been the friend that she is capable of being to Liberia.’\textsuperscript{89} But he emphasizes that he is not anti-American: ‘I am not and will never be anti-American. I just want America to come up to the plate. If you are going to use Liberia as your little back yard garden, well then you do something for Liberia.’\textsuperscript{90} As prosecutor Koumjian notes, ‘Taylor goes back and forth in this schizophrenic defence as far as whether he's a great friend of the United States or the United States is out to get him’.\textsuperscript{91}

Not only did the US refuse to support him, it turned against Taylor

\textsuperscript{85} Transcript p. 24400/1-6.
\textsuperscript{86} Transcript p. 24400/10-15.
\textsuperscript{87} Transcript p. 24408/26; p. 24405/5-7. Elsewhere, Taylor argues Liberians should not be treated like children, Transcript, p. 24655/5; p. 24655/10-11.
\textsuperscript{88} Transcript p. 24403/4-6, 11-12; p. 24655/10-11.
\textsuperscript{89} Transcript p. 24403/4-6.
\textsuperscript{90} Transcript p. 24405/1-4.
\textsuperscript{91} Transcript p. 49238/25-28.
because he stood up for Liberia, defending its economic interest in for example the off-shore oil\textsuperscript{92}, but also the US’s influence in arming rebels and funding opposition parties: ‘[T]he 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\textsuperscript{93}. Taylor was confronted with arms embargo’s, trade embargo’s, IMF sanctions etcetera. The ‘pressure cooker was put on’\textsuperscript{94} and Liberia was ‘squeezed’\textsuperscript{95}. On top of that the US and the UK funded the LURD – which attacked Liberia from neighbouring Guinea: ‘my government was a democratically elected government. My government was under attack. What would you do as a friend? You help the democratically elected government. No, you help the rebels. […] The die was cast, we were going to be destroyed anyway and it happened eventually. I’m here.’\textsuperscript{96}

\textit{Terrorism and Pan-Africanism}

Building on the character sketch above, Taylor and Griffiths argue that the prosecution unjustly portrays him as a demon and a terrorist: ‘You come into Africa, the African got a leader in Liberia, a President, who is eating human beings. ‘So whatever we do to him, Africa, don't be sorry. This guy deserves it.’ So you demonise and you move in for the kill and you bring him before a Court\textsuperscript{97}. Taylor takes the label ‘terrorist’ as a badge of honour placing him in the same camp as for example Mandela\textsuperscript{98}. Griffiths asks: ‘Nelson Mandela was called a terrorist at one time, wasn't he, Mr Taylor?’\textsuperscript{99} Like Mandela, it is purely in the eyes of those in power, those that want to get rid of him, that Taylor is labelled a terrorist: ‘We've seen this throughout history. When leaders are sought for one reason or another, they destroy you. […] Mandela was supposed to be a total -you know, he was a criminal and he - in fact, he was a terrorist,

\textsuperscript{92} For a discussion on Taylor’s conflict with Mobil Oil see Transcript, p. 32151/17 onwards.
\textsuperscript{93} Transcript, p. 31368/4.
\textsuperscript{94} Transcript, p. 31525/15.
\textsuperscript{95} Transcript, p. 26453/12; p. 26711/5; p. 26453/12; p. 26697/25; p. 26697/15; p. 26698/17; p. 26757/8; p. 26757/10; p. 27473/1.
\textsuperscript{96} Transcript, p. 27706/29.
\textsuperscript{98} Relations with, respect for Mandela 25 times in cross examination, see master frame.
\textsuperscript{99} Transcript, p. 25495/9-10.
spent 27 years in jail.\textsuperscript{100}

Gaddafi\textsuperscript{101} is portrayed as another misunderstood hero, wrongfully depicted as a terrorist by the West. ‘[S]omeone trying to say that a pan-Africanist at that time is a terrorist I’d say is talking pure nonsense.’\textsuperscript{102} Taylor counters the accusation that he is a terrorist by saying that this is a label applied to all those who fight for African rule in Africa: ‘Africa has to be free. Africa has to determine its own destiny. Yes, things are rough and yes, we are pushed around. But our actions cannot be - should not be - construed as terrorism.’\textsuperscript{103}

\textit{Racism}

At times Taylor and his lawyer go further then to argue that the case is anti-African – they portray the prosecution as racist. Griffiths reads a quote by prosecutor Crane: ‘Believe me, the trick to getting a West African leader’s attention is cash, plain and simple’, What do you say to that mister Taylor?’.

The answer is clear: ‘One word: racist.’\textsuperscript{104} Griffiths has alluded to the significance of race in this case before. Taylor – the black African – is being put to trial by white westerners: ‘like an illegal immigrant, refugee or worse, and for those of an historical mind, in reverse, he was taken in chains form the shores of Africa to Holland, thousands of miles away. The country of one of the colonisers for he black race for centuries. A historically familiar journey for some.’\textsuperscript{105} He is clearly referring to the Dutch role in the slave trade.

Africans are greedy and cruel barbarians who cannot take care of themselves, who are only after money. African leaders are depicted as silly and easily fooled by Taylor: ‘In fact, it's insulting to some of these African leaders to believe that these powerful leaders are a bunch of donkeys that Taylor is just dictating to. It's total nonsense. Total nonsense, and I reject that. It's total

\textsuperscript{100} Transcript, p. 29970/10-12.
\textsuperscript{101} At the time when Taylor was in the witness box, in the autumn of 2009, Gaddafi’s global reputation, while always contested, was of course considerably less problematic than it has become since.
\textsuperscript{102} Transcript, p. 25495/6-8
\textsuperscript{103} Transcript p. 25496/25-28.
\textsuperscript{104} Transcript p. 31482/1-2.
\textsuperscript{105} Transcript p. 24308/2; p. 29905/8; p. 29905/11-12; p. 29905/16; p. 29969/17-20; p. 29972/20; p. 31482/2.

Other discussion of the case being racist: Transcript p. 24308/2; p. 29905/8; p. 29905/11-12; p. 29905/16; p. 29969/17-20; p. 29972/20; p. 31482/2.

\textsuperscript{105} Transcript p. 24294/8-13.
nonsense. [...] So no, they are not just pulled around by me like they're a bunch of donkeys.\textsuperscript{106} Taylor himself is ‘a bloodthirsty, sadistic African’\textsuperscript{107} perhaps worse and more exotic than the Nazi’s:

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.\textsuperscript{108}

\textit{The Court as an instrument of regime change}

Taylor and Griffiths turn the accusation of Taylor being responsible for prolonging the war in Sierra Leone around and point at the prosecution. The first prosecutor of the Sierra Leone court, David Crane, knowingly ‘scuppered’ peace for Liberia in 2003 by issuing the indictment against Taylor during peace negotiations in Ghana, in order to ‘to humble and humiliate him before his peers, the leaders of Africa, and to serve notice to Taylor and others that the days of impunity in Africa were over.’\textsuperscript{109}

‘Why not declare the end of impunity for all international wrongdoers? Why just Africa?’\textsuperscript{110} Griffiths asks rhetorically. Both Crane’s rhetoric and the fact that the prosecution labels Taylor as a terrorist while he really is a fighter for Africa fits the story of the defence that the SCSL is an instantiation of Western attempt to control Africa. In this matter Griffiths did not shun strong language in his closing statement: ‘We submit that it's to the shame of this Prosecution that it has besmirched the lofty ideals of international criminal law by turning this case into a 21st century form of neo-colonialism.’\textsuperscript{111} He states that ‘whether you are princess or prostitute, whether you are the President of the

\begin{flushleft}
\textsuperscript{106} Transcript 35369/1-3.  \\
\textsuperscript{107} Transcript 29904/26.  \\
\textsuperscript{108} Transcript p. 29904/23-29.  \\
\textsuperscript{109} Crane quoted by Griffiths, Transcript p.24291/26-28.  \\
\textsuperscript{110} Transcript p. 24292/1.  \\
\textsuperscript{111} Transcript p. 49389/26-29.
\end{flushleft}
United States or the President of Liberia, the law is above you.’\textsuperscript{112} But now this turns out not to be the case: Africa is singled out by international criminal institutions like the ICC which has so far only indicted Africans. ‘The tribunals which are but an instrument of diplomacy in the hands of powerful states are, in fact, not administering law at all but, instead, providing spurious cover for their paymasters, thereby prostituting the legal process.’\textsuperscript{113}

When asked by the judge Doherty ‘Are you suggesting that the judges are in the pay of some government?’,\textsuperscript{114} Griffiths shies away from attacking the judges head on. But in an interview months earlier with the BBC he had voiced a similar ‘concern … that these 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.’\textsuperscript{115} He implies that the Court is neither impartial nor independent, but political. Wiki-leaks cables are invoked to suggest that ‘this is not a trial at all, but the abuse of legal forms to achieve a predetermined end: The conviction of the accused and his incarceration for a long time.’\textsuperscript{116} On the day the prosecution was to give its closing statement, lead counsel Griffiths walked out of court – consequently being held in contempt of Court. His ostensible reason was that he had not been allowed to file his final brief, which was delivered late because he wanted to include reflection on recent wiki-leaks cables.\textsuperscript{117}

Griffiths said in an interview with the BBC: ‘we do not want to, in any way, legitimize what’s going on in that courtroom because we have been, in effect, by their decision on Monday, the judges have by majority, they have excluded us from the process’\textsuperscript{118}. But neither Taylor nor Griffiths go all the way in stating what their arguments seem to imply: that the entire court is political.

\textsuperscript{112} Transcript p. 49389/5-7.
\textsuperscript{113} Transcript p. 49396/15-19.
\textsuperscript{114} Transcript p. 49396/23-24.
\textsuperscript{116} Transcript, p. 49396/10-14.
\textsuperscript{118} Griffiths in an interview with the BBC on the 9\textsuperscript{th} of February, \url{http://www.bbc.co.uk/news/world-africa-12402254}. Last accessed 20 April 2011.
They never accuse the judges of being partial nor question the legitimacy of international criminal justice as such. In fact both voice their sympathy for the idea:

I [Taylor] hope and pray for a fair trial that will perhaps bring to an end the cycles of injustice. I stand ready to participate in such a trial and let justice be done for myself and for those who have suffered far more than me in Liberia and Sierra Leone.\textsuperscript{119}

The prosecution, however, is not spared. They are a part of regime change:\textsuperscript{120} an international conspiracy to get rid of Taylor. All of the chief prosecutors (Hollis, Crane, Rapp) were Americans as are most of the prosecution team. The ‘Prosecution is political’\textsuperscript{121}. The prosecution and the Court are nothing but a continuation of the actions of the US against Taylor’s government in Liberia discussed above.

Taylor can almost fight both his discursive battles simultaneously: the case against him and the entire court – specifically the prosecution – are American. The case is built upon information spread by the American government while Taylor was still in power and it wanted him out. And now this false information is used against him in court to lock him away:

They gave you information, all of you. Why were you sent? You were sent down here to prosecute and they are helping you. The whole Prosecution team from David Crane to Alan White, Chris Santora, you, Nick Koumjian, the whole American goon squad came down, so you know what I'm talking about.\textsuperscript{122}

6. Conclusion: Expressivism Accomplished?

\[\text{Around here Table 1}\]

\textsuperscript{119} Transcript p. 250/28-251/4.
\textsuperscript{120} Term used 36 times by Taylor and Griffiths, see master frame.
\textsuperscript{121} Transcript, p. 49397/8.
\textsuperscript{122} Transcript p. 32283/19-23.
We will now assess the rhetorical approaches of prosecution and defence (summarised in Table 1) against their socio-political background, in order to establish the ‘expressivist potential’ of the Taylor trial, of strengthening faith in the rule of law with different audiences. As outlined above, expressivism stresses the crafting of historical narratives and their pedagogical dissemination to the public as raison-d’etre for criminal trials. They are supposed to be a communicative spectacle which will close with the infliction of shame, sanction, and stigma, thus aligning crime with punishment in people’s minds.

The prosecution put Charles Taylor forward as the ‘father’ of the RUF rebels, to whom they owed a patrimonialist allegiance. If we assume that Tim Kelsall and many other Africanists who stress the importance of patrimonialism for African politics are right, this portrayal would in principle resonate well with West-African audiences, who would recognise big-man politics as the dominant form, as well as with western audiences who have been taught that this is how ‘Africa’ works. Indeed the defence does not challenge this element of the discourse. At the same time however, Kelsall points at the principal-agent problem in patron-client relations, particularly in jungle warfare. In the prosecution discourse, the father-son relation becomes one of one-sided blind obedience, rather than a negotiation to mutual advantage between two parties, clad in customary role-play.

Taylor’s bitterness of war speech, a rare public reference to his alleged designs on Sierra Leone, may well live on in the collective memory of Sierra Leonians. As such, its use by the prosecution could be considered as an element of the pedagogical dissemination expressivism has in mind. Arguably, appeal to and strengthening of such a collective memory in the context of the Taylor trial could have purposes of memorialisation and reconciliation. However, this reconciliation may actually come at the expense of, rather than through, complete truth-telling, as it externalizes all responsibility for the war conveniently to a figure outside the Sierra Leonian polity.

The centrality of the ‘acts of terror’ count in the case against Charles
Taylor can hardly be seen as anything other than a post-9/11 American obsession. It is not part of a cosmopolitan human rights vocabulary, and is not a crime under the statutes of other international criminal tribunals. There is no reason to believe that ‘acts of terror’ would resonate well with the populations of Sierra Leone and Liberia, where such acts in the western sense have not been prevalent. However, the prosecution has made a skilful effort to ‘vernacularise’ the charge of terror, 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.

The prosecution’s emphasis on diamonds as Taylor’s prime motivation for involvement in the Sierra Leone war would resonate with audiences inside and outside West-Africa. The term blood diamonds is primarily associated with the Sierra Leonian war (indeed the Hollywood film with that title is set there), and even Charles Taylor himself agreed that diamonds were a prime cause of the war. However, the prosecution does not make much effort explaining why Taylor wanted diamonds. As quoted above, the prosecution mentions both greed and lust for power itself as motives, but neither is elaborated on. No reference is made to the luxuriousness of Charles Taylor’s life-style, nor is it explained why he would go to the trouble of arming the RUF in exchange for diamonds, and then again sell diamonds in order to procure arms. Hence if we liken Taylor’s portrayal to that of a Hollywood villain, the final speech in which either his boundless greed or his bent for world domination are exposed is missing. This makes the singling out of Taylor as the sole villain, at the expense of agency among his associates, all the more problematic.

The prosecution does not give us a Charles Taylor fuelled by ethnic hatred. This sets him apart from most portrayals of war criminals, from the Nazi’s to the defendants in the Yugoslav and Rwandan trials and the first ICC trial against Thomas Lubanga. This makes sense since there appears to be no evidence of Taylor attempting to dehumanize any particular ethnic group. But it points to a bigger problem for the prosecution in terms of its expressivist task. The evidence that war crimes have taken place in Sierra Leone is assembled easily enough. But unlike in the case of the Holocaust, there are no written
plans proving intent to commit mass murder. Unlike in the Yugoslav and Rwandan cases there is not even evidence of murderous or dehumanising language used in reference to particular population groups. The only direct evidence linking the murder, maiming, rape and pillage in Sierra Leone to the president of a neighbouring country comes from Taylor’s own blood-steeped former accomplices.

The defence takes Taylor’s evident lack of ethnic grudges a step further: the child of an Americo-Liberian father and a native mother, he unites in his person the two groups whose previous feuding tore Liberia apart. On the stand, Taylor comes across as a would-be international statesman more than the charismatic ‘leader of the people’ seen in Yugoslav trials. He appears at times to want to appeal to all Africans, at other times even more widely to ‘the international community’. This is consistent with his non-ethnic profile, and provides a credible motive for his involvement in the Sierra Leonian peace process.

Taylor’s account of his humble origins and his ‘calling’ to lead his country to become more developed would appeal to Americans, to Liberians, and arguably even to Sierra Leonians, with lack of social mobility often cited as one of the causes of the war. His schizophrenic attitude to the United States, embracing its values but feeling slighted and neglected in return, would be intelligible to Liberians in particular. But the broader story is that Taylor was ultimately betrayed by the Americans because he stood up to them, particularly resisting oil concessions. The supposed consequences are likened to the ‘regime change’ visited upon Saddam Hussein, an argument with potential appeal to much broader non-western and even western audiences. This turns the ‘terror’ charge upside down, turning the accusation against the ‘war on terror’ instead. Taylor is compared not to Saddam but to universal saint Nelson Mandela and pan-African hero Gaddafi instead.\footnote{124}{At the time when Taylor was in the witness box, in the autumn of 2009, Gaddafi’s global reputation, while always contested, was of course considerably less problematic than at the time of writing in summer 2011.}

\footnote{123}{See Paul Richards, Fighting for the Rain Forest : War, Youth and Resources in Sierra Leone, (International African Institute, London, 1998); Gberie, supra note 14.}
<table>
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<th>Table 1: Main discursive motifs, Taylor trial</th>
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<td><strong>Prosecution</strong></td>
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<td><strong>Defence</strong></td>
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<td><strong>Taylor as leader</strong></td>
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<td>father/brother/chief</td>
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<td>‘harnessed his fighters’ thirst for revenge</td>
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<td>eliminating associates ‘to wipe out traces’</td>
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<td><strong>Taylor’s motives</strong></td>
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<td>‘knowing, wilful, conscious’</td>
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<td>‘lust for power’</td>
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<td>greed: diamonds</td>
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<td><strong>Taylor and the Sierra Leone war</strong></td>
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<td>Bitterness of war</td>
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<td>‘point president for peace’: ridiculed</td>
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<td><strong>Taylor and terrorism</strong></td>
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<td>‘making fearful’</td>
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<td>- Freetown attack ‘more fearful than any other’</td>
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<td>- amputations: ‘trademark atrocity’</td>
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<td>- human heads, intestines displayed at checkpoints</td>
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<td>- mother forced to laugh at death children</td>
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<td><strong>Victims</strong></td>
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<td>‘helpless victims in Sierra Leone’</td>
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<td>‘schizophrenic attitude’</td>
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<td><strong>Purpose of trial</strong></td>
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<td>‘justice for the people of Sierra Leone’</td>
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<td>‘shed light on his responsibility’</td>
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<td>‘help ensure a future respect for law’</td>
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The charge of racism levied by Taylor and his counsel against the prosecution fits only very partially with the prosecution’s narrative, which did not overplay Taylor’s proximity to ritual cruelties, constructing a rational, calculating universal villain rather than a depraved, barbaric African. It relates better to the messianic rhetoric of the first prosecutor, David Crane, than to the more prosaic approach of Brenda Hollis. But, especially in the context of the wider defence discourse, it may nonetheless resonate with African audiences.

The defence’s most powerful charge against the independence of the Court, that of its close proximity to US interests, has much to back it up. First, there is the prominent role of the United States in the creation and funding of the Court. Second, there is the composition of the prosecution team, which was almost entirely American throughout. Thirdly, there is the discourse of the prosecution itself, framing the alleged crimes in terms of terror and terrorism, rather than war crimes or crimes against humanity. These elements made it relatively easy for Taylor and his defence to frame the court as a political project. One of the stakeholders in the conflict is funding and arranging the prosecution of another stakeholder. That prosecution then frames Taylor as a ‘terrorist’, a concept that is easily connected to the dominant American foreign policy preoccupation of the last decade. By depicting the prosecution as a political instrument Taylor and his lawyer discredit the legitimacy of the court and the case against him with some success.

As we have shown by means of discourse analysis, the Taylor case demonstrates three interrelated obstacles to the fulfilment of the expressivist promise. Each of these manifests themselves in the courtroom itself as much as outside it, and each of them is also likely to characterise other international criminal trials to a greater or lesser extent.

First, there is a necessary tension between criminal procedure and historical truth-telling in the case of mass violence. In a single trial, the prosecution’s job is to place maximum responsibility with a single person or a small group. In reality however, crimes against humanity can only be perpetrated through the mediation of many people. In the Taylor case, the RUF rebels were largely portrayed as mindless killing machines who voluntary laid
all their diamonds at Charles Taylor’s feet, whereas in the RUF trial full responsibility was placed with the RUF leadership and Charles Taylor was a marginal figure. Different truths for different trials do not serve the aim of truth-telling well.

Second, discourses cannot be expected to unproblematically appeal to all audiences all the time. Western audiences are likely to be privileged by prosecutors since international criminal courts, precarious as they are, rely to a greater or lesser extent on the support of western powers. As shown, this element was particularly damaging in the Taylor case, where the SCSL could with some credibility be portrayed as the Americans’ plaything, with American funding and American prosecutors levelling ‘American’ accusations of terrorism.

Finally and most importantly, these and other weaknesses will almost certainly be skillfully exposed by the defendant and his lawyers in court. Criminal trials in general, and high-profile international criminal trials in particular, are an antagonistic game. Not one, but two opposing narratives and sets of truths are put forward to the public, and the latter may discredit not just the prosecution’s account, but also weaken rather than strengthen the general public’s faith in the rule of law. This problem gets compounded when the evidence for responsibility higher up the chain of command, or even outside of the chain of command as in the Taylor case, is limited and dependent on unreliable witnesses. Expressivists put much emphasis on the judges’ verdict as the moment in which the naming-and-shaming is communicated, but it is doubtful whether this undoes at one stroke the years of undermining that have preceded it.