

**Introductory Remarks by
Ms. Patricia O'Brien
Under-Secretary-General for Legal Affairs
The Legal Counsel**

**The Special Court for Sierra Leone
Legacy Conference**

7 November 2012 (9.00 am)

Excellencies, Ladies and Gentlemen,

It is a pleasure to be here today to take part in this most important conference ten years after the establishment of the Special Court for Sierra Leone ("Special Court") to discuss how best to assure its lasting legacy. The need to uphold justice and insist upon accountability for the people of Sierra Leone remains as much an imperative today and into the future as it did ten years ago. The Special Court, of course, forms one of the series of international criminal courts that have been established since the early 1990s, and has contributed to what the Secretary-General has hailed as an "age of accountability". He has made the fight against impunity one of the cornerstones of his time in office, and he follows the work of the Special Court closely, as do I.

I would like to congratulate the ICTJ for putting together an excellent programme, with its focus on "understanding and assuring the sustainability of the Special Court's impact ten years after its establishment". To bring this

conference together, and with such an excellent array of speakers and panelists, so soon after the havoc wrought by the hurricane last week is a remarkable feat of determination and dedication. Unfortunately, I will not be able to remain for the various expert sessions, but I wish you all well in your discussions over the next two days.

In 2002, the Special Court represented a new model of international criminal justice. It was envisaged as a cost-effective and more efficient court than its predecessors, the International Criminal Tribunals for the former Yugoslavia and Rwanda (the "ICTY" and the "ICTR"). Basing the SCSL on voluntary funding, and placing it under the supervision of a Management Committee comprising representatives of Sierra Leone and the key donor States, was considered by those States to offer a prospect of strong fiscal management and administrative guidance. Unlike the ICTY and the ICTR, it was established with its Seat in Sierra Leone, the country where the crimes took place. These innovations were intended to mark a new era of efficiency and cost-effectiveness, and to enable the Special Court to have the maximum impact on the restoration of peace, security and the rule of law in Sierra Leone.

The SCSL has indeed had successes, and has made a significant impact on the development of international criminal law. The Special Court issued the first judgment of an international tribunal recognising forced marriage as a crime against humanity and sexual violence as a form of terrorism. This jurisprudence is also reflected in the Special Court's excellent and extensive outreach programme, which ensures that the voices of women and children, so often victims of conflict, are heard in the courtroom.

The impact of the jurisprudence of the SCSL can be seen in the broader landscape of international criminal justice. Its case law on the enlistment, recruitment and use of child soldiers – again a first by an

international criminal tribunal – has been acknowledged and developed by the International Criminal Court in the *Lubanga* judgment.

The Special Court is also the first to have prosecuted attacks against United Nations peacekeepers. Although, as the Trial Chamber noted, the prohibition on attacks against peacekeepers set out in the Statute of the Special Court was not a new crime, its elaboration marked an important development of the “general and fundamental prohibition in international humanitarian law against attacks on civilians and civilian objects”.

In its prosecution of the *Taylor* case, the Special Court has reaffirmed the principle of accountability of all individuals, including those most senior and most responsible. The conviction of Mr. Taylor – the first conviction of a former Head of State by an international criminal tribunal since Nuremberg – sends a clear message that no one is above the law, and that impunity will not be tolerated.

The jurisprudence of the Special Court for Sierra Leone, together with that of the ICTY and ICTR, has contributed to the development over the last twenty years of a remarkable body of international criminal law. It is already clear that this foundation will play a vital role in the future in ensuring accountability for those responsible for the most serious international crimes.

Turning now to completion and residual issues, it seems clear that the Special Court will be the first of the various criminal tribunals to complete its mandate. I understand that the appeal in the Taylor case is scheduled to be finished by around September 2013, and that the Residual Special Court for Sierra Leone (“Residual Special Court”) will then commence functioning upon closure of the Special Court. In this sense, it may be the first truly “free-standing” residual mechanism.

By contrast, the Residual Mechanism for the ICTY and ICTR established in July this year co-exists with the two Tribunals, and shares administrative services with them. As we approach the completion of the Special Court's mandate, therefore, I believe that one of the key considerations of administrative efficiency will be whether the Residual Special Court could similarly share premises and an administrative hub with an existing institution, such as the ICTY or the Hague branch of the Residual Mechanism. No doubt this, and other such important questions, will be looked at in the course of your two days of deliberations.

Finally, I must turn to the subject of financing. One thing that has become abundantly clear to me during the course of my time as the Legal Counsel is that the former Secretary-General and Legal Counsel were right to question the sustainability of voluntary funding as a basis for the financing of criminal tribunals. The Special Court has already received two subventions from the General Assembly in recent years to make up financing shortfalls, and I understand that a third subvention will now be requested to take the Special Court to completion and through the transition to the Residual Special Court. My Office is also engaged on a daily basis with the financial crisis facing the Extraordinary Chambers in the Courts of Cambodia, which are also financed through voluntary contributions.

It is increasingly clear in these difficult economic times that the UN-supported criminal tribunals need a more stable and predictable source of financing. Financial insecurity affects every aspect of a tribunal's work, hinders sound forward-looking management, and undermines staff morale and retention. Whilst the drive from donors for tight budgets and efficiency is understandable, there may be a tendency to regard a small budget as by definition an efficient budget. Experience from the ECCC context over the last few months, on the other hand, has taught us that under-staffed chambers in a court are not necessarily efficient chambers. This drive toward what the late Judge Cassese described as "shoestring justice" can in

fact add to the length of proceedings and therefore the costs – two of the pitfalls which the founders of the Special Court set out to avoid by designing it on lines markedly different from the ICTY and the ICTR.

In your deliberations over the next two days, I would urge you to look closely at all of the various factors that will impact upon the ability of the Special Court and the Residual Special Court to continue to enhance peace, security and the rule of law in Sierra Leone. These have been well identified by the organisers of today's conference in the topics to be considered in each of the panel sessions. I wish you all well in your deliberations

Thank you.