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A VIEW FROM THE TRENCHES: THE SPECIAL COURT FOR SIERRA LEONE – THE FIRST YEAR

Bruce M. MacKay[†]

By the time this article goes to the printer, assuming it survives the tender mercies of the Case Western Reserve University Journal of International Law staff, I will have concluded my assignment with the Special Court of Sierra Leone (“Special Court”). Permit me, then, to expand a bit on the theme of February’s symposium – “the first six months” – and recast my remarks to cover the first year.

Others, better qualified than I, will comment upon the actions taken by the Court during that first year. Instead, I offer a personal potpourri of observations, divided roughly into three categories: people, places, and things.¹

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While every effort has been made to ensure both accuracy and a reasonable degree of objectivity, the content of this article reflects my personal knowledge and experience, and does not constitute the official position of the Office of the Prosecutor or of the Special Court for Sierra Leone. Any inaccuracies or misstatements are my sole responsibility.

¹ One of the advantages of a personal memoir is that I am at liberty to make reasonable statements without having to provide authorities for each. Since legal research opportunities here are scarce, that is a blessing – doubly so for the technical editors of the Case Western Reserve University Journal of International Law, since it makes their reviewing tasks somewhat easier.

People

The challenge facing the Special Court, as with all newly created organizations, was to rapidly become a functioning organization. The conventional approach to staffing envisions a careful assessment of the needs of the organization, developing a staffing table, advertising positions to be filled, evaluating and interviewing applicants followed by selection, administrative processing, and eventual departure for Sierra Leone. This, in other words, is a “ready-aim-fire” approach to staffing.

The Prosecutor, keenly aware of the time and fiscal constraints facing the Special Court and the need to move quickly, adopted a “ready-fire-aim” approach instead. The organization’s needs were assessed, a rudimentary staffing table was developed, and then likely candidates for the initial positions were contacted and invited to join the Office of the Prosecutor (“OTP”).

The immediate advantage of this approach was the ability to quickly hire people and immediately deploy them to Sierra Leone. The Prosecutor determined that his initial staff would require seven people including himself. In April 2002, the court officially came into existence – and by June 2002, the original seven employees of the OTP were hired and in training.²

With every advantage comes a disadvantage. By making employment opportunities available on an “invitation only” basis, the Prosecutor necessarily was limited to a small circle of acquaintances, all of them Americans.³ We received a good deal of criticism, particularly from those familiar with the United Nations. The concern at the time was that the OTP, in specific, and the Special Court, in general, would be an “American show.”

Experience has shown that the “ready-fire-aim” approach, using abbreviated hiring practices to staff key posts in the OTP before departing for Africa, was wise. The Original Seven arrived in Freetown over a sixty day period and were able to “hit the ground running.” The staffing table developed prior to departure from the United States was filled rapidly,

² The “original seven” included the Prosecutor, his Chief of Prosecutions, Chief of Investigations, Special Assistant/Policy Advisor, Legal Administrator, Network Administrator, and me as the Legal Advisor.

³ The Prosecutor was appointed by the Secretary General of the United Nations; the Deputy, by the Government of Sierra Leone. Their choice of a renowned British criminal barrister with prior experience in West Africa in general, and Sierra Leone in particular, provided a second “circle of acquaintances” upon which to draw. Many of the initially hired attorneys, for example, were drawn from the United States, the English bar, and the bar of Sierra Leone based on the combined knowledge of the Prosecutor, the Deputy, and the Chief of Prosecutions.

drawing heavily upon the international community. As the months passed, the concerns about the dominance of Americans eased. The staffing and personnel practices of the Special Court became more aligned with the UN model, and today Americans are but one of several nationalities represented on the Court.⁴

The OTP was not designed to be staffed, however, to meet every eventuality. Core functions (prosecutors, investigators, support staff) appear on the chart and are filled by full-time Special Court employees. Short-term needs have been addressed by contractors, who bring expertise when needed, but only *as needed*.⁵

The Special Court borrowed a time-tested concept from the US legal system and created a robust legal defense unit. For the first time, an international criminal tribunal will have a defense staff supported in much the same manner as the prosecution staff. “Equality of arms” between the OTP and the defense should be somewhat easier to attain, with both offices enjoying comparable levels of support from the Registry.⁶

The Special Court has also adopted another time-tested concept from the US legal system. Only those attorneys with licenses to practice law are permitted to appear before the Special Court. The goal is to streamline the conduct of trials while providing a better level of representation to the defendants.⁷

In another break with tradition, the Registrar has developed a roster of counsel willing to accept assignment for the defense. Indigent defendants are allowed to select counsel of their choice from the roster, thus preserving the right to counsel, while also maintaining some control over the budget.

⁴ Bear in mind that the Court did not have a personnel officer until well after the OTP had established itself in Freetown and begun operations. More conventional personnel practices really came into effect by January, by which time the personnel officer had assembled a staff and was able to function effectively.

Today, the Court is staffed with employees from Argentina, Austria, Australia, Cameroon, Canada, Finland, Germany, Ghana, India, Ireland, Italy, the Netherlands, Pakistan, Senegal, Sierra Leone, Sweden, Switzerland, Tanzania, Trinidad and Tobago, the United Kingdom, the United States, and Zimbabwe.

⁵ So far, the OTP has contracted with data processing experts, forensic anthropologists, and arms trafficking experts. In the future, expert witnesses of various kinds will be working with the OTP under contract.

⁶ The Court consists of four separate entities: (1) the OTP, which by the Court’s statute is an independent organ of the Court; (2) the Registry (“Clerk of the Court” in US parlance); (3) the Chambers, containing the judges; and (4) the Defense Unit.

⁷ The International Criminal Tribunal for the Former Yugoslavia (ICTY) permits those who are “admitted to the practice of law in a State, or is a University professor of law” to represent defendants. See RULES OF EVIDENCE AND PROCEDURE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA 44(A). *Accord*, RULES OF EVIDENCE AND PROCEDURE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA 44(A).

So far, this system has provided a high level of advocacy resulting in a higher quality defense.

Places

When the first members of the Court arrived at Freetown in July 2002 they began the process of finding places to live, work, build a court, and house defendants. Now, all those places exist and are in use to one degree or another. Back in July 2002, each of these places had to be located, built, or both.

The first hurdle was to find a place to live. Temporary accommodation in Freetown is limited and expensive. The Original Seven banded together to rent a manor home, called Sea View House,⁸ which continues to provide housing to senior staff of the OTP. One of the first local staff hired by the Registrar was a housing coordinator to help the other staff find long-term rental housing. Today, the only staff members in short-term rentals are contractors and/or recent arrivals.

Upon arrival, the Registrar and his deputy began the search for suitable office space. Other than easily deducible criteria, one key consideration was the need to provide reasonable security for the work of the Special Court. Unlike the *ad hoc* criminal tribunals created by the UN for the former Yugoslavia and Rwanda, the Special Court was to sit in the country where the alleged atrocities occurred. It was, and remains, safe to assume that there will be those in Sierra Leone who do not support the work of the Court and wish the Special Court or its staff harm. Therefore, security was a matter of significant concern.

The Registrar eventually located a suitable facility for a limited number of staff: the Bank of Sierra Leone complex on the King Tom Peninsula in central Freetown. That facility, consisting of two large rooms, was not capable of housing the Registry. It would have been inadequate to house both the Registry and the OTP, as well as inappropriate to put both organizations into the same room.

As a result, the Registrar and the Prosecutor agreed to use the Sea View house as the OTP's temporary home. The manor home's main and subterranean levels were converted into what rapidly became congested office space. From August 2002 until the OTP's relocation in July 2003, the attorneys and investigators of the OTP worked in cramped, yet reasonably congenial, conditions.

The search for a permanent home continued, until the government of Sierra Leone provided a gently sloping, multi-acre parcel just up the road from the country's main prison on Pademba Road. That parcel, known as New England, now hosts a number of prefabricated container offices. The

⁸ So named due to its location overlooking the Atlantic Ocean.

OTP is on the upper level, with the Registry on the lower level. Each portion of the Court is separated from the other by several hundred meters of open space.

The open space will be filled by the purpose-built courthouse, containing two courtrooms plus modest office space for client consultation and other purposes. That will be the only permanent building constructed by the Court. The offices used by the Court's staff are temporary facilities.

The most challenging matter was finding suitable detention facilities. As noted earlier, the Court sits amidst the wreckage of Freetown. Security is a significant challenge. And the degree to which supporters of those arrested would accept the arrest and trial of their patron(s) was, and remains, largely unknown in spite of continuous investigation and monitoring.

The first criterion for a suitable detention facility was to find a facility that could be secured, and the second was to find one for contingency purposes on the assumption that the Special Court would have to withdraw from Freetown because of unrest. The contingency facility was located first on Bonthe Island. Located about 45 minutes by helicopter south of Freetown (a 12 hour trip by coastal steamer, and several days' journey overland concluded by a ferry ride to the island), Bonthe Island already had a prison facility that was not heavily used by the government of Sierra Leone. Happily, the facility also had a modest adjoining courthouse.

Negotiations with the government allowed their few inmates to be relocated and the limited construction work required to bring the facility to international detention standards was completed. Once construction was finished, the "contingency" site was prepared. Only a select few staff in the OTP, and fewer still in the Registry, understood that the "contingency facility" would in fact be the primary detention facility for months.

The Prosecutor mapped out the broad sweep of his strategy before the Special Court was formally created. The strategy was to focus on those at the absolute top of the command and control structure, conduct an investigation on a limited number of charges, and then indict and arrest.⁹

⁹ The Statute of the Special Court limits the Court's jurisdiction to those "who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996" Statute of the Special Court for Sierra Leone § 1 (established by S.C. Res. 1315, U.N. SCOR, 55th sess., 4186th mtg., U.N. Doc. S/RES/1315 (2000)) *available at* <http://www.sc-sl.org/> (last visited Feb. 14, 2004). The Statute does not establish a finite time limit for the existence of the Court, but does note that the Prosecutor, the Registrar, and the judges are all appointed for renewable three year terms, leading to the commonly-voiced belief that the Court is a "three-year" organization.

The decision to focus on the absolute highest level of leadership among those potentially within the Court's jurisdiction also sharply limited the number of potential defendants. Also, the decision to identify a limited number of charges and develop solid evidence on each – instead of attempting to determine the absolute maximum number of offenses

This strategy required absolute secrecy concerning who was being investigated on which possible charges because those at the top of the command and control structure during the civil war years tended to appear near the top of society now.¹⁰

While the Statute and Agreement creating the Special Court envisioned a high degree of cooperation and support from the government of Sierra Leone, it would have been unreasonable to expect those indicted to actively cooperate in the investigations against them. Therefore, the only reasonable alternative was to rigidly control information and conceal the existence of the investigation from the targets.

Those involved realized that it would be difficult to conceal such an investigation, and impossible to conceal it indefinitely. That realization drove the Prosecutor to acquire his senior staff before arriving in Freetown, and to commence the investigation as soon after arrival as possible.

The investigations began within ten days of the Prosecutor's arrival and continued at a breakneck pace until indictments were prepared. The "contingency" facility was put into use as the primary detention facility in March well before onlookers expected.¹¹ The courtroom adjacent to the detention facility was used for all hearings and court appearances through

allegedly committed by each of the defendants, and then develop evidence to support each charge – limited the size and duration of the investigations required. Even with that narrow focus, the challenges of investigation have been significant in a country ravaged by war during which relevant documents were often deliberately targeted for destruction (as happened during the January 1999 incursion into Freetown, during which one of the first buildings destroyed was the Criminal Investigation Division's headquarters and records), and as a result of which thousands of individuals fled the country.

¹⁰ The Lome peace accords, and their effect or influence upon the Court, will be examined in detail by legal scholars. My observation was that those accords, coupled with a "live and forgive" attitude amongst the populace, allowed many of the war's participants to move relatively easily into positions of significant power within Sierra Leone (e.g., Sam Hinga Norman and Johnny Paul Koroma).

¹¹ The indictments were approved on March 7, with the majority of the first group of indictees arrested on March 10. The arrests all took place the same day, within minutes of each other, and were executed without incident. The national reaction was stunned shock. Public opinion was that no arrests could be made until after a detention facility had been constructed.

In my comments at the Symposium, I stated that I would not discuss indictments – among other reasons because I was to leave the Symposium and go to London to defend the indictments before the judges of the Special Court. The fact that the indictments were ready in February, for presentation to the judges in early March, was one of the best-kept secrets of the Court.

July 22, 2003, at which time the Court's temporary facility at New England was put into service.¹²

Things

The mandate of the Special Court is clear – to prosecute those who bear the *greatest* responsibility for the atrocities committed in Sierra Leone. What is less clear is how those who bear *some* responsibility for those atrocities should be handled.

Most immediately troubling is the dichotomy between the sentencing options available to the Special Court and the national courts. Any individual convicted by the Special Court may only be sentenced to a “specified number of years.”¹³ Domestic law provides for a death penalty;¹⁴ leading to the absurd result that those who are convicted of bearing the greatest responsibility, by ordering atrocities, may suffer a lesser punishment than those who carried out those orders. Logically, those likely to be indicted by the Court would have tremendous incentive to surrender, face the Special Court, and thus avoid possible execution. To date, however, no one has surrendered to the Special Court on these grounds.

Another area of ambiguity in sentencing options concerns the Special Court's relationship to the Truth and Reconciliation Commission (“TRC”). The South African TRC has proved to be a useful device for reintegrating former combatants into civilian society. Unlike South Africa, however, the Sierra Leone TRC functions during the same period as the Special Court and could potentially involve the same witnesses.¹⁵

Early on, there were many people who were concerned that the TRC's records would spawn indictments by the Special Court. Recognizing that the two organizations have complimentary but distinctive missions, the Chairman of the TRC and the Prosecutor of the Special Court jointly

¹² There is a detention block at the New England site, which will be occupied by the time this article is printed. The Bonthe Island facility will be maintained as originally advertised – a contingency facility.

Using the courtroom on Bonthe Island was very convenient for the detainees, but not for anyone else. All participants in each hearing had to be flown via helicopter to the island, at no small expense. The public's participation in the Bonthe Island hearings was largely limited to the local residents, with a few Freetown-based journalists included. The security ramifications were also significant, ranging from the immediately obvious (safety of the visitors; prevention of escape) to those unique to Bonthe (emergency survival equipment on the helicopter in case of mechanical breakdown or forced landing).

¹³ Statute of the Special Court for Sierra Leone, *supra* note 9, at art. 19(1).

¹⁴ See generally the Sierra Leone Criminal Procedure Act of 1965 (as amended), §§ 211 et seq., listing some of the offenses for which a sentence of death may be imposed.

¹⁵ I believe that the TRC will conclude its activities in October 2003.

announced, in December 2002, that no evidence provided to the TRC would be used by the Prosecutor. The intent of the announcement was to provide an incentive to those inclined to appear before the TRC, but fearful of the Special Court.

That being said, there is still much room for improvement in the relationship between the OTP and the TRC as concerns witnesses. Periodically, the TRC requests individuals, with whom the Special Court has a relationship, to testify before the TRC, including those who have been indicted. To date, the Special Court's position has consistently been to regretfully refuse to support the TRC's efforts. We have been unable to create circumstances in which the same individual can testify before the TRC and the Court without creating potential difficulties. For obvious reasons, we prefer not to have the inditees testify prior to their trials.¹⁶ For less obvious, but no less important reasons, we hold the same preference regarding percipient witnesses. We cannot compel them not to testify, but we have urged and will continue to urge them not to appear before the TRC.

During the Nuremberg trials, the National Socialist Party's meticulous archives were used extensively. Live witness testimony was used to illustrate and explain the content of the voluminous records.¹⁷ The German records were meticulous, normally prepared in German, and often filed in redundant locations. German archives contained details such as names and unit assignments.

The situation here in Sierra Leone could not be more different. In Sierra Leone, where the number of existing languages exceeds ten with most of those languages not yet employing a system of writing, few records survived.¹⁸ In Germany, records repositories were seized by the Allies; in Sierra Leone, the combatants targeted repositories for destruction. The Sierra Leonean records often contain *noms de guerre* in lieu of proper names.

¹⁶ The Rules of Procedure and Evidence of the Special Court do not contain a rule against hearsay, so in theory the testimony before the TRC would be admissible before the Special Court. A related line of reasoning suggests that (borrowing hearsay-rule terminology) a prior inconsistent statement would be of some evidentiary use. The better reasoning, at least at this time, is that the possible value of the prior inconsistent is not worth the probable public perception that the TRC and the Prosecutor have abandoned their agreement regarding use of TRC evidence at trial.

¹⁷ See generally TELFORD TAYLOR, THE ANATOMY OF THE NUREMBERG TRIALS (1992) for the author's personal account of the extent to which Nazi records were used.

¹⁸ English is commonly spoken in metropolitan Freetown. Krio, Temne, and Mende are the three dominant languages of Sierra Leone, each with a system of writing. Experts disagree on how many additional languages are indigenous to the country, with estimates ranging from ten to fifteen.

Witness testimony, primarily used at Nuremberg for illustrative purposes, will be essential to the conduct of trials before the Special Court. Any event or behavior that convinces a witness not to testify would be terribly harmful to the Court. For that reason, the Court's Victims and Witness Unit, as well as the Investigations Section of the OTP, actively and energetically protect the identities of those who cooperate with the Special Court.

Another nettlesome issue, thankfully not before the Court, is the task of dealing with children as soldiers. The task of integrating into society a teenaged boy whose only skills are operating an AK-47 and mutilating others upon order would daunt Sisyphus. All that we can do is to honor the Prosecutor's public announcement that he will not indict children.¹⁹

The Court has always anticipated international support. We believe that the development of international criminal law has reached the point where virtually all civilized nations wish to be associated with an effort to identify and punish those who have inflicted horrific crimes upon others. Past perpetrators, believing that their behavior would be excused, tolerated, or condoned by the world, have operated with impunity. In many respects, our beliefs that the world wishes to end the culture of impunity were well-founded.

The Court has been funded, not to the extent necessary and certainly not without difficulty, by contributions from interested states. The funds provided were sufficient to allow us to begin operations and carry us forward into (but not through) the second year.²⁰ However, the funding

¹⁹ The Statute of the Special Court gives the Court jurisdiction over any individual aged fifteen or older at the time of the alleged commission of the crime. Statute of the Special Court for Sierra Leone, *supra* note 9, at art. 7. Legally, it is difficult to envision how a fifteen year old could exercise sufficient power or authority to meet the "bear the greatest burden" test. Morally, it is simply wrong to indict a child – and the Prosecutor made his decision based on that ground; I was there at the time. The fact that the decision is legally and logically supportable is a happy coincidence.

²⁰ To at least a certain extent, the level of funding is more a matter of pragmatism than of idealism. The Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone ("the Agreement") required that the Secretary General of the United Nations have cash-in-hand sufficient to defray the first year's costs, plus pledges equal to the anticipated costs for the next 24 months, prior to establishing the Court. Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Jan. 16, 2002, art. 6, available at <http://www.sc-sl.org>. What no one anticipated was the woeful underestimation of costs for the operation of the Court. The pledges, believed to be sufficient for the second two years, were insufficient to defray the costs of the second year alone. As this is being written, the Court's Management Committee is seeking additional funds from the primary donor states, and is widening its circle of contacts to invite other nations to contribute.

To be fair, certain nations have been exceptionally generous. Others, on the other hand, have been parsimonious.

mechanism is cumbersome. It would be helpful to find a less stressful means of funding for a court that seems to enjoy widespread support.

The Court has also been supported in kind, and by secondments of staff. We have had outstanding investigators provided to us by several nations. I believe, without these investigators, we would not have gotten as far as we have this quickly.

One somewhat under-supported area has been general intelligence support. The Court requires two separate forms of intelligence: threat warning and investigative support. Multiple nations with significant intelligence collection and analysis capabilities have promised that, should a threat develop, we will be immediately informed. To date, we have only had one nation provide any threat warning information whatsoever, and that information was considerably older and less detailed than information we had independently developed.²¹

The second form of intelligence supports investigations. Never intended for admission in court, it merely points investigators at areas deserving of inquiry. Months of negotiation with multiple nations have resulted in virtually no information being provided to the Court. This is disappointing in view of the economic significance of this part of the world and the presumed level of interest from major nations.

Closing Thoughts

The past year has been a kaleidoscope of activity, poorly reflected in the text above. I have not mentioned the quality of our staff members who face daily challenges and trials that simply cannot be adequately explained – yet who proceed with quiet determination to do the job.

I also have not mentioned the weather, other than in passing. During the rainy season, Sierra Leone is the wettest country on earth. In early July we had a storm that, in an eighteen hour period, delivered more rain to Freetown than London receives in an entire year.²²

The indictments or the indictees have also not been mentioned other than in passing. But for the dedication of the staff and their ability to keep confidences, the cooperation of the local police, and the courage of all concerned, none of the indictments could have been returned nor accused arrested. That all now in custody were arrested, without incident, and

²¹ In January 2003, an abortive coup d'etat was allegedly launched by supporters of Johnny Paul Koroma. The plot was penetrated in advance, with the local police keeping us informed. The plotters (including Johnny Paul himself) were arrested. Johnny Paul "escaped", and has been at large ever since.

²² The amount was 220 centimeters; the reference to London came from an awe-struck diplomat at the British High Commission here in Freetown.

transported immediately to their place of detention, again without incident, is mute testimony to the professionalism and dedication of all involved.

What I have done today, actually, is a poor attempt to convey what the first year has been like for the Special Court for Sierra Leone.

What I have not yet done, but will close with, is to explain why we are here, why we stay here, and why we will be here until this task is accomplished.

The standard of excellence, and eloquence, in international war crimes tribunals was set by Mr. Justice Robert Jackson of the United States Supreme Court in his opening address to the Nuremberg trials in 1945. His statement has long been examined and revered for its content. The most common quotation, I believe, is:

The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to reason.²³

Justice Jackson was correct on only one count. The “tribute of Power to reason” is unquestioned and the foundation of modern war crimes jurisprudence. The ability of civilization to survive the horror of Nazism (which gave the world the term “genocide”), the Cambodian killing fields, the shame of the Balkans (which gave the world the chillingly innocent term “ethnic cleansing”), and the wholesale slaughter in the African Great Lakes region, is sadly proven. Sierra Leone could be but one more chapter in what seems to be an ever-descending spiral of human depravity.

Towards the close of his opening statement, Justice Jackson delivered a challenge that echoes through the decades from the Palace of Justice, to the *ad hoc* tribunals for the former Yugoslavia and for Rwanda, and to the seat of the Special Court:

Civilization asks whether law is so laggard as to be utterly helpless to deal with crimes of this magnitude by criminals of this order of importance.²⁴

²³ TAYLOR, *supra* 16, at 167.

²⁴ *Id.* at 171.

The magnitude of the crimes is almost unparalleled. The Nazis fought for racial domination and economic power for Germany. The Cambodians fought in the name of Communism. The Balkan states warred over ethnicity, while the Great Lakes conflict was tribal warfare at its most brutal. In Sierra Leone, the root of the conflict was money and power. Sierra Leone did not make war on its neighbors (although Charles Taylor, as president of Liberia, threatened war on Sierra Leone and delivered with calculated violence). The warring parties did not seek power, in order that they might rule. They sought money for their own personal gain, and they performed acts of murder, of rape, of mutilation, and of cannibalism to obtain their ends.

The criminals were the leading citizens of this sub-region, among them the president of Liberia; the various rulers of Sierra Leone, as well as governmental ministers; and the thousands of lesser lights who followed the path of their leaders. The criminals were aided and abetted by "businessmen" who marketed the diamonds and provided the arms and ammunition to ensure that the flow of diamonds, timber, and other valuable commodities continued unabated.

Perhaps never before in the history of the modern world have so many suffered so much so that so few could profit so richly.

Scholars and defense counsel will debate whether the international criminal law has developed to the point where a seated head of state may be indicted and tried for alleged war crimes. At a simplistic level, the first portion of that question has now been answered: Charles Taylor *is* indicted. That indictment will stand forevermore, unless and until it is lifted by the Prosecutor – the only person on Earth with the power so to do. Having served with the Prosecutor closely, I believe the odds of that indictment being lifted are infinitesimally small. Mr. Taylor will go to his grave as an indicted war criminal. The only means available to lift the indictment is to appear before the Court and contest the allegations.

Debate about the power of the Court to indict a sitting head of state is now moot. It *has* been done. Whether the Court has the power to enforce its indictment is a different inquiry, one which I, among others, will watch with interest.²⁵

But, the larger question posed by Jackson, remains: is the law moribund? Or has it the power, the flexibility, the creativity, and the

²⁵ Mr. Taylor apparently believes that the Court has at least some power; on July 23, 2003 his retained attorney filed with the Special Court notice of representation, as well as a motion to quash the indictment on the grounds that Mr. Taylor enjoys absolute immunity by virtue of his position as President of Liberia. Interestingly, the motion makes its request while simultaneously asserting that the Court has no jurisdiction over Mr. Taylor, and that the motion does not concede jurisdiction. It will be interesting to see how the Court deals with a petition for relief filed by an individual who claims to be beyond the Court's power to extend relief.

courage to deal with unspeakable crimes, committed not for political power but for personal economic aggrandizement, in defense of the maimed, the mute, and the dead?

Time will tell. The answer will say much about the future of Sierra Leone and of West Africa, and perhaps of civilization as a whole. Justice Jackson believed that civilization could not survive repeated war crimes. In that, he was incorrect, as history has sadly shown. Justice Jackson also believed that the law is dynamic, adaptable, capable of changing to different circumstances, and indeed obliged so to do. Were it otherwise, the ends for which the law was created, the peaceful resolution of disputes and the peaceful ordering of man's relations with other men would be utterly frustrated.

I, for one, believe that in the latter case Justice Jackson is correct. I believe that the Court will show that as men attempt to place themselves beyond its reach, the law adapts to bring them back within its grasp. With apologies to Cecil B. DeMille and his comments on the *Ten Commandments*,²⁶ I believe that man does not break the law, he merely breaks himself upon it.

And I believe that, no matter what the individual results of the trials yet to be conducted by the Special Court may be, the very fact that men have been indicted and held to account for their actions will result in a positive change for Sierra Leone. I see signs of change every time I leave Sea View house. In a country in which consumer banking is rudimentary in those few areas where it exists at all, I see the spirit of the entrepreneur. I see buildings, modest, to be sure, but permanent buildings nevertheless being built largely through manual labor. I see new businesses springing up, almost all of them sole proprietorships and small shops, but they are testimony to the faith of the people that things will get better. Capital that once was held to provide the means to finance an escape is now being invested in the country.

I am both humbled and grateful to have had a part, however small, in giving the people of this spectacularly beautiful country a voice, and hope, that reason may once again control, and limit, the power that, unchecked, has wreaked such havoc in West Africa.

²⁶ While commenting on the principles in his film, *The Ten Commandments*, Director, Cecil B. DeMille, asserted, "It is impossible for us to break the law. We can only break ourselves against the law."

