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THE IMPORTANT CONTRIBUTIONS OF THE SPECIAL COURT FOR SIERRA LEONE ON AMNESTIES AND IMMUNITIES: REINFORCING FOUNDATIONAL PRINCIPLES OF INTERNATIONAL CRIMINAL LAW

*Prof. Leila Nadya Sadat**

The book that is the centerpiece of this Micro-Symposium, *The Legal Legacy of the Special Court for Sierra Leone*,¹ is an important contribution to international law and practice. Authored by Charles Jalloh, a distinguished practitioner of international criminal law, the book is essential reading for anyone who wishes to understand the legal ramifications of the Special Court and its work. It is comprehensive, without being overwhelming, and analyzes many of the most important elements of the Court's legal work. It is a perfect companion to his equally excellent edited book on the subject, *The Sierra Leone Special Court and Its Legacy*.²

The Court's establishment was a response to atrocities committed during the Sierra Leone Civil War, which began in 1991 and raged for over a decade. The conflict was notorious "for its brutality and the commission of some of the worst atrocities against civilians ever witnessed in a contemporary conflict."³ As war was ongoing in Sierra Leone, other conflicts were in progress elsewhere, including the war in the former Yugoslavia and the Rwandan genocide. In 1993, the international community established an International Criminal Tribunal for the former Yugoslavia (ICTY), and a second sister tribunal for Rwanda (ICTR), to try those responsible for crimes against humanity, genocide, and serious violations of international humanitarian law committed in those conflicts.

The Yugoslavia and Rwanda tribunals were impactful institutions that reignited a global thirst for justice in the face of atrocity crimes. Their creation gave wings to the dream of those who had long advocated for a permanent international criminal court, the Statute for which was ultimately adopted in 1998 and entered into force in 2002. When the conflict in Sierra Leone ended in 2001, the expectation that criminal trials would be held for

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¹ See generally CHARLES C. JALLOH, *THE LEGAL LEGACY OF THE SPECIAL COURT FOR SIERRA LEONE* (2020) [hereinafter JALLOH, *LEGAL LEGACY*].

² See generally *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY* (Charles Chernor Jalloh, ed., 2014).

³ JALLOH, *LEGAL LEGACY*, *supra* note 1, at 31.

the perpetrators of atrocity crimes was high. Moreover, as Professor Jalloh notes, the government of Sierra Leone and the United Nations were supportive of the idea that there should be a tribunal to try the perpetrators of the war.⁴ Yet the ICTY and the ICTR had experienced some difficulties in their early years, which, combined with their high cost, caused “tribunal fatigue” to set in with at least some members of the United Nations Security Council, who were therefore opposed to creating another Chapter VII *ad hoc* tribunal for Sierra Leone.⁵ A creative workaround was found: although the Security Council adopted Resolution 1315 regarding the court’s establishment, rather than attach a Statute directly to the Resolution, as it had done with the ICTY and the ICTR, it empowered the Secretary-General to negotiate with the Kabbah government to establish the Court.⁶

For this reason, the Special Court for Sierra Leone (SCSL), as the Court came to be known, was therefore neither a Chapter VII-backed tribunal (along the lines of the ICTY or the ICTR) nor an entirely domestic court. Instead, it was established *sui generis*, via a bilateral agreement between the United Nations and Sierra Leone.⁷ The agreement establishing the Court was signed on January 16, 2002, and entered into force on April 12, 2002, with the Statute of the Court annexed thereto.⁸ The manner of the Court’s creation became important in the *Taylor* case when the question of Charles Taylor’s possible immunity as a Head of State was raised as a bar to his prosecution.

The SCSL was the first modern international criminal court located in the country where the crimes being prosecuted had occurred. (The Extraordinary Chambers in the Courts of Cambodia swiftly followed suit).⁹ Although this presented security concerns, it had many benefits, particularly in terms of impacting public opinion in the host country.¹⁰ If location in the host country was a positive, a major negative was that the Court was dependent on voluntary contributions as opposed to receiving funding from the regular UN budget. Many court personnel have described how difficult

⁴ *Id.* at 44.

⁵ *Id.* at 45.

⁶ *Id.* at 51 (citing S.C. Resolution 1315 (Aug. 14, 2000)).

⁷ *Id.* at 55.

⁸ Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Jan. 16, 2002, 2178 U.N.T.S. 137 [hereinafter UN-Sierra Leone Agreement]. Annexed to the UN, Sierra Leone Agreement was the Statute of the Special Court for Sierra Leone.

⁹ See generally David M. Crane, *The Special Court for Sierra Leone*, in THE FOUNDERS (David M. Crane, Leila N. Sadat & Michael P. Scharf eds., 2018); Robert Petit, *Extraordinary Chambers in the Courts of Cambodia*, in THE FOUNDERS (David M. Crane, Leila N. Sadat, and Michael P. Scharf, eds. 2018).

¹⁰ JALLOH, LEGAL LEGACY, *supra* note 1, at 57–58. As Professor Jalloh notes, however, this solution may not be ideal where the security situation is too challenging or other obstacles to judicial or prosecutorial independence exist. *Id.*

funding concerns made their jobs and detracted from their ability to fully focus on their mission. The book also notes that the justice the SCSL administered was neither fully complete nor in and of itself sufficient to fully remedy the harm that the atrocities committed during the Sierra Leonean civil war inflicted on the small West African nation. The SCSL tried only a handful of individuals, both for financial reasons and due to the limitation in Article 1(1) of the Statute that the Court should prosecute those bearing the “greatest responsibility.”¹¹ The parallel work of the Truth Commission was important as well; indeed, as Professor Jalloh notes, the “Sierra Leone transitional justice experiment exposed important legal and policy issues” about how a criminal court and a truth commission can coexist in a complementary manner.¹²

Several chapters address specific important legal questions that arose during the proceedings. A full treatment of these issues is beyond the scope of this short contribution. Instead, I have focused attention upon two key elements, about which I have written elsewhere, and which remain both important and contested areas of modern international criminal law: Head of State immunity (Chapter Eight) and Amnesties (Chapter Nine). A brief comment on these chapters follows.

Amnesties: As Professor Jalloh notes, in the years prior to the SCSL’s establishment, President Kabbah endeavored to put an end to the conflict by negotiating with the rebels. In 1999, he signed the “Lomé Peace Agreement” with Corporal Foday Sankoh, the leader of the Revolutionary United Front.¹³ The Secretary-General of the United Nations and outside governments and organizations also signed as “moral guarantors” of the agreement.¹⁴ Article IX of the Lomé Agreement, entitled “Pardon and Amnesty,” created significant difficulties for the SCSL because it guaranteed “an absolute and free pardon” to RUF leader Sankoh and required “the government of Sierra Leone [to] grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present agreement.”¹⁵ Following signature of the Lomé Peace Agreement, it was announced that the Special Representative of the UN Secretary-General, Francis Okello, had entered a disclaimer that the United Nations would not recognize the validity of the amnesty as regards the “international crimes of genocide, crimes

¹¹ UN-Sierra Leone Agreement, *supra* note 8.

¹² JALLOH, LEGAL LEGACY, *supra* note 1, at 351.

¹³ Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), Lomé, July 7, 1999 [hereinafter Lomé Agreement].

¹⁴ *Id.*

¹⁵ *Id.* at art. IX.

against humanity, war crimes and other serious violations of international humanitarian law.”¹⁶

The Lomé Agreement did not stop the RUF from killing and mutilating civilians. They maintain their control over diamond operations which provided them with funds. At one point, they abducted more than 500 UN peacekeepers, seized their weapons, arms, and uniforms, and murdered several.¹⁷ President Kabbah, who had previously supported the amnesty because he felt it would bring the war to an end, now vigorously advocated for trials. The result was the establishment of the SCSL, which included a provision specifically eliminating amnesties for international crimes in Article 10 of its Statute.

Once before the SCSL, the defendants argued that the Court could not “try them for acts committed before July 1999 given the unconditional amnesty/pardon that the Sierra Leone government had conferred on them.”¹⁸ The Appeals Chamber disagreed. The Chamber found that the amnesty granted in the Lomé Agreement was tantamount to a domestic amnesty, as the Lomé Agreement did not have an international character. Therefore, it was inapplicable before the Special Court. Likewise, the Appeals Chamber found that whatever affect the amnesty may have had in the courts of Sierra Leone, it could have no effect in protecting the defendants from universal jurisdiction prosecutions brought by other States. In a particularly notable passage, the Appeals Chamber observed:

Where jurisdiction is universal, a State cannot deprive another State of its jurisdiction to prosecute the offender by the grant of amnesty. It is for this reason unrealistic to regard as universally effective the grant of amnesty by a State in regard to grave international crimes in which there exists universal jurisdiction. A State cannot bring into oblivion and forgetfulness a crime, such as a crime against international law, which other States are entitled to keep alive and remember.¹⁹

As Professor Jalloh notes, the Appeals Chamber did not categorically find that amnesties for war crimes and crimes against humanity granted by states were unlawful under international law, although it appeared to lean in that direction. This is suggested by the fact, as he observes, the Chamber

¹⁶ U.N. Secretary-General, *Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, 23, U.N. Doc. S/2000/915 (Oct. 4, 2000).

¹⁷ DAVID SCHEFFER, *ALL THE MISSING SOULS: A PERSONAL HISTORY OF THE WAR CRIMES TRIBUNALS* 305–06 (2011).

¹⁸ JALLOH, *LEGAL LEGACY*, *supra* note 1, at 287.

¹⁹ *Prosecutor v. Kallon*, Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, Case Nos. SCSL-2004-15-AR72(E), SCSL-2004-16-AR72(E), ¶ 3 (SCSL App. Ch., Mar. 13, 2004) [hereinafter *Kallon & Kamara*].

could have decided the case on narrow grounds by simply limiting its decision to the effect of the Lomé Agreement before the SCSL. Instead, the Appeals Chamber observed that the crimes had the character of peremptory norms of international law, which generated obligations *erga omnes* to all states, and that there is a “crystallizing international norm that a government cannot grant amnesty for serious violations of crimes under international law.”²⁰

Of particular interest is Professor Jalloh’s discussion of scholars’ reaction to the Appeals Chamber’s decision. As he observes, most scholars agree with the Appeals Chamber’s holding that the Lomé Agreement did not provide the accused with a defense to proceedings before the SCSL. Some, such as Antonio Cassese, found the result correct but the reasoning legally flawed. Others, including this writer, have opined that both the result and the reasoning were important and influential contributions to international law.²¹ A third group of scholars, including William Schabas, have been deeply critical of the decision, suggesting that it used “extravagant language” and did not properly address the complexities of the issues involved.²² In the view of this writer, the Appeals Chamber’s amnesty decision, and the reasoning undergirding it, have stood the test of time. I explain why below after taking up the second critical issue decided by the Chamber on the question of Head of State immunity.

Head of State immunity: Chapter Eight sets out the legal issues posed by the decision of the Court’s Chief Prosecutor to prosecute Charles Taylor, who was, at the time of his indictment, the President of Liberia. Taylor’s defense team argued that as a Head of State he was immune from prosecution.²³ Relying upon the decision of the International Court of Justice in *Yerodia*,²⁴ which had held that Belgium could not issue an arrest warrant directed at a

²⁰ *Id.* ¶ 82; JALLOH, *LEGAL LEGACY*, *supra* note 1, at 290–91.

²¹ Leila Nadya Sadat, *The Lomé Amnesty Decision of the Special Court for Sierra Leone*, in *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY* 311, 323–24 (Charles Chernor Jalloh, ed., 2014) [hereinafter Sadat, *Lomé Amnesty Decision*].

²² William A. Schabas, *Amnesty, the Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone*, U.C. DAVIS J. INT’L L. & POL’Y 145, 163 (2004).

²³ *Prosecutor v. Taylor*, Case No. SCSL-03-01-I-024, Applicant’s motion made under protest and without waiving of immunity accorded to a Head of State President Charles Ghankay Taylor requesting that the Trial Chamber do quash the said approved indictment of 7 March 2003 of Judge Bankole Thompson and that the aforesaid purported Warrant of Arrest and Order for Transfer and Detention of the same date issued by Judge Bankole Thompson of the Special Court for Sierra Leone, and all other consequential and related ORDER(S) granted thereafter by either the said Judge Bankole Thompson OR Judge Pierre Boutet on 12 June 2003 against the person of the said president Charles Ghankay Taylor be declared null and void, invalid at their inception and that they be accordingly canceled and/OR set aside as a matter of law (July 23, 2003) [hereinafter *Taylor, Motion to Quash Indictment Based on Immunity*].

²⁴ Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 3 (Feb. 14, 2002).

sitting Congolese Foreign Minister, the *Taylor* defense argued essentially that Taylor was immune from criminal prosecution because the Special Court was tantamount to a domestic tribunal. The Special Court disagreed, finding that the SCSL was an international criminal tribunal and therefore entitled to exercise jurisdiction over Taylor.²⁵

In *Taylor*, the SCSL Appeals Chamber relied upon the decision in *Yerodia* to distinguish the jurisdiction of international and national criminal tribunals when faced with Heads of State or other high-ranking members of government. At the same time, the Chamber admitted that it was not immediately evident why national and international courts differ as to their treatment of immunities under international law. Its reasons included the fact that no question of state sovereignty was raised given the Court's status as an international organ, and that as a matter of policy, States have accepted that the collective judgment of the international community provides a vital safeguard against the potential destabilizing effect of unilateral judgments in this area.²⁶ As Professor Jalloh notes, although the reasoning of this decision has been criticized,²⁷ many other observers²⁸—including Professor Jalloh himself—believe that the Appeals Chamber came to the right result, even if the manner in which it did so was not entirely convincing.

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It is not the purpose of this short contribution to thoroughly address the question of immunities and amnesties before international criminal courts and tribunals in a comprehensive manner. I have addressed many of these questions in earlier writings, and space does not permit a complete treatment here.²⁹ However, I would like to briefly draw attention to the question of methodology and approach, for, as is generally the case when resolving a legal ambiguity, the outcome depends upon the initial questions presented.

²⁵ Prosecutor v. Taylor, Case No. SCSL-03-01-1, Decision on Immunity from Jurisdiction (SCSL App. Ch., May 1, 2004).

²⁶ *Id.* ¶ 51 (citing Amicus Brief of Professor Diane Orentlicher, at 15); see also Sadat, *Lomé Amnesty Decision*, *supra* note 21, at 318–19.

²⁷ See, e.g., Dapo Akande, *International Law Immunities and the International Criminal Court*, 98 AM. J. INT'L L. 420 (2004).

²⁸ Micaela Frulli, *Piercing the Veil of Head of State Immunity: The Taylor Trial and Beyond*, in THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY 311, 339 (Charles Chernor Jalloh ed., 2014).

²⁹ See, e.g., Leila Nadya Sadat, *Exile, Amnesty and International Law*, 81 Notre Dame L. Rev. 955 (2006); Leila Nadya Sadat, *Heads of State and Other Government Officials Before the International Criminal Court: The Uneasy Revolution Continues*, in THE ELGAR COMPANION TO THE INTERNATIONAL CRIMINAL COURT 96 (Margaret M. deGuzman & Valerie Oosterveld eds., 2020); Leila Nadya Sadat, *International Criminal Courts and Tribunals*, MAX PLANCK ENCYCLOPEDIA OF INTERNATIONAL PROCEDURAL LAW, <https://opil-ouplaw-com.ezproxy.law.wustl.edu/view/10.1093/law-mpeipro/e1710.013.1710/law-mpeipro-e1710?rskey=D6UqoL&result=1&prd=MPIL>.

Scholars and practitioners of international criminal law tend to approach the question of amnesties, immunities, jurisdiction and other elements of international criminal law (as regards core crimes) from two different and competing perspectives. Some view the question of whether the immunities of Heads of State extant in interstate proceedings apply before international courts and tribunals, or regarding the effect of domestic amnesties before international courts and tribunals, as requiring a comprehensive examination of state practice in national cases (the *statist* approach). Others begin with the international system and the principles underscoring it (the *internationalist* approach).

The statist approach was particularly evident in the litigation before the International Criminal Court on the question of whether the ICC could exercise jurisdiction over a Head of State from a nonstate party in a situation that had been referred to the court by the United Nations Security Council. The argument was made by several states and litigants, as well as by amici and many scholars, that State practice regarding interstate exercises of criminal jurisdiction applied by analogy to the International Criminal Court's exercise of jurisdiction over Heads of State.³⁰ This "ground up" approach, which some members of the International Law Commission (ILC) have also employed in the ILC's study on immunity, causes them to ask whether state practice supports the *jus cogens* regime in national and international jurisdictions.³¹ In other words, they make no distinction between *jus cogens* and non *jus cogens* offenses, which are *international crimes* that are the subject of a nonderogable prohibition under international law. This also conflates principles of international law applicable in interstate proceedings with the regime applicable to the direct application of international criminal law in international criminal courts and tribunals. Thus, they do not clearly distinguish between the application of immunities or other elements of international criminal law on a vertical, as opposed to a horizontal, level.

A second *internationalist* approach, which I have argued in a recent essay on the *Al Bashir* case at the ICC,³² is a more suitable framework in analyzing these issues before international criminal courts and tribunals, is to understand the question of the immunity of Heads of State before international criminal tribunals as based upon *international*, not national, practice, for international courts and tribunals do not *derive their power* from delegations of state jurisdiction (although "delegation" sometimes surfaces as a *description* of how States may create an international organization).

³⁰ Sadat, *Heads of State and Other Government Officials*, *supra* note 29.

³¹ See, e.g., Sean D. Murphy, *Immunity Rationae Materiae of State Officials from Foreign Criminal Jurisdiction: Where Is the State Practice in Support of Exceptions?*, 112 AJIL UNBOUND 4 (2018).

³² Sadat, *Heads of State and Other Government Officials*, *supra* note 29.

Instead, at least since the establishment of the United Nations system, the international legal system and the institutions created therein operate in an autonomous sphere (limited by their Charters and international law). In the immunities decision, the SCSL found that the Court, because of the manner of its creation and its pedigree, was an “international court” along the lines of similarly created (although not identical) institutions – the ICTY, the ICTR, and, of course, the ICC. For this reason, it found that it fit squarely within the *Yerodia* exception. Likewise, in its 2019 decision in the *Al Bashir* case, the ICC Appeals Chamber resolved the case similarly. Although Jordan had argued before the Appeals Chamber that the ICC was a “foreign” court, and that it could not exercise jurisdiction over Al Bashir, who was a sitting Head of State, without Sudan’s permission, the Appeals Chamber relied, *inter alia*, upon the decision of the SCSL to find

There is neither state practice nor *opinio juris* that would support the existence of Head of State immunity under customary international law vis-à-vis an international court. To the contrary, such immunity has never been recognized in international law as a bar to the jurisdiction of an international court.³³

The ICC Appeals Chamber decision was accompanied by a concurrence addressing the question of what is meant by the term “international court.” The concurrence defines “international court” as “an adjudicatory body that exercises jurisdiction at the behest of two or more states”³⁴ and refers to the SCSL’s *Taylor* case as evidence that Heads of State do not have immunity before international criminal courts as regards the commission of international crimes. While the opinion may be broader than strictly required, the ICC Appeals Chamber took the view that the question of whether an international court must respect the immunity of a Head of State on international crimes is governed by international law principles that are different than the question of immunities before national courts. Which, of course, is implied by *Yerodia* itself.

Whether the ICC Appeals Chamber sufficiently addressed the thoughtful concerns raised by Professor Jalloh regarding the outer limits or even threshold inquiry of the “international court” requirement remains to be seen. Yet it seems to me that Professor Jalloh overstates the position of scholars when he argues that they nearly all agree that it is not the fact that it

³³ Prosecutor v. Al-Bashir, Case No. ICC-02/05-01/09 OA2, Judgment in the Jordan Referral Re Al Bashir Appeal, 5 (May 6, 2019).

³⁴ Prosecutor v. Al-Bashir, Case No. ICC-02/05-01/09 OA2, Joint Concurring Opinion of Judges Eboe-Usui, Morrison, Hofmanski and Bossa to Judgment in the Jordan Referral Re Al-Bashir Appeal, ¶ 56 (May 6, 2019).

is an international court that is determinative.³⁵ In fact, it is the *combination* of an international criminal court hearing a case in which core international crimes are adjudicated that gives rise to the proposition that no immunities apply. In the *Al Bashir* case, Professor Claus Kress argued that this was mandated by customary international law. The Appeals Chamber found no rule of custom *created* the immunities because they had never existed before international criminal courts and tribunals. Either way, it is most certainly the *combination* of international adjudication combined with an indictment for core crimes that causes the immunity claim to fail.

Turning to the question of amnesties, the Special Court for Sierra Leone took essentially the same approach as it (later) did on the problem of immunities, finding that as an international court, the SCSL was not bound by the provisions of the Lomé Agreement and therefore did not need to investigate whether or not the blanket amnesty offered by the Lomé Peace Agreement was valid before the courts of Sierra Leone. It did suggest, however, that the prosecution of war crimes and crimes against humanity were possibly required given the peremptory nature of the norm and its *erga omnes* character.³⁶ Professor Jalloh has criticized not only this element of the case but also the decision that the amnesty was inapplicable before the SCSL itself, as representing “a judicial misunderstanding of how customary international law is formed,”³⁷ citing the *Jurisdictional Immunities* case of the ICJ for a repudiation of the distinction between substance and procedure.³⁸ This is where we part company because, as noted above, my (internationalist) starting point is quite different.

In my view, the *Jurisdictional Immunities* case has not set aside the important developments of international criminal law that have, since the Nuremberg judgment (and as codified by the ILC itself in its 1996 *Draft Code of Crimes*), seen the *jus cogens* or peremptory nature of crimes against humanity, war crimes, genocide, and aggression as accompanied by a necessary procedural regime that ensures that their application can be successful. Given that *Jurisdictional Immunities* did *not* decide anything about international criminal prosecutions at all—but involved civil claims brought against the Federal Republic of Germany in Italian courts based upon violations of international humanitarian law—it cannot be relied upon to show that the *jus cogens* status of an offense is meaningless as regards procedural issues such as standing, amnesties, immunities, etc. before an international criminal court or tribunal. The better view was expressed by the

³⁵ JALLOH, LEGAL LEGACY, *supra* note 1, at 267.

³⁶ Kallon & Kamara, *supra* note 19, ¶ 71.

³⁷ JALLOH, LEGAL LEGACY, *supra* note 1, at 299.

³⁸ *Id.*; *Jurisdictional Immunities of the State* (Ger. v. It.), 2012 ICJ 96 (Feb. 3, 2012). The Court’s judgment was also the subject of an important dissent authored by Judge Cançado Trindade.

International Criminal Tribunal for the former Yugoslavia in *Prosecutor v. Furundžija*, regarding the crime of torture:

While the *erga omnes* nature [of the crime] appertains to the area of international enforcement (*lato sensu*), the other major feature of the principle prescribing torture relates to the hierarchy of rules in the international normative order. Because of the importance of the values it protects, this principle has evolved into a peremptory norm or *jus cogens*. . . .³⁹

The Trial Chamber thus found, *inter alia*, albeit in dicta, that amnesties for international crimes were not permissible before international criminal courts. As to the legality of amnesties before national courts, that is, either in the jurisdictions where they were granted, or in interstate cases, the cases are unanimous in striking down blanket amnesties in national courts for core international crimes, suggesting that the SCSL got it right in 2004. It is odd that the Special Court of Sierra Leone's decision on amnesties should therefore have attracted so much criticism, given that its amnesty judgment is completely consistent with existing case law emanating from international and national courts. This was true in 2006 when I wrote an article surveying existing case law,⁴⁰ and Amnesty International completed a study in 2017 confirming the trend that was submitted to the International Law Commission as part of its project on crimes against humanity.⁴¹

These issues are complex, and it is difficult to do them justice in just a few pages. Yet, as this short contribution surely shows, the work of the Special Court for Sierra Leone and the analysis of the Court's work by Professor Jalloh are of great contemporary relevance.

³⁹ *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgment ¶ 153 (Int'l Crim. Trib. For the Former Yugoslavia Dec. 10, 1998).

⁴⁰ Sadat, *Exile, Amnesty and International Law*, *supra* note 29, at 1022–23.

⁴¹ AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL CONDITIONAL SUPPORT TO THE DRAFT ARTICLES ON CRIMES AGAINST HUMANITY ADOPTED BY THE INTERNATIONAL LAW COMMISSION IN FIRST READING (2017), <https://www.amnesty.org/download/Documents/IOR4073282017ENGLISH.pdf>.