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### How Leadership in International Criminal Law is Shifting from the United States to Europe and Asia: An Analysis of Spending on and Contributions to International Criminal Courts, 55 St. Louis U. L.J. 953 (2011)

Stuart K. Ford

*The John Marshall Law School, Chicago, [fords@uic.edu](mailto:fords@uic.edu)*

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# HOW LEADERSHIP IN INTERNATIONAL CRIMINAL LAW IS SHIFTING FROM THE UNITED STATES TO EUROPE AND ASIA: AN ANALYSIS OF SPENDING ON AND CONTRIBUTIONS TO INTERNATIONAL CRIMINAL COURTS

STUART FORD\*

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\* Stuart Ford, J.D., LL.M., is an Assistant Professor at The John Marshall Law School in Chicago; previously he was an Assistant Prosecutor at the Extraordinary Chambers in the Courts of Cambodia. He has written about crimes against humanity, genocide, collective security, and the use of force in international relations. Special thanks go to Professor Corey Yung for his helpful comments on an earlier draft.

It is well understood by scholars and practitioners that trials at international criminal courts are expensive, at least compared to the average domestic criminal prosecution.<sup>1</sup> Costs at international criminal courts are also significantly higher than at non-criminal international courts.<sup>2</sup> There are arguably valid reasons for the cost of international criminal courts, including the complexity of even the simplest cases, the necessity for procedural safeguards, and the cost of interpretation and translation services.<sup>3</sup> Nevertheless, it is not uncommon to see authors cite the annual budget for the International Criminal Tribunal for the former Yugoslavia (ICTY), which has regularly exceeded \$100 million per year, as evidence of the high cost of international criminal courts.<sup>4</sup> Often, the explicit or implicit criticism is that nothing so expensive could be worthwhile.<sup>5</sup>

Yet, despite the persistent focus on the “runaway” cost of international criminal courts, there does not appear to have been a comprehensive analysis of spending at international criminal courts over the course of the last two decades.<sup>6</sup> This is unfortunate because we cannot begin to understand whether the various international criminal courts that have been established are worthwhile without understanding two things: what they have cost and what

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1. See, e.g., David Wippman, Commentary, *The Costs of International Justice*, 100 AM. J. INT’L L. 861, 863 (2006) (comparing the costs and lengths of trials at international criminal courts to the costs and lengths of domestic criminal trials in the United States).

2. See Cesare P.R. Romano, *The Price of International Justice*, 4 LAW & PRAC. INT’L CTS. & TRIBUNALS 281, 281 (2005).

3. See Wippman, *supra* note 1, at 872–78. See also Romano, *supra* note 2, at 296 (describing reasons why international criminal courts are more expensive than non-criminal international courts).

4. See, e.g., Romano, *supra* note 2, at 295; Rupert Skilbeck, *Funding Justice: The Price of War Crimes Trials*, HUM. RTS. BRIEF, Spring/Summer 2008, at 6, 6; Wippman, *supra* note 1, at 861.

5. For example, Etelle Higonnet begins her article on hybrid courts by stating that “[r]unaway costs” at the ICTR and ICTY have “called into question the efficacy of international criminal justice.” Etelle R. Higonnet, *Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform*, 23 ARIZ. J. INT’L & COMP. L. 347, 347 (2006).

6. The most comprehensive analysis that the author was able to find is that of Professor Romano. See Romano, *supra* note 2. Professor Romano examined funding in eleven international courts, including both criminal courts and non-criminal courts. See *id.* at 281. His article looks at spending in specific years at a number of the courts considered in this Article and contains some analysis of spending trends, but Professor Romano’s article is primarily concerned with whether or not the courts he analyzes are sufficiently funded to meet their mandates. His article does not systematically look at trends in spending over the entire lifetime of the courts, discuss total spending on international criminal courts, nor address in great detail the question of who is paying for international courts. Finally, the data in the Romano article is now some five years old and is in some cases out of date. Other useful contributions to the literature on the cost of international criminal courts include Wippman, *supra* note 1, and Skilbeck, *supra* note 4.

they have accomplished.<sup>7</sup> Simply quoting the ICTY's annual budget in the mid-2000s tells us virtually nothing about what international criminal courts as a whole have cost over the last twenty years. This Article tries to remedy that problem by answering four questions. First, what has the international community spent on international criminal courts as a whole? Second, what has the international community spent on each individual court? Third, how much do individual countries contribute to international criminal courts? Finally, what recognizable trends have developed in spending on and contributions to such courts over time?

More generally, this Article also represents the first step in answering the question: Are international criminal courts a worthwhile investment for the international community? The first part of that question—what we spend on international criminal courts—is answered in this Article. The second part of that question, which the author intends to address in a later Article, is: What outputs do international criminal courts produce? With answers to those two questions, the author hopes to address the ultimate question: Are international criminal courts worth what we pay for them?<sup>8</sup>

## I. CONCLUSIONS

This Article's primary conclusions are summarized in the bullet points below. More detailed information on the overall spending on international criminal courts and spending by country is contained in Part III. Part IV provides detailed information on spending by individual courts, and Part V describes the methodology used to calculate the figures in this Article.

- The international community will have spent \$4.7 billion on international criminal courts by the end of 2010 and will have spent

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7. The balancing of costs against accomplishments is the hallmark of cost-benefit analysis, which is widely used by the United States government to inform decision-making. See, e.g., David M. Driesen, *Is Cost-Benefit Analysis Neutral?*, 77 U. COLO. L. REV. 335, 339 (2006) (describing cost-benefit analysis as a comparison of the costs of some act and the monetary value of the harms the act will avoid, which are commonly referred to as the benefits); Don Bradford Hardin, Jr., Comment, *Why Cost-Benefit Analysis? A Question (and Some Answers) About the Legal Academy*, 59 ALA. L. REV. 1135, 1136 (2008) (noting that the United States has become a "cost-benefit state" and that virtually all government rulemaking is being driven by cost-benefit analysis).

8. Professor Romano suggests that international criminal courts can only justify their expense if they bring "an end to impunity for war crimes and gross violations of human rights." Romano, *supra* note 2, at 297. This seems an unnecessarily high hurdle for international criminal courts. Clearly, there has not been an end to impunity yet, but that fact does not make all prior spending on international criminal courts wasteful. Rather, it might be better to ask whether we are making progress on impunity. Is there less impunity than there was before the creation of modern international criminal courts? Are we progressing in the direction of accountability and, ultimately, deterrence? If so, how fast? These are difficult but very important questions. Regrettably, they are beyond the scope of this Article.

nearly \$6.3 billion by the time that most of the existing international criminal courts have closed their doors at the end of 2015.<sup>9</sup>

- The period of peak spending on international criminal courts has already passed. Spending peaked in 2009 at \$560 million but that figure will likely decrease by two-thirds by the end of 2015.<sup>10</sup>
- There is a core group of developed states, the majority of which are Western European, that have shown a strong commitment to international criminal courts. These states are all also members of the International Criminal Court.<sup>11</sup>
- The United States will be the single largest contributor to international criminal courts over the period of 1993–2015 and will have spent slightly more than \$1 billion. However, this fact obscures an ongoing change in who is funding international criminal courts. U.S. contributions as a percentage of overall contributions have declined steadily since 2004, and by 2015 the United States' share of the costs of international criminal courts will be essentially zero.<sup>12</sup>
- In contrast, by 2015, European countries will dominate spending on international criminal courts contributing more than 60% of all funding for such international criminal courts. This is primarily a result of the United States' refusal to participate in the International Criminal Court.<sup>13</sup>
- Following on from the two previous points, we are in the middle of a dramatic shift in support for international criminal courts and international criminal law. While the United States has historically been the principal supporter of international criminal courts, and by extension international criminal law, European countries are in the process of assuming that leadership position.<sup>14</sup>

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9. See *infra* Figure 2 and accompanying text.

10. See *infra* Part III.B.

11. This Article measures commitment to international criminal courts in terms of voluntary contributions to such courts, adjusted to take into account the relative wealth of the contributing countries. While the United States has been the largest absolute contributor to international criminal courts, its voluntary contributions, once adjusted for the fact that it is the wealthiest country in the world, are significantly less than a number of other countries. See *infra* Part IV.F and Table 1.

12. See *infra* Part III.C.

13. See *infra* Part III.C.

14. See *infra* Part III.C.

## II. PRELIMINARY ISSUES

### A. *Defining International Criminal Courts*

For purposes of this Article,<sup>15</sup> “international criminal courts” refers to those courts that: 1) were created by international law; 2) are funded primarily by the international community; 3) have a significant proportion of international staff; and 4) have jurisdiction primarily over individuals accused of violating international criminal law. Thus, this Article will only consider spending on the following courts: the International Criminal Court (ICC); the International Criminal Tribunal for the former Yugoslavia (ICTY); the International Criminal Tribunal for Rwanda (ICTR); the Extraordinary Chambers in the Courts of Cambodia (ECCC); and the Special Court for Sierra Leone (SCSL). Other courts were considered for inclusion in this Article, including the Special Tribunal for Lebanon, the Special Panels for Serious Crimes in East Timor, the War Crimes Chamber in Bosnia and Herzegovina, and the Regulation 64 Panels in Kosovo. For various reasons, which are explained below in Part VI, each of these courts was excluded from this analysis.

### B. *The Selection of Dates*

This Article will focus on three particular years in its analysis: 1993, 2010, and 2015. 1993 was chosen as the starting point for this Article’s analysis because it was the beginning of the recent renaissance in international criminal courts.<sup>16</sup> 2010 has been chosen because it represents the present and tells us what is currently happening with international criminal courts. In most cases, it also represents the last year for which concrete figures are available. Figures for future years necessarily involve some predictions about future spending. Future figures also therefore involve some margin of error, and the further into the future the figures are extrapolated the larger the margin of error. Nevertheless, the author felt that certain predictions about the future would be both useful and warranted.<sup>17</sup> 2015 was chosen for two reasons: First, it is as

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15. This definition was chosen solely for the purposes of this Article and is not intended to be a general definition of what constitutes an international criminal court.

16. See *infra* notes text accompanying notes 22–24.

17. It is worth noting that courts routinely engage in this sort of prediction. The ICTY and the ICTR both run on biennial budgets, which means that spending must be predicted at least two years in advance. See *The Cost of Justice*, ICTY.ORG, <http://www.icty.org/sid/325> (last visited July 31, 2011); *General Information*, UNICTR.ORG, <http://www.unictl.org/AboutICTR/GeneralInformation/tabid/101/default.aspx> (last visited July 31, 2011); see also *infra* notes 161, 178 and accompanying text. The ECCC has already produced a “preliminary budget” complete with predicted spending figures through 2015. See EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, PRELIMINARY BUDGET ESTIMATES 2012–2015 (2009) [hereinafter ECCC 2012–2015].

far into the future as the author is willing to predict spending on international criminal courts, and second, as explained below, 2015 represents a natural endpoint for this study.

We are living during what might be termed a “renaissance” of international criminal courts. Of course, some of the ideas that form the basis for international criminal law, like restrictions on certain types of weapons or tactics during armed conflicts, have been around for thousands of years.<sup>18</sup> But the modern form of international criminal law—a body of international law that criminalizes certain conduct by individuals, particularly war crimes, crimes against humanity and genocide—is largely a product of the second half of the twentieth century;<sup>19</sup> the first international criminal court was the International Military Tribunal (IMT) at Nuremburg in the aftermath of WWII.<sup>20</sup> The IMT represented the birth of the modern concept of the international criminal court.<sup>21</sup>

However, the Cold War very quickly put the idea of international criminal courts into hibernation as the two superpowers refused to cooperate with one another. The end of the Cold War, which simultaneously resulted in a thawing of relations between East and West and the outbreak of suppressed ethnic violence in parts of Eastern Europe and the former Soviet Union,<sup>22</sup> led to the creation of new international criminal courts. In 1993, the ICTY became the first new international criminal court to be established in nearly fifty years.<sup>23</sup>

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18. See Stuart Ford, *Crimes Against Humanity at the Extraordinary Chambers in the Courts of Cambodia: Is a Connection with Armed Conflict Required?*, 24 UCLA PAC. BASIN L.J. 125, 131 & n.8 (2007).

19. The modern law of war crimes is largely based on the Geneva Conventions, which came into effect in 1949. *Id.* at 139. Crimes against humanity were first used to prosecute individuals at Nuremburg in 1946. *Id.* at 140–45. Genocide was recognized as a crime upon ratification of the Convention on the Prevention and Punishment of the Crime of Genocide in 1948. *Id.* at 152 (citing G.A. Res. 260 (III), U.N. Doc. A/RES/260(III) (Dec. 9, 1948) (containing the Convention as an annex)).

20. *Id.* at 139–40, 140 n.54.

21. See Whitney R. Harris, *A World of Peace and Justice Under the Rule of Law: From Nuremberg to the International Criminal Court*, 6 WASH. U. GLOB. STUD. L. REV. 689, 700 (2007) (describing how shortly after Nuremberg, twenty-two countries, including all prosecuting powers of the IMT, called for the establishment of an international criminal court).

22. See Stuart Ford, *OSCE National Minority Rights in the United States: The Limits of Conflict Prevention*, 23 SUFFOLK TRANSNAT'L L. REV. 1, 5–6, 8–9, 13–14 (1999) (noting that the end of the Cold War coincided with the adoption of “Western” ideals of human rights and democracy in the former Soviet bloc countries and the outbreak of numerous ethnic conflicts in places like Yugoslavia, Nagorno-Karabakh, the Trans-Dniester, and Ossetia).

23. S.C. Res. 808, ¶ 1, U.N. Doc. S/RES/808 (Feb. 22, 1993); S.C. Res. 827, ¶ 2, U.N. Doc. S/RES/827 (May 25, 1993); Jonathan Hecht, *The Challenge of China and Human Rights*, 9 HARV. HUM. RTS. J. 315, 324 (1996) (book review) (“The establishment of the ICTY . . . in 1993 marks the first time that an international criminal court has been created . . . since the Nuremberg and Tokyo tribunals following World War II.”) (footnote and citation omitted).

After the ICTY was created, the international community went on to create additional courts, including the ICTR, the ECCC, and the SCSL.<sup>24</sup> Thus, 1993 can be thought of as the beginning of the renaissance of international criminal courts and is the obvious starting point for the analysis in this Article.

But if the end of the Cold War represented the beginning of the renaissance in international criminal courts, it also laid the foundation for its end. The end of the Cold War enabled serious negotiations about the creation of a permanent international criminal court.<sup>25</sup> These negotiations culminated with the creation of the Rome Statute in 1998 and the subsequent establishment of the ICC in 2002.<sup>26</sup> One of the goals of establishing a permanent international criminal court was to eliminate the need to create courts of limited jurisdiction in response to particular atrocities.<sup>27</sup> Thus, implicit in the creation of the ICC was the idea that there would eventually remain only one international criminal court.

It is now reasonably clear that unless the international community creates a new international criminal court, sometime in 2015, the ICC will be the only international criminal court in the world.<sup>28</sup> Thus, 2015 represents the end of the “renaissance” in international criminal courts that began with the

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24. See S.C. Res. 955, ¶¶ 1–2, U.N. Doc. S/RES/955 (Nov. 8, 1994) (establishing the ICTR); S.C. Res. 1315, U.N. Doc. S/RES/1315 (Aug. 14, 2002) (establishing the SCSL); Phoebe Knowles, *The Power to Prosecute: The Special Court for Sierra Leone from a Defense Perspective*, 6 INT’L CRIM. L. REV. 387, 389–90 (2006) (describing the finalization of the SCSL); Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodia Law of Crimes Committed During the Period of Democratic Kampuchea, art. 2(1), U.N.-Cambodia, June 6, 2003, available at <http://www.unhcr.org/refworld/country,,UN,,KHM,,4ba8e2ea9dc,0.html>.

25. The International Law Commission’s work on a Draft Code of Offences Against the Peace and Security of Mankind was largely abandoned in 1954 because of the Cold War and not revived again until the late 1970s. See Ford, *supra* note 18, at 158. Even once the International Law Commission began work on the Draft Code again in the 1980s, progress was extremely slow. *Id.* at 169. The work began moving much quicker in the early 1990s when, as a result of the end of the Cold War, the United Nations once more became directly involved in the creation of the International Criminal Court. *Id.* at 177.

26. The project to create a permanent international criminal court culminated in the agreement in the text of the Rome Statute on July 17, 1998. The International Criminal Court came into being just sixty days after the sixtieth country ratified the Rome Statute on July 1, 2002. See Rome Statute of the International Criminal Court art. 126, July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002) [hereinafter Rome Statute].

27. See M. Cherif Bassiouni, *From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court*, 10 HARV. HUM. RTS. J. 11, 60 (1997) (arguing that one of the benefits of a permanent international criminal court would be to “eliminate the necessity of establishing ad hoc tribunals every time the need arises”).

28. The SCSL will likely close in 2011. See *infra* note 98. The ICTR will likely close in 2012. See *infra* note 89. The ICTY will likely close in 2014. See *infra* note 158. The ECCC will likely close in 2015. See *infra* note 103.



establishment of the ICTY in 1993. For this reason, 2015 was chosen as the endpoint for this Article's analysis.

### III. SPENDING ON INTERNATIONAL CRIMINAL COURTS

#### A. Overall Spending

By the end of 2010, the international community had spent approximately \$4.7 billion on international criminal courts.<sup>29</sup> Perhaps more interestingly, by the end of 2015 when all the ad hoc and hybrid tribunals have shut down and only the ICC is left, the international community will have spent an estimated \$6.3 billion on international criminal courts. From then on, unless new courts are created, spending on the ICC will be synonymous with spending on international criminal courts. As Figure 1 shows, total spending on international criminal courts up until 2015 will be dominated by the ICTY, ICTR, and ICC. By comparison, the two hybrid tribunals will have collectively cost less than 10% of the total.<sup>30</sup>

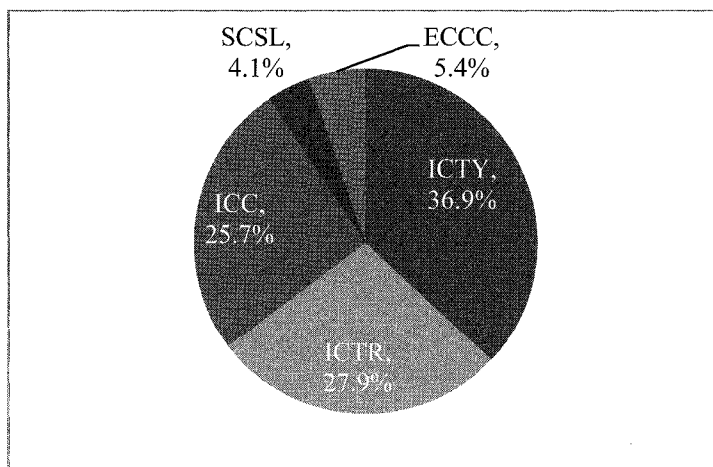


FIGURE 1: TOTAL SPENDING ON INTERNATIONAL CRIMINAL COURTS (1993–2015)<sup>31</sup>

For the period 1993 to 2015, the ICTY will be the most expensive international criminal court and will have spent about \$2.3 billion dollars over its lifetime,<sup>32</sup> while the ICTR will have cost about \$1.75 billion over its

29. This Article addresses each court's expenditures in turn. For a description of the methodology, see *infra* Part V.

30. See *infra* Figure 1 and note 31.

31. This Article addresses each court's projected expenditures in turn.

32. See *infra* Part IV.B, for an explanation of ICTY expenditures by 2010 and projected expenditures by 2015. See also *infra* Parts V.A, V.C (explaining the methodology behind future expenditure projections for the ICTY).

lifetime.<sup>33</sup> Comparatively, the ECCC will have cost about \$338 million,<sup>34</sup> and the SCSL—the cheapest of the courts in this study—will have cost only slightly more than \$257 million.<sup>35</sup> The ICC will have spent an estimated \$1.6 billion by 2015.<sup>36</sup> If we look beyond 2015, however, the ICC will almost certainly become the most expensive international criminal court ever, simply because it is a permanent court.<sup>37</sup>

### B. Yearly Spending

Data for yearly spending on international criminal courts are displayed below in Figure 2.

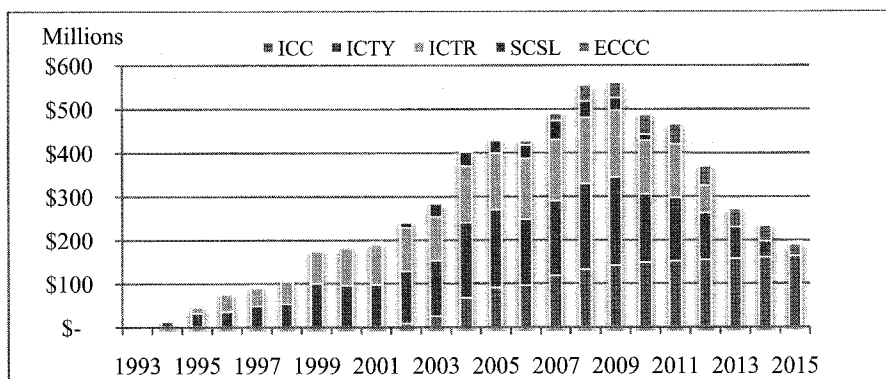


FIGURE 2: YEARLY SPENDING ON INTERNATIONAL CRIMINAL COURTS<sup>38</sup>

33. See *infra* Part IV.C, for an explanation of ICTR expenditures by 2010 and projected expenditures by 2015. See also *infra* Parts V.A, V.D (explaining the methodology behind future expenditure projections for the ICTR).

34. See *infra* Part IV.E, for an explanation of ECCC expenditures by 2010 and projected expenditures by 2015. See also Parts V.A, V.F (explaining the methodology behind future projections for the ECCC).

35. See *infra* Part IV.D, for an explanation of SCSL expenditures by 2010 and projected expenditures by 2015. See also Parts V.A, V.E (explaining the methodology behind future projections for the SCSL).

36. See *infra* Part IV.A, for an explanation of ICC expenditures by 2010 and projected expenditures by 2015. See also Parts V.A, V.B (explaining the methodology behind future projections for the ICC).

37. Theoretically, the ICC might be shut down once its goal of having all violations of international criminal law either prevented or effectively addressed at the national level is met. *Cf.* Rome Statute, *supra* note 26, at pmbl. However, such a cessation will not likely occur in the foreseeable future.

38. Figure 2 is derived from information compiled in Stuart Ford, Total Spending: Yearly Spending on International Criminal Courts (Sept. 12, 2010) [hereinafter Ford, Yearly Spending Spreadsheet] (unpublished spreadsheet) (on file with author). For expenditures by each contributing court, see *infra* Figure 7 (ICC); Figure 9 (ICTY); Figure 11 (ICTR); Figure 13 (SCSL); Figure 15 (ECCC).

The most noticeable trend is that the year of peak spending has already passed. The international community spent \$560 million on international criminal courts in 2009.<sup>39</sup> Spending in 2010 decreased to \$480 million and will decline every year until 2015, as courts wind down their activities.<sup>40</sup> Unless new courts are created or delays affect existing courts, by the end of 2015, the ICC will be the only international criminal court still in operation.<sup>41</sup>

Assuming that the ICC is not significantly expanded and that its budget merely rises to keep pace with inflation, then in 2016 the international community will spend about \$167 million on international criminal courts.<sup>42</sup> In short, the days of huge spending on international criminal courts are almost behind us. By 2016, there will be only a single remaining international criminal court and it will spend less than one-third of what was spent on international criminal courts in 2009.

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39. *See supra* Figure 2.

40. *See supra* Figure 2.

41. The SCSL will likely close in 2011. *See infra* note 98. The ICTR will likely close in 2012. *See infra* note 89. The ICTY will likely close in 2014. *See infra* note 158. The ECCC will likely close in 2015. *See infra* note 103.

42. *See infra* Parts V.A, V.B (explaining the methodology behind future expenditure projections for the ICC).

### C. Spending by Country<sup>43</sup>

Percentages for the top ten individual contributors to the international criminal courts are shown below in Figure 3.

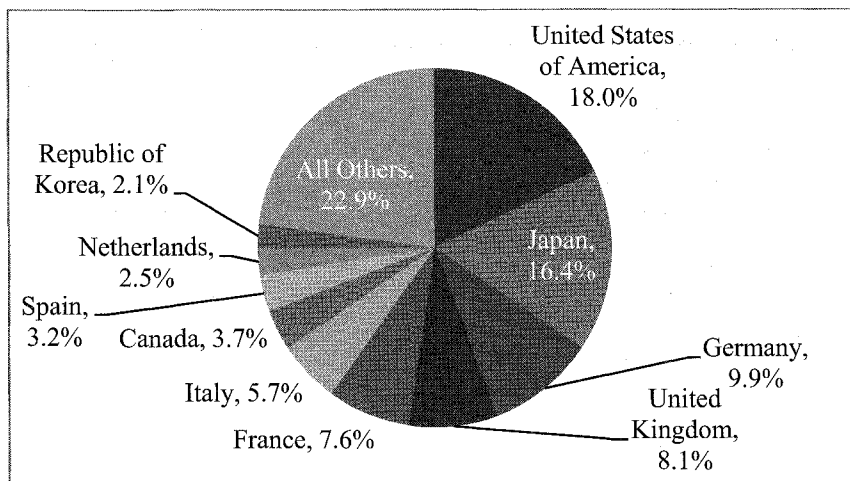


FIGURE 3: INDIVIDUAL COUNTRIES' SPENDING ON ALL INTERNATIONAL CRIMINAL COURTS (1993–2015)<sup>44</sup>

The United States will have been the largest single contributor to international criminal courts during the period from 1993 to 2015. By 2015, the United States will have spent more than \$1.06 billion on international criminal courts.<sup>45</sup> This will represent 18% of total spending on international criminal courts during that period.<sup>46</sup> The United States will be the largest overall contributor primarily because it has been the largest single contributor to both the ICTR and the ICTY, which have been the two most expensive courts.<sup>47</sup> The second largest contributor, Japan, will be just behind the United

43. The figures below detailing contributions to international criminal courts from 1993 to 2015 include actual contribution figures for all of the courts from 1993 to 2010. For the period 2010 to 2015, estimates were made of contributions at the ICC, ICTY, and ICTR. For an explanation of the underlying methodology, see *infra* Part V.A–D. However, it was not possible to make estimates for future contributions to the ECCC or SCSL because they rely on purely voluntary contributions and it is not feasible to predict these. Therefore, Figure 3, *infra*, does not include any estimations for future contributions to the ECCC or SCSL. Given that they collectively represent less than 10% of spending on international criminal courts, the author does not believe their omission is significant.

44. Figure 3 is derived from information compiled in Ford, Yearly Spending Spreadsheet, *supra* note 38 and Stuart Ford, Total Spending: Individual Countries' Spending (Sept. 12, 2010) (unpublished spreadsheet) (on file with author).

45. See *infra* Parts IV.B–E, V.B–E.

46. See *supra* Figure 3.

47. See *infra* Figures 10, 12 and text accompanying notes 85, 92; see *supra* Figure 1 and text accompanying notes 31–33.

States. Japan will have spent \$970 million or slightly more than 16% of total spending on international criminal courts.<sup>48</sup> Germany, the United Kingdom, and France come in third, fourth, and fifth, respectively.<sup>49</sup>

However, the total figures mask a significant shift over time in spending on international criminal courts. If you graph U.S. spending on international criminal courts as a percentage of total spending, it becomes clear that the United States' role in international criminal courts is waning and that this decline has been going on since at least 2004. As Figure 4 shows, between 1994 and 2003, the United States' contribution to international criminal courts varied year-to-year but was consistently between 23% and 29% of total yearly spending and hit a peak of 29% in 1998. Since 2004, U.S. contributions have declined steadily and are expected to reach zero by 2015. While the declines have so far been relatively slow, they will accelerate rapidly in the next couple years.<sup>50</sup>

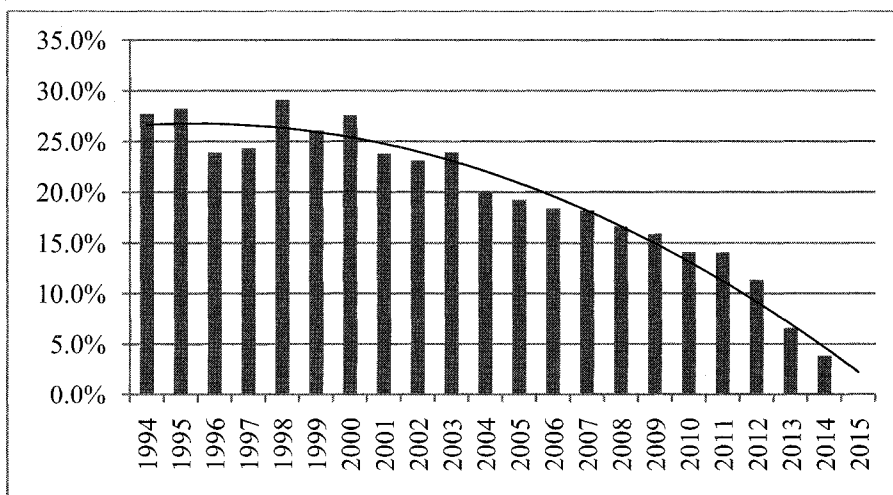


FIGURE 4: U.S. SPENDING AS A PERCENTAGE OF TOTAL SPENDING<sup>51</sup>

This phenomenon can also be illustrated by looking at who will be paying for international criminal courts in 2015.<sup>52</sup> Japan will likely be the largest

48. See *supra* Figure 3 and Parts IV.B–E, V.B–E.

49. See *supra* Figure 3.

50. These figures assume that the United States does not join the ICC before 2015 and that no new international criminal courts are created. At this time, both assumptions seem very likely.

51. Figure 4 is derived from information compiled in Ford, Yearly Spending Spreadsheet, *supra* note 38 and Stuart Ford, U.S. Spending as a Percentage of Total Spending (Sept. 12, 2010) (unpublished spreadsheet) (on file with author).

52. The illustration relies on estimated contributions to the ICC in 2015, as it will likely be the only international court in existence by the end of that year. See *infra* Part V for the methodology behind the estimations.

single contributor in 2015, with Germany, the United Kingdom, and France following.<sup>53</sup> Overall, the list is dominated by European and Asian countries, with only Canada, Mexico, and Australia not belonging to one of the two dominant groupings.<sup>54</sup> The United States is not on the list at all because it is not an ICC member.<sup>55</sup>

The shift towards Europe and Asia becomes even more apparent if you break spending down by regions.<sup>56</sup> As Figure 5 shows, Europe will be the driving force behind spending by 2015. Collectively, European countries will contribute more than 60% of the budget for international criminal courts. Asia will come in second, largely because Japan will be the largest single contributor.<sup>57</sup> North America will follow at a distant third—only slightly ahead of South America and Australia and Oceania.

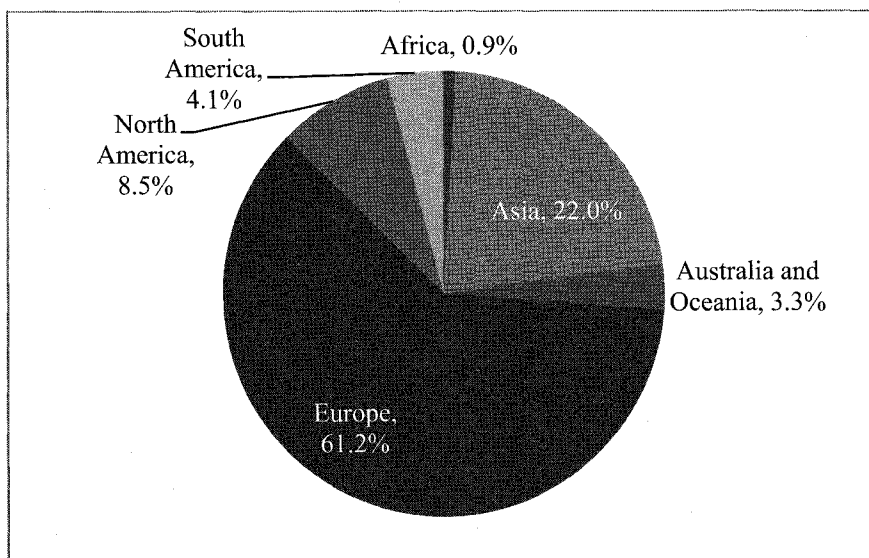


FIGURE 5: SPENDING IN 2015 BY REGION<sup>58</sup>

If you compare the percentage of spending on international criminal courts by region between 1998 (the year when U.S. contributions as a percentage of

53. See *infra* Figure 8.

54. See *infra* Figures 5, 8 and text accompanying note 56 (explaining the groupings used).

55. Cf. *The States Parties to the Rome Statute*, INT'L CRIMINAL COURT, <http://www.icc-cpi.int/Menus/ASP/states+parties/> (last visited July 31, 2011) (listing member nations as of June 22, 2011).

56. For purposes of this article, countries were placed into regions that correspond to the continents as defined by National Geographic. See *Continents*, NAT'L GEOGRAPHIC, <http://travel.nationalgeographic.com/places/continents> (last visited July 31, 2011).

57. See *infra* Figure 8.

58. Figure 5 is derived from estimates compiled in Stuart Ford, *Spending in 2015* (Sept. 12, 2010) (unpublished spreadsheet) (on file with author).

total contributions peaked) and 2015,<sup>59</sup> it is obvious that Europe is primarily responsible for making up for the decline in U.S. contributions. As Figure 6 shows, while North American contributions drop by nearly 23% over that period (almost entirely because of declining U.S. spending on international criminal courts), European spending increases by more than 18%. In other words, as U.S. spending declines it is primarily European countries that are increasing their contributions to compensate.

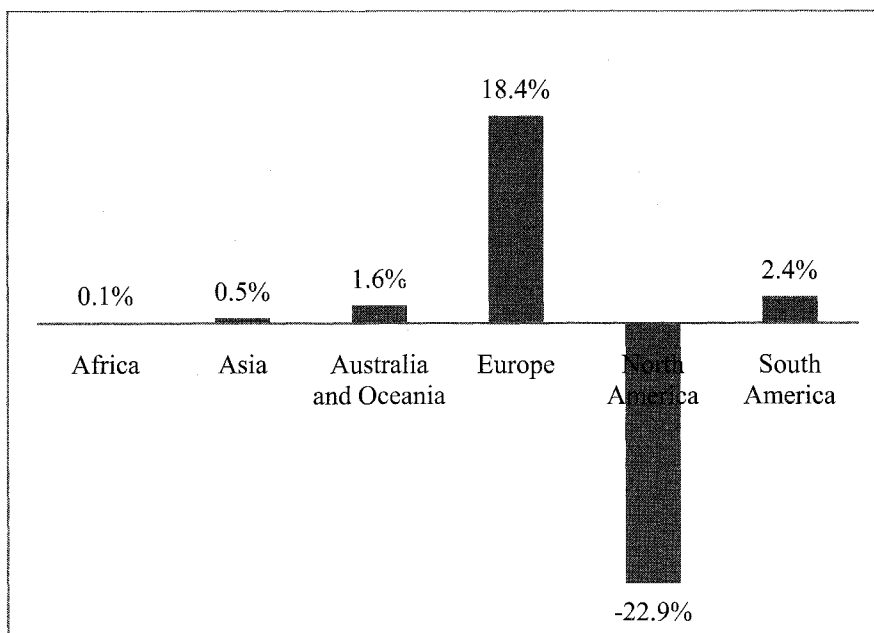


FIGURE 6: PERCENTAGE CHANGE IN SPENDING BETWEEN 1998 AND 2015<sup>60</sup>

This transition from the United States to Europe is the most significant finding of this study. By 2016 the ICC will be the only international criminal court remaining.<sup>61</sup> This will have a significant effect on how international criminal courts are funded. The United States was the largest contributor to the ICTY and the ICTR, the two largest international criminal tribunals to date.<sup>62</sup> And, to a large degree, the United States pushed for and led the development of international criminal courts throughout the 1990s and into the

59. See *supra* Figure 4.

60. Figure 6 is derived from information compiled in Stuart Ford, *Spending in 2015: Percentage Change* (Sept. 12, 2010) (unpublished spreadsheet) (on file with author).

61. The SCSL will likely close in 2011. See *infra* note 98. The ICTR will likely close in 2012. See *infra* note 89. The ICTY will likely close in 2014. See *infra* note 158. The ECCC will likely close in 2015. See *infra* note 103.

62. See *infra* Figures 10, 12 and text accompanying notes 85, 92; see *supra* Figure 1 and text accompanying notes 31–33.

2000s.<sup>63</sup> However, the United States is not a member of the ICC and is not likely to become a member of the ICC in the foreseeable future.<sup>64</sup> Consequently, as ICC spending comes to dominate spending on international criminal courts, the United States' influence and leadership position will be lost. Leadership in international criminal courts (and by extension international criminal law) will shift to Europe and, to a lesser extent, Asia—a process that began in 2004 and is already well under way.<sup>65</sup>

#### IV. INDIVIDUAL COURTS

The following section provides information on spending and contributions to each of the courts considered in this Article. It is this information that forms the basis for the figures presented above in Part III. Part V, below, will describe in detail how this information was collected and compiled. This section assumes a familiarity with the courts themselves and will not spend time describing their structure or history.

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63. See, e.g., David J. Scheffer, Conference Convocation, *U.S. Policy on International Criminal Tribunals*, 13 AM. U. INT'L L. REV. 1383, 1393–96 (1998) (discussing U.S. support for the ICTR); David J. Scheffer, *The United States and the International Criminal Court*, 93 AM. J. INT'L L. 12, 12–15 (1999) (describing extensive U.S. involvement in the drafting of the Rome Statute and in establishing the ICTY and ICTR); David J. Scheffer, *Three Memories from the Year of Origin, 1993*, 2 J. INT'L CRIM. JUST. 353, 353–54 (2004) (describing U.S. involvement in the creation of the ICTY).

64. See *The States Parties to the Rome Statute*, *supra* note 55.

65. See *supra* Figure 6. The year 2003 was the last peak in U.S. spending, which has declined since 2004. See *supra* Figures 4, 5, 6. Thus, 2004 marks the beginning of the spending shift towards Europe.



### A. *The ICC*

In 2010, the ICC cost approximately \$148 million (or about €103,623,300),<sup>66</sup> and by the end of 2010, it had spent slightly more than \$825 million (or about €615 million) in total, as shown below in Figure 7.

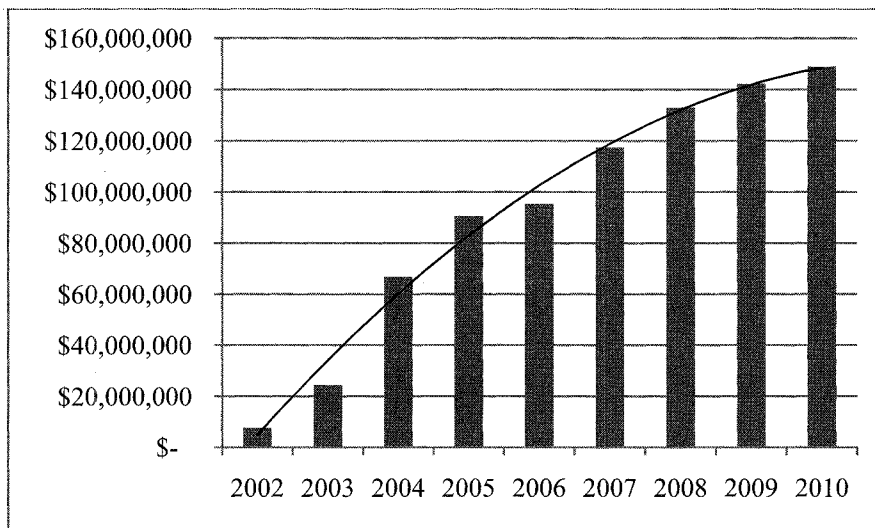


FIGURE 7: ICC EXPENDITURES<sup>67</sup>

66. Programme Budget for 2010, the Working Capital Fund for 2010, Scale of Assessments for the Apportionment of Expenses of the International Criminal Court, Financing Appropriations for the Year 2010, the Contingency Fund, Conversion of a GTA Psychologist Post to an Established One, Legal Aid (Defense) and the Addis Ababa Liaison Office, at 1, Res. ICC-ASP/8/Res.7 (Nov. 26, 2009) [hereinafter Assembly of States Parties 2010] (apportioning funds to the ICC for its 2010 term).

67. Figure 7 is derived from information compiled in Stuart Ford, ICC Budgets: ICC Budgeted Expenditures (Sept. 12, 2010) [hereinafter Ford, ICC Budget Spreadsheet] (unpublished spreadsheet) (on file with author). For further information on the data compiled in Figure 7, see Budget Appropriations for the First Financial Period and Financing of Appropriations for the First Financial Period, at 1, Res. ICC-ASP/1/Res.12, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Sess. (Sept. 3, 2002) [hereinafter Assembly of States Parties 2002–2003] (apportioning funds to the ICC for its 2002–2003 term); Programme Budget for 2004, Working Capital Fund for 2004, Scale of Assessments for the Apportionment of the Expenses of the International Criminal Court and Financing of Appropriations for 2004, at 1, Res. ICC-ASP/2/Res.1, Assembly of States Parties to the Rome Statute of the International Criminal Court, 2d Sess. (Sept. 12, 2003) [hereinafter Assembly of States Parties 2004] (apportioning funds to the ICC for its 2004 term); Programme Budget for 2005, Contingency Fund, Working Capital Fund for 2005, Scale of Assessments for the Apportionment of Expenses of the International Criminal Court and Financing of Appropriations for the Year 2005, at 1, Res. ICC-ASP/3/Res.4, Assembly of States Parties to the Rome Statute of the International Criminal Court, 3d Sess. (Sept. 10, 2004) [hereinafter Assembly of States Parties 2005] (apportioning funds to the ICC for its 2005 term); Programme Budget for 2006, the Working Capital Fund for 2006, Scale of Assessments for the Apportionment of Expenses of the

As can be seen from Figure 7, the court's budget increased significantly during its early years, with growth rates exceeding 100% in years 2003 and 2004.<sup>68</sup> However, the pace of budget increases slowed dramatically in recent years and was only 4.7% in 2010.<sup>69</sup> Given that the ICC is now at essentially full capacity,<sup>70</sup> this figure is not likely to change drastically in the near future. Assuming that ICC budget increases are driven primarily by inflation rather than significant increases in capacity, the ICC will cost approximately \$167 million per year in 2016.<sup>71</sup>

The figures through 2010 indicate that the largest contributor has been Germany with contributions totaling \$123 million.<sup>72</sup> The next largest contributors (in order) are the United Kingdom, France, and Japan.<sup>73</sup> European countries occupy six of the ten top spots.<sup>74</sup> Several other large economies also

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International Criminal Court and Financing Appropriations for the Year 2006, at 1, Res. ICC-ASP/4/Res.8, Assembly of States Parties to the Rome Statute of the International Criminal Court, 4th Sess. (Dec. 3, 2005) [hereinafter Assembly of States Parties 2006] (apportioning funds to the ICC for its 2006 term); Programme Budget for 2007, the Working Capital Fund for 2007, Scale of Assessments for the Apportionment of Expenses of the International Criminal Court and Financing Appropriations for the Year 2007, at 1, Res. ICC-ASP/5/Res.4, Assembly of States Parties to the Rome Statute of the International Criminal Court, 5th Sess. (Dec. 1, 2006) [hereinafter Assembly of States Parties 2007] (apportioning funds to the ICC for its 2007 term); Programme Budget for 2008, the Working Capital Fund for 2008, Scale of Assessments for the Apportionment of Expenses of the International Criminal Court and Financing Appropriations for the Year 2008, at 1, Res. ICC-ASP/6/Res.4, Assembly of States Parties to the Rome Statute of the International Criminal Court, 6th Sess. (Dec. 14, 2007) [hereinafter Assembly of States Parties 2008] (apportioning funds to the ICC for its 2008 term); Programme Budget for 2009, the Working Capital Fund for 2009, Scale of Assessments for the Apportionment of Expenses of the International Criminal Court, Financing Appropriations for the Year 2009 and the Contingency Fund, at 1, Res. ICC-ASP/7/Res.4, Assembly of States Parties to the Rome Statute of the International Criminal Court, 7th Sess. (Nov. 21, 2008) [hereinafter Assembly of States Parties 2009] (apportioning funds to the ICC for its 2009 term); Assembly of States Parties 2010, *supra* note 66, at 1 (apportioning funds to the ICC for its 2010 term). For further information on the methodology of assembling the data presented, see *infra* Part V.A–B.

68. Compare Assembly of States Parties 2002–2003, *supra* note 67, at 1 (apportioning funds to the ICC for its 2002–2003 term), with Assembly of States Parties 2004, *supra* note 67, at 1 (apportioning funds to the ICC for its 2004 term).

69. Compare Assembly of States Parties 2009, *supra* note 67, at 1 (apportioning funds to the ICC for its 2009 term), with Assembly of States Parties 2010, *supra* note 66, at 1 (apportioning funds to the ICC for its 2010 term).

70. See Stuart Ford, *The International Criminal Court and Proximity to the Scene of the Crime: Does the Rome Statute Permit All of the ICC's Trials to Take Place at Local or Regional Chambers?*, 43 J. MARSHALL L. REV. 715, 749 (2010).

71. See *infra* Part V.A–B (explaining the methodology behind future expenditure projections for the ICC).

72. Stuart Ford, ICC Budgets: Total Contributions 2002–2015 (Sept. 12, 2010) [hereinafter Ford, ICC Contributions Spreadsheet] (unpublished spreadsheet) (on file with author).

73. *Id.*

74. *Id.*

appear on the top ten list, including Canada, South Korea, and Australia. Japan has the highest assessment rate,<sup>75</sup> but trails Germany, the United Kingdom, and France in total contributions because it only became a member of the ICC in 2007.<sup>76</sup> The United States is not a member of the ICC and has made no contributions.

Figure 8 shows the projected numbers for total contributions through the end of 2015.

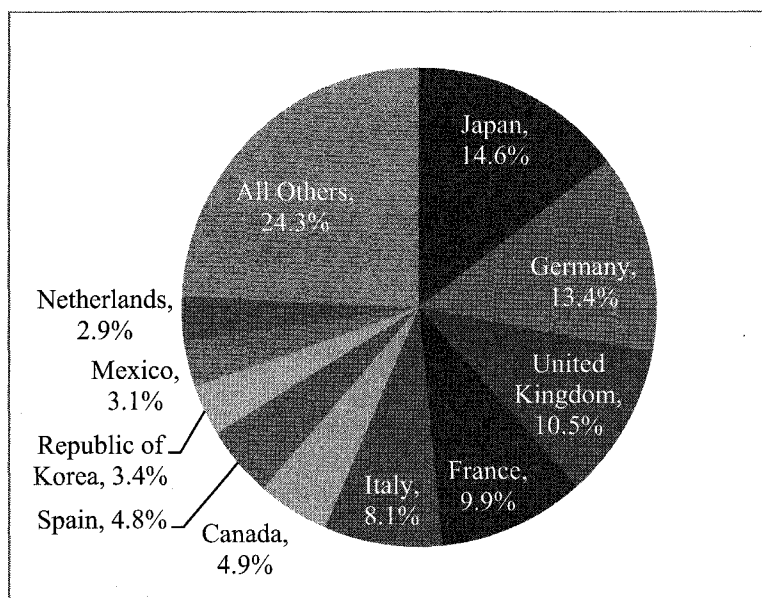


FIGURE 8: TOTAL CONTRIBUTIONS TO THE ICC (2002–2015)<sup>77</sup>

One noticeable difference between 2010 and 2015 is that Japan becomes the largest single contributor to the ICC, with approximately \$235 million in total funds.<sup>78</sup> Unless the United States joins the ICC, it is likely that Japan will remain the largest single contributor for the foreseeable future because it has

75. Cf. U.N. Secretariat, *Assessment of Member States' Advances to the Working Capital Fund for the Biennium 2008–2009 and Contributions to the United Nations Regular Budget for 2008*, U.N. Doc. ST/ADM/SER.B/719 (Dec. 24, 2007). See *infra* Part V, for an explanation of why assessment rates provide only an approximation of actual contributions.

76. Japan, INT'L CRIMINAL COURT, <http://www.icc-cpi.int/Menus/ASP/states+parties/Asian+States/Japan.htm> (last updated Oct. 5, 2007).

77. Figure 8 is derived from information compiled in Ford, ICC Contributions Spreadsheet, *supra* note 72. The estimations for 2015 are based on the following assumptions: first, that ICC budgets will grow by 2% per year; second, that no new members will join the ICC; and third, that the U.N. scale of assessments for 2013–2015 will be the same as it was in 2010–2012. For further information on the data compiled in Figure 8, see sources accompanying Figure 7, *supra* note 67. The methodology of assembling the data presented is addressed below in Part V.A–B.

78. See *supra* Figure 8; Ford, ICC Contributions Spreadsheet, *supra* note 72.

consistently had the second highest assessed rates in the United Nations system.<sup>79</sup> Germany, France, and the United Kingdom still all contribute more than \$160 million, and European countries still dominate the list of top contributors.<sup>80</sup>

### B. The ICTY

By the end of 2010, the ICTY will have spent \$1.9 billion, and it will spend a total of \$2.3 billion by the time it is likely shut down in 2014.<sup>81</sup> Peak spending of slightly more than \$200 million per year occurred in 2009.<sup>82</sup> Yearly spending is shown below in Figure 9.

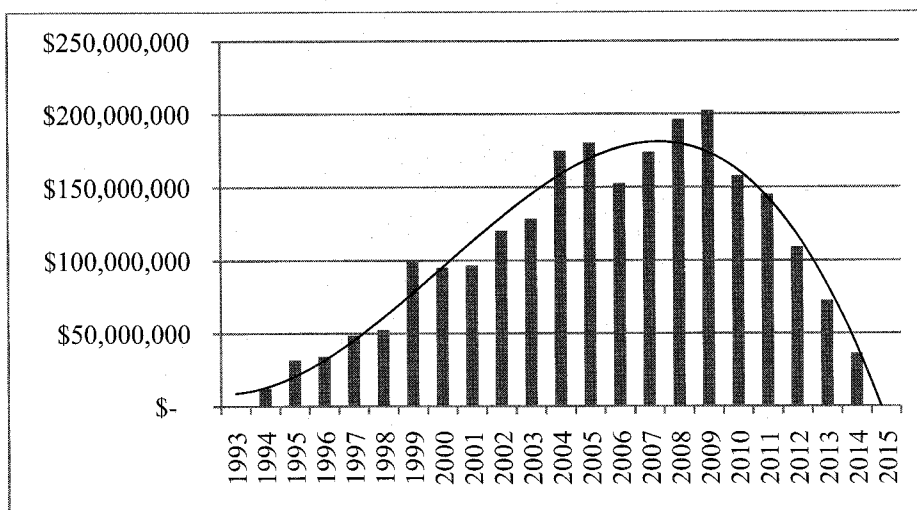


FIGURE 9: ICTY EXPENDITURES<sup>83</sup>

79. See, e.g., G.A. Res. 46/221, ¶ 1, U.N. Doc. A/RES/46/221 (Dec. 20, 1991); G.A. Res. 55/5B, ¶ 7, U.N. Doc. A/RES/55/5B (Jan. 22, 2001); G.A. Res. 64/248, ¶ 6, U.N. Doc. A/RES/64/248 (Feb. 5, 2010). The United States has traditionally had the highest assessed rates in the U.N. budget system. If it were to become a member of the ICC its assessment would immediately be capped at 22%. G.A. Res. 55/5B, *supra*, ¶ 1(h). This would make it the largest contributor to the ICC for a given year.

80. See *supra* Figure 8; Ford, ICC Contributions Spreadsheet, *supra* note 72.

81. The projected longevity of the ICTY is discussed *infra*, note 158; see also *infra* Parts V.A, V.C, (explaining the methodology behind future expenditure projections for the ICTY).

82. G.A. Res. 63/225, Annex, U.N. Doc. A/RES/63/255 (Mar. 19, 2009).

83. Figure 9 is derived from information compiled in Stuart Ford, ICTY Budgets: Spending (Nov. 23, 2010) [hereinafter Ford, ICTY Budget Spreadsheet] (unpublished spreadsheet) (on file with author). For further information on the data compiled in Figure 9, see G.A. Res. 48/251, ¶ 9, U.N. Doc. A/RES/48/251 (May 13, 1994) (reaffirming commitments for the first six months of the ICTY's existence); G.A. Res. 49/242B, ¶ 20, U.N. Doc. A/RES/49/242B (Aug. 7, 1995) (setting appropriations for 1994–1995); G.A. Res. 50/212C, ¶ 2, U.N. Doc. A/RES/50/212C (July 15, 1996) (setting appropriations for 1996); G.A. Res. 51/214, ¶ 3, U.N. Doc. A/RES/51/214 (Feb. 13, 1997) (setting appropriations for January through June of 1997); G.A. Res. 51/214B, ¶

Figure 10 shows the ten largest contributors to the ICTY.

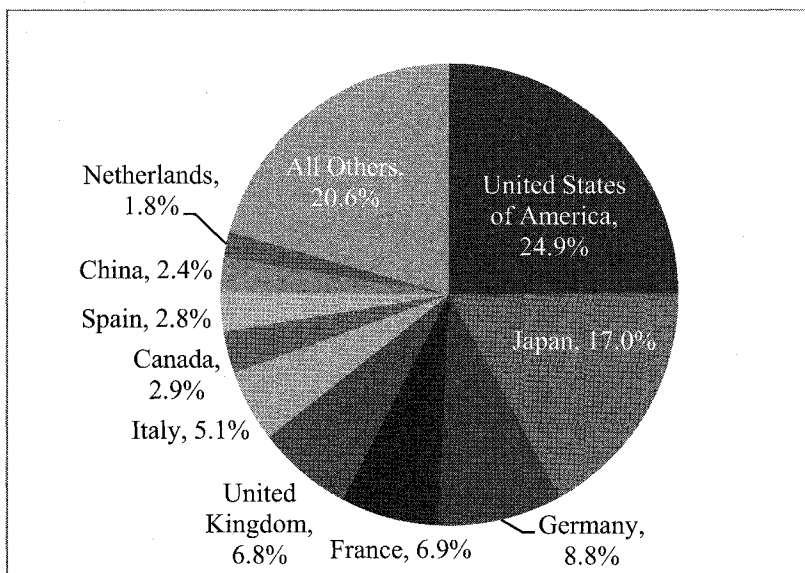


FIGURE 10: TOTAL CONTRIBUTIONS TO THE ICTY (1993–2015)<sup>84</sup>

9, U.N. Doc. A/RES/51/214B (July 10, 1997) (setting appropriations for July through December of 1997); G.A. Res. 52/217, ¶ 7, U.N. Doc. A/RES/52/217 (Feb. 3, 1998) (setting appropriations for 1998); G.A. Res. 53/212, ¶¶ 23–24, U.N. Doc. A/RES/53/212 (Feb. 10, 1999) (setting appropriations for 1999); G.A. Res. 54/239, ¶ 9, U.N. Doc. A/RES/54/239 (Jan. 26, 2000) (setting appropriations for 2000); G.A. Res. 55/225, ¶ 9, U.N. Doc. A/RES/55/225 (Jan. 16, 2001) (setting appropriations for 2001); G.A. Res. 56/247, ¶ 15, U.N. Doc. A/RES/56/247 (Jan. 29, 2002) (setting appropriations for 2002–2003); G.A. Res. 57/288, ¶ 8, U.N. Doc. A/RES/57/288 (Feb. 12, 2003) (amending 2002–2003 appropriations); G.A. Res. 58/255, ¶ 23, U.N. Doc. A/RES/58/255 (Feb. 11, 2004) (setting appropriations for 2004–2005); G.A. Res. 59/274, ¶ 9, U.N. Doc. A/RES/59/274 (Mar. 7, 2005) (amending appropriations for 2005); G.A. Res. 60/243, ¶ 4, U.N. Doc. A/RES/60/243 (Feb. 23, 2006) (setting appropriations for 2006); G.A. Res. 61/242, ¶ 5, U.N. Doc. A/RES/61/242 (Feb. 13, 2007) (setting appropriations for 2007); G.A. Res. 62/230, ¶ 7, U.N. Doc. A/RES/62/230 (Feb. 28, 2008) (setting appropriations for 2008); G.A. Res. 63/255, *supra* note 82, ¶ 7 (setting appropriations for 2009); G.A. Res. 64/240, ¶ 10, U.N. Doc. A/RES/64/240 (Jan. 28, 2010) (setting appropriations for 2010–2011). For further information on the methodology of assembling the data presented, see *infra* Part V.C.

84. Figure 10 is derived from information compiled in Stuart Ford, ICTY Budgets: Total Individual Contributions (Nov. 23, 2010) [hereinafter Ford, ICTY Contributions Spreadsheet] (unpublished spreadsheet) (on file with author). For further information on the methodology of assembling the data presented, see *infra* Parts V.A, V.C. The results are very similar to the contributors to the ICTR, which can be seen in Figure 14, *infra*. This is hardly surprising as the mechanism by which the ICTY is funded is extremely similar to the funding mechanism for the ICTR.

The United States will end up being the largest contributor and will have contributed more than \$570 million by the time the ICTY is finally shut down.<sup>85</sup> Japan will have contributed more than \$390 million, and Germany will have contributed slightly more than \$200 million.<sup>86</sup> Half of the U.N. member states will have contributed less than \$155,000, and the country that will have contributed the least, East Timor, will have contributed only \$9,000.<sup>87</sup>

### C. *The ICTR*

The ICTR will spend approximately \$1.75 billion over its lifetime, with peak spending of approximately \$150 million per year occurring in 2008 and 2009.<sup>88</sup> It is currently scheduled to complete its work and shut down by the end of 2012.<sup>89</sup> Yearly spending is shown below in Figure 11, below.

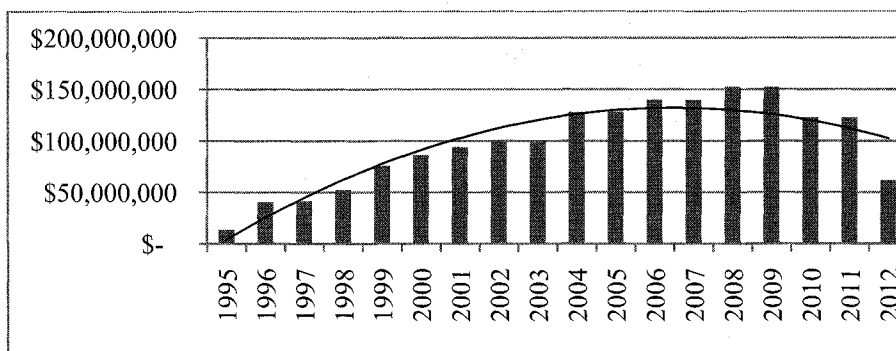


FIGURE 11: ICTR EXPENDITURES<sup>90</sup>

85. See *supra* Figure 10; Ford, ICTY Contributions Spreadsheet, *supra* note 84.

86. Ford, ICTY Contributions Spreadsheet, *supra* note 84.

87. *Id.*

88. G.A. Res. 64/239, pt. I, ¶ 3, U.N. Doc. A/RES/64/239 (Jan. 28, 2010); see also *infra* Parts V.A, V.D (explaining the methodology behind future expenditure projections for the ICTR).

89. Until recently, the ICTR's Completion Strategy had indicated that the ICTR would complete all of its work by the end of 2010. See U.N. Security Council, Letter dated 14 May 2009 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council, ¶ 1, U.N. Doc. S/2009/247 (May 14, 2009). However, the ICTR is clearly behind that schedule. It is now predicting that all of the trials will be completed and judgments written by mid-2010. *Id.* ¶ 38. But, it also notes that this date could slip further if any of the outstanding fugitives are arrested. *Id.* ¶ 55. The Completion Strategy initially predicted that concluding all appeals would take approximately two years after the trials were completed. *Id.* ¶ 1. Thus, it seems reasonable to assume that the ICTR's work will be done by the end of 2012.

90. Figure 11 is derived from information compiled in Stuart Ford, ICTR Spending: Money Allocated to ICTR by General Assembly (Sept. 12, 2010) (unpublished spreadsheet) (on file with author). For a chronological ordering of information underlying the data compiled in Figure 11, see G.A. Res. 49/251, ¶ 4, U.N. Doc. A/RES/49/251 (Aug. 7, 1995) (setting appropriations for 1995 at \$13,467,300); G.A. Res. 50/213A, ¶ 1, U.N. Doc. A/RES/50/213A (Feb. 22, 1996)

Figure 12 shows the ten largest contributors to the ICTR and their contributions as a percentage of the total ICTR budget.

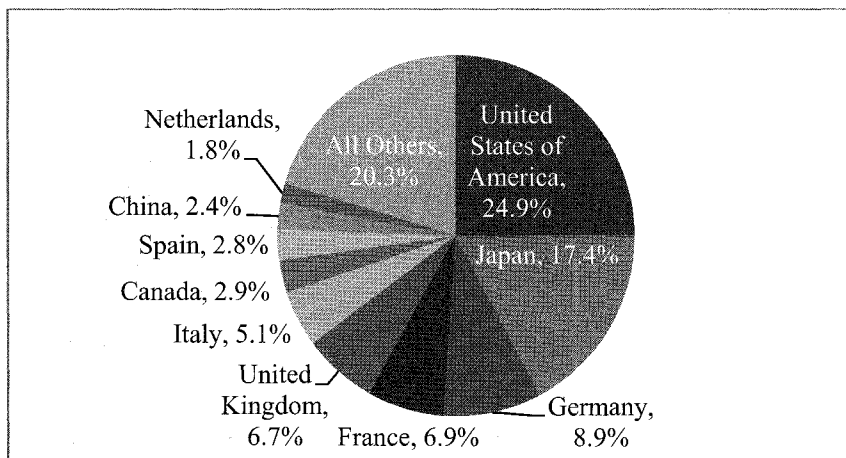


FIGURE 12: TOTAL CONTRIBUTIONS TO THE ICTR (1995–2012)<sup>91</sup>

Unsurprisingly, since it is also the largest contributor to both the United Nations regular budget and its peacekeeping budget, the United States has been the largest contributor to the ICTR. By the end of 2012, the United States will have contributed more than \$425 million to the ICTR.<sup>92</sup> Japan will have contributed \$297 million, and Germany will have contributed slightly more

(setting appropriations for the first three months of 1996); G.A. Res. 50/213C, ¶ 2, U.N. Doc. A/RES/50/213C (July 15, 1996) (setting final appropriations for 1996 at \$40,161,900); G.A. Res. 51/215A, ¶ 2, U.N. Doc. A/RES/51/215A (Mar. 4, 1997) (setting appropriations for January through June of 1997 at \$23,114,950); G.A. Res. 51/215B, ¶ 18, U.N. Doc. A/RES/51/215B (July 10, 1997) (setting appropriations for remainder of 1997 at \$18,402,500); G.A. Res. 53/213, ¶¶ 27, 28, U.N. Doc. A/RES/53/213 (Feb. 10, 1999) (setting appropriations for 1998 and 1999 at \$52,297,900 and \$75,260,900, respectively); G.A. Res. 54/240, ¶ 9, U.N. Doc. A/RES/54/240 (Jan. 26, 2000) (setting appropriations for 2000 at \$86,154,900); G.A. Res. 55/226, ¶ 11, U.N. Doc. A/RES/55/226 (Jan. 16, 2001) (setting appropriations for 2001 at \$93,974,800); G.A. Res. 57/289, ¶ 20, U.N. Doc. A/RES/57/289 (Feb. 12, 2003) (setting appropriations for biennium 2002–2003 at \$201,784,900); G.A. Res. 59/273, ¶ 13, U.N. Doc. A/RES/59/273 (Mar. 7, 2005) (setting appropriations for biennium 2004–2005 at \$255,909,500); G.A. Res. 62/229, ¶ 5, U.N. Doc. A/RES/62/229 (Feb. 28, 2008) (setting appropriations for biennium 2006–2007 at \$279,512,400); G.A. Res. 64/239, *supra* note 88, pt. I, ¶ 3 & pt. II, ¶ 12 (setting appropriations for biennium 2008–2009 at \$304,538,000 and biennium 2010–2011 at \$245,295,800). For further information on the methodology of assembling the data presented, see *infra* Part V.C.

91. Figure 12 is derived from information compiled in Stuart Ford, ICTR Spending: Total Contributions (Sept. 12, 2010) [hereinafter Ford, ICTR Contributions Spreadsheet] (unpublished spreadsheet) (on file with author). See also *supra* Figure 11 and accompanying sources. For further information on the methodology of assembling the data presented, see *infra* Part V.D.

92. Ford, ICTR Contributions Spreadsheet, *supra* note 91; see also Parts V.A, V.D.

than \$150 million.<sup>93</sup> Half of the U.N. member states will have contributed less than \$110,000, and the country that will have contributed the least, East Timor, will have contributed only \$6,500.<sup>94</sup>

#### D. The SCSL

The SCSL was established in 2002<sup>95</sup> and was initially predicted to complete its work in three years.<sup>96</sup> Due to significant difficulties raising capital to establish the court, it was initially agreed that the SCSL would have a budget of only \$57 million—half of what the Secretary-General had predicted it would need.<sup>97</sup> Current estimates indicate that from start to finish, the SCSL will actually cost at least \$257 million and not complete its work until 2011.<sup>98</sup>

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93. Ford, ICTR Contributions Spreadsheet, *supra* note 91.

94. *Id.*

95. S.C. Res. 1315, *supra* note 24. On June 12, 2000, the President of Sierra Leone requested assistance from the United Nations with regard to trying war crimes. Phoebe Knowles, *The Power to Prosecute: The Special Court for Sierra Leone from a Defense Perspective*, 6 INT'L CRIM. L. REV. 387, 389 (2006). On August 14, 2000, Security Council Resolution 1315 authorized the establishment of the Special Court of Sierra Leone and required the United Nations to negotiate a treaty with the government of Sierra Leone. *Id.* The agreement between the United Nations and the government of Sierra Leone finalizing the Special Court of Sierra Leone was signed in January 2002. *Id.* at 390.

96. Elise Keppler, *Bringing Justice: The Special Court for Sierra Leone: Accomplishments, Shortcomings, and Needed Support*, HUM. RTS. WATCH, Sept. 2004, at 1, 2. See also TOM PERRIELLO & MARIEKE WIERDA, INT'L CTR. FOR TRANSITIONAL JUSTICE, THE SPECIAL COURT OF SIERRA LEONE UNDER SCRUTINY 29 (Prosecutions Case Studies Ser., 2006), available at <http://www.ictj.org/static/Prosecutions/Sierra.study.pdf>.

97. Celina Schocken, Comment, *The Special Court for Sierra Leone: Overview and Recommendations*, 20 BERKELEY J. INT'L L. 436, 453 (2002). The initial budget for the Special Court for Sierra Leone was \$30.2 million for the first year and \$84.4 million for the following two years. Chandra Lekha Sriram, Essay, *Wrong-Sizing International Justice? The Hybrid Tribunal in Sierra Leone*, 29 FORDHAM INT'L L.J. 472, 482 (2006). See also Daryl A. Mundis, *New Mechanisms for the Enforcement of International Humanitarian Law*, 95 AM. J. INT'L L. 934, 938 (2001) (citing Letter dated 12 July 2001 from the Secretary-General to the President of the Security Council, U.N. Doc. S/2001/693) (noting a three-year estimated cost of \$114.6 million). The three-year estimated total was later reduced to \$57 million. Sriram, *supra*, at 482. See also PERRIELLO & WIERDA, *supra* note 96, at 30 (noting that initial budget estimates were later halved).

98. This forecast is almost certainly too conservative because it is based on the assumption that the tribunal would complete its work by the end of 2010. SIXTH ANNUAL REPORT OF THE PRESIDENT OF THE SPECIAL COURT FOR SIERRA LEONE 33 (June 2008–May 2009) [hereinafter SIXTH ANNUAL REPORT] (noting original completion budget governed January 1999 through December 2010). However, the Charles Taylor trial, including appeals, is now expected to be complete in 2011. SPECIAL COURT OF SIERRA LEONE, COMPLETION STRATEGY ¶ 17 (June 2009), available at <http://www.sc-sl.org/DOCUMENTS/tabid/176/Default.aspx>. See also Lansana Gberie, *The Redundant Court for Sierra Leone*, NEW AFRICAN, Dec. 2009, at 52, 53 (noting that the Charles Taylor trial is likely to conclude in 2011). This delay will undoubtedly increase the SCSL's overall cost, but there unfortunately does not seem to be any reasonable way



Yearly spending is shown below in Figure 13. As the chart shows, the SCSL budget reached its maximum in 2007 and is now decreasing annually with the expectation that all activities will be wrapped up in 2011.

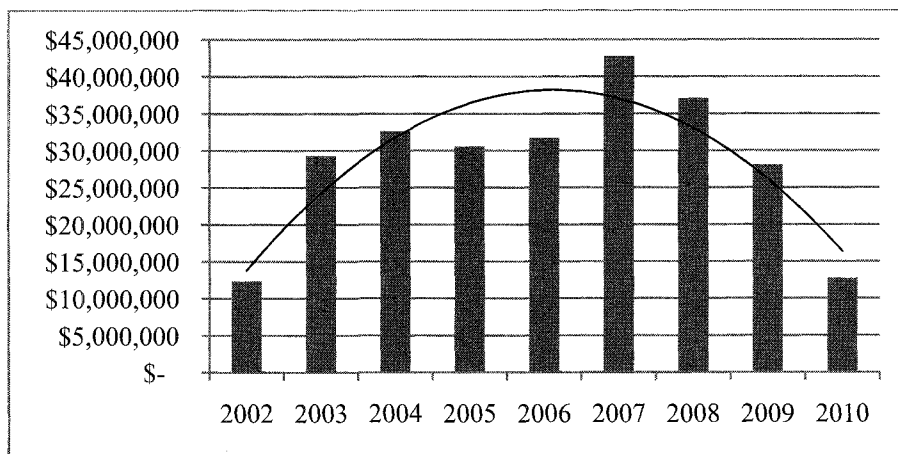


FIGURE 13: SCSL EXPENDITURES<sup>99</sup>

The top ten cumulative donors to the SCSL are identified below in Figure 14. A handful of contributors have paid the vast majority of the costs of the SCSL, and the ten largest donors have collectively contributed more than 90% of the funds received by the SCSL through mid-2009. The United States has been the largest contributor so far, contributing nearly 30% of the SCSL's funds through the end of 2009. Most of the major donors are developed countries in Europe. A notable exception is Sierra Leone, which has

to predict how much more the SCSL will spend. See *infra* Parts V.A, V.E (explaining the methodology behind future projections for the SCSL).

99. For further information on the data compiled in Figure 13, see FIRST ANNUAL REPORT OF THE PRESIDENT OF THE SPECIAL COURT FOR SIERRA LEONE Annex III, at 36 (Dec. 2002–Dec. 2003) [hereinafter FIRST ANNUAL REPORT] (listing expenditures from July 2002 through June 2003 at \$19,425,781); SECOND ANNUAL REPORT OF THE PRESIDENT OF THE SPECIAL COURT FOR SIERRA LEONE Annex III, at 41 (Jan. 2004–Jan. 2005) [hereinafter SECOND ANNUAL REPORT] (listing expenditures from July 2003 through June 2004 at \$28,297,574); THIRD ANNUAL REPORT OF THE PRESIDENT OF THE SPECIAL COURT FOR SIERRA LEONE Annex III, at 46 (Jan. 2005–Jan. 2006) [hereinafter THIRD ANNUAL REPORT] (listing expenditures from July 2004 through June 2005 at \$25,825,394); FOURTH ANNUAL REPORT OF THE PRESIDENT OF THE SPECIAL COURT FOR SIERRA LEONE Annex IV, at 63 (Jan. 2006–May 2007) [hereinafter FOURTH ANNUAL REPORT] (listing expenditures from July 2005 through June 2006 at \$24,081,981 and from June 2006 through December 2006 at \$14,031,622); FIFTH ANNUAL REPORT OF THE PRESIDENT OF THE SPECIAL COURT FOR SIERRA LEONE 43 (June 2007–May 2008) [hereinafter FIFTH ANNUAL REPORT] (setting forth a budget of \$36,003,900 for 2007); SIXTH ANNUAL REPORT, *supra* note 98, at 33 (setting forth estimated completion budgets of \$27,974,100 for 2009 and \$12,710,500 for 2010). See *infra* Part V.E, for the underlying methodology, including a discussion of the effects of in-kind support on net expenditures.

contributed more than 11% of the cost of the SCSL, primarily in the form of in-kind contributions of personnel and facilities.<sup>100</sup>

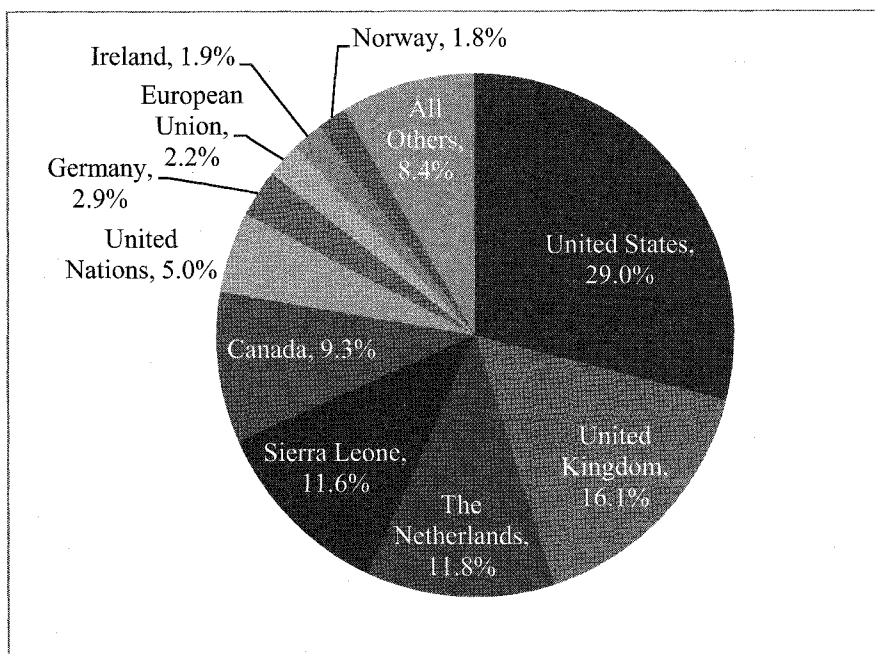


FIGURE 14: TOTAL CONTRIBUTIONS TO THE SCSL (2002–2009)<sup>101</sup>

100. Cf. FIFTH ANNUAL REPORT, *supra* note 99, Annex V, at 62 (listing in-kind support valued at over \$24 million).

101. Figure 14 is derived from summed contributions compiled in Stuart Ford, SCSL Expenditures: SCSL Expenditures (Sept. 12, 2010) (unpublished spreadsheet) (on file with author). For further information on the data underlying Figure 14, see FIRST ANNUAL REPORT, *supra* note 99, Annex IV, at 37; SECOND ANNUAL REPORT, *supra* note 99, Annex IV, at 41; THIRD ANNUAL REPORT, *supra* note 99, Annex IV, at 47; FOURTH ANNUAL REPORT, *supra* note 99, at 64; FIFTH ANNUAL REPORT, *supra* note 99, Annexes IV, V, at 61–62; SIXTH ANNUAL REPORT, *supra* note 98, Annexes VI, VII, at 66–67.

### E. The ECCC

The ECCC was initially predicted to take three years and cost \$56 million.<sup>102</sup> It is now predicted to cost nearly \$338 million and not complete its work until 2015.<sup>103</sup> Yearly spending is shown below in Figure 15. The ECCC budget is expected to reach a peak in 2011 and then decrease annually until the court wraps up its operations in 2015.<sup>104</sup>

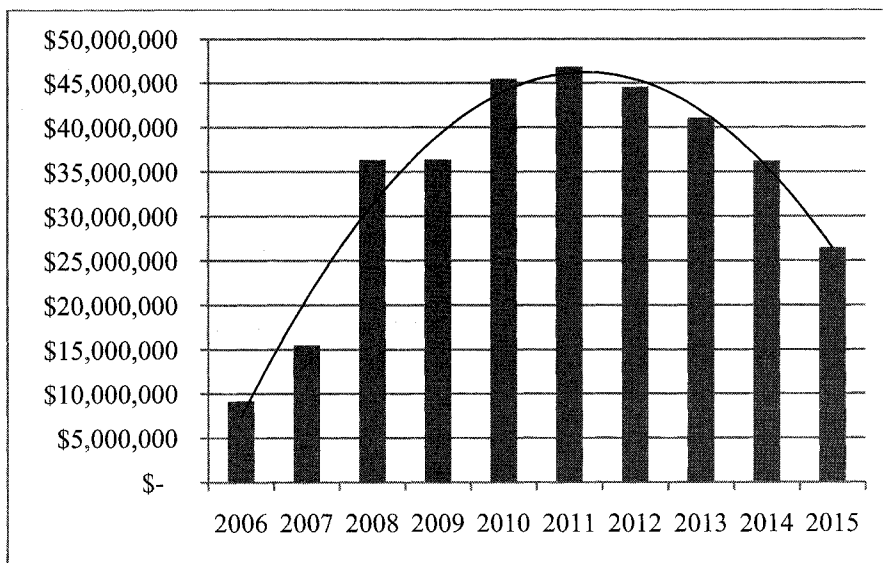


FIGURE 15: ECCC EXPENDITURES<sup>105</sup>

102. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA FOR THE PROSECUTION OF CRIMES COMMITTED DURING THE PERIOD OF DEMOCRATIC KAMPUCHEA, REVISED BUDGET ESTIMATES FROM 2005 TO 2009 ¶¶ S.3, S.4 (2008) [hereinafter ECCC 2005–2009].

103. See ECCC 2012–2015, *supra* note 17, at 4 tbl.S.1.b.

104. See also EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, APPROVED BUDGET FOR 2010–2011 ¶ S.2 (2010) [hereinafter ECCC 2010–2011] (anticipating the winding down of the ECCC as trials are concluded).

105. For further information on the data compiled in Figure 15, see ECCC 2005–2009, *supra* note 102, at 8 tbl.S.1.a (listing court expenditures of \$9,163,200 for 2006 and \$15,496,200 for 2007, and proposals of \$36,314,000 for 2008 and \$36,370,800 for 2009); ECCC 2010–2011, *supra* note 104, at 15 tbl.S.1.a (estimating expenditures of \$45,467,100 for 2010 and \$46,823,900 for 2011); ECCC 2012–2015, *supra* note 17, at 4 tbl.S.1.b (estimating expenditures of \$36,211,000 for 2014 and \$26,425,500 for 2015). For further information on the methodology of assembling the data presented see *infra* Part V.F.

Figure 16 shows the ten largest contributors to the ECCC to date. Japan has been the largest contributor, accounting for nearly half of the ECCC's budget, with Australia the next largest contributor. France and Germany are third and fourth, respectively.

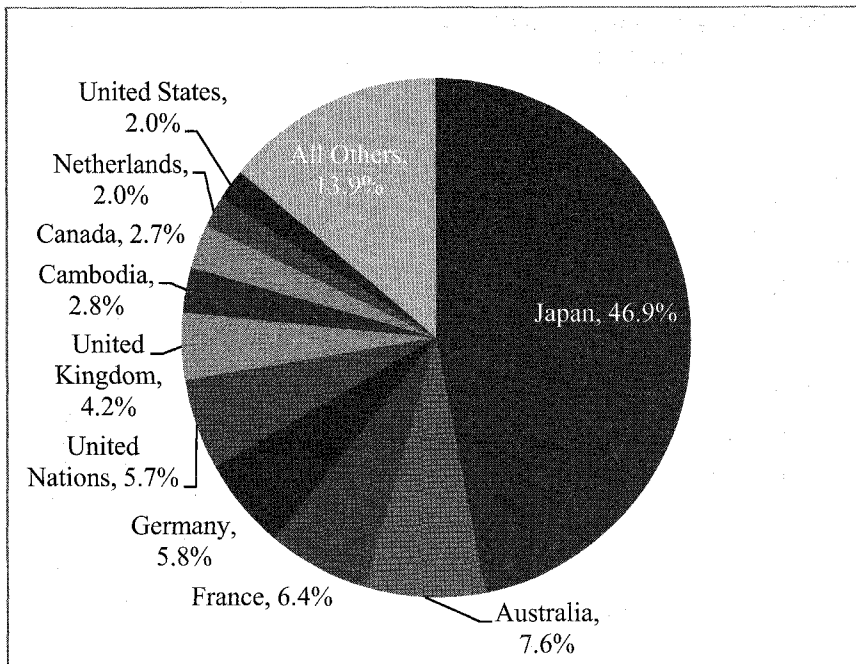


FIGURE 16: TOTAL CONTRIBUTIONS TO THE ECCC (2006-2009)<sup>106</sup>

106. Figure 16 is derived from information compiled in Stuart Ford, ECCC Budget: Spending (Sept. 12, 2010) (unpublished spreadsheet) (on file with author). See also EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, REPORT OF INDEPENDENT AUDITORS AND STATEMENT OF EXPENDITURE AND CASH POSITION FROM 01 JANUARY TO 31 DECEMBER 2006, at 3 (2007) [hereinafter ECCC AUDIT OF 2006]; EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, REPORT OF INDEPENDENT AUDITORS AND STATEMENT OF FUND RECEIPTS, EXPENDITURES AND CASH POSITION FROM 01 JANUARY TO 31 DECEMBER 2007, at 3 (2008) [hereinafter ECCC AUDIT OF 2007]; EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, PROJECT "SPECIAL SUPPORT OF THE CAMBODIAN SIDE OF THE BUDGET FOR THE EXTRAORDINARY CHAMBERS OF THE COURTS OF CAMBODIA": STATEMENT OF CASH RECEIPTS, DISBURSEMENTS AND FUND BALANCE FOR THE YEAR ENDED 31 DECEMBER 2008, at 3-4 (2009) [hereinafter ECCC AUDIT OF 2008]; EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, PROJECT "SPECIAL SUPPORT OF THE CAMBODIAN SIDE OF THE BUDGET FOR THE EXTRAORDINARY CHAMBERS OF THE COURTS OF CAMBODIA": STATEMENT OF CASH RECEIPTS, DISBURSEMENTS AND FUND BALANCE FOR THE YEAR ENDED 31 DECEMBER 2009, at 3 (2010) [hereinafter ECCC AUDIT OF 2009]; UNAKRT Finances, UNAKRT.ORG, [http://www.unakrt-online.org/09\\_Finances.htm](http://www.unakrt-online.org/09_Finances.htm) (last visited May 28, 2011). For further information on the methodology of assembling the data presented, see *infra* Part V.F.

### F. *Measuring Commitment to International Criminal Law*

There are definitely similarities between the donors to the SCSL and the donors to the ECCC, and comparing them (and the amount they donated) could be a useful way to understand why countries contribute to international criminal courts.<sup>107</sup> France, Germany, the United Kingdom, Canada, the Netherlands, the United States, and Norway all contributed more than 1% of the total budget of both the ECCC and the SCSL.<sup>108</sup> However, this group is comprised entirely of Western European and North American states, and its composition is strongly affected by wealth.<sup>109</sup> Accordingly, the author compensated for wealth by calculating each country's percentage of global

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107. A comparison of donors at the ICTY and ICTR would not be as illuminating, since both tribunals are funded through assessments rather than voluntary contributions. Thus, ICTY and ICTR contributions reflect the relative wealth of different countries but say little about any individual country's commitment to international criminal courts or international criminal law. Membership in the ICC is a significant statement of commitment to the ICC's principles, but the amount of a state's contribution is based on its regular U.N. assessment and, therefore, only reflects relative wealth. Only at the ECCC and SCSL can we see how much states care about a tribunal as measured by how much they are willing to contribute. As Professor Romano has pointed out, "[t]he theoretical advantage of voluntary funding is that it correlates financial support to political support." See Romano, *supra* note 2, at 309.

108. See *supra* Figures 14 and 16 and accompanying notes. In addition, two international organizations have also contributed more than 1% of the total budgets of both the ECCC and the SCSL: the United Nations and the European Union. Cf., e.g., ECCC AUDIT OF 2006, *supra* note 106, at 3 (describing grants from European Commission and the U.N. Trust Fund); SECOND ANNUAL REPORT, *supra* note 99, at 28 (discussing United Nations grant to SCSL); SIXTH ANNUAL REPORT, *supra* note 98, Annex VIII, at 67 (listing contributions to SCSL from the E.U. Trust Fund).

109. A comparison of the list to global rankings of Gross Domestic Product (GDP) and GDP per capita demonstrates that wealth does not entirely explain the composition of the list, although it is clearly a significant factor. The United States has the highest absolute GDP, but Japan and China are both wealthier than Germany, France, or the United Kingdom, yet neither appears on the list of major contributors. See GDP, THE WORLD BANK, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (last visited May 28, 2011) (indexing GDP rankings for 2008). Canada is the eleventh wealthiest country, the Netherlands is sixteenth wealthiest, and Norway is the twenty-fourth wealthiest. *Id.* Clearly, there are many wealthier countries that do not appear on the list above, which suggests that wealth alone does not explain the composition of the list. The discrepancy also appears when examining GDP per capita. Norway has the second highest per capita GDP, while the United States drops to fourteenth. See GDP Per Capita, THE WORLD BANK, <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (last visited May 28, 2011) (indexing GDP per capita for 2008). The other rankings are Canada (fifteenth), France (sixteenth), Germany (seventeenth), and the United Kingdom (eighteenth). *Id.* Once again, there are countries with high GDP per capita that do not appear on the list, therefore that measure does not entirely explain why these countries have been consistent supporters of international criminal courts.

GDP.<sup>110</sup> Each country's percentage contribution to the ECCC was then divided by its percentage of global GDP, to calculate the ratio of its contributions to the court versus its share of global GDP. The same calculation was run for the SCSL, and the two ratios were averaged. A result higher than "1" indicates that a country contributed a higher percentage of the courts' costs than its percentage of global GDP and was taken as evidence of a robust commitment to international criminal courts. The resulting list, seen below in Table 1, is geographically broader than the list of the largest absolute contributors above.<sup>111</sup>

COUNTRY	RATIO
The Netherlands	4.67
New Zealand	3.73
Lesotho	3.55
Japan	2.84
Ireland	2.51
Canada	2.37
Australia	2.32
United Kingdom	2.24
Norway	1.96
Luxembourg	1.78
Sweden	1.27
Denmark	1.24

TABLE 1: COMMITMENT TO INTERNATIONAL CRIMINAL COURTS

While the list remains dominated by Western European states, it now includes states from Asia, Africa, and Australia/Oceania. Every country on the list is also a member of the ICC,<sup>112</sup> another measure of commitment to international criminal courts. Lesotho is the only developing country on the list, a result of its \$40,000 contribution to the SCSL.<sup>113</sup> Interestingly, the United States drops off the list. While it gave significant sums to both the ECCC and the SCSL, in total it gave only 65% of what one would expect, given its GDP. Similarly, France and Germany each gave less than one would

110. The absolute figures are available for download from the World Bank. *See GDP*, *supra* note 109. Figures for 2008 were used because they were the most recent figures available. From the absolute figures, it is possible to calculate each country's percentage of global GDP.

111. The host countries, Sierra Leone and Cambodia, topped the list but were removed because one would expect the host country to contribute a portion of the costs of a hybrid tribunal that is higher than its portion of global GDP.

112. *See The States Parties to the Rome Statute*, *supra* note 55.

113. FIRST ANNUAL REPORT, *supra* note 99, Annex IV, at 37. Its contribution to the SCSL was a miniscule 0.02% of the SCSL's budget, but was still nearly seven times what one would expect from Lesotho given its GDP. It did not contribute to the ECCC.

expect given their GDP. Ultimately, it appears that those states with the strongest commitment to international criminal courts—and by extension international criminal justice—are overwhelmingly developed countries, the majority of which are Western European.

There are also some anomalies in the contribution figures that seem to be largely the result of decisions in the donor country that are unrelated to support for international criminal justice. The United States is the single largest contributor to the SCSL but contributes a measly 2% of the ECCC's budget.<sup>114</sup> This appears to have been the result of concerns about the legitimacy of the Cambodian government.<sup>115</sup> Japan is also an anomaly. It contributed nearly half of the ECCC's funds, but only 0.2% of the SCSL's funds.<sup>116</sup> This may be partly an issue of proximity—the ECCC is in Asia, while the SCSL is in West Africa—but it may also be a result of overall Japanese aid priorities.<sup>117</sup>

Next, there are some countries that appear on the donor list of the ECCC but not the SCSL and vice-versa. Analysis of these donors suggests that proximity to the court may be one of the reasons that states voluntarily contribute to international criminal courts. For example, four Asian countries—Japan, India, South Korea, and Thailand—have contributed to the

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114. See *supra* Figure 14, 16 and accompanying notes.

115. From 1997 until 2007, U.S. law prohibited the U.S. government from providing any aid directly to the Cambodian government because of concerns about the government following a coup in the late 1990s. See Erika Kinetz, *US Congress Warms to Cambodia*, CHRISTIAN SCI. MONITOR, Mar. 14, 2007, available at <http://www.csmonitor.com/2007/0314/p04s01-woap.html>. The ECCC was considered part of the Cambodian government, and therefore, the United States could not contribute to the ECCC. See *UNAKRT Mission and Scope*, UNAKRT, [http://www.unakrt-online.org/01\\_home.htm](http://www.unakrt-online.org/01_home.htm) (last visited May 29, 2011) (“The Extraordinary Chambers in the Courts of Cambodia (ECCC) are part of the Cambodian court system.”). See also THOMAS LUM, CONG. RESEARCH SERV., RL 31362, U.S. FOREIGN AID TO EAST AND SOUTH ASIA: SELECTED RECIPIENTS CRS-4 (2008) (listing Cambodia among aid-restricted countries). This law was rescinded in 2007, and the United States has begun contributing to the ECCC. See LUM, CONG. RESEARCH SERV., *supra*, at CRS-14. See also Memorandum of Justification Under Section 7071(c) of the Department of State, Foreign Operations and Related Programs Appropriations Act, 75 Fed. Reg. 17,197, 17,198 (Apr. 5, 2010) (noting that the United States made a \$1.8 million contribution to the ECCC in 2009).

116. See *supra* Figure 14, 16 and accompanying notes.

117. Japan has been giving substantial aid and technical assistance to Cambodia for more than a decade. See JAPAN INT'L COOPERATION AGENCY, JICA COOPERATION TO CAMBODIA 3 (2006), available at <http://www.jica.go.jp/cambodia/english/activities/pdf/basic.pdf>. In particular, Japan has been engaged in helping modernize Cambodia's legal and judicial systems by providing technical assistance to the Ministry of Justice and the Royal School of Judges. *Id.* at 5, 12–13. Thus, Japan's large contributions to the ECCC may be part of a broader commitment to providing support for the Cambodian legal system.

ECCC, whereas only one African country has contributed.<sup>118</sup> On the other hand, six African countries have contributed to the SCSL.<sup>119</sup> This suggests that African countries feel more obligated to contribute to the SCSL, while Asian countries feel more obligation to contribute to the ECCC. While Australia contributed to both the ECCC and the SCSL, it may also be an example of the effect of proximity on donations.<sup>120</sup>

Finally, the amounts that the host country contributes to the court are also worth examining. Cambodia has contributed only 2.8% of the ECCC's budget,<sup>121</sup> while Sierra Leone has contributed 11.6% of the SCSL's budget.<sup>122</sup> However, if the contributions are adjusted to take into account each country's wealth, then Sierra Leone has effectively contributed more than twenty times what Cambodia has contributed.<sup>123</sup> This disparity probably reflects antipathy by the Cambodian government towards the ECCC.<sup>124</sup> By comparison, the Sierra Leonean government has been more supportive of the SCSL.<sup>125</sup>

This analysis suggests three primary conclusions. First, there is a core group of developed states, including a majority of Western European countries, which have a strong commitment to international criminal justice, as demonstrated by their voluntary contributions to the ECCC and SCSL. These

118. See ECCC AUDIT OF 2006, *supra* note 106, at 7 (listing Japan, India, and Thailand). See also UNAKRT Finances, *supra* note 106 (listing Namibia, Japan, and the Republic of Korea). Namibia, the only African country to contribute to the ECCC, gave \$500. *Id.*

119. Botswana, Lesotho, Mauritius, Nigeria, Senegal, and South Africa contributed to the SCSL, although all of the contributions were quite small. See, e.g., FIRST ANNUAL REPORT, *supra* note 99, Annex IV, at 37 (Lesotho, Mauritius, and South Africa); SECOND ANNUAL REPORT, *supra* note 99, Annex IV, at 41 (Mauritius, Nigeria, and Senegal); SIXTH ANNUAL REPORT, *supra* note 98, Annex VI, at 66 (Botswana and South Africa). In addition, five Asian countries contributed to the SCSL (Japan, Malaysia, Singapore, Thailand, and the Philippines). Interestingly, Malaysia, Singapore, and the Philippines contributed to the SCSL but not the ECCC. See, e.g., FIRST ANNUAL REPORT, *supra* note 99, Annex IV, at 37 (Japan, Malaysia, Singapore, and Philippines); FOURTH ANNUAL REPORT, *supra* note 99, at 64 (Thailand).

120. Australia contributes 7.6% of the ECCC's budget but only 0.3% of the SCSL's budget, which probably reflects Australia's greater interest in Southeast Asia compared to its interest in West Africa. Cf. Figures 14 and 16, *supra*.

121. See *supra* Figure 16.

122. See *supra* Figure 14.

123. Sierra Leone contributed 3500 times what one would expect given its share of global GDP. Cambodia contributed 158 times what one would expect given its share of global GDP. See *supra* text accompanying notes 110–11.

124. Cf. OPEN SOC'Y JUSTICE INITIATIVE, POLITICAL INTERFERENCE AT THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA 16–23 (2010), available at [http://www.soros.org/initiatives/justice/focus/international\\_justice/articles\\_publications/publications/political-interference-report-20100706](http://www.soros.org/initiatives/justice/focus/international_justice/articles_publications/publications/political-interference-report-20100706) (summarizing evidence of the Cambodian government's attempts to interfere with the ECCC's operation).

125. Cf. PERRIELLO & WIERDA, *supra* note 96, at 34 ("Sierra Leone is often cited as an example of positive political will in terms of government support for the Court.").



states are all members of the ICC—another indication of commitment to international criminal law. Second, donations to international criminal courts can be affected by internal political considerations unrelated to international criminal justice. To put it another way, internal political considerations can override concerns about international criminal justice even in countries like the United States that otherwise have a strong commitment to international criminal justice. Third, proximity to the court seems to have an effect on a state's willingness to contribute.

## V. METHODOLOGY

In theory at least, it is relatively simple to determine how much is spent on international criminal courts because most budgets of the courts are public.<sup>126</sup> In practice, however, the situation is complicated by two factors: 1) The documents are hard to find; and 2) The data in the documents can be difficult to interpret and compare across courts. First, the courts provide little information about funding on their websites. Instead the information is buried in annual reports, completion strategies, General Assembly resolutions, reports from the Secretary-General, decisions of budgeting committees, and other obscure documents.<sup>127</sup> Second, the data in the documents can be difficult to interpret and to compare across courts. The courts do not all report the same information in the same way or for the same periods. Nor are the documents always clear about how amounts were calculated. Adjustments must be made to allow information from different courts to be compared.

This section will describe how the cost of the various courts has been calculated as well as how contributions by individual countries have been calculated. It will begin by describing how the author calculated the United Nations regular and peacekeeping assessment rates, as these rates are used in determining individual countries' contributions to the ICC, ICTY, and ICTR.

### A. *Calculation of Regular and Peacekeeping Scales of Assessments*

A country's regular U.N. assessment rate is the portion of the regular U.N. budget that it is responsible for paying and is expressed as a percentage.<sup>128</sup>

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126. The exception to this rule is the Special Panel on Serious Crimes in East Timor, which did not have a separate public budget and was excluded from this article because of the difficulty of establishing what it had spent. *See infra* Part VI.

127. Of all the courts considered, only the ICTY states on its website how much it has cost. *See The Cost of Justice, supra* note 17. As an example of the difficulties inherent in this analysis, the author ultimately did not use the ICTY's self-reported figures because they differed by more than ten percent from the figures contained in the U.N. budget resolutions for the ICTY. *See infra* Part V.C (providing the author's methodology for calculating the budget of ICTY).

128. *See, e.g.,* G.A. Res. 46/221, *supra* note 79, ¶ 1 (providing assessment rates "for contribution of Member States to the regular budget of the United Nations," expressed as a "percent" in decimal form).

The scale of assessments used to fund the regular U.N. budget is readily available in a series of General Assembly resolutions.<sup>129</sup> This data was collected and entered into a database. Actual figures were available for the years 1992 through 2012. No figures are yet available for the years 2013 to 2015, so the author assumed that the 2013 to 2015 rates would be the same as the 2012 rates.<sup>130</sup> The resulting database contains information on each country's regular rate of assessment in each year from 1992 to 2015.

Peacekeeping operations are funded separately from the "regular" U.N. budget and use a separate scale of assessments, often known as the peacekeeping scale or the peacekeeping assessment.<sup>131</sup> Similarly to the regular assessment rate, the peacekeeping assessment rate is expressed as a percentage and represents the portion of the United Nations overall peacekeeping budget that each country pays.<sup>132</sup> The peacekeeping scale is based on, but different from, the regular scale of assessments, and as a result, calculating the scale of assessments used for funding peacekeeping operations is more complicated than determining the regular scale of assessments. To begin with, the United Nations has used two different systems for calculating peacekeeping assessments during the period at issue. Between 1989 and 2000, funding for peacekeeping operations was based upon the placement of U.N. member states into one of four categories: (A) permanent Security Council members; (B) economically developed countries; (C) less economically developed countries; and (D) a fourth category that can be thought of as least economically developed countries.<sup>133</sup> The economically developed countries were assessed

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129. See, e.g., *id.* (containing assessments for 1992–1994); G.A. Res. 49/19B, ¶ 2, U.N. Doc. A/RES/49/19B (Mar. 3, 1995) (containing assessments for 1995–1997); G.A. Res. 52/215, ¶ 2, U.N. Doc. A/RES/52/215 (Jan. 20, 1998) (containing assessments for 1998–2000); G.A. Res. 55/5B, *supra* note 79, ¶ 7, Annex II (containing assessments for 2001–2003); G.A. Res. 58/1B, ¶ 2, U.N. Doc. A/RES/58/1B (Mar. 3, 2004) (containing assessments for 2004–2006); G.A. Res. 61/237, ¶ 6, U.N. Doc. A/RES/61/237 (Feb. 13, 2007) (containing assessments for 2007–2009); G.A. Res. 64/248, *supra* note 79, ¶ 6 (containing assessments for 2010–2012).

130. This appeared to be the best solution because assessment rates change slowly over time. So, while the figures for 2013–2015 are unlikely to be exactly the same as for 2012, they are likely to be very similar.

131. G.A. Res. 55/235, ¶ 4, U.N. Doc. A/RES/55/235 (Jan. 30, 2001).

132. *Id.*

133. G.A. Res. 43/232, ¶ 3, U.N. Doc. A/RES/43/232 (Mar. 1, 1989) (describing apportionment of expenses amongst four categories of states). See also U.N. Secretary-General, *Composition of the Existing Groups of Member States for the Apportionment of the Costs of Peace-keeping Operations Financed Through Assessed Contributions*, ¶¶ 1–5, U.N. Doc. A/47/484 (Sept. 29, 1992) [hereinafter *Composition of 1992*] (describing apportionment of peace-keeping assessments); U.N. Secretary-General, *Composition of the Existing Groups of Member States for the Apportionment of the Costs of Peace-keeping Operations Financed Through Assessed Contributions*, ¶¶ 1–4, U.N. Doc. A/44/605/Add.2 (Oct. 13, 1989) [hereinafter *Composition of 1989*] (describing apportionment of peace-keeping assessments).

at 100% of their regular assessment rate.<sup>134</sup> Less economically developed countries paid 20% of their regular assessment rate, while the least economically developed countries were only expected to pay 10% of their regular assessment rates.<sup>135</sup> The permanent members of the Security Council would then pay 100% of their regular rate plus an additional amount necessary to make up for the lower payments levied on the less economically developed and least economically developed states.<sup>136</sup> Beginning in 2001, the General Assembly overhauled the apportionment of peace-keeping expenses and re-categorized countries into one of ten different groups based on per capita gross national product.<sup>137</sup> From then on, the Secretary General has produced a report every three years listing the percentage of the peace-keeping budget levied on each member state.<sup>138</sup>

To better understand these budgetary apportionments, a database of countries' calculated peacekeeping assessments was created covering the years from 1992 to 2015. The information for the years 1992 to 1994 was taken from a report by the Secretary-General describing the peacekeeping assessments of each U.N. member state.<sup>139</sup> That same report also served as the basis for categorizing the U.N. member states into the four categories that were used by the United Nations to determine peacekeeping assessments between

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134. See *Composition of 1992*, *supra* note 133, ¶ 3.

135. *Id.*; *Composition of 1989*, *supra* note 133, ¶ 4.

136. See *Composition of 1992*, *supra* note 133, ¶ 3; *Composition of 1989*, *supra* note 133, ¶ 4. For example, in 1992, the less economically developed states paid only 2.4% of the peacekeeping budget, despite being liable for 11.9% of the regular budget. See *Composition of 1992*, *supra* note 133, Annex I, at 4. The least economically developed states paid only 0.05% of the peacekeeping budget, despite being liable for 0.5% of the regular budget. *Id.* The economically developed countries paid 41.4% of both the peacekeeping budget and the regular budget. *Id.* The total peacekeeping percentage paid by these three categories of countries was 43.9%. *Id.* This left the permanent members of the Security Council responsible for 56.2% of the peace-keeping budget. *Id.* Their collective percentage of the regular budget was 46.2%, so each permanent member had to pay a proportional peacekeeping rate 21.5% higher than their individual portion of the regular budget to make up the difference. See *id.* For example: the United States paid 25% of the 1992–1994 regular U.N. budget but paid 30.387% of the peacekeeping budget for that period. *Id.*

137. G.A. Res. 55/235, *supra* note 131, ¶ 10.

138. See, e.g., U.N. Secretary-General, *Information on the Implementation of General Assembly Resolutions 55/235 and 55/236*, Annex III, at 17, U.N. Doc. A/C.5/55/38 (Mar. 1, 2001) (2001–2003); U.N. Secretary-General, *Implementation of General Assembly Resolutions 55/235 and 55/236*, Annex, at 2, U.N. Doc. A/58/157/Add.1 (Dec. 17, 2003) (2004–2006); U.N. Secretary-General, *Implementation of General Assembly Resolutions 55/235 and 55/236*, Annex, at 2, U.N. Doc. A/61/139/Add.1 (Dec. 27, 2006) (2007–2009); U.N. Secretary-General, *Implementation of General Assembly Resolutions 55/235 and 55/236*, Annex, at 2, U.N. Doc. A/64/220/Add.1 (Dec. 31, 2009) (2010–2012).

139. *Composition of 1992*, *supra* note 133, Annex I, at 4.

1989 and 2000.<sup>140</sup> For the years 1995 to 2000, the peacekeeping assessment of countries in Categories B, C, and D were calculated by multiplying their respective regular budget assessment by either 1, .2, or .1, depending on which category the country was in. The total peacekeeping assessments of countries in Categories B, C, and D were then added together and the result subtracted from 100. The resulting figure was compared to the total of the regular budget assessment of countries in Category A to determine what premium the Category A countries would pay.<sup>141</sup> For the years 2001 to 2012, each country's peacekeeping assessment was taken from reports authored by the Secretary-General.<sup>142</sup> As with the database of regular budget assessments, the peacekeeping assessments for the years 2013 to 2015 were assumed to be the same as for the year 2012.<sup>143</sup> The resulting database contains each country's calculated yearly peacekeeping assessment for the period 1992 to 2015.

### B. The ICC

Each year, the Assembly of States Parties adopts a resolution that appropriates money for the operation of the ICC.<sup>144</sup> From these resolutions, it is possible to determine the ICC's expenditures. To accomplish this, the budget figures were initially extracted from each of the budget resolutions. The ICC budget is in Euros, which were converted to U.S. dollars based on the best Interbank exchange rate available on the date that payments were due to the ICC.<sup>145</sup> This process provided budget figures for 2002 to 2010. ICC spending for the years 2011 to 2015 was calculated by assuming that the ICC budget would grow by 2% per year. This was done for two reasons: First, ICC spending growth has slowed in recent years;<sup>146</sup> and second, overall global inflation is likely to be slow for the next several years.<sup>147</sup>

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140. *See id.*

141. For an example, see *supra* note 136.

142. *See* sources cited *supra* note 138. For the years 2002 to 2005, the Secretary-General reported peacekeeping assessments in six-month periods—from January to July and from July to December. For these years, the yearly peacekeeping assessment was calculated by averaging the assessments for January to July and July to December.

143. *See supra* note 130 and accompanying text.

144. *See supra* sources accompanying Figure 7.

145. Pursuant to the ICC's Financial Regulations and Rules, payments are due on the first of January of the year to which the payment relates. *See* Financial Regulation 5.6, at 190, Res. ICC-ASP/1/3, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Sess. (Sept. 3, 2002). *See also* *Historical Exchange Rates*, OANDA, <http://www.oanda.com/currency/historical-rates> (providing historical exchange rates).

146. *See supra* Part IV.A (describing slowing growth in ICC budgets).

147. The International Monetary Fund estimates that overall global core inflation rate is now slightly less than 2% per year and has been at or near 2% for most of the last decade. *See* INT'L MONETARY FUND, *WORLD ECONOMIC OUTLOOK*, APRIL 2010, at 17 (2010), *available at* <http://www.imf.org/external/pubs/ft/weo/2010/01/index.htm>. Moreover, it is likely to remain at

The ICC's primary source of funding is assessed contributions paid by members of the Assembly of States Parties.<sup>148</sup> These contributions are based on the scale the United Nations uses to assess contributions for its regular budget.<sup>149</sup> However, the United Nations scale of assessments cannot be used without modification because the membership of the United Nations and the ICC are not the same.<sup>150</sup> It is not immediately clear how the U.N. scale of assessment must be modified. Article 117 of the Rome Statute states that the U.N. scale of assessment will be "adjusted in accordance with the principles on which that scale is based."<sup>151</sup> The fundamental principle on which the U.N. scale of assessment is based is that "the expenses of the [United Nations] shall be apportioned broadly according to the capacity to pay."<sup>152</sup> However, the U.N.'s regular scale of assessments already incorporates that principle, so it is not clear what further adjustment (if any) is mandated by Article 117. The ICC's funding resolutions do not clarify the matter.<sup>153</sup>

Given that the United Nations regular scale of assessments already incorporates the principle of capacity to pay, the simplest modification is to increase every country's assessment by whatever fixed percentage is necessary to bring the total of all country's contributions up to 100%, while ensuring that

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relatively low levels for some time as high unemployment rates and excess capacity caused by the global economic downturn will keep inflationary pressures low. *Id.*

148. Rome Statute, *supra* note 26, art. 115(a).

149. *Id.* art. 117. The Rome Statute also contemplates two other sources of funding for the ICC. It assumes that if the Security Council refers a matter to the ICC, the General Assembly will also provide funds to the ICC to pay for the referral. *See id.* art. 115(b). It also allows the ICC to receive voluntary contributions from "Governments, international organizations, individuals, corporations and other entities." *Id.* art. 116. As far as the author can tell, no money has ever come from the latter two funding sources. Consequently, the entire ICC budget was assumed to be funded out of assessed contributions.

150. The United Nations regular scale of assessments assigns a percentage of the United Nations budget to each member state, with the total of the percentages of all the member states equaling 100%. However, there are only 114 current States Parties to the Rome Statute, far fewer than the number of U.N. member states. *See The States Parties to the Rome Statute, supra* note 55. If one were to simply assign the U.N. regular scale of assessments to the ICC States Parties, the total of their contributions would be significantly less than 100%. Thus, the United Nations scale of assessments must be modified so that the total contribution of all states equals 100% of the ICC's budget.

151. *See* Rome Statute, *supra* note 26, art. 117.

152. *See* G.A. Res. 64/248, *supra* note 79, ¶ 2. This is calculated using estimates of gross national income, with various minimum and maximum rates. *Id.* ¶ 5.

153. *Cf., e.g.,* Assembly of States Parties 2010, *supra* note 66, at 3. The only clarifying information is that the ICC assessment rate cannot be higher than the United Nations maximum assessment rate. *Id.* The United Nations maximum rate currently stands at 22%. G.A. Res. 64/248, *supra* note 79, ¶ 5(h). The author requested information on how the ICC's scale of assessments was calculated from the Secretariat of the Assembly of State Parties to the ICC, but received no response.

no country's contribution exceeds 22%.<sup>154</sup> First, the author started with the United Nations regular scale of assessments for each state party to the ICC for the years 2002 to 2015.<sup>155</sup> Next, information was collected on when each state party ratified or acceded to the Rome Statute.<sup>156</sup> Countries that ratified or acceded prior to July 1, 2002, were assumed to have paid in each year. Countries that ratified or acceded after July 1, 2002 were assumed to have made their first payment during the first full year that they were state parties.

For each year, the U.N. assessments of the ICC's state parties were added together. This figure was used to calculate how much each individual country's assessment would have to be increased for that year so that the total of all the assessments equaled 100%. Each country's assessment was then increased by the necessary amount, and the results were tested to see if any country's modified assessments exceeded 22%.<sup>157</sup> If a country exceeded the cap, that country's modified assessment was set to 22%, and the amounts for the other countries were then recalculated (excluding the capped country from the calculation). For each year, each country's ICC assessment was then multiplied by that year's ICC budget to find that country's contribution to the ICC for that year.

### C. *The ICTY*

The International Criminal Tribunal for the former Yugoslavia was established in 1993 by the Security Council and is now expected to finish in 2014, a period of more than twenty years.<sup>158</sup> The ICTY has been funded through a series of General Assembly resolutions.<sup>159</sup> To calculate the ICTY's spending, the amounts from all of the appropriations resolutions were added together. This produced figures for 1994 to 2010.<sup>160</sup> The spending figure for

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154. See *supra* note 153.

155. For a discussion on the methods of collecting this data, see *supra* Part V.A.

156. See *Rome Statute of the International Criminal Court*, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtldsg\\_no=XVIII-10&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtldsg_no=XVIII-10&chapter=18&lang=en) (last visited July 31, 2011) (providing the date that each state ratified or acceded to the Rome Statute).

157. This was the case for Japan in the years 2008 and 2009. Ford, ICC Contributions Spreadsheet, *supra* note 72.

158. The ICTY was established in February 1993. See S.C. Res. 808, *supra* note 23, ¶ 1. In its most recent Completion Strategy report, the ICTY indicated that all but one of the pending appeals would be completed in 2013, with the Karadžić appeal being completed in early 2014. President of the ICTY, Letter dated 12 November 2009 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 addressed to the President of the Security Council, Annex ¶ 5, at 3, U.N. Doc. S/2009/589 (Nov. 12, 2009).

159. See sources cited *supra* accompanying Figure 9.

160. There were no assessed contributions for 1993 because, even though the United Nations authorized ICTY expenditures in 1993, it did not assess any contributions to pay for that

2011 was calculated by subtracting the amount appropriated for 2010 from the ICTY's 2010–2011 biennial budget.<sup>161</sup> To calculate spending in 2012–2014, spending was assumed to decrease linearly from the 2011 amount to zero in 2015.<sup>162</sup>

The ICTY is the only court considered in this Article that publishes its own spending figures on its website.<sup>163</sup> However, the figures listed on the ICTY's website are not the same as the amounts listed in the General Assembly's funding resolutions. In most cases, the amounts listed on the ICTY website are significantly less than what the General Assembly appropriated for the court.<sup>164</sup> Overall, the difference between the two sets of figures amounts to more than \$200 million, almost 10% of the ICTY's total budget.<sup>165</sup> This Article uses the amounts in the General Assembly resolutions because this is the same methodology used to calculate spending at the ICTR and, thus, facilitates comparisons between the ICTR and ICTY figures.

Article 32 of the ICTY Statute states its expenses are to be "borne by the regular budget of the United Nations."<sup>166</sup> However, the General Assembly was unhappy with Article 32 of the ICTY Statute, which had been drafted by the Secretary-General and approved by the Security Council,<sup>167</sup> because the

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spending. Cf. G.A. Res. 47/235, ¶ 5, U.N. Doc. A/RES/47/235 (Sept. 14, 1993) (authorizing the ICTY to spend \$500,000 in 1993, but not assessing any contributions). Spending in 1993 was then paid for as part of the assessment for 1994 and 1995. See G.A. Res. 49/242B, *supra* note 83, ¶ 20.

161. In recent years, the United Nations has used a biennial budget for the ICTY. *The Cost of Justice*, *supra* note 17. The most recent biennium is 2010 to 2011. Thus, the United Nations has already established a total budget for the 2010–2011 biennium and has already assessed contributions for 2010. See G.A. Res. 64/240, *supra* note 83, ¶ 12.

162. An obvious problem with this approach is that it is unlikely that the ICTY's spending will decrease perfectly linearly. Nevertheless, the author was unable to come up with a better way to estimate spending during the court's last years.

163. See *supra* note 127.

164. For example, for the 2006–2007 biennium, the ICTY website lists spending as slightly more than \$276 million. See *The Cost of Justice*, *supra* note 17. In 2006, the General Assembly initially set a biennial budget for 2006–2007 of approximately \$305 million. G.A. Res. 60/243, *supra* note 83, ¶ 3. In 2007, this amount was increased to approximately \$326 million. G.A. Res. 61/242, *supra* note 83, ¶ 5. Finally, it was amended again in early 2008 to bring the biennium total up to roughly \$349 million. G.A. Res. 62/230, *supra* note 83, ¶ 3.

165. The author cannot explain this difference, although it is troubling. Unfortunately, the ICTY website does not indicate the source of the spending figures it provides, so there is no way to know from where they come or how they differ from the amounts the General Assembly appropriated. See *supra* note 127.

166. See Statute of the International Military Tribunal for the Former Yugoslavia art. 32, May 25, 1993, 32 I.L.M. 1192 [hereinafter ICTY Statute].

167. The ICTY Statute was originally an annex to a report by the Secretary-General to the Security Council on the establishment of a tribunal for the former Yugoslavia. See U.N. Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808*, ¶ 30, U.N. Doc. S/25704 (May 3, 1993) (proposing that the Security Council

Assembly believed that it violated Article 17 of the United Nations Charter, which grants authority to the General Assembly to consider and approve the budget and apportion the expenses of the organization amongst member states.<sup>168</sup> Consequently, the General Assembly decided to fund the ICTY through a separate account outside of the regular U.N. budget.<sup>169</sup>

For the years 1994–1997, half of the ICTY’s funds came from surpluses in the budget of the United Nations Protection Force,<sup>170</sup> while the other half was assessed to the member states based on the regular scale of assessments.<sup>171</sup> Beginning in 1998, when the surplus from the United Nations Protection Force’s budget was exhausted, the General Assembly switched to assessing half of the ICTY’s budget based on the United Nations regular scale of assessments and half based on the United Nations peacekeeping scale of assessments.<sup>172</sup> That practice has continued to the present day,<sup>173</sup> and it is expected that it will continue until the ICTY is shut down in 2014.

To calculate the amounts that individual countries have contributed to the ICTY, the author began with the yearly spending figures calculated above.<sup>174</sup>

establishment the ICTY). It was subsequently adopted by the Security Council in Resolution 827. See S.C. Res. 827, *supra* note 23, ¶ 1.

168. Cf. U.N. Charter art. 17; G.A. Res. 47/235, *supra* note 160, ¶ 2 (reaffirming the role of the General Assembly as set out in Article 17); U.N. General Assembly, *Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991: Report of the Advisory Committee on Administrative and Budgetary Questions*, ¶ 3, U.N. Doc. A/48/915 (Mar. 29, 1994).

169. See G.A. Res. 47/235, *supra* note 160, ¶ 6 (requiring detailed cost estimates for the ICTY to be financed through assessed contributions); G.A. Res. 49/242B, *supra* note 83, ¶ 19 (reaffirming that the expenses of the ICTY be met through additional resources).

170. The United Nations Protection Force (UNPROFOR) was a peacekeeping force initially established in Croatia to assist with demilitarization of designated areas, but later expanded to include protection of “safe areas” in Bosnia and Herzegovina. *United Nations Protection Force*, UN.ORG, <http://www.un.org/en/peacekeeping/missions/past/unprofor.htm> (last visited July 31, 2011). The money transferred to the ICTY from the UNPROFOR budget was itself collected on the basis of the peacekeeping scale of assessments. See, e.g., G.A. Res. 49/248, ¶ 9, U.N. Doc. A/RES/49/248 (Aug. 8, 1995) (apportioning the costs of UNPROFOR according to the mechanism established in Resolution 43/232). General Assembly Resolution 43/232 is the resolution that established the peacekeeping scales. See *supra* note 133. Thus, when calculating payments to the ICTY from individual states, all monies transferred to the ICTY from UNPROFOR will be credited to the individual Member States based on the scale of assessments used for peacekeeping operations.

171. See G.A. Res. 49/242B, *supra* note 83, ¶¶ 21–22 (apportioning funds for the 1994–1995 biennium); G.A. Res. 50/212C, *supra* note 83, ¶¶ 4–5 (apportioning funds for 1996); G.A. Res. 51/214, *supra* note 83, ¶¶ 5–6 (apportioning funds for the first-half of 1997); G.A. Res. 51/214B, *supra* note 83, ¶¶ 11–12 (apportioning funds for the second-half of 1997).

172. See G.A. Res. 52/217, *supra* note 83, ¶¶ 9, 12–13 (assessing contributions for 1998).

173. See sources cited *supra* accompanying Figure 9.

174. See *supra* Part V.A.



It was assumed that for every year, half of the ICTY's budget would be funded based on the regular scale of assessments and half would be based on the peacekeeping scale of assessments. Consequently, for each country and for each year, the ICTY's budget for that year was halved, and that figure was multiplied by each country's regular rate and its peacekeeping rate, to calculate each country's contribution based on the regular scale and the peacekeeping scale, respectively. The regular contribution and the peacekeeping contribution were then added together to calculate the total amount that each country contributed in that year.

#### D. *The ICTR*

The International Criminal Tribunal for Rwanda was created in 1994 by the Security Council<sup>175</sup> and is paid for by the members of the United Nations through an assessment levied by the General Assembly.<sup>176</sup> From 1995 to 2001, the General Assembly passed a funding resolution every year.<sup>177</sup> Starting in 2002 and continuing until the 2010–2011 biennium, the General Assembly has funded the ICTR for two years at a time.<sup>178</sup> These resolutions provide information on ICTR spending through the end of 2011. It is now anticipated that the ICTR will complete its work by the end of 2012.<sup>179</sup> Spending in 2012 was assumed to be half of spending in 2011, primarily because the Trial Chambers will no longer be functioning. Total spending was calculated by adding together the amounts from the resolutions for 1995 to 2011 and the estimate of spending in 2012.

The way in which U.N. member states have paid for the ICTR has changed over time. For the years 1995, 1996, and 1997, half of the ICTR's annual cost was paid from funds originally allocated to the United Nations Assistance Mission for Rwanda,<sup>180</sup> and half of the cost was assessed to the Member States

175. See S.C. Res. 955, *supra* note 24, ¶ 1.

176. See G.A. Res. 49/251, *supra* note 90, ¶ 3 (deciding that “the expenses of the Tribunal shall be met through additional resources on the basis of assessed contributions and that they shall be financed through a separate special account outside the regular budget”).

177. The relevant resolutions in chronological order from earliest to most recent are: G.A. Res. 49/251, *supra* note 90, ¶ 4; G.A. Res. 50/213A, *supra* note 90, ¶ 1; G.A. Res. 50/213C, *supra* note 90, ¶ 2; G.A. Res. 51/215A, *supra* note 90, ¶ 2; G.A. Res. 51/215B, *supra* note 90, ¶ 18; G.A. Res. 53/213, *supra* note 90, ¶¶ 27, 28; G.A. Res. 54/240, *supra* note 90, ¶ 9; G.A. Res. 55/226, *supra* note 90, ¶ 11.

178. The relevant resolutions are chronologically: G.A. Res. 57/289, *supra* note 90, ¶ 20; G.A. Res. 59/273, *supra* note 90, ¶ 13; G.A. Res. 62/229, *supra* note 90, ¶ 5; G.A. Res. 64/239, *supra* note 90, pt. I ¶ 3, pt. II ¶ 12.

179. See *supra* note 89 and accompanying text.

180. The United Nations Assistance Mission for Rwanda (UNAMIR) was a U.N. peacekeeping operation originally established to help implement the Arusha Peace Agreement and then subsequently modified in response to the Rwandan genocide. *United Nations Assistance Mission for Rwanda*, UN.ORG, <http://www.un.org/en/peacekeeping/missions/past/unamirS.htm>

based on the scale used for assessments in the regular U.N. budget.<sup>181</sup> Beginning in 1998 and continuing to the present day, half of the ICTR's budget is assessed to the member states based on the scale used for the regular U.N. budget, and half is assessed based on the scale used for funding U.N. peacekeeping operations.<sup>182</sup>

To calculate the amount that each country paid in any given year to the ICTR based on its regular scale of assessments, the regular assessment percentage for that year was multiplied by one half of the ICTR's budget for that year. To calculate the amount that each country paid in any given year based on the peacekeeping scale of assessments, the peacekeeping assessment percentage for that year was multiplied by one-half of the ICTR's budget for that year. The figures for each country's contributions based on the regular scale and the peace-keeping scale were then added together to calculate what each country contributed yearly to the ICTR.

#### E. *The SCSL*

The Special Court for Sierra Leone is funded primarily through voluntary contributions from states,<sup>183</sup> although it has also received direct assistance from the United Nations.<sup>184</sup> Each year the SCSL produces an Annual Report.<sup>185</sup>

(last visited May 28, 2011). It was shut down in 1996. *Id.* The money transferred to the ICTR from the UNAMIR budget was itself collected on the basis of the peacekeeping scale of assessments. *See, e.g.,* G.A. Res. 49/248, *supra* note 170, ¶ 10 (apportioning the expenses for UNAMIR according to the mechanism created in Resolution 43/232). General Assembly Resolution 43/232 established the peacekeeping scales. *See supra* note 133. Thus, when calculating payments to the ICTR from individual states, all monies transferred to the ICTR from UNAMIR will be credited to the individual Member States based on the scale of assessments used for peacekeeping operations.

181. *See* G.A. Res. 49/251, *supra* note 90, ¶ 4; G.A. Res. 50/213A, *supra* note 90, ¶ 1; G.A. Res. 50/213C, *supra* note 90, ¶ 2; G.A. Res. 51/215A, *supra* note 90, ¶ 2; G.A. Res. 51/215B, *supra* note 90, ¶ 18.

182. *See* G.A. Res. 53/213, *supra* note 90, ¶¶ 27, 28; G.A. Res. 54/240, *supra* note 90, ¶ 9; G.A. Res. 55/226, *supra* note 90, ¶ 11; G.A. Res. 57/289, *supra* note 90, ¶ 20; G.A. Res. 59/273, *supra* note 90, ¶ 13; G.A. Res. 62/229, *supra* note 90, ¶ 5; G.A. Res. 64/239, *supra* note 90, pt. I ¶ 3, pt. II ¶ 12.

183. *See* Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, U.N.-Sierra Leone, art. 6, Apr. 12, 2002, 2178 U.N.T.S. 137 ("The expenses of the Special Court shall be borne by voluntary contributions from the international community.").

184. For example, in its second year of operation, the SCSL was nearly shut down because voluntary contributions did not meet its operating expenses. The SCSL was forced to ask for money from the United Nations to avoid closure. *See* U.N. Secretary-General, *Request for a Subvention to the Special Court of Sierra Leone*, ¶¶ 10–12, 14, U.N. Doc. A/58/733 (Mar. 15, 2004) [hereinafter *Request for a Subvention*]. Ultimately, the General Assembly appropriated sufficient money to keep the SCSL going. *See* G.A. Res. 58/284, ¶¶ 1–2, U.N. Doc. A/RES/58/284 (Apr. 26, 2004). At the time, the Secretary General made it clear that he believed

From these reports it is possible to calculate the SCSL's expenditures. First, the budget figures were extracted from the Annual Reports.<sup>186</sup> These provided actual expenditures for 2002 to 2008. In addition, the Sixth Annual Report provides an estimate of expected costs in 2009 and 2010.<sup>187</sup> The Annual Reports also indicate various "in-kind" contributions that were made (often in the form of gratis personnel).<sup>188</sup> These in-kind contributions were accounted for as well.<sup>189</sup> All of these figures were then added together to calculate the SCSL's total cost.<sup>190</sup> As noted above, the resulting figure is almost certainly too low because of delays in the Charles Taylor trial that will keep the SCSL in operation into 2011.<sup>191</sup> However, there does not appear to be any way to estimate how much the delay will cost.

The SCSL also reports non-state donor contributions in its Annual Reports, and information is available on donations received through May of 2009.<sup>192</sup> The information on donor contributions was extracted from the Annual Reports and entered into a spreadsheet. This was used to calculate how much various countries have contributed to the SCSL. There is no way to estimate

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it would be better to fund the SCSL out of the United Nations assessed contributions because this would be the only way to "produce a viable and sustainable" funding mechanism. *See Request for a Subvention, supra*, ¶ 6.

185. *See, e.g.*, FIRST ANNUAL REPORT, *supra* note 99; SECOND ANNUAL REPORT, *supra* note 99; THIRD ANNUAL REPORT, *supra* note 99; FOURTH ANNUAL REPORT, *supra* note 99; FIFTH ANNUAL REPORT, *supra* note 99; SIXTH ANNUAL REPORT, *supra* note 98.

186. *See supra* note 99, for pagination.

187. *See* SIXTH ANNUAL REPORT, *supra* note 98, at 33.

188. FIRST ANNUAL REPORT, *supra* note 99, Annex IV, at 37; SECOND ANNUAL REPORT, *supra* note 99, Annex, at 41 IV; THIRD ANNUAL REPORT, *supra* note 99, Annex IV, at 47; FOURTH ANNUAL REPORT, *supra* note 99, Annex V, at 65; FIFTH ANNUAL REPORT, *supra* note 99, Annex V, at 62; SIXTH ANNUAL REPORT, *supra* note 98, Annex VII, at 67.

189. Canada's in-kind contributions were reported in Canadian dollars. *See, e.g.*, SIXTH ANNUAL REPORT, *supra* note 98, Annex VII, at 67. The author converted the figures into U.S. dollars using relevant exchange rates available at *Historical Exchange Rates, supra* note 145. Although Sierra Leone's in-kind contribution of approximately \$24 million shows up as a single line item in the Fifth Annual Report, the author pro-rated it over the years 2002 to 2007. *See* FIFTH ANNUAL REPORT, *supra* note 99, Annex V, at 62.

190. In calculating the yearly cost of the SCSL, some adjustments had to be made to the SCSL's budget figures for the years 2002 to 2006 because up until 2007, the SCSL's fiscal year ran from July to June. In 2007, the SCSL switched to a calendar year for its fiscal year. Since all other courts have used a calendar year, the numbers for the SCSL's early fiscal years were converted to calendar year figures by splitting them in half and assigning half of the amount to each calendar year that the fiscal year covered.

191. *See supra* note 76.

192. FIRST ANNUAL REPORT, *supra* note 99, Annex IV, at 37; SECOND ANNUAL REPORT, *supra* note 99, Annex IV, at 41; THIRD ANNUAL REPORT, *supra* note 99, Annex IV, at 47; FOURTH ANNUAL REPORT, *supra* note 99, Annex V, at 65; FIFTH ANNUAL REPORT, *supra* note 99, Annex V, at 62; SIXTH ANNUAL REPORT, *supra* note 98, Annex VII, at 67. There will be no further information on SCSL donations until the release of the Seventh Annual Report.

donor contributions in future years because the SCSL relies on voluntary contributions.

#### *F. The ECCC*

Like the SCSL, the Extraordinary Chambers in the Courts of Cambodia is funded primarily through voluntary contributions. Basic information on ECCC spending comes from a series of public budgets that have been intermittently released. The first budget that was released contains fiscal information for the years 2006, 2007, 2008, and 2009.<sup>193</sup> The second released budget contains budget information for the years 2010 and 2011.<sup>194</sup> However, neither of these budgets contains information on the ECCC's future spending. That information is contained in a document that was distributed to potential donor states but was never formally published.<sup>195</sup> Combining information from these budgets allows calculation of yearly spending at the ECCC as well as the ECCC's total cost.

It is impossible to calculate individual countries' contributions to the ECCC on a yearly basis because the ECCC does not release the dates on which contributions were made. The only information available is a list of individual countries' cumulative contributions to the international side of the ECCC budget;<sup>196</sup> and a list of individual countries' cumulative contributions to the Cambodian side of the ECCC budget.<sup>197</sup> Both lists are somewhat out of date. Nevertheless, it is possible to get a reasonably accurate understanding of who has been paying for the ECCC. The result is a list of total contributions by state to the ECCC. There is no way to reliably predict future contributions because the ECCC relies entirely on voluntary contributions.

### VI. EXCLUDED COURTS

Several courts were considered for inclusion in this Article but were ultimately excluded. Three courts—the Special Tribunal for Lebanon, the War Crimes Chamber in the Courts of Bosnia-Herzegovina, and the Regulation 64 Panels in Kosovo—simply did not meet the definition of an “international criminal court” that the author used to determine which courts should be

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193. See ECCC 2005–2009, *supra* note 102, at 8 tbl.S.1.a.

194. See ECCC 2010–2011, *supra* note 104, at 15 tbl.S.1.a.

195. See ECCC 2012–2015, *supra* note 17, at 4 tbl.S.1.b.

196. There exists a summary of donor contributions to the international side of the ECCC budget. See *UNAKRT Finances*, *supra* note 106. It includes donations made through December of 2009.

197. Donor contributions to the national side of the ECCC budget are compiled in audit reports. See ECCC AUDIT OF 2006, *supra* note 106, at 3; ECCC AUDIT OF 2007, *supra* note 106, at 3; ECCC AUDIT OF 2008, *supra* note 106, at 3–4; ECCC AUDIT OF 2009, *supra* note 106, at 3. They contain information through the end of December 2009.

analyzed.<sup>198</sup> A fourth court, the Special Panels for Serious Crimes in East Timor, was excluded even though it met the proposed definition of an international criminal court because there was not enough information to credibly determine what it had cost or who had paid for it.

The Special Tribunal for Lebanon (STL) was not included in this Article because it does not meet the author's definition of an international criminal court. The STL was established by joint agreement of the United Nations and Lebanon,<sup>199</sup> contains a significant proportion of international staff,<sup>200</sup> and is funded primarily by the international community.<sup>201</sup> However, the STL does not have jurisdiction over violations of international criminal law.<sup>202</sup> Consequently, although the STL meets the first three parts of the definition proposed above, it does not meet the fourth part and has been excluded from this analysis.

The War Crimes Chamber in the courts of Bosnia and Herzegovina does not constitute an international criminal court for a number of reasons. First, it was created by domestic Bosnian law.<sup>203</sup> Second, while the War Crimes Chamber initially had significant international funding and international personnel, these were not meant to be permanent. Rather, the intention was to quickly phase out international participation and leave the court to be run entirely by the Bosnian government as part of the domestic court system.<sup>204</sup> The War Crimes Chamber does have jurisdiction over violations of international criminal law,<sup>205</sup> but this is not enough to make it an international criminal court for the purposes of this Article. Rather, it is a domestic court with international assistance.

The Regulation 64 Panels that operated in Kosovo beginning in 2000 are harder to characterize. At the time, Kosovo was being administered by the United Nations Interim Administration Mission in Kosovo (UNMIK)

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198. See *supra* Part II.A (defining "international criminal courts" for purposes of this Article).

199. Agreement between the United Nations and the Lebanese Republic on the Establishment of a Special Tribunal for Lebanon, Leb.-U.N., Jan. 22–Feb. 6, 2007, 2461 U.N.T.S. 257 [hereinafter "STL Agreement"]. See also S.C. Res. 1757, U.N. Doc. S/RES/1757, ¶ 1, Annex I (May 30, 2007) (incorporating STL Agreement as Annex I).

200. See STL Agreement, *supra* note 199, arts. 2, 4.

201. Fifty-one percent of the funding for the STL is supposed to come from voluntary contributions from states; Lebanon is responsible for the other forty-nine percent of the STL's cost. See *id.* art. 5(1).

202. The Statute of the Special Tribunal for Lebanon, which is also attached to Security Council Resolution 1757, limits the STL's subject matter jurisdiction to violations of Lebanese criminal law. See S.C. Res. 1757, *supra* note 199, attachment art. 2 (limiting jurisdiction to violations of the Lebanese Criminal Code and certain provisions of the Lebanese law on "[i]ncreasing the penalties for sedition, civil war and interfaith struggle").

203. See Skilbeck, *supra* note 4, at 10 n.14.

204. See *id.* at 8.

205. See *id.*

following withdrawal of Serbian forces.<sup>206</sup> UNMIK was created by the Security Council using its powers under Chapter VII of the U.N. Charter,<sup>207</sup> and it was the UNMIK that created the Regulation 64 Panels.<sup>208</sup> Thus, it is fair to characterize the Regulation 64 Panels as having been created by international law. In addition, UNMIK was paid for by the international community.<sup>209</sup> By definition, the Regulation 64 Panels have significant numbers of international staff.<sup>210</sup> Finally, the Regulation 64 Panels have jurisdiction over violations of international criminal law.<sup>211</sup>

However, the Regulation 64 Panels were not primarily designed to prosecute international crimes. Rather, they were created because almost all of the newly appointed members of the judiciary in Kosovo were ethnically Albanian and seemed to be systematically favoring ethnic Albanians over ethnic Serbs in cases that came before them.<sup>212</sup> The Panels were designed to give international judges control over particular ethnically-charged cases so as to “ensure the independence and impartiality of the judiciary.”<sup>213</sup> Thus, while the Regulation 64 Panels have jurisdiction over some violations of

206. See Robert F. Carolan, *An Examination of the Role of Hybrid International Tribunals in Prosecuting War Crimes and Developing Independent Domestic Court Systems: The Kosovo Experiment*, 17 TRANSNAT'L L. & CONTEMP. PROBS. 9, 10 (2008). See also S.C. Res. 1244, ¶ 10, U.N. Doc. S/RES/1244 (June 10, 1999) (providing for the creation of an “interim administration” for Kosovo); U.N. Secretary-General, Reg. 1991/1, § 1, ¶ 1, U.N. Doc. UNMIK/REG/1991/1 (July 25, 1999), reprinted in U.N. Secretary-General, *United Nations Interim Administration Mission in Kosovo*, Annex, U.N. Doc. S/1999/987 (Sept. 16, 1999) (“All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK.”).

207. In creating UNMIK, the Security Council explicitly said it was acting under Chapter VII of the Charter. S.C. Res. 1244, pmbl. ¶ 13, U.N. Doc. S/RES/1244 (June 10, 1999).

208. See UNMIK Reg. 2000/64, § 2, U.N. Doc. UNMIK/REG/2000/64 (Dec. 15, 2000), reprinted in U.N. Secretary-General, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, addendum, U.N. Doc. S/2001/218/Add.1 (Mar. 26, 2001).

209. See G.A. Res. 55/227B, ¶ 15, U.N. Doc. A/RES/55/227B (July 18, 2001) (appropriating \$413 million to fund UNMIK from July 2001 to June 2002).

210. According to Regulation 64, the panels created under that regulation were to be composed of three judges of which at least two had to be international judges. See UNMIK Reg. 2000/64, *supra* note 208, § 2.1. It appears that international judges did not constitute a significant part of the entire Kosovan judiciary, even though they were a majority on the Regulation 64 Panels. Cf. Carolan, *supra* note 206, at 18 (noting that international judges were often outvoted by Kosovan judges).

211. See Carolan, *supra* note 206, at 14, 19.

212. See *id.* at 15.

213. UNMIK Reg. 2000/64, *supra* note 208, § 1.1 (“At any stage in the criminal proceedings, the competent prosecutor, the accused or the defence [sic] counsel may submit to the Department of Judicial Affairs a petition for an assignment of international judges/prosecutors and/or a change of venue where this is considered necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice.”).

international criminal law, in practice they hear cases on many matters that are unrelated to international criminal law.<sup>214</sup> It is for this reason that the Regulation 64 Panels cannot be properly described as an international criminal court.<sup>215</sup>

The Special Panels for Serious Crimes (SPSC) in East Timor<sup>216</sup> fits the model described above. The SPSC was created by the United Nations Transitional Authority for East Timor (UNTAET),<sup>217</sup> funded primarily by the international community,<sup>218</sup> had a significant proportion of international staff,<sup>219</sup> and jurisdiction over international criminal law.<sup>220</sup> However, it is not included in this study because of the difficulty of determining how much it cost. The SPSC was funded as part of the U.N. peacekeeping operation in East Timor, but the budgets for the peacekeeping operation do not break down the funding on individual components of the operation.<sup>221</sup> Thus, there is no way to determine from the official budgets how much the SPSC cost. Several authors have offered various figures, but they are not easily reconcilable.<sup>222</sup> In the

214. See Carolan, *supra* note 206, at 19 (noting that the Regulation 64 Panels have heard cases involving terrorism, weapons smuggling, human trafficking, and organized crime).

215. In fact, a special court with jurisdiction over war crimes had been proposed for Kosovo but was ultimately abandoned. See Higonnet, *supra* note 5, at 379–80, 380 n.94.

216. The Serious Crimes Unit operated in East Timor between 2000 and 2005. It is explored in more detail in David Cohen, “Hybrid” Justice in East Timor, Sierra Leone and Cambodia: “Lessons Learned” and Prospects for the Future, 43 STAN. J. INT’L L. 1 (2007).

217. UNTAET was itself a creation of international law. UNTAET was created by the Security Council acting under its Chapter VII authority and granted “overall responsibility for the administration of East Timor [including] all legislative and executive authority [and] the administration of justice.” S.C. Res. 1272, ¶ 1, U.N. Doc. S/RES/1272 (Oct. 25, 1999).

218. It was funded by the United Nations as part of the U.N. Mission in Support of East Timor. See G.A. Res. 59/13, ¶¶ 11, 15–20, U.N. Doc. A/RES/59/13 (Jan. 24, 2005) (providing financing for the U.N. mission to East Timor and encouraging a speedy resolution of trials under the Special Crimes Unit).

219. The only numbers the author could find indicate that roughly thirty-six percent of the Serious Crime Unit’s staff was international. See U.N. Secretary General, *Budget for the United Nations Mission of Support in East Timor for the Period from 1 July 2004 to 30 June 2005: Report of the Secretary General*, tbl.2, U.N. Doc. A/59/290 (Aug. 23, 2004) [hereinafter *Budget for the United Nations Mission*] (listing 47 of the 129 approved staff positions for 2003–2004 as international).

220. See UNTAET Reg. 2000/15, ¶ 1.3, U.N. Doc. UNTAET/REG/2000/15 (June 6, 2000) (granting the Special Panels jurisdiction over “serious criminal offenses” including *inter alia* genocide, war crimes, and crimes against humanity).

221. *Cf.*, e.g., U.N. Secretary-General, *Budget for the United Nations Mission*, *supra* note 219, at 2–4.

222. For example, David Cohen states that the SPSC cost \$6.1 million in 2002 and “U.S. \$7–8 million in 2004–2005.” David Cohen, “Justice on the Cheap” Revisited: The Failure of the Serious Crimes Trials in East Timor, ASIA PAC. ISSUES, May 2006, at 5. Elsewhere, Professor Cohen has stated that the cost for the SPSC in 2001 was \$6.3 million. See, e.g., David Cohen, *Seeking Justice on the Cheap: Is the East Timor Tribunal Really a Model for the Future?*, ASIA

absence of concrete numbers from the United Nations or agreement amongst the commentators, the author has decided not to include the SPSC in this study. However, its overall cost appears to have been so small compared to the other courts discussed above<sup>223</sup> that the author is confident that its exclusion has not materially affected this Article's conclusions.

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PAC. ISSUES, Aug. 2002, at 5. Caitlin Reiger and Marieke Wierda calculate that the budget for the SPSC was \$14.3 million for the years 2003–2005. See CAITLIN REIGER & MARIEKE WIERDA, INT'L CTR. FOR TRANSITIONAL JUSTICE, THE SERIOUS CRIMES PROCESS IN TIMOR-LESTE: IN RETROSPECT 30 (2006). Cesare Romano states that the cost of the SPSC in 2002 was \$15.2 million, though he does not provide any source for this figure. See Cesare P.R. Romano, *The Price of International Justice*, 4 LAW & PRAC. INT'L CTS. & TRIBUNALS 281, 300 (2005).

223. If David Cohen is correct in his figures, then the SPSC probably only cost about \$25–30 million from beginning to end. See Cohen, *supra* note 216, at 14.



