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Justice Bankole Thompson

Universal Jurisdiction: The Sierra Leone Profile



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*Dedicated to my beloved wife,
Dr. Adiatu A. Thompson. In the words
of William Shakespeare:*

*“... Love is not love
Which alters when it alteration finds,
Or bends with the remover to remove:
O no; it is an ever-fixed mark,
That looks on tempest, and is never shaken;”*

Foreword

In the series of consultations on the establishment of the Special Court for Sierra Leone, which emerged as the first hybrid international war tribunal in the world—and notwithstanding, at that particular point in time, the dysfunctional state of the country's court system as a result of the 10-year rebel war—due account was taken of the essential role that the country's criminal law was to play in the jurisdictional architecture and operation of the Special Court. The inclusion in the Statute of the power to prosecute persons who bore the greatest responsibility not only for serious violations of international humanitarian law, but also for crimes under Sierra Leonean law, attests to this acknowledgement. In this regard, it should be noted that Professor Thompson provides a thorough and detailed description of Sierra Leone's legal system—a description that is relevant and absolutely necessary in embarking on the formidable task of writing this book about universal jurisdiction in Sierra Leone.

Accordingly, he should be commended for his scholarship. In the absence of any published scholarly work on the subject in Sierra Leone, his book is a groundbreaking masterpiece on the concept and practice of universal jurisdiction and domestic law in the country. Much has been written about the contribution of Sierra Leone to the progressive development and application of international criminal law, especially in its pioneering role through the Special Court. This book brings into focus another perspective of Sierra Leone's place in the current discourse on the development and practice of international law. The author skillfully employs his knowledge and experience as a legal practitioner of high repute, as an academic with an exemplary mentoring record, and as an eminent international jurist, whose consistent dedication to the maintenance of the integrity and independence of the Sierra Leone judiciary is unparalleled, to produce a scholarly work on the jurisdictional status of international law and the national law of a state. He examines the law and practice governing the principle of universal jurisdiction and the extent to which it is applicable with the municipal law system of Sierra Leone. In the process, he sheds further light on the interrelationship between international law and municipal law in the context of the situation in Sierra Leone.

In the description of the status of Sierra Leone's legal system, the book highlights details of the highly organized structure of the system and its judiciary—facts that have been overshadowed by *inter alia* pre- and post-war imperatives. Against the positive profile, the author scrupulously and objectively identifies the shortcomings, gaps and deficiencies in the country's system that need attention or remedial action.

Here, I believe, lie two related, overarching benefits of this work: (1) its advocacy for law reform, specifically of those laws governing the exercise of universal jurisdiction in Sierra Leone, which may involve a process of modernization, simplification, adaptation, re-designing and even, where appropriate, of codification, ensuring that the outcome is compatible or consistent with international norms and standards; and (2) its proposals for a number of specific implementable or viable goals and objectives for such reform.

Professor Thompson rightly acknowledges the complexity of the book's subject and describes its intricate conceptual underpinnings. He evidently recognizes and makes references to elements that could not be divorced from practical applications of universal jurisdiction and other concepts associated with it. This brings to mind, for instance, the question of the relationship between the application of universal jurisdiction and the principle of *aut dedere aut judicare*. Thompson effectively prods one to consider, for reasons which he clearly enunciates, whether Sierra Leone may be fulfilling its obligation as embodied in the principle to extradite and prosecute.

This book should be considered an articulation of the emerging international consensus that the legitimacy and credibility of the use of universal jurisdiction are best ensured by its responsible and judicious application consistent with international law.

The book is also timely. It is an important contribution to ongoing multi-lateral discussions on the scope and application of the principle of universal jurisdiction, especially criminal justice and efforts to combat impunity. Although preliminary, Professor Thompson's observations on the law governing universal jurisdiction in civil matters with reference to Sierra Leone could also be considered in these discussions. After several years and reports containing comments and observations of governments and relevant observers, the discussions are entering a new phase. A working group is expected to undertake a thorough discussion of the scope and application of the concept, without prejudice to its consideration and related issues in other forums.

I am honoured to write the foreword of this seminal work, which will undoubtedly add to our knowledge of the scholarly relevance and judicial efficacy of the concept, and perhaps more importantly benefit Sierra Leone and other countries with a similar legal profile and jurisprudence, through the specific recommendations that Professor Thompson offers in his reform agenda.

Sylvester Ekundayo Rowe
Former Ambassador of Sierra Leone to the United Nations
Former Visiting Professor, Long Island University, New York, and
one of the negotiators/drafters of the 1999 Lome Peace Agreement
between the Government of Sierra Leone and the RUF rebels

Preface

The concept of universal jurisdiction has evolved throughout modern times in the context of the quest for a viable and effective global criminal justice mechanism, capable of combating gross and widespread violations of human rights. Clearly, it is a key subject of doctrinal significance for international law scholars and practitioners, but its importance does not depend solely on the academic context. Of tremendous significance, too, are the all-encompassing practical facets and dimensions as an effective principle of accountability on the part of states and other public actors for egregious violations of international humanitarian law, human rights law and international criminal law. These are two general and compelling reasons for writing this book.

But a more specific and equally strong motivation for doing so is the lack of any scholarly work on the subject with regard to the law and practice in the West African State of Sierra Leone (a member of the international community and the United Nations) and a pioneer in the progressive application and development of international criminal law in the African Region. Despite this role, the country's profile leaves open the possibility of its municipal law system being exploited or manipulated, both in terms of incorporation and application of the doctrine of universal jurisdiction, by the use of legal technicalities to provide safe havens from justice for perpetrators of international crimes. Hence, a further compelling reason for writing this book is to provide a seminal scholarly work on the subject with useful insights on the existing state of the law in that country, paying particular attention to the defects in the law that help to inhibit the exercise of universal jurisdiction. A related objective is to propose necessary substantive and procedural reforms in the State's jurisprudence on the subject.

It is important to highlight these challenges since they illuminate the unique features of this work. First, writing a seminal book on a complex subject as universal jurisdiction, with its intricate conceptual underpinnings as the *jus cogens* and *obligatio erga omnes*, is a formidable scholarly task. Second, attempting to present a systematic account of the law of a developing nation—dominated by inherited legal concepts and doctrines imposed by colonial rule and compounded by the lack of settled and authoritative jurisprudence on the subject—is extremely

intellectually daunting. Third, on such an arcane area of international law, the problems confronting a research scholar in determining the existing state of the law are tremendous. Of significance, too, are such factors as the inaccessibility, uncertainty and lack of systematic arrangement of legislation and policies on the subject of universal jurisdiction.

Presently, there is no published scholarly work on the subject of universal jurisdiction in Sierra Leone. The only relevant study on the subject is that entitled “Sierra Leone, End Impunity Through Universal Jurisdiction”, a report published by Amnesty International in 2012, researched and drafted by Aminta Ossom, a 2009 J.D. graduate of Harvard Law School and a Satter Fellow of the Harvard Human Rights Programme under the supervision of the International Justice Project in the International Secretariat of Amnesty International. In my capacity as a Criminal Justice Professor and formerly a Judge of the High Court of Sierra Leone and also of the United Nations-backed Special Court for Sierra Leone, I served as legal expert to the project and offered, as acknowledged by Amnesty International, “thoughtful and helpful comments on the current state of Sierra Leonean law during the drafting stage” of the report. Although the report is extremely useful as a general source material, its major limitation is that it does not purport to be a scholarly treatise intended for academic and professional target audiences or an analytical presentation of the law on the subject. In effect, it only covers the key aspects of the subject in the form of a digest. However, much reliance has been placed upon the report as a major source for the exposition on the existing Sierra Leone law on the subject.

This book is about the law and practices governing the doctrine of universal jurisdiction and the extent to which it is applicable within the municipal law system of the West African State of Sierra Leone. Although Sierra Leone has been a pioneer in Africa concerning the progressive application and development of international law—as manifested by the mandate, work and legacy of the Special Court for Sierra Leone, an international war crimes tribunal—it has also been deficient in the processes of incorporation and application of international treaties, agreements and norms within its municipal law system. Generally, the book is written with these readerships in mind: jurists and scholars in international law, practitioners of international criminal law, law professors, graduate and undergraduate students taking courses in international law, attorneys specializing in the practice of international law, legislators, diplomats, international law institutes, non-governmental organisations, human rights’ agencies, and law enforcement professionals, and other stakeholders in the progressive development and practice of international law, international criminal law, international humanitarian law and international human rights law. In effect, the book will serve as invaluable resource material for the targeted readerships, especially at this stage in the intensification of the global advocacy for an end to impunity through universal jurisdiction, which is being championed by human rights organisations like Amnesty International and Human Rights Watch. The book will be a major contribution to knowledge and a very useful addition to the libraries of universities worldwide that offer courses in various branches of international law.

Thematically, the book begins with an overview of the sources of international law, followed by a discussion of the relationship between international law and municipal law. Next is an analysis of the process of incorporation of international law within the municipal law system of Sierra Leone. Further, a detailed description of the legal system of Sierra Leone is provided. Additionally, the author undertakes a comprehensive analysis of jurisdiction as a legal concept. An equally exhaustive analysis of the concept of universal jurisdiction is embarked upon. In the subsequent four chapters, the author explores the existing state of the law in Sierra Leone, providing for the exercise and application of universal jurisdiction in criminal and civil proceedings, including a comprehensive diagnostic examination of the law's inadequacies and deficiencies. The book concludes with a case for substantive and procedural reforms.

The Hague, The Netherlands, 2014

Justice Bankole Thompson
c/o Residual Special Court
for Sierra Leone

Acknowledgments

This book is the culmination of an absorbing combined judicial and academic interest in the concept of universal jurisdiction, which can serve as an effective deterrent against impunity for international crimes. Specifically, the motivation to write the book derived from the judicial and academic inputs provided by the author to Amnesty International during a research study on the subject conducted by Dr. Aminta Ossom of Harvard Law School and Satter Fellow of the Harvard Human Rights Programme under the supervision of the International Justice Project in the International Secretariat of Amnesty International. The study revolved around the existing law governing universal jurisdiction in Sierra Leone from the perspective of that country's vulnerability to becoming a safe haven for fugitives from international criminal justice. Accordingly, I owe Amnesty International an unrequited debt of gratitude for the intellectual inspiration behind the present study.

In a philosophical sense, the law governing universal jurisdiction can be generally characterized as arcane and esoteric, reflecting, in terminology reminiscent of Blackstone, international law's juridical mysticism. The law is dominated by such key concepts as *jus cogens*, *obligatio erga omnes*, and *aut dedere aut judicare*. For the academic and professional perspicacity in appreciating the jurisprudential intricacies and nuances of international law as a global regulatory mechanism, I acknowledge my indebtedness to those professors and tutors who mentored me in the law, both at the University of Cambridge and the Council of Legal Education in London. A similar debt of gratitude is owed to those jurists, legal scholars, judges and commentators from whose writings I have derived much inspiration and wisdom in grappling with the subject.

Without the tremendous assistance of certain individuals and institutions, this work would not have come to fruition. In this regard, I put on record my profound gratitude to the College of Justice Studies at Eastern Kentucky University, my former academic institution, for their academic, professional and budgetary support. This contributed immensely to the successful outcome of the project. In this context, I am particularly grateful to Dr. Victor Kappeler, Associate Dean of the College of Justice and Safety, Dr. Tom Reed, Professor Emeritus, Dr. Pete Kraska,

Chair of the Division of Graduate Studies, and Dr. Preston Elrod, Chair of the Division of Undergraduate Studies, College of Justice Studies and other former academic colleagues in the aforesaid College for their encouragement and enthusiastic support. Professor Shawn White of the English Department at Eastern Kentucky University did an excellent job both editorially and in initially formatting the book; I owe him, too, an unrequited debt of gratitude. I likewise express my gratitude to the Director and Publisher of T.M.C. Press, Mr. Phillip van Tongeren, and his very dedicated staff for their advice, directions, guidance and support for the project.

Further, I wish to express profound appreciation to members of my family, especially my wife, sons and daughters for the various ways in which they either provided motivation for or contributed to the completion of the project. Christiana helped with the typing of the manuscript. Anita assisted with correcting it; she also did the preliminary formatting. Annette helped with corrections. Florizella gave me moral support. It is imperative to mention that the project would not have come to fruition without the unflinching spousal encouragement of my wife, Dr. Adiatu Thompson. Hence, the intuition to dedicate the work to her. Her love and companionship have always been an invaluable reservoir of inspiration and strength to me.

Finally, this study has made extensive use of judicial decisions from different jurisdictions. In the book, I credited the reports with the publication of these case-law authorities. In so far as copyright permissions are concerned, I thank all those authors and publishers—including Amnesty International Publications Secretariat, T.M.C. Asser Press, University Press of America, CRC Press, and New York Press—on whose writings I have relied for analyses, explanations and clarifications of complex legal concepts and doctrines, for the courtesy of their permission.

I also take the opportunity of expressing much gratitude to Dr. Sylvester Rowe for writing the Foreword to the book and to Dr. Gerhard Werle of Berlin University for his support for the project.

I accept full responsibility for any imperfections or shortcomings the work might exhibit.

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