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978-1-107-02914-9 - The Sierra Leone Special Court and its Legacy: The Impact for Africa and International Criminal Law

Edited by Charles Chernor Jalloh

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THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY

The Special Court for Sierra Leone (SCSL) is the third modern international criminal tribunal supported by the United Nations and the first to be situated where the crimes were committed. This timely, important, and comprehensive book is the first to critically assess the impact and legacy of the SCSL for Africa and international criminal law. The collection, containing thirty-six original chapters from leading scholars and respected practitioners with inside knowledge of the tribunal, analyzes cutting-edge and controversial issues with significant implications for international criminal law and transitional justice. These include joint criminal enterprise; the novel crime against humanity of forced marriage; the war crime prohibiting enlisting and using child soldiers (in the first court to prosecute that offense); the prosecution of the war crime of attacks against UN peacekeepers (in the first tribunal where this offense was prosecuted); the tension between truth commissions and criminal trials (in the first country to simultaneously have the two); and the questions of whether it is permissible under international law for states to unilaterally confer blanket amnesties to local perpetrators of universally condemned international crimes, whether the immunities enjoyed by an incumbent head of a third state bars his prosecution before an ad hoc treaty-based international criminal court, and whether such courts may be funded by donations from states without compromising judicial independence.

CHARLES CHERNOR JALLOH is an Assistant Professor at the University of Pittsburgh School of Law, USA. A graduate of Guelph, McGill, and Oxford universities, he has worked in several international criminal courts, including as the Legal Advisor to the Office of the Principal Defender at the Special Court for Sierra Leone where he also served as interim court-appointed counsel to former Liberian President Charles Taylor. Professor Jalloh, who is the Founding Editor-in-Chief of the *African Journal of Legal Studies*, has published widely on issues of international criminal justice especially as they pertain to Africa in prestigious peer-reviewed journals and books. He is editor of *Consolidated Legal Texts for the Special Court for Sierra Leone* (2007) and the lead editor of the first comprehensive multivolume *Law Reports of the Special Court for Sierra Leone* (2012 and 2013).

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Advance Praise

“In this fundamental work, Professor Charles Jalloh, a Sierra Leonean–Canadian scholar who first distinguished himself as an international criminal lawyer in the Charles Taylor Trial at the Sierra Leone Special Court, has assembled a stellar group of experts to comprehensively assess the Court’s crucial legacy to Africa and international criminal justice. Covering the full gamut of substantive legal issues of enduring significance to the work of the International Criminal Court and other tribunals charged with the responsibility to prosecute international crimes – ranging from head-of-state immunity to national amnesties for international crimes, child recruitment, the novel crime against humanity of forced marriage, joint criminal enterprise, command responsibility, and the relationship between truth commissions and criminal trials – this outstanding volume is an enormous contribution to the international criminal law and transitional justice literature. This significant achievement of the contributing scholars and the editor, who has quickly become a renowned commentator on issues relating to international justice in Africa, is a must-read for legal and other academics, practitioners, policy makers, students, and anyone else seeking to understand the successes, and limitations, of the second-generation hybrid tribunal model and its place in the global struggle against impunity.”

Fatou Bensouda, *Prosecutor, International Criminal Court*

“Over the course of a decade, the Special Court for Sierra Leone demonstrated that a national-international partnership may hold to account persons most responsible for wartime atrocities. Its legacy includes many milestones: the first prosecutions for forced marriage and child soldier recruitment; the first inclusion of a Defense Office within the organs of the Court; and the first conviction since Nuremberg of a former head of state. In this remarkable volume, the foremost experts on the Court analyze all this and more. Their essays examine the past work of the Court with an eye toward the future – toward lessons that may enhance future efforts at accountability and redress. The result is a *vade mecum* for all who work for global justice.”

Diane Marie Amann, *Emily and Ernest Woodruff Chair in International Law, University of Georgia*

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THE IMPACT FOR AFRICA AND INTERNATIONAL
CRIMINAL LAW

Edited by

CHARLES CHERNOR JALLOH

University of Pittsburgh
School of Law



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To all the victims of the horrific Sierra Leonean conflict, especially the children and women, who endured the brutal pain, suffering, and other unspeakable horrors that gave birth to the idea of a “special court for Sierra Leone.”

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Editor's Biography

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Biographies of Contributors

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Commission was charged with investigating all violations of international law in Libya, focusing on the period following the rise of the protests there in mid-February 2011. Before her work on Libya, Ms. Ashraph was based in The Hague as the Legal Advisor to the Office of the Public Counsel for Defense in the International Criminal Court, working predominantly on the Kenya post-election violence cases. In 2009, she worked as a Legal Consultant to the UN Fact-Finding Mission on the Gaza Conflict (the Goldstone Inquiry). From 2004 to 2009, Ms. Ashraph was based in Sierra Leone as Co-Counsel on the defense team representing Issa Sesay (interim Leader of the Revolutionary United Front) before the Special Court for Sierra Leone. She is a Deployable Civilian Expert (Justice Sector) with DFID and is also an ad hoc consultant to the Open Society Justice Initiative. Ms. Ashraph is called to the Bar of England and Wales and the Bar of the Republic of Trinidad and Tobago. She is a barrister attached to Garden Court Chambers in London.

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Micaela Frulli is currently Associate Professor of International Law at the University of Florence, Italy. She received her Ph.D. in International Law from the University “Federico II” of Naples (2000). She was a Jean Monnet Fellow (2001–2002) at the Law Department of the European University Institute (2001–2002). She was also a Marie Curie Fellow (2010) at the EUI, sponsored by the European Union, with a project on the criminalization of

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attacks against cultural heritage and the impact of international criminal law on the protection of cultural property. Dr. Frulli has done extensive research in public international law, international criminal law, the law of international organizations, and human rights law. In recent years she has focused on the following topics: immunity of state officials suspected of international crimes; state immunity and human rights; private military companies: issues of accountability. She has published books (as author and editor) and essays, articles, and book chapters in Italian, English, and French. Her most recent publications include articles in the *European Journal of International Law*, *Journal of International Criminal Justice*, and *The Oxford Companion to International Criminal Justice* (edited by A. Cassese).

Kenneth S. Gallant is a Professor of Law at the University of Arkansas at Little Rock. Previously, he was at the University of Idaho, where he directed the clinic and taught on the faculty. Before entering teaching, he served first as a prosecutor and later as Attorney-in-Charge for Special Litigation with the Office of the District Attorney of Philadelphia. He served as a law clerk to the late Judge Samuel J. Roberts of the Supreme Court of Pennsylvania and Judge Louis H. Pollak of the U.S. District Court for the Eastern District of Pennsylvania. Professor Gallant teaches criminal law, international law, conflict of laws, and lawyering skills. He has published extensively in the area of international law. His most recent work is a book, *The Principle of Legality in International and Comparative Criminal Law* (2009).

Lansana Gberie is a Sierra Leonean historian and writer based in New York. He was Senior Researcher with the Africa Conflict Prevention Program of the Institute for Security Studies in Addis Ababa, Ethiopia. Before that, he was Senior Research Fellow at the Kofi Annan International Peacekeeping Training Centre in Accra, Ghana. An academic and journalist, Dr. Gberie is the author of *A Dirty War in West Africa: The RUF and the Destruction of Sierra Leone* (2005). He was awarded the “Outstanding Research Award” by the Canadian government body International Development Research Center in 2002 for his work with Partnership Africa Canada on the Human Security and International Diamond Trade project. He holds a Ph.D. in History from VU University in The Netherlands.

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Charles Chernor Jalloh is an Assistant Professor at the University of Pittsburgh School of Law, USA. A graduate of Guelph, McGill, and Oxford universities, he has worked in several international criminal courts, including as the Legal Advisor to the Office of the Principal Defender at the Special Court for Sierra Leone, where he also served as interim court-appointed counsel to former Liberian President Charles Taylor. Professor Jalloh, who is the Founding Editor-in-Chief of the *African Journal of Legal Studies*, has published widely on issues of international criminal justice, especially as they pertain to Africa in prestigious peer-reviewed journals and books. He is editor of *Consolidated Legal Texts for the Special*

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Court for Sierra Leone (2007) and the lead editor of the first comprehensive multivolume *Law Reports of the Special Court for Sierra Leone* (2012 and 2013).

Wayne Jordash specializes in international and humanitarian law, international criminal and human rights law, and related transitional justice issues. He has represented individuals in the United Kingdom, at the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone. Clients have included a mayor (Baglishema), a prominent businessman (Bagaragaza), and the interim leader of the Revolutionary United Front (RUF) (Sesay). He has been a consultant at the Extraordinary Chambers in the Courts of Cambodia advising on international law issues relevant to the defense of former Khmer Rouge members of the Pol Pot regime, including the deputy to Pol Pot (Nuon Chea) and the former Minister of Foreign Affairs, Khieu Samphan. He is currently lead counsel at the ICTY defending Jovica Stanišić, the first intelligence chief to be tried by an international criminal tribunal, and a consultant on the appeal in *Prosecutor v. Innocent Sagahutu* at the ICTR. He is also a consultant to the Cambodian Centre for Human Rights, advising on a range of international, criminal, and human rights law issues for the NGO that works to promote democracy and human rights throughout Cambodia. He has published widely in international journals and textbooks.

Sara Kendall is currently based in The Hague at Leiden University's Grotius Centre for International Legal Studies. She received a Ph.D. from the University of California at Berkeley, where her dissertation research examined the politics and jurisdiction of the Special Court for Sierra Leone. Her fieldwork was supported by Berkeley's War Crimes Studies Center, and it included monitoring and weekly reporting on trial proceedings for all four of the Court's cases. She has coauthored publications for the War Crimes Studies Center assessing the practice and jurisprudence of the SCSL in addition to an article on the Court's voluntary funding structure published in the *Leiden Journal of International Law*. She is currently undertaking fieldwork for a multiyear research project assessing the International Criminal Court's interventions in Uganda, Kenya, and the Democratic Republic of Congo.

Alhagi B. M. Marong is Legal Advisor and Deputy Head of the Office of Legal Affairs at the United Nations Assistance Mission (UNAMA) in Kabul, Afghanistan. Before joining UNAMA, he worked as a Legal Officer at the Chambers Support Section of the UN International Criminal Tribunal for Rwanda, and as Senior Legal Officer at the Appeals Chamber of the Special Court for Sierra Leone. Earlier in his career, Dr. Marong served as State Counsel at the Attorney-General's Chambers and Ministry of Justice in The Gambia, taught international law at the American University of Armenia in Yerevan, and served as Staff Attorney and Co-Director for Africa Programs at the Environmental Law Institute in Washington, DC. He obtained his Bachelor of Laws (honors) degree at Fourah Bay College, University of Sierra Leone, before proceeding to McGill University in Montréal, Canada, where he graduated with a Master of Laws with distinction in 1997 and a Doctor of Civil Law in international law in 2003. He was called to the Bar in 1993.

Scott Martin was co-counsel for Mr. Augustine Gbao in the case *Prosecutor v. Sesay et al.* at the Special Court for Sierra Leone. He is currently co-counsel in *Prosecutor v. Stanišić and Simatović* at the International Criminal Tribunal for the Former Yugoslavia (ICTY)

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Vincent O. Nmehielle has more than twenty-one years of professional and academic experience. He is currently the Head of the Wits Program in Law, Justice and Development in Africa at the University of the Witwatersrand (Wits) School of Law, Johannesburg, South Africa, where he has taught since February 2002. He is a Barrister and Solicitor of the Supreme Court of Nigeria. Dr. Nmehielle held the Bram Fischer Chair in Human Rights Law at Wits from 2002 to 2004. He was a Professorial Lecturer in Law at the Oxford University and George Washington University Human Rights Program in 2003 and 2004. From 2005 to 2008, Professor Nmehielle served as the Principal Defender of the Special Court for Sierra Leone in Freetown, Sierra Leone. He returned to Wits in June 2008. He holds a Bachelor of Laws degree from the Rivers State University of Science & Technology, Port Harcourt, Nigeria; a Master of Laws degree in International Law from the University of Notre Dame in the United States; and a Doctor of Juridical Science Degree in International and Comparative Law from the George Washington University in Washington, DC. His professional, academic, and research interest is in the theme area of law, governance, justice, and development in Africa.

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Valerie Oosterveld joined the University of Western Ontario Faculty of Law (Canada) in 2005, where she teaches courses in international criminal law, international human rights law, international organizations, and public international law. Before joining Western Law, Valerie served in the Legal Affairs Bureau of Canada's Department of Foreign Affairs and International Trade. In this role, she provided legal advice on international criminal accountability for genocide, crimes against humanity, and war crimes, especially with respect to the International Criminal Court (ICC), the Special Court for Sierra Leone (SCSL), the International Criminal Tribunals for the Former Yugoslavia and Rwanda, and other transitional justice mechanisms. During Canada's Security Council tenure in 1999–2000, she was deeply involved in the discussions surrounding the creation of the SCSL and its Management Committee. She was a member of the Canadian delegation to the ICC negotiations, subsequent Assembly of States Parties, and the 2010 Review Conference of the Rome Statute of the ICC. Her research and writing focus on gender issues within international criminal justice and on the closure of the time-limited criminal tribunals, including the SCSL.

Peter Penfold, who retired in 2002, served in the British Diplomatic Service for thirty-eight years. He spent time in Africa and the Caribbean, witnessing several coups, insurrections, civil wars, kidnappings, and hurricanes. Prior to his appointment to Sierra Leone, he was the governor of the British Virgin Islands and the British government's Advisor on drug trafficking in the Caribbean. Her Majesty The Queen awarded him the CMG (1995) and OBE (1986). During his tenure as the British High Commissioner to Sierra Leone (1997–2000), he was closely identified with the country's efforts to embrace democracy and achieve stability and lasting peace. His experiences brought him into face-to-face negotiations with the rebels and contact with local and international humanitarian agencies. He worked closely with the United Nations, the international community, and British and African military forces. In recognition of his efforts he was appointed a Paramount Chief and made a Freeman of the city of Freetown. He has remained involved with Sierra Leone, visiting the country and promoting assistance for the disabled. He appeared before the Special Court for Sierra Leone as a defense witness on behalf of Chief Sam Hinga

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Norman. He is the author of *Atrocities, Diamonds and Diplomacy: The Inside Story of the Conflict in Sierra Leone* (2012).

René Provost holds a Bachelor of Laws from the Université de Montréal, a Master of Laws from the University of California at Berkeley, and a D.Phil. from the University of Oxford. He served as law clerk to the Honorable Justice Claire L'Heureux-Dubé at the Supreme Court of Canada in 1988–1989 and taught international law at Lehigh University in Pennsylvania in 1991. He joined the Faculty of Law of McGill University in 1994, first as a Boulton Fellow (1994–1995), then as Assistant Professor (1995–2001) and Associate Professor (from 2001). He was the Associate Dean (Academic) of the Faculty of Law from 2001 to 2003. From 2005 to 2010 he was the founding Director of the McGill Centre for Human Rights and Legal Pluralism. Professor Provost teaches public international law, international human rights law, international humanitarian law, international environmental law, legal anthropology, and various courses in legal theory. He is the author of *International Human Rights and Humanitarian Law* (2002); the editor of *State Responsibility in International Law* (2002), and coeditor of *International Law Chiefly as Applied and Interpreted in Canada* (6th ed., 2006); *Confronting Genocide* (2011), and *Dialogues on Human Rights and Legal Pluralism* (2012). He was the president of the Société québécoise de droit international from 2002 to 2006.

Stephen J. Rapp of Iowa is Ambassador-at-Large, heading the Office of Global Criminal Justice in the U.S. Department of State. Prior to his appointment, Ambassador Rapp served as Prosecutor of the Special Court for Sierra Leone (SCSL) beginning in January 2007. He led the prosecutions of former Liberian president Charles Taylor and other persons alleged to bear the greatest responsibility for the atrocities committed during the civil war in Sierra Leone. During his tenure at the SCSL, his office won the first convictions in history for recruitment and use of child soldiers and for sexual slavery and forced marriage as crimes under international humanitarian law. From 2001 to 2007, Mr. Rapp served as Senior Trial Attorney and Chief of Prosecutions at the International Criminal Tribunal for Rwanda, heading the trial team that achieved convictions of the principals of RTL radio and *Kangura* newspaper – the first in history for leaders of the mass media for the crime of direct and public incitement to commit genocide. He was the United States Attorney in the Northern District of Iowa between 1993 and 2001.

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Shakiratu Sanusi was most recently a Human Rights Officer with the Commonwealth Secretariat. She is a qualified solicitor with experience in academia, legal practice, and the civil society sector. She worked with a number of NGOs dealing with human rights issues from an international and African regional perspective prior to qualifying as a solicitor in the United Kingdom. In her work as a solicitor, she specialized in civil liberties cases, particularly actions against the police, bringing claimant proceedings against public authorities alleging discrimination, serious wrongdoing, abuse of position or power, and/or significant breaches of human rights as well as housing law and housing-related public law. At the Special Court for Sierra Leone, she worked as Legal Taxing Officer in the Office of the Principal Defender and subsequently as Legal Advisor to the Registrar and as the Senior Legal Advisor to the Registrar. She holds a Ph.D. in international human rights law from the London School of Economics and Political Science with a focus on women's rights, in particular, the omission of race and culture from feminist approaches to international human rights law from an African perspective, her area of special interest.

Michael P. Scharf is the John Deaver Drinko–Baker & Hostetler Professor and Associate Dean for Global Legal Studies at Case Western Reserve University School of Law. During the elder Bush and the Clinton administrations, Scharf served in the Office of the Legal Adviser of the U.S. Department of State, where he held the positions of Attorney-Adviser for Law Enforcement and Intelligence, Attorney-Adviser for United Nations Affairs, and delegate to the United Nations Human Rights Commission. During a sabbatical in 2008, Mr. Scharf served as Special Assistant to the Prosecutor of the Cambodia Genocide Tribunal. He is the author of fourteen books in the field of international criminal law, three of which have received book-of-the-year awards. Mr. Scharf and the Public International Law & Policy Group, an NGO he cofounded and directs, were nominated for the Nobel Peace Prize by the Prosecutor of the Special Court for Sierra Leone for the work they have done to help in the prosecution of major war criminals, including of Charles Taylor.

Alpha Sesay is the Open Society Justice Initiative's (OSJI) Legal Officer for International Justice based in The Hague. From the start of the Charles Taylor trial in The Hague, Mr. Sesay has monitored the proceedings on a full-time basis for the OSJI, writing and posting daily summaries and analysis on a trial-monitoring blog (www.charlestaylortrial.org) and working with civil society and the media in Sierra Leone and Liberia to enhance their involvement in the work of the Special Court for Sierra Leone (SCSL). He previously lectured on human rights at the University of Sierra Leone, worked with the SCSL and with Human Rights Watch in New York, and cofounded and served as National Director of the Sierra Leone Court Monitoring Program. Mr. Sesay also cofounded and served as President of the Fourah Bay College Human Rights Clinic. He is a Sierra Leonean human rights practitioner

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Alison Smith is the Legal Counsel and Coordinator of the International Criminal Justice Program for No Peace Without Justice, having formerly worked as its Country Director in Sierra Leone. Her experience includes service as the chief legal advisor to the Vice President of Sierra Leone on the Special Court for Sierra Leone and international humanitarian law. She has acted as international legal advisor to a number of clients including the Tibetan Government in Exile and some Kosovar politicians. In 2000, she was a legal advisor to the government of Thailand during the UN Preparatory Commissions for the establishment of an International Criminal Court and during the first sessions of the Assembly of States Parties. Ms. Smith worked in Kosovo as an international legal officer for the International Crisis Group's Humanitarian Law Documentation Project. Before that, she was a researcher at the Kennedy School of Government's Carr Center for Human Rights Policy at Harvard University. Ms. Smith is an Australian barrister and holds a Master's degree in International Law from the Australian National University.

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Harmen van der Wilt is a Professor of International Law at the University of Amsterdam Faculty of Law and the Amsterdam Center for International Law. His research interests lie in the concepts of criminal responsibility in international criminal law; European arrest warrant; ICC: principle of complementarity; harmonization of criminal law in Europe; criminal procedure of international criminal tribunals; legal reaction to terrorism; and cooperation between states and international criminal tribunals. Professor van der Wilt has been involved in professional training programs for judiciary and public prosecutors

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in Addis Ababa, Ethiopia, and training programs for young staff members of Lobatchevski University of Nijni Novgorod. He has been a member of the Research Council of an EU project on the European Arrest Warrant and is currently a member of the Steering Committee of the EU project DOMAC (Impact of International Procedures on Domestic Criminal Procedures in Mass Atrocity Cases). In 1997 he was honored by the Faculty of Law as “best teacher of the year” and in 1999 he received the Edmond Hustinx prize for excellent research. He has published widely on issues of international criminal law and currently serves on the editorial board of the *Journal of International Criminal Justice*.

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Foreword

William A. Schabas, OC MRIA*

“We’d forgive most things if we knew the facts,” wrote Graham Greene in his novel about the lives of British administrators in Second World War–era Sierra Leone. His remark is an interesting idea full of significance for transitional justice. Greene’s great novel *The Heart of the Matter* describes the corruption, depravity, and violence of colonialism in Africa. A progressive man himself, Greene may well have understood the perversity of such a situation, although like many others he might not have anticipated how quickly it would come to an end. Less than two decades after publication of his novel, Sierra Leone was an independent state and a full member of the United Nations. With two nearby West African states, Nigeria and Liberia, it cosponsored the 1961 Monrovia conference at which the Organization of African Unity – now the African Union – was established. At the time, Sierra Leone had a higher standard of living than Singapore. Its university, Fourah Bay College, was renowned throughout the continent. It was a time of great hope and optimism.

The British will claim they brought civilization of a sort to the country, depositing shiploads of freed slaves and giving the name Freetown to its major urban center. In the late eighteenth century, Africans who had sided with them in opposing the revolution were also settled there, after an unsuccessful experiment in Nova Scotia. With independence, Sierra Leone soon became a kind of hell with few equivalents elsewhere in Africa. For complex reasons that neither international courts nor truth and reconciliation commissions will ever be able to explain, the British legacy quickly degenerated into a cycle of despotism and coups d’état. Understandably, young men and women, stung by the hopelessness of their circumstances, turned to rebellion, egged on by revolutionary charlatans such as Mouamar Gaddafi. Civil war began in earnest in 1991. It became apparent that the perverse leadership of those purporting to overthrow a rotten regime was no improvement on those they sought to replace.

The parties fought to a deadlock. Neither side could prevail on the battlefield. In 1999, after the rebels launched a murderous attack on Freetown, intense negotiations resulted in a controversial peace agreement. It was a nasty compromise, integrating the rebel leaders into a power-sharing framework, and promising all parties to the conflict that they would be immune from prosecution, even for the notorious war crimes and crimes against humanity that had been perpetrated during the eight-year conflict. The measure was sugarcoated by the promise that a truth and reconciliation commission would be established, promising a modest degree of accountability for the many unsatisfied victims.

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Only the year before, the Rome Statute of the International Criminal Court had been adopted. There was a growing unwillingness to accept impunity of the sort pledged in the Lomé Peace Agreement. Indeed, the United Nations road tested a new policy, welcoming the end of the war in Sierra Leone but frowning mightily on the amnesty that the combatants had been granted, which is to say granted to themselves. In 2000, maneuvering within the unstable new government brought a resurgence of violence. The rebels took up arms again, holding hundreds of UN peacekeepers hostage and killing some of them. With British help, this new rebellion was quickly brought under control and its leaders taken into custody.

In his marvelous memoir *All the Missing Souls*, David Scheffer describes how the proposal for the Special Court for Sierra Leone emerged. There were four main parties in the negotiations: the United States, the United Nations, the United Kingdom, and the government of Sierra Leone. Sierra Leone's President Kabbah preferred a Security Council tribunal modeled on the existing ad hoc institutions for the former Yugoslavia and Rwanda. However, the United Nations was only beginning to realize that the two tribunals it had set up in the 1990s were immensely expensive, difficult to control, and almost impossible to shut down. Something more modest would have to be devised. The British preferred to leave everything with the local courts in Sierra Leone. As Ambassador Scheffer explains, early in the discussions, the United States had begun to push for the sui generis institution that eventually resulted.

The structure of the Court that was finally agreed by the Security Council had a number of curious features. There were some bizarre concessions to the government of Sierra Leone that really had no place in international justice, such as the possible exercise of jurisdiction over juvenile offenders and the inclusion within the subject-matter jurisdiction of some domestic offenses defined in the archaic language of nineteenth-century England. Comprised within the statute, in practice they were completely ignored by the successive prosecutors.

The United Nations and the government of Sierra Leone were to share in the appointment of judges and prosecutors. It is essentially this aspect of the Court that led many to describe it as a "hybrid" institution. Although far from transparent, the appointment process on the UN side was certainly credible enough, and there could be no real complaint capable of impeaching the integrity of those who were named. On the Sierra Leone side, matters were rather more opaque. In hindsight, allowing the government of Sierra Leone to designate judges and a prosecutor was not a very good idea. It may have been a helpful concession in getting the agreement of Sierra Leone, although there would have been other ways of encouraging President Kabbah to compromise.

One of the biggest defects in the architecture of the Court concerned its funding. Unlike the two ad hoc tribunals for the former Yugoslavia and Rwanda, which were financed out of the general budget of the United Nations, the Special Court for Sierra Leone was to operate on the basis of voluntary contributions. That essentially meant wealthy states in Western Europe and North America – and in particular the two big powers who viewed Sierra Leone as in some sense part of their sphere of influence – were to provide the resources. Originally, the Secretary-General insisted on getting all of the money in his bank account before starting the project, but that proved to be unfeasible. The states that were contributing the money preferred to keep it on a drip feed, the better to influence decisions and the behavior of the

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Court. But when defense lawyers challenged the funding scheme as being incompatible with an independent and impartial tribunal, their arguments were summarily dismissed by an unsympathetic Appeals Chamber.

While the Court was being established, the United Nations also proceeded with the Truth and Reconciliation Commission that had been promised in the 1999 peace agreement. Although such institutions had already become part of the transitional justice landscape, there was virtually no experience with the simultaneous operation of a truth commission and an international court. Several proposals emerged about how to manage the relationship, reflecting competing visions about the relative importance of criminal prosecution and other forms of accountability. The two bodies became operational at about the same time, in mid-2002. No formal agreement was ever reached between them, although they worked in parallel with relative serenity, aside from a few difficult moments. In its judgments, the Court barely referred to the findings of the Truth and Reconciliation Commission.

Many were taken by surprise when the first indictments were announced by Prosecutor David Crane in March 2003. Charges against leaders of the two rebel factions had been expected, but less predictable was the decision to prosecute the pro-government militia, including its patron, cabinet minister Hinga Norman. The lingering and still-unanswered question is why the president himself escaped indictment, given the presumption that he too was part of a joint criminal enterprise or, at the very least, was liable for conviction under the doctrine of superior responsibility.

The Special Court for Sierra Leone was the first international criminal tribunal since Nuremberg and Tokyo to sit in the place where the crimes were committed. The shortcomings in the outreach activities of the Yugoslavia and Rwanda tribunals were often attributed to their physical remoteness. Locating the Special Court in Freetown held the promise of a much better rapport with the people of the country. There were also dividends expected in terms of building capacity within Sierra Leone's rather dismal criminal justice system. But to the extent that the Court was a shared endeavor of the United Nations and the government of Sierra Leone, the latter's role was increasingly eclipsed as time wore on. By the time Charles Taylor was arrested, the government seemed happy enough for proceedings to move to The Hague. Opinions remain sharply divided among those working within the Court as to whether this was really necessary or advisable.

With the work of the Court now virtually completed, it is time to assess its contribution to international justice. As a model, there are some positive, constructive aspects of the structure and organization, although many lessons about pitfalls have also been learned. It was originally expected that the Court would cost about \$50 million, but it probably came in at five or six times that figure. Given the extreme poverty in the country, it is legitimate to ask whether such an expense in order to prosecute a handful of perpetrators is really legitimate when so many other parts of the society desperately cry out for attention.

In Rwanda and the former Yugoslavia, international prosecution was only one element of accountability for criminal behavior during the conflicts. At the national level, there has been a great deal of judicial activity in both jurisdictions, something that is entirely absent in Sierra Leone, where the amnesty remains in force. There have also been a more limited number of universal jurisdiction prosecutions in third states for international offenses perpetrated during the conflicts in Rwanda and the former Yugoslavia. This, too, is missing completely in the case of Sierra Leone. On balance, then, Sierra Leone has not really had

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very much justice. Has it had enough justice to be of any significance? Or is the contribution of the Court to peace, justice, reconciliation, and all of the other alleged benefits of international prosecution something that is both marginal and ephemeral? As Chinese Premier Chou En-Lai famously remarked to Charles De Gaulle, when asked if the French revolution had been a success: “It’s too early to tell.”

Sierra Leone has been at peace for nearly fifteen years. Democratic elections have been held in a relatively serene environment and without serious complaint by international monitors. However, it remains mired in poverty and despair, the very factors that were at least partially responsible for the outbreak of the civil war more than two decades ago. A decade ago, the country was once at the absolute bottom of the United Nations’ Human Development Index; it has climbed slowly, but not much, and in 2011 was 180th out of 187. On a more symbolic note: the once rather-distinguished City Hotel located at Gloucester and Lightfoot Boston streets in central Freetown, where Graham Greene often stayed while posted in Sierra Leone, and that provided inspiration for *The Heart of the Matter*, gradually deteriorated into a dismal fleabag and finally burned to the ground in 2010.

Professor Charles Chernor Jalloh is one of the most prominent scholars to have studied the Special Court for Sierra Leone. The conference that he hosted at the University of Pittsburgh in 2012 generated most of the chapters in this collection. The authors represent a cross section of specialists, including many who, like Professor Jalloh, have worked at the Court. There is an especially important introductory essay by one of the Court’s Prosecutors, Stephen J. Rapp. The contributions have been carefully organized and edited. They cover many features of the institution in a thorough, professional, and often exhaustive manner. This book immediately becomes the authoritative reference on the Special Court for Sierra Leone. There simply is nothing else remotely comparable on the subject. It is and is likely to remain very much the last word on the subject of this fascinating and unprecedented institution.

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Preface and Acknowledgments

This book was inspired by the International Conference Assessing the Legacy and Contributions of the Special Court for Sierra Leone to Africa and International Criminal Justice that I convened at the University of Pittsburgh School of Law, Pennsylvania, from April 19 to 21, 2012. The project, which took two years from conception to implementation, was predicated on the assumption that, given the impending closure of the Special Court for Sierra Leone (SCSL) after completion of its last trial involving former Liberian president Charles Taylor, and the Court's scheduled transformation into a residual mechanism, it would be desirable, if not necessary, to engage in at least a preliminary assessment of the SCSL's legacy to Sierra Leoneans, in whose name it was asked to render credible justice, and the international community, whose generous anti-impunity dollars made its work possible.

The primary goal of the conference was to provide a timely forum for the leading experts most familiar with the Sierra Leone Tribunal's work to critically examine its contributions to international criminal law and practice as well as its possible impact on transitional justice in the Mano River Union sub-region of West Africa. While memories are still fresh, and keeping in mind the specific legal basis, mandate, and historic context of its establishment, scholars, practitioners, and scholar-practitioners would convene at Pitt Law to reflect on what appeared to work, and what did not, in Sierra Leone's struggle to mete out justice for atrocity crimes in the aftermath of one of the worst conflicts in recent memory. The mechanism chosen, that is, a *sui generis* court with a mixed subject-matter jurisdiction and staff composition, quickly became a known entity in international law because of several innovations in its legal mandate, its location in situ, and its subsequent practice. These unique features generated high expectations among Sierra Leoneans as well as international lawyers about what the Court would likely accomplish, some of which with the benefit of hindsight, were not only premature but also unrealistic.

Against this backdrop, the ultimate objective of the Pittsburgh conference, and now this book, was to convene leading minds to discuss and debate the core legal questions of worldwide interest that confronted the SCSL and to capture, for posterity, their years of accumulated wisdom as close participants in and/or observers of the work of international penal courts generally and the Sierra Leone Tribunal in particular.

The stage was set when several prominent legal scholars and practitioners, as well as a cadre of relatively young but rising legal stars, accepted invitations to prepare new academic papers on key assigned topics for this first major attempt to assess the Court's impact and legacy on the development of international criminal law and practice. The authors were

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to draft their papers and submit them a full month before the conference. Once the drafts were available, they were paired up with expert commentators on their particular topics who then reviewed them and offered detailed comments. The papers were also circulated to all the other conference participants, with the co-panelists particularly encouraged to read their colleagues' papers. Many of them, as well as the others who attended, gave the authors feedback directly or indirectly through the convener. The result was a rigorous peer-review and highly collaborative knowledge-sharing process. So much so that in Pittsburgh, over the course of the three days of the conference, the presenters, discussants, and others could have a highly focused, highly stimulating, and ultimately highly fruitful debate on the legacy of the SCSL. The debate centered on important legal controversies that the Court wrestled with during its trials, most of which were interesting not only because they impacted the processes in Sierra Leone, but because they also held broader implications for other transitional justice situations in Africa and other parts of the world.

Consistent with the Court's so-called hybridity, the conference sought to reflect the dual national and international character and ownership of the SCSL process. This book has retained that same objective. Both have therefore attempted to elicit international as well as African, particularly Sierra Leonean, perspectives on the legacy of the Tribunal, a delicate task that proved to be more challenging than initially envisaged, especially given funding and other practical constraints. Nevertheless, the conference successfully brought together about seventy-five experts, tribunal practitioners, policy makers, and civil society advocates. Many of the participants had unique insights to share because they had worked in, collaborated with, or closely followed the SCSL from its earliest days through to its twilight days.

Ultimately, although the conference emphasized what one might term the international legal legacy of the Tribunal over any national ones that might exist, I am pleased that we succeeded in carving out some space in the conference as well as in this subsequent volume for those that insiders in Freetown referred to as the "internationals" and "nationals" or "locals." About thirteen of the chapter authors come from North America; eight are from Europe; one is from Australia/Oceania; eight are African, and of those, four, including the editor, are Sierra Leoneans. This seems relevant as one of the supposed features of "hybrid courts" generally and the SCSL in particular was the opportunity it apparently offered Sierra Leone to encourage local ownership of the Tribunal by including domestic law in its statute. But, perhaps more significantly, the unique chance that the Court's existence offered for Sierra Leonean lawyers to work side by side with their international counterparts to advance the cause of justice for international crimes. Whether at the end of the day this produced any impact on the few national lawyers who made it into the exclusive halls of the SCSL, or on the wider local bar and the domestic legal system, as is so frequently touted in the literature as a major advantage of the Sierra Leone model, remains an open question that is largely beyond the scope of this book.

It seems noteworthy that, because of deliberate attention to the point by the editor, there was a roughly even gender representation in this group of contributors, with about half of the authors women and the other half men. Although conscious efforts were made to add disciplinary diversity to the conference and book, it will be readily apparent that the lawyers ended up dominating the conversation in the volume. In one way, that might not be too surprising. To begin with, the relative infancy of international criminal law suggests