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Closing Reflections on the Contributions on the SCSL's Legal Legacy

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CONCLUSION
CLOSING REFLECTIONS ON THE CONTRIBUTIONS ON THE SCSL'S LEGAL LEGACY

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It has been wonderful and humbling to read these fourteen reviews of my monograph on the Special Court for Sierra Leone's legal legacy. Let me once again heartily thank this A-list of scholars, practitioners, and scholar-practitioners. I remain grateful that they took time out of their busy schedules to read and write such thought-provoking reviews of the book for the present special issue of the *FIU Law Review*.

Generally, although I regret that I did not always agree with some of them, my sense was that the reviews were generally quite positive. They can be divided into two categories. Authors in the first group commented broadly on the book, and, in several instances, also highlighted key issues of particular relevance. In this group were five of the commentators, namely, Prosecutor Stephen J. Rapp, Professor Mark Drumbl, Mr. Simon M. Meisenberg, Dr. Michael Imran Kanu, and Mr. Alpha Sesay.

In the second group, seven authors offered some broad observations about the book and then selected specific chapters to focus on, often commenting in passing on other issues they deemed important. In this group were Professors Margaret M. deGuzman; Professor Stuart Ford (greatest responsibility); Ms. Tamara Cummings-John and Professor Valerie Oosterveld (forced marriage as a crime against humanity); Dr. Alhagi Marong and Professor William A. Schabas (amnesties); Professor Leila Nadya Sadat (amnesties and immunities); and Distinguished Professor Emerita Linda E. Carter and Dr. Joseph Rikhof (on the relationship between special courts and truth and reconciliation commissions, with the former author also commenting in passing on amnesties and the latter addressing in detail the topic of forced marriage as a crime against humanity). Of course, the authors are mentioned here to reflect the order in which the chapters appeared in the book, although the standard *FIU Law Review* format is to list the authors of articles alphabetically.

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From both sets of commentators, whether addressing the Special Court for Sierra Leone (SCSL) legacy from a transitional justice perspective or through the prism of specific chapters examining the caselaw, or both, I received some generous compliments about my ideas and the book. I highly appreciated all of them. My overarching thesis was that the SCSL has indeed bequeathed a useful jurisprudential legacy for international criminal law. This, I suggested, was the original contribution of the book to the legal literature. I am glad that virtually all fourteen reviewers appeared to agree with the main claim that the book advances. It is not often the case that two international lawyers would agree, let alone fourteen, especially on the new and largely uncharted issues which I suggested constituted the core of the SCSL "legal legacy" for international criminal law and practice.

Equally significant, each reviewer also seemed to generally agree that, while the SCSL has left behind some useful jurisprudence on a range of other important topics which were simply impossible for me to address due to space constraints, the primary SCSL caselaw concerned the six legal topics that I chose to focus on. These were the SCSL's interpretation of its somewhat enigmatic personal jurisdiction over persons bearing greatest responsibility under Article 1(1) of its Statute (Chapter 5); the crime of forced marriage as part of the residual category of "other inhumane acts" of crime against humanity pursuant to Article 2(i) (Chapter 6); child recruitment as "other serious violations of international humanitarian law" prohibited by Article 4(c) of the Statute (Chapter 7); the irrelevance of official position of an accused person as a Head of State under Article 6(2) (Chapter 8); whether an amnesty granted by a State to persons later accused of international crimes may operate as a bar to a subsequent prosecution before an independent tribunal in this case under Article 10 of the SCSL Statute (Chapter 9); and, last but not least, the relationship between special criminal courts with a mandate to prosecute perpetrators and truth and reconciliation commissions (Chapter 10) which encourage former enemies to reconcile.

In the introduction to the book, I was careful to explain that the goal of the book under discussion was to be comprehensive, not to be exhaustive. For instance, I did not address the prosecutions of the war crime of attacks against United Nations peacekeepers. Nor did I address other interesting legal debates that arose in Sierra Leone about the competence or powers of the UN Security Council to create hybrid courts. Or the equally interesting caselaw of the SCSL on the fair trial rights of suspects including on the adequacy of resources for the defense, the right to counsel, or challenges concerning issues of self-representation for uncooperative defendants.

Almost all of the chapters in the book received some careful engagement. I was delighted to read all the highly stimulating comments. I

was delighted to read all the thought-provoking comments in this special issue for three important reasons.

First, the commentators are a diverse group. They all have impressive professional backgrounds and experiences, from legal practice in prosecution and defense at the domestic and international levels to current and former diplomats, practicing attorneys, and of course, renowned scholars. Some of them expressly reflected on those experiences when making their comments on the substantive issues of interest in the book.

Quite appropriately, given the "hybridity" of the SCSL, the commentators reflect a good mix of what we used to describe in Freetown as "nationals" and "internationals." The SCSL was a tribunal requested by the Sierra Leone government. But, by its joint creation via a treaty between the United Nations and Sierra Leone as well as its mixed jurisdiction over international and domestic crimes, it was also a unique creature, which the UN Secretary-General rightly labelled sui generis, reflecting a form of hybrid local-global and global-local character and ownership. This, in a symbolic way, points to and reinforces the staying power of the hybrid court model. It draws strength in being simultaneously national and international, even after the completion of its work and in assessments of its legacy.

Second, through their individual reviews, these distinguished commentators not only engaged with my modest ideas on the legacy of the SCSL. They each also offered fresh insights on the tribunal's contributions to the development of international criminal law. Collectively, without necessarily framing it in the same language, though some of them did that too, they expanded on what I have described as the "legal legacy" of the SCSL. They thereby further confirmed the richness of the Court's contributions through its jurisprudence and also as one of the better and more successful models of the hybrid court. A model that, as one of the commentators rightly stressed, continues to remain highly relevant today. His review shows that, while each situation may have its own specificities that ought to be taken into account, the SCSL model can be a credible way to satisfy victims' demands for justice for alleged atrocity crimes in diverse situations. These range from Iraq to Syria, Myanmar, South Sudan, and The Gambia. Even or especially in a world with a permanent International Criminal Court (ICC), which is anchored by the complementarity principle under Article 17 of the Rome Statute.

That principle, also mentioned in the preamble to the Rome Statute, makes clear that it is at the national level that the heavy lifting of prosecuting serious international crimes should take place. The question then arises, where for reasons of lack of capacity, such as was the case in Sierra Leone, the investigations and prosecutions are not possible, as is so often the case in conflict and post-conflict situations, how to fill that void. The hybrid model,

like the SCSL, offers one possible solution taking into account the specificities of each situation.

Third, for someone who has been grappling with the SCSL legacy starting with the days when I was designated to represent the Office of the Principal Defender in the Legacy Phase Working Group established by the Registrar when I was a practicing lawyer in the tribunal in Freetown, it seemed remarkable that these insightful commentators extended in new directions my own thinking on the subject. Some of them cited additional helpful jurisprudence and included the latest judgements from other tribunals. These included the latest rulings from the ICC and the Extraordinary Chambers in the Courts of Cambodia, some of which were issued after the book went to press, incidentally also showing both the relevance and dynamic nature of the concept of legacy in international criminal law.

Along the way, perhaps without even realizing it, some of the commentators planted seeds for further inquiry. Of course, this particular book has been written. But my quest to gain a deeper understanding of legacy in international criminal law generally, and the rightful place of the SCSL and African States in its creation in particular, will undoubtedly continue. This includes the African State plans to apparently expand the toolkit of accountability from the national, international and hybrid to also regionalization of international criminal law enforcement and the reactions, both positive and negative, that such efforts have generated.

While I am deeply appreciative of all the accolades received, from many of the commentators, a number of the reviewers have also raised a number of more critical points. These are important as part of the process of enriching our understanding and expanding knowledge. For example, several of the authors were critical of my treatment of the always fascinating but sensitive questions of amnesties as well as immunity from prosecution for international crimes—two topical issues that continue to bedevil the field of international criminal law.

Of course, in a different context, I have had the privilege to engage those topics from the vantage point of the mandate of the International Law Commission. There, given the mandate of that body to assist the United Nations General Assembly with the promotion of the progressive development of international law and its codification, I have taken positions on amnesties and immunities that may be seen as going beyond codification and more reflective of progressive development. This, to my mind, can be justified on the basis of the mandate of that institution which can make proposals to States for the progressive development of international criminal law.

As regards the substance of the reviews, there did not seem to be much criticism of the main arguments I advanced in the book. Interestingly, one or

two of the authors seemed to imply I was not laudatory enough of the jurisprudential contributions of the SCSL. A couple of others seemed to suggest the opposite: that, at least on certain topics such as the tribunal's rulings on amnesty and immunity or greatest responsibility, I might have been too critical. With the few comments pulling in opposite directions, it might be that, to a distant reader, I probably struck the right balance. Indeed, to my delight, the overwhelming majority of the commentators appeared to have appreciated the book as comprehensive, thorough, and balanced, setting out as objectively as possible the positive and less positive aspects of the judicial reasoning in some of the decisions. In all cases, the authors seemed to endorse the view that the SCSL jurisprudence has been influential whether in other ad hoc courts or even more importantly in the permanent ICC.

At this stage, and in closing, it remains for me to once again thank all the distinguished commentators who honored me by so thoughtfully engaging with this new book on the legacy of the SCSL. I learned a lot from each of them. I can only hope that their substantial contributions to the literature through these reviews will serve to pique even more interest in further examination of the legacy of the SCSL. Together with my book, I hope that the reviews will help to deepen scholarly understanding of the work of that tribunal as well as the international community's long and ongoing struggle against impunity for atrocity crimes under international law.