Book Reviews


The Special Court for Sierra Leone (SCSL or the Tribunal) was established by an agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315(2000) of 14 August 2000 as one of the means to address the consequences of the tragic armed conflict in Sierra Leone in which many civilians lost their lives. The other method used to address the Sierra Leone crisis was a non-criminal process through the Truth and Reconciliation Commission.

The Tribunal is mandated to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of the West African state since 30 November 1996. The mandate also authorizes the prosecution of those leaders who, in committing such crimes, have threatened the establishment and implementation of the peace process in Sierra Leone (Article 1(1) of the Statute). This provision was instrumental in limiting the SCSL’s mandate and to permit the Tribunal to focus on a narrow group of persons who bear the greatest responsibility and to that extent, facilitate a speedy judicial process that permitted the Court to conclude trials and appeals earlier than at the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR).

The Tribunal has jurisdiction over crimes against humanity (Article 2); violation of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 (Article 3); other serious violations of international humanitarian law (Article 4); and crimes under Sierra Leone law (Article 5). However, the Tribunal has no jurisdiction over the crimes of genocide unlike the ICTY and ICTR. To that extent, the SCSL, while it exercises jurisdiction over crimes against humanity, its primary focus is the prosecution of war crimes committed in non-international armed conflict.

The SCSL is unique in the sense that acts criminalized in its statute go beyond the provisions of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977. This submission is captured in Article 5 of the Tribunal’s Statute, a provision which criminalizes abusing a girl under 13 years of age.
age; a girl between 13 and 14 years of age; and abduction of a girl for immoral purposes (Article 5(a)). The article further criminalizes setting fire to dwelling houses, any person being therein; setting fire to public buildings; and setting fire to other buildings (Article 5(b)). The significance of Article 5 for armed conflicts in Africa is profound for it recognizes that in many non-international armed conflicts, the combatants have generally targeted civilians many of whom were herded in private and public houses and burnt alive. This extreme form of criminal abuse was visited on civilians, not only in Sierra Leone, but also, for example, in Rwanda’s 1994 genocide and, in the twenty year war in northern Uganda, the armed conflicts in Central African Republic, Somalia and the Democratic Republic of the Congo.

It is against this background that the editors’ decision to compile a complete and comprehensive interlocutory decisions and Trial and Appeals Chamber judgements in the case of Prosecutor v. Brima, Kamara and Kanu (AFRC case) must be appreciated and welcome. In my view (and others may disagree), the AFRC case provides one of the most important decisions and judgements ever delivered on crimes committed in non-international armed conflicts in the African continent since the adoption of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977.

In compiling the Law Reports of the Special Court for Sierra Leone (The Law Report), the objective of the editors was threefold. First, to present in a single chronological fashion all the publicly available interlocutory decisions issued by the judges during the pre-trial, trial and appeals phase; second, to present accurately the entire judicial output in the AFRC case; and finally, to help ensure that researchers can access the primary decisions in hard copy with the view to encouraging critical reflections of this seminal jurisprudential legacy. As I will observe below, the editors achieved all three objectives.

In the introductory remarks, the editors correctly note the significance of the pre-trial, trial and appeals Chamber interlocutory decisions and judgements, including its relevance to legal practitioners, graduate students and researchers in the field of international criminal law and international humanitarian law. The compilation provides a comprehensive list of the Tribunal’s decisions and opinions, including dissenting opinions. The subject matter discussed in the interlocutory decisions and judgements cover important legal issues such as, but not limited to, whether the “greatest responsibility” requirement is a jurisdictional requirement; the legality of domestic amnesties for international crimes, a practice that has become common in African conflicts at which combatants from all sides give themselves full amnesties from criminal prosecutions; the recruitment of child soldiers and whether the crime of recruitment of child soldiers constituted a customary international law violation by 30 November 1999 when the SCSL was established; the crime against humanity of forced marriage as another inhumane act and the link, or lack thereof, to sexual slavery; command
responsibility within irregular armed groups, the types of irregular forces that have no formal or easily identifiable chain of command; the notion of collective punishment and acts of terrorism as a war crime in non-international armed conflict.

This volume, divided in two books, brings together a most comprehensive collection of the Tribunal jurisprudence to date. The volume systematically captures the publicly available decisions and opinions issued by the Tribunal. It includes decisions of the pre-trial, trial, sentencing and appeals phases of the case. By compiling all publicly available (a total of 82 procedural interlocutory Trial Chamber decisions and 11 Appeals Chamber decisions), this volume positively addresses the need for a single, comprehensive and easily available, in hard copies, the source of the Tribunal’s jurisprudence. In the absence of any official law reports by the SCSL, the volume performs a great service by successfully filling that void.

I wish to express my satisfaction, particularly with the compilation of the Trial and Appeals Chamber interlocutory decisions, as well as for making available the trial and appeals transcripts on a CD-ROM for easy access to the public. My ten-year experience as prosecuting counsel at the Office of the Prosecutor (OTP) at the ICTR, teaches me that for every legal practitioner, whether at the national or international fora, a case may be won or lost depending on how a party to the proceedings, right from the pre-trial stage, handles preliminary objections that are often raised by the Defence. These preliminary objections have the tendency of incrementally chipping away the credibility of the Prosecution case.

At the pre-trial phase, the strategy of the Defence is to undermine the credibility of the Prosecution case by filing motions alleging defects in indictment. This strategy works, for if the Chamber rules that there are defects in an indictment, then all relevant paragraphs, deemed defective, inclusive of allegations against the accused, shall be withdrawn. The withdrawal of one or several paragraphs in an indictment leave(s) gaps in the Prosecution case and may lead to the dropping of several counts in the indictment. In a worst case scenario, it may lead to an eventual acquittal of the accused because there shall be no factual allegations to support the charge(s).

In the AFRC case, the editors identified four such Defence applications alleging defects in indictment. The Prosecution, on the other hand, filed two motions seeking leave to amend the indictment in an effort to cure the defects in the indictment. By including these interlocutory applications in the Law Report, the editors performed an admirable task of bringing this relatively obscure aspect of


the trial process to the public, an area that is often rarely discussed by non-legal practitioners or simply dismissed by the press, NGOs or human rights activists as casual or mere ‘technicality’. Determination of procedural issues by the Trial and Appeals Chambers is important because many of the issues dealt with at that phase of the trial are often not visited again in the final judgements as reference to such decisions are often brief and only in summary form.

The Defence also regularly file motions challenging the Prosecution’s failure to disclose relevant materials at all, or when disclosed, the Defence argument is typically that it was late disclosure and must therefore be excluded. Thus, the issues of non-disclosure are often linked in Defence application to motions to exclude such evidence. These compilations are a great addition to the growing jurisprudence in international criminal procedural law. There are also other interlocutory decisions, particularly on protection of witnesses, which are equally important for an effective administration of international criminal justice. It is gratifying that the editors also included this category of interlocutory decisions.

A holistic reading of the Trial and Appeals AFRC interlocutory decisions and judgements disclose the depth at which the Chambers addressed different and difficult legal issues relating to non-international armed conflicts. I strongly recommend this volume to practising international criminal law lawyers, policy makers, human rights activists and all persons interested in addressing the complex issues of non-international armed conflict. Professor Jalloh and co-editor Mr Mesisenberg deserve congratulations for making hard copies of these important decisions and judgement easily available to the general public. I can, but only concur with the President of the SCSL, Justice Jon Kamanda in his observation that: “This volume positively promotes the case law of SCSL and places it into the context of individual cases thereby ensuring a greater understanding of the individual decisions and authority as such.” (p. xviii). We look forward to more volumes of the Law Report.

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