

THE ACTIONS OF ONE, THE RESPONSIBILITY OF A NATION:

CHARLES TAYLOR’S CONVICTION BY THE SPECIAL COURT FOR SIERRA LEONE AND ITS IMPACT ON STATE RESPONSIBILITY CLAIMS AGAINST LIBERIA

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I. INTRODUCTION

On April 26, 2012, after thirteen months of trial proceedings in the Hague, the Special Court for Sierra Leone (“Special Court”) convicted former Liberian President Charles Taylor of war crimes and crimes against humanity, including aiding and abetting the crimes of murder, rape, conscripting child soldiers, and sexual slavery during Sierra Leone’s civil war throughout the 1990s.¹ Approximately one month later, Taylor was sentenced to fifty years in prison for those crimes, effectively ensuring that he will spend the rest of his life incarcerated.²

Not since the Nuremberg Trials has the international community seen the conviction of a high-level government official such as Taylor by an international criminal tribunal. As the former president of Liberia, Taylor is now the highest ranked individual to be convicted of war crimes and crimes against humanity since the aftermath of World War II.³ As such, Taylor’s conviction raises important questions about the relationship between the previously separate realms of individual and state responsibility in international law.⁴ The primary method of seeking justice for atrocity crimes has focused on individual convictions like Taylor’s, but criminal tribunals often “acknowledge[] that mass atrocity is committed by masses, and is often facilitated by the institutions of the state.”⁵ Because the consequences of a finding of state responsibility are so different than an individual criminal conviction, holding governments accountable for atrocity crimes may offer significant remedies to the

¹ *Strongman Guilty of War Crimes; Former Liberian Leader Charles Taylor Convicted of Crimes in Sierra Leone*, TIMES & TRANSCRIPT (New Brunswick), Apr. 27, 2012, at C1; Editorial, *War Crimes Punished*, INT’L HERALD TRIB., June 1, 2012, at 6.

² Editorial, *War Crimes Punished*, INT’L HERALD TRIB., June 1, 2012, at 6.

³ *Id.*

⁴ See Mary Rumsey, Book Review, 38 INT’L J. LEGAL INFO. 410, 411–12 (2010) (reviewing BEATRICE I. BONAFAE, *THE RELATIONSHIP BETWEEN STATE AND INDIVIDUAL RESPONSIBILITY FOR INTERNATIONAL CRIMES* (2009)).

⁵ Saira Mohamed, *A Neglected Option: The Contributions of State Responsibility for Genocide to Transitional Justice*, 80 U. COLO. L. REV. 327, 330 (2009).

injured party that an individual criminal conviction alone could not.⁶ This note will explore the ways in which an individual criminal conviction could help those findings of state responsibility become a reality.

International law historically treated individual accountability for war crimes and crimes against humanity as a legal issue distinct from state accountability.⁷ Recent high-level convictions such as Taylor's, however, raise questions about how these two areas of international law overlap. A finding of state accountability would entail different rights and responsibilities for the involved states than a conviction for even the highest-level individual in an international criminal tribunal.⁸ This note will discuss the differing standards for individual criminal responsibility and state responsibility for war crimes and crimes against humanity under existing international law. The purpose of this analysis is to identify common features in the standards that might prove useful to a state seeking to bring a state responsibility claim to the International Court of Justice (ICJ) after a high-level individual conviction has already been secured.

Generally, a single incident may be eligible for remedies under both individual and state responsibility in the context of crimes against humanity when the following conditions are met: a) an act is committed that satisfies the definition of a "crime against humanity;" b) that crime entails individual responsibility; and c) it is committed by or attributed to a state organ.⁹ Therefore, if all three of these conditions are satisfied in a given case, both an individual criminal conviction and a finding of state responsibility are possible. Additionally, because of the overlap between these standards, an individual conviction could tend to bolster a claim of state responsibility before the ICJ.¹⁰ The various parts of this note will address whether these conditions are satisfied in the *Taylor* case, and how these conditions interact to make a finding of individual or state responsibility more likely in any given case.¹¹

This note argues that if all the conditions are met, a high-level conviction such as Taylor's will make it easier for countries like Sierra Leone to prevail on a claim for state responsibility against countries like

⁶ *Id.*

⁷ *Id.* at 331.

⁸ See generally BEATRICE I. BONAFÉ, THE RELATIONSHIP BETWEEN STATE AND INDIVIDUAL RESPONSIBILITY FOR INTERNATIONAL CRIMES 11–35, 147–216 (2009).

⁹ *Id.* at 28–29.

¹⁰ See *id.*

¹¹ See *infra* Part IV.

Liberia before the ICJ. However, the high standard of proof required to prevail on a claim of state responsibility in addition to certain specific facts of Taylor's conviction ultimately suggest that the connection between the two standards would not result in a successful claim of state responsibility against Liberia in this case.¹² Therefore, while the overlap between the two standards means that a high-level criminal conviction like Taylor's makes a finding of state responsibility more likely, it still does not mean that the injured state is likely to prevail if they bring such a claim before the ICJ.¹³

Part II of this note will examine the definition of a crime against humanity, and the standard for obtaining an individual conviction under international criminal law. This section further applies these general standards to the specific facts of the *Taylor* conviction.¹⁴ In doing so, Part II addresses the first two conditions of the test for overlap between individual and state responsibility.

Part III will discuss the standard for state responsibility. Put simply, a finding of state responsibility is possible when an atrocity crime is committed by or attributed to a state organ.¹⁵ Part III will specifically address state responsibility for crimes against humanity and atrocity crimes, and will compare the core elements of state responsibility to the elements of an individual criminal conviction by an ad hoc criminal tribunal. Finally, it will discuss how various portions of each standard overlap in such a way that might make a finding of state responsibility possible if a conviction of a high-ranking government official has already been secured.

Finally, Part IV will apply the previous analysis to the Taylor conviction and Sierra Leone/Liberia case, and explore some of the practical difficulties that Sierra Leone might encounter if it was to actually bring a claim against Liberia to the ICJ. This note will conclude that if all three conditions discussed above are clearly met, there is overlap between the standards for individual and state responsibility that suggest a conviction of a high-ranking government official will make a

¹² Davis B. Tyner, *Internationalization of War Crimes Prosecutions: Correcting the International Criminal Tribunal for the Former Yugoslavia's Folly in Tadic*, 18 FLA. J. INT'L L. 843, 844–46 (2006).

¹³ See *infra* Part IV.

¹⁴ David M. Crane, "Back to the Future"—Reflections on the Beginning of the Beginning: *International Criminal Law in the Twenty-First Century*, 32 FORDHAM INT'L L.J. 1761, 1761–65 (2009).

¹⁵ BONAFÈ, *supra* note 8, at 17.

finding of state responsibility more likely.¹⁶ However, the facts of this specific case will show that Sierra Leone would be unlikely to succeed against Liberia based on Taylor's conviction alone, because the facts of Taylor's conviction are not strong enough to directly attribute his actions to the actions of the Sierra Leone government.¹⁷

II. THE STANDARD FOR A CONVICTION OF CRIMES AGAINST HUMANITY UNDER INTERNATIONAL CRIMINAL LAW

The idea that individuals (as opposed to states) can be held responsible for violations of international law is a fairly recent development in terms of the way we think about international law and who can violate it.¹⁸ Traditionally, only states could be held accountable for violations of international law.¹⁹ Following World War II, the first international criminal tribunals were established in Nuremberg and Tokyo, which focused on convicting individuals – not states – of war crimes and crimes against humanity.²⁰ Shortly thereafter, the newly-formed United Nations signed the Genocide Convention and the Universal Declaration on Human Rights, affirming the idea that those who violate these basic rights can be brought to justice.²¹

A. FORMATION OF AD HOC CRIMINAL TRIBUNALS, INCLUDING THE SPECIAL COURT FOR SIERRA LEONE

International criminal law saw its next major development during the 1990s with the emergence of ad hoc criminal tribunals, created by the United Nations to address a certain specific international incident.²² In 1993, the United Nations Security Council created the International Criminal Tribunal for the former Yugoslavia (ICTY), with the goal of punishing “individual wrongdoers guilty of violations of international humanitarian law as established in the Geneva Conventions and Customary International Law, as well as those guilty of committing

¹⁶ See *infra* Part IV.

¹⁷ See *infra* Part IV.

¹⁸ See MARK WESTON JANIS & JOHN E. NOYES, INTERNATIONAL LAW: CASES AND COMMENTARY 459 (4th ed. 2011).

¹⁹ See *id.* at 459–71.

²⁰ Crane, *supra* note 14, at 1761–65.

²¹ *Id.* at 1762.

²² *Id.* at 1764.

crimes against humanity.”²³ The ICTY was soon followed by the creation of the International Criminal Tribunal for Rwanda (ICTR) in 1994.²⁴ The first permanent criminal court for international law, the International Criminal Court (ICC), was created with the adoption of the Rome Statute in 1998.²⁵ Finally, the Special Court for Sierra Leone was created in 2002 in response to the civil war and human rights violations in that country.²⁶

Generally, international criminal tribunals are established on an ad hoc basis through an agreement between the United Nations and the government of the state asking for assistance in prosecuting international crimes, and by a resolution from the United Nations Security Council (UNSC).²⁷ Once the need for an ad hoc criminal tribunal is established, usually by a written request from the government of the affected state, the UNSC decides whether to pass a resolution agreeing to negotiate its creation.²⁸ The time frame between the initial request and the formal creation of a tribunal can vary but is generally accomplished quickly.²⁹ For example, efforts to initiate the ICTY began in 1992 and came to fruition in 1993, and the creation of the ICTR took a mere 7 months.³⁰

In Sierra Leone, the history of the conflict that led to the creation of the Special Court is a long and troubling one.³¹ In March 1991, armed conflict broke out in Sierra Leone when the Revolutionary United Front (RUF) attacked the country from neighboring Liberia.³² The source of the conflict was for control of Sierra Leone’s vast supply of natural resources, including a significant number of diamond mines.³³ The RUF continued these attacks despite peace resolutions until May 25, 1997, when a coup by some members of the Sierra Leone Army overthrew the existing democratic government.³⁴ After seizing control, the insurgent

²³ *Id.*; Tyner, *supra* note 12, at 853.

²⁴ Crane, *supra* note 14, at 1764.

²⁵ *About the Court*, INT’L CRIM. CT., http://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx (last visited Feb. 14, 2014).

²⁶ Statute of the Special Court for Sierra Leone, Jan. 16, 2002, 2178 U.N.T.S. 138.

²⁷ *International Criminal Tribunal for the Former Yugoslavia*, PROJECT ON INT’L CTS. & TRIBUNALS, <http://www.pict-pecti.org/courts/ICTY.html> (last visited Feb. 14, 2014).

²⁸ *Id.*

²⁹ *See id.*

³⁰ *Id.*; *International Criminal Tribunal for Rwanda (ICTR)*, PROJECT ON INT’L CTS. & TRIBUNALS, <http://www.pict-pecti.org/courts/ICTR.html> (last visited Feb. 14, 2014).

³¹ *See* Prosecutor v. Taylor, Case No. SCSL-2003-01-T, Judgment (Apr. 26, 2012).

³² *Id.* at 49625.

³³ *See id.* at 49632.

³⁴ *Id.* at 49625.

Sierra Leoneans joined forces with the RUF, and together they formed a new government called the Armed Forces Revolutionary Council (AFRC).³⁵ Taylor, as the leader of the National Patriotic Front of Liberia (NPFL) and later the president of Liberia, was accused and convicted of assisting, encouraging, directing, and controlling the RUF and AFRC in their attacks against the democratic government of Sierra Leone.³⁶

Like the other ad hoc criminal tribunals that preceded it, the formation of the Special Court was a fairly speedy process.³⁷ In June 2000, the President of Sierra Leone requested that the United Nations establish a criminal tribunal to hear cases against those who had committed war crimes, crimes against humanity, and other atrocities during the ten-year Sierra Leonean civil war.³⁸ Just two months later, in August 2000, the United Nations Security Council passed Resolution 1315, the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone.³⁹ After only eighteen months of negotiations, the Special Court was formally created when both the government of Sierra Leone and the United Nations signed an official agreement on January 16, 2002 in Freetown, Sierra Leone.⁴⁰

The new Special Court, unlike the ICTY and ICTR, was considered to be a “hybrid” tribunal because it used the basic structure of the other ad hoc tribunals, but drew from “legal norms” of both domestic law and international law.⁴¹ The Special Court strives to achieve the best of both worlds by combining “the expertise of the international community” and “the legitimacy of local actors” to enforce international law on the subjects of war crimes and crimes against humanity.⁴² The title of “hybrid tribunal” was given to the Special Court due to the fact that it relies on both domestic and international laws and procedures when trying cases.⁴³

According to its governing statute, the Special Court has the authority to “prosecute persons who bear the greatest responsibility for

³⁵ *Id.*

³⁶ *Id.* at 49625–26.

³⁷ See James Cockayne, *The Fraying Shoestring: Rethinking Hybrid War Crimes Tribunals*, 28 *FORDHAM INT'L L.J.* 616, 617 (2005).

³⁸ *Id.* at 617 n.6.

³⁹ S.C. Res. 1315, U.N. Doc. S/RES/1315 (Aug. 14, 2000).

⁴⁰ Cockayne, *supra* note 37, 317 n.6.

⁴¹ See *id.*

⁴² *Id.* at 619.

⁴³ See *id.* at 317 n.6.

serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.”⁴⁴ In Articles 2 through 5, the statute explicitly identifies the crimes that the court may prosecute as crimes against humanity,⁴⁵ violations of the Geneva Convention,⁴⁶ “other serious violations of international humanitarian law,”⁴⁷ and crimes under Sierra Leonean law.⁴⁸ Finally, the statute specifies that any individual convicted by the Special Court will serve their term of imprisonment in the country of Sierra Leone.⁴⁹ Given this jurisdictional grant, the Special Court is therefore a tribunal that has the authority to hold individuals responsible for crimes against humanity, which satisfies the second criterion for the overlap between individual and state responsibility standards.

B. ATROCITY CRIMES, CRIMES AGAINST HUMANITY, AND THE
CONVICTION OF CHARLES TAYLOR

International criminal tribunals address various diverse criminal acts. Whereas the criminal tribunals at Nuremburg and Tokyo focused exclusively on three areas of international law – armed conflict, genocide, and crimes against humanity – the modern tribunals are often charged with making decisions about a number of other areas of international law.⁵⁰ The recently developed phrase “atrocities crimes” attempts to capture all of the violations of international law addressed by the modern criminal tribunals.⁵¹ These include genocide, crimes against humanity, war crimes, terrorism, ethnic cleansing, and even crimes of slavery, torture, aggression, and apartheid.⁵² In other words, atrocities crimes are “high impact crimes that are of an orchestrated character, that shock the conscience of humankind, that result in a significant number of victims,” and that merit “an international response holding the lead

⁴⁴ Statute of the Special Court for Sierra Leone, *supra* note 26, art. 1, para. 1.

⁴⁵ *Id.* art. 2.

⁴⁶ *Id.* art. 3.

⁴⁷ *Id.* art. 4.

⁴⁸ *Id.* art. 5.

⁴⁹ *Id.* art. 22, para. 1.

⁵⁰ See David J. Scheffer, *The Future of Atrocity Law*, 25 SUFFOLK TRANSNAT’L L. REV. 389, 394–97 (2002).

⁵¹ *Id.* at 398.

⁵² *Id.* at 395–96.

perpetrators accountable before a competent court of law.”⁵³ These crimes are defined by a number of sources of international law, a few of which include the laws of war and armed conflict, human rights law, international humanitarian law, and international criminal law.⁵⁴

i. Defining Crimes against Humanity

In the past, crimes against humanity have been thought of as a part of international humanitarian law, which focuses mainly on state responsibility.⁵⁵ However, the emergence of international criminal law has also led to the prosecution of individuals for crimes against humanity.⁵⁶ Therefore, the significant overlap in the various types of claims of crimes against humanity and the recent Taylor conviction, present an ideal case study in which to compare the standards required for individual and state responsibility.

The definition of the term “crimes against humanity” itself has changed over time, in both the legal and the colloquial sense.⁵⁷ The term first appeared in the 1907 Hague Convention’s preamble, which “codified the customary law of armed conflict.”⁵⁸ One of the first black-letter definitions came from the London Agreement, the governing document of the Nuremburg trials, which characterized crimes against humanity as:

murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population . . . or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal⁵⁹

The ICC and the ad hoc tribunals, including the Special Court, have expanded the original definitions to include acts such as rape and torture.⁶⁰ For instance, the Rome Statute, which governs the ICC, gives the court jurisdiction to hear cases where one of eleven qualifying acts

⁵³ *Id.* at 400.

⁵⁴ *Id.* at 397–98.

⁵⁵ *Id.* at 402–03.

⁵⁶ *Id.* at 407.

⁵⁷ See M. Cherif Bassiouni, *Crimes Against Humanity*, CRIMES WAR, <http://www.crimesofwar.org/a-z-guide/crimes-against-humanity/> (last visited Feb. 14, 2014).

⁵⁸ *Id.*

⁵⁹ Charter of the International Military Tribunal – Annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (“London Agreement”) art. 6(c), Aug. 8, 1945, 82 U.N.T.S. 279; *id.*

⁶⁰ Bassiouni, *supra* note 57.

was “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”⁶¹

The Statute for the Special Court for Sierra Leone (“Special Court Statute”) also provides a definition of “crimes against humanity,” and this definition was essential in prosecuting Taylor.⁶² In order to secure a conviction of crimes against humanity in the Special Court, the prosecutor must generally prove three elements.⁶³ First, the prosecutor must show that the actions in question fall into one of the nine qualifying categories defined by Article 2 of the Special Court Statute.⁶⁴ The qualifying acts specifically recognized by the Special Court Statute are murder, extermination, enslavement, deportation, imprisonment, torture, rape and other similar acts, certain types of persecution, and “other inhumane acts.”⁶⁵ Second, the prosecutor must prove that those actions were committed “as part of a widespread or systematic attack against any civilian population.”⁶⁶ Finally, the prosecutor must demonstrate that the person being tried is individually criminally responsible for the crimes against humanity.⁶⁷

Article 6 of the Special Court Statute states that any “person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime” identified in the statute may be found criminally responsible.⁶⁸ This is true even if the individual in question was acting as the sitting head of state, or if the acts were committed by a subordinate, if the individual being tried “knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”⁶⁹

By defining individual criminal responsibility in this way, the Special Court Statute allows for trials and convictions of individuals who may not have been directly involved in the crimes themselves, but were involved in planning or supporting the crimes and/or failed to take

⁶¹ Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90.

⁶² Statute of the Special Court for Sierra Leone, *supra* note 26, art. 2.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* art. 6.

⁶⁸ *Id.*

⁶⁹ *Id.*

reasonable steps to stop the atrocities from occurring.⁷⁰ Given this definition, a successful conviction by the Special Court satisfies the first two conditions for identifying overlap between individual and state responsibility – a) identifying a crime against humanity, and b) asserting jurisdiction to hold an individual liable for that crime.

ii. *Charles Taylor's Conviction for Crimes against Humanity in Sierra Leone and Its Potential Impact on Liberia*

Taylor's trial for his involvement in the Sierra Leone conflict began with his indictment on June 4, 2003, and lasted almost nine years,⁷¹ finally coming to an end with his sentencing on May 30, 2012.⁷² In his trial before the Special Court, five out of eleven of the crimes that Taylor was accused of were for aiding and abetting crimes against humanity – specifically, murder, rape, sexual slavery, other inhumane acts, and enslavement.⁷³ The remaining six charges were for violations of the Geneva Convention and international humanitarian law.⁷⁴ On April 26, 2012, the Special Court found Taylor guilty of all of these charges,⁷⁵ and on May 20, 2012, sentenced him to fifty years in prison.⁷⁶ Taylor is currently appealing that conviction and sentence, but the question remains – can Taylor's conviction be extrapolated to international responsibility for the government of Liberia as a whole?⁷⁷

During his trial, Taylor raised a number of defenses that the court ultimately rejected. Most significantly, the court rejected Taylor's argument that he was "immune from any exercise of the jurisdiction of this court by virtue of the fact that at the time the indictment and warrant of arrest were issued, he was a sitting head of state."⁷⁸ The trial court, whose decision was later affirmed by the appeals chamber, reasoned, "the sovereign equality of states does not prevent a head of state from

⁷⁰ See *id.*

⁷¹ *The Prosecutor vs. Charles Ghankay Taylor*, SPECIAL CT. FOR SIERRA LEONE, <http://www.scs-sl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx> (last visited Feb. 14, 2014).

⁷² *Prosecutor v. Taylor*, Case No. SCSL-2003-01-T, Sentencing Hearing (May 30, 2012).

⁷³ *Prosecutor v. Taylor*, Case No. SCSL-2003-01-T, Judgment, 49626–27 (Apr. 26, 2012).

⁷⁴ *Id.* at 49627.

⁷⁵ *Id.* at 49676–77.

⁷⁶ *Prosecutor v. Taylor*, Case No. SCSL-2003-01-T, Sentencing Hearing, 49751 (May 30, 2012).

⁷⁷ Alpha Sesay, *Prosecution and Defense to Appeal Charles Taylor Judgment and Sentence*, TRIAL CHARLES TAYLOR (July 20, 2012), <http://www.charlestaylortrial.org/2012/07/20/prosecution-and-defense-to-appeal-charles-taylor-judgment-and-sentence/>.

⁷⁸ *Prosecutor v. Taylor*, Case No. SCSL-2003-01-T, Judgment, 49624 (Apr. 26, 2012).

being prosecuted before an international criminal tribunal or court,” and accordingly held that Taylor *could* be prosecuted by the tribunal despite the fact that he was a sitting head of state at the time that he was indicted.⁷⁹

Ultimately, the court found that Taylor had aided and abetted the commission of crimes against humanity by the RUF despite a number of findings that suggested he was not entirely responsible for their actions.⁸⁰ Significantly, the court found that the prosecution did not meet its burden of proof that Taylor was guilty of crimes against humanity by virtue of being part of a “joint criminal enterprise” with the RUF.⁸¹ Unlike aiding and abetting, which Taylor was ultimately convicted of, a conviction for being in a joint criminal enterprise required the prosecution to prove beyond a reasonable doubt that Taylor participated in a common plan, design, or purpose with the non-state military group.⁸²

However, the court did make a number of findings that were sufficient to convict Taylor for “aiding and abetting” on all of the counts he was charged with.⁸³ The court found that Taylor did provide operational support, financial support, and technical support to the RUF for military activities. They also found that Taylor directly supplied arms and ammunition to the RUF and AFRC, accepted a “continuous supply” of diamonds from the RUF in exchange for those weapons, and provided fuel for machinery used at the diamond mines. Finally, the court found that Taylor exercised his power as the president of Liberia in diplomatic settings to undermine peace efforts in Sierra Leone.⁸⁴

Most importantly, the court found that as president, Taylor knew of the atrocities being committed against civilians in Sierra Leone by the RUF and AFRC, and that someone who supported the RUF and AFRC at that time “would be supporting a group engaged in a campaign of atrocities against the civilian population of Sierra Leone.”⁸⁵ Based on these findings, the court concluded that Taylor was “individually criminally responsible for the crimes referred to in Articles 2, 3, and 4 of the Statute as alleged in the indictment by virtue of holding positions of

⁷⁹ *Id.*

⁸⁰ *Id.* at 49665–66.

⁸¹ *Id.*

⁸² *Id.* at 49666.

⁸³ *See id.* at 49663–64, 49666–67.

⁸⁴ *Id.* at 49667.

⁸⁵ *Id.* at 49663.

superior responsibility and exercising command and control over subordinate members of the RUF [&] AFRC”⁸⁶

There are several important points to take away from Taylor’s conviction when analyzing the strength of a potential claim of state responsibility by Sierra Leone against Liberia: a) that Taylor was *not* found to be in a joint criminal enterprise with the RUF and AFRC in their involvements in Sierra Leone; b) that Taylor was found to have aided and abetted these non-state military groups while they committed atrocities against civilians in Sierra Leone; and c) that under the definition of “aiding and abetting” used by the Special Court, Taylor knew of the atrocities being committed by the RUF and AFRC, and still provided operational, financial, and technical support to the groups.⁸⁷

III. THE STATE RESPONSIBILITY STANDARD AND HOW IT OVERLAPS WITH CONVICTIONS UNDER INTERNATIONAL CRIMINAL LAW

As previously discussed, the idea that individuals can be found responsible for violations of international law is a fairly new concept.⁸⁸ Traditionally, only sovereign states were considered able to violate international agreements and customs, and therefore a state was required to bring claims against another state for harm done to their citizens.⁸⁹ This traditional method of handling breaches of international law is known as the state responsibility doctrine.⁹⁰ The ICJ, the judicial branch of the United Nations, has the jurisdiction to hear most cases involving questions of state responsibility.⁹¹ In 2001, the International Law Commission published the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ILC Draft Articles), which attempted to codify previously recognized principles relating to state responsibility.⁹² Although the ILC Draft Articles themselves are not binding on any state or governing body, they serve as a useful guide to understanding

⁸⁶ *Id.*

⁸⁷ *See infra* Parts III, IV.

⁸⁸ *See supra* Part II.

⁸⁹ *See* JANIS & NOYES, *supra* note 18, at 384.

⁹⁰ *Id.*

⁹¹ Berglind Halldorsdottir Birkland, Reining In Non-State Actors: State Responsibility and Attribution in Cases of Genocide, 84 N.Y.U. L. REV. 1623, 1632–34 (2009).

⁹² U.N. GAOR, 56th Sess., Supp. No. 10, U.N. Doc. A/56/10, at 43 (2001) [hereinafter ILC Draft Articles]. *See also* JANIS & NOYES, *supra* note 18, at 385–86.

customary international law – which is binding upon states – regarding the topic of state responsibility.⁹³

A. BASES FOR FINDING STATE VIOLATIONS OF INTERNATIONAL LAW

Generally, any claim of state responsibility has three elements: 1) establishing a breach of primary or secondary international law, 2) linking action or inaction to the behavior of a specific state, and 3) proving the absence of any circumstances precluding responsibility.⁹⁴

The natural starting point for analyzing a claim of state responsibility is identifying the alleged breach of international law from which the claim arose.⁹⁵ There are a number of sources of international law, the most common of which include treaties and customary international law.⁹⁶ However, Article 1 of the ILC Draft Articles explicitly states that, “[e]very internationally wrongful act of a State entails the international responsibility of that State.”⁹⁷ Identifying the action that constitutes a breach of international law is usually the most straightforward prong of a claim of state responsibility, because the breach is often for non-adherence to a specific treaty that both states are parties to or for non-adherence to peremptory norms that are not largely disputed among states.⁹⁸

Crimes against humanity, in addition to being a basis for an individual criminal conviction under international criminal law, can also form the basis for a breach of international law.⁹⁹ This is true because the commission of a crime against humanity violates the Universal Declaration of Human Rights¹⁰⁰ and the United Nations Charter,¹⁰¹ as well as peremptory norms of general international law (*jus cogens*).¹⁰²

⁹³ David D. Caron, The ILC Articles on State Responsibility: The Paradoxical Relationship Between Form and Authority, 96 AM. J. INT’L L. 857, 861–62 (2002).

⁹⁴ See ILC Draft Articles, *supra* note 92, art. 2.

⁹⁵ Birkland, *supra* note 91, at 1627–30.

⁹⁶ JANIS & NOYES, *supra* note 18, at 28.

⁹⁷ ILC Draft Articles, *supra* note 92, art. 1.

⁹⁸ Birkland, *supra* note 91, at 1628–30.

⁹⁹ See Bassiouni, *supra* note 57.

¹⁰⁰ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (Dec. 10, 1948).

¹⁰¹ See U.N. Charter pmbl.

¹⁰² “*Jus cogens*” is defined as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331 (1969).

Therefore, even if Sierra Leone and/or Liberia are not parties to any treaties that specifically prohibit acts that constitute crimes against humanity, commission of these acts are prohibited by peremptory norms which no state can “opt-out” of.¹⁰³ In other words, crimes against humanity are nearly always breaches of international law if those actions can be properly linked to the state that the action is being brought against.¹⁰⁴

B. IDENTIFYING STATE AND INDIVIDUAL ACTORS, AND LINKING THEIR BEHAVIOR TO THE BREACH OF INTERNATIONAL LAW

Once the breach of international law by one state against the citizens of another has been identified, the next step in a claim of state responsibility is to link the specific action or inaction to the behavior of the government of the first state.¹⁰⁵ Chapter II of the ILC Draft Articles addresses the ways in which a state's behavior may be linked to a breach of international law.¹⁰⁶

First, a link may be established if the action was actually performed by the government of the state.¹⁰⁷ Although there are various ways an action can be attributed to the government of a state, in all circumstances the state must have had complete control over the actor in order to find state responsibility.¹⁰⁸ Under Article 4, the conduct of any official organ of the state is considered an act of the state under international law:

whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.¹⁰⁹

¹⁰³ The Universal Declaration of Human Rights is not a binding source of international law; therefore, a violation does not in itself create a breach of international law for which a claim of state responsibility can be brought. Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 299 (1995–96). However, Sierra Leone and Liberia are both member states of the United Nations and are also bound by *jus cogens*. See *Member States of the United Nations*, UN.ORG, <https://www.un.org/en/members/index.shtml> (last visited Feb. 14, 2014).

¹⁰⁴ See BONAFÈ, *supra* note 8, at 28–29.

¹⁰⁵ *Id.*

¹⁰⁶ ILC Draft Articles, *supra* note 92, ch. II.

¹⁰⁷ *Id.* art. 4.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

The organ may be formally recognized by the state (a *de jure* organ), but a non-official organ may also be found to be a *de facto* organ of the state.¹¹⁰

However, the ILC Draft Articles also provide for a finding of state responsibility in certain situations involving non-state actors.¹¹¹ Article 8 provides that the link between state behavior and the breach of international law can be established by proving that the actors' conduct was directed or controlled by the state.¹¹² Specifically, this article provides that

[t]he conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.¹¹³

Exactly how much control by the state is required for the link to be established is the subject of debate.¹¹⁴ Because of the serious consequences for states that are found responsible for harms to another state, courts have tended to suggest that state control over the actors who commit the crimes must be very high in order to warrant a finding of state responsibility.¹¹⁵

Traditionally, the standard for attributing actions of a non-state actor to a state is that the state must have had "effective control" over the non-state actor in order to be found responsible for the violation of international law.¹¹⁶ In *Nicaragua v. United States*, the ICJ held that a state "financing, organizing, training, supplying and equipping" non-state actors, as well as the state participating in "the selection of its military or paramilitary targets, and the planning of the whole of its operation" were not enough to satisfy the "effective control" standard.¹¹⁷ Additionally, under the "effective control" test set forth in *Nicaragua*, it is necessary to show that the state had control over each individual military operation that violated international law, as opposed to control over militant forces

¹¹⁰ Id. art. 5.

¹¹¹ Id. art. 8.

¹¹² Id.

¹¹³ Id.

¹¹⁴ See Tyner, *supra* note 12, at 845.

¹¹⁵ Id.

¹¹⁶ Jonathan Somer, *Acts of Non-State Armed Groups and the Law Governing Armed Conflict*, 10 ASIL INSIGHTS (Am. Soc'y of Int'l Law, Washington, D.C.), Aug. 24, 2006.

¹¹⁷ Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 115 (June 27).

in general.¹¹⁸ Therefore, the standard set forth in *Nicaragua* was so high that even proof that a state had participated in all of the above activities was not enough to link it to the non-state actor for purposes of state responsibility.¹¹⁹

The “effective control” standard set forth in *Nicaragua* was relaxed somewhat by the ICTY in *Prosecutor v. Dusko Tadic*, which instead applied an “overall control” test. Nevertheless, the *Tadic* “overall control” standard remains a difficult threshold to meet.¹²⁰ Unlike *Nicaragua*, the ICTY’s decision in *Tadic* applies specifically to acts by “non-state military organizations,” and instead of having to show that the state had control over each individual military operation, it was sufficient to show that the state had a more general level of control over the military activity.¹²¹

While it is slightly less rigorous than the effective control test laid out in *Nicaragua*, the ICTY’s overall control test still requires proof that the State was involved “beyond the mere financing and equipping of such forces and involving also participation in the planning and supervision of military operations.”¹²² Finally, the *Tadic* test, like the *Nicaragua* test, reflects the “acknowledgement” and “control” requirements laid out in the ILC Draft Articles as part of the threshold for a finding of state responsibility.¹²³ Therefore, although the ICTY may have slightly lowered the standard for a finding of state responsibility for non-state actors in *Tadic* compared to the ICJ, the standard purposely remains difficult to satisfy because of the serious consequences that a state can face if it is found guilty of a violation of international law.¹²⁴

C. THE IMPACT OF TAYLOR’S CONVICTION ON A STATE RESPONSIBILITY CLAIM AGAINST LIBERIA

Therefore, whether Liberia could be found responsible for crimes against humanity in Sierra Leone depends on whether Taylor’s conviction is enough to implicate him as a state or non-state actor under

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Somer, *supra* note 116.

¹²¹ *Id.*

¹²² *Prosecutor v. Tadic*, Case No. IT-94-1-A, Appeals Chamber Judgment, ¶ 145 (Int’l Crim. Trib. for the Former Yugoslavia July 15, 1999).

¹²³ Somer, *supra* note 116.

¹²⁴ See *id.*

the state responsibility standard. Determining whether the actions of a high-ranking individual who has been convicted under international law can be attributed to the state, is a highly fact-specific question that depends largely on the criminal tribunal's findings during the individual's trial.¹²⁵

One important point, made clear by the *Taylor* case, is the differing impact of a joint criminal enterprise conviction versus an aiding and abetting conviction when it comes to determining whether the state can be linked to non-governmental military actors like the RUF.¹²⁶ Whereas a conviction for joint criminal enterprise demonstrates that the individual was a part of a "common plan, design, or purpose" with the non-state actor who committed the atrocities, a conviction for aiding and abetting crimes against humanity likely falls short of the rigorous tests set forth in *Nicaragua* and *Tadic*.¹²⁷ Additionally, it is crucial to determine the individual's criminal intent in committing the crimes, including factors such as whether they intended to act in an official capacity or whether their actions were in violation of formal instructions.¹²⁸

Finally, it is important to note that when analyzing the overlap between the standards for an individual conviction under international criminal law and a finding of state responsibility, the specific circumstances of the case at hand are key to determining whether the existence of one makes the other more likely.¹²⁹ Despite the overlap and similarities discussed above, it is not entirely clear how much weight an adjudicator, such as the ICJ, would give these connections in a case concerning state responsibility.¹³⁰ Again, whether the findings that led to the individual conviction would be significant factors in a finding of state responsibility would depend on the specific facts pertaining to that unique situation.¹³¹

¹²⁵ See Mohamed, *supra* note 5, at 378–80 (explaining the importance of the JCE theory of liability in the conviction of Dusko Tadic).

¹²⁶ See *id.*

¹²⁷ Somer, *supra* note 116; Mohamed, *supra* note 5, at 379.

¹²⁸ Shabtai Rosenne, *State Responsibility and International Crimes: Further Reflections on Article 19 of the Draft Articles on State Responsibility*, 30 N.Y.U. J. INT'L L. & POL. 145, 162 (1998).

¹²⁹ *Id.* at 162–63.

¹³⁰ *Id.*

¹³¹ *Id.*

D. LEGAL AND PRACTICAL CONSEQUENCES OF STATE RESPONSIBILITY

One of the distinguishing differences between convictions under international criminal law and findings of state responsibility are the consequences that the individual or state faces if the charges brought against them are successful. For an individual, a conviction under international criminal law often means a term of imprisonment, a fine, or both.¹³² However, the consequences that a state faces once it has been found to violate an international obligation are arguably much more severe, due to of the wider impact and lasting effects that such a finding can have on a state and its people.¹³³ These alternative consequences are the primary reason why an injured state would even seek a finding of state responsibility, given that the standard of proof is so difficult to meet.¹³⁴ However, if all of the elements of a finding of state responsibility are satisfied, then attributing the crimes against humanity to a government as well as specific individuals may be the best way to achieve justice for the atrocity crimes committed.¹³⁵

The consequences of state responsibility can be thought of as two separate categories: the responsibilities of the liable state and the rights of the injured state.¹³⁶ The most important obligations of the liable state for the purposes of this note include cessation and non-repetition of the violation of international law¹³⁷ and reparation for the harm caused.¹³⁸ Forms of reparation that are recognized in the ILC Draft Articles include restitution,¹³⁹ compensation,¹⁴⁰ and satisfaction – defined as an official apology or expression of regret.¹⁴¹ In addition to the obligations of the liable state that result from a finding of state responsibility, the injured state also has a number of rights as the result of such a finding.¹⁴² The most important of these rights is the ability to use countermeasures if the liable state refuses to cease its violation of international law.¹⁴³

¹³² See, e.g. Statute of the Special Court for Sierra Leone, *supra* note 26, art. 22.

¹³³ See BONAFÉ, *supra* note 8, at 17–18.

¹³⁴ See Mohamed, *supra* note 5, at 387.

¹³⁵ *Id.*

¹³⁶ ILC Draft Articles, *supra* note 92, arts. 29–37, 42–53.

¹³⁷ *Id.* art. 30.

¹³⁸ *Id.* arts. 31, 34.

¹³⁹ *Id.* art. 35.

¹⁴⁰ *Id.* art. 36.

¹⁴¹ *Id.* art. 37.

¹⁴² *Id.* arts. 40–53.

¹⁴³ *Id.* arts. 49–53.

Based on this brief overview, if Liberia were to be found responsible for some of the atrocities committed during the Sierra Leonean civil war, the Liberian government could be required to make restitution for the harms it caused, to compensate Sierra Leone monetarily, to issue a formal apology or acknowledgement concerning the situation, or any combination of those three things.¹⁴⁴ The actual steps that Liberia would have to take in that situation would be determined by the ICJ after they had already made a finding of state responsibility in the case. However, given the virtual impossibility of “re-establish[ing] the situation which existed before the wrongful act was committed,” it is most likely that a finding of state responsibility against Liberia would result in monetary compensation and satisfaction for Sierra Leone.¹⁴⁵

Finally, there are a number of practical considerations in addition to the legal consequences of state responsibility to take into account when analyzing whether a finding of state responsibility would be beneficial to the injured state. In recent history, the international community has preferred seeking individual criminal convictions for atrocities like genocide and crimes against humanity instead of pursuing an adjudication of state responsibility before the ICJ.¹⁴⁶ Thus, despite these potential benefits, findings of state responsibility for crimes against humanity or other atrocity crimes are rare.¹⁴⁷

However, though the standard for state responsibility is more difficult to prove than an individual criminal conviction, there are a number of benefits that result from holding governments, as opposed to individuals, accountable for these crimes.¹⁴⁸ Because a finding of state responsibility entails serious consequences for the liable state, the process “promotes accountability and contributes to truth-telling—those same goals of transitional justice that the international community relies on criminal trials to accomplish.”¹⁴⁹ Although the international community currently prefers individual prosecutions for atrocity crimes, some combination of holding both individuals and states accountable is likely the ideal means to truly achieve transitional justice.¹⁵⁰

¹⁴⁴ See *id.* arts. 34–37.

¹⁴⁵ *Id.* arts. 35–36.

¹⁴⁶ Mohamed, *supra* note 5, at 328.

¹⁴⁷ *Id.*

¹⁴⁸ See *id.* at 387.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 398–99.

When the three conditions for finding both individuals and the state responsible are met – a) when an act is committed that satisfies the definition of a “crime against humanity,” b) when that crime entails individual responsibility, and c) when it is committed by or attributed to a state organ – the overlap between the two standards suggests that an individual conviction of a high-ranking official could significantly bolster a claim of state responsibility under the right circumstances.¹⁵¹ If both individual and state responsibility can be achieved based on the facts of the case, a combination of the two is likely to be the best approach to transitional justice because a finding of state responsibility truly holds governments accountable for atrocities that they commit directly or that are committed under their watch.¹⁵²

IV. HOW CHARLES TAYLOR’S CONVICTION AFFECTS SIERRA LEONE’S CHANCES IN BRINGING A CLAIM OF STATE RESPONSIBILITY AGAINST LIBERIA

As discussed throughout the previous sections of this note, there are significant areas of overlap between the standards for individual convictions in international criminal law and a finding of state responsibility for atrocity crimes such as crimes against humanity.¹⁵³ Although there are benefits to both individual convictions and holding states themselves accountable, the key to whether the ICJ will find a state responsible for violations of international law against another state hinges largely on the specific details of the state’s involvement in those alleged actions.¹⁵⁴ Whether or not a particular conviction, such as Charles Taylor’s, will significantly impact a case regarding state responsibility depends on the specific findings made by the tribunal in the individual’s case.¹⁵⁵

A. APPLICATION OF THE STANDARDS TO THE SIERRA LEONE/LIBERIA CASE

If all three of the overlap conditions between the individual and state responsibility standards are met, then Sierra Leone could potentially

¹⁵¹ BONAFÈ, *supra* note 8, at 28–29.

¹⁵² Mohamed, *supra* note 5, at 331.

¹⁵³ Rumsey, *supra* note 4, at 411.

¹⁵⁴ Rosenne, *supra* note 128, at 162–63.

¹⁵⁵ See *id.*

rely on Taylor's conviction if they were to pursue a claim against Liberia. The criteria, as applied to the Taylor case specifically, are as follows: a) whether the actions of Taylor and the RUF constitute crimes against humanity, b) whether Taylor is individually criminally responsible for those actions, and c) whether Taylor's actions can be attributed to the state of Liberia.¹⁵⁶ Each of these criteria will be addressed in turn.

As discussed in Part II, the Special Court found that the first two conditions for the overlap between the individual and state responsibility standards were met when it convicted Taylor of crimes against humanity in 2012.¹⁵⁷ The court, whose jurisdiction is granted by its governing statute and the United Nations, tried and convicted Taylor for five counts of crimes against humanity.¹⁵⁸ The Special Court found that Taylor was individually criminally responsible for "aiding and abetting the planning, preparation, or execution of the crimes" because he "provided arms and ammunition, military personnel, operational support, moral support and ongoing guidance to the RUF . . . for military operations during the indictment period."¹⁵⁹ Therefore, the first two criteria are satisfied.

The remaining condition, and biggest difficulty with the Taylor case, is attributing the actions of the RUF and Taylor to the Liberian government. As discussed above, a finding of joint criminal enterprise would have shown that Taylor, the president of Liberia at the time, had been a part of a "common plan, design, or purpose" with the RUF.¹⁶⁰ While not necessarily enough to prove that Taylor was acting in an official capacity in his dealings with the RUF, a conviction for joint criminal enterprise may have produced evidence that tended to show that Taylor's government had overall control of the group for the purposes of state responsibility.¹⁶¹ This is not what the Special Court found, however.¹⁶² Instead, Taylor was convicted of providing numerous types of support to the group with the constructive knowledge that this support was being used to commit atrocities against the civilian population of Sierra Leone.¹⁶³ As discussed previously, merely "financing, organizing,

¹⁵⁶ See BONAFÈ, *supra* note 8, at 28–29.

¹⁵⁷ See *supra* Part II.B.2.

¹⁵⁸ Prosecutor v. Taylor, Case No. SCSL-2003-01-T, Judgment (Apr. 26, 2012).

¹⁵⁹ *Id.* at 49666–67.

¹⁶⁰ See Mohamed, *supra* note 5, at 378–80.

¹⁶¹ See *id.*

¹⁶² See *supra* Part II.B.2, at 14–17.

¹⁶³ See *supra* Part II, at 17.

training, supplying and equipping” non-state actors is not enough to link a state to them under the *Nicaragua* and *Tadic* tests.¹⁶⁴ Therefore, even without delving into the issue of Taylor’s mindset at the time he was acting, it is unlikely that Taylor’s aiding and abetting conviction would be sufficient to attribute his actions to the state of Liberia. Without all three of the criteria for overlap between the individual and state responsibility standards satisfied, it is highly unlikely that Sierra Leone would be able to successfully rely on Taylor’s conviction itself in a claim against Liberia.¹⁶⁵

Although this particular case would not succeed before the ICJ, that does not necessarily mean that individual criminal convictions are not of value to states who seek damages against other states for crimes against humanity.¹⁶⁶ If all three of the overlap criteria can be shown to exist in a given case, it might be possible for a state to use the conviction of a president or another high-ranking government official to bolster their claim of state responsibility before the ICJ.¹⁶⁷

B. PRACTICAL CONSIDERATIONS REGARDING A STATE RESPONSIBILITY CLAIM AGAINST LIBERIA

In addition to the factual difficulties that make a successful state responsibility claim unlikely in Sierra Leone’s case, there are practical concerns that apply both to this case specifically and the link between the standards for state and individual responsibility in general. First, it is unclear how much the ICJ or another adjudicating body could and would rely on the findings from a previous criminal conviction when deciding whether or not to find one state responsible for harms caused to another.¹⁶⁸ International law currently prohibits courts from attaching civil damages to criminal convictions, which is just one of many reasons why international criminal law and state responsibility exist in two separate spheres of international law.¹⁶⁹ Accordingly, while an individual criminal conviction would be an important piece of evidence for a claim

¹⁶⁴ Prosecutor v. Tadic, Case No. IT-94-1-A, Appeals Chamber Judgment, ¶ 145 (Int’l Crim. Trib. for the Former Yugoslavia July 15, 1999); Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 115 (June 27).

¹⁶⁵ See BONAFÉ, *supra* note 8, at 28–29.

¹⁶⁶ See *id.* at 221–23.

¹⁶⁷ See *id.*

¹⁶⁸ See Rosenne, *supra* note 128, at 162–63.

¹⁶⁹ *Id.* at 162.

of state responsibility, “the facts on which the international responsibility of the impugned State rests would have to be established in accordance with relevant international law regarding evidence of facts.”¹⁷⁰

Additionally, criminal tribunals ultimately have somewhat different goals in the pursuit of justice than their counterparts at the ICJ.¹⁷¹ This disparity was clearly articulated by the prosecutors in the Taylor case after his sentence was pronounced in May 2012.¹⁷² In an official statement, Prosecutor Brenda Hollis told Liberians that the conviction did not mean that they would owe monetary damages to Sierra Leone, saying “it’s not Liberia versus Sierra Leone, it’s Sierra Leone versus Charles Gankay Taylor.”¹⁷³ These words were meant to reassure Liberians that the conviction of their former president did not implicate them directly.¹⁷⁴ While the criminal conviction of a president and a finding of state responsibility are two separate legal questions with different consequences, the standards are still interrelated in such a way that one could very well impact the outcome of the other.¹⁷⁵ The question of how much consideration a previous criminal conviction would be given in a state responsibility proceeding remains to be seen, but each individual case would likely depend on the facts surrounding those specific crimes.¹⁷⁶ Although the possibility of Sierra Leone securing a finding of state responsibility against Liberia may not be significantly aided by Taylor’s conviction for the reasons discussed above, Taylor’s conviction in no way precludes Sierra Leone from initiating such an action.¹⁷⁷

V. CONCLUSION

A finding of state responsibility for a violation of international law is different in many respects from an individual conviction under international criminal law, but some important overlaps between the two standards exist. These overlaps are certainly not enough to guarantee that

¹⁷⁰ *Id.* at 162–63.

¹⁷¹ *See id.* at 160–61.

¹⁷² Peter Quaqua, *Liberia: Chief Prosecutor Allays Fears – Says Nation Owes No Liabilities to Sierra Leone*, ALLAFR. (June 5, 2012), <http://allafrica.com/stories/201206050578.html>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *See* BONAFÈ, *supra* note 8, at 221.

¹⁷⁶ Rosenne, *supra* note 128, at 162–63.

¹⁷⁷ *See* Statute of the International Court of Justice art. 36, June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993.

an individual conviction will result in an additional finding of state responsibility. However, the conviction of a high-ranking government official such as a president or prime minister for atrocities such as crimes against humanity nevertheless provides valuable evidence that would be extremely useful to the injured state if it chose to seek additional reparation for the harms suffered. The overall usefulness of the individual conviction when determining state responsibility depends largely on factors such as the details of the conviction, whether the primary actor in the atrocities were government officials or non-governmental military organizations, and whether the high-ranking official was convicted of a joint criminal enterprise or aiding and abetting.

In the case of Charles Taylor and the civil war in Sierra Leone, the key difficulty with linking the former president's actions to the state responsibility standard lies in the fact that he was convicted of aiding and abetting the RUF, as opposed to acting in a joint criminal enterprise with them. Because of this, it is unlikely that Taylor's conviction alone would significantly impact a state responsibility claim by Sierra Leone against Liberia. However, the overlap between the two standards discussed in this note suggests that future convictions of high-ranking officials *could* significantly aid states that seek findings of state responsibility for atrocity crimes. Taylor's conviction by the Special Court was historic in that he was the highest-ranking government official to be found guilty by an international criminal tribunal since Nuremburg, and it may have paved the way for similar convictions if similar atrocities are committed in the future. By better understanding the overlapping standards for individual convictions and state responsibility and pursuing both in future cases, it may be possible to come closer to achieving the goal of transitional justice when atrocities are committed.