An Interview with Charles C. Jalloh on his new book: The Legal Legacy of the Special Court for Sierra Leone (Cambridge University Press, July 2020)

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Book description

The Legal Legacy of the Special CourtThis book examines whether the Special Court for Sierra Leone (SCSL), which was established jointly through an unprecedented bilateral treaty between the United Nations (UN) and Sierra Leone in 2002, has made jurisprudential contributions to the development of the nascent and still unsettled field of international criminal law. The work, which focuses on the main legal legacy of the SCSL, opens with an examination of the historical and political circumstances which led to the outbreak of a notoriously brutal civil war in Sierra Leone, West Africa, which lasted between March 1991 and January 2002 and led to approximately 75,000 deaths. Following a discussion of the creation, jurisdiction, and the trials conducted by the SCSL, the author examines the SCSL's unique personal jurisdiction over persons bearing "greatest responsibility" for the serious crimes committed in Sierra Leone and the implications of its use in future ad hoc international tribunals; the prosecution of the novel crime of "forced marriage" as other inhumane acts of crimes against humanity; the prosecution of the war crime of recruitment and use of children under the age of fifteen for the purpose of using them to participate in hostilities; as well as issues of immunity for the serving head of state of Liberia, which President Charles Taylor sought to invoke to block his own trial for international crimes before the SCSL. The book then discusses the status of blanket amnesties under international law, and critically evaluates the SCSL's ruling that such a domestic measure could not block prosecution of universally condemned crimes before an independent international tribunal. Lastly, the book evaluates the tenuous interaction between truth commissions and special courts given both their simultaneous operation in Sierra Leone and distinctive mandates aimed at reconciliation and punishment. The author demonstrates that the SCSL, as the third modern international criminal tribunal supported by the UN, made some useful jurisprudential additions on many of these topics, and in some cases broke new ground, and that these represent a valuable legal and judicial contribution to the development of the nascent field of international criminal law.

Q. Why this book, and why now?

I wrote this book for several reasons that are actually discussed in the introductory chapter. For our purposes here, let me just highlight the key ones.

First, since international criminal law is a relatively new branch of public international law that is in fact traceable to the United States and her allies' fateful decision to establish the first International Military Tribunal at Nuremberg immediately after World War II to try Nazi leaders, for among other horrors, crimes against humanity committed against Jews, gypsies and other people they considered less than human, the international community has been experimenting with different kinds of courts.

The first two courts, established in 1993 and in 1994 respectively, addressed what was euphemistically described as "ethnic cleansing" in the former Yugoslavia and genocide in Rwanda respectively. Those pioneering courts were created by the United Nations Security Council, which sits at the center of the post-World War II collective security system, responsible for maintaining or restoring peace around the world. It was given extraordinary powers to do so under Chapter VII of the UN Charter and all UN member states, even if their national position was contradicted, agree to abide by its decisions, and quite significantly, to implement them. The Security Council had never, since the UN was established in 1945, used its extraordinary legal power to create such courts to prosecute atrocity crimes based on the premise that if you do not get justice you will not get peace. While the early ad hoc tribunals were effective in a number of key respects, and added significantly to the development of modern international criminal law, those early UN efforts – as with many other areas of the human experience – also faced some criticisms, especially from States that were concerned about their pace of completing investigations and trials of cases, their cost, and their overall efficiency. Such concerns opened the door to a new "hybrid" model, which attempted to address some of the main inadequacies of the early courts, best exemplified by the Sierra Leone Special Court. The question I wondered about was whether the court thought by many to be the flagship of the so-called "second generation" courts delivered on the lofty expectations Sierra Leoneans and the international community had of it.

Second, in a pattern that we see with other parts of the field of international law where what happens in the global south does not get as much prominence as what happens in the global north, academics in the field of international criminal law have not paid as much attention to the SCSL. Interestingly, in a similar phenomenon, when it comes to the UN ad hoc tribunals for the former Yugoslavia and Rwanda, we see a lot of scholarly interest and literature on the former but not the same degree of scholarly interest and literature on the latter. Each, of course, has its own intrinsic merits. And the Yugoslav tribunal does in a way have a special place as the first such court in the history of the UN. At the same time, it remains hard to understand, let alone explain the lopsided attention.

On balance, despite their equal importance to the international community, it seems like the African tribunals did not generate the same level of scholarly attention they deserved. My thinking, in relation to the Sierra Leone Tribunal, was that someone like me who has had the good fortune to work in the

tribunal as a practicing lawyer and that has also had an even bigger privilege to spend many years thinking and writing about it in academia, may have something new to add to the wider conversation about the place of such courts in the global struggle against impunity. The idea was to think about the Sierra Leone court's impact beyond Africa and its contributions, what I call legal legacy, to the field of international criminal law. That legacy remains important today because of the fledgling nature of international criminal law as a legal system. By focusing on the way that the Special Court judges interpreted and applied international criminal law, on traditionally knotty issues for international lawyers but also on novel issues of broader concern to the international community as a whole, I hope that the book will be a useful contribution to the literature on international courts.

Lastly, and this aspect is really fascinating to me, we sadly have many conflicts around the world today that confirm the importance of the hybrid SCSL model. Conflicts in which atrocity crimes are committed daily. People in those widely different conflict situations tend to clamor for some credible justice. In some of those countries, the public might have lost confidence in their domestic criminal court system. Officials including prosecutors and judges may lack independence. In short, trials in the domestic courts are often not seen as either practical or ideal – for one reason or another.

At the same time, despite that victims' desire for justice, it might not be possible for the permanent International Criminal Court (which today enjoys the support of 123 States Parties) to get involved because the concerned country has not accepted its jurisdiction. Or, if the affected State has accepted the ICC's jurisdiction, that jurisdiction formally only starts as of 1 July 2002. Meaning that its temporal jurisdiction might not go as far back as the imperatives of justice demands. In any case, even if the ICC can get involved, it might be too selective since, at best, a court sitting in The Hague can only prosecute a handful of symbolic cases.

Interestingly, we are now seeing a resurgence in the popularity of hybrid courts like the Special Court for Sierra Leone. For example, in the past we had varying levels of hybrids for Cambodia, Kosovo, East Timor, and Lebanon, many then thought that we will no longer need such courts because States have now a permanent international penal court that they can rely on for their justice needs. Today, we know that this has not been our experience. In fact, more recently, we frequently hear proposals for hybrid courts for places as different as Central African Republic, Liberia, Syria, South Sudan, and Myanmar.

The point I am making is that, when viewed in the wider global context, it seems vital that we study the most successful hybrid: the Sierra Leone Court. Though it was far from perfect, we need to see what worked and what did not work. This way, rather than reinventing the wheel and replicating our mistakes, we could take into account the lessons learned and the specificities of each situation when designing such courts for other situations elsewhere in the world.

Q. Who should read this book?

I think this book should be of interest, first, to people who work in the field of international criminal justice. I am not just talking about folks who work in the international criminal courts, whether judges or prosecutors or defense or victims lawyers, but a much broader audience of people who are working daily on issues of transitional justice, accountability, human rights, democracy, state building and the rule of law. Needless to say, this would include legal and policy professionals who work in the UN and other regional organizations like the African and European Unions as well as those engaged in peace and conflict work. Internationally minded law students and international relations and area studies specialists and journalists may also find the book useful.

Q. What is the most important takeaway you hope your readers gain from this book?

The most important takeaways are that the Special Court for Sierra Leone has made some important contributions to the development of international law. First, its jurisprudence on key questions helped to clarify and will thus help to shape certain aspects of international criminal law relating to critical issues like amnesties for international crimes and the prosecution of those who recruit children to fight their wars.

Second, and in addition, the mixed model that we saw in Sierra Leone whereby we have a partnership between one state and the international community represented by the UN to provide some justice for victims while giving the concerned country more voice and thereby strengthening the legitimacy of the process is an invaluable one. The model has already shown it can work, and will likely continue to inform future accountability efforts in other parts of the world for years to come.

Q. How did you decide on the title and cover art?

One of the innovative aspects of the Sierra Leone tribunal was that it was the first of such modern courts to sit in the country where the crimes were committed. The cover art takes this as a symbolic point of departure and leaves nothing to the imagination. Basically, it is a picture of a modern Special Court for Sierra Leone building, that people used to joke looks like a spaceship from a distance, which was located in the New England area of the Sierra Leonean capital Freetown.

What might be interesting to readers though is that I tried to initially get a cover that would have the colors of the national flag of Sierra Leone (that is green, white and blue) combined with the color of the official UN flag (which is blue). I thought what better way to show hybridity than combining the symbols of the founders of the tribunal, representing Sierra Leoneans on the one part, and the UN and the international community on the other part. But I learned that the publisher’s template does not allow for that design since that would kind of mess with the printing colors.

Luckily, when I received the print copies of the book, I noticed something interesting that was hard to discern from the e-cover. If you look carefully to the right of the photo, you will actually notice the Sierra Leonean flag hanging on the first of the three poles. The third pole has the UN flag, though it kind of fades against the blue sky! The best part is that, while I hadn’t thought of this, the middle pole is the white and black flag of the Special Court itself.

The whole thing worked out nicely because the book cover is black, the lettering with the title and author name are white and green, and the picture on the front shows the lovely blue skies of Freetown that reminded me of working there many years ago. So, all to say, in the end, the cover art worked out so nicely!

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About Professor Charles Jalloh

Dr. Charles C. JallohDr. Charles C. Jalloh is professor of law at Florida International University in Miami, USA. He has published widely in the field of international criminal law, and in 2018-2019, was the Fulbright Distinguished Chair in Public International Law at the Lund University and Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Sweden. He is the Founding Editor-in-Chief of the African Journal of International Criminal Justice and Founding Director of the African Court Research Initiative - a project funded by the Africa Regional Office of the Open Society Foundations. He holds degrees from Guelph, McGill, Oxford and Amsterdam.