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*Journal of Conflict Resolution* 2007; 51; 285  
DOI: 10.1177/0022002706297702

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# Gatekeeping versus Allocating in Foreign Assistance

## Donor Motivations and Contributions to War Crimes Tribunals

Steven D. Roper

Lilian A. Barria

*Department of Political Science*

*Eastern Illinois University, Charleston*

We investigate why states provide a voluntary contribution to war crimes tribunals despite the fact that these tribunals are located in states that offer few economic and strategic advantages. We view tribunal financing as a form of foreign assistance and place the funding of tribunals within the broader foreign assistance literature to explain the motivations of donor states. We examine voluntary contributions to four tribunals, and our analysis shows that there are differences between the gatekeeper stage and the secondary decision to allocate assistance. However, donors generally make no distinction among tribunals for purposes of foreign assistance. As a consequence, purely voluntarily funded tribunals are at a disadvantage, since they are not seen by states as unique and requiring special consideration. Ultimately, the lack of funding calls into question the ability of these tribunals to provide justice to victims as well as serve as a mechanism for national reconciliation.

**Keywords:** *war crimes tribunals; foreign assistance; UN Chapter VII; ICTY; ICTR*

Over the last decade, there have been more than 1 million victims of genocide, crimes against humanity, and war crimes, with the current crisis in Darfur a disturbing reminder that international law is only as effective as the legal mechanisms and enforcement available to protect human rights. While the international community in the 1990s and the 2000s determined that ad hoc war crimes tribunals were an appropriate mechanism for dealing with violations of human rights, there has been far less agreement among legal scholars and the human rights community on how to structure the tribunals to advance the cause of justice. Ultimately, these tribunals represent a political compromise by the international community concerning issues

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**Author's Note:** We thank Chad Cross and Emin Nabiyev for research assistance and Mukti Upadhyay and Hui Li for helpful comments. Data files are available at <http://jcr.sagepub.com/cgi/content/full/51/2/285/DC1>.

**Table 1**  
**Chapter VII and Voluntary Contributions for War Crimes Tribunals**

Year	ICTY (1993-2005)		ICTR (1994-2005)		SCSL (2002-2005)	ECCC (2005)
	Chapter VII	Voluntary	Chapter VII	Voluntary	Voluntary	Voluntary
1993	276,000 <sup>a</sup>	NA	NA	NA	NA	NA
1994-1995	36,100,000	6,449,794	NA	5,177,418	NA	NA
1996-1997	84,017,622	2,487,259 <sup>b</sup>	72,444,500	2,214,168	NA	NA
1998-1999	158,879,100	8,181,173	119,411,000	459,983	NA	NA
2000-2001	192,386,500	14,150,730	166,526,300	200,000	NA	NA
2002-2003	223,169,800	6,192,000	177,739,400	50,000	16,278,502 <sup>c</sup>	NA
2004-2005	271,854,600	NA	NA	943,577	38,148,380 <sup>d</sup>	43,000,000 <sup>e</sup>

Note: Data compiled by authors. ICTY = International Criminal Tribunal for the former Yugoslavia; ICTR = International Criminal Tribunal for Rwanda; SCSL = Special Court for Sierra Leone; ECCC = Extraordinary Chambers in the Courts of Cambodia.

a. Amounts are in nominal dollars.

b. 1996 data not available.

c. Funding only for 2003.

d. Funding only for 2004.

e. Funding only for 2005.

of sovereignty, authority, and increasingly, financing. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were established under United Nations (UN) Chapter VII authority, which guarantees funding as an assessed share of the UN budget (although states may choose to provide additional voluntary contributions to the ICTY and the ICTR in addition to the UN budget allocation). Over the last decade, these two tribunals have received over \$5 billion through Chapter VII financing (see Table 1).

Because of the costs associated with Chapter VII-funded tribunals, UN members have moved away from establishing later tribunals as auxiliary organs of the UN with guaranteed funding, including the Special Court for Sierra Leone (SCSL) and the Extraordinary Chambers in the Courts of Cambodia (ECCC). The SCSL and ECCC are financed solely through voluntary contributions from the international community. It is understandable why states would prefer discretionary, voluntarily-funded tribunals; however, what is less clear are the motivations of donors to provide voluntary contributions to tribunals, especially to those tribunals that have guaranteed funding through Chapter VII financing. For all these tribunals but especially in the case of the ICTY and the ICTR, states would appear to have a powerful incentive to free ride and provide no voluntary contribution, since they are already providing funding through their UN contributions (Roper and Barria 2006).

In the case of those tribunals that rely exclusively on voluntary funding, such as the SCSL and the ECCC, why do donors contribute to these tribunals that are

located in states that offer few economic and strategic advantages? Are there characteristics that explain the motivation of donors in providing financing to different types of tribunals? An examination of those states that provided voluntary contributions to the ICTY, the ICTR, the SCSL, and the ECCC shows a diverse cross-section of states that might not have been anticipated (see Table 2). For example, Cambodia, a state that is a recipient of contributions, was one of the first states to provide a voluntary contribution to the ICTY. In this article, we examine why states make voluntary contributions to both Chapter VII and purely voluntarily funded war crimes tribunals. We are interested in identifying those factors associated with (1) why states donate to war crimes tribunals and (2) the contribution levels among donor states. We view tribunal financing as a form of foreign assistance and place the funding of tribunals within the broader foreign assistance literature to explain the motivations of donors.

The funding of these tribunals is an important consideration for donors because it influences whether the tribunal is created under Chapter VII authority as well as the design of the tribunal (either a purely international or a hybrid tribunal, which included domestic judges and prosecutors) and ultimately influences the delivery of justice. For example, the Completion Strategy of the ICTY and the ICTR calls for a termination of all investigations by 2004, trials by 2008, and appeals by 2010. The Completion Strategy involves several interrelated issues, including the financing of the tribunals and the use of national courts as venues for transferred cases to reduce the backlog of tribunal cases. Some have argued that these considerations have impinged on the ability of the tribunals to provide justice to victims as well as to establish a historical record of the atrocities that were committed. Zoglin (2005) argues that the Completion Strategy deadlines and the termination of these tribunals create "junk justice," which places financial considerations above the goals of justice and undermines the process of reconciliation.

The termination of the ICTY and ICTR by 2010 is part of the larger issue of donor fatigue, particularly in the case of the United States. Transferring cases to national courts is viewed as more cost effective, and since the creation of the ICTY and the ICTR, we have seen a gradual shifting of financing and court administration to states. The SCSL and the ECCC are examples of hybrid tribunals in which the use of state resources reduces the overall financial burden of the international donor community. The movement toward a purely national process is seen as a logical next step in reducing the international financial burden. While the Completion Strategy of the ICTY and the ICTR as well as the use of hybrid tribunals reduces donor financing, the question remains whether the goals of justice can be fulfilled as financing is reduced and trials move to national courts. Given the financial concerns of the international community, we are interested in the characteristics of states that provide these contributions to tribunals as part of their general foreign assistance practice. Moreover, this research investigates whether donors make a distinction between the different forms of tribunals. Since voluntarily funded tribunals rely exclusively on the assistance of

**Table 2**  
**Voluntary Contribution Patterns among Donors**

State Contributed	Number of Tribunals	Total Voluntary Amount	% of Time Contributed
Armenia	1	1,000	6
Australia	2	2,403,887	18
Austria	2	468,547	18
Belgium	4	3,092,280	24
Cambodia	1	5,000	12
Canada	4	5,139,643	76
Chile	3	11,000	18
Cyprus	2	24,000	18
Czech Republic	2	110,000	18
Denmark	4	1,076,873	41
Egypt	1	11,000	6
Finland	3	1,181,262	35
France	1	4,800,000	6
Germany	3	4,151,198	76
Greece	2	30,000	6
Hungary	1	12,000	12
India	1	1,000,000	6
Ireland	3	474,054	35
Israel	2	15,000	12
Italy	2	2,193,709	35
Japan	2	21,500,000	12
Lebanon	1	3,000	6
Lesotho	1	40,549	6
Liechtenstein	2	9,985	18
Luxembourg	3	351,775	41
Malaysia	2	2,550,000	18
Malta	1	1,500	6
Mauritius	1	1,500	12
Mexico	1	6,000	12
Namibia	2	1,000	12
Netherlands	4	11,477,831	53
New Zealand	3	549,452	24
Nigeria	1	10,000	12
Norway	4	3,189,241	65
Oman	1	10,000	6
Pakistan	1	1,000,000	12
Philippines	1	961	6
Poland	1	12,000	6
Portugal	1	20,000	6
Saudi Arabia	1	300,000	6
Senegal	1	55,274	6
Singapore	1	15,000	6
Slovenia	1	10,000	6

*(continued)*

**Table 2**  
(continued)

State Contributed	Number of Tribunals	Total Voluntary Amount	% of Time Contributed
South Africa	1	10,000	12
South Korea	1	150,000	6
Spain	2	163,725	18
Sweden	4	1,479,429	41
Thailand	1	24,331	6
UK	4	11,668,104	65
USA	3	22,266,298	76
AVERAGE	2	2,061,538	21

Note: Data compiled by authors. The percentage of times contributed was calculated based on all financing opportunities for which we had data (seventeen total opportunities for all tribunals). Amounts are in nominal dollars.

donors, it is important to assess donor motivations to understand the financing of these tribunals.

## The Motivations for Foreign Assistance

Foreign assistance has often been referred to in the literature as a puzzle because of the various forms it can take, the diverse characteristics of recipients, and the different motivations of donors. Previous studies (Neumayer 2003a; Alesina and Dollar 2000; Schraeder, Hook, and Taylor 1998) have focused on general aid flows, as measured by the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD). While tribunal financing would generally not be included in the definition of foreign assistance provided by the DAC,<sup>1</sup> Duffield (2001) suggests that a new development-security environment emerged in the 1990s in which foreign assistance plays a key role in global governance by targeting conflict prevention and resolution and promoting the rule of law. Increasingly, donors have given a high priority to strengthening and to developing political and administrative institutions in recipient states, including reform of the judicial system (Knack 2004).

The foreign assistance literature has generally focused on recipient characteristics to understand the motivation of donors when allocating assistance. Characteristics found in the literature include population size (McKinlay and Little 1977), level of democratization (Alesina and Dollar 2000), and social development indicators such as life expectancy and daily caloric intake as well as human rights practices (Poe 1992). Schraeder, Hook, and Taylor (1998) find that Japanese aid officials favor states with higher measures of social welfare while Neumayer (2003b) finds

that various regional multilateral development banks and UN agencies tend to favor less populous states.

Traditionally, studies of foreign assistance focus on measures of the recipient state, and therefore, our study contributes to this literature by focusing on how donor characteristics influence foreign assistance contributions. This focus is appropriate, given that on many measures, our recipient states (e.g., Rwanda, Sierra Leone, and Cambodia) are similar in their level of economic and political development and do not allow for variation on key characteristics. While less of the literature utilizes variables based on the characteristics of donors, those studies that examine donor characteristics find that "prestige aid" is an important motivator for donors (Morgenthau 1962). For example, Orr (1988) argues that foreign assistance not only cultivates prestige but can even be used to create a "great power status" (p. 34). For the United States, strategic considerations have historically been important, especially during the Cold War (Grant and Nijman 1997).

In addition, Alesina and Dollar (2000) and Wang (1999) have looked at the relationship between assistance allocation and voting patterns in the UN. They generally find that political alliances within the UN, particularly in the case of the United States and Japan, predict foreign assistance contributions. As a form of state prestige, we are not concerned with the voting patterns and UN alliance politics but rather with the influence of Security Council membership on contributions. All of the war crimes tribunals have been authorized by the UN (in almost all cases through the Security Council), and we hypothesize that membership in the UN Security Council provides states, large and small, a level of prestige and power status that is not available to other UN members. As Security Council members, donors are involved in debating resolutions and reports regarding these tribunals that can enhance their standing within the international community. Therefore, we develop a variable that measures prestige and power status based on Security Council membership.

Regional affiliation has been found to be a factor that explains the decision of donors to provide foreign assistance. States that share a "natural collective" are more likely to provide assistance to states in their region than outside. In addition, foreign assistance may be given by regional powers to effect a change in policy or to exert further control within the region. For example, Japan concentrates its assistance in Asia to promote economic and cultural benefits (Schraeder, Hook, and Taylor 1998). However, others have found limited support for a regional effect. For example, Neumayer (2003b) examines the geographic distance between the United States, Western Europe, and Japan and recipients to measure the impact of regional identification and assistance allocation and finds no relationship between a regional effect and foreign assistance. Although the literature in this area is far from conclusive, we construct a regional variable to assess whether donors are more likely to contribute to a tribunal that is located in their region.

Another variable that has been used to measure donor motivation is the legacy of colonialism. Former colonial powers, such as the United Kingdom and France, have not only concentrated their foreign assistance in their former colonies to maintain cultural ties but also to maintain privileged access to resources and markets in the decolonized areas (Degnbol-Martinussen and Engberg-Pedersen 2003). Schraeder, Hook, and Taylor (1998) argue that “colonial heritage serves as a useful indicator of the impact of culture on foreign aid policies” (p. 305). In addition, Neumayer (2003a) also finds that colonial ties are important. Therefore, we construct a variable to examine whether former colonial powers are more likely to provide assistance to tribunals associated with their former colonies.<sup>2</sup>

Most studies have examined aggregate aid flows or general categories of aid (e.g., economic and military assistance) as the dependent variable (Neumayer 2003c; Apodaca and Stohl 1999; Cingranelli and Pasquarello 1985). In our study, the pattern of foreign assistance is considered an independent variable. We look at a very particular type of assistance, the financing of war crimes tribunals, to determine whether this form of assistance fits within the general patterns of donor foreign assistance. We hypothesize that those states that provide a large amount of general foreign assistance are more likely to provide assistance to war crimes tribunals. Finally, foreign assistance has been viewed as a means to support good governance, particularly concerning human rights. Those studies that have examined this relationship typically focus on the governance and human rights record of the recipient rather than the donor state (Apodaca and Stohl 1999; Poe 1992). For example, Cingranelli and Pasquarello (1985) find that the human rights record of Latin American states influences foreign assistance flows to the region. Neumayer (2003a), however, finds that human rights “play a rather limited role in the allocation of aid” (p. 510). While the role of human rights in foreign assistance is debatable, increasingly the literature examines human rights as an important recipient characteristic.

We take a different approach when conceptualizing human rights—in our cases, tribunals were established in post-conflict environments precisely because of the lack of basic human rights and the rule of law. Therefore, rather than focus on the recipient, we examine whether the level of democratization and good governance characteristics of the donor are associated with tribunal financing. We hypothesize that those states that are more democratic (defined in terms of a better record on political freedoms and civil rights) are more likely to contribute to a tribunal to promote the rule of law as well as lead by example.

## Data

We examine the voluntary contributions provided by donor states for the ICTY, the ICTR, the SCSL, and the ECCC tribunals.<sup>3</sup> To determine whether voluntary contributions to these tribunals fit within a general pattern of foreign assistance, we

examine several donor-specific variables and the decision by donors (1) to provide assistance and (2) to determine the amount of assistance.<sup>4</sup> The dependent variable was constructed in two different ways. First, a dummy variable was constructed, which measured whether states donated to a tribunal. This variable measures whether a donor provided a contribution to any tribunal at any point in time no matter the amount of the assistance. For our second test, a dependent variable was constructed for the logged amount of the real dollar contribution provided by the donor. We considered creating a dependent variable that was a ratio of the donor contribution in terms of gross domestic product (GDP) to control for the effect of the size of the donor's economy (thus eliminating the GDP independent variable that we discuss below). However, by integrating GDP within the dependent variable, we lose the ability to test whether the size of the donor's economy is significant in explaining the amount donated.

Moreover, as discussed below, we consider the size of the economy as a surrogate measure for the general donor foreign assistance practice, which cannot be assessed if we integrate GDP into the dependent variable. While others such as Neumayer in a series of publications create a dependent variable that represents a ratio, this literature is examining the attributes of recipients not donors. This is a fundamental distinction, since much of the foreign assistance literature examines how the size of the recipient economy influences donor behavior. Because the focus of this research is on donor behavior, integrating donor characteristics (such as the size of economy or the level of democracy) into the dependent variable would not allow us to test for the important individual effect of these donor characteristics.

The dependent variable was created by examining various tribunal and UN reports. We considered creating a lagged dependent variable in which the amount of assistance provided by donors was a function of previous year disbursements. For example, Truman and Ayoub (2004) and Hirata (2002) argue that budgetary incrementalism among Japanese aid officials occurs as they develop long-term commitments to specific recipients. However, we did not create a lagged dependent variable because of the fact that there are a number of states that provided tribunal financing sporadically, often only once or twice during a ten-year period. As reported in Table 2, donors on average provide funding for tribunals approximately 20 percent of the time, and therefore, prior contributions are not indicative of future donor behavior. Indeed, aside from states such as Canada, Germany, and the United States, few states exhibit a long-term commitment toward tribunal financing.

In creating the data set for voluntary contributions, we encountered differences in reporting requirements among tribunals. In the case of the ICTY, the ICTR, and the SCSL, the president of the tribunal was required to issue an annual report that outlined the administration and financing of the tribunal.<sup>5</sup> While the ICTY reports are very detailed in their discussion of the contributions, the ICTR reports provide virtually no list of donors or amounts.<sup>6</sup> In addition, the method of reporting differed among the tribunals. While the ICTY provides a year-to-year update, the ICTR's

data are biannual, and the ECCC's data are reported monthly. However, after receiving more detailed budgetary data from tribunal officials, we have been able to standardize contribution amounts using real dollars. Our data set on voluntary contributions covers the period of 1994 through 2005.<sup>7</sup> We have data for the ICTY from 1994 through 2003, the ICTR from 1994 through 2005, the SCSL for 2003 and 2004, and the ECCC for 2005.<sup>8</sup>

Our first independent variable measures state prestige. This variable, Security Council membership, was coded as a dummy variable as to whether the state was a member of the Security Council (year to year). The data set includes every state listed as a UN member as of January 1, 2006. Our Security Council variable is only composed of those states that were rotating members.<sup>9</sup> In the case of permanent members of the Security Council, there is no variance in the independent variable, and therefore, our Security Council variable controls for permanent membership. For the first set of tests, we hypothesized that those states that were Security Council members were more likely to contribute (no matter the amount). The second set of tests examined whether donors that provided a contribution were more likely to provide a larger contribution when members of the Security Council.

Our second independent variable measured regional affiliation. We constructed a dummy regional variable for Europe, Africa, and Asia to estimate the influence of region on contributions.<sup>10</sup> We first test whether donor states were more likely to be from the same region as the tribunal and later whether those states that provided a larger contribution were more likely to be from the same region as the tribunal. A third independent variable measured the colonial past. A dummy variable measured whether the colonial past influenced the amount that donors provided.<sup>11</sup> We hypothesized that this variable would be relevant, given that three of the tribunals were established in recently decolonized states.<sup>12</sup>

A fourth independent variable, GDP, was used to determine if financing tribunals is a function of the size of the donor economy. As indicated above, we view this variable as an appropriate surrogate measure for the general foreign assistance provided by states.<sup>13</sup> The OECD's ranking of official development assistance (ODA) would have been a more suitable measure for foreign assistance practices; however, less than twenty-five states are ranked, and in the case of tribunal financing, many donors are not ranked by the OECD. In the case of the ECCC, this was not problematic, since all but one of the donors were ranked on ODA. However, for the ICTY and the ICTR, the inclusion of an ODA variable was problematic because of the significant number of missing values for lower-ranked states.<sup>14</sup> The GDP variable was created by using World Bank data from 1994 to 2004 in which GDP was reported in real dollars. Since there is considerable variation in GDP, which creates a skewed distribution, we logged the variable. We hypothesized that those states that provided financing to tribunals did so as part of their normal practice of foreign assistance. Those states that provide larger amounts of general foreign assistance were more likely to provide a contribution to a tribunal and in a larger amount.

Finally, we constructed a variable to assess whether donors who practice good governance and a respect for political freedoms were more likely to provide tribunal assistance as a means to encourage post-conflict states to democratize and establish the rule of law. Numerous studies utilize a democracy variable but in almost all the cases, the variable is constructed for the recipient not the donor. Here, we are interested in whether donors who respect human rights are more likely to provide a tribunal contribution as an incentive for furthering the protection of human rights and good governance in the recipient. Zanger (2000) argues that democratic states often pressure nondemocracies to adopt democratic institutions to protect human rights. Tribunals imbue the rule of law, promote human rights protection, and serve broader institution-building interests within society. Similar to other studies that measure democratization and good governance, we use Freedom House (2006) rankings for the period of 1994 to 2005. Freedom House reports the level of democracy in a state based on a political rights and a civil liberties category. The measures range from one (free) to seven (not free). We collapsed the political rights and the civil liberties categories into one measure. We test whether donors with lower scores (more free) are more likely to provide a contribution to a tribunal (as well as provide a larger contribution).<sup>15</sup>

As important as the variables that were included in our models, it is equally important to note the variables that were excluded. Most studies of foreign assistance analyze the economic motivation of donors (Neumayer 2003a; Alesina and Dollar 2000; Schraeder, Hook, and Taylor 1998). We considered the possibility that tribunal contributions were based on the economic self-interest of the donor. However, given the relatively insignificant import and export market of Rwanda, Sierra Leone, and Cambodia, it was doubtful that major donors, such as the United States, would be inclined to provide a contribution to a tribunal based on economic interests. That being said, we did initially include a variable for imports and exports (in real dollars) that measured the trade between the recipient and its major trading partners in our analysis. However, we found no significant relationship between the contribution amount and economic self-interest and ultimately decided not to include this variable in our final models.<sup>16</sup>

## Method

We use pooled cross-sectional time series to assess the factors associated with tribunal financing. This funding as a form of foreign assistance follows the same logic as all foreign assistance in which donors must first decide whether they want to contribute financing and then secondarily determine the amount that will be provided. Cingranelli and Pasquarello (1985) have termed this first decision point the “gatekeeper” stage in which the dependent variable is the decision whether to provide assistance. Therefore, we use binominal logit estimation for this stage and

constructed a model for all tribunals (e.g., the ICTY, the ICTR, the SCSL, and the ECCC) as well as a model for Chapter VII-funded tribunals and those tribunals that rely exclusively on voluntary financing. For the second stage, we use ordinary least squares (OLS) regression to test for the relationship between the amount contributed for all Chapter VII-funded and voluntarily-funded tribunals. Because of the nature of the former colonial independent variable (there is only one former colonial power for each tribunal sample), we have included this variable only in the second stage test. Binominal logit estimation used in the first stage test is unable to assess whether a former colonial power is more likely to provide a contribution, because the sample size of former colonial powers was limited. However, for the second stage test, it is appropriate to use OLS regression to assess whether former colonial powers contribute more than other donor states.<sup>17</sup>

Our models seek to explain the characteristics of donor states that have provided funding to tribunals and assess under what conditions states are more likely to provide funding. Additionally, we examine if the motivations of donors vary depending on whether the tribunal has a guaranteed financing mechanism (e.g., Chapter VII) or whether tribunal financing is completely voluntary. Given that there might have been large differences in total contributions among donors with different size economies, we were concerned about the possibility of heteroscedasticity and the need to use corrected standard errors. We performed a Cook-Weisberg test, which indicated that there was equal variance of the residuals and therefore a lack of heteroscedasticity.

## Results

### The Decision to Provide Financing to War Crimes Tribunals

As reported in Table 3, the decision as to whether to fund war crimes tribunals is influenced by a number of factors. The results of the three models reported in Table 3 show a remarkable similarity in terms of the significant variables as well as the pseudo  $R^2$  values. In all three models, the pseudo  $R^2$  value was just under 50 percent, indicating a reasonable ability to account for the decision to fund tribunals. In addition, for all three models, the democratic characteristics of the donor state were associated with the decision to fund tribunals. Because of Freedom House's coding scheme, the negative relationship indicates that those donor states with a better record on political rights and civil liberties were more likely to provide a contribution to a war crimes tribunal. We interpreted this result to indicate that those donor states that were more democratic were more inclined to provide foreign assistance to promote good governance (especially the rule of law) in the recipient state and thus lead by example.

In addition, in these models, GDP and the regional effect were statistically significant. States with a larger economy were more likely to provide a contribution, and since GDP is a surrogate for ODA, this result indicates that states that provide

**Table 3**  
**Factors that Influence the Decision to Contribute to War Crimes Tribunals**

Variable	All	Voluntary-Funded (SCSL/ECCC)	Chapter VII-Funded (ICTY/ICTR)
Democracy	-.311** (.024)	-.393** (.069)	-.299** (.026)
Security Council	-.188 (.188)	-.030 (.500)	-.211 (.204)
Region	1.264** (.135)	1.721** (.466)	1.248** (.145)
LGDP	1.197** (.076)	1.468** (.209)	1.157** (.082)
Nagelkerke $R^2$	.478	.494	.477
<i>N</i>	3,404	568	2,836

Note: Dependent variable was whether the state donated to a tribunal (1 = *donated*; 0 = *did not donate*). \* $p < .05$  and \*\* $p < .01$ . Entries are logit coefficients with standard errors in parentheses. *N* includes all state donations during the period from 1994-2005. ICTY = International Criminal Tribunal for the former Yugoslavia; ICTR = International Criminal Tribunal for Rwanda; SCSL = Special Court for Sierra Leone; ECCC = Extraordinary Chambers in the Courts of Cambodia; LGDP = log of real gross domestic product.

tribunal assistance do so as part of their general foreign assistance practice. The results also indicate that donors who were from the same region as the tribunal were more likely to provide a contribution. The regional effect was found in all three models, and this is especially salient in the case of the voluntarily funded tribunals. More specifically, in the case of the ECCC, the regional effect indicates that Asian donors have been more committed to provide financing, which contradicts the argument concerning so-called “Asian values” that promote community over individual rights and the importance of state sovereignty over international solutions to human rights violations (Apodaca 2002; Davis 2000). While the Association of Southeast Asian Nations, the main regional organization, promotes the noninterference of members in the domestic affairs of neighboring states, it is clear that Asian donors do not regard tribunal financing as a form of domestic interference. Perhaps this is because the ECCC is a mixed tribunal in which the majority of judges and prosecutors are Cambodian. Because the Cambodian government wields considerable influence in the tribunal’s decision-making process, Asian states have been more likely to provide a contribution.

The Security Council variable was insignificant in all three models, indicating that Security Council rotating membership did not influence the decision of donors to provide financing. States that held a seat as a rotating member of the Security Council were no more likely to provide a contribution to a tribunal than nonmembers (in fact, the negative relationship in the three models shows that they were

slightly less likely to contribute to tribunal financing). To determine if the exclusion of permanent members from the variable may have biased the result, we reran the data, including the permanent members, and again found that the variable was not significant. While this may be surprising given the amount that the United States and the United Kingdom have provided to tribunals, China and Russia have not provided assistance to any tribunal, and France has only provided limited assistance.

What is surprising about these results is that donors do not make a distinction between voluntarily funded and Chapter VII-funded tribunals. The same variables are significant in both models, indicating that states use the same logic when deciding to donate to a tribunal. Perhaps one of the reasons why voluntarily funded tribunals such as the SCSL have been underfunded is because the international community does not see this form of tribunal as essentially different from those that are funded by the UN (because of frustration over inadequate financing, SCSL Registrar Robin Vincent resigned in 2005). While the need for a tribunal in all these instances is similar, the difference in the funding mechanism places extra burdens on voluntarily funded tribunals. As Table 3 demonstrates, Security Council members see no additional responsibility to fund these types of tribunals.

### **The Factors that Influence the Amount Provided to War Crimes Tribunals**

The models reported in Table 4 are based on OLS regression in which the dependent variable was the logged real dollar contribution to the tribunal. Here, we are interested in explaining those factors associated with contribution levels among donors and examine whether there is a pattern of contributions. As reported in Table 4, there was a significant difference in the ability of the models to account for contribution levels. While the model for all tribunals and Chapter VII is less effective in accounting for contribution levels (.384 and .272), the adjusted  $R^2$  for the voluntarily funded tribunals was rather robust at over 55 percent.

For all three models, GDP was significant, and as we find that ODA and GDP are highly correlated, we believe that this indicates that tribunal financing fits within a donor's general pattern of foreign assistance. States that normally provide large amounts of foreign assistance are more likely to provide greater assistance to tribunals. The list of states that provided a tribunal contribution is somewhat surprising. As reported in Table 2, states such as Egypt, Lesotho and Namibia provided a tribunal contribution. However, the amounts that they provided were rather small and fit this GDP and foreign assistance pattern (for example, Namibia's total contribution to all tribunals was \$1,000).

The democracy variable continues to be an important donor characteristic. In the all and voluntarily funded model, donors with a better democratic record were more likely to provide a larger contribution to a tribunal. Indeed, a cursory examination

**Table 4**  
**Factors that Influence the Contribution Amounts for War Crimes Tribunals**

Variable	All	Voluntary-Funded (SCSL/ECCC)	Chapter VII-Funded (ICTY/ICTR)
Democracy	-.159* (-2.570)	-.223* (-2.366)	-.098 (-1.162)
Security Council	-.034 (-.524)	-.151 (-1.637)	.089 (.981)
Region	-.078 (-1.289)	-.006 (-.060)	-.013 (-.162)
Former Colony	.229** (3.849)	.185* (2.097)	.245** (2.982)
LGDP	.517** (7.535)	.637** (6.186)	.454** (4.861)
Adjusted $R^2$	.384	.567	.272
<i>N</i>	3,404	568	2,836

Note: Dependent variable was logged donation in real dollars. \* $p < .05$  and \*\* $p < .01$ . Entries are standardized coefficients from OLS regressions. The  $t$ -statistic is in the parentheses.  $N$  includes all state donations during the period from 1994-2005. ICTY = International Criminal Tribunal for the former Yugoslavia; ICTR = International Criminal Tribunal for Rwanda; SCSL = Special Court for Sierra Leone; ECCC = Extraordinary Chambers in the Courts of Cambodia; LGDP = log of real gross domestic product.

of the amounts contributed by donor states reported in Table 2 shows that while states such as Malaysia, Pakistan, and Saudi Arabia contributed to tribunals, most of the large donors were highly democratic states. In addition, it appears that those donors who are regarded as more democratic are making a distinction between voluntarily funded and Chapter VII-funded tribunals. Donors with better governance records prefer to make larger contributions to voluntarily funded tribunals than to Chapter VII-funded tribunals. We interpret this result to indicate that democratic donors recognize the necessity of leading by example by making contributions to tribunals in democratizing states that have much more limited resources.

This test also examined whether former colonial powers provided a larger contribution than other donor states. As reported in Table 4, the status as a former colonial power was significant in all three models, indicating that former colonial powers were more likely to provide a larger contribution irrespective of the tribunal's funding mechanism. The amounts provided by the Belgian government for the ICTR and the British government for the SCSL confirm that as former colonial powers, they provided large contributions. Belgium provided over 30 percent of the total contribution for the ICTR while the United Kingdom provided almost 23 percent of the total for the SCSL. In the case of the ECCC, France as the former colonial power has donated the second highest amount of any state. Former colonial powers see a

responsibility to contribute to tribunals located in former colonies. This result is not surprising, since many former colonial powers use their history as a basis for bilateral assistance. Alesina and Dollar (2000) note that some states, such as Portugal and the United Kingdom, rely heavily on their colonial past to make foreign assistance decisions.

Once again for all three models, Security Council membership was not a factor that influenced tribunal financing. Donors were no more likely to provide greater assistance while occupying a rotating Security Council seat. Indeed, in two of the cases (e.g., the all and the voluntarily funded model), the variable was once again negative, which indicates that those states that were not on the Security Council were slightly more likely to make a larger contribution. We thought that membership would serve as a prestige factor for states or conversely that Council membership itself was the "prestige" and would provide a norm of behavior that compelled states to provide larger contributions during their membership. While certain forms of foreign assistance may provide state prestige, it seems that tribunal financing affords limited prestige. Perhaps this is one of the reasons why China and Russia have not provided assistance to any tribunal while France has provided only limited assistance.

As reported in Table 4, the regional variable is not significant in any of the three models. The decision of a donor as to the amount to provide to a tribunal is not related to whether the donor is from the region in which the tribunal occurs. We were somewhat surprised that the variable was not significant for voluntarily funded tribunals. For example, the initial pledge of the Japanese government for the ECCC was over \$21 million; however, aside from the Japanese and the Australian governments, the pledged contributions from other Asian states have been rather modest. Moreover in the case of the SCSL, African contribution amounts have been rather modest.

## Conclusions: The Funding of War Crimes Tribunals

Over the last ten years, the Security Council has become hesitant to establish tribunals under Chapter VII authority to avoid mandatory contributions and thus decrease the financial burden. This means that for the more recent tribunals, such as the SCSL and the ECCC, voluntary contributions have become even more important because they are the sole means of funding.<sup>18</sup> In this article, we sought to determine whether there is a difference in donor decision-making and contribution patterns between the two forms of tribunals and what factors can account for these differences. We find that while donors make a distinction between the gate-keeping and the allocating decision points, in almost all cases, there is no difference between the contributions to voluntarily and Chapter VII-funded tribunals. Donor states do not make a distinction between tribunals in terms of whether to

provide a contribution, and in almost all cases, donor states see no difference in the tribunals when allocating the amount of their contribution.

The results show that while states located in the same region as the tribunal are more likely to donate to a tribunal (gatekeeper stage), they are no more likely to donate a larger amount (allocating stage). Perhaps given the poverty in Africa and Asia, it is not surprising that many states in the region might provide a token contribution to support their neighbor but would be unable to provide a significant amount to a tribunal. For example, an examination of all African contributions listed in Table 2 shows that these donors provided less than \$120,000.

In terms of the initial decision as to whether to provide assistance to a tribunal, our analysis as reported in Table 3 demonstrates that there is uniformity in the decision-making process across tribunals. The regional affiliation, democracy, good governance practices, and donor GDP (as an indicator of their general pattern of foreign assistance) account for the decision to donate to both types of tribunals. It appears that the notion of leading by example has merit, since those states with higher levels of democracy contribute more frequently than those with lower democratic levels. However, Security Council membership is not a good predictor of whether states donate to a tribunal. Ultimately, donors make no distinction between the two forms of tribunals in the gatekeeping stage of whether to contribute.

When accounting for contribution amounts from donors as reported in Table 4, there is again little difference in the decision-making process of donors based on the type of tribunal. At the allocating stage, colonial powers contribute a larger amount irrespective of the funding mechanism of the tribunal. Only in the case of democratic donors do we see a distinction being made between the tribunals. While democratic states are more likely to donate to either type of tribunal, they are more likely to donate a larger amount to voluntarily funded tribunals than those with guaranteed funding. It seems that democratic states make a distinction between the act of contributing and the actual amount of the contribution. The results in Tables 3 and 4 lead us to conclude that voluntary funded tribunals are at a disadvantage at the gatekeeper and allocating stages, since donors make little to no distinction between the two forms of tribunals. Therefore, for the SCSL and for the ECCC, the difficulty in securing voluntary funds occurs at the gatekeeper decision point (to contribute) as well as the allocating decision point (deciding on the amount). Perhaps this is why the SCSL, in particular, has had such difficulty securing necessary funding.

These results show that tribunal contributions fit within the general pattern of donor foreign assistance, and therefore, tribunal funding is simply another form of aid. The negative implication of this finding is that donors not only make no distinction between the different types of tribunals, they may also not make a distinction between a tribunal contribution and other forms of foreign assistance. Therefore, tribunals must compete with other assistance categories to obtain resources necessary

to apprehend, to try, and to deliver justice. Because these tribunals are located in states that have undergone substantial human rights violations that undermined the ability of the state to function, it is imperative that tribunals receive the necessary financing to promote justice and ultimately national reconciliation. If tribunal funding is part of general foreign assistance practices, we wonder whether there are some donors that provide tribunal assistance in lieu of other forms of assistance to the recipient state. While this question is beyond this research, it is important to examine how institutions such as tribunals are funded as a matter of donor foreign assistance policy.

In addition, what is interesting about these results is the fact that for many donors, the timing and the amount of the contribution are sporadic. While our analysis shows a pattern of state behavior regarding tribunal assistance, it does not offer insight into the sometimes seemingly random behavior of donor states. Perhaps other variables that are not generally explored in the foreign assistance literature may provide some insight into tribunal financing patterns such as interest group mobilization and lobbying and the election cycle (Cassen 1994). In the case of tribunal assistance, domestic constituencies in donor states were often mobilized in support of a mechanism to bring to justice perpetrators of gross human rights violations. In this case, foreign assistance had a specific purpose that domestic constituencies could identify with. While there are some cases in which donors were consistent over time in their support of tribunals, particularly the ICTY and the ICTR, there are many examples in which donors gave one year and then went two or three years before providing another contribution. While we cannot account for the apparently arbitrary behavior of donors, this research shows that different factors influence donor decisions to provide foreign assistance as well as to determine the amount of contributions to war crimes tribunals.

Ultimately, the motivations for tribunal donors are important to understand as the international community reassesses its commitment to these institutions. The Completion Strategy of the ICTY and the ICTR envisions the completion of the work of the tribunals by 2010. Given that important ICTY indictees have yet to be apprehended, it is questionable whether this target date will be fulfilled, and there is some question whether it is even advisable that the tribunals should attempt to complete their work under such deadlines. While the timetable was motivated by a concern of the international community regarding the substantial costs associated with Chapter VII-funded tribunals, the Completion Strategy involves more basic issues of justice. For many, the termination of the tribunals and devolution of cases to state courts is penny wise but pound foolish. Zoglin (2005, 75) argues that the "determination to return . . . cases to national courts merely was a way for the international community to wash its hands of an expensive problem." As this research shows, even the more cost-effective hybrid tribunals are vulnerable to the whims of donors.

## Notes

1. While the Development Assistance Committee (DAC) definition of foreign assistance emphasizes economic development, the DAC recognizes that assistance includes several facets such as emergency relief, humanitarian and environmental assistance, and gender equality. Therefore, economic development is only one aspect of foreign assistance.

2. There are many cases (e.g., Canada and Sweden) in which the donor state had no colonies and therefore no colonial past.

3. In the case of the Extraordinary Chambers in the Courts of Cambodia (ECCC), the contribution amount was initially a pledge since the tribunal had not officially begun.

4. We exclude from our analysis the funding of the Serious Crimes Panel for East Timor (SCPET) because data on this tribunal were unavailable. Moreover, the SCPET is an unusual case in that it was indirectly funded under Chapter VII authority and does not clearly fit a category. In 1999, the Security Council passed Resolution 1272, establishing the United Nations Transitional Administration in East Timor (UNTAET), which was authorized to administer East Timor during its transition to independence. At that point, even though the East Timorese had voted for independence, the state was not ready to assume total political control so the UNTAET assumed many government powers until 2002. The SCPET was administered and funded by UNTAET, and therefore, even though the SCPET was not considered an auxiliary organ of the UN in the same manner as the International Criminal Tribunal for the former Yugoslavia (ICTY) or the International Criminal Tribunal for Rwanda (ICTR), in reality the SCPET's primary mode of financing was through Chapter VII funding.

5. While we focus on contributions provided by states, in several tribunals, organizations provided significant funding. These organizations include intergovernmental organizations such as the European Union as well as nongovernmental organizations such as the Soros Foundation and the Rockefeller Foundation and even a university (Utrecht University in Sweden).

6. The authors are grateful to Danilo Carlos of the ICTR Budget Office for providing the amount of donor contributions.

7. The ICTY's annual report for 1996 neglected to include a list of voluntary contributions, and therefore, this year has been omitted from the data set.

8. The data set created unbalanced panels because of tribunal sample size differences. To determine whether the unbalanced panels contributed to model estimation difficulties, we ran a model with balanced samples from the four tribunals. The reported estimation of the model was almost identical to the model in which the panels were unbalanced. Therefore, we do not believe that the nature of the sample data creates a significant model estimation problem.

9. Several rotating members held a temporary seat on the Security Council in multiple years. Many states held the seat three times during the period of this analysis, and Chile even held the seat on four occasions.

10. To determine regional affiliation, we used the U.S. Department of State bureau listings to code states.

11. Some of the literature focuses on cultural similarity, which is a much broader concept than colonial past. In the case of the colonial past, there is usually a generally recognized former colonial power. Cultural similarity, however, can be group, tribe, or clan based and more difficult to establish. For purposes of coding, we decided to use the more restrictive measure of colonial past. We recognize that this measurement excludes several interesting cases, such as the fact that several Islamist states provided contributions to the ICTY in all likelihood because of the atrocities committed against Bosnian Muslims.

12. For Sierra Leone, Cambodia, and Rwanda, there was an obvious former colonial power. In the case of the former Yugoslavia, the situation was much more complex. To be consistent across cases, we

coded the last colonizer as the former colonial power and therefore coded Austria as the colonial power for the former Yugoslavia.

13. We conducted a bivariate correlation of the Organization for Economic Cooperation and Development (OECD) official development assistance rankings and gross domestic product (GDP) of donors. We found a highly significant relationship between the two variables with a Pearson correlation of .832 significant at the .01 level.

14. The problem with this form of missing data was that it was nonrandom and systematically biased in favor of higher ranked states. We considered constructing a dummy variable for official development assistance (ODA) ranking; however, we felt that this measure was insensitive and—in the case of the ECCC and to a lesser extent the Special Court for Sierra Leone (SCSL)—meaningless since there was no variation on the independent variable.

15. We were concerned that variables such as the level of donor democracy and GDP would be highly correlated. We diagnosed for multicollinearity by examining the data's tolerance and variance inflation factor (VIF). All the variables had a high tolerance (average .876) and a low VIF (average 1.154) indicating a low degree of multicollinearity.

16. We considered whether tribunal contributions were a reflection of economic self-interest by examining donor foreign direct investment (FDI). According to the United Nations Conference on Trade and Development, the 2004 FDI flows (recorded on a net basis that includes capital account credits less debits between direct investors and their foreign affiliates) to Cambodia were \$131 million, Rwanda, \$11 million, and Sierra Leone, \$5 million. FDI flows for the states of the former Yugoslavia were not reported, and while these amounts would be much higher than those reported for the three states above, these figures indicate that there is not a significant compelling economic self-interest explanation for tribunal donor behavior. To examine more specific donor behavior, we ran a bivariate Pearson correlation on the amount donated to the ECCC as a function of donor FDI. The correlation coefficient was .021, indicating virtually no relationship between the tribunal contribution and donor FDI. This confirms our earlier test on trade flows in which we found that trade relations (measured as imports and exports between the recipient and its major trading partners) had a negligible influence on donor behavior.

17. While the test for the influence of colonial past as an independent variable is common within the literature, this variable is typically constructed based on the characteristics of the recipient measured as years as a colony rather than the dichotomous donor characteristic as a colonial power. The construction of this variable as a dummy is unsuitable in the first stage test.

18. In the case of the ECCC, the Cambodian government initially agreed to burden-share the costs associated with the Tribunal and pledged \$13 million toward the effort. This amount has recently been significantly reduced.

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