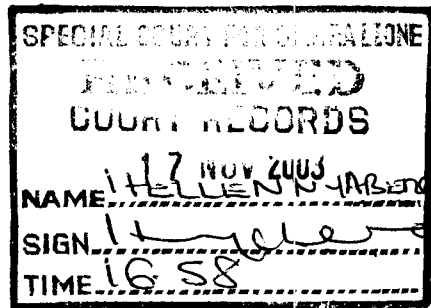


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CURRENT LEGAL DEVELOPMENTS

The Special Court for Sierra Leone: An Initial Comment

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Keywords: crimes against humanity; international humanitarian law; Special Court for Sierra Leone; violations of the Geneva Conventions; war crimes.

Abstract. The proposed establishment of the Special Court for Sierra Leone is a valiant effort to end impunity for the egregious crimes that were committed during the Sierra Leonean civil war. Nonetheless, the Special Court – which will have jurisdiction over crimes against humanity, war crimes, and various offences under Sierra Leonean national law – will have a number of major hurdles to cross in order to fulfill its mandate. Most notably the Court as currently empowered lacks the ability to induce the authorities of third states to comply with its orders and has limited temporal jurisdiction: thereby allowing a number of accused to escape justice. More alarmingly the on-going discussions within United Nations Headquarters concerning the financing of the organisation has substantially eroded the credibility of the institution, especially as large numbers of potential accused have been languishing in jail for significant periods without being formally charged.

1. INTRODUCTION

On 6 January 1999, rebels from the Revolutionary United Front ('RUF') launched an offensive against Freetown, the capital of Sierra Leone. A three-week battle ensued with government troops and the soldiers of the Nigerian-led peace-keeping force from the Economic Community of West African States Monitoring Group ('ECOMOG').¹ As the rebels took control of the capital, they turned their weapons on the civilian population. According to human rights observers "the rebel occupation of Freetown was characterised by the systematic and widespread perpetration of all classes of gross human rights abuses against the civilian pop-

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The authors would like to thank Helen Duffy for providing valuable observations on the draft Statute of the Special Court that were incorporated into this commentary. The views expressed herein are those of the authors alone and do not necessarily reflect the views of the United Nations or the ICTY.

1. ECOMOG forces have maintained a presence in Sierra Leone, at the invitation of the Government, since 1991 when hostilities between the RUF and government forces commenced. Human Rights Watch, *Sierra Leone: Getting Away with Murder, Mutilation and Rape*, July 1999 (hereinafter 'Human Rights Watch'), available at <http://www.hrw.org/hrw/reports/1999/sierra/index.htm>.

ulation. Civilians were gunned down within their houses, rounded up and massacred on the streets, thrown from the upper floors of buildings, used as human shields and burned alive in cars and houses."² Moreover, as the ECOMOG forces counter-attacked and the RUF retreated through the capital, the rebels abducted hundreds of people, mostly children and young women.

In an attempt to end impunity for the horrendous crimes that were committed during the civil war, the United Nations and the Government of Sierra Leone are on the verge of establishing an independent special court ('the Special Court') to prosecute those most responsible for the atrocities. Characterised in essence as a national court with a large involvement, the Special Court differs in a number of areas from the International Criminal Tribunal for the former Yugoslavia ('ICTY') and the International Criminal Tribunal for Rwanda ('ICTR') (hereinafter 'the *ad hoc* Tribunals'). Instead of being comprised solely of international judges, the Special Court will be made up of both international and Sierra Leone judges. In addition to having subject-matter jurisdiction over those crimes that are beyond doubt part of international humanitarian law, the Special Court will have the authority to prosecute individuals for certain crimes under Sierra Leonean law. Finally, and most importantly, since it will be a treaty-based, *sui generis* court established by an agreement between the United Nations and Sierra Leone, the Special Court will lack the power of the *ad hoc* Tribunals to assert primacy over national courts of third states and to order the surrender of accused persons located therein.

Given its importance to the continued development of international humanitarian law, this commentary – after reviewing the events that led to its establishment – examines the nature and specificity of the Special Court as well as the crimes over which it has jurisdiction. The commentary will then look at the organisational structure of the Special Court and explore the practical difficulties that it may face in order to bring to justice the perpetrators of some of the most heinous crimes that have been committed on the African continent during the last decade. In this connection, it should be noted that these comments are limited in scope and nature, without any detailed insight into the undoubtedly complex negotiations that underlie the agreement reached between the Government of Sierra Leone and the United Nations.

2. BACKGROUND

On 23 March 1991, the RUF, under the leadership of Foday Sankoh, entered Sierra Leone from Liberia and launched a rebellion to overthrow

2. *Id.* For a more complete description of the atrocities that followed the occupation of Freetown, see Fifth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone, UN Doc. S/1999/237 (4 March 1999), at paras. 20–30.

the one-party military rule of the All Peoples Congress, whom it accused of rampant corruption, nepotism and fiscal mismanagement.³ After successive military coups, the fighting briefly subsided following the election of Ahmad Tejan Kabbah, head of the Sierra Leone People's Party. On 30 November 1996, the Kabbah government and the RUF signed the Abijan Peace Agreement, which called for a cease-fire, disarmament, demobilisation and the withdrawal of all foreign forces.⁴ Only two months after its signing, however, the Peace Agreement collapsed after intense fighting broke out in the southern Moyamba district.

On 25 May 1997, fourteen months after assuming power, President Kabbah was overthrown by a *coup d'état* orchestrated by a group of disgruntled military officers, the Armed Forces Revolutionary Council ('AFRC').⁵ Upon taking power, the AFRC suspended the constitution, banned political parties, announced rule by military decree and – given their mutual opposition to the President – invited the RUF to join them in the new government. The period which ensued was characterised by political repression, including, in particular, arbitrary arrests and detention, mass rape and abduction of women, forced recruitment of children and summary executions.

The international community widely condemned the coup and in October 1997, the UN Security Council adopted a resolution imposing mandatory sanctions on Sierra Leone, including an embargo on arms and oil imports.⁶ On 23 October 1997, after intense negotiations, the Kabbah government-in-exile signed an agreement with the AFRC/RUF, providing for the return to power of President Kabbah by April 1998. However, in February 1998 – after the AFRC/RUF undermined the implementation of the accord by stockpiling weapons and attacking ECOMOG positions – ECOMOG forces and civilian militias launched an operation to force the AFRC/RUF forces from Freetown. In March 1998, President Kabbah was reinstated and over the next few months ECOMOG forces were able to establish control over roughly two-thirds of the country including all regional capitals.⁷

Having been expelled from the capital, the rebels tried to consolidate

3. Despite the fact that Sierra Leone is extremely resource-rich, with large deposits of diamonds, gold, rutile and bauxite, it is estimated to be one of the poorest countries in the world. Human Rights Watch, *id.* For an examination of the RUF, see I. Abdullah & P. Muana, *The Revolutionary United Front of Sierra Leone*, in C. Clapham (Ed.), *African Guerrillas* 173 (Oxford: James Currey, 1998).
4. See Report of the Secretary-General on Sierra Leone, UN Doc. S/1997/80 (1997) (21 October 1997).
5. The AFRC, which was led by army major Johnny Paul Koroma, cited the Government's failure to implement the Abijan Peace Agreement as the reason for the coup. Human Rights Watch, *supra* note 1.
6. Security Council Res. 1132, UN Doc. S/RES/1132 (1997) (8 October 1997). The AFRC/RUF alliance was able to evade the ban, however, by purchasing arms through the illegal diamond trade. See S. Dickey, *Sierra Leone: Diamond for Arms*, 7 Hum. Rts. Br. 9 (2000).
7. Human Rights Watch, *supra* note 1.

their position in other parts of the country and through a series of counter-offensives managed to gain control of the diamond-rich Kono district and several other strategic areas. By the end of 1998, the rebels had gained the advantage militarily and were in control of over half of the country. It was from these positions that the RUF launched its January 1999 attack on Freetown.⁸

Following the retreat of the RUF from the capital, efforts were made once again to secure a negotiated peace to the conflict. After several months of dialogue, on 18 May 1999 the Sierra Leonean Government and the RUF entered into a cease-fire and on 7 July 1999 signed the Lomé Peace Agreement. Under the agreement, there was to be a permanent cessation of hostilities, a complete amnesty for any crimes committed by the members of the fighting factions during the conflict, disarmament, demobilisation and release of all prisoners and abductees.⁹

Although it initially respected the terms of the peace agreement, by October 1999 widespread reports were surfacing of RUF rebels looting villages, burning houses, sexually assaulting women and young girls and abducting children. On 22 October 1999, the UN Security Council approved the UN Mission in Sierra Leone ('UNAMSIL').¹⁰ The operation authorised the deployment of an initial peace-keeping force of 6,000 entrusted with the tasks of assisting the disarmament and demobilisation process, ensuring the security of UN civilian personnel, aiding the delivery of humanitarian aid and providing support for new elections.¹¹ However, the presence of the peace-keeping force did not deter the commission of human rights abuse, which continued virtually unabated. Soon after taking over 500 poorly equipped peace-keepers hostage at the beginning of May 2000,¹² the RUF began an offensive on the Masiaka region. Although heavy reinforcements by the United Nations and British troops – who were deployed early in May 2000 – repulsed the attack, during the week-long occupation of the area, the RUF committed various acts of murder, mutilation, rape, looting and abduction against the civilian population.¹³ At the time of writing, although Foday Sankoh and several hundred of his supporters have been taken into custody and the RUF has entered into a

8. *Id.*

9. *Peace agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone*, UN Doc. S/1999/777, Annex; also available at <http://www.sierra-leone.org/lomeaccord.html> (hereinafter 'Lomé Peace Agreement').

10. Security Council Res. 1270, UN Doc. S/RES/1270 (1999) (22 October 1999).

11. *Id.*

12. For a description of the attacks on and detention of United Nations personnel, see Fourth Report of the Secretary-General on the United Nations Mission in Sierra Leone, UN Doc. S/2000/455 (19 May 2000), at paras. 56–79.

13. See Human Rights Watch, *Fresh Reports of RUF Terror Tactics*, 26 May 2000, available at <http://www.hrw.org/press/2000/05/s10526.htm>.

cease-fire agreement with the Government,¹⁴ an uneasy peace lies over Sierra Leone: the possibility of continued violence being ever present.

3. ESTABLISHMENT OF THE SPECIAL COURT

In order to end the cycle of violence and commence the process of national reconciliation, in a letter to the Secretary-General of the United Nations dated 1 June 2000 President Kabbah requested the establishment of an international court.¹⁵ This request was essentially denied. Instead, on 14 August 2000, the UN Security Council – deeply concerned by the systematic and widespread violations of international humanitarian law that were being committed in Sierra Leone – requested the Secretary-General to negotiate an agreement with the Sierra Leonean Government to create an independent special court to prosecute persons who bear the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant domestic law committed within the territory of Sierra Leone.¹⁶ By the terms of Resolution 1315 (2000), the Security Council further requested that the Secretary-General submit a report on the implementation of the Resolution, and particularly the legal framework and practical arrangements for the establishment of the Special Court.¹⁷ This report was submitted to the Security Council on 4 October 2000;¹⁸ attached to it was a draft Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone¹⁹ and the Statute of the Special Court.²⁰

14. The Abuja cease-fire agreement, which was signed on 10 November 2000, provided for a monitoring role for UNAMSIL; full liberty for the United Nations to deploy throughout the country; unimpeded movement of humanitarian workers, goods and people throughout the country; the return of UNAMSIL weapons and other equipment seized by the RUF; and the immediate resumption of the programme of disarmament, demobilisation and reintegration. See Eighth Report of the Secretary-General on the United Nations Mission in Sierra Leone, UN Doc. S/2000/1199 (15 December 2000) (hereinafter 'Eighth Secretary-General's Report').

15. See Letter from the President of Sierra Leone to the Secretary-General, UN Doc. S/2000/786 (12 June 2000).

16. Security Council Res. 1315, UN Doc. S/RES/1315 (2000) (14 August 2000).

17. *Id.*

18. Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, UN Doc. S/2000/915 (4 October 2000) (hereinafter 'Secretary-General's Report').

19. *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, annex to Secretary-General's Report, 4 October 2000 (hereinafter 'Agreement').

20. *Statute of the Special Court for Sierra Leone*, enclosure to Secretary-General's Report, 4 October 2000 (hereinafter 'Statute').

4. REPORT OF THE SECRETARY-GENERAL

4.1. Nature and specificity of the Special Court

In his report, the Secretary-General noted that unlike the *ad hoc* Tribunals, which were established by resolutions of the UN Security Council (under the powers vested to it by Chapter VII of the UN Charter) and constituted as subsidiary organs of the United Nations, the Special Court as envisioned by the Council will be a treaty-based court established by the Agreement between the United Nations and the Government of Sierra Leone.²¹ An advantage of this approach is that, having been created in this way, the Court should be able to deflect prospective jurisdictional challenges based on the contention that it was not "established by law" as required by international human rights standards.²² It should be recalled, in this connection, that in the *Tadić* case the question arose as to whether the ICTY was "established in accordance with the appropriate procedures under the United Nations Charter" and whether, "in accordance with the proper international standards," it provided "all the guarantees of fairness, justice and even-handedness, in full conformity with internationally recognised human rights instruments."²³ Although these questions were ultimately answered in the affirmative, considerable delays resulted whilst the ICTY Appeals Chamber dispensed with this matter.

The legal nature of the Special Court, however, will also have a critical impact on its powers. Since its establishment was not intended to preclude the exercise of jurisdiction of national courts in the prosecution of persons who have committed atrocities during the Sierra Leone civil war, the Statute asserts that concurrent jurisdiction will exist between the Court and national courts to prosecute such persons.²⁴ Even so, to avoid complications arising from the principle of *non-bis-in-idem* (i.e., a person may not be tried twice for the same crime),²⁵ the Court shall have "primacy" over domestic prosecutions and may, therefore, request national Sierra Leonean courts to defer to its jurisdiction.²⁶

Nonetheless, as a treaty-based institution, the Court lacks the power to assert primacy over national courts in third states or to order the surrender

21. Secretary-General's Report, *supra* note 18, at para. 9.

22. See the International Covenant on Civil and Political Rights, Art. 14; European Convention on Human Rights, Art. 6. See also, e.g., *Prosecutor v. Tadić*, Appeal on Jurisdiction, Case No. IT-94-I-PT, T.Ch. II, 2 October 1995 ('*Tadić* Appeals Decision'), for an analysis of this decision see G.H. Aldrich, *Jurisdiction of the International Criminal Tribunal for the Former Yugoslavia*, 90 AJIL 64 (1996); *Prosecutor v. Kanyabashi*, Decision on the Defence Motion on Jurisdiction, Case No. ICTR-96-15-T, T.Ch. I, 18 June 1997, for an examination of this decision see V. Morris, *International Decisions: Prosecutor v. Kanyabashi*, *Decision on Jurisdiction*, 92 AJIL 66 (1997).

23. *Tadić* Appeals Decision, *id.*, at para. 45.

24. Statute, *supra* note 20, Art. 8(1).

25. *Id.*, Art. 9.

26. *Id.*, Art. 8(2).

of an accused or the production of documents from any third state and to induce the compliance of its authorities with any such request.²⁷ In the authors' opinion, given the nature and scope of the anticipated investigations and prosecutions, the practical impact of such a limitation may be considerable. Going on the experience of the *ad hoc* Tribunals, the co-operation of third states with the Court will be imperative, for example in the arrest and transfer of suspects, the provision of intelligence and other information, the freezing or seizure of assets and other forms of co-operation and assistance.²⁸ In the absence of powers deriving from Chapter VII of the UN Charter, co-operation with third states would have to be routed through *ad hoc* diplomatic channels or via the normal inter-state mechanisms for judicial assistance, a process which assumes the existence of treaties on judicial co-operation and is, to a large degree, cumbersome and lengthy. The absence of powers *vis-à-vis* third states can be considered, therefore, potentially serious.

A further difficulty that will have to be overcome with the approach taken by the Security Council concerns the relationship between the Special Court and the national judicial system. It is noted that in order to implement the Statute and the Agreement at the national level, these instruments will need to be incorporated into the national laws of Sierra Leone in accordance with constitutional requirements. Given that the Sierra Leonean Constitution provides that the Supreme Court is "the final court of appeal in and for Sierra Leone"²⁹ and that it was not the intention of the drafters of the Statute to have the Court under the supervision of this institution, substantial amendments will be required to entrenched provisions of the Constitution. Tejan-Cole observes these provisions cannot be amended unless they are passed by Parliament after first being approved at a referendum by a two-thirds majority.³⁰ Considering the precarious state of internal security within Sierra Leone and the fact that the RUF still controls a substantial part of the countryside, it is unlikely that such a referendum would be organised in the foreseeable future. In the absence of such a referendum, alternative ways will have to be found to incorporate the Special Court in the national legal system, but such alternative means will in all likelihood lack the same degree of legitimacy as the constitutionally required referendum and will thus always be a source of criticism.

4.2. Competence of the Special Court

In recognition of the principle of legality, in particular *nullem crimen sine lege*, and the prohibition on retroactive criminal legislation, the Secretary-

27. Secretary-General's Report, *supra* note 18, at para. 10.

28. See ICTY Statute, Art. 29; ICTR Statute, Art. 28.

29. Constitution of Sierra Leone, Sec. 122(1).

30. A. Tejan-Cole, *The Special Court for Sierra Leone: Conceptual Concerns and Alternatives*, 1 African Human Rights Law Journal 107, at 114 (2001).

General ensured that the Special Court had subject-matter jurisdiction only over those crimes which were beyond doubt part of customary international law at the time of the alleged commission of the crimes. Three clusters of crimes can therefore be prosecuted under the Statute: namely, crimes against humanity,³¹ war crimes³² and other serious violations of international humanitarian law.³³ By expressly including Article 3 common to the Geneva Conventions of 12 August 1949 and Additional Protocol II of 8 June 1977, the Secretary-General appears, however, to have prejudged the character of the conflict. In the view of the authors, it would have been more appropriate if the Secretary-General had adopted a formula granting the Court broader subject-matter jurisdiction, leaving the determination of the character of the armed conflict to the Judges.

On account of the lack of evidence that the massive, large-scale killing in Sierra Leone was at any time perpetrated against an identified national, ethnic, racial or religious group with the intent to annihilate the group as such, the Secretary-General did not consider it appropriate to include the crime of genocide in the list of international crimes falling within the jurisdiction of the Court.³⁴ However, upon the recommendation of the Security Council, the Secretary-General chose to extend the subject-matter jurisdiction of the Court to include crimes under Sierra Leonean law, including offences relating to the abuse and abduction of girls as well as the wanton destruction of property.³⁵ Despite notable differences in their subject-matter jurisdiction, the Special Court is expected to be guided by the decisions

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31. Crimes against humanity include widespread or systematic attacks against any civilian population resulting in the following crimes: murder, extermination, enslavement, deportation, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence. This also includes persecution on political, racial, ethnic or religious grounds and other inhumane acts. Statute, *supra* note 20, Art. 2.
 32. Violations of Art. 3 common to the Geneva Convention and of Additional Protocol II include violence to life, health and physical or mental well-being of persons (in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment), collective punishments, taking hostages, acts of terrorism, outrages upon personal dignity (in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault), pillage, passing of sentences and carrying out of executions without previous judgements pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples. Threats to commit any of these violations are also included. *Id.*, Art. 3.
 33. Serious violations of international humanitarian law include intentionally directing attacks against the civilian population, personnel, installations, material, units or vehicles involved in humanitarian assistance or peace-keeping missions. Abduction and forced recruitment of children under the age of fifteen years into armed forces or groups for the purpose of using them to participate actively in hostilities are also offences. *Id.*, Art. 4.
 34. Secretary-General's Report, *supra* note 18, at para. 13.
 35. The crimes under Sierra Leone law which are included within the Statute are: offences relating to the abuse of girls under the 1926 Prevention of Cruelty to Children Act (abuse of a girl under 13 years of age (Sec. 6), abuse of a girl between 13 and 14 years of age (Sec. 7) and abduction of a girl for immoral purposes (Sec. 12)) and the wanton destruction of property under the 1861 Malicious Damage Act (setting fire to dwelling-houses (Sec. 2), setting fire to public buildings (Secs. 5 and 6) and setting fire to other buildings (Sec. 6)). Statute, *supra* note 20, Art. 5.

of the Appeals Chambers of the *ad hoc* Tribunals, thus ensuring the uniform evolution of international humanitarian law.³⁶ Moreover, the Special Court must apply the Rules of Procedure and Evidence of the ICTR, although the judges have the authority to amend or adopt additional rules, where a specific situation is not provided for.³⁷

Although the Sierra Leone civil war and the attendant atrocities dated back to 1991, the Secretary-General concluded that imposing a temporal jurisdiction on the Special Court reaching back that far “would create a heavy burden for the prosecution and the Court.”³⁸ The date of 30 November 1996 – which corresponded to the conclusion of the Abijan Peace Agreement, the first failed peace agreement between the Government of Sierra Leone and the RUF – was chosen instead as the beginning date of the temporal jurisdiction of the Court as this “would have the benefit of putting the Sierra Leone conflict in perspective without unnecessarily extending the temporal jurisdiction of the Special Court.”³⁹ Since the armed conflict in various parts of Sierra Leone was still ongoing, it was decided that the temporal jurisdiction of the Court should be left open-ended.⁴⁰

The truncated scope of the temporal jurisdiction of the Special Court has been criticised as it may inhibit the successful prosecution of some accused persons.⁴¹ It has further been opined that it may send the wrong signal to the people of Sierra Leone. As observed by Tejan-Cole, prior to 1997 the civil war and the attendant atrocities were confined primarily to the countryside. It was not until 1999 that the fighting reached the streets of the Sierra Leonean capital. By selecting the date of 30 November 1996, the Secretary-General has excluded a significant portion of the crimes committed in the provinces and it has been stated that in doing so, he has inadvertently signaled that “it only matters when the lives of the people of Freetown are affected.”⁴² The authors, however, recognise the difficulties associated with the selection of a starting date for the Court’s temporal jurisdiction and submit that there is still significant authority to bring to justice those most responsible for the crimes committed in Sierra Leone.

The Special Court, like the ICTY, has limited territorial jurisdiction: offences must have been committed in the territory of Sierra Leone.⁴³ Nonetheless, given the alleged involvement of persons from neighbouring countries in the crimes committed during the civil war, it would have been

36. *Id.*, Art. 20(3).

37. When making such amendments, the Judges may be guided, as appropriate, by the 1965 Criminal Procedure Act of Sierra Leone. *Id.*, Art. 14.

38. Secretary-General’s Report, *supra* note 18, at para. 26.

39. *Id.*, at para. 27.

40. *Id.*, at para. 28.

41. Human Rights Watch, *Letter to United Nations Security Council*, 1 November 2000, available at <http://www.hrw.org/press/2000/11/sl-ltr.htm>; see also Tejan-Cole, *supra* note 30, at 116.

42. See Tejan-Cole, *id.*

43. Statute, *supra* note 20, Art. 1.

preferable to have followed the ICTR formula whereby Rwandan citizens may be prosecuted for offences falling within the competence of the court which are committed in neighbouring states.

Questions also arise as regards the personal jurisdiction of the Special Court. In its Resolution 1315 (2000), the Security Council recommended that the Court should have the power to prosecute "persons who bear the greatest responsibility for the commission of the crimes." Interpreting this statement as an indication that the number of accused should be limited by reference to their command responsibility and the gravity and scale of the crime, the Secretary-General restricted the personal jurisdiction to those "most responsible."⁴⁴ Although this restriction permits the prosecution of persons who committed atrocities on a massive scale, in addition to the trial of the political and military leadership, it is opined that language should have been adopted similar to that used in the Statutes of the *ad hoc* Tribunals – which merely refer to "persons responsible" – thereby leaving the decision as to whom to charge to the Prosecutor.⁴⁵

Moreover, the formula applied to the *ad hoc* Tribunals, which focuses more on the seriousness of the violation and less on who is overall the most responsible, has its attractions for a court which aims to contribute to peace and reconciliation. A local commander, who would not necessarily be "most responsible" in the greater picture of things, could have on his conscience a crime which has had a large impact on a particular region or town. Dealing with such an atrocity could be of great importance if the Special Court is to contribute successfully to the process of reconciliation. A final comment, which should be made in respect of the most responsible formula, is that it could be subject to jurisdictional challenges by the accused. Given the fact that the term is not well defined and imprecise, such challenges may not be easily dealt with.

Under the terms of the Lomé Peace Agreement, a sweeping amnesty was granted to all combatants for any crimes they may have committed.⁴⁶ Although recognising the role that an amnesty may play at the end of a civil war to bring about national reconciliation, the Secretary-General noted that amnesty could never be granted in respect of international crimes.⁴⁷ In this connection, it was pointed out that during the signing of the Lomé Agreement, the Special Representative of the Secretary-General

44. See Secretary-General's Report, *supra* note 18, at paras. 29–30.

45. See ICTY Statute, Art. 1; ICTR Statute, Art. 1.

46. Lomé Peace Agreement, *supra* note 9, Art. IX. For a critique of the amnesty provisions under this Agreement, see A. Tejan-Cole, *Painful Peace – Amnesty under the Lomé Peace Agreement*, 3 Law, Democracy and Development 239 (1999).

47. Secretary-General's Report, *supra* note 18, at para. 22. Scharf points out, however, that while the substantive law establishing international offences is extensive, international procedural law imposing a duty to prosecute is far more limited. Consequently, since there is no duty to prosecute crimes against humanity or war crimes committed in a civil war, there are no legal constraints to the negotiation of an amnesty-for-peace arrangement in such conflicts. M.P. Scharf, *The Amnesty Exception to the Jurisdiction of the International Criminal Court*, 32 Cornell Int'l L.J. 507 (1999).

for Sierra Leone entered a reservation on the amnesty provision.⁴⁸ Accordingly, Article 10 of the Statute provides that “an amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the crimes referred to in Articles 2 to 4 of the present Statute shall not be a bar to prosecution.” This provision, however, refers only to international crimes and not offences falling within Article 5 of the Statute, and as a consequence the ability of the Court to successfully prosecute violations of Sierra Leonean law may be seriously affected.

The most difficult dilemma that faced the Secretary-General was how to deal with juvenile offenders. As he recognised:

More than in any other conflict where children have been used as combatants, in Sierra Leone, child combatants were initially abducted, forcibly recruited, sexually abused, reduced to slavery of all kinds and trained, often under the influence of drugs, to kill, maim and burn. Though feared by many for their brutality, most if not all of these children have been subjected to a process of psychological and physical abuse and duress which has transformed them from victims into perpetrators.⁴⁹

On one hand, the Government of Sierra Leone insisted that those responsible for the crimes falling within the jurisdiction of the Court be held accountable no matter what their age. As they stated “the people of Sierra Leone would not look kindly upon a court which failed to bring to justice children who committed crimes of that nature and spared them the judicial process of accountability.”⁵⁰ On the other hand, human rights groups were unanimous in their opposition to trials of anyone below 18 years of age.⁵¹ As a compromise, the Secretary-General proposed that child combatants between fifteen and eighteen years of age be made to go through the judicial process of accountability but with all the internationally recognised guarantees of juvenile justice attached. Furthermore, the penalty of imprisonment was excluded and a number of alternative options of correctional or educational nature were provided for instead.⁵² Thus, the Secretary-General appears to have struck a fair balance between the understandable but opposing views.

4.3. Organisational structure of the Special Court

The Secretary-General recommended that the Special Court should consist of three organs: the Chambers, which shall comprise two Trial Chambers

48. Secretary-General's Report, *id.*, at para. 23.

49. *Id.*, at para. 33.

50. *Id.*, at para. 35.

51. *Id.*

52. *Id.*, at para. 37. For an examination of the legal basis for the prosecution of children who commit atrocities in the course of internal strife, see C. Reis, *Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in Internal Armed Conflict*, 28 Colum. Human Rights L. Rev. 629 (1997).

and an Appeals Chamber, the Prosecutor's Office and the Registry. This view was not supported by the Security Council, however, who suggested that the Court begin its work with a single Trial Chamber, with the possibility of adding a second Chamber should the developing case-load warrant its creation.⁵³ They did agree with the Secretary-General's proposal that three judges would serve in the Trial Chamber, two appointed by the Secretary-General and the third being appointed by the Government of Sierra Leone.⁵⁴ The Appeals Chamber will be composed of five judges, three appointed by the Secretary-General and the remainder by the Government of Sierra Leone.⁵⁵ It was proposed that the judges will be appointed for a four-year term and shall be eligible for re-appointment.⁵⁶

It was further proposed that the Secretary-General should, after consultation with the Government of Sierra Leone, appoint an independent prosecutor to lead the investigations and prosecutions.⁵⁷ The Prosecutor shall be assisted by a Sierra Leonean Deputy appointed by the Government of Sierra Leone in consultation with the Secretary-General.⁵⁸ In this connection, it would appear that the Prosecutor's powers are severely limited in comparison with the Statutes of the *ad hoc* Tribunals. The legal framework, as it is envisaged, appears to address only the Prosecutor's "responsibility": no reference is made to the active powers of the Prosecutor. In order to perform his functions effectively, the Prosecutor will require the power to take investigative steps such as interviewing suspects and witnesses, collecting evidence and conducting on-site investigations.⁵⁹ While the modalities of these functions may be reserved for the Rules of Procedure and Evidence, the general power to do so should have been contained in the Statute (the Rules being a derivative of the Statute), as

53. Letter dated 22 December 2000 from the President of the Security Council addressed to the Secretary-General, UN Doc. S/2000/1234 (22 December 2000) (hereinafter 'Security Council's Letter').

54. Statute, *supra* note 20, Art. 12(1)(a). It is noted that it was originally proposed that "one Sierra Leonean judge" should be appointed to each of the Trial Chambers. This phrase was replaced at the request of the government of Sierra Leone by "judges appointed by the government of Sierra Leone." While this does not preclude the appointment of a Sierra Leone judge, it creates the possibility that Sierra Leoneans may not play any adjudicating role in the process. It has opined that in order to enhance the appearance of impartiality, it is crucial that Sierra Leoneans are appointed to serve as judges. Tejan-Cole, *supra* note 30, at 119-120.

55. Statute, *id.*, Art. 12(1)(b). This procedure differs to that followed by the *ad hoc* Tribunals where the judges are elected by the UN General Assembly, after candidates have been short-listed by the Security Council, *see* ICTY Statute, Art. 13; ICTR Statute, Art. 12.

56. The judges, like those appointed to the *ad hoc* Tribunals, must be persons of high moral character, impartiality and integrity, who possess, in their respective countries, the qualifications required for appointment to the highest judicial office. They shall be independent in the performance of their functions, and shall not accept or seek instructions from any government or any other source. Statute, *id.*, Art. 13.

57. The Prosecutor shall be appointed for a four-year term and shall be eligible for re-appointment. Agreement, *supra* note 19, Art. 3(1).

58. *Id.*, Art. 3(2).

59. *See* ICTY Statute, Art. 18(2); ICTR Statute, Art. 17(2).

should the corresponding obligations of Sierra Leone (and possible third states).

Unlike the *ad hoc* Tribunals, which are not located in the states where the atrocities were committed and the majority of the victims (and perpetrators) reside, it is envisioned that the Special Court will be located in Sierra Leone.⁶⁰ This will allow the Court to have ready access to witnesses, documentation and other evidence. Particularly given the collapse and consequent mistrust of official institutions in Sierra Leone, the close proximity to the Court will further enable the people of Sierra Leone to observe the work of an international court that operates in accordance with the highest standards of impartiality and respect for all parties as well as avoid a major criticism of the *ad hoc* Tribunals, namely that they have been perceived locally as a foreign appendage forced upon the region.

4.4. Judgement, penalties and enforcement of sentences

Although provisions relating to the commencement and conduct of trial proceedings are absent, the Statute provides that an accused shall be presumed innocent until proven guilty and shall be entitled to a fair and public hearing.⁶¹ In the determination of any charge against him, the accused shall be entitled to the minimum guarantees as recognised by international human rights instruments, in particular the standards set out in Article 14 of the International Covenant on Civil and Political Rights. It should be noted, however, that the Special Court is empowered to take appropriate measures to protect the safety and well being of victims and witnesses, provided such measures are consistent with the rights of the accused.⁶²

The authority to pronounce judgements and impose sentences and penalties on convicted persons is also set out in the Statute. Judgements must be by a majority of the Judges of the Trial Chamber and must be delivered in public.⁶³ Upon conviction, the Special Court may sentence an accused, other than a juvenile offender, to a period of imprisonment and may order any property, proceeds or assets which have been acquired unlawfully or by criminal conduct to their rightful owner or to the State of Sierra Leone.⁶⁴

Similar to the *ad hoc* Tribunals, both convicted persons and the Prosecutor may appeal decisions made by the Trial Chambers on the grounds that there has been an error on a question of law invalidating the

60. For a discussion on a possible alternative host state, should it be necessary to convene the Special Court outside Sierra Leone, see Secretary-General's Report, *supra* note 18, at paras. 51–54.

61. Statute, *supra* note 20, Art. 17(2) and (3).

62. *Id.*, Art. 17(2).

63. A reasoned opinion made in writing, to which separate or dissenting opinions may be appended, must accompany the judgement. *Id.*, Art. 18.

64. *Id.*, Art. 19.

decision or an error of fact which has occasioned a miscarriage of justice.⁶⁵ The Statute of the Special Court also enables a party to the proceedings to appeal on the ground of a procedural error.⁶⁶ Although not specified, it is assumed that for the purposes of judicial efficiency the notion of “procedural error” shall be linked to the principle of a fair trial and the interests of justice. After hearing such appeals, the Appeals Chamber may confirm, reverse or revise the Trial Chamber’s decision. The Appeals Chamber is not entitled, however, to send proceedings back to a Trial Chamber.⁶⁷ The Statute further enables a convicted person or the Prosecutor to apply to either a Trial Chamber or the Appeals Chamber to review its decision if a new fact comes to light which was not known at the time of the proceedings before the Chamber, and that fact could have been a decisive factor in reaching the decision.⁶⁸

Given the hybrid nature of the Special Court, it was decided that convicted persons should serve their sentence in Sierra Leone. Should circumstances so require, imprisonment may be also served in any of the states who have concluded an agreement for the enforcement of sentences with the *ad hoc* Tribunals or otherwise indicated their willingness to accept convicted persons.⁶⁹ With respect to pardon or commutation of sentence, such matters are to be determined by the laws of the state in which the convicted person is imprisoned. If eligible for release, the state concerned shall notify the Special Court, and the President of the Court, in consultation with the judges, shall decide to pardon or commute the sentence of the convicted person “on the basis of the interests of justice and the general principles of law.”⁷⁰

5. PRACTICAL ARRANGEMENT FOR THE OPERATION OF THE SPECIAL COURT

As with most endeavours that aim to advance humanity and create an improved world, everything starts and ends with adequate funding. A particular feature of the criminal process, namely that it cannot be done half-heartedly (particularly when it is a process sponsored by the organisation set up to champion that better world), makes the funding issue even more fundamental in the case of the Special Court. National and interna-

65. *Id.*, Art. 20(1)(b) and (c).

66. *Id.*, Art. 20(1)(a).

67. This provision follows the inquisitorial legal system in which appellate courts may determine questions of fact themselves: in adversarial legal systems, appellate courts usually remit such questions to the trial court. *Id.*, Art. 20(2). See also ICTY Statute, Art. 25(2); ICTR Statute, Art. 24(2).

68. Statute, *supra* note 20, Art. 21.

69. The Special Court is also authorised to conclude agreements for the enforcement of sentences with other states, and, in light of the precarious security situation in Sierra Leone, it is likely that such agreements will need to be completed. *Id.*, Art. 22.

70. *Id.*, Art. 23.

tional judicial institutions have repeatedly held that the lack of available finances cannot excuse a violation of the right of an accused to be tried without undue delay. Nor can the lack of financial means justify denying an accused's request to have the documentation pertaining to his case and the court proceedings translated into a language he understands. If a judge, *proprio moto*, or the defence, sees a need to request the testimony of certain witnesses, it is expected that adequate funds will be made available to secure their presence at trial. Moreover, under customarily accepted human rights standards convicted persons who have been the victim of a malicious or otherwise wrongful prosecution have the right to be compensated for which insufficient budgetary means at the national level cannot be an excuse. In other words, a criminal process in accordance with the basic human rights standards agreed in the United Nations context, requires a certain base level funding at all stages of the process – from investigation to judgement on final appeal. The fact that it is envisioned that the Special Court will also have to involve itself in juvenile justice – with all the additional expertise and, thus, expenses involved – will add to the base-level costs and increase the responsibilities associated thereto.

Against this background one cannot be surprised by the conclusion of the Secretary-General in his report of 4 October 2000 that:

The risks associated with the establishment of an operation of this kind with insufficient funds, or without long-term assurances of continuous availability of funds, are very high, in terms of both moral responsibility and loss of credibility of the Organisation, and its exposure to legal liability.⁷¹

The only mechanism which can insure an assured and continuous source of funding are assessed contributions by the participating states.

For whatever reasons, the Security Council has not heeded the Secretary-General's warning and, thus, may have once again exposed the United Nations to a mandate that will be very difficult to execute. In its letter to the Secretary-General dated 22 December 2000, the President of the Council indicated that the members of the Security Council support funding through voluntary contributions.⁷² To nonetheless provide something of a foundation, it was added by the Council that no concrete steps are taken to set up the Special Court unless adequate funds for at least twelve months of operations are guaranteed and pledges are in for another twelve months.

In his reply, the Secretary-General reiterated his assessment of the risks involved in going down the voluntary-contribution road, but grudgingly accepted that he did not have a choice in the matter at the present stage

71. Secretary-General's Report, *supra* note 18, at para. 70.

72. Voluntary contributions could include, besides funding, equipment and services and gratis personnel offered by states, inter-governmental organisations and non-governmental organisations. Security Council's Letter, *supra* note 53.

of the process.⁷³ He therefore suggested a modification of the Security Council's proposal of 22 December 2000 to require that twelve months of funding be at hand and twenty-four months of funding be pledged before the Court is established.⁷⁴ The authors do not have an elaborate insight into the political machinations that will determine whether this is a sufficient basis upon which to proceed. We do, however, share the Secretary-General's fundamental concerns and dread to think what the weight of the Court will be when, after two years and into the conduct of the first trials, it will have to compete for funds with other serious humanitarian disasters which regrettably keep erupting world-wide. In this connection, the proposal by the Security Council to set up a committee for management and oversight with membership from Sierra Leone, the UN Secretariat and the voluntary contributors has not alleviated the authors' concerns.⁷⁵

6. CONCLUDING REMARKS

In light of the ongoing situation in Sierra Leone, there is an urgent need for the Special Court, which is a laudable endeavour in the pursuit of international justice, to commence its operations immediately. Nonetheless, at the time of writing twelve months have passed since the Government of Sierra Leone first approached the United Nations requesting the establishment of the Court and there is still no clear indication as to when it will become operational or, for that matter, when its constitutive instruments will come into effect. This, in itself, is very likely to have an adverse effect on the perceived success of the Court. As has been rightly observed "swift trials conducted immediately after the war and which capture public attention will be more effective than protracted symbolic trials held long after the war."⁷⁶

The delays associated with the establishment of the Special Court are also concerning, given that a significant number of rebels, including Foday Sankoh, have been detained by the Government of Sierra Leone for several months under the emergency provisions of the Constitution.⁷⁷ The longer it takes to establish the Court, the greater the dilemma of the Sierra Leonean Government. Since no one should be subject to arbitrary arrest and detention in contravention of the applicable instruments of international human rights law, the Government will either have to prosecute these persons for an ordinary crime under national law or release them. Either

73. See Letter dated 12 January 2001 from the Secretary-General addressed to the President of the Security Council, UN Doc. S/2001/40 (12 January 2001).

74. *Id.*

75. Security Council's Letter, *supra* note 53.

76. Tejan-Cole, *supra* note 30, at 120.

77. As at 1 December 2000, 291 persons were detained without charge under the emergency powers. Eighth Secretary-General's Report, *supra* note 14, at para. 49.

option is likely to provoke severe hostility from the Sierra Leonean population.

The large numbers of persons in custody will also create problems for the Special Court once it is finally established. It is not entirely clear whether the Court is responsible for existing cases right away, or whether some formal deferral process is intended in respect of incipient national proceedings. In all likelihood the Court will be criticised for not taking cases, and in those cases where it does exert its jurisdiction, it is probable that the accused will challenge the length of his detention. Both issues will undermine the credibility of the Court from the outset.

The credibility of the institution is, in fact, already being eroded by the ongoing discussions on funding and the apparent unwillingness of the UN members to throw their committed weight behind the project. The longer the commencement of the process of "doing justice" is stalled, the more difficult it will be to start that process and the harder it will be to combat negative perceptions within the very community which the Court will be set up to serve.

In this connection and as a final comment, the authors would strongly advocate that the Special Court should have an active, well thought through programme at the outset to enable it to reach out to the people of Sierra Leone and to make its role and functions understood. It is, for example, very likely that the Court will be perceived as a luxury institution, where those "most responsible" will be treated generously by comparison to the mere foot-soldiers who, if charged at all, will be routed through the under-developed and poorly funded national legal system. Perceptions such as these can be dangerous and have a negative impact on the contribution that an institution such as the Special Court can make towards peace and reconciliation in Sierra Leone.⁷⁸ In assessing the costs for the project and making the determination whether adequate funds are available to actually establish the Court, the Secretary-General should be mindful of the need for such an outreach programme.⁷⁹ Reconciliation cannot be imposed and experience suggests that it is impossible in the short term. The significance of the Court lies instead with the potential of its activities. By informing, educating and involving the people of Sierra Leone – thereby increasing the popular perception of its work and encouraging debate – the Court may help the process of change in a country which has been savagely torn by war for over a decade.

78. For other negative perceptions that may be encountered, see Tejan-Cole, *supra* note 30, at 126.

79. For a discussion of how the establishment of an outreach programme for the ICTY has facilitated the realisation of some of the objectives of the Tribunal, see L. Vohrah & J. Cina, *The Outreach Programme*, in R. May *et al.* (Eds.), *Essays on ICTY Procedure and Evidence: In Honour of Gabrielle Kirk McDonald* 547 (The Hague: Kluwer Law International, 2000).

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Article

*391 CURRENT APATHY FOR COMING ANARCHY: BUILDING THE SPECIAL COURT FOR SIERRA LEONE

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INTRODUCTION

Much of the recent commentary on the conflict in Sierra Leone has included reference to Robert Kaplan's essay, *The Coming Anarchy*. [FN1] Kaplan writes that "[t]yranny is nothing new in Sierra Leone or in the rest of West Africa. But it is now part and parcel of an increasing lawlessness that is far more significant than any coup, rebel incursion or episodic experiment in democracy." [FN2] His bleak portrayal of unending chaos suggests there is very little the world can do but look on. This is exactly what many have accused the United Nations ("U.N.") of doing. While NATO planes dropped bombs in Serbia and Kosovo, albeit without explicit U.N. sanction, Sierra Leone seemed a forsaken place. [FN3]

The U.N. did, belatedly, respond to the conflict in Sierra Leone. By no means its only response, but among the most central, is the proposed Special Court for Sierra Leone ('the Special *392 Court'), which will try those who bear the greatest responsibility for the conflict's atrocities. Tribunal- establishment as a response to conflict attracts skepticism, a viewpoint articulated by Kaplan in another of his essays, when he writes: "[i]nstitutionalizing war-crimes tribunals will have as much effect on future war crimes as Geneva Conventions have had on the Iraqi and Serbian militaries." [FN4] We have some appreciation for this view, but it does not take us very far as it is incapable of being empirically demonstrated or rejected. [FN5] Moreover, criminal tribunals as a response to mass atrocities can, inter alia, bring a measure of justice and recognition for the victims through the imposition of penal sanctions on wrongdoers and thus do not rely solely on deterrence for their justification. We therefore proceed on the assumption that criminal tribunals are a legitimate response to conflict, albeit not the only response that can or should be employed. Our question is, instead, whether the Special Court represents a legitimate response to the conflict in Sierra Leone at a broadly political level and whether it is being established with a sufficiently solid foundation to enable it to operate effectively.

Part I of this Article examines the chronology of the decade-long conflict in Sierra Leone. It provides an illuminating backdrop against which the Special Court may be assessed and highlights particular features that the institutional design of the Special Court would have to accommodate. Part II explores the precedents for the Special Court. Specifically, it considers the establishment of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") and the International Criminal Tribunal for Rwanda ("ICTR"), and the impetus behind the International Criminal Court, developments that parallel in time the unfolding of Sierra Leone's conflict. Part III subjects particular *393 features of the Special Court to critical assessment, namely its institutional design, the lack of power and resources committed thereto, and the context in which it will operate. It argues that these features represent fundamental flaws and significant hurdles that need to be overcome if the Special Court is to operate effectively or efficiently.

I. CHRONOLOGY OF THE CONFLICT

In a decade in which atrocities had become almost commonplace, Sierra Leone's conflict was still shocking. Horror registered at the signature amputations, the thousands of children press-ganged into the service of the respective armed factions, and the fact that they at times seemed the cruelest of combatants. Here however, the brutality appeared not intended to achieve any particular political end; the Revolutionary United Front ('RUF'), the government's armed opposition that emerged in 1991, lacked a coherent ideology. Instead, it appeared to the outside world a rag tag band of anarchists bent on destruction. It confirmed the very worst predictions for Africa: an Africa marked by "the withering away of central governments, the rise of tribal and regional domains, the unchecked spread of disease, and the growing pervasiveness of war." [FN6]

However, if the RUF's terror defied easy categorization, it was not because it lacked reason but because of the enormity in scope and complexity of the problems to which it responded. Sierra Leone has, for several years, ranked last in the United Nations Development Program's Human Development Index, [FN7] a position not won merely by the staging of a decade long civil war. Sierra Leone's misery is centuries older. Years of colonialism were replaced by independence in 1961 by an almost uninterrupted succession of despotic leaders who secured their place by military coup, and the establishment of a one-party system and widespread patronage, allowing for unrelenting personal enrichment on the part of the ruling elite. [FN8] Sierra Leone's vast mineral wealth, particularly its diamonds, has been plundered by its administrators, *394 both pre- and post-independence, institutionalizing a culture whereby political power is almost interchangeable with control of the diamond mines. These mines, although not yielding the quality or quantity they once did, continue to provide Sierra Leone's greatest economic resource. [FN9]

The Sierra Leone people throughout have suffered excruciating levels of poverty. It was therefore no surprise that when opposition came, it aimed to wrest control of the diamond trade from the government. The stage was set for its appearance in the easing of political controls initiated in the late eighties by President Joseph Momoh, former head of the army. A commission established to review the then enforced one-party constitution, ultimately recommended the revival of a multi-party system of governance. [FN10]

At the same time, the Green Book--Muammar Qaddafi's blueprint for Libyan revolution--was made widely available in West Africa, including Sierra Leone, and appeared to give at least a veneer of ideological content to the agendas of those opposed to the government. However, Qaddafi's influence in the region was based far more on the actual support and encouragement he offered certain disaffected elements than on any compelling ideology. He backed Charles Taylor and his National Patriotic Front as they overran Liberia and executed President Samuel Doe. Taylor, in turn, assisted in the overthrow of Burkina Faso's president, Thomas Sankara, by Blaise Compaore. [FN11]

Thus, when the RUF emerged in the early 1990's it was buoyed both by local discontent and regional instability. It entered Sierra Leone from Liberia in 1991 and easily took control of the eastern region. Although aided by the governments of Libya and Burkina Faso, it was Charles Taylor of Liberia who came to be their chief ally, offering troops and a safe haven. [FN12] Taylor's campaigns of terror also provided a model on which the RUF based its own strategy. Their practice of abducting children, forcing boys to fight and girls to perform sexual service, and the amputation of limbs distinguished their campaign as particularly atrocious. [FN13]

*395 The government initially retaliated by bolstering its armed forces by recruiting, like the RUF, from among the thousands of poor, uneducated youth. However, the disaffection was so endemic that these forces themselves staged a coup, forcing Momoh from power. [FN14] Over the next four years the RUF continued its fight against successive governments, increasingly gaining control over lucrative diamond fields. The Economic Community of West African States Monitoring Group ("ECOMOG"), led by Nigeria, entered the fray in 1994 by sending in troops to defend the government. [FN15] By 1995, the rebel assault had not subsided and the government turned to the services of private security companies, already deployed in the country, on contract to a number of mining houses. These private security companies were remarkably effective, [FN16] in pushing the rebels back and enforcing calm for long enough that multi-party elections could be held in 1996. Ahmad Tejan Kabbah, a former U.N. official and leader of the Sierra Leone People's Party, was elected president and soon after entered into negotiations with the RUF which resulted, in November 1996, in a peace agreement known as the Abidjan Accord. [FN17] Kabbah agreed to dispense with the private security companies and to grant amnesty to the RUF and other combatants. The RUF, in turn, agreed to an immediate cease-fire, disarmament, and demobilization. [FN18]

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The U.N. Secretary-General recommended sending a small peacekeeping operation to assist the implementation of the Abidjan Accord, but the recommendation was never approved by the Security Council. [FN19] In the absence of any authoritative force, allegiances, always shaky, quickly blurred. It was said to be impossible to distinguish the army from the rebels: "the word 'sobel' was coined to describe soldiers who wore the uniform of *396 the government by day and then robbed, raped, and attacked civilians by night." [FN20]

In May 1997, Kabbah was deposed by a government army faction calling itself the Armed Forces Revolutionary Council ('AFRC'). [FN21] These soldiers made concrete their alliance with the RUF by inviting it to share power. [FN22] As the RUF entered Freetown, mayhem erupted as soldiers and rebels looted with impunity and residents of the capital went on strike and refused to cooperate with the new regime. The situation--a country now poised on the verge of collapse--finally compelled the U.N. to act. A Security Council Resolution referred to the situation in Sierra Leone as "a threat to the peace" and called on the military regime to return power to the democratically elected Kabbah government. [FN23] The Resolution did not, however, authorize intervention, but rather imposed sanctions on Sierra Leone and mandated ECOMOG to enforce the sanctions and other terms of the Resolution.

In 1998, Kabbah was restored to power when ECOMOG troops, predominantly Nigerian, drove the rebels from Freetown. However, the ECOMOG offensive was unable to reverse the gains made by the RUF outside of the capital. [FN24] By the end of 1998, the RUF controlled well over half the country, and in early 1999 it again launched an attack on Freetown. Commentators have, in the aftermath, attempted to capture the sheer brutality of these two weeks, calling it "a war that was at that moment the world's cruelest, as well as its most invisible." [FN25] While ECOMOG troops, employing a force of almost equal ferocity, [FN26] were eventually able to push the RUF back, an estimated 6000 civilians were left dead, thousands more mutilated and limbless. The RUF's "Operation No Living Thing" also wrought the abduction of an estimated 3,000 children, the rape of thousands of *397 women, and the destruction of much of Freetown. [FN27]

Graphic images broadcast worldwide finally alerted the West to the seriousness of the situation, the inadequacy of the ECOMOG operation, and the untenable position of the government. Although intervening militarily in Kosovo, the United States and the United Kingdom pushed hard for diplomatic settlement in Sierra Leone. President Clinton sent the Reverend Jesse Jackson to broker peace, a move sanctioned by the U.N. [FN28] The resulting Lomé Accord, [FN29] signed in July 1999, offered amnesty to all combatants and provided for RUF inclusion in a new coalition government in exchange for RUF disarmament. Significantly the U.N. Secretary-General's Special Representative ('SGSR') added a reservation to the amnesty provision by interpreting the article as not applying to "international crimes of genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law." [FN30] The Accord established a timetable for the formation of a neutral peacekeeping force and requested the assistance of the U.N., now prepared to send troops. [FN31] In October 1999, the Security Council established the United Nation's Mission in Sierra Leone ("UNAMSIL") [FN32] to assist in carrying out provisions of the agreement. Six thousand peacekeeping troops were initially pledged.

From the start, the RUF failed to comply with the terms of the Lomé Accord. Few of their soldiers entered the disarmament, demobilization, and reintegration camps; human rights *398 abuses continued; [FN33] and once U.N. troops arrived, they were ambushed. In May 2000 several hundred U.N. peacekeepers were taken hostage, evidencing that the Lomé Accord existed in name only. [FN34] However, UNAMSIL maintained its presence and bolstered its forces, attempting once again to bring the RUF and the Government of Sierra Leone to the negotiating table. The Abaju cease-fire, signed in Nigeria on November 10, 2000, recommitted the parties to the provisions of Lomé, but it too cannot be said to have immediately ushered in a period of peace and stability. [FN35]

Many civilians trapped in areas controlled by the RUF attempted to escape by fleeing across the border to Guinea. The RUF responded by launching attacks into Guinea, in pursuit of the fleeing civilians and, it is alleged, hoping to secure control over Guinea's valuable bauxite mines. [FN36] Liberia, already an ally of the RUF, and motivated by desire to suppress forces opposed to the Taylor regime, joined the pursuit. [FN37] In early 2001, the U.N. was calling the unfolding melee the world's worst humanitarian crisis. [FN38]

Six months later there is much more reason for cautious optimism about the peace-process. [FN39] Although UNAMSIL has been considerably weakened by a series of internal disputes and the withdrawal of a number of contributing States' forces, [FN40] it is relatively numerically strong [FN41]--at present the world's largest *399 peacekeeping mission. Britain also has a strong military presence in Sierra Leone, where it is primarily involved in

training government troops. [FN42] The United States sent troops to Nigeria where they similarly undertook training, but of ECOMOG troops. [FN43] While these initiatives have created some tension between UNAMSIL, the United States, and the United Kingdom respectively, [FN44] they have bolstered the military presence in the region and intensified pressure on Sierra Leone combatants to disarm. [FN45] With disarmament and demobilization centers located throughout the country and the recent entry of UNAMSIL forces into the northern region, the U.N. now maintains a presence throughout Sierra Leone. [FN46]

Attempts have also been made to address the structural causes fuelling the war. In January 2001, a U.N. panel of experts released a report on the illegal diamond trade in Sierra Leone, accusing President Taylor and the Liberian government of supporting the RUF's attacks in exchange for diamond concessions. [FN47] The attendant condemnation and imposition of travel bans appear to have forced President Taylor to sever ties with the RUF. [FN48]

A number of suspected RUF leaders are in government custody, among them Foday Sankoh, leader of the RUF, who was arrested on May 17, 2000. [FN49] The government of Sierra Leone *400 has looked to the international community for assistance in prosecuting those responsible for atrocities committed during the war, but not without prompting. [FN50] During her visit to Sierra Leone, shortly after the conclusion of the Lomé Accord, U.S. Secretary of State Madeline Albright hinted at the possibility of an international tribunal for Sierra Leone. [FN51] A year thereafter, President Kabbah sent a letter the U.N. Secretary-General requesting assistance from the U.N. in establishing a criminal tribunal for Sierra Leone. [FN52] In August 2000 the Security Council passed Resolution 1315, [FN53] reiterating "that the situation in Sierra Leone continues to constitute a threat to international peace and security in the region," and mandating the Secretary-General to negotiate an agreement with the government of Sierra Leone for the establishment of an independent Special Court. It further requested the Secretary-General to submit a report on the implementation of the Resolution, including recommendations on a number of key issues identified in the Resolution. This report was presented to the Security Council on October 4, 2000. The Agreement between the U.N. and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone and the Statute for the Special Court for Sierra Leone were annexed to the report. [FN54]

The Security Council's request of the Secretary-General, while novel, is not without precedent. In the following section we examine recent developments in the creation of international criminal tribunals that have paved the way for the Special Court for Sierra Leone.

*401 II. THE SPECIAL COURT: ITS PRECURSORS AND PEDIGREE

The decade-long civil war in Sierra Leone roughly corresponds to a time period in which unparalleled developments in international criminal law were taking place. Like the Special Court, these were spawned by atrocity. If in 1999, Sierra Leone's conflict could be said to be the world's cruelest, many at the beginning of the decade would have claimed that mantle for Bosnia. Two years later that distinction could be said to have fallen to Rwanda. In relation to both conflicts, the U.N. released reports acknowledging its failure to do all that it could. [FN55]

The contemporaneous attempts made to address these conflicts included the establishment of ad-hoc criminal tribunals for the respective regions. At the time, there seemed to be no appropriate, legitimate, or functioning venue in which to try individuals for crimes committed during these conflicts, although the Nuremberg and Tokyo tribunals, established in the wake of World War II, had provided prototypes on which the international community could build. Moreover, the Genocide Convention's reference to an international penal tribunal signaled that the international community had every intention of furthering this project. [FN56] The advent of the Cold War, however, removed any hope of achieving the necessary consensus. But during the post- Cold War political environment in which the conflict in Yugoslavia arose--in fact the Cold War's demise could be said to have precipitated the conflict--the major powers came to recognize a common interest in punishing individuals who commit gross human rights violations. [FN57] Thus, by Resolution 827, the Security Council, acting under Chapter VII of the U.N. Charter, unanimously adopted the Statute of the ICTY. [FN58]

*402 This was the same method used to establish the ICTR, although this time, there was not universal consensus within the Security Council. [FN59] While Rwanda had initially requested the Tribunal, it came to oppose its

establishment and voted against it in the Security Council. [FN60] There was some dispute about the legitimacy of the Security Council's invocation of Chapter VII powers to establish these ad-hoc tribunals. Although little controversy surrounded the identification of both conflicts as "threats to the peace," necessary to trigger the extraordinary powers of Chapter VII, some argued that Article 41 authorizing "measures not involving the use of armed force" to restore international peace and security could never have been intended to include the establishment of international criminal tribunals. [FN61]

Nonetheless the establishment of the two ad-hoc tribunals gave renewed impetus to the project for an international criminal court. Commitment to this project had been evidenced sporadically throughout the U.N.'s lifespan, yet it was only in the wake of the ad-hoc tribunals' establishment that sufficient political will and international support set the stage for the General Assembly's Preparatory Committee on the Establishment of the International Criminal Court. [FN62] In July 1998, after six weeks of intensive debate and negotiations, the Statute for the International Criminal Court was opened for signature at the Rome Diplomatic Conference. Unlike the ad-hoc tribunals, the Security Council will have no hand in its establishment. Instead the treaty will enter into force once it is ratified by sixty States, [FN63] after *403 which the International Criminal Court ("ICC") will become a functioning reality.

The establishment of the ad-hoc tribunals and the efforts to create an ICC reflect an increasingly sensitive international response to the treatment of international conflict. The cessation of hostilities is no longer regarded as, in itself, sufficient. Instead contemporary international legal scholarship emphasizes the importance of institutionalizing processes of accountability whereby justice must be seen and served if a conflict-ridden society is to move beyond its traumatic past. [FN64]

The ICC, once established, should relieve further need of ad-hoc tribunals. Working as intended, the ICC will be able to prosecute and punish perpetrators as its attention is drawn to sites of atrocity. But the ICC is not yet in operation and may not, once it is, exercise jurisdiction in respect of crimes committed before its Statute took effect. [FN65] In addition, the jurisdiction of the ICC is limited either to crimes committed on the territory of States Parties or in cases where the accused is a national of a State Party, namely a State that has ratified or acceded to the Rome Statute. [FN66] Therefore, at least for some time, ad-hoc tribunals of the type of the ICTY and ICTR will present themselves as an option for consideration by the international community in the wake of atrocity. Yet while it is an ad hoc tribunal, the Special Court for Sierra Leone is not accurately understood as the same type as the ICTR and ICTY. It is best conceived as a variation on a theme and in the following section we explore the flaws inherent in this particular variation.

III. BREAKING THE PROMISE

The Secretary-General's Report and the Agreement and Statute set out the particular features of the Special Court for *404 Sierra Leone. Many of these are to be implemented for the first time with respect to Sierra Leone. [FN67] Chief among these innovative characteristics is the mode of establishment: unlike the ICTY and ICTR, which were established by Resolutions of the Security Council and thus constitute subsidiary organs of the U.N., the Special Court is to be established by agreement between the U.N. and the Government of Sierra Leone. It will therefore be "a treaty-based sui generis court of mixed jurisdiction and composition," [FN68] rather than a subsidiary organ of the U.N.

The more extensive involvement afforded Sierra Leone in the case of the Special Court--far more than was offered either the former Yugoslavia or Rwanda in respect of the ad hoc tribunals--heralds a seemingly positive development. As was earlier discussed, current legal scholarship emphasizes the importance of ending impunity of perpetrators--securing their prosecution and punishment-- if a fractured society is to move beyond its history of abuse, rebuild itself, and attempt genuine reconciliation. [FN69] This surely is an objective for Sierra Leone. [FN70] The Special Court offers a promise of rebuilding Sierra Leone's society by ending the widespread impunity but also offers a promise of rebuilding the society in a much more tangible sense by generating institutional skills and resources crucial to any functioning democracy, which will live on long after the Special Court completes its work. In this respect, the U.N. might be said to have learnt the lessons of Rwanda well.

There, the Rwandese government took the initiative in proposing the establishment of an international tribunal, and participated fully in the deliberations on the Statute but ultimately voted against Security Council Resolution 955,

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authorizing the ***405** Tribunal's establishment. [FN71] Its dissent was triggered in part by its demand that the seat of the Tribunal be situated inside Rwanda to "teach the Rwandese people a lesson, to fight against the impunity to which it had become accustomed . . . and to promote national reconciliation." [FN72] A location inside Rwanda was also advocated on the basis that "establishing the seat of the Tribunal on Rwandese soil would promote the harmonization of international and national jurisprudence." [FN73] Commentators such as Neil Kritz have argued that this critique has particular resonance for Rwandese society where, because "a substantial percentage of the population cannot benefit from newspaper or television coverage of the trials, the process of justice should be accessible and visible." [FN74] In addition, Tribunal sittings within the country would have served as an important model of due process for domestic efforts and more effectively communicated the idea that "international and domestic trials are complementary parts of an integrated, wholistic and multifaceted approach to justice." [FN75]

These concerns present themselves with equal force in deliberations concerning Sierra Leone and international attempts at securing justice. The Statute for the Special Court reflects efforts to meet these concerns. Indeed the U.N. could be said to have taken to heart the caveat that if international tribunals are to be effective "more attention needs to be given to both the physical accessibility of proceedings and the dissemination of objective information to the local population." [FN76] In his report, the Secretary-General both advocates a broad public information and education campaign as integral to the Special Court's activities [FN77] and proposes several potential premises for its seat in the ***406** Sierra Leone capital, Freetown. [FN78]

Some have asked whether the money for the Rwandan Tribunal would have been better spent on the rebuilding and training of the Rwandan legal system: the genocide in Rwanda left the judicial system virtually destroyed--approximately ninety-five percent of the country's lawyers and judges were killed, exiled, or imprisoned. [FN79] The fighting in Sierra Leone has unsurprisingly compounded the pre-existing problems of poverty and the consequent corruption within the Sierra Leone legal system, leaving its judicial institutions in a similar state of collapse. However, the Special Court--a cooperative endeavor between the U.N. and Sierra Leone, with special provisions made for Sierra Leonean judges, prosecutors, and administrative support staff, applying international humanitarian law and Sierra Leonean law, and benefiting from internationally contributed personnel, equipment, and resources--appears likely to inject new life into Sierra Leone's domestic legal system. Knowledge gained, skills acquired, and personnel empowered may act as catalysts for the establishment of new institutions, structures, and culture that will better safeguard the rule of law and will outlive the existence of the Special Court. Therefore, Sierra Leone's Special Court appears to represent the "best scenario" in which the international community provides "appropriate assistance to enable a society emerging from mass abuse to deal with the issues of justice and accountability itself." [FN80] Viewed outside of the parameters of international tribunals, the Special Court initiative might be said to neatly fall within the currently favored U.N. discourse of capacity-building, said to denote the process by which individuals, groups, organizations, institutions, and societies increase their abilities to: 1) perform core functions, solve problems, define and achieve objectives; and 2) understand and deal with their development needs in a broad context and in a sustainable ***407** manner. [FN81]

However, appearances can be deceptive and emphasis on the Special Court's capacity-building potential is ultimately disingenuous. The Special Court's institutional design, the resources committed thereto, are so flawed and insufficient as to severely hamper its potential. Moreover, all too often the context in which it is to operate has been ignored making it even more unlikely that it will deliver on its promise. The following sections examine the difficulties created by the institutional design of the Special Court, the lack of powers and resources with which it is to be invested (these relate to a decontextualized Special Court), and finally the challenges thrown up by the context in which the Special Court must operate. Often these factors do not work in isolation but serve to exacerbate the effect of the others. Nonetheless in a quest for clarity, we have attempted where possible, to treat these factors as discrete sets within which specific difficulties may be examined.

A. Critiques of a Decontextualized Special Court

In this section, issues relating to the subject-matter, temporal, and personal jurisdiction of the Special Court are discussed, before we address the financial mechanisms and absence of Chapter VII powers afforded the Special Court. These difficulties would present themselves wherever a tribunal of this type were to operate, effectively crippling its potential. However, they are made that much worse in Sierra Leone which suffers chronic underdevelopment.

1. Subject Matter Jurisdiction of the Special Court

Like the two ad-hoc tribunals, the Special Court's subject-matter jurisdiction covers crimes under international humanitarian law considered to have had the status of customary international law at the time the alleged crimes were committed. [FN82] Accordingly, the Court will avoid challenges to its legality, particularly *408 the principle of *nullum crimen sine lege* and the prohibition on retroactive criminal legislation. [FN83] The Statute does not, however, incorporate the entirety of customary international humanitarian law. Instead, the drafters have tailored the Court's subject matter jurisdiction to accord with their perception of the conflict and the atrocities committed during this period. For example, the Statute omits the crime of genocide from the Special Court's jurisdiction because there has been no allegation that victims of atrocities in Sierra Leone were targeted on the basis of belonging to a national, ethnic, racial, or religious group, [FN84] as they were in the conflicts in the former Yugoslavia and in Rwanda. The Statute, although including violations of Article 3 Common to the Geneva Conventions and Additional Protocol II, also fails to provide for the more extensive protections of the Geneva Conventions, specifically the Grave Breaches provisions. [FN85] These more extensive protections avail during periods of international armed conflict but not during times of non-international armed conflict and their omission signals that the conflict in Sierra Leone has, in effect, been predetermined as one of a non-international armed character. That predetermination is shortsighted--both factually, given Liberia and Burkina Faso's involvement, and theoretically, given the recognition that distinctions between international and non-international conflicts are difficult to make in contemporary conflict situations which often evidence aspects of both. [FN86] Additionally, lesser protections for victims of internal armed conflict are increasingly difficult to justify. [FN87] Had the more extensive provisions *409 been included, the judges of the Special Court could then have made characterizations of the conflict according to the facts of individual cases. [FN88]

If the Statute is notable for what it omits under subject-matter jurisdiction, it is perhaps more extraordinary for what it includes: provisions of Sierra Leone domestic law. Article 5 of the Statute enables the Special Court to prosecute persons for offences "relating to the abuse of girls under the prevention of Cruelty to Children Act, 1926," and offences "relating to the wanton destruction of property under the Malicious Damage Act, 1861." The Secretary-General justified the decision to create a Special Court of mixed jurisdiction on the basis that certain crimes or aspects of crimes committed during the conflict were better regulated by Sierra Leonean law than by international law. [FN89] This is not necessarily so: both the abuse of girls and malicious damage to property arguably fall within the ambit of international crimes included in the Statute. [FN90] It might be argued that the crimes under Sierra Leone law offer greater protection to a greater number of people, since they neither require proof of the existence of an armed conflict nor a widespread or systematic attack. [FN91] However, the elements of these crimes raise significant evidentiary difficulties [FN92] and present the specter of a complex *410 dual start-date for the Special Court--an issue addressed in detail in a later section. There is the further practical problem that prosecution of crimes under article 5 would demand reliance on Sierra Leone jurisprudence, which is largely unavailable. To ensure consistency in application of these laws, judges on the Special Court would need to have reference to court decisions issued by Sierra Leone domestic courts, but publication of Sierra Leone court decisions ceased in the 1970s. [FN93] Taking all of this into account, it appears that any additional protection offered under domestic law is more than offset by the problems it raises.

2. Temporal Jurisdiction

As hostilities had not ceased at the time of the Statute's first drafting, the temporal jurisdiction of the Special Court was left open-ended and in this manner resembles the ICTY which also has open-ended temporal jurisdiction because it too continued to be plagued by conflict at the time of its creation. [FN94] Yet while the Statute makes provisions for future conflict, it does not accommodate all the conflict that has gone before. In its current formulation, the Statute dates the beginning of the Special Court's temporal jurisdiction from November 30, 1996, the conclusion of the first comprehensive peace agreement between the Government of Sierra Leone and the RUF, known as the Abidjan Peace Agreement. [FN95] The temporal jurisdiction does not, therefore, *411 encompass the decade-long conflict in its entirety but only the past five years.

The restricted jurisdiction was triggered by considerations that the prosecutor should not be overburdened nor the

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Court overloaded. It was also intended that the start date of the Special Court's jurisdiction not be politically tendentious and that it encompass the most serious crimes committed by persons of all political and military groups in all geographical areas of the country. [FN96] The November 1996 start-date is said in the Secretary-General's Report to meet these concerns. [FN97]

However, on August 20, 2001 the Government of Sierra Leone sent a letter to the Legal Counsel of the U.N. in which it requested that the temporal jurisdiction of the Court be extended to cover the period since March 1991, when the conflict first started. [FN98] Reformulation of the Statute's temporal jurisdiction, in keeping with the request, would allow for the creation of a much more credible Special Court. [FN99] Not only would it allow the Prosecutor to focus more effectively on "those who bear the greatest responsibility" for violations committed throughout the conflict, rather than only those violations which have occurred during the last five years, it will also facilitate greater public support for the Special Court. The perception in Sierra Leone is that the current draft unjustly favors Freetown over the provinces, as the November 1996 date corresponds to the time when ^{*412} the capital first became a target of attack. For the provinces, the conflict has generally been one long, continuous experience from the beginning of the 1990s, whereas Freetown witnessed intermittent episodes of violence from the mid-1990s on. An amendment to the Statute setting the temporal jurisdiction's start-date from the beginning of the conflict would address the criticisms of many in Sierra Leone who view the limitation as arbitrary and unjust. It would keep faith with the tenets of international humanitarian law which do not apply from some retrospectively set date, arbitrarily fixed mid-way through the conflict, but from the time the hostilities began. It would also perceptibly foster a more cooperative and complementary relationship with the National Truth and Reconciliation Commission ("TRC"), which has a temporal jurisdiction dating from the beginning of the conflict.

Another factor to be considered when examining the Special Court's temporal jurisdiction is the amnesty granted under the Lomé Peace Agreement of July 7, 1999. The Secretary-General denied that this would act as any bar to the determination of the start-date of the Special Court's jurisdiction: reasoning that the "United Nations has consistently maintained the position that amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law." [FN100] In addition, he reiterated the disclaimer issued by his Special Representative for Sierra Leone at the time of the signing of the Lomé Peace Agreement to the effect that "the amnesty provisions contained in Article IX of the Agreement ('absolute and free pardon') shall not apply to international crimes and other serious violations of international humanitarian law." [FN101]

However, the Statute acknowledges that amnesties will be valid in respect of the included provisions of Sierra Leone law. [FN102] ^{*413} This makes for a situation in which the Special Court may hear violations of international humanitarian law committed since November 30, 1996, but only hear violations of the Sierra Leone provisions committed from the date of the signing of the Lomé Peace Agreement--July 7, 1999. In effect, this creates a dual start-date for the Special Court's temporal jurisdiction, which could raise serious questions about the legitimacy of the court in the eyes of the Sierra Leone public.

3. Personal Jurisdiction of the Special Court

The Statute for the Special Court provides that persons prosecuted shall be those "persons 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." [FN103] The terminology has been retained in subsequent drafts of the Statute, despite the Secretary-General's recommendation that the phrase "persons most responsible"--thought to widen the pool of potential defendants--be employed. [FN104]

Persons who bear the greatest responsibility for violations shall "includ[e] those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone." [FN105] The terminology is disturbingly open-ended. Various agreements have been attempted over the past five years--since the Kabbah-led government was elected to power--and even more before that. However, the U.N. only deployed a peacekeeping mission in Sierra Leone subsequent to the Lomé Peace Agreement, allowing for the argument that the peace process to which the Statute refers is that attempted after Lomé. Although unlikely, it is a possible and disconcerting interpretation further limiting the scope of the Special Court's focus and the restriction of its temporal jurisdiction to the period after 1996.

Following from the Secretary-General's Report on the Establishment *414 of a Special Court in Sierra Leone [FN106] and the fact that personal jurisdiction shall include and thereby not be limited to leaders, it may be surmised that the determination of the accused will be made by reference to both their command authority as well as the gravity and scale of the crimes. Appreciation that the Prosecutor must consider these two factors might auger for deference for the exercise of prosecutorial discretion. Yet, the stipulation that the Special Court prosecute those "who bear the greatest responsibility for serious violations" in contradistinction to the terminology employed in the ICTY and ICTR Statutes [FN107]--"the power to prosecute persons responsible for serious violations"--makes the job of Prosecutor of the Special Court that much more difficult and vulnerable to damaging criticism. For example, it might be said that the Prosecutor is incapable of determining the persons who bear the greatest responsibility without undertaking an analysis of, at least, most of the violations committed during the conflict. However, an analysis of this type is almost impossible, particularly given the limited resources afforded the Special Court.

The aspect of the Special Court that has, perhaps, provoked the most public debate is its position vis-à-vis those accused below the age of eighteen at the time of the alleged commission of the crimes. The position accurately reflected is that the Special Court shall have no jurisdiction over persons under the age of fifteen at the time of the alleged commission of the crime. [FN108] However, persons between the ages of fifteen and eighteen at the time of alleged commission of the crime may be brought before the Special Court, although the Prosecutor is directed to resort to alternative truth and reconciliation mechanisms, where appropriate. [FN109] If convicted, juvenile offenders may not be sentenced to imprisonment; instead the Special Court may order a variety of correctional care. [FN110]

The position represents a break with the Rome Statute for the International Criminal Court which provides that the "Court shall have no jurisdiction over any person who was under the age *415 of 18 at the time of the alleged commission of a crime" [FN111] and has provoked protest from child protection agencies. [FN112] Unfairly, the Government of Sierra Leone has been said to have insisted on the Special Court's power to prosecute juvenile offenders. However, the provision, in fact, originated from the U.N. Office of Legal Affairs. Upon receipt of the draft Statute containing that provision from the Office of Legal Affairs, Sierra Leone sought to change the jurisdiction to cover only persons older than seventeen, the age at which persons take on full adult criminal responsibility in Sierra Leone. At the urging of U.N. officials both in New York and Freetown, the Government of Sierra Leone came to adopt the position initially advanced by the U.N. and thereafter agreed to a revised Article 7 of the draft Statute of the Special Court for Sierra Leone. [FN113] The Statute now allows for prosecution of those between the ages of fifteen and eighteen at the time of the alleged commission of the crime, but at least does not foresee a whole trial chamber specifically designated to hear such trials as the U.N. initially proposed. [FN114]

The outcry elicited in response to these provisions has deflected attention from arguably more serious deficiencies in the Statute, given that the prescription of prosecuting "those who bear the greatest responsibility" makes it extremely unlikely that any juvenile offender will be prosecuted before the Special Court.

4. No Grant of Chapter VII Powers

For all the difficulties created for the Special Court by what it is given in the Statute, its greatest difficulties may stem from what it has not been given. Most glaringly, it has not been given *416 Security Council Chapter VII powers. Although the Special Court is to have concurrent jurisdiction with and primacy over Sierra Leone courts, and thus appears to be endowed with powers similar to those enjoyed by the ICTR and ICTY, its primacy is limited to the national courts of Sierra Leone and does not extend to courts of third-party States. This limitation results from the absence of Chapter VII powers afforded the Special Court. In contrast, the ad-hoc tribunals enjoy primacy and concurrent jurisdiction in respect of all national courts. [FN115] Their establishment by Security Council Chapter VII Resolution secures this pre-eminent position as all States are obliged to comply with Security Council decisions adopted under Chapter VII. [FN116] The Special Court lacks the power to request the surrender of an accused from any other State and to induce its compliance because it has not similarly been vested with Chapter VII powers.

In his report, the Secretary-General himself draws attention to the significant omission that will result should the Special Court not be granted these powers. [FN117] He suggests that the Security Council "may wish to consider

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endowing it with Chapter VII powers for the specific purpose of requesting the surrender of an accused from outside the jurisdiction of the Court." [FN118]

At the time of writing, the Security Council has not accepted this recommendation. One reason for its unwillingness to heed the Secretary-General's suggestion that it endow the Special Court with Chapter VII powers might be that this would strengthen legal arguments that the Special Court is an organ of the U.N., afforded Security Council powers, and so entitled to an *417 assessed share of the U.N.'s ordinary budget. [FN119]

Yet, without the power to induce the surrender of those "bearing the greatest responsibility for serious violations" the Special Court must be considered a particularly deficient response to the conflict that has swept through the country. Central to this conflict has been the part played by regional actors. Liberia and Burkina Faso have both lent considerable support to the RUF, providing bases from which to launch attacks, as well as providing ammunition, training, and money. Perpetrators might seek refuge within these territories, safe from the reach of the Special Court. Guinea, the site of recent attacks may also be used for this purpose.

The attacks across Guinea's borders evidence another significant weakness of the Special Court's proposed method of establishment. The Special Court's territorial jurisdiction only encompasses the territory of Sierra Leone and so ignores the reality of modern-day conflicts that are not neatly contained within the territorial confines of one particular State, but spill over national borders and generate more conflict. A comprehensive response to the war in Sierra Leone would entail the construction of a judicial mechanism afforded reach over all parts of the conflict—a power not granted the Special Court but which easily could have been given. In fact, the Security Council has attempted to accommodate the realities of these types of conflicts in the past and its omission in the case of Sierra Leone is made all the more objectionable by the fact that it appreciated this particular feature of the genocide in Rwanda and accordingly vested the Tribunal with an extended territorial jurisdiction. Article 1 of the Statute of the International Tribunal for Rwanda provides that:

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the *418 provisions of the present Statute. [FN120]

The precedent of this provision makes the inadequacy of the powers afforded the Special Court all the more apparent.

5. Funding the Special Court

As a treaty-based organ, the Special Court is not anchored within the existing U.N. administrative system and will not receive an assessed share of the budget as do the ICTY and ICTR. Instead, the Security Council has been adamant from the outset that the Special Court will be financed through voluntary contributions. [FN121] The U.N. Secretary-General questioned this arrangement in his report, arguing that:

While the Special Court differs from the two Tribunals in its nature and legal status, the similarity in the kind of crimes committed, the temporal, territorial and personal scope of jurisdiction, the number of accused, the organizational structure of the Court and the Rules of Procedure and Evidence suggest a similar scope and duration of operation and a similar need for a viable and sustainable financial mechanism. [FN122]

Voluntary contributions proposed for the Special Court cannot ensure the continuous and secure sources of funding needed to appoint judges, the prosecution, registry and administrative staff and purchase the necessary equipment. For this reason, the Secretary-General argues that the risks associated with voluntary contributions are great 'in terms of both moral responsibility and loss of credibility of the Organization, and its exposure to legal liability.' [FN123] He emphatically states that the Special Court 'based on voluntary contributions would be neither viable nor sustainable.' [FN124] He proposes two alternatives, including, financing through assessed contributions which would entail transforming the treaty-based court into a 'United *419 Nations organ governed in its financial and administrative activities by the relevant United Nations financial and staff regulations and rules,' [FN125] or reliance on the existing Sierra Leonean court system where judges, prosecutors, investigators, and administrative staff would be contributed by interested States. [FN126]

It is hard to imagine a note of warning issued more urgently and ominously than a public declaration by the Secretary-General in respect of a U.N.-sponsored institution. Yet the Security Council has refused to reconsider its choice of funding by means of voluntary contribution. It was decided, as a compromise after it became clear that assessed contributions were not an option, that implementation of the Agreement will only commence once contributions sufficient to finance the establishment of the Court and its first twelve months of operations are in hand, and the amount equal to the anticipated expenses for the following twenty-four months has been pledged. [FN127]

Even given this formulation, voluntary contributions remain a precarious means of funding a judicial institution: they have already resulted in a drastic reduction of the Special Court's budget, which was inadequate to begin. The Secretary-General provided an initial estimate of the start-up costs for the Special Court of U.S.\$22 million, based 'on the United Nations scale of salaries for a one-year period, the personnel requirements along with the corresponding equipment and vehicles.' [FN128] The revised estimated total expenses for the Special Court were U.S.\$114.6 million--based on a projected three year working cycle--with U.S.\$30 million allocated for the establishment and first year's operations. These initial figures are difficult to reconcile with the Secretary-General's observation that the similarity of the demands on the ad-hoc tribunals to those placed on the Special Court suggest similar expenses incurred: "the experience gained in the operation of the two ad hoc International Tribunals provides an indication of the scope, costs and long-term duration *420 of the judicial activities of an international jurisdiction of this kind." [FN129]

For 2001 the ICTY was awarded a budget of U.S.\$108,487,700 [FN130] and the ICTR a budget of U.S.\$93,974,800 [FN131] and neither of these two institutions are without financial difficulty. [FN132] The Special Court's initial U.S.\$22 million seems paltry in comparison: already less than a quarter of that given the ad-hoc tribunals. Yet the Special Court is not even to receive this comparatively small amount. Informal consultations indicated that the U.N. could not hope to secure anywhere near the amount it had estimated from Member States. Therefore, on June 14, 2001, a revised budget was presented to the Group of Interested States, [FN133] putting the costs of the first three years of operation at U.S.\$57 million, with U.S.\$16.8 million for the first year. [FN134] As of July 6, 2001, the Secretariat received indications of contributions for the Special Court's first year of operation at U.S.\$15 million--a shortfall of approximately U.S.\$1.8 million--and pledges for the following twenty-four months at approximately U.S.\$20.4 million--a shortfall of approximately U.S.\$19.6 million for the second and third years combined. [FN135]

Assuming that these funds are secured and implementation of the Agreement commences, it is nonetheless difficult to imagine *421 how the Special Court will evolve as a viable, effective judicial institution with so diminished a budget. This realization is made all the more obvious when one considers that the Special Court will have to shoulder not only the costs carried by the ad-hoc tribunals on their much larger budgets, but also the costs of a separate Appeals Chamber composed of five judges, while the ad hoc tribunals share an Appeals Tribunal.

B. The Special Court Placed in Context

The previous assessments examined possible difficulties for the Special Court that largely inhere in the institutional design of the Special Court itself. The following section looks at complicated aspects of the Special Court that will flow from its operation in the particular context of Sierra Leone.

1. The Special Court and the Truth and Reconciliation Commission

Article XXVI of the Lomé Accord provides for the establishment of a TRC to "address impunity, break the cycle of violence, provide a forum for both the victims and the perpetrators of human rights violations to tell their story, get a clear picture of the past to facilitate genuine healing and reconciliation." [FN136] The Commission is to investigate human rights violations committed since the beginning of the Sierra Leonean conflict in 1991. Although the Commission has not yet begun its operations due to bureaucratic delays in Geneva and elsewhere, the Sierra Leonean government has already enacted legislation for its establishment. [FN137]

It is unclear at present how the Special Court and TRC will function together; whether they will overlap or follow

on from each other. The Report of the Secretary-General acknowledges that at some future point "relationship and cooperation arrangements *422 would be required between the Prosecutor and the National Truth and Reconciliation Commission, including the use of the Commission as an alternative to prosecution, and the prosecution of juveniles in particular." [FN138] The current draft of the Statute requires that, in the prosecution of juveniles, the Prosecutor, where appropriate, resorts to alternative truth and reconciliation mechanisms, to the extent of their availability. Given that prescription and the fact that the Sierra Leone TRC legislation predates both the Secretary-General's Report and the Security Council Resolution on the Special Court, it is questionable why the relationship between the two institutions was not addressed at the time of the institutional design of the Special Court. While the Security Council noted the "steps taken by the Government of Sierra Leone in creating a national truth and reconciliation process, as required by Article XXVI of the Lomé Peace Agreement (S/1999/777) to contribute to the promotion of the rule of law," it failed to request that the Secretary-General take this into account in the creation of the Special Court.

This omission is not, perhaps, as shortsighted as it may first appear. The failure to include an explicit reference to the TRC either in the Statute or the Agreement for the Special Court implicitly recognizes and underscores the independent nature of both institutions. Thus the formulation of cooperative arrangements has, it could be argued, properly been left to the institutions that will be required to implement those arrangements and that will have the necessary specific expertise to resolve potentially thorny details.

Nonetheless, confusion around these two institutions has allowed the perception to be created in Sierra Leone that a choice must or might be made between one or the other rather than understanding each as complementary. The dynamics are complicated and ensuring some form of transitional justice in Sierra Leone will involve a careful balancing of these institutions, not only by local actors but also by the international community. At present and over the course of the next few months, disarmament and demobilization will take center-stage. Successful conclusion of this process may politically involve downplaying the Special Court or TRC at certain points.

*423 On the other hand, it is important that both the Special Court and TRC be understood as forming part of a larger whole. This bigger picture is supplied by the global context and by appreciating accountability as fundamental to lasting peace in Sierra Leone. Only by understanding the two institutions as complementary will the Sierra Leone process represent a development for international accountability mechanisms and not a regression. For example, the Sierra Leone TRC, viewed in isolation, is a step back from the South African TRC process, which has not escaped challenge for awarding amnesties to persons responsible for crimes against humanity. [FN139] In South Africa, however, there was incentive for perpetrators to come forward and disclose their crimes in order to receive amnesty. Otherwise, they faced the prospect of prosecution. It has been said simplistically, but somewhat accurately, that South Africans exchanged prosecutions for truth. This cannot be said even simplistically about the TRC process in Sierra Leone. To the extent that amnesty was given, it was given at Lomé, thereby removing a particularly strong incentive for the appearance of perpetrators before the TRC.

The transitional justice process in Sierra Leone need not be understood as deficient if greater emphasis is placed on the way in which the two institutions might operate together: the TRC allowing for the recounting of personal experience and the construction of historical narrative which is essential when one considers that Sierra Leone's conflict has too often, too simply, been dismissed as anarchic. This process of truth-telling and narrative construction is, however, to be overlain by Special Court prosecutions which (although in flawed fashion, given the limited numbers it is to prosecute) signals that those responsible for crimes against humanity and war crimes will not receive immunity.

As yet the U.N. has not attempted to present the two institutions as complementary, [FN140] allowing for the expression of concerns that information given to the TRC will be used to secure *424 convictions before the Special Court and so inspiring fears of intimidation and more violence.

2. Amnesty Provisions in the Lomé Accord

The Secretary-General's Special Representative for Sierra Leone appended his signature to the Lomé Peace Agreement with the disclaimer that "the amnesty provision contained in article IX of the Agreement ('absolute and free pardon') shall not apply to international crimes and other serious violations of international humanitarian law."

[FN141] Indeed, the Special Court is premised on this idea, namely that people who are suspected of having committed crimes under international law must be held accountable for their actions, amnesty or no amnesty. This is reflected in article 10 of the Statute itself, which provides that "[a]n amnesty granted to any person falling within the jurisdiction of the Special Court in respect of [crimes under international law] shall not be a bar to prosecution." [FN142]

The representative of the government of Sierra Leone, however, made no disclaimer in respect of the amnesty provisions upon signing the Lomé Peace Agreement. In fact, the Agreement was premised on the Government's offer of absolute and free pardon to all combatants and collaborators in exchange for the RUF's undertaking to cease hostilities. [FN143] Under Sierra Leone *425 law, a pardon offers constitutional protection against prosecution, which can only be derogated from to the extent necessary for dealing with situations of public emergency. [FN144] In addition to the granting of absolute and free pardon, the Government agreed that no judicial or official action would be taken against any of the combatants in respect of anything done by them in furtherance of their objectives from March 1991 to July 1999. Had these terms not been included, or had only partial immunity been offered, the Lomé talks would have been doomed to failure.

Despite these assurances, the Government not only agreed to the inclusion of article 10 in the Statute of the Special Court, it actively sought means by which criminal prosecutions could be brought against the very people it purported to pardon. This apparently contradictory behavior allows for a number of legal challenges. Those opposed to the amnesty may challenge the constitutionality of article IX of Lomé, on the basis that no constitutional power exists by which to grant any individual immunity before a criminal trial has been concluded. The Constitution vests the prerogative of mercy in the President, who accordingly has the power "to grant any person convicted of any offence against the laws of Sierra Leone a pardon, either free or subject to lawful conditions." [FN145] It does not purport to endow the President or anyone else with the ability either to grant a pardon before conviction or to guarantee anyone that criminal prosecutions will not be brought against them. Consequently, it might be argued that article IX of Lomé and any subsequent implementing legislation is unconstitutional and thus invalid, at least to the extent of its inconsistency with the Constitution.

Those seeking to safeguard the amnesty, on the other hand, *426 may argue that the Sierra Leone Government has acted contrary to its obligations under Lomé. They might do so by reasoning that the very act of negotiating and concluding an agreement to prosecute people for atrocities committed during the conflict, in essence the Agreement on the Special Court, can be characterized as an "official action," contrary to article IX(3) of Lomé which prescribes any "official or judicial action" on the part of the Government against any of the combatants. [FN146]

The Government has not endorsed the unconstitutionality argument. It need not do so in order to ensure that those accused of atrocities are brought to justice. Instead, it might maintain that the Lomé Peace Agreement was first breached by the RUF, thereby rendering the Agreement void and releasing the Government from its obligations. Further, it might argue that the amnesty granted "in respect of anything done by them in pursuit of their objectives" [FN147] was intended only to comport with the international humanitarian principle that combatants in civil wars should not be penalized simply for having taken part in hostilities [FN148] and that it was never intended to cover violations of international humanitarian law. [FN149] An additional support is provided by the principle of *aut dedere aut judicare*, namely that every State is under a legal, non-derogable obligation to either prosecute or extradite people suspected of having committed these types of crimes. This pre-existing obligation would render Article IX of the Lomé Peace Agreement and any subsequent implementing legislation void, as the Government had no capacity to contract out of its international legal obligations.

All this might seem to have very little significance for the U.N., since once the Agreement is signed the question of whether Sierra Leone has breached its domestic law will not affect the validity of that agreement. [FN150] However, the Special Court represents a joint endeavor, therefore its success depends *427 upon the Government's ability to make good its obligations and direct its enforcement power to the apprehension, detention, and trial of the accused and the sentencing and punishment of those convicted. Given this, the U.N. cannot ignore the situation. At the very least it must help the Government comprehensively address this issue. If establishment of the Special Court proceeds and this proves to be a stumbling block to its effective operation, the U.N. will ultimately be held responsible and the failure will throw into question the future practice of Tribunal-creation.

IV. INNOVATIVE JUDICIAL MECHANISMS IN A COUNTRY OF MORE PRESSING NEEDS

The establishment of an innovative, sophisticated judicial mechanism in a country said to be the least developed in the world raises a number of difficulties. [FN151] The ten-year war is largely a manifestation of the dire economic conditions faced by people in the region. Addressing these conditions and ending the war by investing funds in the disarmament process seem more obvious priorities for the immediate future. This sentiment is often expressed in Sierra Leone: the media, for instance, often argues that the money for the Special Court could be better used for other objectives. But even if we ignore the *428 argument that there can be no real ending of conflict without addressing the cycle of impunity that exists in Sierra Leone, the fact remains that the money is not available to be spent on other goals. There is no general pool of money allocated to Sierra Leone that is depleted by committing funds to the Special Court. The choice, therefore, is not between spending the money on the Special Court or directing it to other objectives; it is between having funds for the Special Court or not having funds at all.

Nonetheless, the economic conditions in Sierra Leone pose real challenges to the successful operation of the Special Court. While the Court will be based in Sierra Leone and is, therefore, theoretically more accessible to the people there than the ad-hoc tribunals are for the people of those regions respectively, lack of infrastructure makes it unlikely that the Special Court will be genuinely accessible. High rates of illiteracy compound the problem. Justifications offered accountability mechanisms such as the Special Court--that they deter would-be war criminals, end the culture of impunity, offer the victims acknowledgement of their suffering--all depend for their veracity of the workings of these institutions being observed and understood. Where this cannot be guaranteed, as in Sierra Leone, articulation of these justifications leaves room for doubt.

It must also be appreciated that these difficulties--lack of infrastructure, illiteracy, and the sheer number of people affected--will hamper the actual workings of the Special Court, particularly the work of the Prosecutor's Office, which will need to build cases, solicit and collect evidence and testimonies.

However, the U.N. is attentive to the challenges posed for the peace process by the overwhelming economic needs of Sierra Leoneans. Its attempts at instantiating post-conflict judicial processes are only one part of a multi-faceted approach, involving military, economic, and political initiatives, by which peace is put in place. It must balance these factors as best it can. And yet, Sierra Leoneans and human rights advocates are right to demand a meaningful, sustained form of transitional justice for Sierra Leone--one that serves as no handmaiden for any of the other peace process initiatives. Accordingly, economic, military, and political initiatives must not be allowed to directly undercut the foundation for the Special Court.

Sadly this situation occurs when the Secretary-General urges *429 assistance for the RUF "to transform itself into a genuine political party that can participate in the coming elections" and appeals to "countries in the West African sub-region, as well as donor countries, to extend technical and other appropriate assistance to the RUF in this regard." The appeal is triggered by his concern that demobilized combatants "not directly benefiting from disarmament could resort to activities that might undermine not only the peace process in Sierra Leone but also the stability of the subregion." [FN152]

Criminal trials in the wake of mass atrocity are valuable, not least because they individualize guilt and militate against demonization of whole groups, however they are also important because they safeguard against political rehabilitation. Akhavan writes specifically in relation to Rwanda that criminal indictments and prosecutions "thwarted any political rehabilitation and military reorganization of Hutu extremism." [FN153] Yet this is exactly what the Secretary-General requests in respect of the RUF. Admittedly the Special Court is not intended to target the RUF, but if predictions can be made, it is that many of those deemed to "bear the greatest responsibility" for atrocities committed during the conflict will be drawn from the upper echelons of the RUF hierarchy. They are, as yet, undicted and thus inseparable from the RUF, making it difficult to treat the RUF as legitimate without the risk of shoring up their leadership and advancing their personal ambitions (including evasion of the Special Court). The Secretary-General's appeal now, at a time when the U.N. purports to seek the establishment of the Special Court, risks discrediting the U.N., by appearing malleable, and undercutting support for the Special Court, by requiring that those who might be prosecuted be treated as legitimate.

These circumstances--individually, but more powerfully in combination--suggest that the climate in Sierra Leone is not hospitable to the workings of the Special Court. The U.N.'s readiness to establish this experimental judicial

process without consideration for the legal and political landscape in which it will operate, its failure to attempt to make that landscape more *430 amenable and, most seriously, its active contribution to an unsupportive environment, must trigger the gravest concern.

CONCLUSION

In many respects the Special Court appears to represent "boutique justice:" an overrated, overly expensive means of doing what courts in Sierra Leone are quite capable of doing themselves, perhaps not better but certainly faster. Yet, in one important respect the Special Court offers an advantage the domestic courts cannot: as a U.N.-sponsored institution it offers more legitimacy than the Government ever could acting alone--contributing to a more stable, enduring peace. Even those who complain of the cost of the Court can appreciate and subscribe to this argument.

The publicity accorded negotiations between the Government of Sierra Leone and the U.N. on the Special Court and the many statements made in Sierra Leone concerning the need for this institution have raised a legitimate expectation that the Court will be established and it will do its work well. However, the flaws in the substantive mandate and institutional design of the Court throw into question the international community's capacity to deliver on its promises and its commitment to addressing the conflict in Sierra Leone.

There is no more pressing reason to ensure that the Special Court does, indeed, do its work well than the people of Sierra Leone themselves. Their suffering during ten years of brutal war has for too long gone neglected. Yet there is another important reason: post-conflict judicial mechanisms are relatively new phenomena. They constitute an essential, if still experimental, part of an increasingly elaborate and sophisticated toolbox with which the international community addresses conflict. Should one of these individual institutions fail at this formative stage, as the Special Court may do spectacularly, all post-conflict judicial mechanisms may come to be viewed as irrelevant. Robert Kaplan's argument that institutionalizing war crimes tribunals will not reduce the commission of these types of crimes will always be easy to answer. That tribunals of Sierra Leone's type--under-funded, ill-equipped, and disorganized from the time of its inception--constitute the most artificial, apathetic attempts to address conflict will always be the more difficult argument to refute.

[FN1]. LL.B, LL.M. Fellow, Joseph R. Crowley Program in International Human Rights, Fordham Law School. Outreach Officer for No Peace Without Justice, Sierra Leone, June-Aug. 2001.

[FN2]. B.A., LL.B, LL.M. International Law Consultant. Country Director for No Peace Without Justice, Sierra Leone, Aug.-Oct. 2000, Feb.-Sept. 2001.

[FN3]. Robert Kaplan, *The Coming Anarchy: Shattering the Dreams of the Post Cold War* (2000). See David Pratt, *Sierra Leone: The Forgotten Crisis* (Apr. 23, 1999), available at <http://www.sierra-leone.org/pratt042399.html>. This report was prepared by a member of the Canadian Parliament and Special Envoy to Sierra Leone for the Canadian Minister of Foreign Affairs. See also Steve Coll, *The Other War: The Gratuitous Cruelties Against Civilians in Sierra Leone Last Year Rivalled Those Committed in Kosovo at the Same Time*, *Wash. Post Mag.*, Jan. 9, 2000, at W8, available at [http://www.washingtonpost.com/wp-srv/photo/galleries/sierra leone](http://www.washingtonpost.com/wp-srv/photo/galleries/sierra%20leone); Karen Gallagher, Note, *No Justice, No Peace: The Legalities and Realities of Amnesty in Sierra Leone*, 23 *T. Jefferson L. Rev.* 149 (2000).

[FN4]. Kaplan, *supra* note 1, at 4.

[FN5]. This Article will not, however, address the disparity in treatment of the two conflicts.

[FN6]. See Kaplan, *supra* note 1, at 100.

[FN5]. See Developments in the Law--International Criminal Law: II. The Promises of International Prosecution, 114 Harv. L. Rev. 1957, 1963 (2001). Payam Akhavan disagrees, writing that: "Although still in the early stages of their institutional life, the International Criminal Tribunals for the former Yugoslavia ("ICTY") and for Rwanda ("ICTR") provide a unique empirical basis for evaluating the impact of international criminal justice on post-conflict peace building." *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?*, 95 Am. J. Int'l. L. 7 (2001). However, he does acknowledge that "measuring the capacity of punishment to prevent criminal conduct is an elusive undertaking, especially when a society is gripped by widespread habitual violence and an inverted morality has elevated otherwise 'deviant' crimes to the highest expression of group loyalty." *Id.*

[FN6]. Kaplan, *supra* note 1, at 9.

[FN7]. See U.N. Devel. Program, Human Development Report: Human Development Index 1999, available at <http://www.undp.org/hdro/HDI.html>.

[FN8]. James Traub, *The Worst Place on Earth*, N.Y. Rev. of Books, June 29, 2000, available at <http://www.nybooks.com/articles/43>.

[FN9]. *Id.*

[FN10]. See Gallagher, *supra* note 1, at 153.

[FN11]. See Traub, *supra* note 8; see also Pratt, *supra* note 1.

[FN12]. See Traub, *supra* note 8.

[FN13]. It should be noted that the Revolutionary United Front ("RUF") was not alone in committing these crimes during the course of the war, but it did commit them on a more systematic, sustained scale than other parties to the conflict.

[FN14]. See Gallagher, *supra* note 1, at 156. Valentine Strasser, a young army officer, led the coup gaining notoriety as the youngest head of State in the world.

[FN15]. See Pratt, *supra* note 1.

[FN16]. According to accounts from local Sierra Leoneans they were also particularly brutal.

[FN17]. Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), Nov. 30, 1996 [hereinafter *Abidjan Accord*], available at <http://www.sierra-leone.org/abidjanaccord.html>.

[FN18]. Gallagher, *supra* note 1, at 157.

[FN19]. Report of the Secretary-General on Sierra Leone, U.N. Doc. S/1997/80 (1997).

[FN20]. Traub, *supra* note 8.

[FN21]. Gallagher, *supra* note 1, at 157.

[FN22]. *Id.* The army's opposition to Kabbah is said to have been provoked by his recourse to private militias, because the army had not been offered scholarships abroad, and because they were badly paid. See *id.*; Coll, *supra* note 1; Traub, *supra* note 8.

[FN23]. S.C. Res 1270, U.N. SCOR, 4054th mtg., U.N. Doc. S/RES/1270 (1999).

[FN24]. See Pratt, *supra* note 1.

[FN25]. Coll, *supra* note 1.

[FN26]. See *id.* Freetown inhabitants report countless violations committed by ECOMOG troops. *Id.*

[FN27]. *Id.*

[FN28]. See Traub, *supra* note 8.

[FN29]. Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, July 7, 1999 [hereinafter Lomé Accord], available at <http://www.sierra-leone.org/lomeaccord.html>.

[FN30]. Gallagher, *supra* note 1, at 162. Hum. Rts. Watch, The Sierra Leone Amnesty Under International Law (Aug. 3, 1999), available at <http://www.hrw.org/campaigns/sierra/int-law2.htm>.

[FN31]. Gallagher, *supra* note 1. The U.N. Security Council has traditionally been reluctant to intervene to protect one side in a civil war--a violation of its principle of impartiality. It is far more ready to send troops to ensure compliance with a cease-fire agreement. However, a U.N. Report released last year subjected this principle of impartiality to criticism, arguing that "where one party to a peace agreement clearly and incontrovertibly is violating its terms, continued equal treatment of all parties by the United Nations can in the best case result in ineffectiveness and in the worst may amount to complicity with evil." Report of the Panel on United Nations Peace Operations, U.N. Docs. A/55/305- S/2000/809 (Aug. 21, 2000).

[FN32]. See S.C. Res. 1270, *supra* note 23.

[FN33]. Admittedly, these were not solely the province of the RUF.

[FN34]. Bruce Zagaris, U.N. Security Council Votes to Establish War Crimes Tribunal for Sierra Leone, 16 Int'l Enforcement L. Rep. 10 (2000).

[FN35]. See *id.* paras. 3-4 (noting continued disagreement between UNAMSIL and RUF, and reports of alleged attacks on RUF controlled villages).

[FN36]. War Traps 250,000 Refugees, Uproots Residents of Guinea, Dallas Morning News, Feb. 16, 2001, at 13A.

[FN37]. See Guinea is Target of Rebel Movement: Liberian Leader Said to Aid Insurgents, Wash. Times, Feb. 1, 2001, at A12.

[FN38]. See Guinea: U.N. Refugee Office to Resume Aid, Facts on File World News Dig., Feb. 20, 2001, at 173B3.

[FN39]. See Eleventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, U.N. Doc. S/2001/857, para. 57 (Sept. 7, 2001).

[FN40]. See Douglas Farah, U.N. Deployment Woes Jeopardize Sierra Leone Cease-Fire, Wash. Post, Feb. 19, 2001, at A29 [hereinafter U.N. Deployment]; see also Douglas Farah, A Separate Peacekeeping: In Sierra Leone, Britain, U.N. Clash over Ultimate Aim, Wash. Post, Dec. 10, 2000, at A42.

[FN41]. See Eleventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, *supra* note 39, para. 18 (stating that as of September 5, 2001 UNAMSIL troop strength had increased to 16,664).

[FN42]. See U.N. Deployment, *supra* note 40.

[FN43]. Daniel Benjamin, The Limits of Peacekeeping: The U.S. Quietly Launches a Program to Train Troops in West Africa, Time Eur., Jan. 8, 2000, at 37.

[FN44]. *Id.*

[FN45]. See Eleventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, *supra* note 39, paras. 18, 21 (reporting that UNAMSIL troop strength has increased to 16,664 and that by Sept. 3, 2001 a total of 16,097 combatants had been disarmed: 6,523 from the RUF, 9,399 from the Civil Defense Force, and 175 from the AFRC/ex-Sierra Leone army).

[FN46]. See *id.* para. 2 (noting that disarmament has been completed in four districts and that UNAMSIL deployment now covers a considerable part of the country).

[FN47]. Security Council Takes Up Report on Diamonds, Arms in Sierra Leone; Expert Panel Says Council Sanctions Broken with Impunity, U.N. Doc. SC/6997 (2001), available at <http://www.un.org/News/Press/docs/2001/sc6997.doc.htm>.

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[FN48]. Douglas Farah, *Sierra Leone's Rebel Without a Home: As Sanctions on Liberia Loom, Once Feared 'Mosquito' is Under Pressure to Leave*, Wash. Post, Jan. 22, 2001, at A13. Illegal mining continues, however, despite the fact that UNAMSIL, the Government of Sierra Leone, and the RUF have agreed to moratoriums on diamond mining in order to facilitate the disarmament process. See Eleventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, *supra* note 39, para. 3.

[FN49]. Gallagher, *supra* note 1, at 167.

[FN50]. See Zagaris, *supra* note 34.

[FN51]. Gallagher, *supra* note 1, at 194.

[FN52]. Jim Wurst Rights: U.N. Creates Court to Try Sierra Leone War Crimes, Inter Press Service, Aug. 14, 2001. This was much like the request sent by the Rwandan President to the U.N. Secretary-General in 1994 requesting a criminal tribunal to try those responsible for the country's genocide.

[FN53]. S.C. Res. 1315, U.N. SCOR, 4186th mtg., at 2, U.N. Doc. S/RES/1315 (2000).

[FN54]. Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, U.N. Doc. S/2000/915 (2000). The draft Statute of the Special Court for Sierra Leone, annexed to the Secretary-General's report was subsequently revised in February 2001. Although not yet made available by the U.N., it was released by the Government of Sierra Leone. Unless otherwise stated, reference in this Article to the Statute of the Special Court is to the revised draft of February 2001. The Draft Statute of the Special Court of Sierra Leone is available at <http://www.specialcourt.org/documents/index1.htm>.

[FN55]. Report of the Secretary-General Pursuant to General Assembly Resolution 53/35. The Fall of Srebrenica, U.N. GAOR, 54th session, U.N. Doc. A/54/549 (1999) (relating to the Bosnian conflict); Report of the Independent Inquiry Into the Actions of the United Nations During the 1994 Genocide in Rwanda, U.N. Doc. S/1999/1257 (1999) (relating to the Rwandan conflict).

[FN56]. See Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260(III)A, 78 U.N.T.S. 277, art. 6 (adopted by the U.N. General Assembly on December 9, 1948).

[FN57]. Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), U.N. Doc. S/25704 (1993), reprinted in Virginia Morris & Michael P. Scharf, *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia* 22-35 (1995).

[FN58]. Statute of the International Tribunal for the Prosecution on Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, S.C. Res. 827, U.N. SCOR, 3217th mtg., Doc. S/RES/827 (1993) [hereinafter ICTY Statute].

[FN59]. Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Neighboring states, between January 1, 1994 and December 31, 1994, S.C. Res. 955, U.N. Doc. S/RES/955 (1994) [hereinafter ICTR Statute].

[FN60]. Morris & Scharf, *supra* note 57, at 72.

[FN61]. See *id.* at 75-116. The Federal Republic of Yugoslavia sent a letter to the Secretary-General submitting that the Security Council was not entitled to establish an international tribunal as a subsidiary body under Article 29 of the Charter. A similar argument was made by the defense in *Prosecutor v. Dusko Tadić*, Case no. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Oct. 2, 1995).

[FN62]. M. Cherif Bassiouni, Historical Survey: 1919-1998, in *International Criminal Law* 609-16 (M. Cherif Bassiouni ed., 2d ed. 1999).

[FN63]. Rome Statute of the International Criminal Court, U.N. Doc. A/ CONF.183/9 (1998), art. 126, available at www.un.org/law/icc/index.html. As of November 14, 2001, 46 States have ratified the Rome Statute of the International Criminal Court.

[FN64]. The literature is enormous. We cite only by example: Madeline Morris, Symposium: Justice in Cataclysm: Criminal Trial in the Wake of Mass Violence, 7 *Duke J. Comp. & Int'l L.* 319 (1997); M. Cherif Bassiouni, Accountability for International Crime and Serious Violations of Fundamental Human Rights, 59 *L. & Contemp. Prob.* 9 (1996).

[FN65]. See Rome Statute of the International Criminal Court, *supra* note 63. Article 11(1) provides: "The Court has jurisdiction only with respect to crimes committed after the entry into force of the Statute."

[FN66]. *Id.* art. 12. Under this article, non-State Parties may also accept the jurisdiction of the ICC in respect of a particular situation. *Id.*

[FN67]. Many of these novel features will, however, be replicated in the provisions for the Special Court proposed for Cambodia. See Nina Jorgensen, The New, More Attractive Face of International Courts, *Carberra Times*, Jan. 19, 2001, at A9.

[FN68]. See Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, *supra* note 54, para. 9; Konstantinos D. Magliveras, The Special Court for Sierra Leone: A New Type of Regional Criminal Court for the International Community?, 17 *Int'l Enforcement L. Rep.* 2 (2001).

[FN69]. See Bassiouni, *supra* note 62.

[FN70]. S.C. Res. 1315, *supra* note 53 (recognizing that "in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace").

[FN71]. Payam Akhavan, The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment, 90 *Am. J. Int'l L.* 501, 504-05 (1996).

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[FN72]. *Id.* at 508 (citing U.N. Doc. S/PV.3453, at 16 (1994)).

[FN73]. *Id.*

[FN74]. Neil J. Kritz, *Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights*, 59 L. & Cont. Probs. 127, 131 (1996).

[FN75]. *Id.* at 132.

[FN76]. *Id.*

[FN77]. Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, *supra* note 54. "If the role of the Special Court in dealing with impunity and developing respect for the rule of law in Sierra Leone is to be fully understood and its education message conveyed to Sierra Leoneans of all ages, a broad public information and educative campaign will have to be undertaken as an integral part of the Court's activities." *Id.* para. 7. It should be noted that as of September 2001, no educational or publicity campaigns had been undertaken by the U.N. in respect of the Special Court, although some efforts have been made to promote the Truth and Reconciliation Commission. The only Special Court sensitization efforts carried out have been initiated by No Peace Without Justice.

[FN78]. *Id.* para. 60. However, all the potential sites were rejected on financial or security grounds. It should be noted that the Security Council requested that the Secretary-General address the possibility of an alternative host State, should it be necessary to convene the Special Court outside its seat in Sierra Leone, for security or other compelling reasons. *Id.* para. 50.

[FN79]. Kritz, *supra* note 74, at 135.

[FN80]. *Id.* at 148.

[FN81]. U.N. Development Programme, Management Development and Governance Division, Capacity Development: Technical Advisory Paper 2, at 5-6, at <http://www.magnet.undp.org/cdrb/Techpap2.html>.

[FN82]. Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, *supra* note 54, para. 12. These comprise crimes against humanity (art. 2); violations of article 3 common to the Geneva Conventions and of Additional Protocol II (art. 3), and other serious violations of international humanitarian law (art. 4). *Id.* para. 21.

[FN83]. *Id.*

[FN84]. Protected groups under the Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 56.

[FN85]. They were included in the ICTY Statute (ICTY Statute, *supra* note 58); however, they were omitted from

the ICTR Statute (ICTR Statute, *supra* note 59).

[FN86]. Theodor Meron, *The Humanization of Humanitarian Law*, 94 Am. J. Int'l. L. 239, 261 (2000).

[FN87]. The ICTY appeals chamber has held:

Why protect civilians from belligerent violence, or ban rape, torture or the wanton destruction of hospitals, churches, museums or private property, as well as proscribe weapons causing unnecessary suffering when two sovereign States are engaged in war, and yet refrain from enacting the same bans or providing the same protection when armed violence has erupted 'only' within the territory of a sovereign State? If international law, while of course duly safeguarding the legitimate interests of States, must gradually turn to the protection of human beings, it is only natural that the aforementioned dichotomy should gradually lose its weight.

Prosecutor v. Tadic, Case no. IT-94-I-A72, Appeal on Jurisdiction, para. 97 (Oct. 2, 1995), reprinted in 35 I.L.M. 32 (1996).

[FN88]. No Peace Without Justice, So, What Is the Special Court and What Does It Intend To Achieve in the End? Report from the Special Court Training Seminars 11 (2001).

[FN89]. Report of the Secretary-General on the Establishment of a Special Court in Sierra Leone, *supra* note 54, para. 19.

[FN90]. Article 2, inscribing crimes against humanity, prohibits "rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence." It also prohibits "persecution on political, racial, ethnic or religious grounds" and "other inhumane acts." Article 3, inscribing violations of article 3 common to the Geneva Conventions and of Additional Protocol II, prohibits "acts of terrorism" and "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault."

[FN91]. However, the prosecutorial prescription that only "persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law" stand trial before the Special Court, makes it extremely unlikely that persons accused only of isolated crimes--acts which do not form part of a widespread and systematic attack--will be prosecuted before the Special Court.

[FN92]. For example, the abuse of girls provisions would require proof of the child's age, be it 13 or 14. In a country where births are more often not registered or recorded than they are, this requirement of proof of age could pose problems that are difficult, if not impossible, to overcome.

[FN93]. Verified by our discussions with legal practitioners in Sierra Leone. Since the 1970s, court decisions are only written in longhand by the judges who decide the cases and are stored in loose piles in the basement of the courthouse. Many of these decisions were destroyed by fire and thus lost completely during the attacks on Freetown.

[FN94]. Article 1 of the Statute of the ICTY provides that the Tribunal "shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute." ICTY Statute, *supra* note 58. Article 1 of the Statute of the ICTR provides jurisdiction in respect of "serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between January 1, 1994 and December 31, 1994 ..." ICTR Statute, *supra* note 59. A finite period of jurisdiction was afforded on the basis that hostilities between the Tutsis

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and Hutus had come to a halt. There have, however, been subsequent outbreaks of hostilities between the groups and the Statute would have been better conceptualized had the drafters understood this possibility and provided for a more expansive jurisdiction.

[FN95]. Abidjan Accord, *supra* note 17; Report of the Secretary-General on the Establishment of a Special Court in Sierra Leone, *supra* note 54, paras. 26- 27.

[FN96]. Report of the Secretary-General on the Establishment of a Special Court in Sierra Leone, *supra* note 54, paras. 21-22.

[FN97]. *Id.* paras. 26-27. Two other dates were in contention. May 25, 1997, the date of the coup d'etat staged by the Armed Forces Revolutionary Council against Kabbah's democratically elected government, and believed to have ushered in more serious violations of international humanitarian law, was rejected on the ground that it would imply that punishment was sought for participation in the coup. The alternate date, Jan. 6, 1999, marking the launch of the RUF's most recent attempt to capture Freetown and the peak of the campaign of systematic and widespread crimes against the civilian population, was also rejected as it would exclude all crimes committed before that period in the rural and provincial areas. *Id.* para. 27.

[FN98]. Eleventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, *supra* note 39, para. 48.

[FN99]. Freetown newspapers, for example, have consistently attacked the issue on numerous occasions. In addition, it was criticized in every one of the 21 Special Court Training Seminars conducted by No Peace Without Justice, which were held in Freetown, Bo, Kenema, and Mile 91. These seminars attracted a total of 602 participants, including civil society and human rights organizations, lawyers, Paramount Chiefs, police, teachers, combatants, and ex- combatants: not a single voice was raised in support of retaining the start- date at 1996.

[FN100]. Report of the Secretary-General on the Establishment of a Special Court in Sierra Leone, *supra* note 54, paras. 22, 24.

[FN101]. *Id.* para. 23.

[FN102]. Draft Statute of the Special Court for Sierra Leone, *supra* note 54, art. 10. Article 10 provides:

An amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the crimes referred to in articles 2 to 4 of the present Statute shall not be a bar to prosecution.

Id. The omission of Article 5, which inscribes the provisions of Sierra Leone law, indicates that amnesties granted in respect of these crimes will be a bar to prosecution.

[FN103]. Draft Statute of the Special Court of Sierra Leone, *supra* note 54, art. 1(1) (noting that this Feb. 2001 version of the Statute has not been released by the U.N. and that only the Sierra Leonean government's draft is available).

[FN104]. Report of the Secretary-General on the Establishment of a Special Court in Sierra Leone, *supra* note 54, para. 29.

[FN105]. Draft Statute of the Special Court of Sierra Leone, *supra* note 54, art. 1(1).

[FN106]. Report of the Secretary-General on the Establishment of a Special Court in Sierra Leone, *supra* note 54, at para. 29.

[FN107]. See ICTY Statute, *supra* note 58, art. 1; ICTR Statute, *supra* note 59, art. 1.

[FN108]. Draft Statute of the Special Court of Sierra Leone, *supra* note 54, art. 7(1).

[FN109]. *Id.* art. 15(5).

[FN110]. *Id.* art. 7(2).

[FN111]. Rome Statute, *supra* note 63, art. 26.

[FN112]. See Report of the Secretary-General on the Establishment of a Special Court in Sierra Leone, *supra* note 54, para. 35. "The international non-governmental organizations responsible for child-care and rehabilitation programmes, together with some of their national counterparts, however, were unanimous in their objection to any kind of judicial accountability for children below 18 years of age for fear that such a process would place at risk the entire rehabilitation programme so painstakingly achieved." *Id.* para. 35.

[FN113]. This information is known to No Peace Without Justice because of its position assisting the Sierra Leone Mission to the U.N. in New York and the Government of Sierra Leone in Freetown.

[FN114]. See Report of the Secretary-General on the Establishment of a Special Court in Sierra Leone, *supra* note 54, art. 7(3)(b) (noting that this section includes an initial version of the Draft Statute).

[FN115]. See ICTY Statute, *supra* note 58, art. 9; see also ICTR Statute, *supra* note 59, art. 8.

[FN116]. See U.N. Charter chap. VII, art. 48. Article 48 constitutes an affirmation in the context of Chapter VII Security Council powers with respect to threats to the peace, breaches of the peace, and acts of aggression and of Member States' obligations to accept and effect binding decisions by the Security Council. Article 48 provides that: "the action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all Members of the United Nations, or by some of them, as the Security Council may determine." *Id.* Article 103 states that "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligation under the present Charter shall prevail." *Id.* chap. XVI, art. 103.

[FN117]. Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, *supra* note 54, para. 10.

[FN118]. *Id.*

[FN119]. See Thalif Deen, *Sierra Leone Tribunal May Run into Funding Problems*, Inter Press Service, Jan. 4, 2001 (commenting on the Security Council's rejection of the recommendation by the U.N. Secretary-General that the Special Court be financed through mandatory fees levied on all 189 Member states).

[FN120]. ICTR Statute, *supra* note 59, art. 1.

[FN121]. See S.C. Res. 1315, *supra* note 53 (requesting the Secretary-General to include recommendations on the 'amount of voluntary contributions, as appropriate, of funds, equipment and services to the Special Court, including through the offer of expert personnel that may be needed from States, intergovernmental organizations and non-governmental organizations').

[FN122]. Report of the Secretary-General on the Establishment of a Special Court in Sierra Leone, *supra* note 54, para. 69.

[FN123]. *Id.* para. 70.

[FN124]. *Id.*

[FN125]. *Id.* para. 71.

[FN126]. A variation on the latter type of proposal has been employed in Kosovo and East Timor. Carlotta Gall, *U.N.'s Chief in Kosovo Plans a Special Court: Foreign Judges in Ethnic and War Cases*, Int'l Herald Trib., June 24, 2000.

[FN127]. Letter of the Secretary-General to the Security Council, U.N. Doc. S/2001/40 (Jan. 12, 2001).

[FN128]. Report of the Secretary-General on the Establishment of a Special Court in Sierra Leone, *supra* note 54, para. 58.

[FN129]. *Id.* para. 69 (emphasis added).

[FN130]. *Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*, G.A. Res. 55/255, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/225 (2001).

[FN131]. *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, G.A. Res. 55/266, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/226 (2001).

[FN132]. See Report on the Operation of the International Criminal Tribunal for the Former Yugoslavia, available at

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[http:// www.un.org/icty/pressreal/RAP000620e.htm](http://www.un.org/icty/pressreal/RAP000620e.htm); see also Statement by the President of the ICTR to the U.N. General Assembly (2000), available at [http:// www.ictr.org/](http://www.ictr.org/).

[FN133]. The Group of Interested States is a self-selected group of U.N. Member States who are taking an active interest in the establishment of the Special Court. They are primarily those who have indicated their willingness to contribute funds for the Court.

[FN134]. Letter from the Secretariat, S/2001/693 (July 12, 2001), available at <http://www.un.org/Docs/sc/letters/2001/693e.pdf> (referring to an amended budget and a June 14, 2001 letter from the Secretariat to Member States regarding revised budget estimates). These numbers include contributions received up until July 6, 2001.

[FN135]. *Id.*

[FN136]. Lomé Accord, *supra* note 29.

[FN137]. See The Truth and Reconciliation Commission Act 2000, available at <http://www.sierra-leone.org/trc.html> (2001) [hereinafter TRC]. The TRC is to be composed of seven commissioners, four of whom will be citizens of Sierra Leone. The remaining three will be foreigners. All will be appointed by the President of Sierra Leone. It is to be operational for a period of one year although it will have an additional three-month preparatory period and may be extended for six-month periods after the initial 12 months have passed. It will investigate human rights violations from the outbreak of the conflict in 1991 to the signing of the Lomé Accord. *Id.*

[FN138]. Report of the Secretary-General on the Establishment of a Special Court in Sierra Leone, *supra* note 54, para. 8.

[FN139]. See Azanian Peoples Organization (AZAPO) and Another v. President of the RSA and Others 1996 (8) BCLR 1015 (CC) (noting that the families of slain political activists, Steve Biko and Griffiths Mxenge challenged the TRC legislation on the basis that an award of amnesty for crimes against humanity violated South Africa's international law obligations).

[FN140]. To the extent it has undertaken any educational campaigns, the U.N. has sought to increase awareness about the TRC. Tenth Report of the Secretary-General on the U.N. Mission to Sierra Leone, U.N. Doc. S/2001/627, para. 59.

[FN141]. Lomé Accord, *supra* note 29, para. 23.

[FN142]. Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, *supra* note 54, para. 24; see also The Draft Statute of the Special Court of Sierra Leone, *supra* note 54, art. 10.

[FN143]. Lomé Accord, *supra* note 29, art. IX. The full text of Article IX reads as follows:

(1) In order to bring lasting peace to Sierra Leone, the Government of Sierra Leone shall take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon.

(2) After the signing of the present Agreement, the Government of Sierra Leone shall grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their

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objectives, up to the time of the signing of the present Agreement.

(3) To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organizations, since March 1991 up to the time of the signing of the present Agreement. In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons currently outside the country for reasons related to armed conflict shall be adopted using the full exercise of their civil and political rights, with a view to their reintegration within a framework of legality.

Id.

[FN144]. Sierra Leone Const., § § 23(9)-(10), available at <http://www.sierra-leone.org/constitution.html>. While a state of emergency has existed in Sierra Leone since 1999, it is unclear whether any measure allowing the prosecution of "pardoned" individuals would be reasonably justifiable for the purposes of dealing with that emergency.

[FN145]. Id. § 63(1)(a).

[FN146]. See Lomé Accord, *supra* note 29, art. IX.

[FN147]. See *id.*

[FN148]. Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, art. 6(5), reprinted in 16 I.L.M. 1442.

[FN149]. Indeed, the Presidential prerogative of mercy is limited to granting pardon for offences committed against the laws of Sierra Leone, not to crimes under any other jurisdiction.

[FN150]. Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations, Mar. 21, 1986, art. 46. The Provisions of internal law of a State and rules of an international organization regarding competence to conclude treaties state that:

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. An international organization may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of the rules of the organization regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of fundamental importance.

3. A violation is manifest if it would be objectively evident to any State or any international organization conducting itself in the matter in accordance with the normal practice of States and, where appropriate, of international organizations and in good faith.

Id.

[FN151]. "At the end of 2000, the net present value of the country's external debt was equivalent to 707% of GDP, while external debt service due equaled 48% of exports and about 70% of government revenues." Eleventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, *supra* note 39, para. 54.

[FN152]. Eleventh Report of the Secretary-General on the United Nations Mission in Sierra Leone, *supra* note 39, para. 59. It is interesting to note that the same report records that a far greater number of CDF soldiers have been

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disarmed and demobilized than RUF soldiers. Yet no special measures are urged for them lest they threaten peace.

[FN153]. Akhavan, *supra* note 5, at 23.

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Internationalized Courts and Substantive Criminal Law

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A. INTRODUCTION

This chapter examines the substantive criminal law applicable in the internationalized courts created in East Timor and Sierra Leone as well as the internationalized court envisaged for Cambodia. Because the internationalized panels for Kosovo differ so much from the other three internationalized courts as far as purpose, jurisdiction, and applicable law are concerned, they will be treated less extensively.

After a brief discussion of the purpose of internationalized courts, this chapter will examine the jurisdiction and the applicable substantive law issues in these courts. Crimes under general international law, other international crimes, crimes under domestic law, and general principles of criminal law will be discussed subsequently.

B. THE PURPOSE OF INTERNATIONALIZED COURTS

International and internationalized criminal courts may be created for all kinds of purposes. The jurisdiction of these courts is not necessarily limited to international crimes in the strictest sense: aggression, genocide, crimes against humanity, and war crimes, which are crimes under customary international law and constitute crimes against the peace and security of mankind. It is, for instance, conceivable that the UN Security Council, acting under Chapter VII of the UN Charter, decides to create an international or internationalized court for the purpose of adjudicating terrorist crimes, drug crimes, crimes against internationally protected persons, or still other international crimes that

have been created by treaties, if it is of the opinion that this would be necessary in order to maintain or restore international peace. Similarly, the Security Council could decide to create a court for the purpose of adjudicating international offences that the Council itself has created under Chapter VII.¹ It is also conceivable that agreements between the United Nations and states, or between groups of states, are concluded not only for the purpose of adjudicating crimes under customary international law but also other international crimes.² Finally, internationalized criminal courts may, on occasion, also be created primarily for the purpose of adjudicating crimes under domestic law.

The internationalized panels for East Timor³ and the Special Court for Sierra Leone⁴ have been created primarily for the purpose of assisting a state in ending impunity for crimes against the peace and security of mankind and in bringing the perpetrators of these crimes to justice. That is also the purpose of the plans to create Extraordinary Chambers within the judicial system of Cambodia.⁵ On the other hand, the situation is apparently rather different in Kosovo. Here, plans to set up a Kosovo War and Ethnic

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¹ See, eg, Resolution 1373 (2001) (28 September 2001) with regard to the financing of terrorist acts as an offence created by the Security Council.

² Article 123 of the Statute of the International Criminal Court, for instance, provides for the possibility of amending the Statute for the purpose of including one or more international crimes that do not constitute crimes against the peace and security of mankind. Resolution E, attached to the Final Act of the 1988 Rome Diplomatic Conference, specifically mentions terrorist crimes and drug crimes as offences that could be included in the Statute.

³ UNTAET Regulation 2000/15 (On the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences). See also Regulation 2000/11 (On the Organization of Courts in East Timor).

⁴ The text of the Statute is included in 'Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone' UN Doc S/2000/915. The Statute was later amended; see UN Doc S/2000/1234. See also the Special Court Agreement Ratification Act 2002, adopted in Sierra Leone in 2002.

⁵ Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, promulgated on 10 August 2001. See www.yale.edu/cgp/KR_Law_trans For the text of the draft Agreement between Cambodia and the United Nations see 'Report of the Third Committee of the UN General Assembly' UN Doc A/57/806. See also 'Report of the Secretary-General on Khmer Rouge Trials' UN Doc A/57/769.

Crimes Court have been abandoned. Participation of international judges and prosecutors in the administration of criminal justice primarily serves the purpose of contributing to the building of a new national system of justice as a part of building more peaceful relations between different groups in a society.⁶ Although international judges and prosecutors may, on occasion, be involved in the adjudication of international crimes, the emphasis is not on ending impunity for these crimes.⁷ This may be due to the fact that there exists already an international tribunal with jurisdiction over international crimes committed in the territory of the former Yugoslavia, including Kosovo, since 1991 (i.e. ICTY).

C. JURISDICTION

The overall purpose for which an internationalized court is created will determine its jurisdiction *ratione materiae, personae, loci, and temporis*. With regard to any internationalized court the decision has to be made over what categories of offences and offenders its jurisdiction extends, as well as where and when an offence must have been committed in order for the court to possess jurisdiction.

As far as the internationalized courts for East Timor, Sierra Leone, and Cambodia are concerned, their primary purpose is to contribute to ending impunity for crimes against the peace and security of mankind. In their constitutive instruments, these courts have, therefore, been given jurisdiction over war crimes, crimes against humanity, and, where East Timor and Cambodia are concerned, genocide. Apparently, there was no need to include the crime of aggression. In the case of Sierra Leone, the nature of the situation in which serious violations of international humanitarian law occurred was thought to make it superfluous to grant the Special Court jurisdiction over genocide and war crimes committed in an international armed conflict. Moreover, all three constitutive instruments

⁶ UNMIK Reg 2000/64 (On Assignment of International Judges/Prosecutors and/or Change of Venue).

⁷ Moreover, their involvement in cases concerning international crimes seems to be rather rare. See Sylvia de Bertodano 'Current Developments in Internationalized Courts' (2003) 1 J International Criminal Justice 226, 239–40.

grant the courts jurisdiction over limited categories of other offences. These may be international crimes, such as torture in time of peace or crimes against diplomats, or purely national ones, such as murder or sexual offences. While all three statutes make their own selection of offences in this respect, one must assume that the main reason for including them lies in the close connection between these crimes on the one hand and genocide, war crimes, and crimes against humanity on the other.

Conversely, the jurisdiction of the internationalized courts in Kosovo is very different. Here, no specific categories of offences have been singled out. Instead, an UNMIK Regulation enables the Special Representative of the Secretary-General (SRSG) in Kosovo to appoint international judges and prosecutors in the various courts of Kosovo.⁸ Another regulation empowers the SRSG to assign international judges and prosecutors to a specific case and/or to change venue 'where this is considered necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice'.⁹ It follows from these regulations that international judges and prosecutors may take part in the adjudication of any criminal offence where this would be conducive to the independence and impartiality of the judiciary or to the ability of the judiciary 'to properly prosecute crimes which gravely undermine the peace process and the full establishment of the rule of law in Kosovo'.¹⁰

There is a relation between the subject matter jurisdiction of the courts on the one hand and their jurisdiction *ratione temporis* on the other. The internationalized courts for East Timor and Sierra Leone have been created in order to adjudicate international crimes as well as some other categories of crimes committed during an international or internal armed conflict that came to an end before the courts were created. The same is true where plans for creating an internationalized court for Cambodia are concerned. The constitutive instruments of these judicial bodies contain specific provisions on the temporal jurisdiction. Apparently, the particular character of these historical conflicts has

⁸ UNMIK Reg 2000/6 (On the Appointment and Removal from Office of International Judges and International Prosecutors), later amended by UNMIK Regs 2000/34 and 2001/2.

⁹ UNMIK Reg 2000/64.

¹⁰ *ibid* Preamble.

influenced the selection of international and other crimes over which these internationalized courts have, or will have, jurisdiction.¹¹ This is especially the case where the selection of purely ‘domestic’ offences is concerned. Here again, the situation in Kosovo is different. The jurisdiction of internationalized panels for Kosovo is not limited to events that occurred in a specific period of time before the panels were created. Their jurisdiction *ratione temporis* is not different from that of other courts in Kosovo.

Finally, for completeness’ sake, a summary of the jurisdiction of the four internationalized courts *ratione personae* and *loci* should be given. As far as the Special Court for Sierra Leone is concerned, its personal jurisdiction is limited to ‘persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law’.¹² The Cambodian Law limits the jurisdiction of the Extraordinary Chambers to ‘senior leaders of (the) Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia’.¹³ On the other hand, there are no limitations with regard to specific categories of persons where the jurisdiction of the Panels for East Timor and the internationalized courts of Kosovo is concerned.

Neither the Cambodian Law nor the regulations in force in Kosovo contain explicit provisions with regard to the geographical jurisdiction of the internationalized courts. Section 2 of UNTAET Regulation 2000/15 establishing Special Panels for East Timor vests them with ‘universal jurisdiction’ over international crimes. This contrasts with Article 1 of the Statute of the Special Court for Sierra Leone, which limits the jurisdiction of the Court to crimes committed on Sierra Leonean territory.

¹¹ Section 2 of UNTAET Reg 2000/15 confers jurisdiction over international crimes and some crimes under domestic law, but limits jurisdiction over the second category to crimes committed in the period between 1 January 1999 and 25 October 1999. Article 1 of the Statute of the Special Court for Sierra Leone confers jurisdiction over offences committed since 30 November 1996, Art 2 of the Cambodian Law over offences committed during the period from 17 April 1975 to 6 January 1979.

¹² Article 1 of the Statute. This Article also provides for (subsidiary) jurisdiction over peace-keepers and related personnel with regard to ‘any transgressions’ committed during peace-keeping operations undertaken with the consent of the government of Sierra Leone.

¹³ Article 1 of the Cambodian Law.

D. APPLICABLE LAW

The constitutive instruments of the internationalized courts for East Timor and Sierra Leone not only determine the extent of their jurisdiction but equally determine the substantive law that they have to apply. In both cases, the specific crimes under general international law over which the courts have are specified. Moreover, one can find also provisions on general principles of criminal law applicable to these crimes, as well as on penalties that may be imposed in the case of conviction. The same is true for the Cambodian Law on the Establishment of Extraordinary Chambers. Finally, the constitutive instruments of these three bodies define, either autonomously or by reference to national law, other offences over which the jurisdiction of an internationalized court extends.

Again, the situation is rather different in the case of Kosovo. There, internationalized Panels have to apply the criminal law of Kosovo, which includes provisions in the Criminal Code on international crimes. Moreover, they may have to adjudicate crimes created by the SRSG pursuant to the legislative powers conferred upon him. On several occasions, the SRSG has made use of his power to do so.¹⁴

Where the adjudication of international crimes is concerned, all four internationalized courts are confronted with a mixture of international and national law, and each of them in its own way. This raises the general issue of the relationship between international law and national law.

It is self-evident and imperative that an internationalized court should apply the body of customary international law and treaty law that is applicable to crimes under

¹⁴ See, eg, UNMIK Reg 2000/4 (On the Prohibition Against Inciting to National, Racial, Religious or Ethnic Hatred, Discord or Intolerance), Reg 2000/52 (On the Import, Manufacture, Sale and Distribution of Pharmaceutical Products, Including Narcotic Drugs and Psychotropic Substances), Reg 2001/4 (On the Prohibition of Trafficking in Persons in Kosovo), Reg 2001/12 (On Terrorism and Related Offences), and Reg 2001/12 (On Measures Against Organized Crime). The SRSG may, where necessary, amend the Criminal Code in force in Kosovo. An example is provided by UNMIK Reg 2003/1 (Amending the Applicable Law on Criminal Offences Involving Sexual Violence).

general international law. This is not only true for the definition of those crimes but also for general principles of criminal law and for other matters, to the extent that rules of international law are available. In this respect, the situation of an internationalized court is not different from that of a truly international court. On the other hand, to the extent an internationalized court has jurisdiction over purely domestic offences, it will, as a matter of course, have to apply domestic law.¹⁵

There is a third scenario. An internationalized court might have jurisdiction over international crimes not amounting to crimes under general international law. In this case, it will have to apply international treaties creating these crimes, provided that the state in which the internationalized court operates is a party to these treaties, and to the extent the applicable treaties have, in the field of substantive law, more to offer than a mere definition of the offence or the offences. For the rest, it will have to apply national law. In this respect, the interesting questions are whether some international crimes by treaty have already evolved into crimes under customary international law at the time they were committed, and, if so, when did this occur. These questions arise with regard to the crime of torture in section 7 of UNTAET Regulation 2000/15, and to destruction of cultural property during an internal armed conflict and crimes against internationally protected persons, included in Articles 7 and 8 of the Cambodian Law.

It is a basic principle of international law that a state may not invoke the provisions of its internal law as a justification for its failure to comply with rules of customary international law or treaty law.¹⁶ However, this is not to say that national courts are always in a position to apply international law and to disregard domestic law whenever it conflicts with international law. Whether, and to what extent, they will be

¹⁵ In the same sense, see the Report of the Secretary-General (n 4) 5. It should be noted, however, that the question of what exactly constitutes domestic law may not be easily determined. In both East Timor and Kosovo, this has given rise to controversy. As to the former, see the decision of the Court of Appeal in *Prosecutor v Armando dos Santos* (15 July 2003) available at www.jsmp.minihub.org/judgmentspdf/court/appeal/Ct_of_App-dos_Santos_English22703.pdf, in which the court held that 'the laws in force in East Timor prior to 25 October 1999' were those of Portugal rather than Indonesia, the latter having been regarded as applicable law thus far. For Kosovo, see [Cerone/Baldwin, paras. 11-14].

¹⁶ cf Art 27 of the Vienna Convention on the Law of Treaties.

able to do so basically depends on national constitutional principles governing the implementation of international law in the domestic legal order. Since internationalized criminal courts (with the notable exception of the Special Court for Sierra Leone) are part of the national legal system, when applying international law in criminal cases they might well be faced with the same problems and difficulties as ordinary national criminal courts. It is, therefore, important to look more closely at the constitutional position of these courts.

As far as the internationalized courts for Kosovo and East Timor are concerned, they have been created by SRSGs, deriving their mandate from UN Security Council Resolutions adopted under Chapter VII.¹⁷ These Resolutions have vested the SRSG with all legislative and executive authority with respect to Kosovo and East Timor. In the case of East Timor, the SRSG has promulgated UNTAET Regulation 1999/1, declaring in section 3 that the laws in force in East Timor at the date of the relevant Security Council Resolution 'shall apply in East Timor insofar as they do not conflict with ... the fulfilment of the mandate given to UNTAET ..., or the present or any other regulation and directive issued by the Transitional Administrator'. Section 3 of UNTAET Regulation 2000/15, establishing Panels with exclusive jurisdiction over serious criminal offences, refers to Regulation 1999/1. In addition, it provides that the panels shall 'apply ..., where appropriate, applicable treaties and recognized principles and norms of international law, including the established principles of the international law of armed conflict'. It would seem that, pursuant to both Regulations, the Special Panels will have no difficulties in applying international law and disregarding conflicting domestic criminal law.

The SRSG for Kosovo has also promulgated a regulation with regard to applicable law. Section 3 of UNMIK Regulation 1999/1 on the authority of the interim administration in Kosovo is almost identical to section 3 of the UNTAET Regulation 1999/1. However, this SRSG, in creating internationalized Panels, has not addressed in general terms the constitutional relationship between international law and domestic criminal law. It would, therefore, seem that these Panels will have to solve problems that

¹⁷ UNSC Res 1244 (1999) (10 June 1999) and 1272 (1999) (25 October 1999).

might arise as to conformity with the existing legal rules in Kosovo with regard to the implementation of international law in the domestic legal order of Kosovo.

As far as the Special Court for Sierra Leone is concerned, its Statute is based on an agreement between the United Nations and Sierra Leone. Although there is no provision in the Statute comparable to section 3 of UNTAET Regulation 2000/15, the other provisions of the Statute clearly suppose that the Court, in adjudicating international crimes, will have to disregard Sierra Leonean law where it would conflict with international law.

Finally, in the case of Cambodia the Extraordinary Chambers will apparently have to solve conflicts between international and domestic law in conformity with Cambodian constitutional law. Article 2(2) of the Draft Agreement between Cambodia and the United Nations, however, provides that:

The present Agreement shall be implemented in Cambodia through the Law on the Establishment of the Extraordinary Chambers as adopted and amended. The Vienna Convention on the Law of Treaties, and in particular its Articles 26 and 27, applies to the Agreement..¹⁸

A lesson to be learned from this overview could be that, in future efforts to establish internationalized courts, the United Nations might insist on the inclusion in the constitutive instruments of similar bodies of a provision explicitly authorizing, or requiring the court to apply, international law where national law would conflict with international law.¹⁹

In moving on to the analysis of the applicable law, since the internationalized Panels for Kosovo differ so much from the other three internationalized courts where purpose, jurisdiction, and applicable law are concerned, they will not be discussed in more detail in this chapter.

1. Crimes under general international law

¹⁸ For the text of the draft Agreement see n 5.

¹⁹ Article 21 of the Rome Statute of the ICC could serve as an example.

In selecting and defining the crimes under general international law over which the internationalized courts have jurisdiction the constitutive instruments of the courts for East Timor and Sierra Leone and the Cambodian Law make choices. These choices are not always the same and give rise to a number of questions.

(a) Genocide

UNTAET Regulation 2000/15 and the Cambodian Law closely follow the text of Article II of the 1948 Genocide Convention as regards the general definition of the crime of genocide.²⁰ Yet, the same is not true for the specific acts amounting to genocide, enumerated in Article III of the 1948 Convention. Article 4 of the Cambodian Law contains an enumeration of its own, which does not mention direct and public incitement to commit genocide as a separate form of genocide and, therefore, seems to be more restrictive. On the other hand, in section 4 of UNTAET Regulation 2000/15 there is no reference at all to Article III of the 1948 Convention. Instead, section 14 dealing with the matter of individual criminal responsibility determines the question of what persons may be held responsible for having committed genocide. In this, the Regulation follows the example of Articles 7 and 25 of the Rome Statute of the International Criminal Court. As a result, the Regulation covers all acts enumerated in the Genocide Convention, with, possibly, a partial exception for conspiracy to commit genocide.²¹

²⁰ Daryl Mundis' critique that the definition of genocide in the Cambodian Law deviates from that in the Convention may have been based on an erroneous translation. See Daryl A Mundis 'New Mechanisms for the Enforcement of International Humanitarian Law' (2001) 95 *American J Int'l Law* 934, 941. Apart from that, one may wonder whether the events in Cambodia in the 1970s amounted to genocide where the Cambodian population at large is concerned. However, according to the Group of Experts for Cambodia, a number of minority groups had, at any rate, been singled out as special targets. See 'Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135' UN Doc A/53/850 paras 62–65.

²¹ See William A Schabas 'Article 6 Genocide' in Otto Triffterer (ed) *Commentary on the Rome Statute of the International Criminal Court* (Nomos Verlagsgesellschaft Baden-Baden 1999) 11516.

It should be noted that genocide has not been included in the Statute of the Special Court for Sierra Leone, the Security Council being of the opinion that there was no need to do so.²²

(b) Crimes against humanity

Crimes against humanity are included in the constitutive instruments of the internationalized courts for East Timor and Sierra Leone as well as in the Cambodian Law. In defining crimes against humanity, Article 2 of the Statute of the Special Court for Sierra Leone, and Article 5 of the Cambodian Law, follow the definition in Article 3 of the Statute of the ICTR; partly in the case of the Statute, wholly in that of the Law. Section 5 of UNTAET Regulation 2000/15, on the other hand, draws its inspiration from the far more elaborate and detailed definition of Article 7 of the Rome Statute. As a result, there are some material differences between the concepts of crimes against humanity in the three constitutive instruments.

It is not clear why the negotiators of the Statute of the Special Court for Sierra Leone and the Cambodian Law have decided to follow the definition of crimes against humanity of the Statute of the ICTR, rather than that of ICTY. Selecting ICTR instead of the ICTY Statute provides the advantage that, in order to constitute crimes against humanity, the crimes must have been committed in armed conflict, whether international or internal in character. The nexus between crimes against humanity and war crimes can no longer be considered to be part of customary international law.²³ On the other hand, selecting ICTR instead of the ICTY Statute has its own drawbacks, since the ICTR Statute requires that to be crimes against humanity crimes must have been committed as part of a widespread or systematic attack against any civilian population 'on national, political, ethnic, racial or religious grounds'. The quoted words seem to imply that all relevant acts must have been committed with discriminatory intent on the part of their

²² See UNSC Res 1315 (2000).

²³ *Prosecutor v Du_ko Tadi_* IT-94-1-AR72 Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (2 October 1995) 138–42. According to the Group of Experts for Cambodia, the nexus had already ceased to exist in 1975; (n 20) para 71. Apparently, this is also the point of view adopted in the Cambodian Law.

author. However, as has been held by the Appeals Chamber of ICTY, like the war crimes nexus, discriminatory intent is not required by customary international law, with an exception for persecution.²⁴ The negotiators of the Statute for the Special Court were, therefore, on solid grounds when they decided to depart from the ICTR Statute in this respect.²⁵ A second difference with the ICTR Statute is the explicit mention of 'sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence' alongside with rape as crimes against humanity. Here, the influence of the Rome Statute is discernible.²⁶

Section 5 of UNTAET Regulation 2000/15 copies Article 7 of the Rome Statute almost *verbatim*. Thus, it avoids the problems that could have arisen by following the Statute of the ICTY or that of ICTR. Be that as it may, there are a number of differences between UNTAET Regulation 2000/15 and the Rome Statute. I will not discuss all of them, but only mention the most important and striking one.²⁷ Unlike Article 7(2)(a) of the Rome Statute, the Statute for East Timor does not define what amounts to an attack directed against any civilian population. The omission seems to be deliberate and to find its origin in the fear that the rather controversial definition of the term 'attack' contained in the Rome Statute unduly restricts that concept with regard to situations in which an attack against a civilian population is characterized by its widespread, rather than its systematic, nature.²⁸

²⁴ *Prosecutor v Duško Tadić* IT-94-1-A Judgment (15 July 1999) 273–305.

²⁵ Meanwhile, in *Prosecutor v Jean-Paul Akayesu* Judgment (1 June 2001), the Appeals Chamber of ICTR has softened the impact of the requirement considerably by holding that it does not relate to the intent of the individual person but only restricts the jurisdiction of the tribunal to widespread or systematic attacks against a civilian population that are based on discriminatory grounds.

²⁶ See Micaela Frulli 'The Special Court for Sierra Leone: Some Preliminary Comments' (2000) 11 *European J International Law* 857, 863–64; Suzannah Linton 'Cambodia, East Timor and Sierra Leone: Experiments in International Justice' (2001) 12 *Criminal Law Forum* 185, 234.

²⁷ For an exhaustive analysis of all differences see Kai Ambos and Steffen Wirth 'The Current Law of Crimes Against Humanity: An Analysis of UNTAET Regulation 15/2000' (2002) 13 *Criminal Law Forum* 1. See also Linton (n 26) 207–8.

²⁸ See Ambos and Wirth (n 27) 3, 30–34.

(c) *War crimes*

East Timor relevant Regulations, the Statute of the Special Court for Sierra Leone, and the Cambodian Law all include war crimes among the prosecutable crimes. However, they do so in rather different ways, which reflect the different historical and political events that led to their creation.

As far as East Timor is concerned, section 6 of UNTAET Regulation 2000/15 is, on the whole, a faithful reproduction of Article 8 of the Rome Statute.²⁹ Hence any critique of section 6 of that Regulation is tantamount to a critique of the Rome Statute. This chapter, however, is not the place for an analysis in depth of Article 8 of the Rome Statute.

Since the events in Sierra Leone were not considered to amount to an international armed conflict, the Statute of the Special Court for that country has regard solely to war crimes committed in an internal conflict. Articles 3 and 4 of the Statute borrow from the Statute of the ICTR as well as the Rome Statute. Article 3 of the Statute reproduces Article 4 of the ICTR Statute almost *verbatim*.³⁰ In addition, Article 4 defines three more crimes in language copied from Article 8.2(e) of the Rome Statute.³¹ It is not clear why other crimes defined in that particular part of the Rome Statute have not been included in the Statute for Sierra Leone.³²

The most interesting case is that of Cambodia. Article 6 of the Cambodian Law confers jurisdiction to the Extraordinary Chambers with regard to grave breaches of the

²⁹ There are two differences of minor importance. Understandably, s 6(1) of the Regulation avoids the emphasis placed in Art 8.1 of the Rome Statute, on 'war crimes committed as part of a plan or policy or as part of a large-scale commission of such crimes', since this jurisdictional element in the Rome Statute may have no relevance for the situation in East Timor. Secondly, it omits the proviso in Art 8.2.(b)(XX) on means and methods of warfare where the existence of a 'comprehensive prohibition' is concerned.

³⁰ While the Statute for Sierra Leone omits the words 'shall not be limited to' this does not seem to have particular consequences.

³¹ Attacks against the civilian population, attacks against peace-keeping personnel, and conscription or enlistment of children under the age of 15 years.

³² See Linton (n 26) 235.

1949 Geneva Conventions.³³ There is no provision in the Law with regard to war crimes committed in an internal armed conflict, although conduct which nowadays would be considered to amount to such crimes surely must have been far more widespread in Cambodia at the time of the Khmer Rouge than violations of international humanitarian law committed in an international armed conflict. The explanation lies in the fact that Cambodia had not become a party to the Additional Protocols before 1980 and that the criminal nature of violations of international humanitarian law committed in an internal armed conflict was held not yet to be part of customary international law in the 1970s.³⁴

2. Other international crimes

The Cambodian Law covers some international crimes other than crimes against the peace and security of mankind discussed above. Article 7 of the Law confers jurisdiction on the Extraordinary Chambers over breaches of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, partially also covered as a war crime by Article 6. Moreover, Article 8 grants jurisdiction over crimes against internationally protected persons ‘pursuant to the Vienna Convention of 1961 on Diplomatic Relations’.³⁵ These two crimes have been included in the Law because they occurred during the period with regard to which the Extraordinary Chambers have temporal jurisdiction. For roughly the same reason, the Special Group of Experts for Cambodia suggested in its Report that also forced labour and torture be brought under the jurisdiction of a special court as international crimes.³⁶ That suggestion was only

³³ Surprisingly, Art 6 speaks about ‘the Geneva Convention’, without specifying which of the four Conventions. Presumably, this is a typing error. There are some minor differences in language between the list of breaches in the Law and those in the Conventions.

³⁴ See Report of the Group of Experts (n 20) paras 72–75; Linton (n 26) 195.

³⁵ The Vienna Convention itself contains no penal provisions. Suggestions to include the crimes defined in the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, were not followed, apparently for the reason that Cambodia is not a party to the Convention. See Linton (n 26) 196–97.

³⁶ Report of the Group of Experts (n 20) paras 77–78.

followed to the extent that torture is a crime under Cambodian Law, and thus it is within the jurisdiction of the Chambers.

There is a remarkable provision in UNTAET Regulation 2000/15 with regard to torture. Section 7 contains a definition of torture, inspired by the definitions in the well known Declaration of the UN General Assembly of 9 December 1975³⁷ and the 1984 Torture Convention,³⁸ although it differs from both in some respects. A study of the structure of the Regulation reveals that sections 1 and 7 of the Regulation aim at criminalizing the act of torture as a singular crime, to be distinguished from torture as a crime against humanity and torture as a war crime.³⁹ Under sections 1 and 7, for conduct to amount to torture it is not necessary that it be committed as part of a widespread or systematic attack against a civilian population nor that it occurred during an international or internal armed conflict. At first sight, it looks as if section 7 intends to characterize torture as a distinctive crime under customary and treaty international law. However, there is a fundamental difference between the definition of torture in section 7 on the one hand and those of the 1975 Declaration and the 1984 Convention on the other. Unlike those, section 7 does not require that severe pain or suffering is inflicted ‘by or at the instigation of a public official’ (the formula of the Declaration) or ‘by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity’ (the formula of the Convention). Under section 7, torture, therefore, can be committed by any person in any personal circumstances. This might well widen the concept of torture beyond customary international law and treaty law.⁴⁰ One gets the

³⁷ UNGA Res 3452 (XXX).

³⁸ 1465 UNTS 85.

³⁹ Given the fact that torture is listed in s 1(3) as a separate crime in addition to war crimes and crimes against humanity, s 7 is not solely meant to offer guidance for the interpretation of the term ‘torture’ in the provisions on crimes against humanity and war crimes, as Ambos and Wirth (n 27) 66, suppose. See also Linton (n 26) 210.

⁴⁰ Involvement of a state agent in the act of torture is not a requirement for torture as a war crime or crime against humanity; see especially the Trial Chamber of ICTY in *Prosecutor v Dragoljub Kunara_ and others* IT-96-23-T and IT-96-23/1-T Judgment paras 488–97, and the Appeals Chamber in the same case, paras 142–48. There may be sound arguments for arguing that this should neither be an element of torture as a distinctive crime under customary international law. On the other hand, arguments for maintaining the requirement are given by Antonio Cassese *International Criminal Law*

impression, however, that the main, or additional, intention of the framers of the Regulation has been to define, or redefine, torture as a common crime under domestic law.⁴¹ Thus, sections 1 and 7 of the Regulation would achieve the criminalization of two different forms of torture: torture as a crime under international law and torture as a crime under domestic law not satisfying all requirements of torture as an international crime.

3. Crimes under domestic law

A remarkable feature of UNTAET Regulation 2000/15, the Statute of the Special Court for Sierra Leone, and the Cambodian Law is that they all grant jurisdiction over a number of offences under domestic law. Murder, sexual offences, and, possibly, torture in the case of East Timor;⁴² sexual offences against young girls, destruction of property, and arson in the case of Sierra Leone; and homicide, torture, and religious persecution in that of Cambodia. The main reason for granting concurrent jurisdiction over these offences lies in the fact that the crimes listed were likely to have been frequently committed by persons over which the Panels, Court, and Extraordinary Chambers have personal jurisdiction in the period of time over which their temporal jurisdiction extends. In the case of Sierra Leone, an additional consideration has been that some types of conduct criminalized in Sierra Leonean law were considered to be 'either unregulated or inadequately regulated under international law'.⁴³

A number of arguments, most of them sound, have been advanced in favour of this policy, which, for obvious reasons, could not be adopted in the statutes of the two ad hoc tribunals, and in that of the International Criminal Court.

First, by charging an accused with international crimes as well as domestic crimes, special rules with regard to sentencing for concurrent offences may become applicable, limiting the maximum punishment that may be imposed. Secondly, if the accused is

(Oxford University Press Oxford 2003) 118. For a detailed analysis of the concept of torture in UNTAET Reg 2000/15 and in other texts see Ambos and Wirth (n 27) 65–70.

⁴¹ Section 1(3) mentions torture as a distinct crime after murder and sexual offences, two (other) categories of crimes under domestic law.

⁴² The Group of Experts suggested that a number of other crimes under Cambodian law should also be included. See Report of the Group of Experts (n 20) paras 86–88.

⁴³ Report of the Secretary-General (n 4) para 19.

acquitted of having committed an international crime, the internationalized court is able to decide whether or not the same conduct amounts to a crime under domestic law, thus making it unnecessary to expose the accused to a new trial for the same conduct in a different court.⁴⁴ Thirdly, and more pragmatically, crimes under domestic law are often easier to prove since proof of an international crime usually requires also proof of additional elements.⁴⁵ Evidence of this is offered by the case of East Timor, where, for some time, because of lack of sufficient resources available to investigate the international aspects of a crime, a number of accused have been charged solely with crimes under domestic law.⁴⁶ It is difficult to condone this practice because it does insufficient justice to international crimes, and it could only be accepted as a form of *force majeure*. Finally, if, as is true for East Timor and Sierra Leone, the temporal jurisdiction of an internationalized court includes crimes that may have occurred in a relatively distant past, the option of prosecuting a person for crimes under domestic law might become especially important if that person is suspected of conduct that did not yet constitute a crime under general international law at the time of his conduct, or when it seems uncertain whether this was the case.

4. General principles of criminal law

‘General Principles of Criminal Law’ is a term used by the Rome Statute of the International Criminal Court as a heading to Part 3 of the Statute. Together, the 12 Articles of this Part of the Statute cover a wide variety of issues that, assuming that the Court has jurisdiction, determine whether or not a person allegedly having committed an international crime may be prosecuted before the Court and can be held criminally responsible for his or her conduct. The provisions of Part 3 have regard to the nature and

⁴⁴ The provisions on *ne bis in idem* in UNTAET Reg 2000/15 and in the Statute of the Special Court for Sierra Leone do not prohibit the trial of an accused who has been acquitted of having committed an international crime by another court on the grounds that the conduct may also amount to a crime under domestic law.

⁴⁵ Report of the Group of Experts (n 20) para 88. See also Linton (n 26) 241, supposing that this may be more conducive to an expeditious trial.

content of individual criminal responsibility,⁴⁷ to the availability of justifications and excuses,⁴⁸ and to other obstacles that may or may not bar prosecution or punishment.⁴⁹ With some limited exceptions, the provisions mentioned here aim to reflect customary international law.

What are the general principles of criminal law that are applied by the internationalized courts and what do their constitutive instruments say about them? In this regard, one has to keep in mind that there is one major difference between the internationalized criminal courts and the international criminal courts. Unlike international courts, internationalized courts do not only possess jurisdiction over crimes against the peace and security of mankind but also over a number of crimes under domestic law. As has been discussed,⁵⁰ in the cases of East Timor and Cambodia there is also jurisdiction over a third category: international crimes usually not regarded as being crimes against the peace and security of mankind.

As stated earlier,⁵¹ one cannot but assume that internationalized courts will have to apply customary international law relating to general principles of international law when adjudicating genocide, crimes against humanity, and war crimes. On the other hand, it stands to reason that they apply domestic law where the adjudication of crimes under domestic law is concerned. In the case of international crimes other than crimes against the peace and security the answer is less clear. There seems to be no compelling logical reason to apply 'general principles of criminal law', that have been developed in customary international law with regard to crimes against the peace and security of mankind, to other international crimes when the criminal nature of an act is not based on

⁴⁶ Guy Cumes 'Murder as a Crime Against Humanity in International law: Choice of Law and Prosecution of Murder in East Timor (2003) 11 *European Journal of Crime, Criminal Law and Criminal Justice* 40, 62–64. See also Linton (n 26) 217–18.

⁴⁷ Article 25 on individual criminal responsibility generally; Art 27 on the irrelevance of official capacity; Art 28 on the responsibility of superiors; Art 30 on the mental element; Art 33 on superior orders.

⁴⁸ Article 31 on grounds for excluding criminal responsibility; Art 32 on mistake of fact and mistake of law.

⁴⁹ Articles 22 to 24 on the legality principle; Art 26 on persons under the age of 18; Art 29 on statutes of limitation.

⁵⁰ See [p].

customary international law but solely on treaties that require implementation in domestic legislation in order for that act to constitute a crime. But even when they are crimes under customary international law, which is the case for torture and may well be the case, too, for destruction of cultural property during an international or internal armed conflict and crimes against internationally protected persons, there is no compelling logical reason to apply to them general principles that have been developed with regard to crimes against the peace and security of mankind, although this would probably be the simplest and the best solution from a systematic and practical point of view.

The Statute of the Special Court for Sierra Leone and the Cambodian Law recognize the importance of the distinction between international and domestic crimes. In both cases, the negotiators appear to have been aware that different regimes should be applied to different crimes: general principles of international criminal law to crimes against the peace and security of mankind, and principles of national criminal law to crimes under domestic law.

Article 6(5) of the Statute for the Special Court for Sierra Leone explicitly refers to this distinction. This is less so in UNTAET Regulation 2000/15, which approaches the matter in a quite different manner. General principles of criminal law, as codified in either the Rome Statute or the statutes of the ad hoc international tribunals, have been generally declared applicable to all crimes, including crimes under domestic law. To this there are two exceptions only: the first concerns command responsibility; the second statutes of limitation. It is not clear to me what considerations are at the basis of this choice, which, on occasion, might have negative consequences for the accused as far as individual responsibility for domestic crimes is concerned.

As far as destruction of cultural property and crimes against internationally protected persons are concerned, the Cambodian Law declares the rules with regard to individual criminal responsibility laid down in the Statutes of the two ad hoc tribunals applicable to them.

There is a considerable difference in the manner in which the Statute of the Special Court for Sierra Leone and the Cambodian Law, on the one hand, and UNTAET

⁵¹ See [p]

Regulation 2000/15, on the other, lay down the general principles of criminal law to be applied to international crimes. The Statute of the Special Court and the Cambodian Law both reproduce the Articles in the Statutes of the ICTY and ICTR on individual criminal responsibility, which, among other things, deal with official position, responsibility of superiors, and superior orders. The Statute of the Special Court also incorporates the Articles in the Statutes of the two ad hoc tribunals on concurrent jurisdiction and *ne bis in idem*. Both the Statute and the Law have a special provision on amnesties and pardons. Moreover, the Cambodian Law declares that no statute of limitations applies to genocide and crimes against humanity, while the Statute of the Special Court for Sierra Leone contains a separate provision on minors.

Conversely, UNTAET Regulation 2000/15 is far more elaborate and detailed. Its provisions on general principles of criminal law are reproductions of those of the Rome Statute of the International Criminal Court. However, to this there are some striking exceptions. The provisions in the Regulation on command responsibility and superior order do not copy those of the Rome Statute but have been borrowed from the Statutes of the ad hoc tribunals. Moreover, unlike the Rome Statute, Regulation 2000/15 has no provision on jurisdiction over minors.

Compared to Regulation 2000/15, the provisions on individual criminal responsibility in the Statute of the Special Court and the Cambodian Law are rather rudimentary. In particular, they do not cover a variety of personal defences which might relieve a person of individual criminal responsibility. Obviously, the rudimentary nature of the two texts is due to the fact that the Statutes of the ad hoc tribunals are also silent on these matters. The silence of the Statutes of the ICTY and ICTR rests on the consideration that it should be left to the two tribunals themselves to determine the limits of individual criminal responsibility on the basis of customary international law as well as general principles of law recognized by civilized nations.⁵² One may hope and expect that the internationalized courts for Sierra Leone and Cambodia will do the same and will, in particular, draw inspiration and guidance from the case law of the tribunals. As detailed

⁵² 'Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)' UN Doc S/25704 para 58.

above, the main problem here, especially in the case of Cambodia, might be that principles of national constitutional law prevent the internationalized courts from applying international law.⁵³

In the case of East Timor, this problem certainly does not exist. There is, however, the question of why Regulation 2000/15 follows the Rome Statute in almost all respects but refuses to do so where command responsibility, superior orders, and minor age are concerned.⁵⁴ Since, to my knowledge, there is no official document explaining the intentions and choices of the framers of the Regulation, one can only speculate about the reasons. The most likely explanation probably is that, in the opinion of the framers, the Rome Statute less accurately reflects international customary law than the Statutes of the ad hoc international tribunals and the case law of the tribunals do. In the case of command responsibility, they may, for instance have had objections against the causality requirement laid down in Article 28 of the Rome Statute, or may have thought that the responsibility of superiors other than military commanders has been too narrowly defined. In the case of superior orders, they may have been of the opinion that Article 33 of the Rome Statute gives too much room to the defence of superior orders where war crimes are concerned. In the case of minors, they may have thought that, notwithstanding Article 26 of the Rome Statute, there is no reason to exempt categorically persons under the age of 18 from being prosecuted for international crimes. Whatever the explanations might be, it is obvious that the choices made favour the more strict and exacting approach over the more lenient and liberal one.

It is not necessary to discuss all general principles of criminal law enshrined in one or more of the constitutive instruments of the three internationalized courts. I will, therefore, limit myself to a discussion of matters that have a special significance for East

⁵³ See [p]. Linton (n 26) 197, supposes that, in the absence of a special provision in the Cambodian Law on defences, the Extraordinary Chambers will have to apply the provisions of the Cambodian Penal Code to defences advanced with regard to international crimes.

⁵⁴ The fourth difference with the Rome Statute is that Art 24 of the Rome Statute, dealing with non-retroactivity *ratione personae*, has not been repeated in the Regulation. Meanwhile, the first paragraph of Art 24 is not directly relevant to the situation in East

Timor, Sierra Leone, or Cambodia: *nullum crimen*, the position of juveniles, and statutes of limitation. There is also good reason to discuss briefly provisions on amnesties and pardons in two of the three cases.

(a) *Nullum crimen sine lege*

The Panels for East Timor, the Special Court for Sierra Leone, and the Cambodian Extraordinary Chambers all have jurisdiction over events that occurred before they were created. UNTAET Regulation 2000/15 defines no specific starting date for the temporal jurisdiction of the Panels over international crimes, but it may be assumed that their jurisdiction extends over these crimes committed since the invasion of East Timor by Indonesia, an event that occurred on 7 December 1975. The Special Court for Sierra Leone has jurisdiction over offences committed since 30 November 1996, the Cambodian Extraordinary Chambers over offences committed in the period from 17 April 1975 to 6 January 1979. In itself, conferring retroactive jurisdiction on newly created criminal courts does not violate international human rights standards provided that these courts ‘genuinely afford the accused the full guarantees of fair trial’.⁵⁵ However, since the constitutive instruments of the three internationalized courts also define the international crimes over which the courts have jurisdiction, as well as a number of general principles of criminal law applicable to these crimes, the issue of retroactive application of criminal statutes inevitably arises.

Of the constitutive instruments of the three bodies considered here, UNTAET Regulation 2000/15 is the only to include provisions on the principle of *nullum crimen, nulla poena sine lege*. Section 12 of that Regulation basically follows the text of Article 22 of the Rome Statute, while section 13 follows the text of Article 23. Moreover, Section 2.4, provides that the Panels ‘shall have jurisdiction ... only insofar as the law on which the serious criminal offence is based is consistent with Section 3.1 of UNTAET Regulation No. 1999/1’. Regulation 1999/1, in its turn, requires all persons undertaking

Timor. The subject matter of the second paragraph, dealing with issues of transitory law, is covered by ss 2 and 3 of the Regulation.

⁵⁵ *Prosecutor v Du_ko Tadi*_ IT-94-1-R72 Appeals Chamber ICTY Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (2 October 1995) para 45.

public duties or holding public office in East Timor to observe, inter alia, the International Covenant on Civil and Political Rights. This includes Article 15 of the Covenant. In addition, section 3 of Regulation requires the Panels to apply, 'where appropriate, applicable treaties and recognised principles and norms of international law'. The legality principle may be said to belong to these principles. On the other hand, the Statute of the Special Court for Sierra Leone and the Cambodian Law are entirely silent on the issue of retroactivity. They share this characteristic with the Statutes of the ICTY and ICTR. However, the incriminations in the Statutes of the ad hoc tribunals are based on the premise that the tribunals should only apply 'rules of international humanitarian law which are beyond any doubt part of customary law',⁵⁶ and the same premise will, therefore, apply in the case of Sierra Leone and Cambodia.⁵⁷ Finally, both states are parties to the International Covenant.

The *nullum crimen* principle requires that the criminal nature of conduct which violates rules of customary international law has been recognized as such in international law at the time of the conduct. This should not be confused with the case of conduct that has been defined as criminal in international conventions, but which has not yet become the object of a norm of customary international law. In similar situations, it is only reasonable to require that the relevant conduct has been made a criminal offence before the conduct occurred pursuant to the laws of the state party wanting to exercise jurisdiction.⁵⁸ In the former case, individual criminal responsibility is solely determined by international law, in the latter it is not.

It would seem that the constitutive instruments of the three internationalized courts are based on the same premises. As has already been mentioned, the reason why the Cambodian Law does not include war crimes committed in an internal armed conflict is that, on the one hand, violations of international humanitarian law had not yet become crimes under customary international law in the 1970s and, on the other hand, that in that

⁵⁶ Report of the Secretary-General (n 52) para 34, with an explicit reference to the *nullum crimen* principle.

⁵⁷ See also Report of the Secretary-General (n 4) para 12.

period, Cambodia had not yet become a party to the 1977 Additional Protocols.⁵⁹ As far as Sierra Leone is concerned, a discussion between the Secretary-General of the United Nations and the Security Council is revealing. The original proposal of the Secretary-General did not contain a wholesale prohibition on the conscription or enlisting of children under the age of 15 years as a war crime, but solely their abduction and forced recruitment for the purpose of using them to participate actively in hostilities. In his Report, the Secretary-General doubted whether the wider prohibition of Article 8.2(e)(vii) of the Rome Statute had already become part of customary law in every respect.⁶⁰ Having apparently no such doubts, the Security Council amended the proposal and ensured its conformity with the Rome Statute.⁶¹

There seems to be one major difference between international criminal courts and national criminal courts in the respect they have to pay to the *nullum crimen* principle with regard to international crimes. Since individual responsibility for crimes under general international law directly derives from international law itself, international courts only have to take international law into account. In each individual case, they have to assess whether a given conduct amounted to a crime under international law at the time of that conduct, and whether the accused can be held accountable pursuant to general principles of international criminal law existing at that time. It is not their responsibility to assess whether or not the same would be true under the domestic laws of the state on whose territory the conduct occurred, although there are examples in which they have performed that check, without being obliged to do so, with a view to making sure that the accused could without any doubt know that his conduct was criminal.⁶²

However, for national courts the matter is more complicated. They may not ignore domestic law unless there is a clear legal basis in domestic law for so doing. Presumably,

⁵⁸ In the same sense Art 39 of the International Law Commission's Draft Statute for an International Criminal Court UN Doc GAOR A/49/10, 112–14. See also Bruce Broomhall 'Article 22' in Otto Triffterer (ed), (n 21) 461–62.

⁵⁹ See [p].

⁶⁰ Report of the Secretary-General (n 4) para 18.

⁶¹ UN Doc S/2000/1234.

domestic law will require them to assess whether the conduct constituted an international crime pursuant to domestic law at the time the conduct occurred. They may, therefore, have to perform a double check: the one involving international law, the other domestic law. As a consequence, cases may present themselves in which the accused is charged with conduct for which he can be held responsible pursuant to domestic law, but not yet pursuant to international law. Domestic law with regard to command responsibility could, for instance, impose more exacting standards on individual persons than international law did at the time of the conduct. It would then violate the *nullum crimen* principle to convict the accused for having committed an international crime. Provided that the internationalized courts are, under domestic law, permitted to apply Article 15 of the International Covenant on Civil and Political Rights directly, this will be the inevitable and proper decision for them to take.⁶³ On the other hand, there may be cases in which the accused can be held responsible pursuant to international law but not pursuant to domestic law. The most likely example of such a situation probably is the one in which, at the time of the conduct, domestic law did not yet have adequate criminal legislation with regard to crimes under general international law. Domestic principles with regard to *nullum crimen* might then make it inevitable for an internationalized court to acquit the accused, even though Article 15(2) of the International Covenant would perhaps not forbid the retroactive application of domestic legislation incriminating 'any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations'.⁶⁴

⁶² See, eg, *Prosecutor v Du_ko Tadi_* (n 55) paras 135–36 (violations of international humanitarian law in internal armed conflicts); *Prosecutor v Anto Furund_ija* IT-95-17/1-T Judgment para 167 (rape).

⁶³ Cambodia and Sierra Leone are parties to the Covenant, while UNTAET Reg 1999/1 has made it part of the law of East Timor.

⁶⁴ For an example see the recent decision of the Dutch Supreme Court of 18 September 2001 (2002) *Nederlandse Jurisprudentie* 559 (*Bouterse*). Meanwhile, there seems to be no consensus on the question of whether Art 15 of the International Covenant has regard only to events that have occurred during the Second World War or has a wider scope. See Machteld Boot *Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court* (Intersentia Antwerp/Oxford/New York 2002) 137–41, 158–70.

Internationalized criminal courts are, as it were, to a greater or lesser degree 'embedded' in a national legal system.⁶⁵ The question, therefore, is what law they should apply in tackling issues of retroactivity. The answer is very clear for East Timor. Pursuant to section 12 of UNTAET Regulation 2000/15, a person may not be held criminally responsible unless the conduct in question constituted, at the time it took place, a crime under international law or the laws of East Timor. This clearly means that for a person to be convicted of an international crime it suffices that the conduct was criminal pursuant to international law at the time it occurred. It does not matter whether or not, at that time, his conduct was also an international crime pursuant to domestic law.⁶⁶ The Statute of the Special Court for Sierra Leone and the Cambodian Law are entirely silent on the matter. Presumably, however, the solution is not different from the one chosen for East Timor: only international law at the time of the conduct matters. Otherwise, the definitions of international crimes in the Statute and the Law as well as the setting up of the two internationalized courts might perhaps make limited sense.

(b) Juveniles

The Statute of the Special Court for Sierra Leone is unique in including provisions on jurisdiction over juveniles. The Cambodian Law and UNTAET Regulation 2000/15 do not contain a similar provision. In the case of Cambodia, the small group of persons who might have to stand trial does not include persons who were juveniles at the time they allegedly committed crimes over which the jurisdiction of the Extraordinary Chambers extends. However, more surprising, at first sight is the absence of a provision in UNTAET Regulation 2000/15, since a provision on that matter can be found in the Rome Statute. Article 26 of the Rome Statute provides that ICC shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

⁶⁵ For further discussion, see [in this book, Kleffner/Nollkaemper, pp. XXX].

⁶⁶ On the other hand, the text implies that a person could be convicted if the conduct did not constitute a crime under general international law but amounted to a crime pursuant to domestic law. This is, however, only possible for crimes over which the Panels have jurisdiction.

However, Article 26 is a provision of a purely jurisdictional character. It does not provide that persons under the age of 18 may under no circumstances be held criminally responsible for their acts, but leaves that matter entirely to national jurisdictions. In this sense, Article 26 does not really express a 'general principle of criminal law'. It is, therefore, not surprising that UNTAET Regulation 2000/15 has refrained from including a similar provision in its text. As a consequence, the matter is entirely governed by the law of East Timor.

Juveniles played a major role in the Sierra Leonean conflict. Massive resort to child soldiers was a characteristic of this conflict, which gave it a badge of shame. In his Report on the establishment of a Special Court for Sierra Leone, the Secretary-General of the United Nations spoke of a 'difficult moral dilemma' and a 'terrible dilemma' in explaining the various options for dealing with international crimes committed by children, most of them former child soldiers and themselves victims of abduction, forced recruitment, sexual abuse, or other war crimes.⁶⁷ The proposals by the Secretary-General, as amended by the Security Council, struck a compromise between highly diverging opinions on what to do with juveniles and attempt to strike a balance between the various interests involved. Hence, under Article 7 of its Statute, the Special Court has no jurisdiction over persons under the age of 15 at the time of the alleged commission of the crime. Yet, this does not exclude their trial by other courts in Sierra Leone. Moreover, Article 7 applies a special regime to persons who were between 15 and 18 years old when they allegedly committed a crime, in which a strong emphasis is placed on a rehabilitative approach. Imprisonment is excluded as a penalty in Article 19 of the Statute, while Article 15 urges the Prosecutor carefully to consider in each individual case whether alternatives to prosecution should be preferred. Since, pursuant to Article 1 of the Statute, the Special Court has jurisdiction solely over 'persons who bear the greatest responsibility for serious violations of international humanitarian law', very few juveniles are expected to be tried by it.⁶⁸ The practice that will develop in Sierra Leone with regard to juvenile

⁶⁷ Report of the Secretary-General (n 4) paras 32–33.

⁶⁸ Linton (n 26) 237.

offenders might well set a precedent for other states struggling with the terrible problem of child soldiers.

(c) Statutes of limitation

There are no statutes of limitation in the Statute of the Special Court for Sierra Leone. This is probably due to the fact that the temporal jurisdiction of the Court is limited to international crimes and crimes under Sierra Leonean law committed since 30 November 1996. On the other hand, the temporal jurisdiction of the Panels in East Timor and the Extraordinary Chambers in Cambodia being far wider, the question whether or not statutory limitations apply to crimes committed in a rather distant past becomes an important one.

On this matter, UNTAET Regulation 2000/15 again follows the Rome Statute. Like Article 29 of the Rome Statute, section 17 of the Regulation provides that genocide, war crimes, and crimes against humanity shall not be subject to any statute of limitations. The same is true for torture, defined in section 7 as a discrete crime not amounting to a crime against humanity or a war crime. As has been discussed, section 7 of Regulation 2000/15 has not only regard to torture as an international crime, defined in the Torture Declaration and the Torture Convention. It also covers torture not committed by, or at the instigation of a public official and makes that a crime under domestic law. It is not self-evident that this crime under domestic law should not be subject to any statute of limitations and that the normal rules with regard to statutory limitations in the law of East Timor should not apply.

The Cambodian Law is more timid in eliminating statutes of limitation. Pursuant to Articles 4 and 5 of the Law, no statute of limitations applies to genocide and crimes against humanity. However, there is no similar provision with regard to the grave breaches of the Geneva Conventions. The same is true for destruction of cultural property in violation of the 1954 Hague Convention and for crimes against internationally protected persons. As far as crimes under Cambodian law are concerned, Article 3 of the Law extends the statute of limitations set forth in the Cambodian Penal Code for an

additional 20 years. Admittedly, it is difficult to discover the logic behind this system. Why should statutes of limitation continue to apply to war crimes without any exception while they have been eliminated for genocide and crimes against humanity? Why should more lenient rules apply to war crimes, destruction of cultural property, and crimes against diplomats than to the crimes under domestic law over which the Extraordinary Chambers have jurisdiction?

UNTAET Regulation 2000/15 and the Cambodian Law apply to events that have occurred before the Regulation and the Law entered into force. It is not wholly impossible that, as a result, persons could be tried for crimes with regard to which limitation periods have already elapsed. In the past, this has always been the most controversial aspect of eliminating statutory limitations retrospectively. It is, therefore, important to note that, in abolishing statutes of limitation for specific categories of international crimes, neither the Regulation nor the Law make an exception for cases in which limitation periods had already run out.

(d) Amnesties and pardons

Like statutes of limitation, amnesties and pardons are also sensitive issues in international criminal law. The problem of what to do with them has arisen in the case of Sierra Leone as well as that of Cambodia. As far as Sierra Leone is concerned, Article IX of the 1999 Lomé Peace Agreement granted 'absolute and free pardon' to the parties in the conflict that raged in Sierra Leone in the 1990s. However, the SRSG appended a disclaimer to his signature of the Agreement to the effect that the amnesty provisions 'shall not apply to international crimes of genocide, crimes against humanity and other serious violations of international humanitarian law'.⁶⁹ On 14 September 1996, the Cambodian King granted pardon to Khmer Rouge leader Ieng Sary who, in 1979, had been tried and convicted *in absentia* on a charge of genocide by a special court established by the People's Republic of Kampuchea after the invasion of Cambodia by Vietnamese troops, and had been sentenced to death. One may have doubts about the fairness of that trial.

⁶⁹ Report of the Secretary-General (n 4) para 23.

Article 10 of the Statute of the Special Court for Sierra Leone provides that amnesties granted in the past in respect of crimes against humanity and war crimes shall not be a bar to prosecution before the Special Court. This provision does not cover future amnesties or pardons after conviction by the Special Court, but one may suppose that they would, to say the least, violate the spirit of the Statute. On the other hand, Article 40 of the Cambodian Law provides that the Cambodian government shall not submit to the Cambodian King requests for the granting of amnesties or pardons to persons 'who may be investigated for or convicted of' crimes over which the Extraordinary Chambers have jurisdiction, regardless of whether an investigation or conviction concerns international crimes or crimes under domestic law. This leaves open the question of what to do with the pardon granted in the past to Ieng Sary. For a long time, this issue has been a major bone of contention between the United Nations and Cambodia and one of the reasons why, in 2001, they were unable to reach an agreement on the establishment of an internationalized court for Cambodia.⁷⁰ A compromise has apparently been reached in 2003 to the effect that 'the scope' of the pardon granted to Ieng Sary 'is a matter to be decided by the Extraordinary Chambers'.⁷¹

The question of whether amnesties and pardons granted in respect of crimes against the peace and security of mankind violate customary international law, and whether exceptions to this rule are permitted, does not seem to be entirely settled yet.⁷² However, the Statute of the Special Court for Sierra Leone and, to a lesser extent, the Cambodian Law certainly contribute to the emergence or strengthening of such a rule.

E. GENERAL OBSERVATIONS AND CONCLUSIONS

At the end of this chapter, a number of general observations can be made and conclusions drawn. The first and perhaps the most important one is that, in creating internationalized

⁷⁰ For the relevant documents see Ben Kiernan 'Cambodia and the United Nations: Legal Documents' (2002) 34 *Critical Asian Studies* 611.

⁷¹ See Report of the Third Committee (n 5) 8.

⁷² For a recent overview see Andreas O'Shea *Amnesty for Crime in International Law and Practice* (Kluwer Law International The Hague/London/New York 2002).

criminal courts for the purpose of adjudicating international crimes, one should be aware that their integration in a national legal system might make it difficult for them to apply international law to the fullest extent. Measures should, therefore, be taken where necessary to ensure that these courts are able to apply international law where domestic law conflicts with it.

The Regulation for East Timor, the Statute of the Special Court for Sierra Leone, and the Cambodian Law all show some measure of eclecticism in defining the crimes under customary international law over which the Panels, the Court, and the Chambers have jurisdiction. The Statutes of the ICTY and ICTR and that of the permanent International Criminal Court are their main sources of inspiration. However, each of the three charters for an internationalized criminal court makes its own choices in this respect and these choices are by no means always identical. It is not always clear why one template has been preferred over another. The main justification for deviating from the Statutes of the ad hoc international tribunals or that of the permanent ICC seems to be that these Statutes do not always accurately reflect customary international law. Examples are the elimination of the requirement of discriminatory intent in the definition of crimes against humanity in the Sierra Leonean Statute, and the omission of a definition of the term 'attack' in the Regulation for East Timor. In both cases, the decision not to follow the example of a Statute of an international tribunal or court was well founded. Conversely, one may note that, in some cases, a decision not to deviate from the chosen template carries the risk that insufficient justice is done to customary international law.⁷³ More generally, the constitutive instruments of the three internationalized courts show that opinions on what constitutes customary international law may evolve or change in a short time, as may well be true, too, for customary law itself. As far as jurisdiction over crimes under domestic law is concerned, concurrent jurisdiction over international crimes and crimes under domestic law has many advantages and could be pursued in a more methodical way by future internationalized courts.

⁷³ The requirement of discriminatory intent in Art 5 of the Cambodian Law, for instance, or the incomplete list of violations of the laws and customs in armed conflicts not of an international character in s 8.1(e) of UNTAET Reg 2000/15.

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REPORT OF THE SECRETARY-GENERAL ON
THE SITUATION IN SIERRA LEONE

I. INTRODUCTION

1. The present report is submitted pursuant to a number of requests from members of the Security Council. It covers the period since my good offices were formally requested by the Government of Sierra Leone in November 1994.
2. The conflict in Sierra Leone began in March 1991, when the forces of the Revolutionary United Front (RUF) launched attacks to overthrow the Government of the All People's Congress (APC) headed by former President Joseph S. Momoh. The conflict has so far caused the deaths of thousands of civilians, while many thousands more are internally displaced or are refugees in Guinea and Liberia.
3. On 29 April 1992, the Government of President Momoh was overthrown by a military coup and the National Provisional Ruling Council (NPRC) was established. Captain Valentine E. M. Strasser became the Chairman of NPRC and Head of State. After the coup, RUF made additional demands and continued its conflict with the new Government.
4. Towards the end of 1993, NPRC regained control of areas held by RUF in the southern and eastern parts of the country and subsequently announced a unilateral cease-fire in December 1993. Nevertheless, attacks on towns, villages and major highways escalated to unprecedented levels and spread throughout the country.
5. In a letter addressed to me on 24 November 1994, Chairman Strasser formally requested my good offices to bring the Government and RUF to negotiations, with the United Nations serving as an intermediary in that process. I dispatched a member of the Department of Political Affairs, Mr. Felix Mosha, to Sierra Leone to explore the possibilities of dialogue between the Government and RUF. He held a series of discussions from 15 to 22 December 1994 with Government officials, prominent citizens, religious leaders, resident diplomats and representatives of all United Nations bodies and agencies in Sierra Leone. He was not able, however, to establish contact with RUF in order to assess its

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attitude towards negotiations. In a letter to me dated 28 December 1994, Chairman Strasser expressed his appreciation and full support for the mission and requested that I continue my efforts.

6. The findings of the exploratory mission convinced me of the need to establish a more permanent presence in Freetown. I therefore appointed Mr. Berhanu Dinka (Ethiopia) as my Special Envoy for Sierra Leone and communicated this to the President of the Security Council on 7 February 1995 (S/1995/120).

II. POLITICAL SITUATION

7. During the last three years, while taking military measures against RUF, the Government has followed a two-track political approach: a negotiated settlement with RUF and democratization of the political process, including transition to an elected civilian Government within a fixed time-frame. These two political approaches are intended to reinforce each other.

A. The pursuit of negotiations

8. Prior to requesting my good offices, the Government had dispatched a delegation of prominent Sierra Leoneans to the border with Liberia to establish contact with RUF and pave the way for peace talks. The delegation met with the representatives of RUF on the Mano river bridge and held meetings with them on 24 November and 4 and 7 December 1994. Since then, there have been no follow-up meetings and each side has blamed the other for the non-resumption of talks. RUF accused the Government of sabotaging the process by issuing derogatory statements while the talks were being held. The Government alleged that the talks were discontinued because RUF took hostage three members of the Government delegation and continues to hold them.

9. My Special Envoy has spared no effort to establish contact with RUF. He has closely collaborated with the Organization of African Unity (OAU), the Commonwealth Secretariat and other organizations supporting negotiations in Sierra Leone. Along with the OAU and Commonwealth delegations, he issued a tripartite statement in Freetown in February 1995, calling on RUF to meet with them. He has since kept in constant communication with officials of these two organizations.

10. In his attempts to establish contact with RUF leadership, my Special Envoy has sought and received assistance from official bodies, private individuals and non-governmental organizations in Sierra Leone and throughout the subregion. This has enabled him to communicate with Mr. Foday Sankoh, the leader of RUF, and some of its senior members. In May 1995, Mr. Sankoh invited my Special Envoy to visit him at his base but later changed his mind. In a similar vein, at the beginning of September 1995, he invited, through the International Committee of the Red Cross (ICRC) in Freetown, a number of prominent Sierra Leoneans to meet him. The Government agreed to allow those invited to proceed to the meeting. On 18 September, ICRC informed RUF of the Government's

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agreement and requested RUF to fix the date and venue. No response has yet been received.

11. My Special Envoy is still continuing his efforts through various channels to meet face-to-face with the RUF leader. In addition to these efforts, he has been assisting and encouraging the Government in its democratization process.

B. Democratization

12. On 26 November 1993, Chairman Strasser issued a declaration setting out a programme of transition to democratic constitutional rule. According to the schedule, registration of voters was to have been completed from March to June 1994 and presidential elections were to have taken place in November 1995. However, the continued conflict and limited State resources have delayed the implementation of the transition programme by one year.

13. On 27 April 1995, on the occasion of the thirty-fourth anniversary of independence, Chairman Strasser reaffirmed the commitment of NPRC to the transition programme, pledging that everything possible would be done to complete its implementation by January 1996, when a democratically elected President would be sworn in. Several important steps have followed that pronouncement.

14. The Interim National Electoral Commission (INEC), which was established by Decree No. 1, 1994, has intensified its activity under the chairmanship of Mr. James O. C. Jonah. Its sister organization, the National Commission for Democracy (NCD), established by Decree No. 15, 1994, promotes civic and voter education throughout the country.

15. At the request of the Government, the United Nations Electoral Assistance Division conducted a needs assessment mission from 22 November to 2 December 1994, in close collaboration with the National Electoral Commission, to identify the technical requirements for organizing the electoral process, including voter registration, polling, civic education, training of electoral officers, legal issues and the electoral timetable.

16. On 20 June 1995, the Government issued Decree No. 7, 1995, lifting the ban on political activities, which it had imposed when it came to power, and empowered INEC to register political parties. Fifteen political parties have so far been issued with final certificates of registration and have begun campaigning (see annex I).

17. In order to build broad-based support for the electoral process, a National Consultative Conference on Elections was held in Freetown from 15 to 17 August 1995 with the participation of all the political parties, representatives of the Government and 78 different organizations representing a wide spectrum of civil society. The Conference adopted a system of elections based on proportional representation, a code of conduct for political parties and rules to govern campaign financing. The Conference overwhelmingly agreed to hold elections by the end of February 1996. The date has since been set for

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26 February 1996. The vigorous debate and the consensus that emerged indicate wide support for the democratic process.

18. As a result of these decisions, INEC is ready to begin voter registration and to finalize preparations for the elections. However, there are serious financial constraints that endanger this process: the total budgetary requirement is US\$ 10,730,219, but only US\$ 1,125,005 in cash and kind has so far been raised from external sources (see annex II). Unless additional financial support is made available, the electoral timetable will not be met.

19. Postponement of the elections could result in escalating violence and halt altogether the process of democratization. There are some elements within Sierra Leone that seek to derail the electoral process, as was attested by the attempted coup of 2 October 1995.

20. Various efforts have been made to raise resources. At a briefing of donor countries on the electoral and political situation in Sierra Leone on 2 November 1995, the response was very positive. I am convening a donors' conference on electoral assistance to Sierra Leone in New York on 30 November and I urge Member States to respond generously.

21. I have instructed my Special Envoy to follow closely all aspects of the democratization process. I have also instructed him to encourage the Government and leaders of the political parties to safeguard the integrity of the process, ensuring that the elections are free and fair and that their outcome is not contested.

III. SECURITY SITUATION

22. When NPRC took power, the Republic of Sierra Leone Military Forces numbered 3,000. A massive recruitment drive increased their total strength to around 14,000. After the December 1994 offensive by RUF, however, it became clear that the forces were inadequate to confront the challenges they faced. In addition, some soldiers have been implicated in illegal activities.

23. Given the links between the conflicts in Liberia and Sierra Leone, certain regional and other countries have taken the decision to provide military assistance to Sierra Leone. In addition, NPRC has been using non-Sierra Leonean advisers to improve the fighting skills of its troops, instil discipline and upgrade command and control.

24. The situation on the ground has not changed dramatically. Foreign and Sierra Leonean nationals, including seven nuns, were taken hostage in different parts of the country in early 1995 and subsequently released on 21 March 1995. In addition, RUF began moving closer to Freetown and captured several villages in Kono District, an area rich in diamonds and therefore of great economic importance.

25. Recently, morale and discipline within the Republic of Sierra Leone Military Forces appear to have improved. The diamond fields of Kono and a number of villages were retaken by Government forces in July and August 1995.

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The frequency of ambushes on the highways has decreased in the last few weeks and, if the present trend continues, the delivery of relief assistance to the countryside, as well as registration and voting, will be facilitated.

26. The majority of the combatants on both sides are young men with no employable skills other than soldiering. The Government has expressed its desire to demobilize part of its army. This is imperative, but it is also vital to reintegrate the demobilized soldiers into society as productive citizens. Sierra Leone lacks the resources to accomplish this task and the international community needs to assist the processes of demobilization and reintegration. While this programme will initially cover only members of the Republic of Sierra Leone Military Forces and those RUF combatants who are already in the hands of the Government, it must be designed to cover those still in the field as soon as a cease-fire and peace agreement are in place.

27. The Republic of Sierra Leone Military Forces held a seminar on 16 and 17 November 1995 with civilians and representatives of political parties to discuss the differences of perception and mutual suspicion between the military and the civilian population. It hopes that this seminar will create a harmonious environment in preparation for the forthcoming transition to civilian rule.

IV. THE ECONOMIC SITUATION

The socio-economic costs of the war

28. Much of the fighting has taken place in the mineral-rich areas in the south and east and the agriculturally viable regions where cocoa, coffee and other cash crops are grown. As a result, production of gold and diamonds dropped from 43,000 tons in 1991 to 38,000 tons in 1994. This was reflected in a \$30 million decline in exports. Income from the production of cash crops has declined from \$21 million in 1990 to \$7.6 million in 1993, a fall of 64 per cent. At the same time, government expenditures have risen as a result of the war; it is estimated that some 75 per cent of total revenue is now spent on the war effort.

29. Infrastructure damage has been enormous, with academic institutions, government offices, banks, health centres, schools and hospitals in a state of severe disrepair. Roads, bridges and construction equipment have been destroyed, while the Government, the churches, NGOs and mining companies have closed or scaled down operations and laid off thousands of workers as part of the austerity measures.

30. The Government has been credited with stabilizing the economy. However, the formal economy accounts for only 25 to 30 per cent of the country's total economic activities. As economic opportunities in the formal sector decline, people have little choice but to participate more fully in the informal economy, including resorting to acts of banditry.

31. Much of the war is being fought in the rural areas, particularly in the south and east, affecting semi-subsistence farmers who make up the bulk of the rural population. Farms have been destroyed, food stores burnt, domestic

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animals stolen or killed and agricultural tools looted. Attacks have consistently taken place during the dry season, preventing farmers from harvesting their crops. As a result, 248,800 tons of cereals were imported in 1992, an 80 per cent increase over the previous year. Continued food shortages are likely to perpetuate the war.

V. HUMANITARIAN

32. The humanitarian situation in Sierra Leone remains critical. Nearly 2 million people have been internally displaced, the majority flocking to major towns, including Bo, Kenema and Makeni. This represents close to 50 per cent of the country's estimated population of 4,477,000. Only about 1.1 million persons from this group receive assistance with any degree of regularity, owing to security constraints. Highways linking Freetown to key population centres have been usable only sporadically for much of this year and the impact on civilian populations has been severe. In the eastern and south-eastern areas of the country, which have been totally inaccessible for more than eight months, it is feared that malnutrition will soon reach life-threatening levels. Beginning in September 1995, however, there has been a relative improvement in access, allowing humanitarian organizations to deliver relief without armed escorts. Areas in the eastern portion of the country, however, remain inaccessible.

33. The gap between the resources made available by the international community for humanitarian assistance and the unmet needs of the affected population continues to be great. In March 1995, I launched the United Nations inter-agency consolidated appeal for humanitarian assistance to Sierra Leone, covering the period from March to December 1995 and requesting \$14.7 million for the emergency activities of the United Nations Children's Fund (UNICEF), the World Health Organization (WHO), the World Food Programme (WFP) and the United Nations Department of Humanitarian Affairs. Only 41 per cent of the funds requested has been received. This pattern is particularly worrying with respect to the status of WFP food stocks and anticipated needs for the coming year. Resources are required as soon as possible to prevent an even more precarious food aid situation next year.

34. The emergency situation has prevented development organizations from carrying out any sustained activity outside the Freetown area. Programmes have now been reoriented to address the emergency. The Department of Humanitarian Affairs will establish a humanitarian assistance coordination unit in Freetown, staffed by three experienced officers, to support the United Nations Humanitarian Coordinator.

VII. OBSERVATIONS AND RECOMMENDATIONS

35. While the situation in Sierra Leone is generally characterized by conflict, human suffering and economic decline, there are some positive emerging trends which, if assisted, would contribute to the re-establishment of peace and stability. The ongoing process of democratization, particularly the elections set for 26 February 1996, is a significant element in this development and worthy of the international community's support.

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36. The internal conflict that has raged for the last four years has damaged or destroyed much of the vital physical and social infrastructure of the country. In order to consolidate the democratic process and support the incoming elected civilian Government, I urge the international community to demonstrate its solidarity with the people of Sierra Leone, many of whom believe that the world has abandoned them. Some initial steps must be taken now to signal the international community's commitment to assist this democratization process.

37. Given the importance of the issue, I am instructing the Department of Humanitarian Affairs and the United Nations Development Programme (UNDP) to field a team of experts to prepare, in collaboration with the Government, a coordinated and workable action plan for the demobilization and reintegration of combatants. The team will take into account the experiences gained by the United Nations in El Salvador and Mozambique, as well as the present effort in Liberia, to identify sources of funds so that implementation can begin expeditiously.

38. I have also instructed the Electoral Assistance Division to work closely with other United Nations agencies and programmes, in particular UNDP, to assist INEC in coordinating international observers during the elections and in strengthening national observer groups.

39. The humanitarian situation in Sierra Leone is a cause for concern because of the widening gap between the needs of the war-affected population and the resources available to humanitarian agencies. Unless the international community responds quickly to enhance the humanitarian agencies' capacity to deliver relief assistance in time and in sufficient quantity, the situation may become desperate. In this connection, I should like to commend all United Nations agencies and non-governmental organizations operating in Sierra Leone for their response to the emergency situation by reorienting their various programmes.

40. Delivering relief assistance to the needy is not an easy task even at the best of times. It becomes almost impossible when humanitarian convoys are targeted. Members of the Security Council may consider admonishing those responsible for attacking relief convoys and urging them to refrain from such deplorable actions.

41. Despite all efforts to contact it, the RUF leadership has remained elusive and unresponsive to initiatives for a meeting or negotiations. While commending those Governments, non-governmental organizations and individuals that have been supporting the efforts of my Special Envoy, the time has come for the international community to urge RUF to take advantage of my good offices and to initiate a process of negotiation.

42. I intend to retain my Special Envoy in Sierra Leone for the time being. He will continue his efforts to establish a dialogue between RUF and the Government and to support the process of democratization. His efforts will be coordinated with OAU and the Commonwealth.

43. In conclusion, I should like to call upon Member States to provide the fullest possible material and financial support to INEC so that the elections

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can be held on schedule. Although there are legitimate security concerns, experience has shown in other places, such as Cambodia and South Africa, that the democratic process should not be held hostage to the intransigence of any particular group.

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Annex IList of registered political parties in Sierra Leone

<u>Name of political party</u>	<u>Name of leader</u>
1. People's Progressive Party (PPP)	Edward Bundu-Kamara
2. National Unity Movement (NUM)	Desmond Luke
3. People's National Convention (PNC)	Ibrahim Ben Kargbo
4. United National People's Party (UNPP)	John Karafa-Smart
5. People's Democratic Party (PDP)	Thaimu Bangura
6. All People's Congress (APC)	S. A. T. Koroma
7. National Unity Party (NUP)	A. C. D. George
8. Sierra Leone People's Party (SLPP)	Rev. Paul Dumbar
9. National Democratic Alliance (NDA)	Foday B. Mansaray
10. National People's Party (NPP)	Aliramy Yamba Komeh
11. National Republican Party (NRP)	Sahr Steven Mambu
12. Democratic Centre Party (DCP)	Abu A. Koroma
13. Coalition for Progress Party (CPP)	Ms. Jeredine Williams Sarho
14. National Alliance Democratic Party (NADP)	Mohamed Y. Sillah
15. Social Democratic Party (SDP)	Andrew Lungay

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Annex II

Interim National Electoral Commission

Electoral assistance budget (November 1995-March 1996)

Funding status as at 24 October 1995

Category	Description	Amount	Funded	Promised	Not funded
Coordination	Chief technical adviser	108 000	108 000 a/		
	Legal adviser	60 000	60 000 b/		
	United Nations Volunteers	55 000			55 000
	Electoral coordinator	30 000			30 000
	Admin. support personnel	36 000	36 000 a/		
	Mission costs/duty travel	25 000	25 000 a/		
	Reports sundries	18 000	18 000 a/		
	Subtotal	332 000	247 000		85 000
Voter education	<u>International personnel</u>				
	Media coordinator	60 000	60 000 b/		
	Civic education consultant	120 000	120 000 c/		
	<u>National personnel</u>				
	Civic education consultants	12 000	10 000 a/		2 000
	Publicity supervisors	14 667			14 667
	Publicity officers	175 000			175 000
Materials rental	Publicity assistants	400 000			400 000
	Audiovisual productions	55 556	20 000 d/		35 556
	Theatre productions	100 000	63 000 e/		37 000
	Design/graphic materials	83 333			83 333
	Vehicle rental	100 000			100 000

/...

Category	Description	Amount	Funded	Promised	Not funded
	Launch/other rental	5 556			5 556
	Mobile radio communications	300 000	50 000 a/		250 000
	Training	50 556			50 556
	Equipment materials	100 687			100 687
	Audiovisual communication vehicles	250 000	250 000 f/		
	Fuel and maintenance	106 500			106 500
	Subtotal	1 933 855	573 000		1 360 855
Voter registration	<u>International personnel</u>				
	Logistics coordinator	60 000	60 000 g/		
	Team leaders	40 000			40 000
	Database expert	17 555	17 555 a/		
	Registration coordinators	7 200	7 200 a/		
	Registrars	500 000			500 000
	Data editors	25 667			25 667
	Revision personnel	250 000			250 000
	Data entry personnel	20 000			20 000
	Logistics assistants	6 000			6 000
Training	Registration officials	100 000		63 000 h/	37 000
Rentals/others	Vehicles for registration	166 667			166 667
	Vehicles for revision	83 333			83 333
Materials	Registration	400 000		100 000 h/ 100 000 i/	300 000
	Computerization	220 250	8 500 e/ 211 750 h/		
	Subtotal	1 896 672	305 005	263 000	1 328 667

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Category	Description	Amount	Funded	Promised	Not funded
Polling	<u>International and national personnel</u>				
	Nomination day	20 767			20 767
	Election day	900 638			900 638
	INEC supervisory personnel	100 000			100 000
	Trainees, monitors	533 333			533 333
	Training coordinator	7 200			7 200
	Training assistants	10 800			10 800
Training	Election officers training	250 000			250 000
Materials/rentals	Materials rentals	85 000			85 000
	Vehicle rentals	233 333			233 333
	Election day materials	851 067		c/	851 067
	Food/materials for brigades	109 667			109 667
	United Nations Secretariat equipment	69 220			69 220
	Helicopter lease	1 000 000			1 000 000
	Subtotal	4 171 025			4 171 025
Transportation	<u>Purchases</u>				
	Field vehicles (6)	240 000			240 000
	Light vehicles (14)	560 000			560 000
	Trucks (5)	266 667			266 667
	Minibuses (5)	400 000			400 000
	Motor bicycles/bicycles	150 000			150 000

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Category	Description	Amount	Funded	Promised	Not funded
	Operation/maintenance	500 000			500 000
	Air transport fuel/operations	300 000			300 000
	Subtotal	2 416 667			2 416 667
	Grand total	10 750 219	1 125 005	263 000	9 362 214
Summary					
Coordination		332 000	247 000		85 000
Voter education		1 933 855	573 000		1 360 855
Voter registration		1 896 672	305 005	263 000	1 328 667
Polling		4 171 025			4 171 025
Transportation		2 416 667			2 416 667
	Grand total	10 750 219	1 125 005	263 000	9 362 214
a/	United Nations Development Programme.				
b/	Commonwealth.				
c/	European Union.				
d/	Greece.				
e/	United States of America.				
f/	United Kingdom of Great Britain and Northern Ireland.				
g/	Canada.				
h/	Sierra Leone.				
i/	Sweden.				

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Annex III

Resource mobilization for the Sierra Leone emergency

Agency	Requirements	Pledges	Shortfall	Percentage of needs covered
United Nations Children's Fund	2 799 000	1 100 000	1 699 000	39.3
World Health Organization	1 325 000	759 856	565 144	57.3
Office of the United Nations High Commissioner for Refugees	4 648 800	336 538	4 312 262	7.2
Department of Humanitarian Affairs	237 500	8 772	228 728	3.7
World Food Programme (non-food)	450 000	0	450 000	0
(food and ITSH) a/				
Vegetable oil	3 503 640	1 455 000	2 048 640	41.5
Corn-soya blend	686 280	592 800	93 480	86.4
ITSH a/	493 038	278 460	214 578	56.5
Subtotal	4 682 958	2 326 260	2 356 698	49.7
Total for consolidated appeal	14 143 258	4 531 426	9 611 832	32.0
United Nations Development Programme b/		4 104 000		
Food and Agriculture Organization of the United Nations b/		356 000		
United Nations Population Fund b/		100 000		
Grand total	14 143 258	9 091 426	9 611 832	

a/ Internal transport, stores and handling.

b/ Not included in the March-December consolidated appeal.

INTERNATIONAL HUMANITARIAN LAW AND UNITED NATIONS MILITARY OPERATIONS*

Christopher Greenwood**

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1. INTRODUCTION

The application of international humanitarian law to United Nations military operations is a subject that has attracted considerable interest almost from the inception of the United Nations.¹ While the basic premise that United Nations military operations are conducted under the authority of the Security Council

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** Professor of International Law, London School of Economics; member of the Board of Editors, *Yearbook of International Humanitarian Law*. The author gratefully acknowledges assistance of Mr. Christoph Safferling, LL.M., who helped to compile materials for this article and Ms. Avril McDonald, Managing Editor of the *Yearbook of International Humanitarian Law*, who made a number of helpful suggestions regarding recent developments at the United Nations, as well as providing valuable encouragement. The responsibility for any errors remains that of the author alone.

1. See in particular, D.W. Bowett, *United Nations Forces* (London, Sweet and Maxwell 1996) pp. 484-516; F. Seyersted, *United Nations Forces in the Law of Peace and War* (Leiden, Sijthoff 1966); ICRC, *Symposium on Humanitarian Action and Peace-Keeping Operations* (Geneva, ICRC 1994); L. Condorelli et al, eds., *The United Nations and International Humanitarian Law* (Paris, Editions Pedone 1996); D. Schindler, 'United Nations Forces and International Humanitarian Law' in C. Swinarski, ed., *Studies and Essays on International Humanitarian Law* (The Hague, Martinus Nijhoff 1984) p. 521; P. Benvenuti, 'The Implementation of International Humanitarian Law in the Framework of United Nations Peace-keeping Operations' in European Commission, *Law and Humanitarian Crises* (Luxembourg, Office for Official Publications of the European Communities 1995) vol. I, p. 83; G.-J. van Hegelsom, 'The Law of Armed Conflict and United Nations Peace-keeping and Peace-Enforcing Operations' 6 *Hague Yearbook of International Law* (1995) p. 45; and U. Palwankar, 'Applicability of international humanitarian law to United Nations peace-keeping forces', 33 *International Review of the Red Cross* (1993) p. 227. See also the resolutions adopted by the Institut de droit international: Resolution on the Conditions of Application of Humanitarian Rules of Armed Conflict to Hostilities in which United Nations Forces may Engaged, adopted at Zagreb in 1971 ('the Zagreb Resolution'), 54 (II) *Annuaire de l'institut de droit international* (1971) p. 465, and the Resolution on the Conditions of Application of Rules other than Humanitarian Rules of Armed Conflict to Hostilities in which United Nations Forces may

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that provision are being asked to bear a weight which they were never intended to carry and which has never been acknowledged in state practice.

Moreover, while it is attractive from a humanitarian standpoint to argue that a legal duty to take action of this kind exists, considerable practical difficulties arise. The prevention of violations of IHL involves far more than simply the act of interceding in a particular case. Where there are systematic abuses taking place, their prevention may require the initiation of combat operations on a large scale. Many United Nations forces are simply not equipped for an operation of that kind. In addition, intervention by military means to prevent violations of IHL, even if it was, in principle, impartial, would almost certainly be seen by those on the receiving end of such intervention as compromising that impartiality. It would therefore make the discharge of the force's mandate even more difficult. To give a practical example, a lightly armed United Nations force charged with the responsibility for delivering relief supplies will almost certainly be forced to negotiate safe passage with a variety of local forces. If the United Nations force then intervenes to prevent one of those local forces from violating IHL, it is highly likely that that action will prejudice the ability of the force to continue delivering relief supplies and thus fulfilling the mandate which the Security Council gave it.

Consequently, if it is to be said that there is a duty for a United Nations force to intervene, at whatever cost, to prevent violations of IHL, then that duty has to be recognised not by the force commander but by the Security Council and the principal states in setting up the operation in the first place and determining the force levels and the nature of the equipment with which that force is to be provided.

9. CONCLUSIONS

Perhaps inevitably, this study has shown that the relationship between IHL and United Nations military operations remains the subject of considerable uncertainty. Nevertheless, a few conclusions can be suggested.

(1) In principle, a United Nations force, or a force authorized by the United Nations, is required, if it becomes party to an armed conflict, to apply as a matter of law the relevant body of IHL, customary and conventional, subject only to the fact that the application of certain rules of the law of naval warfare and belligerent occupation may be modified as a result of the United Nations involvement.

(2) The character of the conflict will determine whether the relevant body of law is that applicable to international or non-international conflicts.

(3) The mandate of the United Nations force and whether it is classified as an enforcement, peace-enforcement or peacekeeping operation is not decisive of whether IHL is applicable, since any class of United Nations operation is capable of becoming involved in hostilities. Nevertheless, an enforcement action is, as a practical matter, more likely to lead to involvement in a conflict than a peacekeeping operation.

(4) In practice, however, there is a great reluctance to acknowledge that a United Nations force which was not established in order to carry out enforcement action has become a party to an armed conflict even if it has become involved in quite heavy fighting. The consequence is that a higher threshold for determining the existence of armed conflict is applied in such cases than in relation to fighting between states.

(5) It is therefore possible for a United Nations force to engage in combat operations without being treated as a party to an armed conflict. In such a case, it is accepted that the force has a duty to comply with the principles and spirit of the principal conventions on IHL. Attempts are being made to give greater substance to this reference to principles and spirit.

(6) International humanitarian law offers some protection to the members of a United Nations force which is not a party to a conflict but that protection is insufficient and is to be supplemented by the 1994 Convention.

(7) In the absence of a specific provision in the mandate, a United Nations force has no legal duty to take action against violations of IHL by other persons or groups, although it has a right to do so.

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REPORT OF THE PANEL OF EXPERTS
APPOINTED PURSUANT TO
UN SECURITY COUNCIL RESOLUTION 1306 (2000), PARAGRAPH 19
IN RELATION TO SIERRA LEONE

December 2000

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ACRONYMS

AFRC	Armed Forces Revolutionary Council (Sierra Leone)
ASECNA	Agency for the Safety of Air Navigation in Africa and Madagascar
ATU	Anti-Terrorism Unit (Liberia)
CMRRD	Commission for the Management of Strategic Mineral Resources (Sierra Leone)
DDR	Disarmament, Demobilisation and Rehabilitation Programme (Sierra Leone)
DRC	Democratic Republic of Congo
ECOMOG	ECOWAS Monitoring Group
ECOWAS	Economic Community of West African States
FIR	Flight Information Region
GGDO	Government Gold and Diamond Office (Sierra Leone)
IATA	International Air Traffic Association
ICAO	International Civil Aviation Organization
IWETS	International Weapons and Explosives Tracking System
LICR	Liberian International Ship and Corporate Registry
LKI	Lazare Kaplan International
NPFL	National Patriotic Front of Liberia
PCASED	Programme for Coordination and Assistance for Security and Development
RPG	Rocket Propelled Grenade
RUF	Revolutionary United Front
RUFP	RUF Party
SITA	Société internationale de télécommunications aéronautiques
SLA	Sierra Leone Army
UNAMSIL	United Nations Mission in Sierra Leone
UNITA	Uniao Nacional para a Independencia Total de Angola
WCO	World Customs Organization

EXECUTIVE SUMMARY

A. Diamonds

1. Diamonds have become an important resource for Sierra Leone's Revolutionary United Front (RUF) in sustaining and advancing its military ambitions. Estimates of the volume of RUF diamonds vary widely, from as little as \$25 million per annum to as much as \$125 million. Whatever the total, it represents a major and primary source of income for the RUF, and is more than enough to sustain its military activities.
2. A certain volume of RUF diamonds are traded in Kenema and elsewhere in Sierra Leone. These are most likely smuggled out of the country. Some RUF diamonds have also been traded informally in Guinea. But the bulk of the RUF diamonds leave Sierra Leone through Liberia. The diamonds are carried by RUF commanders and trusted Liberian couriers to Foya-Kama or Voinjama, and then to Monrovia. Such trade cannot be conducted without the permission and the involvement of Liberian government officials at the highest level. Very little Liberian trade, in fact, whether formal or informal, takes place without the knowledge and involvement of key government officials. This is true of all imports, and where exports are concerned, it is especially true of diamonds.
3. The Lomé Peace Agreement appointed Foday Sankoh Chairman of the Commission for the Management of Strategic Mineral Resources (CMRRD). Between the time he returned to Sierra Leone in 1999 and the resumption of hostilities in May 2000, the Commission never actually functioned, but Foday Sankoh spent money lavishly, without an obvious source of income. Sankoh was, in fact, encouraging a wide variety of potential foreign investors, many thinking they would reap exclusive benefits from the same things. A picture emerges of a double-dealing leader, clutching at financial opportunities for personal and political gain, outside of the governmental framework in which he was ostensibly working. Most of this related to the diamond trade.
4. The report comments on Sierra Leone's new certification system. Where the RUF's conflict diamonds are concerned, the legitimate export system is largely irrelevant. As long as there are no controls in neighbouring countries, the RUF will continue to move their diamonds out with impunity. For this reason, it is imperative that a standardized global certification scheme be introduced as soon as possible.
5. A major difficulty in tracking the movement of rough diamonds, whether conflict or otherwise, is the inconsistent manner in which the governments of major trading centres record diamond imports and exports. One issue has to do with the general availability of statistics. Another has to do with a distinction made between 'country of origin' and 'country of provenance'. Country of provenance refers to the country from which diamonds were last imported; country of origin indicates where they were mined. Until recently, little serious attention was paid anywhere to the issue of where diamonds were actually mined. The result is a wide range of anomalies. For example, 41 per cent of British rough diamond imports in 1999 were said to originate in Switzerland, while Switzerland officially imports almost no rough diamonds at all. This is a consequence of diamonds passing through Swiss free trade areas, until recently without record and without serious government oversight.
6. In its search for conflict diamonds from Sierra Leone, the Panel discovered that there is a much greater volume of 'illicit' diamonds, and that distinguishing between the two is extremely difficult. A large volume of diamonds entering Europe is disguised as Liberian, Guinean and Gambian in order to evade taxation and launder money. The report describes

flagrant examples in Belgium of fraudulent commercial reporting. A country like Liberia, whose name has been used with or without its knowledge by illicit traders, can thus conceal its own very real trade in illicit and conflict diamonds behind larger rackets being perpetrated by others.

B. Recommendations on Diamonds

7. In order to better regulate the flow of rough diamonds from producing countries, a global certification scheme based on the system now adopted in Sierra Leone is imperative. It will give added impetus to current discussions on this subject if the Security Council endorses the concept of a global system.

8. In the short run, and in the absence of a global system, it is recommended that certification systems similar to that adopted by Sierra Leone, be required of all diamond exporting countries in West Africa, with special and immediate reference to Guinea and Côte D'Ivoire, as a protective measure for their indigenous industries and to prevent their exposure to conflict diamonds. If this has not been completed within a period of six months, the Security Council should impose an international embargo on diamonds from these countries.

9. The Panel further recommends a complete embargo on all diamonds from Liberia until Liberia demonstrates convincingly that it is no longer involved in the trafficking of arms to, or diamonds from, Sierra Leone. The ban should not be lifted until this condition has been met, and until Liberia too has joined the proposed standardized certification system.

10. The Security Council should place an immediate embargo on trade in all so-called Gambian diamonds until such time as its exports of diamonds can be reconciled with imports.

11. Other diamond exporting countries in the region have been designated by the Belgian government as 'sensitive' countries, where special attention to imports is required. In addition to the three countries suffering directly from conflict diamonds and those mentioned above, these include Uganda, Central African Republic, Ghana, Namibia, Congo Brazzaville, Mali, Zambia and Burkina Faso. This list is commended to other major importing countries, including Switzerland, South Africa, India, Israel, the United Kingdom and the United States. Invoices from these countries need to be thoroughly checked, and where there is doubt about either provenance or origin, parcels should be seized until the authorities have checked the facts. Delays in processing will increase the cost of doing business and will encourage better paper work. Forfeiture of improperly labelled goods will discourage the habit decisively.¹

12. Urgent attention should be given to extending a Sierra Leone-style certification system to these countries as soon as possible.

13. The United Nations, the World Diamond Council and the import control authorities of all rough diamond importing countries should be vigilant for other exporting countries, or for countries in the future, where trade in diamonds has little to do with domestic production or legitimate trading.

14. It is essential, and a matter of urgency, that major trading centres (Belgium, the United Kingdom, Switzerland, South Africa, India, the United States and Israel) come to a common agreement on the recording and public documentation of rough diamond imports that is consistent from one country to another, and that clearly designates the country of origin in addition to country of provenance.

15. An annual statistical production report should be compiled by each exporting country and gathered into a central annual report, compiled by the World Diamond Council and/or by the certification body that is expected to emerge from the 'Kimberly Process' of intergovernmental negotiation. Countries of origin must be distinguished from countries of provenance.

16. If diamonds are mixed and/or re-invoiced in a free trade zone, it is imperative that the government of that country take responsibility for verifying the bona fides of the diamonds before they are re-exported. This is especially important with regard to Switzerland because of the large volumes that pass through its *Freiläger*, losing their identity in the process. The same is true of the United Arab Emirates. In other words, all countries importing rough diamonds must be part of the anticipated 'rough controls' system.

17. Throughout its work, the Panel was struck by the widespread breaking of UN Security Council sanctions on both weapons and diamonds. If existing and future sanctions are to be effective, the Security Council will require an on-going capacity to monitor their observance and conduct research. Where diamonds are concerned, there have been three Expert Panels examining many of the same issues concurrently. There has been useful collaboration, but there has also been overlap and duplication. Considering the complexity and the changing nature of the conflict diamond issue the Panel recommends that in future, it would serve the Security Council better to have an on-going focal point within the UN to monitor adherence to sanctions, as well as progress towards the goals stated in the December 1, 2000 General Assembly resolution on conflict diamonds.

18. The attention of the Security Council, the Government of Sierra Leone, donor agencies and other interested parties is drawn to observations contained in the report about the need for probity and transparency. Without serious reform and due diligence within government and government agencies in Sierra Leone, international efforts to assist will be wasted.

C. Weapons and Air Traffic Control

19. Despite an ECOWAS-Moratorium on arms shipments to West Africa, the region is awash in small arms. Guerrilla armies receive weapons through interlinked networks of traders, criminals and insurgents moving across borders. Systematic information on weapons smuggling in the region is non-existent, and information that could be used to combat the problem on a regional scale - through ECOWAS or through bilateral exchanges - is generally not available. Few states in the region have the resources or the infrastructure to tackle smuggling.

20. In Sierra Leone, the RUF depends almost exclusively on light weaponry, although it does have access to more sophisticated equipment. It has captured many weapons during confrontations with the Sierra Leone Army, ECOMOG and UNAMSIL forces. The Panel, however, found unequivocal and overwhelming evidence that Liberia has been actively supporting the RUF at all levels, in providing training, weapons and related *matériel*, logistical support, a staging ground for attacks and a safe haven for retreat and recuperation, and for public relations activities.

21. There is also conclusive evidence of supply lines to Liberia through Burkina Faso. Weapons supplied to Burkina Faso by governments or private arms merchants have been systematically diverted for use in the conflict in Sierra Leone. For example, a shipment of 68 tons of weapons arrived at Ouagadougou on 13 March 1999. They were temporarily off-loaded in Ouagadougou and some were trucked to Bobo Dioulasso. The bulk of them were

then trans-shipped within a matter of days to Liberia. Most were flown aboard a BAC-111 owned by an Israeli businessman of Ukrainian origin, Leonid Minin. Details of the flights and dates are included in the report.

22. The role of aircraft in the RUF's supply chain is vital, especially over the past two years as their sphere of influence in Sierra Leone has widened. It is known that the RUF were supplied by helicopter on a sporadic basis before 1997, and on a regular basis since then. Helicopters originating in Liberia land at Buedu, Kailahun, Makeni, Yengema, Tumbudu and elsewhere in Kono District.

23. President Charles Taylor is actively involved in fuelling the violence in Sierra Leone, and many businessmen close to his inner-circle operate on an international scale, sourcing their weaponry mainly in eastern Europe. One key individual is a wealthy Lebanese businessman named Talal El-Ndine. El-Ndine is the inner-circle's paymaster. Liberians fighting in Sierra Leone alongside the RUF, and those bringing diamonds out of Sierra Leone are paid by him personally. The pilots and crew of the aircraft used for clandestine shipments into or out of Liberia are also paid by El-Ndine.

24. Regional air surveillance capacities are weak or totally inadequate in detecting, or in acting as a deterrent to the arms merchants supplying Liberia and the RUF. Weak airspace surveillance in the region in general, and abusive practices with regard to aircraft registration, create a climate in which arms traffickers operate with impunity.

25. Because of its lax licence and tax laws, Liberia has for many years been a flag of convenience for the fringe air cargo industry. Liberia also has lax maritime and aviation laws that provide the owners of ships and aircraft with maximum discretion and cover, and with minimal regulatory interference. A schedule of Liberian-registered aircraft provided to the Panel by the government listed only 7 planes. No documentation was available on more than 15 other aircraft identified by the Panel. Many aircraft flying under the Liberian flag, therefore, are apparently unknown to Liberian authorities, and are never inspected or seen in the country.

26. In November 1999, a Kenyan national named Sanjivan Ruprah was authorized by the Liberian Minister of Transport to act as the 'Global Civil Aviation agent worldwide' for the Liberian Civil Aviation Regulatory Authority, and to 'investigate and regularise the ... Liberian Civil Aviation register'. During its visit to Liberia the Panel asked the Transport Ministry, the Ministry of Justice and police authorities about Ruprah and his work, but was told that he was not known to them. Ruprah is, in fact, a well-known weapons dealer. He travels using a Liberian diplomatic passport in the name of Samir M. Nasr, and carries additional authorization from the Liberian International Ship and Corporate Registry.

27. Victor Bout is a well-known supplier of embargoed non-state actors - in Angola, the Democratic Republic of the Congo and elsewhere. He oversees a complex network of over 50 planes and multiple cargo charter and freight-forwarding companies, many of which are involved in shipping illicit cargo. Bout has used the Liberian aviation register extensively, operating mainly out of the United Arab Emirates. Sharjah Airport is used as an 'airport of convenience' for planes registered in many other countries. One of Bout's aircraft, an Ilyushin 76, was used in July and August 2000 for arms deliveries from eastern Europe to Liberia. This aircraft and an Antonov made four deliveries, on July 4 and 27, and August 1 and 23, 2000. The cargo included military helicopters, spare rotors, anti-tank and anti-aircraft systems, missiles, armoured vehicles, machine guns and ammunition.

28. It is difficult to conceal something the size of an Mi-17 military helicopter, and the supply of such items to Liberia cannot go undetected by customs authorities in originating countries unless there are false flight plans and end-user certificates, or unless customs officials at points of exit are paid to look the other way. The constant involvement of Bout's aircraft in arms shipments from eastern Europe into African war zones suggests the latter.

29. In addition, there have been few significant cases of aircraft with weapons being grounded at important fuelling points such as Cairo, Nairobi or Entebbe, or anywhere in West Africa. Although some countries have temporarily or permanently stopped aircraft registered in Liberia from entering their airspace, the Liberian register continues to be used fraudulently. The practice has clearly been organised from Liberia in cooperation with shrewd businessmen abroad, and Liberian-registered planes remain prominent in many African countries, particularly in countries at war.

30. In short, Liberia is actively breaking Security Council embargoes regarding weapons imports into its own territory and into Sierra Leone. It is being actively assisted by Burkina Faso. It is being tacitly assisted by countries allowing weapons to pass through or over their territory without question, and by those countries that provide a base for the aircraft used in such operations.

31. The report concludes with a full technical report on the adequacy of air traffic control and surveillance systems within the region.

D. Recommendations on Weapons and Air Traffic Control

32. The Panel strongly recommends that all aircraft operating with an EL-registration number and based at airports other than in Liberia, should be grounded immediately and until the provisions in the following recommendation are met. This includes planes based in Sharjah and other airports in the United Arab Emirates, in Congo Brazzaville, in the Democratic Republic of the Congo, Gabon, Angola, Rwanda and Kenya. Airport authorities and operators of planes registered in Liberia over the past five years should be advised to keep all their documentation, log books, operating licences, way bills and cargo manifests for inspection.

33. It is further recommended that all operators of aircraft on the Liberian register, wherever they are based, be required to file their airworthiness and operating licences and their insurance documents with the International Civil Aviation Organisation's headquarters in Montreal, Canada, including documentation on inspections carried out during the past five years. The aircraft of all operators failing to do so should be grounded permanently. Aircraft that do not meet ICAO standards should be grounded permanently.

34. The Security Council, through ICAO, IATA and the WCO should create a centralized information bulletin, making the list of grounded Liberian aircraft known to all airports in the world.

35. Burkina Faso has recently recommended that the UN Security Council supervise a proposed mechanism that would monitor all arms imports into its territory, and their use, for a period of three years. The Panel endorses this proposal. The Panel also recommends that under such a mechanism, all imports of weapons and related matériel into Burkina Faso over the past five years be investigated. The Panel further recommends that any state having exported weapons during this period to Burkina Faso should investigate the actual end-use of these weapons, and report their findings to the Security Council and to the Program for

Coordination and Assistance for Security and Development (PCASED) established under the ECOWAS Moratorium.

36. In view of the sanctions-breaking cases investigated by the Panel and the information gathered in the region, it is recommended that the Security Council encourage the reinforcement of the ECOWAS Programme for Coordination and Assistance for Security and Development (PCASED) with support from Interpol and the World Customs Organisation. PCASED should have an active capacity to monitor compliance with arms embargoes and the circulation of illicit weapons in the region.

37. The Security Council should encourage ECOWAS member states to enter into binding bilateral arrangements between states with common frontier zones, to initiate an effective, common and internationally agreed system of control that includes the recording, licensing, collection and destruction of small arms and light weapons. These bilateral arrangements can be promoted and facilitated through ECOWAS and through the Programme for Coordination and Assistance for Security and Development. A common standard and the management of a database on significant cases of smuggling and sanctions busting in the region could be developed by Interpol. The IWETS (International Weapons and Explosives Tracking System) programme of Interpol could be used by all states and the United Nations for the purpose of tracking the origin of the weaponry.

38. In this report, the Panel has identified certain arms brokers and intermediaries responsible for supplying weapons to the RUF. A project should be developed to profile these arms brokers with the cooperation of Interpol. Similarly, considering the importance of air transport in the sanctions busting, profiles of major cargo companies involved in such practices should be developed, with a view to exploring ways and means of further strengthening the implementation of sanctions.

39. Responsibility for the flood of weapons into West Africa lies with producing countries as well as those that trans-ship and use them. The Security Council must find ways of restricting the export of weapons, especially from eastern Europe, into conflict areas under regional or UN embargoes. 'Naming and shaming' is a first step, but consideration could be given to placing an embargo on weapons exports from specific producer countries, just as diamonds have been embargoed from producer countries, until internationally acceptable certification schemes have been developed.

40. An analysis of the firearms recovered from rebels should be undertaken in cooperation with Interpol, and its International Weapons and Explosives Tracking System. This would help in further identifying those involved in the RUF supply line.

41. The World Customs Organization should be asked to share with the Security Council its views on creating adequate measures for better monitoring and detection of weapons or related matériel to non-state actors or countries under an arms embargo.

42. Current Security Council arms embargoes should be amended to include a clear ban on the provision of military and paramilitary training.

43. Countries in West Africa that have not signed the 1989 UN Convention on the Recruitment, Use, Training and Financing of Mercenaries should be encouraged to do so.

44. Consideration should be given to the development of special training programs on sanctions monitoring for national law enforcement and security agencies, as well as airport and customs personnel in West Africa, and the development of a manual or manuals on the

monitoring of sanctions at airports for worldwide use by airport authorities and law enforcement services.

45. Consideration should be given to placing specialised United Nations monitors at major airports in the region (and perhaps further afield), focussing on sensitive areas and coordinating their findings with other airports. This would enable better identification of suspect aircraft. It would also create a deterrent against illicit trafficking, and would generate the information needed to identify planes, owners and operators violating UN sanctions and arms embargoes.

46. The Security Council should consider ways in which air traffic control and surveillance in West Africa can be improved, with a view to curtailing the illicit movement of weapons. Possibilities include:

- encouraging the installation of primary radar at all major West African airports, and finding the financial support to do so. Only primary radar can independently detect the movement of aircraft;
- an alternative to radio would be High Frequency Radio, or 'pseudo radar'. This, however, requires pilot cooperation;
- requiring the use in the region of a Global Positioning System and requiring aircraft to be equipped with the appropriate avionics, with installation of the corresponding equipment on the ground. This would entail requiring aircraft flying in West Africa to have on board or to be equipped with avionics which could enable controllers on the ground to identify any traffic, anywhere and at any time in their sector;
- encouraging ICAO and other interested agencies to assist states in reinforcing the financial autonomy of bodies established for the management of air navigation services.

Other Recommendations

47. In this report, the Panel makes a variety of specific recommendations that deal with diamonds, weapons and the use of aircraft for sanctions-busting and the movement of illicit weapons. Many of these recommendations and the problems they address are related to the primary supporter of the RUF, Liberia - its President, its government and the individuals and companies it does business with. The Panel notes with concern that Security Council resolutions on diamonds and weapons are being broken with impunity. In addition to the foregoing, the Panel offers the following recommendations with a view to making the message of this report more clear, and to ensuring that there is better follow-up to Security Council decisions in future:

48. A travel ban similar to that already imposed on senior Liberian officials and diplomats by the United States should be considered for application by all UN member nations until such time as Liberia's support to the RUF and its breaking of other UN sanctions ends conclusively.

49. The principals in Liberia's timber industry are involved in a variety of illicit activities, and large amounts of the proceeds are used to pay for extra-budgetary activities, including the acquisition of weapons. Consideration should be given to placing a temporary embargo on Liberian timber exports, until Liberia demonstrates convincingly that it is no longer involved in the trafficking of arms to, or diamonds from, Sierra Leone.

50. Consideration should be given to creating capacity within the UN Secretariat for on-going monitoring of Security Council sanctions and embargoes. This is imperative to the building of an in-house knowledge base on current issues such as conflict diamonds, as noted in paragraph 17 above, but it is even more important to creating greater awareness of, and capacity to deal with problems, which are not likely to be solved in the near future, such as the illicit trade in weapons and related *matériel*.

INTRODUCTION

A. General

51. On August 2, 2000, in reference to Security Council Resolution 1306 (2000) concerning Sierra Leone, adopted by the Security Council on July 5, 2000, the Secretary General of the United Nations appointed a Panel of Experts to collect information on possible violations of the measures imposed by paragraph 2 of Resolution 1171 (1998) and the link between trade in diamonds and trade in arms and related *matériel*, and to consider the adequacy of air traffic control systems in the region.

52. Paragraph 2 of Resolution 1171 (1998) states that The Security Council... decides, with a view to prohibiting the sale and supply of arms and related *matériel* to non-governmental forces in Sierra Leone, that all States shall prevent the sale or supply, by their nations or from their territories, or using their flag vessels or aircraft, of arms and related *matériel* of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, to Sierra Leone other than to the Government of Sierra Leone through named points of entry on a list to be supplied by that Government to the Secretary-General who shall then promptly notify all Member States of the United Nations of the list.

53. In connection with this Resolution, the Panel took cognisance of Paragraph 8 of Security Council Resolution 788 (1992), which remains in force: The Security Council... decides, under Chapter VII of the Charter of the United Nations, that all states shall, for the purposes of establishing peace and stability in Liberia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Liberia until the Security Council decides otherwise.

54. The Panel also noted paragraphs 1 to 7 of Security Council Resolution 1306 (2000), which dealt with the issue of Sierra Leone's diamonds, and in which the Security Council decided that 'all States shall take the necessary measures to prohibit the direct or indirect import of all rough diamonds from Sierra Leone to their territory.'

55. On October 6, 2000, the Chairman of the Sierra Leone Sanctions Committee informed the President of the Security Council that his Committee had agreed to exempt the export of diamonds controlled by the Government of Sierra Leone through a new Certificate of Origin regime from the measures imposed by paragraph 1 of the resolution.

56. The Panel of Experts consisted of Mr. Martin Chungong Ayafor (Cameroon - Chairman), Mr. Atabou Bodian (Senegal - Expert from the International Civil Aviation Organization), Mr. Johan Peleman (Belgium - Arms and Transportation Expert), Mr. Harjit S. Sandhu (India - Expert from Interpol), and Mr. Ian Smillie (Canada - Diamond Expert). The letter appointing the Panel is included in Annex 1.

57. The Panel first met at UN Headquarters in New York on August 21, and it was subsequently agreed with the Security Council Sanctions Committee on Sierra Leone that its

report would be submitted on December 8, 2000. This was subsequently rescheduled to mid December, 2000.

B. The Work of the Panel

58. The Panel received a great deal of logistical and moral support from the United Nations Secretariat, from UN Resident Coordinators and UNDP officials in almost every country it visited. Many governments helped with detailed information and advice, and many individuals and companies in the diamond industry provided helpful information. The Security Council exploratory hearings on Sierra Leone diamonds held in New York on July 31 and August 1, 2000 were also very helpful in setting the stage for the Panel.

59. The Panel was able to coordinate some of its work with the concurrent Angola Panel. In addition, Panel members were able to attend an important intergovernmental conference on conflict diamonds held in Pretoria in September 2000.

60. The Panel travelled widely to countries involved in the diamond trade, and to countries involved, or said to be involved in the trafficking of weapons and related *matériel* to Sierra Leone in contravention of UN Security Council embargoes. The entire panel visited Sierra Leone twice, and some Panel members visited three times. In addition to Freetown, trips were made to Daru and to the diamond trading centre of Kenema. In Guinea, Panel members visited Conakry and Nzerekore. The entire Panel also visited Liberia, South Africa and United Nations Headquarters in New York. Travel was undertaken by one or several of the Panel members to Belgium, Burkina Faso, Canada, Ghana, France, India, Israel, Mali, Niger, Nigeria, Spain Switzerland, Ukraine, the United Kingdom, the United States and the United Arab Emirates. Stopover visits were made to Abidjan, but because of elections and subsequent civil unrest, only a limited number of telephone conversations were possible.

61. In each country Panel members met with government authorities, and where relevant, with diplomatic missions, civil society organizations, aid agencies, private sector firms and journalists. The Panel had access to a wide range of public and confidential information provided by official sources, including law enforcement and intelligence agencies. The Panel also contacted a number of key individuals and informants whose names have been a subject of interest and controversy in recent months in connection with the Sierra Leone crisis. A full list of those contacted is contained in Annex 2. Given the sensitive nature of the subjects investigated by the Panel, however, it should be noted that many individuals spoke under conditions of confidentiality. Several meetings held in various countries have therefore not been listed.

62. In August 2000, the Panel requested detailed statistics dating back to 1987 on diamond exports from major producing countries, and imports to countries with significant trading, cutting and polishing industries. The reason for going back to 1987 was to determine what trends might have prevailed before the wars in Sierra Leone and Liberia. In September, the Panel sent reminders to all governments that had not yet provided the requested statistics. In the end, most of the data requested was provided by most governments. Three exceptions stand out, despite reminders: no statistics were received from The Gambia, Côte d'Ivoire and the United Arab Emirates.

C. Standards of Verification

63. The Panel agreed at the outset of its work to use high evidentiary standards in its investigations. This required at least two credible and independent sources of information to

substantiate a finding. Wherever possible, the Panel also agreed to put allegations to those concerned in order to allow them the right of reply. In the past, allegations against various parties to the conflict in Sierra Leone have been denied with the question, 'Where is the evidence?' An example of this is the standard response to charges that weapons have been channelled to Liberia through Burkina Faso. In the report that follows, we have dealt in detail with this particular allegation. It might still be asked, 'Where is the evidence?' On this charge and others, full details of the sources will not be revealed, but the evidence is incontrovertible. The Panel examined the flight records maintained at the offices of Roberts Flight Information Region (FIR) in Conakry for all aircraft movement in West Africa during the period in question. It saw photographs of the aircraft being loaded in Burkina Faso. It examined flight plans. It spoke to eyewitnesses of aircraft movement in Burkina Faso and Liberia, and it spoke to individuals who were on board the aircrafts in question. In addition to its own detailed verification, the Panel received corroborating information from international intelligence agencies and police sources operating at international as well as national levels. The assistance of Interpol specialists was also taken as and when required. This is an example of one of the more difficult issues examined by the Panel. All issues have been judged and reported using the same standard.

D. A Reminder

64. The Panel's mandate is described in Section A, above. The Panel was reminded of the background to its mandate, however, during its visits to Sierra Leone. There, thousands of civilians, many of them child victims of unspeakable brutality, face a future without hands or feet. Tens of thousands of Sierra Leoneans have lost their lives, half a million have become refugees and three or four times that number has been displaced. As the Panel concluded its report, much of Sierra Leone remained in rebel hands, where people lived without access to medical assistance, education or the means to a secure livelihood. The Panel remained cognizant, throughout its work, of its role and its responsibility in helping to end the suffering of the people of Sierra Leone, and this decade-long tragedy.

[1] Note: the term 'sensitive country' is not used in this report to suggest wrongdoing. It is taken from a Belgian government report which seeks to protect these countries, Belgium and the industry from problems to which they are all clearly vulnerable. Namibia, for example, is one of the leaders in the fight against conflict diamonds.

PART ONE: DIAMONDS

I. SIERRA LEONE DIAMONDS

A. Background

65. Each year, over 250 million carats of diamonds are mined worldwide. Even in its peak years of production during the 1960s, Sierra Leone never produced more than 2 million carats annually. But a high proportion of Sierra Leone's diamonds are gemstones of very high quality and value, and they are much sought after. During the 1970s and 1980s the Sierra Leone diamond industry fell prey to corruption and mismanagement and many of the country's diamonds were exported illegally. Between 1992 and 1996, average annual exports were less than 200,000 carats and the per carat value was significantly less than the country's known run-of-mine average. Not only were the bulk of the country's diamonds being smuggled out, but the emphasis in smuggling seemed to be on higher value diamonds.

66. Between 1997 and 1999 the situation worsened because of the war. In those three years a total of only 36,384 carats were exported officially.

B. Diamonds in the RUF

67. The Revolutionary United Front initiated the war in 1991. Until 1995, RUF diamond mining and digging was probably done on a sporadic and individual basis. By 1995, however, the RUF and its patrons were clearly taking a much greater interest in the diamond fields of Kono District, and had to be removed forcefully at that time by the private military company, Executive Outcomes. From then on, the RUF interest in diamonds became more focussed, especially with the 1997 imprisonment of Foday Sankoh in Nigeria. During his imprisonment and subsequently, the diamond areas of Kono and Tongo Field became a primary military focus of the RUF, and diamond mining became a major fund-raising exercise.

68. This finding is supported by the tenacious military hold that the RUF has maintained on Kono District and Tongo Field, the two most valuable diamond areas in Sierra Leone. It is borne out in the written and oral testimony of current and past RUF leaders. It is supported by the testimony of Chiefs and elders from Kono District who are in daily communication with travellers from their areas. It is borne out in written reports made by RUF field commanders to Foday Sankoh. And it is supported by current internal communications between RUF leaders inside Sierra Leone, and between RUF leaders in Sierra Leone and in Liberia.

69. At first, RUF fighters did their own mining, or used forced labour. More recently they have developed a modified form of forced labour, allowing local diggers to keep a certain amount of what they find. One system is to make a group of diggers work for the RUF for four days, and allow them to work for themselves for two, with one day off. More common is what is known as the 'two pile system', in which diggers create one pile of diamondiferous gravel for the RUF and another for themselves. The idea is that diggers can then retain what they find in their own pile, although all the washing is watched, and any sizeable diamonds found in a digger's pile are also taken by the RUF.

70. Once the Kono diamond fields were secured by the RUF, they created a mining unit under 'Lt. Col Kennedy'. The RUF have since organized something they refer to today as 'RUF Mining Ltd.' As of October 2000, the 'Chairman' was 'Lt. Col. Abdul Razak' and the Deputy Chairman was 'Lt. Col. Victor'.

71. In addition to being a source of revenue, diamonds have also been a source of constant friction and confusion within the RUF. In 1999, Sam 'Mosquito' Bockarie, a former diamond digger who became the RUF's 'Battle Group Commander' and 'High Command', complained to Foday Sankoh that during the AFRC/RUF 'marriage' in 1997[1] Dennis Mingo ('Col. Superman') had sold a diamond to a Lebanese businessman. A portion of the proceeds had gone to the AFRC government and the balance, Le 9 million, was intended for the RUF. Instead, however, Superman embezzled the money, according to Bockarie. (A list of RUF leaders and their pseudonyms is included as Annex 3.)

72. Late in 1998, after the AFRC had been forced out of Freetown by ECOMOG, RUF forces led by Issa Sesay and under orders from Sam Bockarie (then referred to as Chief of Defence Staff for both the RUF and the AFRC), undertook a mission to move former AFRC Chairman Johnny Paul Koroma to the safety of RUF headquarters in Buedu. While they were there, Sesay discovered that Koroma was in possession of a parcel of diamonds, and that he was planning to escape to Ghana with his family. Sesay and Brigadier Mike Lamin confronted Koroma, finding it hard to believe that while they were trying to regroup, Koroma would keep diamonds for his own use and flee, leaving them with a problem he had created. The diamonds were subsequently handed over to the RUF leadership. According to internal RUF reports, the diamonds were then given to Ibrahim Bah and 'Sister Memuna' and taken to Liberian President Charles Taylor.

73. The name of 'Ibrahim Bah' arises frequently in the RUF diamond story. He is said to be a Burkinabe military officer. He is also known as Ibrahima Baldé and Baldé Ibrahima. He was a key player in the RUF-AFRC axis, and has been instrumental in the movement of RUF diamonds from Sierra Leone into Liberia and from there to Burkina Faso.

74. Issa Sesay, the current RUF leader, has had his own problems with diamonds. Late in 1998, Captain Michael Comber of the RUF Mining Unit brought a parcel of diamonds from Kono to the RUF headquarters at Buedu. Sam Bockarie gave the diamonds to Sesay who took them to Liberia where he was to meet Ibrahim Bah. Together they were then to meet a business associate of Foday Sankoh to make arrangements for the procurement of military equipment. Sesay lost the diamonds somewhere in Liberia, claiming he had accidentally dropped the parcel in the mud. This led to a major contretemps between Sesay and Bockarie, although Sesay was eventually forgiven.

75. Dennis 'Superman' Mingo, however, still smarting over the allegation that he had embezzled Le 9 million from a 1997 diamond sale, played up Sesay's loss, fomenting contention within the RUF ranks. In October 1999, he wrote to Foday Sankoh from Liberia, warning him that Sam Bockarie could not be trusted and that Sankoh's life was in danger. He also said that Bockarie and his men had been squandering funds from diamond sales and that Bockarie had bought a house in Liberia and one in France.

76. Shortly thereafter, a military confrontation occurred between forces loyal to Foday Sankoh and those loyal to Sam Bockarie. Several combatants were killed. Sam Bockarie subsequently went into exile in Liberia, where he remains close to President Charles Taylor.

77. Diamonds continue to cause friction. In September 2000, a dispute arose between Lt. Col. Victor, the Deputy Chairman of RUFP Mining Ltd. and some of his associates: Major Bob Vandy, Staff Captain Koroma and Major Morry Gebaru. RUFP Mining Chairman Abdul Razak undertook an investigation, which uncovered stories of diamond embezzlement by 'Capt. Prince Khan' and others who were in conflict with the Deputy Chairman, including

'Lt. Col. Mustafa Sherrif'. This in turn raised the concern of Issa Sesay, who was at the time carrying out a wider investigation into all RUF financial affairs in Liberia.

C. Estimated Volume of Diamonds Mined by the RUF

78. Estimates of the volume of diamonds mined by the RUF vary widely, from as little as \$25 million per annum to as much as \$125 million. De Beers has estimated that the total was likely \$70 million in 1999. Part of the difficulty in estimating what is available to the RUF is the fact that years of illicit mining and export have served to reduce all official historical production figures, providing no reliable statistics for at least two decades on what has actually been mined in Sierra Leone. In the late 1960s, Sierra Leone exported 2 million carats per annum. The RUF holds the richest diamond areas in the country. If 1999 RUF production was one eighth of Sierra Leone's best year (i.e. 250,000 carats), the value would be upwards of \$50 million. If it was half of the official average exports in the early 1990s (i.e. 100,000 carats), it would be in the neighbourhood of \$20 million.

79. There are arguments in favour of lower estimates: the RUF does not have access to heavy equipment and is thus limited to artisanal mining; many former RUF combatants today live very modest lives and say they never saw diamonds. Arguments favouring higher estimates include the fact that the RUF has been able to support 3,500 - 5,000 armed combatants and as many camp followers for several years, and internal RUF communications regularly refer to the importance of diamonds. Knowledgeable diamantaires believe that a very high proportion of the diamonds being exported from The Gambia (which mines no diamonds of its own) originate in Sierra Leone, some travelling there via a third country such as Liberia. Imports into Belgium of 'Gambian' rough averaged over \$100 million per annum between 1996 and 1999.

80. While the total generated by the RUF, whether it is \$25 million, \$70 million or \$125 million, is very small in relation to the global annual output of diamonds, it nevertheless represents a major and primary source of income to the RUF, and is more than enough to sustain its military effort.

D. How the RUF Move Diamonds Out of Sierra Leone

81. Diamonds have always been smuggled out of Sierra Leone, the bulk through Liberia. This historical fact is not in dispute. There have been a variety of reasons for smuggling: to avoid taxes; to avoid the higher cost of corruption in one country over another; to gain access to hard currency; to launder money. Historically, Liberia was the route of choice primarily because of its use of the U.S. dollar as its official currency. Other diamonds found their way to Guinea where they would more likely have been traded for rice and other foodstuffs. And diamonds also travelled further afield to other countries in the region, carried by Madingo and Senegalese traders, known as marakas.

82. Some RUF diamonds have been traded in Guinea. There are reports of one-off deals in which RUF commanders have traded diamonds for supplies, and sometimes for weapons, dealing with individual, mid-level Guinean military officers acting on their own account. One such arrangement in mid 2000 is said to have gone sour, resulting in an RUF attack on the Guinean border town of Pamelap when promised Guinean supplies were not forthcoming. There is no evidence, however, of any official Guinean collusion in such trade.

83. A certain volume of RUF diamonds are being traded in Kenema and elsewhere in Sierra Leone. It is an open secret that RUF traders bring diamonds to Kenema from Tongo Field,

only 28 miles away, on a regular basis, and exchange them for food and other supplies. This would account for the continued presence in Kenema of more than 40 separate diamond dealers, many of them Lebanese, even though their main source of supply has officially been out of reach for several years. It is possible that these diamonds could enter the official export system if there is a lack of probity and vigilance in the Government Gold and Diamond Office (GGDO), the Ministry of Mineral Resources and its branches.

84. It is more likely, however, that these diamonds are being smuggled out to neighbouring countries. Many of Sierra Leone's diamond dealers are also major importers of food and consumer goods. The steep mark-up on these goods yields high profits which require a hard currency or its equivalent in order to be repatriated. Diamonds serve this purpose. Many prominent exporters from Sierra Leone are also exporters of diamonds from The Gambia, a country that produces no diamonds at all.

85. As noted in paragraphs 68 through 78, however, the bulk of the RUF trade in diamonds leaves Sierra Leone through Liberia. The diamonds are carried by RUF commanders and trusted Liberian couriers to Foya-Kama or Voinjama, and then to Monrovia.

86. A Liberian is said to be President Taylor's representative in Kono, with a mandate to supervise diamond operations. On the RUF side, during much of 1998, Dennis 'Superman' Mingo was in charge of the diamond operations in Kono. He regularly took diamonds to the RUF headquarters at Buedu and from there they were transferred to Liberia. At various times, diamonds were taken to Monrovia by Eddie Kaneh, Sam Bockarie and Issa Sesay. As noted in paragraphs 72 to 78, there have been frequent disputes over the diamonds, and RUF couriers travel in fear of being robbed by rogue Liberian NPFL (National Patriotic Front of Liberia) fighters. At RUF headquarters in Buedu, concerns have occasionally arisen that diamonds said to be held in safekeeping by President Taylor might actually have been sold. On one occasion in 1998, Sam Bockarie went to Monrovia to see Taylor about this concern, and when he returned, he reported that he had seen the diamonds.

87. Because of time constraints, the Panel could not go into the details of ways and means through which RUF diamonds are moved out of Liberia, however there is sufficient evidence to prove that this trade cannot be conducted in Liberia without the permission and the involvement of government officials at the highest level. In Liberia, uncorroborated stories refer to high-level go-betweens, senior government officials, and financial transactions made in Burkina Faso, South Africa, the United States and Lebanon. (This subject is covered from a different perspective in the Liberia Case Study, below.)

88. Liberian officials thrive on their country's reputation for weak administration, its crippled infrastructure and its 'porous border'. In fact, however, very little trade, whether formal or informal, takes place without the knowledge and involvement of key government officials. This is true of all imports, and where exports are concerned, it is especially true of diamonds and timber. Liberia's own official diamond exports were said to be only 8,500 carats in 1999, valued at \$900,000.[2] Liberia's Minister of Lands, Mines and Energy estimates that this represents only 20 per cent of what is actually leaving the country, and the Ministry of Revenue suggests that it might be as little as 10 per cent of the total.

89. In a country where most of the diamond traders are foreigners and where the movement of foreigners, money and supplies is as carefully watched, as is the case in Liberia, it is not conceivable that so much of Liberia's own diamond production could avoid the detection of government. Nor is it conceivable that the significantly greater volumes of high-value Sierra Leone diamonds moving through Liberia could avoid detection by government.

E. Foday Sankoh's Post-Lomé Diamond Business

90. The Lomé Peace Agreement appointed Foday Sankoh Chairman of a Commission for the Management of Strategic Mineral Resources (CMRRD). Between the time Foday Sankoh returned to Sierra Leone late in 1999 and the resumption of hostilities in May 2000, members of the Commission never actually met, and the Commission did not function. During his time in Freetown, Foday Sankoh spent money lavishly, although he had no obvious source of income. He imported vehicles, satellite phones and other expensive equipment.

91. In 1999, before Foday Sankoh's appearance in Freetown, Sam Bockarie wrote a 'To Whom It May Concern' letter on RUF stationery, appointing Mohamed Hijazi, a long-time diamond miner and dealer, as the RUF's agent 'to negotiate with any person or company within or outside S/Leone for the prospecting, mining buying and selling of diamonds'.

92. After his arrival in Freetown, Foday Sankoh signed numerous agreements with international business firms and solicited financial favours from others making enquiries in his own name, in the name of the Commission, and in the name of the RUF. His own business files, found in his office after the May 2000 resumption of hostilities, contain correspondence relating to business opportunities he was actively promoting.

93. In November 1999, for example, Foday Sankoh received a visit from Chudi Izebu, President of the Integrated Group of Companies based in McLean, Virginia. Izebu had chartered an aircraft to Freetown from Abidjan, and together he and Sankoh discussed a range of investment possibilities for the Integrated Group, which includes a company called Integrated Mining, registered in the Cayman Islands. They discussed possible investments in civilian aircraft services, petroleum imports and a major investment in the Koidu diamond kimberlites. Subsequently, Izebu and Sankoh exchanged correspondence about 'negotiations and discussions currently going on in the interest of the RUF'. And they exchanged test messages in a code which would allow them to disguise names - words like 'diamonds' and 'gold', and expressions such as 'everything is OK', and 'things are bad'. In December 1999, Sankoh ordered 14 vehicles from Izebu with the logo of the RUF Party painted on the side of each.

94. In March 2000, Damian Gagnon of the U.S. company, Lazare Kaplan International (LKI), visited Foday Sankoh, and in a subsequent letter to Sankoh, LKI Chairman Maurice Tempelsman said that Gagnon had reported 'a commonality of views between you and this company on the possibilities of LKI re-entering the Sierra Leone diamond business in a manner beneficial to all the people of that country as well as our company'.

95. Much of the correspondence suggests that Sankoh was encouraging a wide variety of potential investors, many thinking they would reap exclusive benefits from the same things. One much-circulated April 2000 letter from 'Michel' to 'The Leader' talks about how Sankoh should try to get all of the diamonds mined in Kono, rather than the 10 per cent which the author said was the case - the rest being filtered off to Liberia. 'Michel' proposed that his Belgian partner 'Charles' could hire a private jet to take the diamonds out directly from Kono, avoiding 'the Lebanese' and Monrovia - 'We cannot trust those people', he wrote.

96. Michel Desaeleer, a U.S.-based, self-employed Belgian, made contact with the RUF in Togo during the summer of 1999 while he was doing business with the son of President Eyadema. By October, he and John Caldwell, President of the Washington-based U.S. Trading & Investment Company, had worked up an arrangement with Foday Sankoh which would give them authority to broker rights to all of Sierra Leone's diamond and gold

resources for a ten year period. Although refused a visa by Sierra Leone's U.S. embassy, Caldwell and Desaeleer went to Sierra Leone and Liberia anyway, and signed the agreement between Desaeleer's BECA Company and the RUF (not with the Government of Sierra Leone or the Commission for the Management of Strategic Mineral Resources). While they were in Liberia, Desaeleer was given diamonds by Ibrahim Bah (a.k.a. Ibrahima Baldé), which Desaeleer later discovered in Antwerp were worth much less than he had been told. He also claimed to have been shown 'perhaps hundreds' of diamonds by Sankoh's wife, Fatou, during a 1999 meeting in New York.

97. In February 2000, Foday Sankoh, his wife and other RUF officials travelled to South Africa. Sankoh was in contravention of a United Nations travel ban prohibiting him from leaving Sierra Leone. The trip was sponsored and partially financed by South African businessman Raymond Kramer, who earlier the same month had signed an agreement with Sankoh to 'represent the Commission [the CMRRD, of which Sankoh was Chairman] in all areas relating to mining and mineral resources, including but not limited to strategic minerals and precious stones'. When Sankoh's presence in South Africa was made public, he was forced to return to Sierra Leone and curtail his dealings with Kramer. Fatou Sankoh, who travels on a U.S. passport, visited South Africa again in May 2000, and was again deported.

98. The correspondence presents an image of a double-dealing Leader, clutching at financial opportunities for personal and political gain, outside of the governmental framework in which he was ostensibly working. Much of this related to the diamond trade. It also suggests dissension within the RUF ranks, and an attempt by Sankoh to gain control over diamonds that remained effectively in the hands of his fractious field commanders and their Liberian mentors.

F. Sierra Leone's New Diamond Certification System

99. By resolution 1306 (2000) adopted on July 5, 2000, the Security Council imposed an embargo on the direct and indirect import of rough diamonds from Sierra Leone until a new mining, export and monitoring regime could be developed. With technical assistance from Belgium's Diamond High Council and financial assistance from the United Kingdom and the United States, a certificate of origin system was developed between July and October 2000, including a numbered confirmation certificate printed on security paper, new detailed electronic databases of exports with electronic confirmation at destination, and electronic transmission of digital photographs of the packages being exported.

100. In October, after considering the new measures and ensuring that information about them had been disseminated to importing countries, the Security Council lifted the embargo on official Sierra Leone exports. The first diamonds exported under the new arrangements reached Antwerp at the end of October.

101. The embargo and the new certification system were peripheral to the mandate of the Panel, but during our travel it was the subject of much discussion in Sierra Leone, in other African exporting countries, and in all the major diamond importing centres.

102. The new system is indeed foolproof once diamonds enter the formal system. It will be important for Sierra Leone's Government Gold and Diamond Office to ensure, therefore, that only diamonds mined in government-controlled areas are actually certified. This is especially important, given efforts by the RUF to trade diamonds for food and other supplies in Kenema (see also paragraph 84 above).

103. It is perhaps more important to consider the value of the system beyond conflict diamonds, once the war ends. Then the issue for Sierra Leone will focus more on smuggling and other forms of illicit behaviour. In the end, the certification system can only work to its fullest potential if the government is willing and able to track and audit dealers in Sierra Leone, and if it is able to develop systems of support for the artisanal miners who, for the better part of 50 years, have worked outside the diamond industry.

104. There is more to be said about the certification scheme, however. There was never a serious problem with diamonds being exported officially from Sierra Leone. The problem was the illicit and conflict diamonds which avoided the formal system. In 1999, Sierra Leone officially exported only 9,320 carats, a demonstration, if one was needed, that the formal system was being ignored by the RUF and smugglers. This had changed in the first half of 2000, when concern about the country's conflict diamonds was noted in the world press and in diamond-buying centres. The consequence was a sudden influx of diamonds into the formal system, offered by dealers wanting at last to 'go straight' and avoid charges of illicit trading. While the 26,300 carats exported officially during this period did not represent a landslide, it was a significant step in the right direction.

105. The United Nations embargo effectively stopped this legitimizing trend for several months, and pushed traders back into their old and time-tested smuggling routes. Because there was no embargo on diamonds from any of Sierra Leone's neighbouring countries, the ban actually punished the victim and rewarded its enemies. This has now changed, and it is to be hoped that the new system will attract a significant volume of diamonds back into legitimate channels.

106. Where the RUF's conflict diamonds are concerned, the legitimate export system, whether it was foolproof or not, was irrelevant, and it will remain so. As long as there are no controls in neighbouring countries, the RUF will continue to be able to move their diamonds out with impunity.

107. For this reason, it is imperative that a standardized global certification scheme be introduced as soon as possible. The issue of conflict diamonds has now been addressed at four intergovernmental meetings in the 'Kimberley Process' and at a further meeting in London in October 2000. On December 1, 2000, the United Nations General Assembly passed a resolution on the role of diamonds in fueling conflict (A/RES/55/56), and expressed 'the need to give urgent and careful consideration to... the creation and implementation of a simple and workable international certification scheme for rough diamonds.' The resolution stated that this scheme should meet internationally agreed minimum standards, it should secure the widest possible participation, and that diamond exporting, processing and importing states should act in concert. The resolution also noted the need for transparency and for arrangements to help ensure compliance.

108. This resolution is strongly endorsed by the Panel. It is a major step forward in recognizing the need for what the diamond industry calls 'rough controls'. If implemented, it could go a long way in solving some of the problems identified in this report. The Government of Namibia will convene a workshop early in 2001 to consider technical aspects pertaining to the envisaged certification scheme. The Panel very much welcomes the Namibian offer to help move the process forward.

109. The Panel notes with concern, however, that some governments and some members of the industry may be approaching the idea of international 'rough controls' with reluctance or antipathy, urging a minimalist approach and a lengthy period of study and negotiation. The

Panel believes that any international system must be developed carefully, and that it must be appropriate to the need. But the Panel is in no doubt about the urgency or the importance of the proposal. Despite all the meetings of the past year, despite the work of the United Nations and many governments, the wars in Sierra Leone, Angola and the Democratic Republic of the Congo continue; diamonds continue to serve as fuel for these wars and as a catalyst for the continuing misery of hundreds of thousands of people.

Case Study: Diamond Identification and Certification

A diamantaire in London showed the Panel six diamonds, for which the owner was asking \$1 million. The diamonds had been brought to London on approval from Antwerp, and were accompanied by all the necessary paper work. They were said to have originated in South Africa, and the South African export documents were also available. The diamantaire and his colleagues, however, believed that the diamonds were not South African. One or two might have been Angolan or even Sierra Leonean, but they were fairly certain that all six had come from Namibia. The South African Diamond Board scrutinizes all official diamond imports, but as with other countries, diamonds can be smuggled into, as well as out of the country. Panel members visited the Diamond Board and examined the available documentation on a sample import from Zambia. Along with the South African paper work, the importer had supplied a Zambian export certificate. The fact that Zambia mines few diamonds notwithstanding, the 'certificate' was a document that could have been created in five minutes with a rubber stamp and a laptop. Facilities for checking back with Zambian authorities as to its authenticity, or the authenticity of the information contained in it were minimal.

G. Conclusions on Sierra Leone Diamonds

110. The issue of Sierra Leone's conflict diamonds is complex, but it is not unfathomable. As will be noted later in this report, it is tied to the wider issue of illicit diamonds, and this has been recognized in a forthright manner by the diamond industry in WDC documentation. A detailed proposal has also been made by the WDC for a 'System for International Rough Diamond Export and Import Controls', which should be an excellent basis for intergovernmental discussions.

111. At the beginning of 1999, the industry denied the problem of conflict diamonds, and governments appeared to be taking decisive action. The situation has now changed, with the most specific initiatives coming from industry. Despite the December 1, 2000 passage of General Assembly Resolution A/RES/55/56 on the need for a global system of 'rough controls', the intergovernmental process may take several more months of negotiation. For this reason, where Sierra Leone is concerned, it will be imperative for the Security Council to take early steps on broadening the existing Sierra Leonean certification system throughout West Africa at least.

II. INTERNATIONAL DIAMOND STATISTICS AND TRANSIT COUNTRIES

A. General

112. The Panel sought to determine how illicit diamonds from Sierra Leone find their way into the legitimate trade. One line of enquiry was to compare diamond export statistics of neighbouring producer countries with their known mining production capacity, to see if exports significantly exceed production capacity. Another was to review the import statistics of major trading centres for anomalies. One such anomaly is the 33.6 million carats said to be of Liberian origin that were imported into Belgium in the five years between 1995 and 1999.

This volume is far beyond Liberian production capacity, and exceeds official Liberian exports by so much, that investigation was clearly warranted (see also paragraphs 123 to 131 below).

113. A major difficulty in tracking the movement of rough diamonds, however, is the inconsistent manner in which the governments of major trading centres record diamond imports and exports. The first issue has to do with the general availability of statistics. Belgian authorities expressed concern to the Panel that Belgium had been unfairly criticized in the past because it has been so open with its statistics. It was suggested to the Panel that other countries have escaped criticism for importing rough from 'sensitive' countries - either as countries of origin or provenance - simply because they produce no public statistics at all.

114. The Panel went to considerable lengths to obtain rough diamond import statistics from all the major trading centres for the years between 1987 and 1999. With the exceptions of The Gambia, Côte d'Ivoire and UAE, the Panel was largely successful. We found the following:

Belgium: Imports a great deal of rough - 183 million carats in 1999, valued at \$7,185 million, averaging \$39 per carat.

India: Imports a growing volume of rough, increasing from 52.1 million carats in 1990-1 to 187.2 million in 1998-9, tapering off at 178.4 million carats in 1999-00 and averaging \$28 per carat. On average over the past five years, 80 per cent has been imported from Belgium and 15 per cent from the U.K. A tiny volume is imported from the UAE and virtually nothing from Africa.

Israel: Has traditionally imported a small amount of rough - on average less than 12 million carats annually between 1997 and 1999. A tiny fraction of this has come from 'sensitive' countries - about 4,000 carats per annum. On average, 89 per cent of all rough imported into Israel between 1997 and 1999 was from three countries: Belgium, the U.K. and Switzerland. This is changing because one Israeli firm, IDI Diamonds, has made proprietorial diamond arrangements with the government of the Democratic Republic of The Congo. Between January and October 2000, Israeli imports of rough from Belgium, the U.K. and Switzerland had declined to 77 per cent of the total. Imports of Angolan rough accounted for 10 per cent of the total by weight, and 3.6 per cent by value.

South Africa: Imports very little rough - approximately 70,000 carats in 1999, valued at \$2.2 million. The imports originate in several countries in the region, with a very small amount from West Africa. About half of the total originates in Zambia, a country with very little diamond production of its own.

Switzerland: Imports very little rough. Total value in 1999 was only Sfr 1.5 million, of which most was of British provenance. None was from 'sensitive' countries. The U.K., however, recorded 41 per cent of its rough imports, valued at £44.8 million in 1999, as having come from Switzerland. The contradiction is explained by the unrecorded flow of large amounts of rough diamonds through Swiss *Freiläger* (see paras 117-120 below).

U.A.E.: No data supplied. Belgium recorded imports from UAE of 5 million carats in 1999, up from only 500 carats in 1996. The average value of the diamonds in 1999 was \$2.94 per carat.

U.K. Imports large volumes of rough, about half from South Africa and 40 per cent from Switzerland. Imports very little from 'sensitive' countries - 2,387 carats in 1999.

U. S. Imports a small amount of rough - approximately 8.7 million carats in 1999. The bulk was from Russia, Switzerland and the United Kingdom. Very little from sensitive countries, although imports from Sierra Leone totalled about 5000 carats in 1999, roughly 54% of what was officially exported..

B. Provenance and Origin

115. Although the Panel received detailed import statistics from each of the major trading centres, there are a number of key differences that make the tracking of rough diamonds extremely difficult. The first has to do with a distinction made between 'country of origin' and 'country of provenance'. Country of provenance refers to the country from which diamonds were last imported; country of origin indicates where they were mined. Statistics on country of provenance are important in the calculation of national trade statistics, and until recently, little serious attention was paid anywhere to the issue of where diamonds were actually mined.

116. This leads to major anomalies. For example in 1999, British imports of rough unsorted diamonds (code 71021000) totalled £107 million (down from £347 million in 1998). Of this, Switzerland was recorded as the 'country of origin' for 41 per cent or £44.2 million. Switzerland, as a non-producer of diamonds, could only have been the country of provenance, importing the diamonds from another country. Switzerland, however, records the importation of virtually no rough, unsorted diamonds. The total in 1999 was valued at only Sfr 1.5 million, up from Sfr 295,000 in 1998.

117. The difference is explained by the fact that Switzerland has not in the past recorded statistics on diamonds passing through its free trade areas, or *Freiläger*, at Zurich and Geneva airports. The volume of these flows is so great that it would skew national trade statistics, and since no value is added to these diamonds as they pass through Swiss airports, there has, until recently, been no felt need to record the statistics. Those diamonds bound for the UK thus become 'Swiss' simply by virtue of having passed through a *Freilager*. The country of origin, which might have been recorded in Switzerland, and passed on to British customs authorities, is thus lost.

118. It should be noted that parcels of rough diamonds passing through a *Freilager* can be opened, mixed with other diamonds, repackaged for a variety of destinations, and exported as mixed diamonds. Private sector firms working in the *Freiläger* maintain facilities expressly for this purpose, including secure areas with diamond scales and sorting equipment. This sorting and re-invoicing serves to further obscure the origin of diamonds.

119. Origins become even more obscure once diamonds have been sorted and/or partially treated in the U.K. Under this heading (code 71023100), the UK became the origin of 96.7 per cent of all Swiss imports in 1999. Having become 'Swiss' on the way to the UK, a huge proportion then becomes 'British' on the way back to Switzerland. Because 96.4 per cent of Swiss diamond exports in 1999 went to Israel, most of these same diamonds thus became 'Swiss' again as far as Israeli import statistics are concerned.

120. India notes the fact that it does not trade in conflict diamonds because 80 per cent of its rough imports come from Belgium and virtually none come directly from Africa. As with the

U.K. and the U.S., however, the operative word is 'directly'. The lack of scrutiny throughout the delivery chain and the stops along the way allow most importing countries to say that they do not import anything from Africa, conflict or otherwise.

121. These examples explain why it is so difficult to determine where diamonds - still in their rough state and moving from one trading or polishing centre to another - are actually mined. It does not explain, however, why the huge volume of diamonds entering Belgium, noted in paragraph 113 above, would have been labelled 'Liberian'. The superficial explanation is that they were of Liberian 'provenance', as clearly they could not have been mined in Liberia. According to this explanation, they would have transited Liberia and became 'Liberian', just as other diamonds transit Switzerland, Belgium or the UK, becoming 'Swiss', 'Belgian' or 'British' in the process.

C. Case Studies: Liberia, The Gambia, Guinea and Côte d'Ivoire

Case Study - Liberia

122. The highest estimates of current Liberian production capacity do not exceed 150,000 carats per year. In 1987, the country exported a record high 295,000 carats, at an average value of \$37 per carat. The Liberian Ministry of Lands, Mines and Energy informed the Panel that 1998 official diamond exports totalled only 8,000 carats, valued at \$800,000 (i.e. \$100 per carat). In the same year, Belgium recorded imports from Liberia by 26 companies, totalling 2.56 million carats, valued at \$217 million (i.e. \$85 per carat). One company alone, 'Company A', imported 168,456 carats, estimated at \$87 million, or \$516 per carat.

123. In 1999, official Liberian exports grew slightly, to 8,500 carats, at an average value of \$105 per carat. 'Liberian' imports into Belgium declined to 1.75 million carats, but the stated value increased to \$247 million, or \$140 per carat. Company A's imports declined to 75,000 carats, valued at \$57 million. This represented a significantly higher per carat value, however, of \$760.

124. Up to mid August 2000, 'Liberian' imports into Belgium were 340,000 carats, valued at \$50 million, or \$147 per carat. Company A, however, which told the Panel at the end of October that it had not imported anything from Liberia for six months, showed imports of only 6,696 carats. But valued at \$12.88 million, this represented a remarkable \$1,923 per carat.

125. Belgium has recently changed the data requirements on the import licenses that it requires for each shipment. It now requires that each import shipment state the country of provenance, as well as the country of origin. A review of selected Company A import licenses, however, showed that diamonds *far in excess of the quality or quantity available in Liberia* had been imported as Liberian in provenance and origin. Invoices from 'Liberian' firms - none on the list of licensees provided by the Liberian government - accompanied the Belgian import license.

126. A physical check of the Monrovia street addresses given by most of these firms revealed that there were no such companies, and no such addresses. Courier firms in Monrovia, however, have in the past been instructed to route correspondence for these addresses to the International Trust Company, (ITC) which in January 2000 changed its name to the International Bank of Liberia Ltd. Since then, mail addressed to the companies in question has been forwarded to the newly-established Liberian International Ship and Corporate Registry (LISCR) which now handles the Liberian maritime registry. This means that if the companies

in question are more than shells, they are not physically present in Liberia, and none of the diamonds in question were either mined in, or passed through Liberia. It also means, however, that there is an intimate Liberian connection with these deceptive diamond transactions.

127. The name of retired U.S. Army General Robert A. Yerks occurs frequently in discussions about Liberian diamond transfers. He was involved with ITC and is currently a senior official in LISCR.

128. Companies and individuals in Belgium importing 'Liberian' diamonds in 1999 and/or 2000 include (but may not be limited to) the following: Abadiah, Afrostars Diamonds, Ankur Diamonds, Arslanian, Cukrowicz, Diam 2000, Diambel, Diminco, Fink Diam, Hardwill Diamonds, I.D.H. Diamonds, Korn & Partners, Krishna Dimon, Lewy-Friedrich, Marjan Diamonds, Omega Diamonds, Orion, Samir Gems, Sana Diam, Shainydiamond, Shallop Diamonds, Shour, Siddhi Gems, Sima Diamond, Soradiah, Starough, Sunshine Gems, Sygma Diamonds, Symphony Gems, Vijaydimon, Vitraag and Widawski.

129. Companies supposedly exporting diamonds from Liberia, which are not on the Government list of licensees and which do not have a physical presence in Liberia include Alcorta Trading, Barnet Trading Co., Diamond Trading Associates, Fairlib Enterprises Inc., Kamal Daoud S.A., Nybelgo Company, and Pier Enterprises S.A. There are undoubtedly more. While the diamonds listed on the invoices of these companies are not necessarily conflict diamonds, companies with a genuine physical presence in Liberia have also provided invoices to Belgian importers. Without further investigation, it is difficult to say whether they are exporting genuine Liberian diamonds, or smuggled Sierra Leonean diamonds. Whatever the case, they are engaged in illicit behaviour, because they do not have Liberian export licenses and because their exports far exceed official Liberian exports.

130. Much has been made in recent months about the need to make a clearer distinction between 'country of origin' and 'country of provenance'. The volumes in question regarding Liberia, however, taken in conjunction with Liberia's own figures and its limited capacity to act as a trading centre, indicate that a large proportion of the diamonds entering Belgium under the Liberian label represent neither country of origin nor country of provenance. Most are illicit diamonds from other countries, taking advantage of Liberia's own involvement in the illicit diamond trade, its inability or unwillingness to monitor the use of its name internationally, and the improper use of its maritime registry. The larger illicit trade provides Liberia with a convenient cover for the export of conflict diamonds from Sierra Leone.

Case Study - The Gambia

131. The Gambia produces no diamonds, but in recent years it has become a diamond-exporting nation. In 1998, Belgium recorded imports from The Gambia of 449,000 carats valued at \$78.3 million, an average value of \$174 per carat. The volume declined the following year to 206,000 carats, with an average per carat value of \$234. Up to mid August 2000, there was a more significant decline: 82,000 carats valued at \$17.6 million (\$214/ct).

132. All of the Belgian importers of 'Gambian' rough also import from one or more of the producing countries in the region: Sierra Leone, Guinea and/or Liberia. 'Company B' explains its importation of \$50 million in 'Gambian' diamonds between January 1, 1998 and mid August 2000 as follows: There are many traders - 'marakas' - moving up and down the coast with diamonds. The Gambia has become a 'mini-Antwerp', and reputable companies are simply buying what is available on the open market. When pressed, however, Company B acknowledges that these diamonds have entered Gambia for one of two reasons: either to

evade taxes in the countries where they have been mined, or to avoid detection as conflict diamonds. Knowledgeable diamantaires say that 90 per cent of ‘Gambian’ diamonds are from Sierra Leone.

133. The Gambia did not respond to the Panel’s repeated requests for information on diamond imports and exports, so the Panel does not know whether exports from The Gambia are consistent in any way with official Gambian imports.

Case Study - Guinea

134. Official Guinean exports were consistent over the 1990s, averaging 380,000 carats per annum, at \$96 per carat. The panel examined Belgian, U.S., British, Swiss and Israeli import statistics, and found that the only significant imports were into Belgium. This is consistent with information provided by the Government of Guinea.

135. Belgian trade statistics, however, record average imports over the same period of 687,000 carats per annum, with an average value of \$167 per carat (see Table 1). In other words, Belgium appears to import almost double the volume that is exported from Guinea, and the per carat value is almost 75 per cent higher than what leaves Guinea.

Table 1: Comparison of Guinean Exports and Imports into Trading and Polishing Centres 1993-1999

Year	Guinea Exports		Belgian Imports from Guinea		US Imports from Guinea		UK Imports from Guinea	
	carats (000)	US\$ (000)	carats (000)	US\$ (000)	carats (000)	US\$ (000)	carats (000)	US\$ (000)
1993	374	29,582	1,030	178,020	3	4,400	—	—
1994	381	28,412	876	165,770	1	1,600	—	—
1995	452	34,719	780	26,210	2	3,400	—	—
1996	364	35,471	440	83,670	1	2,700	—	—
1997	380	46,930	533	108,120	3	10,000	—	—
1998	355	40,657	596	116,100	17	11,000	—	—
1999	357	40,207	554	127,120	10	16,400	84	5098
Total	2,663	255,978	4,809	805,010	37	49,500	84	5098

Sources: Bureau National d’Expertise des Diamants et Autres Gemmes, Guinea; Ministry of Economic Affairs, Belgium; U.S. Department of Commerce; HM Customs & Excise, Tarrif & Statistical Office, UK. No Guinean diamonds appear in Israeli, Indian or Swiss import figures. Negligible amounts are imported into South Africa. UK£ converted at U.S.\$1.5.

136. It is unlikely that the difference between Guinean exports and Belgian imports could be explained by the 'country of provenance' issue, because Guinea does not officially import diamonds, and any official Sierra Leone diamonds in transit through Conakry do not enter Guinean trade statistics.

137. There are three possible explanations. The first is that the difference is made up of diamonds exported unofficially from Guinea. These could be either Guinean diamonds, or diamonds smuggled in from Sierra Leone and elsewhere (as in the Gambian case). Such diamonds could be 'conflict diamonds' or simply 'illicit diamonds'. The second possibility is that Guinea's name is applied to diamonds entering Belgium from another country or countries, as in the Liberian case. A third possibility is that it is a combination of the first two.

138. U.S. statistics show a different problem, if they have been correctly presented to the Panel. They record a very small volume of Guinean imports by weight, but the value is over \$1,300 per carat. This is a major anomaly in the sense that it is roughly 14 times higher than the average per carat value exported from Guinea. This statistic requires further investigation if it is to make sense (US officials are currently reviewing the matter).

Côte d'Ivoire

139. A problem similar to that of Guinea exists in relation to Côte d'Ivoire. According to the authoritative U.S. Geological Survey, Côte d'Ivoire exported approximately 75,000 carats per annum in the mid 1990s. Very little rough is imported into the U.K., the U.S. or Israel from Côte d'Ivoire. Belgium, however, imported 6 million carats between 1994 and 1999, about 13 times more than was apparently produced in the country. The average per carat was \$92.

140. Export figures for Côte d'Ivoire have been taken from the U.S. Geological Survey because Côte d'Ivoire did not respond to the Panel's request for information.

D. Conclusions on Statistics and Transit Countries

141. The statistical anomalies surrounding the Liberian example demonstrate that the Liberian name, and most likely the names of other countries, has been widely used by individuals and companies wishing to disguise the origin of rough diamonds. These diamonds could include conflict diamonds from Sierra Leone, DRC and/or Angola, but the volumes are such that additional explanations are required. These include the breaking of legally binding commercial contracts, tax evasion and money laundering. Mostly, such diamonds are illicit in nature. Because the volume in illicit diamonds is so high, it is not difficult for the smaller volume of conflict diamonds to become lost in the larger numbers.

142. A country like Liberia, whose name has been used with or without its knowledge by illicit traders, can thus conceal its own trade in illicit or conflict diamonds behind the larger rackets being perpetrated by others.

143. The variations in the way major trading centres record the importation of rough diamonds add to the ease with which illicit and/or conflict diamonds can be laundered.

III. 'CONFLICT' DIAMONDS' AND 'ILLICIT' DIAMONDS

A. The Issue

144. 'Conflict diamonds' have been defined as diamonds that originate in areas controlled by forces fighting the legitimate and internationally recognized government of the relevant country. De Beers has estimated that in 1999 the total volume of conflict diamonds was

approximately \$255 million, less than 4 per cent of the world's rough diamond production of \$6.8 billion. Of these, \$35 million were said to originate in Democratic Republic of The Congo, \$150 million in Angola, and \$70 million in Sierra Leone. Where the DRC is concerned, some researchers place the figure at about twice the De Beers estimate. Where Sierra Leone is concerned, a more detailed discussion can be found in paragraphs 79-81 above.

145. In its search for conflict diamonds from Sierra Leone, the Panel discovered that there is a much greater volume of 'illicit' diamonds, and that distinguishing between the two is extremely difficult. As noted above, part of the difficulty in understanding diamond statistics is that once rough diamonds arrive in Europe, they are sorted, traded across borders, re-sorted and re-traded - possibly many times - before they actually get to a cutting and polishing centre.

146. This obscuring of origins makes the diamond industry vulnerable to a wide variety of illicit behaviour. It is no secret that diamonds are stolen from virtually every mining area in the world. Diamonds have long been used as an unofficial hard currency for international transactions. As with other precious commodities, they lend themselves to money laundering operations. Because they are small and easily concealed, they are readily moved from one country to another for the purpose of tax evasion, money laundering or to circumvent trade agreements. Virtually all of these diamonds eventually find their way into the legitimate trade. And all of these illicit transactions are made easier by the industry's long history of secrecy. Secrecy in the diamond industry is understandable for security reasons, but secrecy also obscures illicit behaviour.

147. At an October 2000 intergovernmental meeting on conflict diamonds in Pretoria, a senior diamond evaluator and trade consultant estimated that 20 per cent of the worldwide trade in rough diamonds is illicit in nature. The Panel raised this issue in its travels, and the figure was widely accepted as a reasonable estimate.

148. Official rough diamond production in 1999 was approximately \$6.85 billion. About 65 per cent of this was controlled in one way or another by De Beers, which maintains that its diamonds are clean. If it is assumed that no De Beers diamonds are 'illicit', the illicit 20 per cent of \$6.85 billion must all be flowing through the part of the business that trades on 'outside markets'. This would mean that a surprising 57 per cent of the outside market is comprised of illicit diamonds. Two other possibilities exist. The first is that the 20 per cent estimate is wrong. The second is that if it is not wrong, De Beers, too, must accept some responsibility for the trade in illicit diamonds. Whatever the explanation, this is an area that warrants further study, because it has the potential to taint and damage the entire industry.

149. Regardless of the explanation, it became obvious to the Panel that there is a very large trade in illicit diamonds, and that conflict diamonds are only a part of this trade. They are, in essence, illicit diamonds that have gone septic. They are, however, difficult to distinguish from illicit diamonds, because they are often traded in the same way, and by many of the same people who have been involved in the illicit trade for generations. When asked how conflict diamonds enter the system, dealer after dealer told the Panel that it happens in the same way that illicit diamonds enter the system. Someone brings them to a trading centre - Israel or New York, for example - either smuggling them past customs or making a false declaration. Either way, they will find a buyer. Or, a dealer will go to Africa and buy them from rebels, or from a third or fourth party. He will then take them to Europe, Israel or New York, and smuggle them past customs or make a false declaration.

B. Conclusion on Conflict versus Illicit Diamonds

150. The Panel visited three import-export regulatory centres: in South Africa, Israel and Belgium. Given the huge volume of diamonds moving in and out of these three countries alone, even a five or tenfold increase in the size of these regulatory operations would probably not be enough to deal effectively with the issue of illicit diamonds. A global certification scheme with teeth would help, because it would require much better documentation on the part of exporters and importers, and would make false declarations less possible. A global certification scheme would not completely stop smuggling, but the anomalies described in the Liberian, Gambian and Guinean case studies above would not have been possible, and such a system would help put an end to conflict diamonds in Sierra Leone.

IV. A FINAL NOTE ON DIAMONDS

A. Some Recommendations from Sierra Leone

151. A two-day conference on diamonds, organized by the Network Movement for Justice and Development, the Civil Society Movement of Sierra Leone and several other Sierra Leonean organizations, coincided with the visit to that country of the Panel. This 'Just Mining' conference made several recommendations, which the Panel wishes to draw to the attention of the Security Council. The recommendations were based on widespread public frustration in Sierra Leone with the de facto division of the country into two parts - one with diamonds, controlled by the RUF, and one largely without diamonds, controlled by the government. The conference was vocal in its criticism of UNAMSIL's mandate and/or its inability to change this situation. UNAMSIL, the conference concluded, was actually complicit in dividing the country and in ensuring that the RUF can mine diamonds with impunity. The conference recommended the following:

- that the Government of Sierra Leone engage a private military/security firm to bring about a military solution to the problem as soon as possible;
- that the United Nations assume responsibility for the key diamond areas and manage them as a UN Trust Territory;
- that UNAMSIL be deployed to the diamond areas to protect them from future incursions and from illicit mining;
- that the Sierra Leone diamond industry be closed down completely for a period of five years in order to encourage non-Sierra Leoneans involved in the industry to leave, and to provide the government and people with the time required to devise new investment codes and more open systems of transparency and accountability, so that the diamond industry can benefit the people of the country, rather than the few who have enjoyed its rewards over the past three decades.

152. The Panel includes these civil society recommendations in the report for two reasons. The first is that they reflect widespread public concern in Sierra Leone about the connection between diamonds and the war, and about the lack of progress in resolving the conflict. The second is that they reflect a widespread concern, shared by the Panel, that once the conflict is settled, Sierra Leone's diamond industry should not be allowed to lapse back into the corruption and mismanagement of earlier years. The objective of the UN peacekeeping effort, the new diamond certification scheme, and the work of the Panel of Experts should not be a return to the status quo of earlier years. Rather the aim should be to help Sierra Leone move

forward to a situation in which diamonds are a widespread public good, becoming an engine for development and peace rather than one of war and destruction.

B. Further Research

153. There is reason to believe that a certain amount of diamonds have been traded by the RUF with officers of the former West African peacekeeping force, ECOMOG, in return for cash or supplies. The Panel did not see this issue as part of its mandate and so did not examine it in any detail, but repeated accounts, many of them first-hand eyewitness reports, made the stories impossible to ignore. If the issue is thought to be important, it will require further investigation.

154. The issue of 'illicit' diamonds and their implications for the diamond industry, as well as for the tracking and discovery of conflict diamonds, is an important one. This report has touched on it, but on-going research and monitoring may be required in order to do the subject justice.

V. RECOMMENDATIONS ON DIAMONDS

155. In order to better regulate the flow of rough diamonds from producing countries, a global certification scheme based on the system now adopted in Sierra Leone is imperative. It will give added impetus to current discussions on this subject if the Security Council endorses the concept of a global certification system.

156. In the short run, and in the absence of a global system, it is recommended that certification systems similar to that adopted by Sierra Leone, be required of all diamond exporting countries in West Africa, with special and immediate reference to Guinea and Côte D'Ivoire, as a protective measure for their indigenous industries and to prevent their exposure to conflict diamonds. If this has not been completed within a period of six months, the Security Council should impose an international embargo on diamonds from these countries.

157. The Panel further recommends a complete embargo on all diamonds from Liberia until Liberia demonstrates convincingly that it is no longer involved in the trafficking of arms to, or diamonds from, Sierra Leone. The embargo should not be lifted until this condition has been met, and until Liberia too has joined the proposed standardized certification system.

158. The Security Council should place an immediate embargo on trade in all so-called Gambian diamonds until such time as its export of diamonds can be reconciled with imports.

159. Other diamond exporting countries in the region have been designated by the Belgian government as 'sensitive' countries, where special attention to imports is required. In addition to the three countries suffering directly from conflict diamonds and those mentioned above, these include Uganda, Central African Republic, Ghana, Namibia, The Congo Brazzaville, Mali, Zambia and Burkina Faso. This list is commended to other major importing countries, including Switzerland, South Africa, India, Israel, the United Kingdom and the United States. Invoices from these countries need to be thoroughly checked, and where there is doubt about either provenance or origin, parcels should be seized until the authorities have checked the facts. Delays in processing will increase the cost of doing business and will encourage better paper work. Forfeiture of improperly labelled goods will discourage the habit decisively.[3]

160. Urgent attention should be given to extending a Sierra Leone-style certification system to these countries as soon as possible.

161. The United Nations, the World Diamond Council and the import control authorities of all rough diamond importing countries should be vigilant for other exporting countries, or for countries in the future, where trade in diamonds has little to do with domestic production or legitimate trading.

162. It is essential, and a matter of urgency, that major trading centres (Belgium, the United Kingdom, Switzerland, South Africa, India, the United States and Israel) come to a common agreement on the recording and public documentation of rough diamond imports that is consistent from one country to another, and that clearly designates the country of origin in addition to country of provenance.

163. An annual statistical production report should be compiled by each exporting country and gathered into a central annual report, compiled by the World Diamond Council and/or by the certification body that is expected to emerge from the 'Kimberly Process' of intergovernmental negotiation. Countries of origin must be distinguished from countries of provenance.

164. If diamonds are mixed and/or re-invoiced in a free trade zone, it is imperative that the government of that country take responsibility for verifying the *bona fides* of the diamonds before they are re-exported. This is especially important with regard to Switzerland because of the large volumes that pass through its *Freiläger*, losing their identity in the process. The same may be true of the United Arab Emirates. In other words, all countries importing rough diamonds must be part of the anticipated 'rough controls' system.

165. Throughout its work, the Panel was struck by the widespread breaking of UN Security Council sanctions on both weapons and diamonds. If existing and future sanctions are to be effective, the Security Council will require an on-going capacity to monitor their observance and conduct research. Where diamonds are concerned, there have been three Expert Panels examining many of the same issues concurrently. There has been useful collaboration, but there has also been overlap and duplication. Considering the complexity and the changing nature of the conflict diamond issue the Panel recommends that in future, it would serve the Security Council better to have an on-going focal point within the UN to monitor adherence to sanctions, as well as progress towards the specific goals stated in December 1, 2000 General Assembly Resolution A/RES/55/56.

166. The attention of the Security Council, the Government of Sierra Leone, donor agencies and other interested parties is drawn to the observations and recommendations about corruption and the need for probity contained paragraph 152-3 and in Annex 5. Without serious reform and due diligence within government and government agencies in Sierra Leone, international efforts to assist will be wasted.

[1] Following a coup in May 1997, the Armed Forces Revolutionary Council, headed by Johnny Paul Koroma took power. The AFRC invited the RUF to share power with them. A period of violence and anarchy ensued. In February 1998 the West African peacekeeping force, ECOMOG, forced the AFRC from power and returned Tejan Kabbah to the Presidency.

[2] Liberia's estimated production capacity varies between 100,000 and 150,000 carats per annum. In 1988 and 1989, Liberia officially exported approximately 150,000 carats, valued at an average of \$8.7 million per annum.

[3] Note: the term 'sensitive country' is not used in this report to suggest wrong-doing. It is taken from a Belgian government report which seeks to protect these countries, Belgium and the industry from problems to which they are all clearly vulnerable. Namibia, for example, is one of the leaders in the fight against conflict diamonds.

PART TWO: WEAPONS

I. WEAPONS AND THE RUF

A. Background

167. Small arms play an important role in sustaining conflicts, in exacerbating violence, in contributing to the displacement of innocent populations and threatening international law, and in fuelling crime and terrorism. Recognizing this, the Security Council and the international community have tried to constrain their proliferation in West Africa. The Security Council placed Sierra Leone under a variety of travel, economic and military sanctions after the May 1997 coup. Following the return of the elected government, the arms embargo was amended in June 1998 to lift sanctions against the government. Security Council sanctions placed on Liberia in 1992 remain in place.

168. On 31 October 1998, members of the Economic Community of West African States (ECOWAS) adopted 'The Declaration of a Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa'. The Moratorium came into force on November 1 1998, for a period of three years and the Programme for Coordination and Assistance for Security and Development (PCASED) supports its implementation. PCASED is designed to monitor the moratorium and to establish a database and training programme for law enforcement agencies of the signatory countries. The programme is supported by the United Nations Development Programme, the UN Department of Political Affairs and the United Nations Institute for Disarmament Research.

169. Despite the ECOWAS Moratorium (also called the Mali Moratorium), West Africa is still awash with small arms. Serious problems with weapons have emerged, not only in countries that are victims of warfare, but also in major cities across the entire sub-region. The rapidly increasing incidence of armed violence is a consequence. The outbreak of civil conflict in Senegal, Guinea-Bissau, Niger, Liberia and Sierra Leone during the past decade has increased the demand for light weapons.

170. Guerrilla armies receive weapons through interlinked networks of traders, criminals and insurgents moving across borders. Arms also travel from one unstable zone to another, and rebel movements or criminal gangs in one country sell their arms to groups they are aligned with elsewhere. In other instances governments may see opportunities for their own regional ambitions in West Africa, supplying rebel groups with weapons in order to further these ambitions.

171. Systematic information on weapons-smuggling in the region is non-existent, and information which could be used to combat the problem on a regional scale - through ECOWAS or through bilateral exchanges - is generally not available. Few states in the region have the resources or the infrastructure to tackle smuggling, a situation that creates opportunities for the smuggling of weapons across all major borders in the region.

172. Officials acknowledge the existence of a large, and largely uncontrolled informal weapons trade and outright illicit trafficking. The extent of such practices, far beyond normal levels of informal trade, aggravate corruption and criminalisation throughout the region.

173. In Sierra Leone, the RUF depends almost exclusively on light weaponry, although it does have access to more sophisticated equipment. Lists of equipment turned in under the Disarmament, Demobilisation and Rehabilitation (DDR) Program include those of eastern

European manufacture as well as American, Belgian, British and German types. In May 2000, at the time the Lomé peace process collapsed, roughly 12,500 weapons and 250,000 pieces of ammunition had been collected at the different weapons storage centres that had been initiated eight months earlier. The weapons included the following:

496 pistols,
4,000 AK-47 'Kalashnikov'
rifles,
1,072 AK-74 rifles,
940 G-3 Rifles,
440 FN-FAL rifles,
451 SLR rifles,
140 Machine Guns,
217 Grenade Launchers,
1,855 Grenades
45 Mortars.

174. These numbers represent only a small fraction of the weapons that are actually in the hands of the rebels. The very poor quality and the age of the weapons turned in suggest that the rebels have held onto the newest and best weapons at their disposal. Despite the setback in May, former rebels, child soldiers and Civil Defence Force members keep presenting themselves at the different DDR centres for demobilisation and for the turning over of their weapons.

175. Many of the weapons are old and have been obtained from different sources, both regional and international. Provided that suitable ammunition is available, however, a ten-year old firearm can still be lethal. One of the few positive elements of the war in Sierra Leone is that there has been little or no use of anti-personnel land-mines in the conflict.

176. With no standardized marking system for small arms and the proliferation of great amounts of weapons of this nature, the arms flow to rebel groups on the African continent remain largely uncontrolled.

B. Sources of RUF Weaponry Within Sierra Leone

177. The RUF needs a steady flow of arms and ammunition. Although the arms inventoried by the DDR program originate in many countries, most of the rifles are of eastern European design. Variants of the AK-47 Kalashnikov are the most readily available. Although a Russian design, the AK-47 is today produced in so many countries, and in so many variants, that a thorough study of model numbers, serial numbers and factory markings would be required in order to determine their precise origin. After this, it might be possible to determine the supply trail of the weapons, but even this would be complicated by the fact that many may have been bought on the open market, and may be second- or even third-hand weapons.

178. The RUF have captured many weapons during confrontations with the Sierra Leone Army, ECOMOG and UNAMSIL forces. A forthcoming study made available to the Panel by the Small Arms Survey, a Geneva-based NGO, provides a well-documented summary overview of known seizures of weapons by the RUF. The Panel was able to verify most of the incidents reported in the survey.

179. Supplies obtained by the RUF from intervening forces deployed in Sierra Leone include, for example:

considerable amounts of weaponry seized during confrontations with the government of Sierra Leone armed forces. A lack of training and discipline led to soldiers abandoning their weapons for ready seizure by the rebels. SLA soldiers are also reported to have sold weapons and ammunition to the rebels;

a significant number of weapons, including hundreds of rifles, 24 machine guns, 10 mortars, 20 rocket propelled grenades, several tons of ammunition and three armoured personnel carriers were seized when the rebels detained and disarmed a Guinean UNAMSIL unit in January 2000. Guinean units serving under ECOMOG had also been disarmed during previous ambushes and seizures

Kenyan and Zambian UNAMSIL contingents were disarmed when they were taken hostage by rebels in May 2000. In these cases, great amounts of rifles were lost to the rebels, as well as eight armoured personnel carriers and several other military vehicles.

II. LIBERIAN SUPPORT TO THE RUF

A. General

180. The personal connections between President Charles Taylor and Foday Sankoh go back ten years to their training in Libya, to their combined efforts on behalf of Blaise Campaore in his seizure of power in Burkina Faso, and to Sankoh's involvement in Charles Taylor's struggle as head of the NPFL to take power in Liberia in the early 1990s. These events are well documented, and President Taylor told the Panel that he was a close friend of Foday Sankoh. President Taylor denies unequivocally, however, that he or his government have provided any training to the RUF, any weapons or related *matériel*, any Liberian facilities or territory for staging attacks, or a safe haven.

181. He told the Panel that RUF leader Sam Bockarie's presence in Liberia was a gesture of goodwill on Taylor's part, in order to allow the RUF to work together for a peaceful settlement in Sierra Leone after Foday Sankoh and Bockarie had found themselves unable to work together.

182. The Panel, however, found unequivocal and overwhelming evidence that Liberia has been actively supporting the RUF at all levels, in providing training, weapons and related *matériel*, logistical support, a staging ground for attacks and a safe haven for retreat and recuperation.

B. Training

183. The RUF has received regular training in Liberia at Gbatata near Gbanga and elsewhere. Hundreds of ex combatants and many former RUF leaders have confirmed this in oral testimony and in writing. Sufficient corroborative documentary evidence in the form of written reports of RUF commanders to Foday Sankoh is also available. RUF soldiers have been trained alongside Liberia's Anti Terrorist Unit (ATU), and RUF combatants are frequently used by President Taylor for his own personal security details. Liberian officers and men are also actively assisting the RUF in Sierra Leone, serving as combatants, trainers and liaison officers.

184. The panel received information on the presence of Ukrainian, Burkinabe, Nigérien, Libyan and South African nationals in Liberia for training purposes. The training was given to

non-Liberian nationals for deployment in RUF-territory in Sierra Leone, and for action in recent clashes on the Guinea border. Early in 1999, a significant improvement of tactics and use of weapons by the RUF rebels was noted in Sierra Leone. It was more than a coincidence that this happened immediately after foreigners started training these elements in Liberia.

185. In addition, the police interrogation statements of some of arrested RUF officials and the oral statements of former rebels interviewed by the panel confirm the presence of foreign mercenaries including South African and Ukrainians training and fighting alongside RUF.

South Africans Providing Training in Liberia

186. Fred Rindel a retired officer of the South African Defence Force and former Defence Attaché to the United States, has played a key role in the training of a Liberian anti-terrorist unit, consisting of Liberian soldiers and groups of foreigners, including citizens of Sierra Leone, Burkina Faso, Niger and The Gambia.

187. The panel interviewed Mr Rindel extensively. Rindel was contracted as a security consultant by President Charles Taylor in September 1998, and training started in November 1998. The contract included consultancy services and strategic advice to convert Charles Taylor's former rebel militia into a professional unit. The Anti-Terrorist Unit is used in Liberia to protect government buildings, the Executive Mansion and the international airport, and to provide VIP Security and the protection of foreign embassies. The numbers trained were approximately 1200. Because of negative media attention, Rindel cancelled his contract in Liberia in August 2000.

188. In 1998, ECOMOG identified a plane, registration number N71RD, owned by a South African company, Dodson Aviation Maintenance and Spare Parts, as having carried weapons to Robertsfield in September of that year. The plane is a Gulfstream 14-seater business jet that cannot be used for arms transport, but there are other relevant connections. Fred Rindel was the owner of Dodson. The company was closed on 31 December 1998, but during the period under investigation, the plane was leased to, and operated by, Greater Holdings (Liberia) Ltd., a company with gold and diamond concessions in Liberia. The plane was used for the transport of the Greater Holdings' staff to and from Liberia.

189. Niko Shefer is a businessman located in South Africa, and was Chairman/CEO of the Greater Diamond Company (Liberia) Ltd, a subsidiary of Greater Holdings. Shefer denies diamond dealings in Liberia and Sierra Leone, except for two exploration agreements with the Liberian government for concessions in Mano and Lower Lofa. When the employees of their diamond operations in Mano came under attack, Shefer discussed security with President Taylor, and suggested bringing in private security specialists from South Africa. This resulted in the security contract with Mr Rindel. In the end, Shefer's explorations were unprofitable and were abandoned. The American partners in Greater Diamonds were at that time under investigation by American authorities for tax evasion and money laundering, using assets in Liberia. Shefer met with RUF leader Foday Sankoh in South Africa in February 2000 (see also paragraph 98).

190. Fred Rindel states that he has never had any involvement with diamonds in Liberia and was never approached by anyone in Liberia with regard to diamonds. According to the Liberian Minister of Mines, however, Rindel was involved in a diamond project with the son of President Taylor, Charles Taylor Jr. Rindel includes a reference to De Dekker Diamonds (Pty) Ltd on his business card. Rindel was also contracted as consultant on a mineral and geological survey of the gold potential in the Mano and Nimba areas in Liberia. Geologists

from South Africa were hired for the purpose. Rindel acquired the gold and other mineral rights for two concessions on behalf of a Bermuda based company, the Bermuda Holding Corporation, a company in which President Charles Taylor and some of his relatives hold interests. Mr Rindel was also negotiating with a number of international companies to form joint ventures with the Bermuda corporation.

191. Mr Rindel denies bringing other South Africans to Liberia as trainers. During his time in Liberia, however, there were several other South Africans there, including Meno Uys, Gert Keelder and Faber Oosthuyzen. These men and others worked under contract in Liberia in 1998, 1999 and 2000 as security trainers. Their headquarters is at Gbanga. Another South African, Karl Alberts, is flying helicopters for the Liberian armed forces. Neither Rindel nor the other South Africans applied for authorisation under the South African Regulation of Foreign Military Assistance Act (1998), because, in his case, according to Rindel, his services were purely of a protective nature and did not include any combat training, or training of armed forces in Liberia.

C. Safe Haven

192. There are innumerable accounts in RUF written reports, in oral testimony given to the Panel, and in police and military intercepts, of high-level RUF meetings with President Taylor, RUF travel to Monrovia, RUF strategy meetings at the Executive Mansion, RUF travel on Liberian helicopters, RUF staging bases at Camp Schefflein, Voinjama and Foya-Kama. Liberia has provided the families of many senior RUF officials with a safe haven. Eyewitness accounts speak of RUF fighters being treated in Monrovia hospitals. Most recently, Gibril Massaquoi, acting as RUF spokesman on issues relating to the Nov 10, 2000 cease-fire, has been interviewed in, and has made his press statements from Monrovia.

D. Weapons and Related *Matériel*

193. Police and military intercepts, civilian accounts, the written reports of RUF commanders to Foday Sankoh and oral testimony provided to the Panel by ex-combatants provide lengthy and detailed descriptions of a constant flow of weapons and supplies entering Sierra Leone from Liberia. Weaponry and supplies include mortars, rifles, RPGs, satellite phones, computers, vehicles, batteries, food and drugs. Most of the supplies are sent by road or helicopter to Foya-Kama, a few miles from the Sierra Leone border near Kailahun, and then they are trucked across the border into RUF territory for onward distribution.

III. THE ROLE OF OTHER COUNTRIES

194. Weapons can be procured directly from producing factories, or from surplus stocks of the armed forces in different countries. It is mainly through arms merchants or brokers that weapons are purchased for use by non-state actors. In the case of the RUF, private brokers and arms merchants are the principal suppliers, but most large arms and ammunition supplies only reach the RUF indirectly, through countries with governments sympathetic to the rebels.

195. The Panel has found conclusive evidence of supply lines to the RUF through Burkina Faso, Niger and Liberia. Weapons supplied to these countries by governments or private arms merchants have been diverted for use in the conflict in Sierra Leone. Cote d'Ivoire, under previous administrations, was sympathetic to the Liberian government and, indirectly, to the RUF in Sierra Leone. The Ivorian relationship dates back to the training of RUF and Liberian rebels in Cote d'Ivoire in the early 1990s.

196. Typically, the movement of the arms from a supplying country to the RUF will entail several stop-overs and cross-border shipments. This should expose arms dealers, especially those breaking United Nations sanctions, to controls, legal procedures and regulations on the export, import and transit of military equipment. Since weapons have moved into the region and across borders with impunity, it can only be assumed that the parties involved - the brokers and suppliers of arms to the RUF - have obtained cooperation from border and customs inspectors, and licensing government departments in order to circumvent UN sanctions and normal border controls.

197. The President of Burkina Faso is a close ally of President Charles Taylor and Burkina Faso has acknowledged the presence of over 400 Burkinabe soldiers in Liberia during the time Taylor was leading his rebellion in 1994 and 1995. Provision was made in the government budget to cover salaries for the services rendered during this period. Burkina Faso has repeatedly denied the involvement of its nationals in supporting the RUF. Eyewitnesses and former RUF combatants, however, confirm the active involvement of Burkinabes with the RUF. A Burkinabe, 'General' Ibrahim Bah (a.k.a. Baldé) - referred to in paragraphs 73-4 - handles much of the financial, diamond and weapons transactions between the RUF, Liberia and Burkina Faso. He shuttles regularly between Monrovia and Ouagadougou. Burkina Faso's involvement in weapons transfers is detailed below.

IV. THE ROLE OF AIRCRAFT IN SUPPLYING THE RUF

A. Direct Flights Into RUF Territory

198. Having no access to the sea, the RUF can import weapons and related matériel only by road or by air. The role of aircraft in the RUF's supply chain is vital, especially over the past two years, as their sphere of influence in Sierra Leone has widened. Given the state of the country's roads, it would be impossible to supply RUF operations such as those undertaken at Pamelap in Guinea late in 2000, for example, without aerial support.

199. Most Sierra Leonean landing strips in the areas under RUF control were destroyed or have not been maintained because of the war. The landing strip at Yengema is probably not operational, and although the airstrip at Magburaka was rebuilt during the AFRC period in 1997 and is now in rebel territory, there are few reports of fixed-wing aircraft landing there or elsewhere in RUF-held territory.

200. The absence of reports in itself, however, is not very meaningful, as there is a total lack of governmental oversight of Sierra Leonean airspace, due to insufficient infrastructure at the country's airports and in the sub region in general (see Part III, below).

201. This problem notwithstanding, it is known that the RUF have been supplied with weapons by helicopter on a sporadic basis before 1997 and on a regular basis since then. Helicopters originating in Liberia land at Buedu, Kailahun, Makeni, Yengema, Tumbudu, Yigbeda and elsewhere in Kono District. More recently, newly delivered Mi-8 transport helicopters have been used for this purpose, including for the delivery of surface-to-air (SA-7) shoulder-launched missiles.

B. Weapons Flights into Liberia

202. Virtually all of the weapons shipped into RUF territory are transhipped through at least two other countries between their point of origin and RUF territory in Sierra Leone. In virtually all cases, the last transit point before shipment into Sierra Leone is Liberia. The weapons reach Liberia in a variety of ways - occasionally by sea but most frequently by air.

The Panel went to considerable lengths to document some of these shipments in order to demonstrate how the supply chain works.

Case Study: Burkina Faso Delivery of Ukrainian Weapons

203. A shipment of 68 tons of weapons arrived at Ouagadougou on 13 March 1999. It included 715 boxes of weapons and cartridges, and 408 boxes of cartridge powder. The inventory also included anti-tank weapons, surface-to-air missiles, and rocket propelled grenades and their launchers.

204. This shipment has now been well documented. Documentation provided in April and June 1999 by the Ukraine government to UN Sanctions Committees shows that the weapons were part of a contract between a Gibraltar-based company representing the Ministry of Defence of Burkina Faso, and the Ukrainian state-owned company Ukrspetsexport. An aircraft of the British company Air Foyle, acting as an agent for the Ukrainian air carrier Antonov Design Bureau, shipped the cargo, under a contract with the Gibraltar-based company, Chartered Engineering and Technical Services. A Ukrainian licence for sale of the weaponry was granted after Ukrspetsexport had received an end-user certificate from the Ministry of Defence of Burkina Faso.

205. The end-user certificate was dated 10 February 1999. The document authorized the Gibraltar-based company to purchase the weapons for sole use of the Ministry of Defence of Burkina Faso. The document also certified that Burkina Faso would be the final destination of the cargo and the end-user of the weaponry. The document is signed by Lieutenant-Colonel Gilbert Diendéré, head of the Presidential Guard of Burkina Faso. During a visit by a Panel Member to Ukraine, this sequence of events was reconfirmed.

206. The authorities of Burkina Faso, in correspondence with the United Nations Sanctions Committee on Sierra Leone, denied allegations that the weapons had been re-exported to a third country, Liberia, and during a visit to Burkina Faso the Panel was shown weapons that were purportedly in that shipment.

207. The weapons in question, however, were not retained in Burkina Faso. They were temporarily off-loaded in Ouagadougou and some were trucked to Bobo Dioulasso. The bulk of them were then trans-shipped within a matter of days to Liberia.

208. Most were flown aboard a BAC-111 owned by an Israeli businessman of Ukrainian origin, Leonid Minin. The aircraft bore the Cayman registration VP-CLM and was operated by a company named LIMAD, registered in Monaco. Minin was, and may remain, a business partner and confidant of Liberian President Charles Taylor. He is identified in the police records of several countries and has a history of involvement in criminal activities ranging from east European organised crime, trafficking in stolen works of art, illegal possession of fire arms, arms trafficking and money laundering. Minin uses several aliases. He has been refused entry into many countries, including Ukraine, and travels with many different passports. Minin offered the aircraft mentioned above for sale to Charles Taylor as a Presidential jet, and for a period between 1998 and 1999, it was used for this purpose. It was also used to transport arms.

209. Regarding the shipment in question, the aircraft flew from Ibiza in Spain to Robertsfield in Liberia on 8 March 1999. On March 15, two days after the arrival of the Ukrainian weapons in Ouagadougou, the plane flew from Monrovia to Ouagadougou. On March 16 the plane was loaded with weapons and flew back to Liberia. On the 17th, it returned to

Ouagadougou. After a flight to Abidjan in the Ivory Coast, the plane flew again from Ouagadougou to Liberia with weapons on the 19th. On the 25th the plane flew again from Liberia to Ouagadougou and returned on the same day with weapons. On the 27th the plane flew again to Ouagadougou and from there to Bobo Dioulasso for the weapons that had been trucked there. The aircraft made three flights over the next three days between Bobo Dioulasso and Liberia. On 31 March the plane flew back to Spain. Because the plane had a VIP configuration, it had only limited cargo capacity, which is why so many flights were necessary.

210. A second plane, an Antonov operated by a Liberian company named Weasua, is reported by eye-witnesses to have flown part of the cargo to Liberia from Bobo Dioulasso.

211. Minin's BAC-111 was used for an earlier shipment of weapons and related equipment from Niamey Airport in Niger to Monrovia. This occurred in December 1998, shortly after Minin purchased the plane and started to operate it in the region. On 22 December 1998, the BAC-111 made two trips from Niamey to Monrovia. On the second trip, it took a consignment of weapons, probably from existing stocks of the armed forces of Niger. The weapons were off-loaded into vehicles of the Liberian military. A few days after these events, the RUF-rebels started a major offensive that eventually resulted in the destructive January 1999 raid on Freetown.

C. The Inner Circle of the Taylor Regime

212. President Charles Taylor is actively involved in fuelling the violence in Sierra Leone. He and a small coterie of officials and private businessmen around him are in control of a covert sanctions-busting apparatus that includes international criminal activity and the arming of the RUF in Sierra Leone. Over the years - before President Taylor's inauguration and after - this group has contracted foreign businessmen for the financing, sourcing or facilitating of these covert operations. The sanctions-busting is fed by the smuggling of diamonds and the extraction of natural resources in both Liberia and areas under rebel control in Sierra Leone. In addition, the sovereign right of Liberia to register planes and ships, and to issue diplomatic passports, is being misused in order to further the operations of this group.

213. The role of Liberia as a transshipment platform for arms to the RUF is crucial. However, arms are brought into the region from elsewhere. Many businessmen close to the inner-circle of the Liberian presidency operate on an international scale, sourcing their weaponry in Eastern Europe. The Panel focussed on a limited number of individuals, but there are many more examples of the significant presence of criminal organisations in the region.

214. A key individual is a wealthy Lebanese businessman named Talal El-Ndine. El-Ndine is the inner-circle's paymaster. Liberians fighting in Sierra Leone alongside the RUF, and those bringing diamonds out of Sierra Leone are paid by him personally. Arms shippers and brokers negotiate their payments in his office in Old Road, Monrovia. El-Ndine also brings foreign businessmen and investors to Liberia, individuals who are willing to cooperate with the regime in legitimate business activities as well as in weapons and illicit diamonds. The pilots and crew of the aircraft used for clandestine shipments into or out of Liberia are also paid by El-Ndine. They are mostly of Russian or Ukrainian nationality and they invariably stay at the Hotel Africa in Monrovia.

215. The manager of this hotel is a Dutch national named Gus Van Kouwenhoven. Van Kouwenhoven started his hotel and a gambling business in Liberia in the 1980s. He is also a member of President Taylor's inner circle, through his contacts with Taylor's economic

advisor, Emmanuel Shaw. Shaw, a former Liberian finance minister, owns a number of facilities at Robertsfield, including all the hangars. Van Kouwenhoven is responsible for the logistical aspects of many of the arms deals. Through his interests in a Malaysian timber project in Liberia, he organises the transfer of weaponry from Monrovia into Sierra Leone. Roads built and maintained for timber extraction are also conveniently used for weapons movement within Liberia, and for the onward shipment of weapons to Sierra Leone.

216. Simon Rosenblum, an Israeli businessman based in Abidjan, has logging and road construction interests in Liberia. He too, is very close to the Liberian President and carries a Liberian diplomatic passport. His trucks have been used to carry weapons from Robertsfield to the border with Sierra Leone.

217. Minin and Van Kouwenhoven are linked to Liberia's timber industry, which provides a large amount of unrecorded extra-budgetary income to President Taylor for unspecified purposes. Three companies are involved: Exotic and Tropical Timber Enterprise (ETTE), Forum Liberia and the Indonesian-owned Oriental Timber Company.

V. LIBERIA AND INTERNATIONAL TRANSPORT NETWORKS

A. General

218. Security Council Resolution 1306 (2000) mandated the Panel to consider the adequacy of air traffic control systems in the region for the purpose of detecting flights of aircraft carrying arms and related *matériel* across national borders in violation of United Nations sanctions. Effective monitoring of airspace and a proper control system at airports is vital for the detection of illicit trafficking. In this context, the Panel found that regional air surveillance capacities are weak or totally inadequate in detecting, or in acting as a deterrent to the arms merchants supplying Liberia and the RUF. Weak airspace surveillance in the region in general, and abusive practices with regard to aircraft registration, create a climate in which arms traffickers operate with impunity. (Technical notes on this subject are contained in Part III of this report.)

219. There are many examples of this problem. On July 18, 2000 an Ilyushin 18D with Liberian registration EL-ALY requested permission to land at Conakry in Guinea. The aircraft was operated by a company named West Africa Air Services. The crew were citizens of the Republic of Moldova and the plane had flown from Kyrgyzstan to Burkina Faso, then to Guinea and finally to Liberia. The cargo documents listed seven tons of 'spare parts to equipment of aircraft' and the client was a company named Kipo Dersgona in Conakry, Guinea. This 'Guinean' company is not listed in the register of companies in Guinea. The plane is also not among those listed for the Panel by the Liberian authorities as having Liberian registry, nor is it listed by the International Civil Aviation Organization.

220. The case was still under investigation at the time of writing. Tracing a plane carrying an unknown registration number, however, is practically impossible, and the plane was probably using multiple registrations, shifting rapidly from one to another in order to avoid detection. Such clear abuses of international aviation procedures are not easily detected unless navigation controllers and national airport authorities in several countries cooperate, and actively track and share information on the whereabouts and operations of such aircraft.

B. Aircraft Registered in Liberia

221. Because of its lax licence and tax laws, Liberia has for many years been a flag of convenience for the fringe air cargo industry. A company incorporated in Liberia can locate

its executive offices in another country and conduct business activities anywhere in the world. Names of corporate officers or shareholders need not be filed or listed, and there is no minimum capital requirement. A corporate legal existence can be obtained in one day. Liberia also has lax maritime and aviation laws that provide the owners of ships and aircraft with maximum discretion and cover, and with minimal regulatory interference. Businessmen in several countries compete with each other to attract customers for these offshore registrations. The system has led to a total disregard for aviation safety and a total lack of oversight of Liberian registered planes operating on a global scale.

222. The Panel requested documentation on all Liberian registry aircraft from Liberian Civil Aviation Authorities and the Ministry of Transport, but was told that the documentation had been lost or was destroyed as a consequence of the Liberian civil war. A schedule of Liberian-registered aircraft provided to the Panel by the Ministry listed only 7 planes. No documentation was available on more than 15 other aircraft that had been identified by the Panel. Many aircraft flying under the Liberian flag, therefore, are apparently unknown to Liberian authorities, and are never inspected or seen in the country. Many operate from airports in Central Africa (N'Djili in DRC, Luanda in Angola or the national airports of The Congo Brazzaville, Rwanda, Kenya and Gabon) or in the Middle East (United Arab Emirates, Tripoli in Libya or Khartoum in Sudan).

223. Several countries (including Belgium, South Africa, U.K. and Spain) have in recent years banned Liberian registered aircraft from their airspace and airports, in part because of fraudulent activity in relation to their registration. The illegal registration of more than one plane with the same number, for example, is a practice frequently mentioned by airport inspectors throughout Africa. It is also widely acknowledged that Liberian EL-registry planes operating in Africa and from airports in the United Arab Emirates are commonly used for illicit arms shipments.

C. Key Individuals in Liberia's Aviation Registry

224. A Kenyan national named Sanjivan Ruprah plays a key role in Liberia's airline registry and in the arms trade. Before his involvement in Liberia, Sanjivan Ruprah had mining interests in Kenya, and was associated with Branch Energy (Kenya). Branch Energy owned diamond mining rights in Sierra Leone, and introduced the private military company, Executive Outcomes to the government there in 1995. Ruprah is also known as an arms broker. He has worked in South Africa with Roelf van Heerden, a former colleague from Executive Outcomes, and together they have done business in Rwanda, DRC and elsewhere. Ruprah was once in charge of an airline in Kenya, Simba Airlines, until investigations into financial irregularities forced the company's closure.

225. In November 1999, Ruprah was authorized in writing by the Liberian Minister of Transport to act as the 'Global Civil Aviation agent worldwide' for the Liberian Civil Aviation Regulatory Authority, and to 'investigate and regularise the ... Liberian Civil Aviation register'. The ostensible aim of Ruprah's investigation was to 'suspend and/or cancel the registration of those aircraft which have had illegal certificates issued outside the knowledge of the government'. During its visit to Liberia the Panel asked the Transport Ministry, the Ministry of Justice and police authorities about Ruprah and his work, but was told that Ruprah was not known to them.

226. Sanjivan Ruprah travels using a Liberian diplomatic passport in the name of Samir M. Nasr. The passport identifies him as Liberia's Deputy Commissioner for Maritime Affairs.

227. A British national, Michael G Harridine, was previously appointed by the Liberian Minister of Transport to act as Chairman of the Liberian Civil Aviation Regulatory Authority, through an office in the United Kingdom. Harridine told the Panel that he is no longer involved with the registration of Liberian aircraft. He acknowledges, however, that irregular activities in the registration of Liberian aircraft were taking place.

228. An airline named Santa Cruz Imperial/Flying Dolphin, based in the United Arab Emirates, has used the Liberian registry for its aircraft, apparently unbeknownst to Liberian authorities until 1998. It also used the Swaziland registry until the Government of Swaziland de-registered them in 1999. A total of 43 aircraft were de-registered, operated by the following companies: Air Cess, Air Pass, Southern Cross Airlines, Flying Dolphin and Southern Gateway Corporation. According to the Government of Swaziland, 'while the names may be different, some of these companies are one and the same and did not operate from Swaziland.' When it discovered that some of the aircraft were still operating, the government of Swaziland sent information to the Civil Aviation Authorities in the UAE where some of the aircraft were based, in part because of airworthiness concerns, and in part because it believed that the operators may have been involved in arms trafficking. Flying Dolphin is owned by Sheikh Abdullah bin Zayed bin Saqr al Nayhan, a business associate of Victor Bout.

229. Victor Bout is a well-known supplier of embargoed non-state actors - in Angola, the Democratic Republic of Congo and elsewhere. Viktor Vasilevich Butt, known more commonly as Victor Bout, is often referred to in law enforcement circles as 'Victor B' because he uses at least five aliases and different versions of his last name. He was born in Dushanbe, Tajikistan, had air force training in Russia, and reportedly worked as a KGB officer shortly before the end of the Cold War. He then went into private business, setting up airline companies throughout Eastern Europe. Today Victor Bout oversees a complex network of over 50 planes, tens of airline companies, cargo charter companies and freight-forwarding companies, many of which are involved in shipping illicit cargo. Bout himself lives in the United Arab Emirates.

230. Bout has used the Liberian aviation register extensively in connection with his company, Air Cess Liberia. The UN Panel investigating the violations of UN embargoes on UNITA in Angola identified 37 arms flights, all with false end-user-certificates and false flight schedules, conducted with Liberian-registered planes operated by Victor Bout, between July 1997 and October 1998. Victor Bout is a resident of the United Arab Emirates and many of his airline companies are based there, providing charter services to companies in more than ten countries. His planes, however, are registered elsewhere - in Equatorial Guinea, the Central African Republic and elsewhere.

231. Centrafricain Airlines is one of the many companies controlled by Bout and his Air Cess/Transavia Travel Cargo group. Early in 2000, an investigation into fraud concerning the registration of an aircraft operated by Centrafricain Airlines was initiated in the Central African Republic, because some aircraft flying these colours were operating without a licence.

232. An Ilyushin 76, registered in Liberia in the name of Air Cess Liberia in 1996, was later registered in Swaziland. It was subsequently removed from the Swaziland register by the Civil Aviation Authority because of irregularities. The plane then moved to the register of the Central African Republic, where it obtained the designation TL-ACU in the name of Centrafricain Airlines. The aircraft sometimes carries the registration of the government of The Congo-Brazzaville. As with other Bout aircraft, the plane is based in Sharjah in the United Arab Emirates.

233. This plane was used in July and August 2000 for arms deliveries from Europe to Liberia. This aircraft and an Antonov made four deliveries to Liberia, three times in July and once in August 2000. The cargo included attack-capable helicopters, spare rotors, anti-tank and anti-aircraft systems, missiles, armoured vehicles, machine guns and almost a million rounds of ammunition. The helicopters were Mi-2 and Mi-17 types. A few months earlier, two Alouette-3 helicopters had been flown in by a Libyan government plane, but these helicopters were replaced by the newly arrived ones and are thought to be in Liberia no longer. (A note on European sources of weaponry is included in paragraph 248, below.) These deliveries, all made after the collapse of the Lomé Peace Agreement, are especially worrisome.

234. The transactions were set up by Victor Bout in the United Arab Emirates, and by Gus van Kouwenhoven, mentioned in paragraph 218, above. The plane used for the helicopter shipment was the Ilyushin 76, TL-ACU. Bout worked with a freight forwarder in Abidjan. A non-existent company 'Abidjan Freight' was set up as a front by Sanjivan Ruprah, to conceal the exact routing and final destination of the plane. The official routing was 'Entebbe-Robertsfield-Abidjan' but the cargo was unloaded in Robertsfield. The weapons were sourced from Central Europe and Central Asia.

D. Offices in the United Arab Emirates

235. Virtually all of Bout's companies, regardless of where they are registered, operate out of the United Arab Emirates. Sharjah Airport is used as an 'airport of convenience' for planes registered in many other countries, such as Swaziland, Equatorial Guinea, the Central African Republic and Liberia. In October 1998, 15 planes of Santa Cruz Imperial/Flying Dolphin, all registered in Liberia but operated from Sharjah, were temporarily grounded by the Liberian Aviation Authority. The planes have also been under investigation in Swaziland and in South Africa, and were finally barred from airports in these countries.

236. The authorities in the United Arab Emirates are aware of the seriousness of the issue and told the Panel that they are in the process of taking measures that will make it more difficult for aircraft registered elsewhere to remain in the UAE for more than a year without a local inspection. Better registration and safety inspections would perhaps make such aircraft more airworthy, but they do not address the issue of gun-running. The concerns raised by the Panel have been raised before in the UAE, and it is not clear that any serious action has been taken.

VI. OTHER ISSUES

A. The Role of Customs in Exporting and Transit Countries

237. In the case of the July and August 2000 deliveries of military helicopters and heavy calibre missiles, the Panel did not obtain conclusive information on the exact source of supply. In general, however, the Panel believes that initiatives should be taken to enhance the capacity of countries in Eastern Europe to monitor arms exports more carefully. It is hard to conceal something the size of an Mi-17 military helicopter, and the supply of such items to Liberia cannot go undetected by customs authorities in originating countries unless there are false flight plans and end-user certificates, or unless customs officials at points of exit are paid to look the other way. The constant involvement of Victor Bout's aircraft in arms shipments from Eastern Europe into African war zones suggests the latter. A serious investigation into the capacity of licensing and monitoring authorities in Eastern Europe is therefore warranted.

238. Where West Africa is concerned, any aircraft flying from Eastern Europe must make at least one fuel stop halfway through the trip. At these refuelling airports, cargo could be

inspected and illicit goods detected. In addition, arms shipments in violation of UN sanctions often pass through countries neighbouring the embargoed state. A third possible inspection of the cargo could occur there. There have been few significant cases, however, of aircraft with weapons being grounded in Eastern Europe, at important fuelling points such as Cairo, Nairobi or Entebbe, or anywhere in West Africa.

239. The strengthening of air surveillance or border controls alone is not enough to stop the problem of illicit arms flights. Coordination and feedback between any country of origin and any country of destination for international military cargo shipments is needed, and customs and airport authorities can play an equally important role in the implementation of sanctions. The World Customs Organisation has designed a standardised, single document that could harmonise and standardise the procedure for the declaration and inspection of cargo at border crossings, ports or airports.

B. The Role of Airport Authorities and Inspectors

240. Aircraft that land or ship cargo are obliged to file for a foreign operating licence. The directorate of each airport is responsible for inspecting the legitimacy of all arriving planes and their operators. Here are two possible levels of inspection that can be used to deter illegal arms shippers. The filing of false flight plans, the use of fake aircraft registration, and the background of a plane's operator can all be scrutinized at these levels. Some of the arms traffickers and the planes they use are well known.

241. The use of multiple registration numbers for one plane, or the changing overnight from one register to another is a practice that should be viewed with suspicion by airport authorities worldwide. Victor Bout and other operators transporting illicit goods have been able to get away with such practices in far too many countries. In a few cases he has attracted minor fines, but not enough to stop his lucrative alliances with warlords, rebel leaders and criminals in many African countries.

242. Although some countries have temporarily or permanently stopped aircraft registered in Liberia from entering their airspace, the Liberian register continues to be used fraudulently. The practice has clearly been organised from Liberia in cooperation with shrewd businessmen abroad, and Liberian planes remain prominent in many African countries, particularly in countries at war.

C. The Non-Observance of Moratoria and Embargoes

243. Signatories to the Wassenaar Arrangement, which includes some of the world's most significant producers of arms, including small arms and ammunition, have agreed on a voluntary basis to participate in weapons and ammunition export controls. The signatories also agreed to abide by the ECOWAS Moratorium, and to restrain their arms exports to the West Africa. The Panel deplores the fact that Ukraine, a signatory to the Wassenaar Arrangement, and Burkina Faso, a signatory to the ECOWAS Moratorium, have shown neither restraint nor due care and diligence in their arms transactions, and were involved in a major arms deal only months after signing these agreements. Furthermore, the arms were diverted to Liberia for use by the rebels in Sierra Leone, in gross violation of the spirit of the ECOWAS-Moratorium and of the United Nations Sanctions imposed on Liberia and Sierra Leone.

244. The ECOWAS Moratorium does not cover illicit trafficking. However from 30 November to 1 December 2000 a Ministerial Conference was held under the auspices of the

Organisation of African Unity, in Bamako, Mali. A declaration was adopted on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons. The signatories agreed to enhance the capacity of the OAU's member states to identify, seize and destroy illicit weapons and to put in place measures to control the circulation, possession, transfer and use of small arms and light weapons and the institutionalisation of training programmes to control and eradicate the circulation of illicit arms in Africa.

245. Military cargo should always be accompanied by an export licence, an end-user certificate, an airway bill, a pro-forma invoice and a cargo manifest, together with a detailed description of the items in the cargo. The revised 1996 Kyoto Convention on Customs is an adequate basis for this improved procedure, but the Convention awaits ratification and implementation of UN member states. A single globally-adapted document accompanying military cargo would provide customs officers or exporting, transiting and importing authorities with much greater clarity on the precise nature of the cargo, and the parties involved in the handling, shipping, facilitating or buying and selling the weaponry. As a first step, urgent ratification of the Convention by all UN member states is necessary.

D. Further Research

246. Financial assets are at the heart of all criminal enterprise. Lost workers and equipment can always be replaced if financial assets are not targeted. Because of time constraints, the Panel could not look into the assets of RUF leaders, their sponsors and the members of the organised crime groups that supply them. Further investigation is required to identify, trace, freeze and confiscate these assets.

247. Because of time constraints, the Panel was unable to fully investigate the original source (i.e. producing countries) of weapons that contravene the Security Council embargoes in question. As noted below (paragraph 251), one outstanding query involves an incident in Kazakhstan. Another involves a Moldova-based company named Renan.

248. On various occasions prior to the arrival of UNAMSIL in Sierra Leone, Nigerian ECOMOG troops lost weapons to the RUF when they fell victim to rebel ambushes. During the December 1998 siege of Kono, for example, the rebels captured a great number of ECOMOG weapons, including a number of armoured vehicles. In addition, however, the Panel heard an overwhelming number of reports on Nigerian ECOMOG troops exchanging weapons with the RUF for cash, diamonds, food or other goods. The information was considered reliable, but in order to verify or disprove these allegations, further investigation will be required.

249. During its work, the Panel obtained information on connections between the RUF and rebels in Guinea-Bissau, and with UNITA representatives in West Africa. The evidence, however, was not conclusive, and needs more research, preferably with cooperation from law enforcement and border control authorities in the region.

250. An accomplice of Victor Bout, a Russian citizen named Oleg Grigorovich Orlov, is the subject of a government investigation in Kazakhstan into the smuggling of two Mi-8T helicopters out of the country. According to the Government of Kazakhstan, Orlov is active in the arms markets of the Confederation of Independent States, Syria, Sri Lanka, Pakistan, North Korea and certain African countries, including Eritrea. He is associated with the following companies: Dunford-Avia Progress Ltd. (Cyprus), Global Omarus Technology Ltd. (lately renamed EMM Arab System Ltd. (Cyprus), Euroasian Financial Industry Group

(Singapore and Malaysia), Belmont Trading and Gulfstream. Further investigation of Orlov and his association with Victor Bout could shed light on an important source of illegal weapons flows into Africa.

251. On 7 December 2000 the panel was informed by Ugandan authorities that Ugandan Customs had recently seized a consignment of arms, believed to be destined for Monrovia. Ugandan authority had been granted for air transport of the consignment from Entebbe to Conakry for the use of the Guinean Ministry of Defence. The flight plan, however, showed that the real destination of the plane was Monrovia. Further information is expected.

VII. CONCLUSIONS REGARDING WEAPONS AND THE RUF

252. Liberia is actively breaking Security Council embargoes regarding weapons imports into its own territory and into Sierra Leone. It is being actively assisted by Burkina Faso. It is being tacitly assisted by all countries providing such weapons, by countries allowing weapons to pass through or over their territory without question, and by countries providing a base for the aircraft used in such operations.

253. The registration of aircraft in Liberia is clearly connected to illegal activities that go beyond the economic rationale for the offshore registration of aircraft or crews. The use of registrations bought in Liberia on an ad-hoc basis and for short periods, without inspection of the plane or its operators, is clearly intended to circumvent the identification of planes that are used for illicit purposes. Victor Bout, Sanjivan Ruprah, Leonid Minin and Sheik Abdullah bin Zayed bin Saqr al Nayhan are key to such illicit practices, in close collaboration with the highest authorities in Liberia.

254. In summary, the RUF is able to obtain large quantities of arms, military equipment and related *matériel* as a result of the following key factors:

- the purchasing power it derives from the sale of conflict diamonds;
- the willingness of some major arms producing countries to sell weapons with disregard as to the final users;
- the willingness of some countries to provide their end-user certificates and/or to facilitate the safe passage of weapons through their territory;
- the largely unregulated activity of international arms brokers and their intermediaries;
- corruption;
- the inability of Sierra Leone and its neighbours to monitor and control their airspace;
- Liberia's interest in destabilizing its neighbours.

VIII. RECOMMENDATIONS ON WEAPONS, TRANSPORT AND AIR TRAFFIC CONTROL

255. The Panel strongly recommends that all aircraft operating with an EL-registration number and based at airports other than in Liberia, should be grounded immediately, and until the provisions in the following recommendation are met.. This includes planes based in Sharjah and other airports in the United Arab Emirates, in The Congo Brazzaville, in the Democratic Republic of The Congo, Gabon, Angola, Rwanda and Kenya. Airport authorities and operators of planes registered in Liberia over the past five years should be advised to keep

all their documentation, log books, operating licences, way bills and cargo manifests for inspection.

256. It is further recommended that all operators of aircraft on the Liberian register, wherever they are based, be required to file their airworthiness and operating licences and their insurance documents with the International Civil Aviation Organization's headquarters in Montreal, including documentation on inspections carried out during the past five years. The aircraft of all operators failing to do so should be grounded permanently. Aircraft that do not meet ICAO standards should be grounded permanently.

257. The Security Council, through ICAO, IATA and the WCO should create a centralized information bulletin, making the list of grounded Liberian aircraft known to all airports in the world.

258. Burkina Faso has recently recommended that the UN Security Council supervise a proposed mechanism that would monitor all arms imports into its territory, and their use, for a period of three years. The Panel endorses this proposal. The Panel also recommends that under such a mechanism, all imports of weapons and related *matériel* into Burkina Faso over the past five years be investigated. The Panel further recommends that any state having exported weapons during this period to Burkina Faso should investigate the actual end-use of these weapons, and report their findings to the Security Council and to the Program for Coordination and Assistance for Security and Development (PCASED) established under the ECOWAS Moratorium.

259. In view of the sanctions-breaking cases investigated by the Panel and the information gathered in the region, it is recommended that the Security Council encourage the reinforcement of the ECOWAS Programme for Coordination and Assistance for Security and Development (PCASED) with support from Interpol and the World Customs Organisation. PCASED should have an active capacity to monitor compliance with arms embargoes and the circulation of illicit weapons in the region.

260. The Security Council should encourage ECOWAS member states to enter into binding regional arrangements between states with common frontier zones, to initiate an effective, common and internationally agreed system of control that includes the recording, licensing, collection and destruction of small arms and light weapons. These bilateral arrangements can be promoted and facilitated through ECOWAS and through the Programme for Coordination and Assistance for Security and Development. A common standard and the management of a database on significant cases of smuggling and sanctions busting in the region could be developed by Interpol. The IWETS (International Weapons and Explosives Tracking System) programme of Interpol could be used for the purpose of tracking the origin of the weaponry.

261. In this report, the Panel has identified certain arms brokers and intermediaries responsible for supplying weapons to the RUF. A project should be developed to profile these arms brokers with the cooperation of Interpol. Similarly, considering the importance of air transport in the sanctions busting, profiles of major cargo companies involved in such practices should be developed, with a view to exploring ways and means of further strengthening the implementation of sanctions.

262. Responsibility for the flood of weapons into West Africa lies with producing countries as well as those that trans-ship and use them. The Security Council must find ways of restricting the export of weapons, especially from eastern Europe, into conflict areas under regional or UN embargoes. 'Naming and shaming' is a first step, but consideration could be given to an

embargo on weapons exports from specific producer countries, just as diamonds have been embargoed from producer countries until internationally acceptable certification schemes have been developed.

263. Current Security Council arms embargoes should be amended to include a clear ban on the provision of military and paramilitary training.

264. Countries in West Africa that are not signatories to the 1989 UN Convention on the Recruitment, Use, Training and Financing of Mercenaries should be encouraged to do so.

265. An analysis of the firearms recovered from rebels should be undertaken in cooperation with Interpol, and its International Weapons and Explosives Tracking System. This would help in further identifying those involved in the RUF supply line.

266. The World Customs Organization should be asked to share with the Security Council its views on creating adequate measures for better monitoring and detection of weapons and related matériel to non-state actors and countries under an arms embargo.

267. Consideration should be given to the development of special training programs on sanctions monitoring for national law enforcement and security agencies, as well as airport and customs personnel in West Africa, and the development of a manual or manuals on the monitoring of sanctions at airports for worldwide use by airport authorities and police services.

268. Consideration should be given to placing specialised United Nations monitors at major airports in the region (and perhaps further afield), focussing on sensitive areas and coordinating their findings with other airports. This would enable better identification of suspect aircraft. It would also create a deterrent against illicit trafficking, and would generate the information needed to identify planes, owners and operators violating UN sanctions and arms embargoes.

269. The Security Council should consider ways in which air traffic control and surveillance in West Africa can be improved, with a view to curtailing the illicit movement of weapons. Possibilities include:

- encouraging the installation of primary radar at all major West African airports, and finding the financial support to do so. Only primary radar can independently detect the movement of aircraft;
- an alternative could be 'pseudo radar' which creates a radar environment with the use of powerful means of transmission of air/ground data through satellite;
- requiring the use in the region of a Global Positioning System and requiring aircraft to be equipped with the appropriate avionics, with installation of the corresponding equipment on the ground. This would entail requiring aircraft flying in West Africa to have on board or to be equipped with avionics which could enable controllers on the ground to identify any traffic, anywhere and at any time in their sector;
- encouraging ICAO and other interested agencies to assist states in reinforcing the financial autonomy of bodies established for the management of air navigation services.

IX. CONCLUDING RECOMMENDATIONS

270. In this report, the Panel has made a variety of specific recommendations that deal with diamonds, weapons and the use of aircraft for sanctions-busting and the movement of illicit weapons. Many of these recommendations and the problems they address are related to the primary supporter of the RUF, Liberia - its President, its government and the individuals and companies it does business with. The Panel notes with concern that Security Council resolutions on diamonds and weapons are being broken with impunity. In addition to the foregoing, the Panel offers the following recommendations.

271. A travel ban similar to that already imposed on senior Liberian officials and diplomats by the United States should be considered for application by all UN member nations until such time as Liberia's support to the RUF and its breaking of other UN sanctions ends conclusively.

272. The principals in Liberia's timber industry are involved in a variety of illicit activities, and large amounts of the proceeds are used to pay for extra-budgetary activities, including the acquisition of weapons. Consideration should be given to placing a temporary embargo on Liberian timber exports, until Liberia demonstrates convincingly that it is no longer involved in the trafficking of arms to, or diamonds from, Sierra Leone.

273. Consideration should be given to creating capacity within the UN Secretariat for on-going monitoring of Security Council sanctions and embargoes. This is imperative to the building of an in-house knowledge base on current issues such as conflict diamonds, as noted in paragraph 166 above, but it is even more important to creating awareness and capacity on problems, which are not likely to be solved in the near future, such as the illicit trade in weapons and related *matériel*.

PART THREE

A TECHNICAL NOTE ON AIR TRAFFIC CONTROL SYSTEMS IN WEST AFRICA

I. BACKGROUND

274. What follows is a technical paper on air traffic control systems in West Africa. Recommendations emanating from this part of the report have been included in the previous section.

275. First, a word on terminology: airspace is divided into lower and upper airspace and into Flight Information Regions (FIRs), which can, as required, encompass Terminal Control Areas (TMAs) or Upper Control Areas (UTAs).

276. An FIR is an airspace with specific dimensions, in which an information service and an alert service are provided. A TMA is a control area established, in principle, at airways crossroads, around one or several important aerodromes. West African airspace is managed either by agencies to which governments have delegated responsibility, or by state-managed administrations. These include the following:

- ASECNA (Agency for the Safety of Air Navigation in Africa and Madagascar) is in charge of the airspaces of Burkina Faso, Côte d'Ivoire, The Gambia, Guinea Bissau, Mali, Mauritania, Niger and Senegal;
- Guinea, Liberia and Sierra Leone have established the Roberts FIR to control their airspace;

- Ghana manages its airspace and that of Benin, Sao Tomé and Togo from the Accra FIR;
- Cape Verde has an extensive oceanic airspace called Sal FIR;
- Nigeria has divided its national airspace in two parts: the Kano FIR to the North and the Lagos FIR to the South.

277. The Panel agreed, for the purposes of this report, to review first the air traffic control systems in West Africa, and then the ones that prevail in the Roberts FIR and the countries under its jurisdiction. For reasons of timing and flight availability, the Panel's expert on the subject was unable to visit the centres in Abidjan, Lagos and Sal Island.

II. AIR TRAFFIC SYSTEMS IN WEST AFRICA

278. The Panel was pleased to note that, contrary to the situation elsewhere, FIRs in West Africa do not strictly follow the contours of national boundaries, and that the delimitation of these FIRs is generally in line with operational requirements.

279. The Panel also noted that the present airspace configuration was redefined to take into account the ICAO (International Civil Aviation Organization) recommendation, which requires states to implement area control as soon as possible, with a view to increasing air traffic safety. A lot remains to be done however, especially in Nigeria, Mali, Mauritania, Niger and elsewhere.

280. The layout of the airways, which transit the Region, connects major airports, or the radio navigational aids, which serve these airports. The heaviest traffic flows are the Gulf of Guinea (Abidjan-Accra-Lagos corridor), then the Dakar/Abidjan axis and the North-South traffic flow. The East-West traffic is less dense. The West African airspace is far from being congested.

B. Communications

281. The most frequently used means for Aeronautical Mobile Service (AMS - air/ground and air/air communications) is the High Frequency (HF), which has an extended range but presents drawbacks on reception, and the Very High Frequency (VHF), whose range is not extended, but which offers greater listening comfort. These technologies operate well on the whole. A study carried out by IATA on this subject in May 2000 shows, on the one hand, that the VHF is increasingly used and has considerably improved, both from the point of view of quality and availability, and that on the other hand, the HF is still the only available mean in several sectors.

282. In several countries in the Sub-region, the Single Sideband (SSB) is used to provide links between the main airport and the domestic airports.

283. The Aeronautical Fixed Service (AFS), which ensures the transmission of flight plans and other aeronautical messages between specific fixed points, operates fairly well, especially at main airports. Performance has been enhanced by the implementation of the SATCOM (Satellite Communications) Project developed by ICAO and financed by the European Development Fund. SATCOM, which uses VSAT (Very Small Aperture Terminal) technology, has facilitated the implementation of several fixed service and speech circuits in the Region. Many VSAT have been installed in the region, and there are other projects under implementation, especially in the vast airspaces managed by ASECNA.

284. The Fixed Service is often backed up, however, or replaced by the SITA (Société internationale de télécommunications aéronautiques) network, a private network generally used by airlines. The 97% availability threshold recommended by ICAO is often never reached.

285. As regards the ATS/DS (direct speech) circuits based on the use of the public telecommunications network, these seem to be operating better in the ASECNA area (Dakar/Bamako, Niamey/Ouaga, etc) because of the similarity of equipment, than they do outside that area (Bobo/Accra, Bamako/Roberts). These ATS/DS circuits enable two controllers working in adjacent centres to exchange traffic data. Usually, when the ATS/DS circuits do not work, controllers use the HF for the coordination. This practice is not recommended. In short, communications remain a weakness.

C. Navigation

286. The main navigational aids in the region operate fairly well. However, many of them have reached their age limit, especially the Instrument Landing Systems.

287. The VORs (VHF Omni-directional Radio Range), coupled or not with DMEs (Distance Measuring Equipment), are implemented in all international aerodromes and are generally operational. The same is true for the NDBs (Non-directional radio beacons), which are used nearly everywhere. All these ground facilities work towards providing safe navigation in the Region.

D. Surveillance

288. The use of radar is very rare in West Africa. The explanation given to the Panel is that ICAO recommends that states should use radar only if the situation really warrants it. If this is taken as a rule, it would apply only to the Gulf of Guinea States (Côte d'Ivoire, Ghana and Nigeria).

289. Thus Ghana has installed radar in Accra to cover the Western sector of its airspace. A project is presently underway which will enable Ghana to cover its entire airspace, including that of Benin and Togo. In Nigeria, the radar is being replaced. That of Abuja operates within a radius of 50 Nautical Miles.

290. A secondary radar system has been undergoing tests in Abidjan for the past few years. Its official commissioning has been delayed because of a problem between the government and ASECNA, the manager of the airspace. It has nonetheless proven very useful. As an example, the Panel was informed that a few hours after a recent takeoff from Accra, an aircraft heading west realized that its navigation instruments were no longer functioning. It therefore decided to land at Accra, its point of departure. Soon after, it was seen on the Abidjan radar screens heading north. The Ivorian controllers were able to guide it safely to its final destination.

291. The Panel was informed that, as part of a surveillance exercise, ASECNA had carried out Automatic Dependent Surveillance (ADS) trials, which had been positive. But for the past two or three years, ASECNA has stopped talking about them.

292. The CNS/ATM (Communication, Navigation, Surveillance/Air Traffic Management) implementation plan (1995-2005) provides for the installation an ADS in Dakar and in Sal Island to monitor the Oceanic FIRs.

293. The absence of radar is strongly felt and all the aeronautical and/or military authorities questioned by the Panel mentioned the problem. Authorities are frequently informed of violations of their airspace by pilots who come across illegal traffic. They are also aware that aircraft operators can operate with impunity in their sphere of sovereignty, without their knowledge. At times, it is local authorities or even local individuals who contact them to inform them of an overflight. The military admit that they do not have the means to intercept such traffic, a common practice elsewhere. Training and refresher course were also mentioned as a major requirement.

294. In spite of the absence of radar, West African air traffic services still provide the classic elements of control, which is to prevent collision between aircraft in the air and on the ground, and to speed up and regulate air traffic generally.

III. THE ROBERTS FIR

A. General

295. The Roberts FIR is a dismemberment of the Dakar FIR. It was established in January 1975 by Guinea, Liberia and Sierra Leone, which decided to manage their airspace jointly. The FIR was named after Roberts International Airport (also known as Robertsfield), which hosted the headquarters at its creation. The headquarters was transferred to Freetown in June 1990 because of the war in Liberia. It has been based in Conakry since June 1997 as a result of the war in Sierra Leone. The Panel also noted that whether in Robertsfield, Freetown or Conakry, the buildings, which have hosted the headquarters and its technical services, are not architectural models. In Conakry, for example, the building where the FIR administration is located is old, tiny and inaccessible. The Flight Information Centre (FIC) is not much better. It is located in a very narrow single room, and the control equipment is old. Everything in the centre dates from an earlier epoch. The controllers complain about unsuitable working conditions.

Air Traffic Management

296. The Roberts FIR TMA extends 40NM north of Conakry and 99NM south of Monrovia. It therefore encompasses the three airports, and VHF coverage is also provided. The most frequently flown airway is UB 600, which extends from Dakar to Abidjan. Domestic traffic in Guinea, Liberia and Sierra Leone is very low.

297. The Roberts Flight Information Centre is responsible for all overflights and takes charge of flights above 3,000 feet, after takeoff. Upon landing, it transfers traffic to the local control tower when the descending aircraft has reached about 4,000 feet.

298. The air traffic service authorities are aware of the existence of illegal transboundary traffic. They are informed by other pilots who fly in their airspace on the one hand, and by the supervisory authorities of the three countries, on the other.

Communications

299. The Roberts FIC operates a VHF which covers the entire TMA. It uses the HF for links with Freetown and Monrovia.

300. The ATS/DS system is operational with Dakar and Abidjan. An iridium satellite telephone is used with Bamako.

301. Only the Conakry VSAT is operational. Freetown VSAT is out of order. The AFS is not operational in the Roberts FIR.

Navigation

302. Navigational aids (ILS, VOR/DME, NDB) are available at the three airports, except at Roberts (Monrovia) where the VOR has been out of order for a very long time.

Surveillance

303. There is no radar in the Roberts FIR. However, the Panel noted that in the Air Navigation Plan for the African/Indian Ocean Region, the Roberts FIR included the installation of a radar.

B. Guinea

304. In Conakry, the Panel was informed of the following incident: on 10 November 2000, the crew of an Antonov 12, registered in Ukraine and chartered over a period of time by a Guinean airline, was carrying out maintenance work on the aircraft which had been grounded because of a contract dispute. The crew requested permission from the control tower to taxi, in order to test the engines. The authorization was granted. Soon thereafter, the aircraft took off and disappeared into the Guinean sky without a flight plan, without authorization and without answering numerous calls from the tower. It was only few hours later that the aircraft was reported to be on the ground at Freetown. This is a concrete example of what can happen at airports in the Region.

305. Guinean civil aviation authorities observe that their country is going through a difficult period, and they have taken measures to revise overflight and landing agreements. They have noted an increase in the number of requests for overflight and landing authorizations whose justification leaves much to be desired. While key staff in the Air Traffic Management field have been in the Roberts FIR since its creation, they badly need training in the field of CNS/ATM.

306. Many domestic airports in Guinea are closed to public air traffic due to a lack of passengers or aircraft. Most of the equipment at domestic airports is very old. Where surveillance is concerned, civil aviation authorities note the concern of the Interior Ministry and the Ministry of Defence, and they mention letters from these Ministries informing them of cases of unauthorized overflight. (A copy of one of these letters is attached to this report as Annex 4).

307. The DCA is aware of the presence of small aircraft and helicopters operating near national borders. It also recognizes the existence of several landing strips, either authorized or not. Some are used by the Office of the United Nations High Commissioner for Refugees and World Food Programme.

308. The Panel was authorized to visit a domestic airport, namely the Nzerekore Airport, near the borders with Côte d'Ivoire and Liberia. An NDB is available. The airport is not fenced. The only communications means available at this airport is the common frequency with the other airports, including Freetown and Monrovia.

C. Sierra Leone

309. During discussions with the Panel, the civil aviation authorities of Sierra Leone stressed that military flights in general and Nigerian military flights in particular do not follow air

traffic instructions. They do whatever they want in Sierra Leonean airspace. The authorities deplore the absence of radar, which would enable them to know what these military flights actually do on the one hand, and on the other, to detect illegal overflights. They also lack the means to detect weapons and dangerous objects at the airport. Lack of training is also mentioned as a problem.

310. The authorities expressed concern about airports being open to public air traffic without technical personnel, and of them being used for unauthorized private flights. Where Freetown is concerned, they have made arrangements to act in case of unauthorized landing, for example, by requesting fire-fighting trucks to block the runway and informing the appropriate authorities. They gave the Panel a memorandum, copy of which is attached to this report (as Annex 5). The Panel noted a large number of aircraft and helicopters in the public parking lot on the one hand, and the absence of airport security measures, as well as the absence of a fence, on the other. Virtually everything in the field of civil aviation needs to be done or redone in Sierra Leone.

D. Liberia

311. The Panel met with President Charles Taylor and found him to be aware of the shortcomings and deficiencies faced by Roberts International Airport, which only a few years ago, was a very dynamic air traffic control centre. He was concerned by the lack of resources to control his airspace and he said that he had personally approached the United Nations for assistance in acquiring the equipment necessary for effective management of the airport. His request, he said, had yielded no result. Asked about the priority he would give between the acquisition of military equipment and the acquisition of means to improve his airport, he chose the airport.

312. The day before this discussion, the Panel visited Roberts International Airport, which is gradually resuming activity. The airport has many burned out and tumbledown buildings, a consequence of the war. As in Conakry and Freetown, the activities of the control tower are limited to takeoffs and landings. However unlike Conakry and Freetown, there is no link between Robertsfield and the domestic airports of the hinterland, and there is no telephone.

313. The authorities say that they do not have the means to take inventories or to inspect domestic airports. As regards military flights, the air traffic services are not involved in their movements. A separate sector is allocated to them.

IV. CONCLUSIONS

314. As noted in previous sections of this report, major shortcomings and deficiencies are obvious in the Roberts FIR and its constituent states in particular, as well as in the other West African FIRs in general. The civil aviation community is aware of this situation, and recommendations and conclusions have been adopted at technical meetings organized by ICAO on this subject. The problem is a lack of resources, despite the existence of more or less autonomous administrations set up to manage airports and air navigation services.

315. Training is a basic requirement in all centres. And finally, it is essential that each country in the region have the ability to identify aircraft operating in its airspace.

ANNEX 1 - LETTER DATED 2 AUGUST 2000 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to refer to resolution 1306 (2000), adopted by the Security Council on 5 July 2000, concerning Sierra Leone. In paragraph 19 of that resolution, the Council requested that, after consultation with the Security Council Committee established pursuant to resolution 1132 (1997), I establish a panel of experts composed of up to five members, for an initial period of four months from its effective entry into operation, to collect information on possible violations of the measures imposed by paragraph 2 of resolution 1171 (1998) and the link between trade in diamonds and trade in arms and related materiel, and to consider the adequacy of air traffic control systems in the region.

Accordingly, following consultations with the Committee, I wish to inform you that I have appointed the following five experts:

Mr. Martin Chungong Ayafor (Cameroon)
 Mr. Ian Smillie ((Canada), diamond expert)
 Mr. Johan Peleman ((Belgium), expert on arms and transportation)
 Mr. Harjit Singh Sandhu ((India), expert from Interpol)
 Mr. Atabou Bodian ((Senegal), expert from the International Civil Aviation Organization)

I have also selected Mr. Martin Chungong Ayafor (Cameroon) to chair the panel of experts.

(Signed) Kofi A. Annan

ANNEX 2 - MEETINGS AND CONSULTATIONS

BELGIUM

Government

Ministry of Foreign Affairs
 Cabinet of Development Cooperation
 Ministry of Economic Affairs
 Ministry of Finance (Customs)
 Cabinet of the Secretary of State for Foreign Trade
 Diamond Office
 Diamond High Council (Hoge Raad voor Diamant)

Private Sector

Mackie Diamonds
 Omega Diamonds
 Rapaport Belgium
 Talib Diamonds

Civil Society

Private Sector

Diamond Counsellor International
 Mackie Diamonds
 Sar-Kuma Mining Co. Ltd.
 Rex Diamonds
 Sierra Leone Airports Authority
 Several diamond dealers in Kenema

Diplomatic, Bilateral and Multilateral Agencies

UN Special Representative of the Secretary General
 UNAMSIL

- officers and officials in Daru
- a wide range of officers and officials in Freetown

International Peace Information Service (IPIS) UNV (United Nations Volunteers)

BURKINA FASO

Government

Ministry of Foreign Affairs
Ministry of Energy and Mines
Ministry of Commerce, Industry and Trade
Customs and Excise
National Police
Ministry of Transport
Ministry of Defence
Representatives of the Armed Forces

Civil Society

Mouvement Burkinabe des Droits de l'Homme et des Peuples

Private Sector

Chamber of Commerce

Diplomatic, Bilateral & Multilateral Agencies

France
United States
Agence pour la Sécurité de la Navigation en Afrique et à Madagascar (ASECNA)
UNDP

CANADA

Department of Foreign Affairs and International Trade
International Civil Aviation Organisation (ICAO)

COTE D'IVOIRE

Modern Africa Fund Managers
BBC

FRANCE

Several Panel members visited Interpol Headquarters in Lyon. Discussions were also held with the Police Attaché in the Paris Embassy of Israel, and the Deputy Air Attaché in the Embassy of India

GHANA

Government

Ministry of Roads and Transport
Civil Aviation Authority

United Kingdom
United States

Civil Society

Campaign for Good Governance
Human Rights Watch
Network Movement for Justice and Development
Oxfam GB
Search for Common Ground
Sierra Leone Muslim Congress
Various Chiefs and Elders from Kono District
Civil Defence Force (Kamajor) leaders in Kenema and Daru

Media

BBC
CBS News
NHK Japan Broadcasting Corporation

SOUTH AFRICA

Government

Ministry of Foreign Affairs
Ministry of Justice
South African Diamond Board
Civil Aviation Authority

Private Sector

Executive Research Associates
Landmat
Lanseria Airport
Raymond Kramer & Associates

Diplomatic, Bilateral and Multilateral Agencies

UNDP
United Kingdom
United States

Civil Society

Institute for Security Studies
Institute for Global Dialogue
South African Institute for International Affairs

Media

Sunday Independent
Khareen Pech

Other

Aviation Security
Air Traffic Services

Diplomatic, Bilateral and Multilateral Agencies
UNDP

GUINEA

Government

Ministère des Mines, de la Géologie et de l'Environnement
Direction Nationale de l'Aviation Civile
Agence Nationale de la Navigation Aérienne

Diplomatic, Bilateral and Multilateral Agencies

Canada
France
Ukraine
United Kingdom
World Bank
Office of Roberts Flight Information Region (FIR)
UNDP

Private Sector

Société de Gestion de l'Aéroport de Conakry

INDIA

Government

Ministry of Foreign Affairs
Ministry of Commerce
Customs and Central Excise Department
Airport and Customs Officials, Mumbai (Bombay)

Diplomatic, Bilateral and Multilateral Agencies

UNDP

Private Sector

Gem and Jewellery Export Promotion Council of India

Media

The Hindu
Indian Express

ISRAEL

Government

Participation in Inter-ministerial Meeting on Conflict Diamonds gave Panel members access to a wide range of government and private sector firms from Africa, Europe, Israel and North America. The Panel also participated in an Air Transport Sector Workshop: Controlling the Movement of Illicit Goods, attended by a wide range of experts from civil aviation and South Africa agencies, including the National Anti-Corruption Unit, Air Traffic and Navigation Services and the National Inter-Departmental Structure. The workshop was organised by Saferworld (U.K.) and the Institute for Security Studies in Pretoria

SPAIN

Meeting with police officials, Madrid.

SWITZERLAND

Government

Federal Department of Foreign Affairs (UN & International Organisations; Financial & Economic Affairs)
Federal Customs Administration (Berne)
Federal Customs Administration (Geneva Free Port)
State Secretariat for Economic Affairs
Federal Office for Police Matters (Money Laundering Reporting Office NCO Division)

Private Sector

Acal Amit S.A.
HSB Republic Bank (Suisse) S.A.
Bucher & Co. Publikationen
TAG Aviation

Civil Society

Small Arms Survey

Other

United Nations Institute for Disarmament Research

UKRAINE

Government

Ministry of Foreign Affairs
State Security Service
National Security Directorate

Ministry of Foreign Affairs
Ministry of Industry and Trade: Diamonds,
Precious Stones & Jewellery Administration

Private Sector

Israel Diamond Exchange
Israel Diamond Manufacturers Association
Tacy Ltd.

Media

Market Direct Business Communications
Pazit Ravina

KENYA

African Airlines Association
International Air Transport Association
(IATA)
International Civil Aviation Organization
(East & Southern Africa Regional Office)
UNDP

LIBERIA

Government

President Charles Taylor
Ministry of Foreign Affairs
Ministry of Lands, Mines & Energy
Ministry of Planning & Economic Affairs
Ministry of Transport
Ministry of Revenue
Ministry of Defence
Ministry of Justice
Ministry of Finance, Bureau of Customs &
Excise
Ministry of Commerce and Industry
Liberian Police
Roberts International Airport

Private Sector

Mr. George Haddad
Mars Diamonds

Diplomatic, Bilateral and Multilateral Agencies

European Union
Sierra Leone
UNDP
United Kingdom
United States

Civil Society

Border Control Authority
Civil Aviation Authority
Ministry of Defence
National Security Directorate
Ukrspetsexport

Diplomatic, Bilateral and Multilateral Agencies

UNDP

UNITED ARAB EMIRATES

Civil Aviation Authorities
Customs and diamond officials in Sharjah
A visit was also made to Sharjah airport.

UNITED KINGDOM

Government

Foreign and Commonwealth Office

- Minister of State
- United Nations Department
- Africa Department
- Sanctions Unit
- Arms Control Unit
- Department for International
Development
- Metropolitan Police Service
- HM Customs & Excise

Private Sector

De Beers
Anaconda Worldwide Ltd.
WWW International Diamond Consultants
Ltd.
M. Vainer Ltd.

Civil Society

Amnesty International
Global Witness
International Alert
Human Rights Watch

Media

Financial Times
Basel Magazine

Centre for Democratic Empowerment
Liberian Interfaith Council
Liberian National Bar Association
Susuku

Media

BBC
The Enquirer
The News

NIGER

Government

Ministry of Foreign Affairs
Ministry of Transport
Civil Aviation Authority

Diplomatic, Bilateral and Multilateral Agencies

Agence pour la Sécurité de la Navigation en
Afrique et à Madagascar (ASECNA)
UNDP

MALI

Civil Aviation Authority
L'Agence pour la Sécurité de la Navigation en
Afrique et à Madagascar (ASECNA)
UNDP

NIGERIA

ECOWAS
UNDP officials in Abuja

SENEGAL

ICAO (West & Central Africa Regional
Bureau)

SIERRA LEONE

Government

Ministry of Foreign Affairs
Ministry of Mineral Resources (in Freetown
and Kenema)
Ministry of Trade
Ministry of Justice
Customs and Excise
Port Authority
Airports Authority
Government Gold and Diamond Office
National Security Advisor

Insight News Television
Africa Confidential
Thomas Brian-Johnson

THE UNITED STATES

Government

Department of State
Defence Intelligence Agency
Department of National Intelligence
USAID

Private Sector

World Diamond Council
Rapaport Diamonds

Diplomatic, Bilateral and Multilateral Agencies

Sierra Leone Embassy
Missions to the United Nations:

- Bangladesh
- Belgium
- Canada
- France
- India
- Kazakhstan
- Sierra Leone
- Switzerland
- Uganda
- United Kingdom
- United States

Media

Sebastian Junger
Teun Voeten
The Perspective

INDIVIDUALS

A number of individuals have played a key part in some of the events noted in this report, or have been mentioned in that connection in

Sierra Leone Police (several agencies)
Sierra Leone Army
Sierra Leone Air Wing

media reports. The Panel was grateful to several who agreed to be interviewed:

Andrei Bressler
John Caldwell
Roger Crooks
Omrie Golley
Michael Harridine
Nicholas Karras
Ya'ir Klein
Johnny Paul Koroma
Raymond Kramer
Ze'ev Morgenstern
Richard Ratcliffe
Fred Rindel
Niko Schefer

Note: Given the sensitive nature of the subjects being investigated by the Panel, many individuals spoke under conditions of confidentiality. Several interviews have therefore not been noted.

ANNEX 3 - KEY FIGURES IN THE RUF

Many of the RUF leaders have been given, or have given themselves high-ranking military titles and nicknames or aliases. As many of them are known mainly by the latter, the report has occasionally used these as well as real names, where known. The following are some of the main RUF leaders.

Foday Saybana Sankoh, Chairman of the RUF; currently in prison in Sierra Leone

General Issa H. Sesay, formerly Brigadier, then Battlefield Commander; currently Interim Head of the RUF

Brigadier-General Maurice Kallon; currently heading the northern axis of the RUF

Brigadier Dennis Mingo (alias 'Superman'), Battle Group Commander, latterly Battle Commander, Lunsar Axis; currently fighting with the RUF

Lt. Col. Gibril Massaquoi, latterly Foday Sankoh's personal assistant; currently acting as RUF Spokesman behind RUF lines

Major-General Sam Bockarie (alias 'Mosquito'), former Battle Group Commander and 'High Command'; currently in exile in Liberia

Colonel Boston Flamoh or Flomoh (alias 'Rambo'); killed by RUF comrades in Makeni

Brigadier Mike Lamin, formerly Chief Intelligence Officer; Minister of Trade and Industries

until May 2000; currently in prison in Freetown

Eldred Collins, Public Relations Officer, RUF Party; currently in prison in Freetown

General Ibrahim Bah, a Burkinabe, possibly of Gambian origin; senior logistics expert in the movement of weapons and diamonds between Burkina Faso, Liberia and Sierra Leone. Also known as Ibrahima Baldé and Baldé Ibrahima.

ANNEX 5 - LIST OF PROBLEMS AND RECOMMENDATIONS PROVIDED BY THE SIERRA LEONE PORTS AUTHORITY

Drawbacks in Detecting Diamonds and Arms Smuggling Through the Airports

1. No equipment available to detect diamonds or arms.
2. Security personnel screening passengers not properly trained in diamonds and arms detection.
3. Coordination between various security agencies, viz: airport security, police, UNAMSIL, SLA etc. very inadequate and the sheer numbers represented make the process counter-productive
4. Social aspects of state security personnel exposes them to temptation; e.g. very low salaries and allowances, poor IQs, poor education, little exposure, etc.
5. VIP protocol and escort extended by state security personnel to too many classes of people, e.g. ministers, parliamentarians, judges, army and police officers, corporate executives, diplomats, etc.
6. Poor integrity of many state security and customs personnel, who use the privilege of their position to directly facilitate smuggling for personal benefit.
7. No facilities for detecting unauthorized aircraft landing elsewhere other than Lungi and Hastings airports.
8. Direct disloyalty of some state security and customs personnel who intentionally facilitate smuggling in order to promote the course of saboteurs and dissidents of the government.


Recommendations

1. To strengthen the aspect of coordination and control by the SLAA through the provision of equipment such as:
 - a) X-ray baggage screening equipment (high resolutions) for both Lungi and Hastings Airports;
 - b) Surveillance radar equipment at Lungi Airport with a coverage of low altitudes;
 - c) Air-to-ground and ground-to-ground state-of-the-art VHF and HF communication equipment to be installed at Lungi, Hastings, Bo and Kenema Airports;

- d) Appropriate training of SLAA personnel in Security, ATC and operations management.
- 2. To properly screen all state security and customs personnel deployed at the airport to ensure integrity, loyalty, education, intelligence and character.
- 3. To provide induction courses and appropriate training for all state security and customs personnel on the detection of diamonds, arms, laws relating to international smuggling, etc.
- 4. Substantially improve the remuneration of all personnel charged with the responsibility of screening passengers.
- 5. To desist from all VIP protocol except for persons using the Presidential Lounge and the heads of diplomatic mission only.
- 6. To improve coordination and the exchange of information between various security agencies.
- 7. To reduce the over-abundance of state security personnel deployed in passenger screening processes and to limit it to a small and well-trained core.
- 8. To impose stiff penalties of jail terms without any option of a fine, for persons convicted of smuggling or facilitating smuggling through action or omission.

001

SCSL-2003-01-I
7 MARCH 2003

 1548
27 MAR 2003
17.00 hrs.

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL - 03 - I

THE PROSECUTOR

Against

CHARLES GHANKAY TAYLOR also known as
CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR



INDICTMENT

The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute) charges:

CHARLES GHANKAY TAYLOR also known as
(aka) CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR

with **CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II and OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW**, in violation of Articles 2, 3 and 4 of the Statute as set forth below:

THE ACCUSED

1. **CHARLES GHANKAY TAYLOR aka CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR (the ACCUSED)** was born on or about 28 January 1948 at Arthington in the Republic of Liberia.



GENERAL ALLEGATIONS

2. At all times relevant to this Indictment, a state of armed conflict existed within Sierra Leone. For the purposes of this Indictment, organized armed factions involved in this conflict included the Revolutionary United Front (RUF), the Civil Defence Forces (CDF) and the Armed Forces Revolutionary Council (AFRC).
3. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.
4. The organized armed group that became known as the RUF, led by FODAY SAYBANA SANKOH aka POPAY aka PAPA aka PA, was founded about 1988 or 1989 in Libya. The RUF, under the leadership of FODAY SAYBANA SANKOH, began organized armed operations in Sierra Leone in March 1991. During the ensuing armed conflict, the RUF forces were also referred to as "RUF", "rebels" and "People's Army".
5. The CDF was comprised of Sierra Leonean traditional hunters, including the Kamajors, Gbethis, Kapras, Tamaboros and Donsos. The CDF fought against the RUF and AFRC.
6. On 30 November 1996, in Abidjan, Ivory Coast, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement which brought a temporary cessation to active hostilities. Thereafter, the active hostilities recommenced.
7. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of the Republic of Sierra Leone via a coup d'état on 25 May 1997. Soldiers of the Sierra Leone Army (SLA) comprised the majority of the AFRC membership. On that date JOHNNY PAUL KOROMA aka JPK became the leader and Chairman of the AFRC. The AFRC forces were also referred to as "Junta", "soldiers", "SLA", and "ex-SLA".
8. Shortly after the AFRC seized power, at the invitation of JOHNNY PAUL KOROMA, and upon the order of FODAY SAYBANA SANKOH, leader of the RUF, the RUF joined with the AFRC. The AFRC and RUF acted jointly thereafter. The AFRC/RUF

Junta forces (Junta) were also referred to as “Junta”, “rebels”, “soldiers”, “SLA”, “ex-SLA” and “People’s Army”.

9. After the 25 May 1997 coup d’état, a governing body, the Supreme Council, was created within the Junta. The governing body included leaders of both the AFRC and RUF.
10. The Junta was forced from power by forces acting on behalf of the ousted government of President Kabbah about 14 February 1998. President Kabbah’s government returned in March 1998. After the Junta was removed from power the AFRC/RUF alliance continued.
11. On 7 July 1999, in Lomé, Togo, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement. However, active hostilities continued.
12. The **ACCUSED** and all members of the organized armed factions engaged in fighting within Sierra Leone were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986.
13. All offences alleged herein were committed within the territory of Sierra Leone after 30 November 1996.
14. All acts and omissions charged herein as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.
15. The words civilian or civilian population used in this Indictment refer to persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities.

INDIVIDUAL CRIMINAL RESPONSIBILITY

16. Paragraphs 1 through 15 are incorporated by reference.

17. In the late 1980's **CHARLES GHANKAY TAYLOR** received military training in Libya from representatives of the Government of MU'AMMAR AL-QADHAFI. While in Libya the **ACCUSED** met and made common cause with FODAY SAYBANA SANKOH.
18. While in Libya, the **ACCUSED** formed or joined the National Patriotic Front of Liberia (NPFL). At all times relevant to this Indictment the **ACCUSED** was the leader of the NPFL and/or the President of the Republic of Liberia.
19. In December 1989 the NPFL, led by the **ACCUSED**, began conducting organized armed attacks in Liberia. The **ACCUSED** and the NPFL were assisted in these attacks by FODAY SAYBANA SANKOH and his followers.
20. To obtain access to the mineral wealth of the Republic of Sierra Leone, in particular the diamond wealth of Sierra Leone, and to destabilize the State, the **ACCUSED** provided financial support, military training, personnel, arms, ammunition and other support and encouragement to the RUF, led by FODAY SAYBANA SANKOH, in preparation for RUF armed action in the Republic of Sierra Leone, and during the subsequent armed conflict in Sierra Leone.
21. Throughout the course of the armed conflict in Sierra Leone, the RUF and the AFRC/RUF alliance, under the authority, command and control of FODAY SAYBANA SANKOH, JOHNNY PAUL KOROMA and other leaders of the RUF, AFRC and AFRC/RUF alliance, engaged in notorious, widespread or systematic attacks against the civilian population of Sierra Leone.
22. At all times relevant to this Indictment, **CHARLES GHANKAY TAYLOR** supported and encouraged all actions of the RUF and AFRC/RUF alliance, and acted in concert with FODAY SAYBANA SANKOH and other leaders of the RUF and AFRC/RUF alliance. FODAY SAYBANA SANKOH was incarcerated in Nigeria and Sierra Leone and subjected to restricted movement in Sierra Leone from about March 1997 until about April 1999. During this time the **ACCUSED**, in concert with FODAY SAYBANA SANKOH, provided guidance and direction to the RUF, including SAM BOCKARIE aka MOSQUITO aka MASKITA.

23. The RUF and the AFRC shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be provided to persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise.
24. The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimize resistance to their geographic control, and to use members of the population to provide support to the members of the joint criminal enterprise. The crimes alleged in this Indictment, including unlawful killings, abductions, forced labour, physical and sexual violence, use of child soldiers, looting and burning of civilian structures, were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise.
25. The **ACCUSED** participated in this joint criminal enterprise as part of his continuing efforts to gain access to the mineral wealth of Sierra Leone and to destabilize the Government of Sierra Leone.
26. **CHARLES GHANKAY TAYLOR**, by his acts or omissions, is individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes the **ACCUSED** planned, instigated, ordered, committed or in whose planning, preparation or execution the **ACCUSED** otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which the **ACCUSED** participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which the **ACCUSED** participated.
27. In addition, or alternatively, pursuant to Article 6.3. of the Statute, **CHARLES GHANKAY TAYLOR**, while holding positions of superior responsibility and exercising command and control over his subordinates, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. The **ACCUSED** is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so

and the **ACCUSED** failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

CHARGES

28. Paragraphs 16 through 27 are incorporated by reference.
29. At all times relevant to this Indictment, members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF), supported and encouraged by, acting in concert with and/or subordinate to **CHARLES GHANKAY TAYLOR**, conducted armed attacks throughout the territory of the Republic of Sierra Leone, including, but not limited, to Bo, Kono, Kenema, Bombali and Kailahun Districts and Freetown. Targets of the armed attacks included civilians and humanitarian assistance personnel and peacekeepers assigned to the United Nations Mission in Sierra Leone (UNAMSIL), which had been created by United Nations Security Council Resolution 1270 (1999).
30. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property.
31. As part of the campaign of terror and punishment the AFRC/RUF routinely captured and abducted members of the civilian population. Captured women and girls were raped; many of them were abducted and used as sex slaves and as forced labour. Some of these women and girls were held captive for years. Men and boys who were abducted were also used as forced labour; some of them were also held captive for years. Many abducted boys and girls were given combat training and used in active fighting. AFRC/RUF also physically mutilated men, women and children, including amputating their hands or feet and carving “AFRC” and “RUF” on their bodies.

**COUNTS 1 – 2: TERRORIZING THE CIVILIAN POPULATION AND
COLLECTIVE PUNISHMENTS**

32. Members of the AFRC/RUF supported and encouraged by, acting in concert with and/or subordinate to **CHARLES GHANKAY TAYLOR** committed the crimes set forth below in paragraphs 33 through 58 and charged in Counts 3 through 13, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 1: Acts of Terrorism, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.d. of the Statute;

And:

Count 2: Collective Punishments, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.b. of the Statute.

COUNTS 3 – 5: UNLAWFUL KILLINGS

33. Victims were routinely shot, hacked to death and burned to death. Unlawful killings included, but were not limited to, the following:

Bo District

34. Between 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembahun, Gerihun and Mamboma, unlawfully killing an unknown number of civilians;

Kenema District

35. Between about 25 May 1997 and about 19 February 1998, in locations including Kenema town, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Kono District

36. About mid February 1998, AFRC/RUF fleeing from Freetown arrived in Kono District. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF unlawfully killed several hundred civilians in various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya;

Bombali District

37. Between about 1 May 1998 and 31 July 1998, in locations including Karina, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Freetown

38. Between 6 January 1999 and 31 January 1999, AFRC/RUF conducted armed attacks throughout the city of Freetown. These attacks included large scale unlawful killings of civilian men, women and children at locations throughout the city, including the State House, Parliament building, Connaught Hospital, and the Kissy, Fourah Bay, Ugun, Calaba Town and Tower Hill areas of the city.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 3: Extermination, a **CRIME AGAINST HUMANITY**, punishable under Article 2.b. of the Statute;

In addition, or in the alternative:

Count 4: Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

Count 5: Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute.

COUNTS 6 – 8: SEXUAL VIOLENCE

39. Widespread sexual violence committed against civilian women and girls included brutal rapes, often by multiple rapists. Acts of sexual violence included, but were not limited to, the following:

Kono District

40. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF raped hundreds of women and girls at various locations throughout the District, including Koidu, Tombodu, Kissi-town (or Kissi Town), Foendor (or Foendu), Tomendeh, Fokoiya, Wonedu and AFRC/RUF camps such as “Superman camp” and Kissi-town (or Kissi Town) camp. An unknown number of women and girls were abducted from various locations within the District and used as sex slaves;

Bombali District

41. Between about 1 May 1998 and 31 July 1998, members of AFRC/RUF raped an unknown number of women and girls in locations such as Mandaha. In addition, an unknown number of abducted women and girls were used as sex slaves;

Kailahun District

42. At all times relevant to this Indictment, an unknown number of women and girls in various locations in the District were subjected to sexual violence. Many of these victims were captured in other areas of the Republic of Sierra Leone, brought to AFRC/RUF camps in the District, and used as sex slaves;

Freetown

43. Between 6 January 1999 and 31 January 1999, members of AFRC/RUF raped hundreds of women and girls throughout the Freetown area, and abducted hundreds of women and girls and used them as sex slaves.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 6: Rape, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

And:

Count 7: Sexual slavery and any other form of sexual violence, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

In addition, or in the alternative:

Count 8: Outrages upon personal dignity, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.e. of the Statute.

COUNTS 9 – 10: PHYSICAL VIOLENCE

44. Widespread physical violence, including mutilations, was committed against civilians. Victims were often brought to a central location where mutilations were carried out. These acts of physical violence included, but were not limited to, the following:

Kono District

45. Between about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Tombodu, Kaima (or Kayima) and Wonedu. The mutilations included cutting off limbs and carving “AFRC” and “RUF” on the bodies of the civilians;

Freetown

46. Between 6 January 1999 and 31 January 1999, AFRC/RUF mutilated an unknown number of civilian men, women and children in various areas of Freetown, including the northern and eastern areas of the city, and the Kissy area, including the Kissy mental hospital. The mutilations included cutting off limbs.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 9: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

Count 10: Other inhumane acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.i. of the Statute.

COUNT 11: USE OF CHILD SOLDIERS

47. At all times relevant to this Indictment, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 11: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute.



COUNT 12: ABDUCTIONS AND FORCED LABOUR

48. At all times relevant to this Indictment, AFRC/RUF engaged in widespread and large scale abductions of civilians and use of civilians as forced labour. Forced labour included domestic labour and use as diamond miners. The abductions and forced labour included, but were not limited to, the following:

Kenema District

49. Between about 1 August 1997 and about 31 January 1998, AFRC/RUF forced an unknown number of civilians living in the District to mine for diamonds at Cyborg Pit in Tongo Field;

Kono District

50. Between about 14 February 1998 and 30 June 1998, AFRC/RUF forces abducted hundreds of civilian men, women and children, and took them to various locations outside the District, or to locations within the District such as AFRC/RUF camps, Tombodu, Koidu, Wondedu, Tomendeh. At these locations the civilians were used as forced labour, including domestic labour and as diamond miners in the Tombodu area;

Bombali District

51. Between about 1 May 1998 and 31 July 1998, in Bombali District, AFRC/RUF abducted an unknown number of civilians and used them as forced labour;

Kailahun District

52. At all times relevant to this Indictment, captured civilian men, women and children were brought to various locations within the District and used as forced labour;

Freetown

53. Between 6 January 1999 and 31 January 1999, in particular as the AFRC/RUF were being driven out of Freetown, the AFRC/RUF abducted hundreds of civilians, including a large number of children, from various areas within Freetown, including Peacock Farm and Calaba Town. These abducted civilians were used as forced labour.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 12: Enslavement, a **CRIME AGAINST HUMANITY**, punishable under Article 2.c. of the Statute.

COUNT 13: LOOTING AND BURNING

54. At all times relevant to this Indictment, AFRC/RUF engaged in widespread unlawful taking and destruction by burning of civilian property. This looting and burning included, but was not limited to, the following:

Bo District

55. Between 1 June 1997 and 30 June 1997, AFRC/RUF forces looted and burned an unknown number of civilian houses in Telu, Sembehun, Mamboma and Tikonko;

Kono District

56. Between about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning in various locations in the District, including Tombodu, Foindu and Yardu Sando, where virtually every home in the village was looted and burned;

Bombali District

57. Between 1 March 1998 and 30 June 1998, AFRC/RUF forces burned an unknown number of civilian buildings in locations such as Karina;

Freetown

58. Between 6 January 1999 and 31 January 1999, AFRC/RUF forces engaged in widespread looting and burning throughout Freetown. The majority of houses that were destroyed were in the areas of Kissy and eastern Freetown; other locations included the Fourah Bay, Upgun, State House and Pademba Road areas of the city.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 13: Pillage, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.f. of the Statute.

COUNTS 14 – 17: ATTACKS ON UNAMSIL PERSONNEL

59. Between about 15 April 2000 and about 15 September 2000, AFRC/RUF engaged in widespread attacks against UNAMSIL peacekeepers and humanitarian assistance workers within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko, and Kono Districts. These attacks included unlawful killing of UNAMSIL peacekeepers, and abducting hundreds of peacekeepers and humanitarian assistance workers who were then held hostage.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 14: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.b. of the Statute;

In addition, or in the alternative:

Count 15: For the unlawful killings, Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

Count 16: Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

Count 17: For the abductions and holding as hostage, Taking of hostages, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.c. of the Statute.

Dated this 3rd day of March 2003

Freetown, Sierra Leone

A large, stylized handwritten signature in black ink, appearing to read "David M. Crane".

David M. Crane

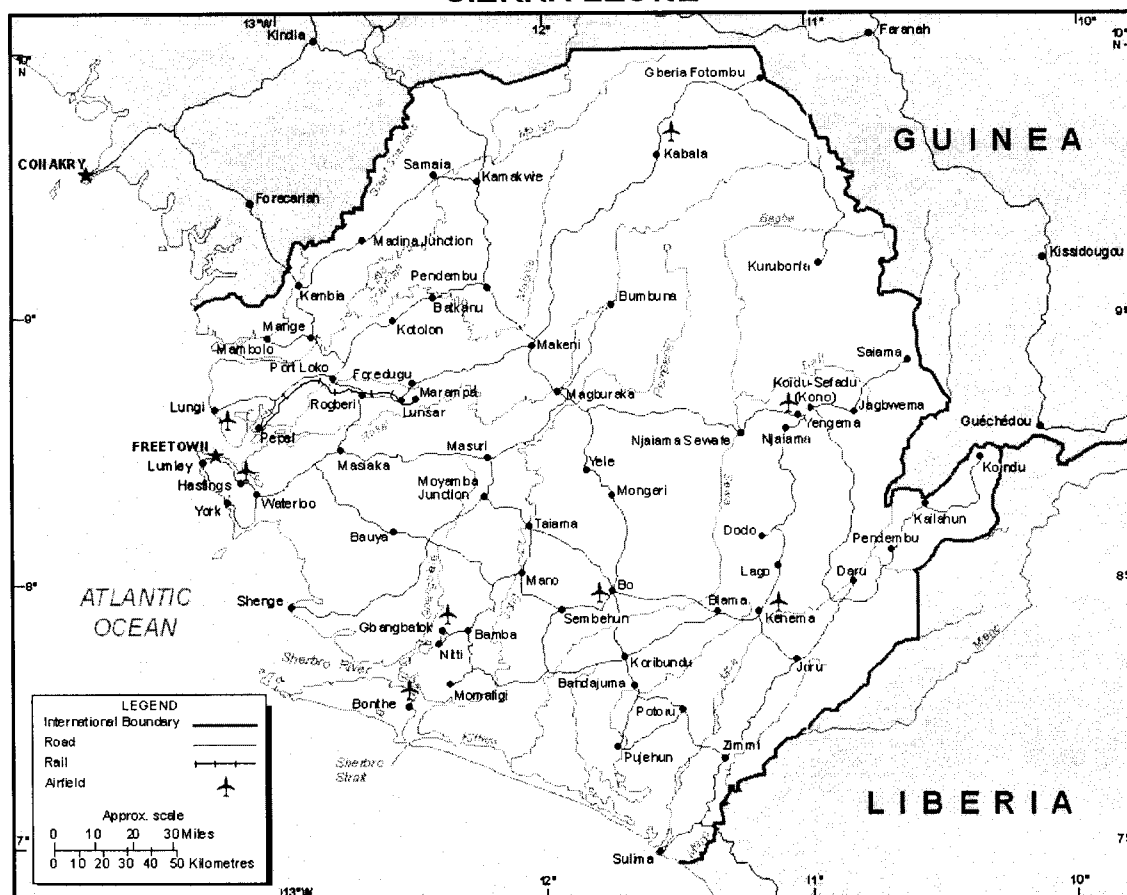
The Prosecutor

SIERRA LEONE
TIME FOR A NEW MILITARY
AND POLITICAL STRATEGY

11 April 2001

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SIERRA LEONE



General Staff Map Section, GS83 11187 (CAD), Edition 3-GS83, August 1998 672/98

Produced by Military Survey, MOD UK 1998

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SIERRA LEONE

TIME FOR A NEW MILITARY AND POLITICAL STRATEGY

EXECUTIVE SUMMARY

Sierra Leone is a human tragedy of massive proportions that is rapidly becoming a security nightmare for all West Africa. Two-thirds of Sierra Leone's population are thought to have been displaced during the ten-year civil war. Another 600,000 have become refugees in neighbouring countries. The war is spilling over into Guinea, where heavy fighting since September 2000 threatens the collapse of the government and has already produced a massive, new refugee problem. In effect, Sierra Leone is now at the heart of a series of conflicts that risk forming an arc of violence from southern Senegal to the Ivory Coast.

ICG believes the international community needs to take a radically different approach to that in which it has engaged so far. There should be no further negotiations with the Revolutionary United Front (RUF) other than for its complete disarmament and demobilisation. The RUF has blatantly used negotiations for the purpose of rearming. It has consistently shown bad faith in the string of agreements it has signed in Abidjan, Conakry, Lomé and Abuja. The RUF has no meaningful political constituency. Its main backer is Charles Taylor, the president of Liberia, who uses it as a proxy army to pursue his drive for regional hegemony: not for nothing is Taylor known widely as the Milosevic of West Africa. And, of course, the RUF has committed heinous atrocities qualifying as war crimes.

This report reaches the conclusion, stark, but we believe unavoidable -- that the international community must help Sierra Leone take decisive military action against the RUF. There are two vital conditions.

First, it is urgent to harmonise the divergent approaches of the UK government, which is arming, retraining and re-equipping the Sierra Leone army (SLA) for a serious campaign, and the UN military mission (UNAMSIL), which is still trying to implement the compromise provisions of the Lomé agreement. The international community cannot run two or more strategies in Sierra Leone simultaneously. Working against each other with conflicting mandates will only fuel the conflict and invite warring factions to exploit differences. Achieving a common approach will require much diplomacy, especially with West African nations that are hesitant about a muscular policy in which a former colonial power takes a prominent role.

Those in the RUF who refuse to demobilise should be defeated militarily. The military option could be spearheaded by UK trained and led Sierra Leone armed forces, with UNAMSIL securing the areas regained. The UK should provide military and intelligence backup to guarantee the safety of UN forces. The Civil Defence Force (CDF) could provide additional security for local villages and settlements.

Secondly, military action must be co-ordinated with a coherent political strategy accepted by all the key international actors and the Sierra Leone government. This will involve some form of UN-endorsed commitment to an international effort that may need to last five years or more, in order to help Sierra Leone re-establish good governance and reconstruct its shattered society. Without such a political effort, even military victory over the RUF would be pointless since the resulting power-vacuum would soon be filled by more violence from government and pro-government forces, new rebels and predatory neighbours.

The specific recommendations that follow will be difficult to implement. If the international community does not make a substantial commitment to help Sierra Leone resolve both its military and political problems now, however, it is all too easy to foresee the contagion of violence spreading out of control in West Africa much as has happened in Central Africa.

RECOMMENDATIONS

To the UN Security Council

1. Abandon the Lomé Agreement and make no further deals with the RUF.
2. Call for immediate surrender of the RUF and, against those who refuse, support the threat and eventual use of military force by the Sierra Leone army, supported by the UK.
3. Give UNAMSIL a tougher mandate to occupy and protect areas liberated by the SLA and harmonise its objectives with the UK and with West African heads of state.
4. Impose targeted sanctions on Charles Taylor's regime in Liberia -- involving visa restrictions, freezing of bank accounts and the like -- in order to persuade it to end its support for the RUF.
5. Provide adequate financing so that the Special Court established under UN Security Council Resolution 1315 of August 2000 can begin to investigate and prosecute those responsible for war crimes and a Sierra Leone Truth and Reconciliation Commission can start operations.
6. Support Demobilisation and Reintegration Programs for RUF and government militia (CDF) combatants.
7. Commit to a continuing international role in Sierra Leone, which may need to last five or more years, to assist the Sierra Leone government constitute a more reliable army, re-establish good governance, and restore its shattered society.

Freetown/Brussels/London, 11 April 2001



SIERRA LEONE

TIME FOR A NEW MILITARY AND POLITICAL STRATEGY

I. INTRODUCTION

Sierra Leone has become a tragedy of massive proportions. Moreover, the civil war in that country has now spilled into neighbouring Guinea, where heavy fighting since September 2000 threatens to produce the collapse of another West African government. In effect, Sierra Leone is at the heart of a series of conflicts that risk spreading an arc of conflict from southern Senegal to the Ivory Coast.

Radical action is urgently needed if the further spread of war is to be avoided. The experience since the first international intervention in neighbouring Liberia in 1990 has demonstrated that neither the United Nations nor regional groupings can achieve this unaided, not least because conflicts in this part of Africa make a unanimous approach by the local countries impossible. The presence of an 800-strong British military force in Sierra Leone is an important new factor. However, if lasting peace is to be established in Sierra Leone and destabilisation of the region halted, it is essential that the British role and other forms of international intervention be harmonised. The International Crisis Group believes that further efforts to achieve a workable negotiated agreement between the parties to the Sierra Leone war would be fruitless. Rather, what is needed is broad international consensus on the military measures required to save the country from further agony and prevent violence from extending further throughout the region, and support for a complementary political strategy to rebuild the devastated country's institutions.

The modern republic of Sierra Leone grew out of an eighteenth-century settlement on the West African coast for black people from Britain, some of them former slaves. Starting with the colony of Freetown, British rule eventually extended into the hinterland. The country remained under British rule until independence in 1961. From the beginning, Sierra Leone's political parties vied for dominance at any cost. In 1967, the Sierra Leone People's Party (SLPP), that had led the country since independence, was narrowly defeated by the All People's Congress (APC) led by former trade union leader Siaka Stevens. The latter was prevented from taking power immediately by a military coup, but in 1968 Stevens became head of state. His APC party quickly consolidated power, and in 1978 it formally established a one-party state. Its notoriously corrupt government made extensive use of patronage and eventually undermined all the principal institutions including parliament, police, and civil service, resulting in chaos.

The past twenty years have seen a succession of bad governments, both military and civilian, all in one way or other dependent upon or involved in the trade in diamonds, which are Sierra Leone's most valuable resource. In the last decade the diamond trade has helped destroy Sierra Leone. Financial, military and diplomatic crime have characterised the country, as Lebanese, Israeli, Russian and other traders have competed for gems, and various military forces have fought for control of the diamond fields.¹

Diamonds have also fuelled the terrible civil war in which a nihilistic movement known as the Revolutionary United Front (RUF), led by a former corporal, Foday Sankoh, has battled against every government that seized or otherwise obtained power in Freetown since 1991. Sankoh, widely thought to be a psychopath, has repeatedly committed atrocities against civilians. He has been supported in his ambitions by the equally brutal and unscrupulous Charles Taylor, now president of Liberia. Taylor won power in Liberia through war and now seeks to dominate the Mano River basin, which includes Liberia, Sierra Leone and Guinea.

Throughout the 1990s, Sierra Leone has had only one period of relative peace, in 1995-1996. South African mercenaries from an organisation known as Executive Outcomes were hired by the NPRC in April 1995. With a force of less than 200, they drove the RUF away from Freetown, secured the diamond fields and many other areas, and enabled a peaceful democratic election to be held in 1996. This was won by Tejan Ahmed Kabbah, a former UN official. Unwisely, Kabbah thought that Foday Sankoh could be persuaded to reasonable compromise. In one of several peace agreements ultimately broken by the RUF, Kabbah agreed that Executive Outcomes should leave. As a result, he was overthrown by a military coup and exiled in May 1997.

Nigerian forces, deployed under the banner of the Economic Community of West African States Cease-Fire Monitoring Group (ECOMOG), eventually restored Kabbah but they were unable to defeat the RUF, which invaded Freetown again in January 1999, killing, mutilating and abducting thousands of people. It was this awful event – coinciding with the Kosovo crisis – that finally compelled the broader international community to act. At that stage, the refugees in and from Sierra Leone were double those of Kosovo. Around 600,000 persons have fled the country - mainly to Guinea - and two-thirds of Sierra Leone's population of almost five million are thought to have been internally displaced.

The question was what to do. Nigeria, now under the democratic rule of Olusegun Obasanjo, wished to withdraw, and no other country wanted to take its place. Consequently, President Kabbah was pressured by the U.S., the UK and his neighbours to make another peace agreement with Sankoh, in Lomé in July 1999. Under this, Sankoh was, astonishingly, given the status of vice president and put in charge of the strategic minerals, including diamonds. The RUF were amnestied for their crimes. A UN mission (UNAMSIL) was dispatched to implement the accord.

¹ See Appendix 1: Detailed Background to the Political Crisis.

The Lomé agreement collapsed in May 2000. The RUF was chiefly to blame, sabotaging the peace process by capturing 500 UN peacekeepers and their equipment. The peacekeepers were eventually released through the intervention of Liberia's Taylor, and Sankoh was arrested. He faces the prospect of trial by the special tribunal established under UN Security Council Resolution 1315 of August 2000 for war crimes committed after the signature of the Lomé agreement, if international funding for that tribunal and political will can be found. Nevertheless, the RUF still controls 50 per cent of the country, including the diamond areas. From those areas it continues to make incursions across the border into Guinea, which is growing ever more unstable.

The collapse of the peace process has left the United Nations and its member states floundering for a response. Neither the amnesty offered to all combatants by the Lomé accord nor the deployment of what is already the UN's largest current peacekeeping force has been sufficient to keep the peace process on track. A decade after the end of the Cold War, Sierra Leone provides a sobering reminder of how little progress has been made on forging appropriate international responses to conflict. A further international failure in Sierra Leone will have catastrophic consequences for West Africa and grave implications for future international peacekeeping.

Throughout the last decade, international initiatives in Sierra Leone have been marred by divergent and competing agendas. Too often, mediators have staked their credibility on negotiated settlements in which rival warring groups are treated as potential political players, even allies in a coalition government. The notion of bringing rebel groups into government, which has been successful in some countries and some situations, however, has proved utterly misguided in Sierra Leone. The Lomé accord, the most recent agreement to disintegrate, was a vain exercise motivated largely by international expediency. It attempted to elevate those responsible for the deaths of thousands of innocent civilians into statesmen even though they lacked a coherent political agenda and almost any political base.

The collapse of Lomé means that the international community and the Sierra Leone government must rethink their approaches. There are key questions that need to be resolved before it will be possible to embark on a new strategy based on more than short-term expediency: what issues underlie the war? who are the key players, including in the international community? what assumptions are behind the failed peace initiatives? what new approaches are viable? The situation is so desperate and so unusual that new approaches are certainly necessary.

The answers do not lie in futile pursuit of yet another negotiated settlement with forces that have shown no interest in adhering to accords. The RUF plays a long game and uses peace agreements as stepping stones towards its ultimate goal of power. Its strategy is at the expense of democracy and the country's citizens. For the commanders of the RUF and its chief puppeteer, President Taylor, peace offers little reward; war presents greater opportunities to extend their influence.

ICG believes that there is no other real option than to take military action against the RUF. We do so, however, with the vital proviso that this must be associated with a coherent political strategy agreed among the key international actors and with the Sierra Leone government. The type of political strategy sketched here is

an unusual one. It will require significant international commitment to Sierra Leone for five years or more. In the particular case of Sierra Leone, the decision already made to establish an international tribunal to try Foday Sankoh and others accused of war crimes is a significant marker of the willingness of national and international forces to work together.

The necessity for a coercive military response has been recognised by the UK, which has been supporting the Sierra Leone government's need to reform and strengthen its armed forces to defeat the RUF on the battlefield since last summer. The UK and the U.S. have also supported a complete embargo against diamonds from Liberia in order to cut the RUF's revenue. The prospect of such a military policy, which conflicts with the UN's propensity towards impartiality, being applied without broader international agreement causes deep consternation in West Africa for understandable reasons. It must acquire the commitment of key regional and other international players if it is to succeed. Most importantly, a military policy will not succeed in isolation but must be coupled with a political strategy that addresses the conflict's underlying causes and has broad support inside Sierra Leone and within the region. Without international consensus around these linked objectives, real peace is unlikely, and the people of Sierra Leone, who have been victims for so long, will continue to suffer.

In short, Sierra Leone needs radical solutions involving the serious use of force complemented by extended international political commitment. The use of military force should always be a last resort, but ICG believes the crisis is so grave that this option must now be seriously pursued.

II. ROOT CAUSES OF THE CONFLICT

Amidst the turbulence of Sierra Leone's conflict, the underlying causes are frequently overlooked. These include corrupt and unaccountable government, ethnicity that has been manipulated for political ends, and alienated youth. Peace cannot be sustained without addressing all these factors.

A. Bad Government

Sierra Leone's problems are rooted in its history. Since independence in 1961, Sierra Leone has never experienced truly democratic, accountable government.² Independence was preceded by lengthy colonial rule which, although including a strain of authentic democratic tradition, was characterised by patronage and authoritarian government, especially in rural areas.

The habits of trust and accountability between people and rulers are often absent. There is little general awareness of the duties and responsibilities of government as these are accepted internationally. Politicians have for decades squandered the country's resources, which include good land and rich mineral deposits. Diamonds provide easily transportable and lucrative returns for people who enjoy good connections with or within the government. A medley of politicians, businessmen, soldiers and civil servants have formed networks of patronage or commerce,

² See Appendix 1: Detailed Background to the Political Crisis.

spread as far as the Middle East, the U.S. and Europe, that have undermined state institutions. Unsurprisingly, within a few years of the RUF's appearance, the rebel group's primary focus had become the occupation and control of diamond areas as a source of funds for weapons. The link between diamonds and corruption, conflict and weapons is a central feature of Sierra Leone's war.³

Sierra Leone desperately needs to establish a government that is both legitimate and accountable. The events of the last five years have shown that free elections alone are no guarantee. President Kabbah's SLPP government was democratically elected but is now widely regarded as corrupt. It is highly dependent on armed support from forces over which it has no control. President Kabbah has spent much of his life outside the country, is often perceived as detached from the population, and does not demonstrate the requisite level of influence over all members of his government. He has also shown poor judgement. Following his return to office in February 1998, for example, he unwisely oversaw a policy that led to the execution of people associated with the military junta and convicted of treason. This and other policies heightened animosity towards his administration and undoubtedly contributed to the intensity of the horrific revenge killings and abuses during the January 1999 RUF attack on Freetown.

Elections in 2001? There is widespread support among Sierra Leone citizens for new elections this year. Although they would be insufficient in themselves, they could be a vital element in creating a new legitimate government and underpinning reforms. New elections were due in March 2001 but were postponed by the government due to insecurity in parts of the country. They are unlikely to be held soon as around 50 per cent of Sierra Leone's territory is controlled by the RUF and two-thirds of its population is displaced.

The constitution provides conditions under which elections can be postponed: if Sierra Leone is fighting a war affecting the national territory; if the president concludes that under such circumstances it is not practicable to hold an election and proposes postponement to the parliament; and if the parliament so decides. If these conditions are met, the president's tenure may be extended for a maximum of six months at any one time. The number of extensions is unlimited.

There are other practical problems. The 1996 elections cost around U.S.\$10 million. Unless similar funding is forthcoming from donors, there is little possibility of organising new elections. Voter registers will need to be revised, constituency boundaries delineated, and hundreds of thousands of refugees repatriated. This will not be cheap.

B. Unaccountable Military

President Kabbah's most immediate problem is control of the armed forces. Under President Siaka Stevens, the armed forces remained small, around 3,000, sufficient to quell minor uprisings but not to pose a threat to the government. President Stevens did, however, establish an Internal Security Unit, from which the Special

³ For a full account, see *Report Of The Panel Of Experts Appointed Pursuant To UN Security Council Resolution 1306 (2000), Paragraph 19 in Relation To Sierra Leone* (December 2000).

Security Division (SSD) was created in 1972. This notorious, 500-strong unit was effectively a private army for his APC party.

In 1991-92, to counteract emergence of the RUF, the security forces were expanded to around 13,000. (The exact figure has never been determined because of the large number of 'ghost' soldiers, who drew salary and rations.) Recruitment attracted street boys and unemployed youth. Coupled with poor leadership, training and equipment, the rapid expansion led to disillusionment among front-line soldiers and the emergence of what became known in Sierra Leone as 'sobels' – 'soldiers by day, rebels by night'.⁴ During 1994 and 1995, violence against civilians was often blamed on combatants believed to be part of the security forces. Difficulty in identifying the attackers fostered a belief that both sides – army and rebels – were equally to blame.

The 'sobel' phenomenon and collapse into gang-like tactics had several causes. Soldiers were unprepared to risk their lives to serve corrupt masters in Freetown, particularly as their salaries and rations were frequently missing. That led to collusion with the RUF to avoid battle. There was evidence of large-scale transfers of arms and ammunition from the army to the RUF. Also, soldiers discovered the lucrative returns that could be made by mining diamonds or simply looting civilian property.

Substantial commonality of interest gave the army and the RUF further incentive to cooperate. During 1995, terror tactics – which included amputation and carving messages into the chests and backs of victims – were often designed to deter the population from the democratisation process that was gathering momentum. Both the RUF and the armed forces recognised that elections were against their interests. The armed forces – which held power throughout the NPRC military administration headed by Valentine Strasser – stood to lose their ruling position. For the RUF, elections threatened further exclusion at home and internationally since a democratic government would gain international recognition and credibility. It has been alleged that the practice of cutting off the hands of civilians at random dates from this period and was originally an attempt to deter voting: the official election slogan was 'The future is in your hands'. Such terror tactics, however, failed to deter. The parliamentary and presidential elections held in February 1996 had widespread support. People saw the elections as a chance to express dissatisfaction with both the military government and the RUF and bring about permanent change.

While the initial success of the elections was astonishing, the Kabbah government failed to inspire extensive loyalty. It favoured a Mende militia in the form of the *Kamajors* (later the central element in the Civil Defence Force, CDF). Latent discontent within the army intensified, resulting in the coup of May 1997. The immediate spark was a government proposal to slash spending on the military and use the savings for the CDF, turning it into a private army for the ruling SLPP or factions within it. Johnny Paul Koroma, the head of the AFRC, justified his coup by noting that:

⁴ ICG Interviews with residents of Bo and Kenema, November 1995.

*'the SLPP tribal hunter militia, the Kamajors, received logistics and supplies far beyond their immediate needs. This was enough indication of the preference for the private army over our Armed Forces, foreshadowing the ultimate replacement of the Constitutional Defence Force by Mr Kabbah's hunters.'*⁵

The AFRC junta, which took power in May 1997, may have had some desire to end the war by inviting the RUF to join it in power, but it also sought to protect army privileges. At a more basic level, the administration reflected the battlefield collusion between the two sides. However, the army underestimated the strength of the RUF and quickly found itself a hostage of the rebel movement.

When a Nigerian military assault in February 1998 pushed AFRC and RUF forces out of Freetown, their common front ended. What was left of the alliance wreaked terror against civilians, particularly in the Northern Province.⁶ Some former military filtered back into Freetown while others joined the RUF and yet others continued nominally as the AFRC or joined splinter groups such as the West Side Boys who set up base in the Okra Hills outside Freetown. In August 2000, this faction kidnapped eleven British soldiers, ultimately leading to its elimination during a rescue by British special forces.

With its entry into Freetown in February 1998, the Nigerian-dominated ECOMOG contingent effectively became Sierra Leone's military. President Kabbah was reinstated, and Nigerian Brigadier-General Maxwell Khobe, who had led the assault on Freetown, was seconded to be the country's defence chief. General Khobe was in theory answerable simultaneously to the Nigerian and Sierra Leone governments.

The New Sierra Leone Army. Sierra Leone has a long history of private armies formed by particular parties or factions, degenerating into banditry, and official security forces being abused for private interest. The British decision to revive the Sierra Leone army as the core of a new military thus carries significant risks.

In September 1999, the SLA consisted of around 6,300 troops of which 2,000 were new recruits, the others the rump of the AFRC with little loyalty to the elected government and with a lamentable human rights record.⁷ The military is highly politicised. Maintaining an ethnic balance will be essential if it is to be impartial. The military is also riddled with corruption. Sierra Leone has a long history of coups, and for nearly a decade the army has taken power on a whim. Inculcating values of professionalism, discipline and service to the state and eliminating corruption will require long-term training.

Finally, the success of security sector reform requires not only the remodelling and retraining of soldiers into an accountable force, but also a guarantee that they will be adequately paid and equipped. Sierra Leone's resources are limited and the government has no revenue base adequate to finance an efficient army in the

⁵ In letter from Johnny Paul Koroma to ECOWAS, August 1997. Available at www.sierra-leone.org/koroma0897.html.

⁶ Amnesty International, *Sierra Leone: Childhood – a Casualty of Conflict* (Amnesty International, AFR 51/69/00, London, 31 August 2000), p.7.

⁷ Comfort Ero, *Sierra Leone's Security Complex* (Centre for Defence Studies, King's College London, 2000), p.41.

short or medium term. Donors have traditionally been reticent to fund the security sector, although since last May the UK has increased bilateral defence assistance to Sierra Leone.

The Civil Defence Force. Apart from the considerable difficulty in organising the SLA into a responsible force, there remain other security forces of dubious nature within the government camp. Most notable is the Civil Defence Force. The CDF began as an initiative to protect civilians from the ravages of both RUF and SLA but its current strength and composition may exacerbate rather than improve the internal security situation.

Currently, the CDF consists of some six different groupings, representing the main ethnic groups in Sierra Leone. The most powerful, however, are the *Kamajors*. These were originally a guild of hunters among the Mende people in the southeast of the country. They defended their villages and hunted game with home made shotguns. As RUF and army looting intensified, traditional chiefs, many supporting the SLPP, which is regarded as a Mende-dominated party, recruited young men to be initiated into the *Kamajor* movement to defend their communities. The success of the *Kamajors*, supposedly equipped with extraordinary spiritual powers, stimulated similar defence forces, also purportedly traditional in nature, in other parts of Sierra Leone. These were loosely organised under the CDF umbrella.

On balance the CDF has been highly successful at protecting some communities, particularly when supported by good logistics and elite troops such as the South African military company Executive Outcomes. The CDF alone, however, is generally unable to resist a concerted RUF attack. Over time, the CDF has evolved into a force which itself contains the seed of destabilisation. The mistrust and hostility that has existed between CDF and army for six years has not evaporated with creation of the 'new' SLA. Towns like Lunsar have been lost to the RUF reportedly because of fighting between the coalition of forces that support the government. Some CDF commanders admit they now exist to guard against the SLA as much as against the RUF. CDF fighters are bitter that they receive fewer rations and weapons than the SLA. They argue the CDF stayed loyal to the democratic government and fought the RUF in the bush while the SLA colluded with the rebels. That loyalty, they argue, should be rewarded.

To a large degree, the CDF's future depends on the ambitions of Chief Hinga Norman, the Deputy Defence Minister, who is the nominal leader of all CDF and exercises real control over some *Kamajor* forces. Norman, formerly a professional army officer, was imprisoned in the late 1960s for planning a military coup on behalf of the SLPP, the party which is today in power. There is sometimes speculation that he may attempt a coup again, although this appears unlikely. However, Chief Norman may be a candidate in the next presidential election, in which case his influence among the CDF will be of real political value, especially if the CDF were to be seen as instrumental in the war against the RUF. There are also splits emerging in the CDF. Chief Norman is said to be losing control of the *Kamajors* in the regions of Kenema and Pujehun and Moyamba district to another leader, Eddie Massally.

There is a risk of wider ethnic instability if the SLPP, whose core support is among the Mende, were to lose forthcoming elections. The Mende component of the CDF – the *Kamajors* – are seen by many as guarantors of Mende power. Controlling the CDF – and giving it an effective role, such as local territorial force as is being mooted – is a major challenge facing the Sierra Leone government and its British military advisers.

C. Ethnic Politics and Exclusion

Ethnic balance, most particularly in the reorganised armed forces, will play a large part in rekindling people's confidence in institutions of government. Ethnic relations have been a persistent undercurrent in Sierra Leone's modern history, although there is not a history of enmity comparable to that in the Balkans or Rwanda, nor has widespread violence been conducted on a plainly ethnic basis.

The first seven years of Sierra Leone's independence were dominated by the SLPP, which attracted support predominantly from the Mende people in the south. Under the All People's Congress (APC) led by Siaka Stevens, power shifted to northern groups, principally the Limba and Temne. Stevens' dictatorship ensured that this dominance, reinforced by ethnic favouritism in the security forces, continued until the transfer of power to Joseph Momoh in 1985.

When the SLPP in 1996 won office for the first time in nearly 30 years, it was widely perceived as the return to power of a Mende constituency. But Kabbah tried to heal ethnic divisions by bringing representatives of other parties into his government. The dominance of northerners in the army remained a legacy from Stevens' time. Hence, the military coup of May 1997 also reflected some shift in the ethnic complexion of power.

Yet ethnicity is not necessarily all-pervasive. Ethnic factors appear to have played little role in the formation of the RUF or in its later manoeuvres. RUF combatants come from all parts of the country, many of them recruited by force. In its first months, the RUF attempted to rally support not on grounds of ethnic favouritism but in protest against social and political exclusion, a result of corrupt central power of whatever form.

D. Militarisation of Youth

'Central to an understanding of the war in Sierra Leone is the role of alienated youth ... for whom combat appears a viable survival alternative in a country with high levels of urban unemployment'.⁸

Sierra Leone's future will depend on ensuring that youth do not join military factions. That in turn largely depends on having an economy able to absorb an expanding young work force. This is a challenge that is not unique to Sierra Leone. Throughout Africa, poorly educated, unemployed youth are the excluded and disenfranchised outcasts created by corrupt governments. In Sierra Leone,

⁸ Ibrahim Abdullah and Patrick Muana, 'The Revolutionary United Front of Sierra Leone', in Christopher Clapham (ed.), *African Guerrillas* (James Currey, Fountain Publishers and Indiana University Press, Oxford, Kampala & Bloomington, 1998), p.172.

frustrated urban and rural youth formed a veritable reserve army. The RUF's simplistic messages offered the possibility of reversing the social hierarchy through violence. Quick wealth was also an attractive incentive.

Although many joined the RUF for these reasons, young people with an identical profile in 1992 joined the army to fight the RUF. It is perhaps unsurprising that ill-equipped, poorly-trained, ill-paid army recruits colluded with the rebels. The more structured CDF, by contrast, recruited a greater concentration of rural youth through the patronage networks of chiefs. More recently, recruitment into the CDF has been less discriminate.

For the young, therefore, ethnic differences have been less important than finding a remedy to feelings of dispossession and alienation or, more positively, achieving a sense of purpose. Policies that do not address these fundamental issues are unlikely to provide long-term remedies for Sierra Leone's problems.

III. THE FAILURE TO ACHIEVE PEACE

While the underlying causes of Sierra Leone's war can be traced to different roots, the resolution of the conflict has been hampered by a number of issues. First, the RUF has shown little sign of wanting peace. The international community has confused the signing of agreements with achieving peace. Lomé and earlier negotiations need to be understood as interludes within a wider strategy of war through which the RUF bought time to seize power. A new peace agreement that relies on the RUF being a cohesive force willing to adhere to a document is pointless. Finally, the response of the international community has been uncoordinated and has shown lack of resolve. Its competing interests have hampered the search for a consistent strategy.

A. The Futility of Negotiations and the Failed Peace Accords

Early Attempts at Negotiation (1992 -1996). Few chances for negotiation were taken during the early years of the war. When the National Provisional Ruling Council (NPRC) military junta came to power in 1992, the RUF sought a negotiated settlement but the NPRC spurned the offer as it was confident of military victory. Its counteroffer to the RUF was tantamount to a demand for unconditional surrender and was rejected by Sankoh.⁹ Instead, the RUF consolidated its weak position and realigned its rhetoric.¹⁰ As the military situation began to turn during 1994 and early 1995, the RUF's desire to negotiate lessened further.

The NPRC and RUF re-established communication toward the end of 1995 when the NPRC offered a coalition government of 'national unity'. But Sankoh, still confident he could win militarily if foreign forces left (specifically the Executive Outcomes mercenaries), refused to compromise. According to senior diplomatic

⁹ Paul Richards, *Fighting for the Rain Forest: War, Youth and Resources in Sierra Leone* (James Currey and Heinemann, London and Portsmouth NH, 1996), pp.10-11.

¹⁰ For further information on the NPRC, see appendix 1.

sources, he demanded the presidency, but the NPRC was willing to concede only the vice-presidency.¹¹

Faced with Sankoh's unwillingness to compromise, the NPRC stepped up its military attacks through Executive Outcomes. EO deployed a helicopter gunship and tactics that included concentrated mortar fire and ground attacks by approximately 120 soldiers. It rolled the RUF back in a number of battles, taking the Kono diamond fields in late 1995 and enabling a number of diamond companies, including Branch Energy, a firm with close links to EO, to resume mining. During the later battles, it conducted combined operations with the *Kamajors* and occasionally with the Sierra Leone armed forces, though these were often hampered by intelligence leaks.

In January 1996, following a campaign that destroyed a key RUF base in the Kangari Hills, the RUF dropped its demands, agreed to a ceasefire, and began unconditional negotiations for the first time. It was this that created the period of relative stability that enabled the elections in February 1996 to proceed.

The Abidjan Accord (1996). The election of a civilian government undermined any legitimacy the RUF might have claimed and relegated it to an insurgent threat. But the army was also threatened by civilian government as it lost political and economic privileges. When Sankoh, after weeks of talks in the Ivory Coast, reneged on his promise to sign a peace accord, President Kabbah authorised EO and the *Kamajors*, supported by the SLA, to assault RUF positions. A few days after they destroyed the RUF headquarters southeast of Kenema in November 1996, Sankoh agreed to sign the Abidjan peace accord. A senior diplomat in Freetown noted that, 'always military pressure was needed to be put on before negotiations could succeed'¹².

Unsurprisingly, Sankoh insisted that the Abidjan agreement include EO's departure. Unwisely, Kabbah agreed. In its place a UN peacekeeping force was to be established but never arrived. Donors were not willing to meet the U.S.\$ 47 million bill for 700 soldiers, and Sankoh continued to dispute the agreement, maintaining that the UN presence should be less than 100. Nevertheless, EO was finally asked to leave by President Kabbah, who believed the RUF was sincere about peace. Three months later, without any external force to defend his government, he was deposed in another military coup led by the Armed Forces Revolutionary Council (AFRC).

The Conakry Accord (1997). The AFRC was not recognised by any foreign government or by the Sierra Leone people. After extensive bloodshed and destruction, the Conakry Accord was signed in October 1997 by a delegation sent by the AFRC leader Johnny Paul Koroma. It was intended to restore the Kabbah government. But it clearly became a ploy to buy time in the face of international pressure and a domestic boycott by government employees, who refused to work under the AFRC regime and shut down key government functions. Under cover of the accord, the AFRC stockpiled weapons and attacked remaining ECOMOG positions at the country's international airport at Lungi.

¹¹ Confidential interview, 24 April 1997.

¹² ICG Confidential interview, 24 April 1997.

The Lomé Accord (1999). A Nigerian/ECOMOG offensive retook Freetown in February 1998, forced the AFRC out of the city and reinstalled President Kabbah. In January 1999, however, the RUF rampaged through Freetown, killing and maiming until Nigerian troops drove them out. Seven months later, the Lomé Accord was brokered by the UN under the auspices of Francis Okello, special representative of the UN Secretary General, as well as by the UK, the U.S. and regional states. Lomé was an act of expedience. ECOWAS states – particularly Nigeria – wanted to withdraw. Nigeria claimed it was spending U.S.\$ 1 million a day and had been actively fighting for over two years. Other than from the UK, there was little Western assistance for the Nigerian operations, and there was scant prospect of any replacement force or backing from Western states. Lomé was the child of stalemate. For the UN, striving for continued relevance as a peace-brokering body after being sidelined in Kosovo by NATO, the stakes were high. In October 1999, the Security Council authorised the establishment of UNAMSIL.

The international desperation to reach an agreement and 'create' peace enabled the RUF to negotiate very favourable terms. Donor countries, for their part, invested more heavily in the Lomé process than in past agreements and made important concessions to push the accord through. The U.S. hoped that the agreement would usher Sierra Leone off the international agenda at minimum cost. President Clinton's special envoy to Africa, Jesse Jackson, helped persuade Sankoh. At a critical point, Sankoh received a call from Clinton. Sankoh was reportedly jubilant. 'What rebel leader gets called by the president of the United States?' he asked. 'I only got that call because I fought in the bush for so many years'.¹³

Under Lomé the RUF was brought into the government, gaining four cabinet positions, heading a number of public sector directorships, and filling some ambassadorial posts. Most controversially, there was a blanket amnesty for all crimes committed during the war, however terrible. At the last moment however, the UN dissociated itself from the amnesty for crimes against humanity. In November 1999, a UN spokesperson stated that the amnesty would not cover 'the most flagrant' human rights abuses, and there would be a Truth and Reconciliation Commission. In February 2000, the Sierra Leone parliament approved legislation to create such a commission. However, it has not begun to function.

Lomé also achieved one of the RUF's central goals – exit of the Nigerians. Today Sankoh was rewarded with the status of vice president and chairmanship of the Strategic Mineral Resources Commission, effectively giving him access to the country's diamond resources. Diamonds have been the main source of revenue for the RUF in its nine years' bush war. When Sankoh was imprisoned in May 2000, documents were discovered in his house that allegedly prove he continued to export diamonds illegally while in government.

Given the extent of concessions to the RUF, President Kabbah, was reluctant to sign. He buckled under international (particularly U.S.) pressure.

¹³ Steve Col, 'The Other War', *Washington Post Magazine*, 9 January 2000, p.26.

The Abuja Agreement (2000). Within days of the last ECOMOG troops' departure in May 2000, the RUF took 500 members of UNAMSIL hostage and seized their vehicles and weaponry. Charles Taylor, increasingly recognised as the real power behind the RUF, came under strong international pressure to secure the eventual release of these hostages. He claimed this result proved his desire to broker a peace; it also showed his power over the RUF. Subsequently, Sankoh was arrested in Freetown, and a powerful UK force was dispatched to Lungi airport to provide security for the capital after the UN debacle. This intervention was crucial in again changing the military balance inside Sierra Leone.

In August, the Security Council approved the creation of a Special Court for war crimes. In November a cease-fire was agreed in Abuja between the RUF and the government, which was followed by a break in fighting. However, the RUF continues to commit atrocities against the civilian population and to block UN deployment. Furthermore, the fighting has spread to Guinea, where the RUF is backing rebels.

B. The RUF - No Credibility or Legitimacy

For the most part the RUF has agreed to negotiations when it faces military disadvantage and has then broken the resulting agreements after rearming. Negotiated peace settlements with the RUF, unless they provide for its complete demobilisation and disarmament, are, therefore, extremely suspect.

Moreover, the RUF lacks any independent political legitimacy. It is effectively controlled by Liberia's President Taylor, who uses it to advance his regional ambitions. The RUF has become an army of Taylor's convenience, so negotiations with the RUF's leadership ignore the real power behind its operations. These factors, discussed in more detail below, point to the need for a coercive military strategy that also provides opportunities for RUF combatants to demobilise voluntarily.

A Proxy for Charles Taylor's Political Ambitions. Taylor was elected Liberia's president in 1997 after a campaign of terror. He runs Liberia as his own personal fiefdom. He has a personal stake in every major business and personally directs all financial and security services. For Taylor, there is limited advantage at best in ending the Sierra Leone war. Disorder enables the RUF to control the diamond fields and gives Taylor access through northern Sierra Leone to attack Guinea. Both the RUF and his own elite forces have been trained by Fred Rindel, formerly with the South African special forces. Associated with Rindel are several South Africans, formerly of Executive Outcomes, who have effectively changed sides. Rindel is believed to have markedly improved the RUF's military capabilities. A state of war also provides a pretext for Taylor to quell domestic opposition.

President Taylor is not just interested in money and diamonds. Resources are simply a means to his political goals. As one senior Liberian commentator put it, 'he's in Sierra Leone not for the money but for his political agenda.'¹⁴ Although the

¹⁴ ICG interview, 3 November 2000.

Sierra Leone diamond revenues are a key source of funds, the Liberian president has never been short of money. While head of the NPFL, in control of 90 per cent of the country, he was estimated by the former U.S. ambassador to Liberia, William Twaddell, to be earning U.S.\$ 75 million a year from taxes on the passage of diamonds, timber, rubber and iron ore through his territory.¹⁵

Taylor is determined to attain power throughout the region. Since the mid-1980s he has relied heavily on personal links with Ivory Coast, Burkina Faso and Libya. He attended the Libyan training camps that 'became the 'Harvard and Yale of a generation of African revolutionaries'¹⁶ where he first met Foday Sankoh. Now unchallenged in his control of Liberia, he has a grander design to control the Mano River countries. However, his desire to destabilise Sierra Leone and Guinea also reflects personal grudges. He was angered that West African ECOMOG forces occupied Monrovia in 1990 and foiled his initial attempt to seize power.

An uncompromising report by the UN in December 2000 identified President Taylor as the principal culprit behind the Sierra Leone war and linked him with diamond smuggling and arms trading. It noted that he 'is actively involved in fuelling the violence in Sierra Leone, and many businessmen close to his inner circle operate on an international scale, sourcing their weaponry mainly in eastern Europe'. It added:

'In short, Liberia is breaking [UN] Security Council embargoes regarding weapons imports into its own territory and into Sierra Leone. It is being actively assisted by Burkina Faso. It is tacitly assisted by all the countries allowing weapons to pass through or over their territory without question, and by those countries that provide a base for the aircraft used in such operations.'¹⁷

An Unpopular Movement. The RUF has no discernible popular following. The 1996 elections were essentially a protest vote against the RUF and the Sierra Leone government of the day. While there was some initial sympathy for the RUF's aims – opposition to corruption in government – that has long since evaporated.

From its beginning the RUF relied on terror and brutality, summarily executing leaders believed to support the government, including chiefs, government officials and village elders. It has carried out widespread and indiscriminate campaigns of terror, mutilating thousands of people, often at random. It has received little support from the more settled rural communities, the population of which has often preferred to flee the 'freedom fighters'. Consequently, there has been 'little scope for the transformation of political dissent in these areas into revolutionary fervour'.¹⁸

An Ideological Vacuum. The simplistic ideology the RUF once enunciated is no longer a real influence on its actions. It has been replaced by a triangle of profit,

¹⁵ Stephen Ellis, *The Mask of Anarchy: the Destruction of Liberia and the Religious Dimension of an African Civil War*, (C. Hurst and New York University Press, London and New York, 1999), p.90.

¹⁶ Ellis, *The Mask of Anarchy*, *ibid*, p.72.

¹⁷ Report of the UN panel on illicit diamond and arms dealings in Sierra Leone, December 2000.

¹⁸ Abdullah and Muana, 'The Revolutionary United Front', p.179.

power and brutality. The overwhelming view in Sierra Leone is that the RUF is criminal.

The main RUF propaganda tract, 'Footpaths to Democracy: Toward a New Sierra Leone', quotes copiously from foreign revolutionary documents and essentially calls for a return to multi-party democracy, a fair sharing of resources, reform of education and an end to Lebanese domination¹⁹. This bears no relation to RUF practice. The RUF has not focused on building a political base in the countryside among the peasantry that might have been its natural following but has sought only to terrorise. Sankoh is a militaristic despot and, like Charles Taylor, is intent on taking power by whatever means. He executed his two main internal rivals, Rashid Mansaray and Abu Kanu in 1992, apparently for objecting to his tactics, and thereby eliminated any threat to his command.

The RUF concentrates upon making money, obtaining power, punishing those who are perceived as opponents, and perpetuating the privileges of gangland authority. Since Sankoh's imprisonment, it has continued to mine diamonds but the proceeds have gone to other senior leaders and Taylor. Miners work most commonly on a 'split pile' arrangement whereby they keep diamonds from one pile, and the other is taken by the RUF. Most reports indicate that any larger stones are taken by the RUF with the largest going to Liberia²⁰.

Forcible Recruitment of Young Fighters. Many, perhaps most, RUF fighters were forcibly recruited. Many are child soldiers who were kidnapped from their homes and fed on a diet of drugs. Former child combatants report using marijuana or *djamba* (often spiced with gunpowder to make it stronger), homemade alcohol, and various tablets. Cocaine and heroin are also taken, but less frequently.²¹ Children say they took drugs because it made them 'fearless'. They 'no longer saw people as people but as animals, and they could do anything they had to do, the implication being that drug taking made it possible to commit atrocities such as killing family members and cutting off peoples' limbs'.²²

There are many accounts of children forced to commit atrocities against their home villages. This transforms them into pariahs in their own communities and makes it impossible for them to return. Others are tattooed with RUF symbols so they cannot go home even if they had the chance to escape. Former combatants also relate that they would be beaten if they returned from raiding expeditions against civilians with nothing, and several tell of seeing friends shot by commanders if they did not follow orders.²³

War Crimes and Terror as a Means of Control. The RUF has committed heinous atrocities that qualify as war crimes. Indeed, the main tactic used to control territory is intimidation through violence. A RUF hallmark is amputation. Since the mid-1990s hundreds of people have had hands hacked off. The most

¹⁹ The economic influence of the Lebanese communities in West Africa is often seen as imperialistic by local populations.

²⁰ *Report Of The Panel Of Experts Appointed Pursuant To UN Security Council Resolution 1306 (2000)*.

²¹ Sue Loughlin, 'A preliminary assessment of past and current drug use among former child ex-combatants in Sierra Leone', Report for UNICEF, August 2000, p.4.

²² *Ibid.*, p.6.

²³ *Ibid.*

dramatic orgy of violence occurred in January 1999 when the RUF, supported by disgruntled members of the former army, infiltrated Freetown, attacked Nigerian troops from ECOMOG, killed several thousand civilians and amputated limbs of over 800 people.²⁴ More than anything, it was these well-documented atrocities that forced Western governments to take notice of Sierra Leone.

Internal Divisions within the RUF. There appear to be splits within the RUF. These are not new. In April 1997 one group of senior RUF members denounced Sankoh's leadership because he did not support the Abidjan Accord. They were taken prisoner and tortured. Some never reappeared. It is unclear whether the RUF now operates cohesively as a single unit. Junior members were sent to sign the November 2000 cease-fire, for example. It is uncertain exactly who has authority to represent the movement and ensure that it adheres to a peace agreement.

With Sankoh's imprisonment, the RUF appears to have come more directly under President Taylor's control. Issa Sesay has been announced as 'interim leader', although it is not clear on whose authority. The 'interim' nature of the appointment is presumably meant to indicate that Sankoh remains in theory the overall leader despite his imprisonment. Sesay's appointment appears not to have total support but is most likely backed by President Taylor. Some leaders, such as Dennis 'Superman' Mingo, have opposed Sesay's more moderate line, while there are reports that Sam 'Mosquito' Bockarie may be trying to exert more influence after disagreeing with Sankoh and taking refuge in Liberia. But Bockarie's position is uncertain since it was reported in January 2001 that Taylor had expelled him from Liberia, probably to distance himself from visible connections with the RUF.

Further confusion has fuelled uncertainty about who speaks for the RUF. On 22 November 2000 media reports quoted RUF spokesperson Gibril Massaquoi as alleging that the RUF was divided over the cease-fire signed earlier in the month, and the majority of combatants no longer took orders from Sesay. This was later denied. The RUF appears broadly divided into two commands. The eastern command has two main brigades, one centred around Kono and Tongo diamond areas to secure those resources and the communication routes to Liberia. The northern command, with four brigades, is located in the Magburaka, Makeni area. The division poses difficulties for obtaining full RUF acquiescence to any peace agreement.

C. Conflicting Agendas and Military Deadlock

Intransigence and a lack of legitimacy and integrity have been the hallmarks of the RUF but the RUF has also capitalised on the absence of international resolve and the multiplicity of international agendas. The result has been a series of weak accommodations engineered by the international community that have perpetuated rather than resolved the war.

The UK intervention to retrain the SLA with a view to conducting a more coercive strategy is a break with the past. It contains risks given SLA unreliability but it

²⁴ 'Getting Away with Murder, Mutilation and Rape: New Testimony from Sierra Leone', *Africa Rights Watch*, Vol. 11, No. 3(A), June 1999.

recognises that there is little chance of permanent peace through negotiations. The UK stance has been met with scepticism and a degree of resentment in Africa. The UN has tended to favour another series of negotiations, in large part because UNAMSIL is incapable of robust action.

1. The African Response

Nigeria. A small Nigerian unit has been in Sierra Leone since the mid-1990s. Nigerian troops have served under both ECOMOG and the UN. The initial Nigerian role was to assist Sierra Leone during the Liberian war when it was clear Charles Taylor was helping the RUF. A large ECOMOG force held parts of Liberia and was frequently in conflict with Taylor's NPFL faction. Conversely, one militia recruited from Liberian refugees (ULIMO) was helping the Sierra Leone army against the RUF.

In Sierra Leone, the ECOMOG force was usually small and restricted to guarding key installations. When confronted with the AFRC/RUF forces during the coup in May 1997, the Nigerians were forced into an embarrassing retreat to the international airport. Their failure was exacerbated by the fact that Nigeria had also signed a defence agreement with the Kabbah government in March 1997 which promised to provide presidential protection, training for the Sierra Leone military and strategic support for the regime.

That blow to Nigerian pride, added to impatience at the intransigence of the AFRC/RUF junta, was a key reason for the Nigerian assault that took Freetown and restored Kabbah to power in February 1998. Intervention also suited General Sani Abacha's military government. Nigeria needed – and still needs – to be seen as a powerful player and a positive force for regional stability. For Abacha the intervention was an opportunity to divert the increasing international pressure on Nigeria to improve its human rights situation and hold elections. The West was obliged to recognise Nigeria's involvement in Sierra Leone because no other state was willing to fulfil this role.

More than any other nation, Nigeria has committed itself militarily to the resolution of Sierra Leone's war. Without its involvement it is likely the RUF would have consolidated its power. But it also locked Nigeria into a long-term fight against the RUF, which retreated into the hinterland. On assuming office in early 1999, the newly elected Nigerian president, Olusegun Obasanjo, stated that one of his main foreign policy priorities was to reduce the cost of Nigerian troops in Sierra Leone. Prior to the Lomé agreement, there was a clear feeling among Nigerian politicians that it was time the UN pulled its weight in Africa by sending more peacekeepers or at least paying for ECOMOG.

Today Nigeria's continued presence risks degenerating into collaboration with its supposed enemies. Something similar happened earlier in Sierra Leone and in Liberia where international peacekeepers often collaborated with various armed factions. During the Liberian war, timber and minerals were transported across the frontlines between rival forces, earning ECOMOG the synonym of 'Every Car Or Moving Object Gone'. In September 2000, some

Nigerian soldiers were accused by the Indian UN Force Commander, General Jetley, of collaborating with the RUF to mine and trade diamonds. This is an accusation with which most independent observers in Sierra Leone concur. The economic ambitions of senior Nigerian officers are worrying, especially since, as part of UNAMSIL, Nigerian troops are likely to reoccupy the diamond mining areas

Positioning Nigerian forces in the diamond areas could prolong an intractable conflict. Added to the U.S.\$ 1,000 per month that Nigeria receives for each soldier it contributes to UNAMSIL (under ECOMOG all costs were borne by West African states and so overwhelmingly by Nigeria), the fear is that some commanders have little incentive to seek an end to the conflict.

When a UN Security Council mission visited Liberia in October 2000, President Taylor stated he would prefer Nigerian forces to be based in the diamond fields and to guard the Liberian border. This contrasts to statements during the Lomé negotiation when he insisted that ECOMOG withdraw. His change is clearly linked to what he judges would give him best advantage. Within days of ECOMOG's departure in April 2000, the RUF took UN peacekeepers hostage. Now with the threat of the UK-trained force on the horizon, Taylor is courting Nigeria and attempting to drive a wedge between Nigeria and the UK so as to maintain his stronghold. On 21 November 2000, for example, he called for withdrawal of UK forces if they were not brought into UNAMSIL. Clearly, Taylor believes he can do business with the Nigerians.

Liberia and Guinea. West African conflicts are too frequently compartmentalised into state specific insurgencies, ignoring regional implications. Sierra Leone's war was perceived as a local conflict until its regional ramifications recently became only too obvious. Clearly, the RUF has support from Liberia and, indirectly, Burkina Faso. There has been significant fighting along the Sierra Leone-Guinea border between RUF and Guinean troops and also between Liberian and Guinean security forces along the Guinea-Liberia border around the Guinean town of Guéckédou where there are approximately 200,000, mainly Sierra Leone, refugees.

Liberia and Guinea have accused each other of territorial violations and harbouring dissidents. Liberia has charged that more than four attacks on its territory in two years were carried out with the acquiescence of Guinea, which it alleges trained and armed Liberian insurgents.

Guinea claims the Liberian government supports incursions into its territory from Sierra Leone and Liberia. Guinea has carried out several bombing raids of Sierra Leone territory, claiming they were in pursuit of dissidents who were attacking Guinean towns and villages. Fighting in Guinea's forest region has created a humanitarian crisis involving over 300,000 Sierra Leone and Liberian refugees, who have fled the wars in their countries. The conflict has seriously affected the ability of aid agencies to reach desperate refugees. The UNHCR describes the crisis as its biggest humanitarian emergency.

Charles Taylor is widely regarded as supporting RUF attacks against Guinea. There are fears that these attacks could provoke more widespread conflict and instability within Guinea, a country of over seven million considered close to collapse from internal strife and the misgovernment of President Lansana Conte's regime.

In addition to Taylor, another name consistently linked with the incursions into Guinea is that of Mohammed Touré, son of Guinea's first post-colonial leader, Ahmed Sékou Touré. Mohammed Touré is believed to be close to Taylor and working alongside the RUF to exploit its control of territory adjacent to Guinea's long border with Sierra Leone. Ethnicity also plays a leading role in this instability since there are mixed populations along the border.

Many of the same factors in Sierra Leone and Liberia's wars are present in Guinea. Poverty and corruption have resulted in high levels of youth unemployment. Unsurprisingly, students and disgruntled young people are at the vanguard of protests and most likely to take up arms. Unfortunately, Guinea's mineral wealth, including one third of the world's bauxite reserves²⁵, significant iron ore and gold and an estimated 300 million carats in diamond reserves, could prove to be a source of instability.

2. The United Nations

Military Role. ICG believes that there is a need for military coercion against the RUF but UN forces can not do this. Increasing their numbers in the expectation that more will prove better could lead to further UN humiliation.

The UN's mandate permits peacekeepers only to protect themselves when threatened and to protect civilians in 'imminent threat of physical violence' in areas of UNAMSIL deployment. Thus, in practice, the issue of where and when to use force to protect civilians is open to inconsistent interpretation and is ultimately at the discretion of the field commander. UNAMSIL's evacuation of Kenyan peacekeepers from Kabala when the town came under RUF attack in early June 2000 demonstrated the lack of clarity and vulnerability inherent in the current 'Chapter Six and a Half' mandate. Many argue that UNAMSIL needs more extensive powers so as to be better prepared if attacked or deployed in dangerous areas. Under a stronger Chapter VII mandate, it would be more easily held accountable for any failures.²⁶

However, even a more robust mandate will not change the reality that the UN force is ill-suited to wage war in Sierra Leone. It cannot be expected to launch offensives. To protect civilians effectively, UNAMSIL requires not only a robust mandate, and the political will to hold UN field commanders and their units accountable, but also serious military capability.

²⁵ Guinea's production represents 11 percent of the world's production.

²⁶ See U.S. Committee for Refugees http://www.refugees.org/news/fact_sheets/faq_sierraleone.htm

Regrettably, much of the current UNAMSIL force is inadequate, and its soldiers are not willing to put their lives at risk in a conflict in which they have no direct interest. The standard of many of the African forces that form the bulk of UNAMSIL is woeful. Poorly briefed, ill-equipped and unable to operate cohesively, they are unprepared to cope with the tactics of the armed groups. Peacekeepers in May 2000 put up little resistance to RUF attempts to disarm them in Makeni. Rather than disarming combatants, they contributed a significant array of weaponry and equipment to the arsenal of the RUF. An informal poll of the rules of engagement by various contingents revealed that they would return fire if under attack but that they considered themselves under no obligation to go to the rescue of another country's soldiers in UNAMSIL.

The U.S. supports a more forceful UNAMSIL approach and advocates that the force be strengthened. It favours a redrafting of the UN mandate to allow UNAMSIL to impose peace and has threatened to withhold funding if that does not happen. The U.S. has started training five Nigerian, one Ghanaian and one Senegalese battalion to join UNAMSIL and enforce a more aggressive mandate.²⁷ But there is little guarantee that this diverse force could retake much territory. Experience suggests that the successful use of force requires a single cohesive military unit.

Furthermore, adopting a more robust Chapter VII approach would deter potential troop-contributing countries. They question why their soldiers should fight a war to which Western governments are unprepared to commit troops. UN Secretary-General Kofi Annan was unusually frank during the hostage crisis of May 2000: 'We would have liked to see some of the governments with capacity, with good armies and well-trained soldiers, participate but they are not running forward to contribute to this force'.²⁸

For developing countries, the opportunity to earn hard currency has become a compelling reason for contributing peacekeepers. UN peacekeeping forces in Africa – especially in unresolved internal conflicts – are rapidly turning into a third world army paid by the West. Whereas five years ago, Western governments formed the backbone of UN deployments, today they shun such involvement. Lakhdar Brahimi, the Algerian diplomat who led a UN panel on the reform of peacekeeping, recently lamented 'you can't have a situation where some people contribute the blood and some contribute the money'.²⁹

India's withdrawal of its 3,000 soldiers and Jordan of its 1,800 at the end of 2000 is linked in part to their reluctance to provide peacekeeping forces to areas where Western troops refuse to go. But there was also considerable hostility between Nigeria and India over Gen. Jetley's remarks concerning Nigerian diamond interests. The two most senior Nigerian officials implicated in the report - Mr Annan's special representative in Freetown, Ambassador

²⁷ The U.S. partnership with Western African armies to support UN operations in Sierra Leone is called "Operation Focus relief".

²⁸ UN press release SC/6857, 11 May 2000.

²⁹ Colum Lynch, 'U.S. and Europe Shift UN Peacekeeping Burden to Poor Nations' Troops', *Guardian Weekly*, 14 December 2000, p.29.

Oluyemi Adeniji, and Gen Jetley's immediate subordinate, Brigadier-General Mohammed Garba - both denounced Gen. Jetley's memorandum.

After that incident, future co-operation between these two major contributors, each with three battalions, was untenable. General Victor Malu, the Nigerian chief of staff, demanded Gen. Jetley's immediate removal. 'We are not going to serve under that man in whatever circumstances. If he is not removed, he will not get our co-operation, and we are the largest contingent in the force,' he said.³⁰

Although two Bangladeshi battalions and further troops from Zambia and Ghana will partly fill the gap, the departure of the Indians is a major blow to UNAMSIL's viability; the Indian forces were its best troops.

International Tribunal. 'The Lomé peace agreement entrenched the impunity enjoyed by perpetrators of human rights abuses throughout Sierra Leone's eight-year conflict. By including an amnesty for all activities undertaken in pursuit of the conflict, the peace agreement granted impunity for some of the worst human rights abuses, including crimes against humanity and war crimes.'³¹

The Security Council has resolved (Resolution 1315 of 14 August 2000) to create an international tribunal to prosecute those who have committed crimes against humanity. The tribunal or special court will try 'persons who bear greatest responsibility' for 'crimes against humanity, war crimes and other serious violations of international law, as well as crimes under relevant Sierra Leonean law, committed within the territory of Sierra Leone'. Unlike the Tribunals of Rwanda and Former Yugoslavia, the court is to be a mixed effort between the international and Sierra Leone justice systems.³² Although the Lomé accord of July 1999 included a comprehensive amnesty, it would be possible to prosecute people who have committed crimes since that date, including Foday Sankoh. Moreover, it is sometimes argued that RUF failure to respect Lomé terms has rendered the amnesty null and void, thus enabling prosecution also of earlier crimes.

The tribunal is needed. Those who have committed abuses must be brought to trial. That will go some way to ending impunity for perpetrators on all sides of human rights abuses. But there has been little material support for its establishment. In January 2001, Secretary-General Kofi Annan cautioned the Security Council against moving ahead without proper funding. He noted that the court might encounter financial problems unless provided three years of operational funds before its inception.

³⁰ Chris McGreal and Ewen MacAskill, 'UN to Bolster Peacekeeping Force by 7,000. Decision to Send Extra Troops Could Solve Dilemma about Leadership', special report: Sierra Leone, *The Guardian* (London), 13 September 2000.

³¹ Amnesty International, *Sierra Leone: Ending Impunity - an Opportunity Not to be Missed* (Amnesty International, AFR 51/60/00, 6 July 2000), p. 2.

³² See letter from the Secretary-General to the President of the Security Council dated 12 January 2001, S/2001/40.

There is also need for legal improvements within Sierra Leone. Administration of justice, both civil and criminal, is barely functional. Judicial institutions 'lack the necessary personnel with the appropriate training in international criminal law, financial support, equipment and the necessary legal tools to conduct trials of those accused of crimes under both national and international law'³³. Furthermore, Sierra Leone law does not currently extend to crimes under international law, including crimes against humanity and war crimes.

The Lomé Accord also mandated a Truth and Reconciliation Commission (TRC) and a national human rights commission but little progress has been made toward establishing either. The TRC was to be established 90 days after the signing and to submit its report twelve months later. However, the government stated that it did not want the TRC to begin until disarmament and demobilisation of combatants were complete. Recently, UNAMSIL has assisted the government to draft legislation to establish a human rights commission, but funding is lacking. A workshop by the UNAMSIL human rights office in November 2000 also laid out some issues for the establishment of a Truth and Reconciliation Commission.

3. The UK Role

The UK has maintained an interest in Sierra Leone since independence. It contributed the bulk of the funding to the February 1996 election. The so-called Sandline Affair (known also as the 'Arms to Africa Affair') and the publicity surrounding atrocities in Sierra Leone intensified British interest. In March 1998 it was reported that the British private security company Sandline (an associate of Executive Outcomes) had violated an arms embargo on Sierra Leone. Sandline had purchased weapons and provided a small number of personnel and a helicopter in support of the February 1998 Nigerian assault on Freetown to reinstate President Kabbah. Sandline, dubbed 'mercenaries' in the British press, claimed that the UK government had known of its intention to assist Kabbah. While the Labour government condemned the affair as an affront to ethical foreign policy, it appeared to many that the company was supporting the restoration of democracy against a barbarous AFRC/RUF junta and could, therefore, be seen as being on the 'right' side in Sierra Leone's war.

Sandline's intervention raised a more fundamental issue. In the absence of other international assistance, President Kabbah had little choice other than to arrange a commercial deal to obtain the funds to pay Sandline for its support and to request the help of Nigeria, which then was under the dictatorial rule of Sani Abacha. The international media coverage of atrocities when the RUF entered Freetown in January 1999 fuelled further pressure on the UK to assist in resolution of the Sierra Leone conflict. These events resulted in a marked increase of UK funds to restructure the Sierra Leone armed forces in 1999.

³³ Amnesty International, *Sierra Leone: Ending Impunity*, p.3.

As noted earlier, the UK's policy to train and equip SLA troops to inflict a military defeat on the RUF is high-risk. A military offensive against the RUF may be essential given the failure of Sierra Leone's elected government to stabilise the country and end the war but if pursued in the absence of an appropriate political strategy it could prove disastrous. Even if a reorganised SLA, supported by British troops, could decisively defeat the RUF, the consequence might be further regional destabilisation since RUF forces could regroup in Liberia and renew their offensive in Guinea. Moreover, SLA forces, unless regularly paid and effectively commanded, might well begin to live off the land as so many troops in Sierra Leone have done in the past. Finally, a British withdrawal after a comprehensive military victory over the RUF would tip the balance of military power and risk restarting the war, as happened after the withdrawal of Executive Outcomes in 1997. All the problems which helped create the war in the first place remain present, aggravated by the events of the past ten years.

It is obvious, despite Whitehall denials, that British involvement in logistics and training will need to continue for a long time. Habits of ill discipline and corruption are endemic in the Sierra Leone armed forces, and many of the same soldiers are being recycled. Familiar problems – especially 'lost' wages and rations – are re-emerging as soldiers are placed under Sierra Leone command following their UK training. To reorient the SLA, it needs to know it is being effectively led. For that to happen, British officers must be placed in the chain of command, probably as deep as the rank of major. That step, while believed essential by British officers on the ground, is politically risky for a Blair government already accused of 'mission creep' by its political opponents. It would also create unprecedented dependence by an African country on a former colonial power.

The necessity for outside commitment to Sierra Leone goes further than the military sphere. In effect, a military option alone is doomed to failure in the sense that it cannot by itself stabilise Sierra Leone and could cause serious military repercussions throughout West Africa, further destabilising a troubled region. A military option, while necessary, can only achieve stability if it is part of a medium-term political strategy.

4. Harmonising Objectives

There is mounting unease in West Africa at the British approach to arm, retrain and re-equip the Sierra Leone army with the objective of defeating the RUF. The show of British strength in November 2000, including deployment of warships, attack helicopters and marines, may have been comforting for Sierra Leone citizens, but it was condemned by the acting UN commander, a Nigerian, who considered it overly aggressive and declared it might undermine any peace agreement.

The Nigerian position - which has great resonance in UNAMSIL - is that international and Sierra Leone government forces should push into the interior, persuading, not compelling, the RUF to stand aside. Multinational forces, given their composition and mandate, actually have few other options. UNAMSIL continues to hold one-on-one conversations with the RUF,

entreating its leaders to keep the Lomé accord, which in reality has already failed.

The UK mission is distinct from that of the UN, and there are risks of serious disagreement. The new appointments of Force Commander Major-General Daniel Opande (Kenya), Deputy Force Commander Major-General Martin Agwai (Nigeria) and a British Chief of Staff, Brigadier-General Alastair Duncan, may help bridge some of the gaps. But the question remains how mediation aimed at forging a consensus favoured by UNAMSIL can mesh with the more aggressive stance taken by the Sierra Leone government and its UK backers.

Nevertheless, the two international forces need each other. UNAMSIL relies on the guarantee of forceful UK intervention. Without it, UNAMSIL risks once again being humiliated by the RUF as in May 2000. At the same time, the UK plan presumably requires UNAMSIL to occupy areas that the SLA takes, especially given the nature of Sierra Leone troops. That strategy, however – appearing to take sides against the RUF – does not coincide with the UN approach.

The UN also worries that, should the SLA be defeated by the RUF, its soldiers will retreat into UNAMSIL bases, effectively placing them on the front line and compromising their 'impartiality'.

The international community cannot run two or more strategies in Sierra Leone simultaneously. Working against each other with conflicting mandates will only fuel the conflict and invite warring factions to exploit differences. The former Yugoslavia and Somalia provide clear examples that strategic coherence is fundamental to success.

IV. CONCLUSIONS

There are no simple solutions to the Sierra Leone war. The task is to make the best policy from the possibilities and players available. The international community must not repeat its mistakes by believing that a quick-fix negotiation will resolve the conflict. This time around, Sierra Leone deserves reassurance that the international community will fulfil its commitment to restore and uphold peace for as long as needed. That first aspect -- to restore peace -- involves a militarily robust response.

The Lomé peace agreement is dead and should be abandoned. It was broken by the RUF in the first months after its signature. The most recent blatant demonstration of bad faith came in December 2000 with the long awaited hand-over of weapons and equipment taken from UNAMSIL in May 2000. A total of eleven armoured vehicles were returned on 11 December 2000 but they had been stripped of all mounted weapons and equipment. No other weapons or ammunition were turned in, despite commitments to do so. Furthermore, the RUF banned UNAMSIL from entering areas it controlled until certain 'non-negotiable' conditions were met, including the release of Foday Sankoh.

Since bringing the RUF into negotiations has not aided peace, the UN should call for the RUF's immediate 'surrender'. The RUF is not a cohesive movement. It lacks ideology or popular support. It is an armed gang, ultimately controlled by President Charles Taylor.

RUF combatants wanting to demobilise should be helped to do so quickly and in safety, with well planned and designed re-integration programs to entice them out of the bush. Delays in providing re-integration programs will result in many youths being recycled as further recruits for President Taylor and his security forces.

Those in the RUF who refuse to demobilise should be defeated militarily. The military option could be spearheaded by UK trained and led Sierra Leone armed forces with UNAMSIL securing the areas regained. The UK should provide military and intelligence backup to guarantee the safety of UN forces. The CDF could provide additional security for local villages and settlements.

Such a military strategy, while essential, clearly requires a shift in international perceptions and agreements.

A forward military strategy requires rapid harmonising of international positions. It is unlikely to succeed while the UN-West Africa alliance pulls in a different strategic direction from the UK-Sierra Leone government alliance. The international community must quickly find a united way forward or it will witness another intervention disaster in Africa.

It is essential that the UN Security Council upgrade the UNAMSIL mandate. This will require a concerted effort by permanent Security Council members including the U.S., UK and France. The UK is already committed to such a course. The U.S. also supports redrafting the UN mandate. Its role as a funder of the operation and its training function with various West African armies give the U.S. considerable influence. France is understood to be considering a British request to take a more positive approach to military interventions in West Africa. An incentive for France to do this could come from its relations with Ivory Coast, the government of which is threatened by a further spread of violence in the region and has closed its territory to arms transfers from Burkina Faso to Liberia.

It is also vital that other West African governments identify themselves with such an approach. This is perhaps the hardest diplomatic task. It would effectively legitimise a position already taken by the UK that has never been the subject of any international mandate. It would require resolution of deep differences between West African governments.

The most important actor in this respect is Nigeria. A guarantee of further international funding for African troops in UNAMSIL would have to be part of a comprehensive diplomatic agreement that would also include an enhanced mandate for UNAMSIL and agreement by ECOWAS on an aggressive stance towards the RUF. Importantly, Ivory Coast might now be expected to support such a position given its vulnerability. France might also be prevailed upon to intercede with its regional allies and is already considering British requests for support for joint border operations between Sierra Leone and Guinea. This would be welcome if agreed by key regional actors, especially Nigeria and Ivory Coast. Other African

governments should be asked for support. Little can be hoped for from the Organisation of African Unity, which is too large and disparate, but some gesture of support for robust international action might be obtained from South Africa, which has good relations with both Britain and the U.S. Although South Africa is not militarily involved in West Africa, its influence and its rhetorical commitment to the notion of an African renaissance make its position important.

If Charles Taylor is not stopped from fuelling the Sierra Leone conflict, he is likely to encourage formation of a new rebel group should the RUF be defeated. This tactic was often seen during the earlier war in Liberia. The conflict must be examined in its regional context and Sierra Leone's neighbours need to be made accountable for their role in it. The use of targeted sanctions – visa restrictions, freezing bank accounts and the like -- against key members of President Taylor's power structures and their families would be extremely effective. To keep Taylor's threat at bay these sanctions could be extended to Taylor's business partners in the region and in the United States. A key element would include logging activities, which enrich Taylor's immediate circle and are frequently associated with arms shipments. ECOWAS is already considering such sanctions against Liberia.

Funding is needed to start the Special Court, which has already been formally established. While the pitfalls of the Rwandan tribunal need to be heeded, the instigators of violence such as Foday Sankoh and key members of the RUF hierarchy should stand trial. This is essential to stop the cycle of impunity.

Parallel support is needed to re-establish basic judicial functions within Sierra Leone and to bring into play a Truth and Reconciliation Commission in a form appropriate to the Sierra Leone situation. The latter would seek to produce a degree of healing between those who have committed crimes at a lower level, and their victims.

The underlying causes of Sierra Leone's war are frequently forgotten in the face of the immediate conflict. These include corrupt and unaccountable government, manipulated ethnicity and alienated youth. Peace cannot be sustained without addressing these factors.

Demobilisation and reintegration campaigns that collapsed in May 2000 should be rejuvenated to provide an incentive for soldiers to give up their weapons. Even before May 2000, only a minority of those who demobilised were RUF.

The CDF needs to be brought under more accountable control, possibly as part of local territorial units. Currently, it is an extra-state force, answerable to Chief Hinga Norman, who runs it as his own military. The CDF's future needs to be resolved quickly and decisively. While it has been effective in keeping the RUF at bay, it is a wild card in the peace process and risks deteriorating into a new RUF. The UK and Sierra Leone governments have developed an apparently sound concept to formalise the CDF's existence and bring it under state control. It envisages the CDF serving as a smaller territorial force that could be mobilised in response to local security threats. Its weaponry could conceivably be stored in one central arsenal.

Improving governance in Sierra Leone is the most difficult problem of all but it is essential if there is to be a lasting peace. The civil war is rooted in four decades of bad government and a longer colonial history of indirect rule. Elections in 1996 produced a government which was democratically chosen but soon demonstrated itself incapable of governing well or installing peace. It failed to address many of the fundamental problems that have underpinned the war. New elections are needed. They should be run by the UN, as in Cambodia and elsewhere.

However, there is no reason to believe that a government elected in the immediate future would do any better unless rooted in a clear partnership with the international community. This means the Security Council making a clear commitment to a continuing role for the international community in Sierra Leone for a long enough period, probably five years or more, to complete essential contributions not only to rebuilding Sierra Leone's army but also to re-establishing the judicial system and other elements of good governance, including a national system of education.

The whole strategy proposed, with both its military and civilian support dimensions, would need to be the subject of negotiation with key political actors in the country, and discussed and, as far as possible, endorsed by key regional actors, especially Nigeria. It would surely be supported by the overwhelming majority of the Sierra Leone population.

Regarding the international half of this partnership, the single most eligible actor to play a leading role is the UK government, which is the only potential peacemaker that has shown the will and ability to intervene decisively. Its authority, however, would need to be confirmed in some form and complemented by the UN, with respect to both military and political strategy. It needs to be emphasised again that a purely military strategy, without a real political commitment by the international community, would likely only further destabilise the region, as many West Africans fear, regardless of the fate of the RUF.

These are unusual and radical recommendations. They will be difficult to implement. However, if the international community were to leave Sierra Leone quickly, even in the event of the military defeat of the RUF, violence would likely resume at once as the consequent power-vacuum attracted intervention from Liberia and Burkina Faso. The results would almost certainly include a collapse of government in Guinea and spread of the zone of conflict throughout much of West Africa in a manner comparable to what has happened in Central Africa. In other words, without an unusually intense and protracted international commitment in Sierra Leone, the prospects are terrible.

Freetown/London/Brussels, 11 April 2001

Appendix A: Political Background to the Crisis

The modern republic of Sierra Leone grew out of an eighteenth-century settlement on the West African coast for African and Caribbean Slaves and free citizens from Britain, some of them former slaves. Starting with the colony of Freetown, British rule eventually extended into the hinterland. The country area remained under British rule until it gained independence in 1961. From the beginning Sierra Leone's political parties vied for dominance at any cost. In 1967, the Sierra Leone Peoples Party (SLPP), that had led the country since independence, was narrowly defeated by the All People's Congress (APC) led by former trade union leader, Siaka Stevens. The latter was prevented from taking power immediately by a military coup but in 1968 Stevens became head of state. His APC party quickly consolidated power and in 1978 formally established a one-party state. This notoriously corrupt government made extensive use of patronage.

In 1985, the 80-year old Stevens handed over power to his hand-picked successor, General Joseph Momoh. Momoh cracked down on prominent Lebanese businessmen who controlled the Sierra Leone diamond trade and had become politically powerful under APC rule. These businessmen used their wealth to finance the civil war then raging in Lebanon itself and their influence with the government to encourage diplomacy helpful to one or another Lebanese faction. However, President Momoh became increasingly dependent in his own turn on Israeli traders and diplomatic and security networks and on Russian criminals with interests in the diamond trade. Such webs of international influence, in which criminal, financial, military and diplomatic interests are inextricably linked, have characterised Sierra Leone ever since.

Sierra Leone's war began in March 1991 when a small armed contingent known as the Revolutionary United Front (RUF), accompanied by Liberian fighters and Burkinabe soldiers, entered south-eastern Sierra Leone from Liberia. Foday Sankoh and other leading figures in the RUF had been involved with Charles Taylor and other insurgents from various West African countries in training camps in Libya and Burkina Faso in the 1980s. They said they intended to overthrow the APC government of President Momoh and claimed their larger goal was a radical, pan-African revolution.

The RUF was heavily dependent on Taylor, then the leader of a military faction in the civil war that had begun in neighbouring Liberia in 1989. Taylor and Sankoh sometimes claimed that their alliance was based on pan-African revolutionary solidarity. Taylor was also motivated by a desire to punish the Sierra Leone government for its participation in the West African intervention force in Liberia, known as the Economic Community of West African States Cease-fire Monitoring Group (ECOMOG) and led by Nigeria. That intervention in 1990 had prevented Taylor's National Patriotic Front of Liberia (NPFL) faction from taking control of Liberia. As time went by, Sierra Leone and Liberian forces became increasingly embroiled in one another's affairs, and Taylor supported the RUF to prevent Sierra Leone from being used by his Liberian opponents as well as to acquire diamonds and other plunder.

On 29 April 1992, President Momoh was overthrown in a military coup by young officers disillusioned with his government. Many of these officers had battlefield experience of the burgeoning two-country war. The coup was overwhelmingly popular among Sierra Leone citizens, many of whom regarded the old administration as incorrigibly corrupt. But the new National Provisional Ruling Council (NPRC) administration, consisting of eighteen military officers and four civilians, headed by Captain Valentine Strasser, soon adopted a style reminiscent of its predecessors. It also suffered a series of defeats

against the RUF. Despite military government and the expansion of the Sierra Leone army from 3,000 to over 13,000, the RUF advanced within a few kilometres of Freetown. Moreover, it became increasingly apparent that the government army often avoided fighting the RUF. Army and rebel commanders even reached informal understandings not to confront one another. Both sides lived off the countryside, plundering and abusing unarmed civilians. In desperation the government hired a private military company, Executive Outcomes, mainly comprised of former South African soldiers. This more disciplined and experienced force, which was supported by local armed militias, reversed the tide of war and pushed the RUF from most strategic areas.

The subsequent lull in fighting afforded sufficient stability – coupled with international and local pressure for democracy – for elections to be held in February 1996. These were conducted reasonably well and were won by the SLPP party led by Ahmed Tejan Kabbah, a former international civil servant with the United Nations.

The new government continued the policy of encouraging some local communities to recruit their own armed militias, officially called the Civil Defence Force but often known as *Kamajors*. It signed a peace settlement with RUF leader Foday Sankoh in Abidjan in November 1996, as part of which Kabbah was obliged to terminate Executive Outcomes' contract at the beginning of 1997. This proved a mistake that crucially changed the balance of military force and upset whatever basis had existed for political accord.

Three months later, President Kabbah was overthrown in a coup led by his own army, which had grown dissatisfied with the new government's curtailment of its privileges and its increasing use of the Civil Defence Force as, in effect, a private army. Kabbah and his government were forced into exile in Conakry. The new Armed Forces Revolutionary Council (AFRC) invited the RUF to join a coalition government.

A bizarre alliance of former foes, the AFRC/RUF administration was characterised by the total absence of the rule of law. There was widespread violence, rape and looting. The military regime was shunned by the international community. Many Sierra Leone civil servants boycotted their government jobs. Under international and domestic pressure, the AFRC/RUF agreed in Conakry in October 1997 to return power to the democratically elected Kabbah government. But almost immediately the AFRC/RUF administration showed increasing reluctance to adhere to its pledges.

Nigerian forces, present under an older defence agreement, continued to hold the international airport at Lungi even after the May 1997 overthrow of Kabbah. In February 1998 these troops, now technically part of ECOMOG, attacked Freetown, ousting the AFRC government. Most RUF fighters returned to the interior and resumed guerrilla war. Many Sierra Leone soldiers who had served the AFRC junta also fled to the interior and lived off the land, making common cause with the RUF. Pitted against them were 10-12,000 mainly Nigerian troops, under the banner of ECOMOG. These worked closely with the armed civilian militias, especially the *Kamajors*.

Horrific atrocities against civilians in rural areas were reported throughout 1998. In many cases these seem to have been perpetrated by the RUF and former soldiers seeking to impose their will in the countryside, but there were also reports of atrocities by the *Kamajors*. In effect, Sierra Leone was prey to a variety of armed groups, some having little coherence and no formal status. Its government, although internationally regarded as legitimate by virtue of its electoral mandate, was actually dependent on Nigerian troops and local militias. Several local forces recruited Liberians who had come to Sierra Leone either as refugees or as military adventurers. Some of these retained

links to Liberian military factions. There were many reports of collusion between groups officially opposed to one another, especially in diamond-marketing.

In July 1998, the UN established UNOMSIL, a 40-strong observer force.³⁴ But in January 1999, AFRC and the RUF infiltrated and nearly seized control of Freetown. Appalling atrocities were inflicted on civilians including rape, the random amputation of limbs from men, women and children, and kidnapping. Three thousand people are believed to have been murdered or abducted and many hundreds mutilated before ECOMOG again consolidated and pushed the RUF out of the capital.

ECOMOG, overwhelmingly Nigerian, was incapable of inflicting a lasting military defeat on the RUF, which continued to be supplied from Liberia by President Taylor. Nigeria wanted to withdraw, especially once Olusegun Obasanjo was elected as head of a civilian government in 1999. With few other states showing interest in sending troops and under international pressure to take even cosmetic action, another peace agreement was signed between the government and the RUF in Lomé just six months after the January 1999 atrocities.

Under Lomé the RUF gained positions in the government, and Foday Sankoh was given the status of vice president and made responsible for diamond marketing. To replace departing ECOMOG forces the UN Security Council also agreed to establish a 6,000-strong peacekeeping force, recently raised to 17,500. The new UN force, known as UNAMSIL, was empowered under Chapter VI of the UN Charter 'to ensure the security of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under immediate threat of violence, taking into account the responsibilities of the Sierra Leone government and ECOMOG'. Half of the 6,000 troops were expected to be provided by ECOWAS countries.³⁵

But within days of the last ECOMOG troops' departure in May 2000, the RUF took hostage 500 members of UNAMSIL and seized their vehicles and weaponry. Charles Taylor, increasingly recognised as the real power behind the RUF, came under strong international pressure to secure the eventual release of these hostages. He claimed this result proved his desire to broker a peace; it also showed his power over the RUF. Subsequently, Sankoh was arrested in Freetown, and a powerful UK force was dispatched to Lungi airport to provide security for the capital after the UN debacle. This intervention was crucial in again changing the military balance inside Sierra Leone.

By December 2000, a vague west-east front line divided the warring factions. Since then there has been little fighting inside Sierra Leone itself. To the north of this front line, the RUF remains dominant except for isolated army deployments around Kabala and Bumbuna. In the south, especially around Freetown, some 13,000 UNAMSIL peacekeepers, predominantly African and dominated by three Nigerian battalions, are stationed in camps. Between them, and operating completely independently, is the Civil Defence Force (CDF), an exceedingly loose militia group of up to 40,000 fighters nominally under the control of the Deputy Minister of Defence, Hinga Norman. The training and strength of the militia is highly variable though many have modern automatic weapons.

³⁴This was renamed UNAMSIL in October 1999, initially with some 6,000 troops.

³⁵John L. Hirsch, *Sierra Leone: Diamonds and the Struggle for Democracy* (International Peace Academy Occasional Paper Series, Lynne Rienner publishers, Boulder and London, 2001), p.127.

The new Sierra Leone army, which will ultimately number 8,500, is becoming a more powerful force. Under the direction of several hundred UK soldiers, 3,000 have now completed basic training. A British rapid reaction force has been stationed offshore, presumably ready to intervene should the RUF become a major threat once again. A key concern to many observers, however, is that among the troops deployed in support of the government are many who could carry out future abuses. The new, retrained Sierra Leone army appears to contain individuals who were themselves responsible for human rights abuses in previous years. If they are not well led, there may be more abuses. The CDF has also been responsible for many abuses; some of its fighters are reported to have served previously with other militias in Sierra Leone or in Liberia.

Appendix B: Acronyms

- AFRC: Armed Forces Ruling Council. A military junta established after a coup in 1997, which was driven from power by Nigerian forces operating under the umbrella of ECOMOG in February 1998. Troops loyal to the AFRC retreated to the countryside and continued to operate as armed opponents of the restored democratic government.
- APC: All People's Congress. A political party formed by the late Siaka Stevens, which held power until a military coup in 1992.
- CDF: Civil Defence Force. Officially a government-aligned militia force of about 40,000, the name is given to a number of local militias, most notably the *Kamajors*, which are in fact largely independent of government control.
- ECOMOG: ECOWAS Cease-Fire Monitoring Group. Originally organised in 1990 to intervene in Liberia, it has evolved into an umbrella for various regional interventions in which Nigeria has played a leading role.
- ECOWAS: Economic Community of West African States. A regional economic grouping which has become a key diplomatic forum for organising regional military interventions in Sierra Leone, Liberia and elsewhere.
- EO: Executive Outcomes. A South African security company run by former members of the South African Special Forces. Employed by the Sierra Leone government in 1995-6, it decisively altered the military balance. Its contract was terminated under the terms of the Abidjan peace agreement in early 1997. EO has subsequently been dissolved, but some of its associates have recently worked for President Taylor of Liberia and have aided the RUF.
- NPRC: National Provisional Ruling Council. A military junta established after a coup in 1992 chaired by Valentine Strasser. It ceded power to an elected government in 1996.
- RUF/SL: Revolutionary United Front/Sierra Leone. A revolutionary group formed by Sierra Leone citizens in Libya in the late 1980s and led by Foday Sankoh. It began its armed campaign in March 1991. It is particularly known for its use of terror tactics such as amputation and mutilation.
- SLA: Sierra Leone Army. The armed force of the Sierra Leone government.
- SLPP: Sierra Leone People's Party. A political party which held power immediately after independence and again since 1996. Regarded as having a power-base particularly among the Mende people, one of the country's largest ethnic groups.
- ULIMO: United Liberation Movement for Democracy. A militia established in 1991 by Liberians opposed to Charles Taylor, at that time Liberia's main rebel leader. ULIMO was employed as an auxiliary force inside Sierra Leone, fighting against the RUF, before pushing its way into Liberia. It subsequently split into rival factions, some supported both by the Nigerian faction in ECOMOG and the government of Guinea. ULIMO has used Guinean territory to launch attacks on President Taylor's Liberia and appears to have played a role in recent fighting inside Guinea.
- UNAMSIL: United Nations Mission in Sierra Leone, established by UN Security Council Resolution 1270 of October 1999.

Appendix C: Chronology³⁶

- 1961 Sierra Leone is declared independent on 27 April. Its first prime minister is the leader of the Sierra Leone People's Party.
- 1967 All People's Congress party leader Siaka Stevens wins elections. He is prevented by a coup from taking office.
- 1968 Non-commissioned officers stage Sierra Leone's third coup in thirteen months. Siaka Stevens assumes power.
- 1978 The APC adopts a one-party constitution.
- 1985 Military force commander Major-General Joseph Momoh succeeds Stevens as president.
- 1990 Momoh supports return to multiparty constitution. Elections scheduled for 1992.
- 1991 March 23. Around 100 fighters, including Sierra Leone citizens, Liberians loyal to Charles Taylor, and some Burkinabe mercenaries, attack Sierra Leone in the name of the Revolutionary United Front (RUF), led by Foday Sankoh, a former army corporal once detained for his part in a coup attempt.
- 1992 April 29. Junior officers carry out a coup and establish the National Provisional Ruling Council with Captain Valentine Strasser as chairman.
- 1994 September. Sierra Leone and Nigeria sign a mutual defence agreement.
- 1995 February. An RUF advance on Freetown is stopped by pro-government forces including some 2,000 Nigerian soldiers.
- 1995 March. Strasser signs a contract with the South African security company Executive Outcomes.
- 1996 January 16. Brigadier-General Julius Maada Bio replaces Strasser as NPRC Chairman in an internal coup.
- 1996 February 26-27. Presidential and legislative elections are held with the participation of thirteen political parties. No presidential candidate receives the required 55 per cent vote.
- 1996 March 15. Ahmad Tejan Kabbah of the SLPP wins a runoff.
- 1996 March 29. Kabbah is sworn in as president.
- 1996 November 30. Kabbah and Sankoh sign the Abidjan Peace Agreement.

³⁶Adapted from Hirsch, *Sierra Leone: Diamonds and the Struggle for Democracy*, pp.113-34.

- 1997 January 31. Executive Outcomes officially leaves Sierra Leone under the terms of Abidjan.
- 1997 May 25. A military coup installs the Armed Forces Revolutionary Council, chaired by Major Johnny Paul Koroma. President Kabbah flees to Guinea.
- 1997 June 1. Major Koroma invites the RUF to join the ruling junta.
- 1997 October 8. UN Security Council Resolution 1132 establishes an embargo on selected items. ECOWAS is empowered to enforce the embargo.
- 1997 October 23. In negotiations in Conakry between the junta and ECOWAS, the AFRC/RUF agree to restore President Kabbah within six months.
- 1998 January 15. Nigerian troops operating with ECOMOG attack Freetown.
- 1998 February 15. The AFRC/RUF leave Freetown, which is taken by Nigerian troops.
- 1998 March 10. President Kabbah returns to Freetown and is reinstated as president.
- 1998 July 13. UN Security Council 1181 establishes the UN Observer Mission in Sierra Leone.
- 1999 January 6. AFRC/RUF forces re-enter Freetown by force. They inflict major destruction and widespread atrocities.
- 1999 May 25. Negotiations begin on a new peace agreement.
- 1999 July 7. The Lomé peace agreement is signed by President Kabbah and Foday Sankoh. The UN Security Council welcomes the agreement.
- 1999 October 22. UN Security Council Resolution 1270 establishes the UN Mission in Sierra Leone, now known as UNAMSIL.
- 2000 February 7. The Security Council adopts Resolution 1289 which expands UNAMSIL from 6,000 to 11,100 military personnel and revises its mandate to include additional tasks, like providing security at key locations and ensuring the free flow of people and goods on specified routes.
- 2000 May 6. After several incidents indicating its non-compliance with the peace process, the RUF takes 500 UN peacekeepers hostage.
- 2000 May 8. RUF fighters in Freetown fire on a demonstration, killing seventeen people.
- 2000 May 9. ECOWAS appoints Charles Taylor to ensure that the RUF complies with the terms of the Lomé peace agreement and frees the estimated 500 UN peacekeepers hostages.
- 2000 May 17. Foday Sankoh is captured by a crowd in Freetown, turned over to government authorities, and imprisoned.

- 2000 May 19. UN Security Council resolution expands UNAMSIL to 13,000.
- 2000 May 29. An ECOWAS summit approves a proposal to send 3,000 West African troops to Sierra Leone.
- 2000 June 10. A team of British military trainers arrives in Freetown.
- 2000 July 5. The UN Security Council imposes an eighteen-month trade ban on uncertified diamonds from Sierra Leone in a bid to stop their sale from funding the RUF rebellion (Resolution 1306).
- 2000 August 1. The UN Security Council Sanctions Committee announces the composition of a panel to look into possible violations of sanctions and the link between trade in diamonds and arms.
- 2000 August 4. The UN Security Council extends UNAMSIL's mandate and agrees to a reinforcement of its military component (Resolution 1313).
- 2000 August 14. The UN Security Council adopts Resolution 1315 that recommends the setting up of a Special Court, which would have jurisdiction over suspected perpetrators of war crimes and human rights violations and would operate under both Sierra Leonean and international law.
- 2000 August 28. Kofi Annan recommends that UNAMSIL be increased to 20,500 troops, which would cost \$305 million more, bringing the UNAMSIL annual budget to \$780 million.
- 2000 September 20. India announces its intention to withdraw troops from UNAMSIL, soon followed by Jordan.
- 2000 November 10. Sierra Leone's government and the RUF agree to a cease-fire and to resume the peace process. They also agree that the UN Mission will be allowed to deploy freely in rebel held areas in order to supervise the cease-fire.
- 2000 December 20. The UN panel investigating illicit arms and diamond dealings with anti-government forces in Sierra Leone recommends a complete embargo on all diamonds from Liberia.
- 2001 January 1. The British announce that their troops will remain in Sierra Leone "until the RUF has been defeated by war or diplomacy".
- 2001 January 17. Kofi Annan cautions the Security Council that the Special Court has not yet received adequate funding from UN member states.
- 2001 January 30. Presidential and parliamentary elections are postponed because of the continuing insecurity in parts of the country.
- 2001 March 30. UN Security Council Resolution 1346 authorises the extension of UNAMSIL by six months and increases its military strength to 17,500.

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CONCURRENCE BETWEEN INDIVIDUAL RESPONSIBILITY AND STATE RESPONSIBILITY IN INTERNATIONAL LAW

ANDRÉ NOLLKAEMPER*

This article explores the consequences of the expansion of the domain of individual responsibility for the law of state responsibility. It is induced by a number of recent cases in which state responsibility claims were accompanied by prosecutions of individuals whose acts led to the responsibility of the state. An example is the parallel attribution of (alleged) acts of genocide in the former Yugoslavia between 1991 and 1995 to Yugoslavia and to Slobodan Milošević.

Concurrence between state responsibility and individual responsibility can be relevant from a practical perspective. For instance, findings pertaining to individual responsibility may influence subsequent determinations on state responsibility. Concurrence also is relevant from a theoretical perspective. It raises the question of whether the principles of state responsibility in case of concurrence differ from 'ordinary' cases of state responsibility. This question leads to the grand themes of the unity of state responsibility, the transparency of the state and the ('criminal', 'civil', or *sui generis*) nature of state responsibility.

The legal consequences of concurrence between individual and state responsibility are in large part a matter for primary obligations. For instance, obligation to prosecute individuals suspected of international crimes can directly link the obligations and responsibilities of the state and those of the individual. However, concurrence can manifest itself also in what now are considered the secondary rules of state responsibility, for instance in the sphere of attribution and remedies.

The consequences of the individualisation of international responsibility for the law on state responsibility have not been addressed by the recent restatements of the law of individual responsibility¹ and the law of state responsibility.² And while there is a large body of literature on the problem of

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¹ Art 25(4) Statute on the International Criminal Court, Rome, 17 July 1998 (hereafter ICC Statute) states: 'No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law', UN Doc A/CONF.183/9.

² Art 58 ILC Articles on responsibility of States for internationally wrongful acts (hereafter ILC Articles) states: '[t]hese articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.' The ILC articles are contained in the Annex of UN Doc A/Res/56/83 of 28 Jan 2002.

'state crimes' which inevitably emerges in cases of concurrent responsibility, this literature generally does not address the distinct problems pertaining to the influence of individual responsibility on state responsibility.³

This article explores certain legal issues that may arise in case of concurrence between state responsibility and individual responsibility. By way of background, Section I describes the development from exclusive state responsibility to concurrent responsibility. The article then considers the argument that in certain cases individual responsibility should be of an exclusive nature (Section II); the functions of state responsibility next to individual responsibility (Section III); certain practical connections between individual and state responsibility (Section IV) and the influence of individual responsibility on the principles of the law on state responsibility (Section V). The article does not address the other side of the coin: the influence of state responsibility on individual responsibility (for instance, the relevance of findings on state responsibility for sentencing of individuals).

I. THE EMERGENCE OF CONCURRENCE BETWEEN INDIVIDUAL AND STATE RESPONSIBILITY

Traditionally, international law attributes acts of individuals who act as state organs exclusively to the state. Although in factual terms states act through individuals,⁴ in legal terms state responsibility is born not out of an act of an individual but out of an act of the state.⁵ State responsibility neither depends on nor implies the legal responsibility of individuals. The irrelevance of indi-

³ Specific literature on this aspect is only now emerging: eg, PM Dupuy, 'International Criminal Responsibility of the Individual and International Responsibility of the State', in A Cassese, P Gaeta, and JRWD Jones (eds), *The Rome Statute of the International Criminal Court: A Commentary* (Oxford: Oxford University Press, 2002), 1085–1100; H Fox, 'The International Court of Justice's Treatment of Acts of the State and in Particular the Attribution of Acts of Individuals to States', in Nisuke Ando et al, *Liber Amicorum Judge Shigeru Oda* (The Hague: Kluwer Law International, 2002) 147; Marina Spinedi, 'State Responsibility v Individual Responsibility for International Crimes: *Tertium Non Datur*', 13 *EJIL* (2002) 895; A Bos, 'Crimes of State: In Need of Legal Rules', in G Kreijen (ed), *State, Sovereignty, and International Governance* (Oxford: Oxford University Press, 2002) 221; S Rosenne, 'State Responsibility and International Crimes: Further Reflections on Art 19 of the Draft Articles on State Responsibility', 30 *NYU Journal of International Law and Politics* (1997–8), 145; id, 'War Crimes and State Responsibility', 24 *Israel Yearbook on Human Rights* (1995) 63; M Evans, 'International Wrongs and National Jurisdiction', in Evans (ed), *Remedies in International Law: The Institutional Dilemma* (Oxford: Hart, 1998) 173; O Triffterer, 'Prosecution of States for Crimes of State', 67 *Revue Internationale de Droit Penal* (1996) 341; v Degan, 'Responsibility of states and individuals for international crimes', in Sienho Yee and Wang Tieya (eds), *International Law in the Post-Cold War World. Essays in Memory of Li Haopei* (London: Routledge, 2001), 202.

⁴ The Permanent Court of International Justice stated: 'States can act only by and through their agents and representatives', *Case of Certain questions relating to settlers of German origin in the territory ceded by Germany to Poland*, Advisory opinion, PCIJ Series B, No 6, 22.

⁵ D Anzilotti, *Cours de droit international* (Paris: Recueil Sirey, 1929), transl, by Gilbert Gidel, 503; PM Dupuy, 'Dionisio Anzilotti and the Law of International Responsibility of States', 3 *EJIL* (1992) 139, at 141–2 (hereafter Dupuy, *Anzilotti*).

vidual responsibility can be illustrated by the judgment of the European Court of Human Rights in *Selmouni v France*. In considering the responsibility of France for an act of torture by an individual police officer, the Court noted that the issue of guilt of the French police officials for the alleged acts of torture is a matter for the jurisdiction of the French courts and that '[w]hatever the outcome of the domestic proceedings, the police officers' conviction or acquittal does not absolve the respondent State from its responsibility under the Convention.'⁶ While this statement concerned the outcome of a domestic trial, it supports the broader principle that state responsibility under international law is separated from the legal responsibility of the individual.⁷ Responsibility of individuals is a matter of national, not international law. In this respect, the dualities between state and individual and between international law and national law are mutually supportive.⁸

The duality between state and individual is reflected in several key principles of the law of state responsibility. The principles governing breach and attribution are indifferent to the subjective conduct of the author of the act. The conduct of the state as a legal person is assessed against an objective standard.⁹ Fault may be determined by national law, but in principle does not enter the international legal sphere.¹⁰ The individual also is invisible in the principles governing remedies. Remedies fall on the state, not on individuals whose acts triggered state responsibility. Sanctions on individuals are left to national law. This is one of the reasons why the ILC was reluctant to provide for orders to prosecute individuals as a form of satisfaction.¹¹

The invisibility of the individual in the traditional law of state responsibility did have a drawback. Shielding the individual from responsibility undermined

⁶ *Selmouni v France*, ECHR Reports V (1999) 29 EHRR 403, para 87 (emphasis added).

⁷ The principle also was recognised by the British Ambassador in Washington in the *MacLeod*-case. He noted that the destruction of the *Caroline* 'was a public act of persons in her Majesty's service, obeying the order of their superior Authorities. The act, therefore, according to the usages of nations, can only be the subject of discussion between the Two National Governments: it cannot justly be made the ground of legal proceedings in the United States against the individuals concerned'. (Reported in Moore, II A Digest of International Law, 409 et seq; reproduced in Mac Nair, 2 *International Law Opinions*, Cambridge: Cambridge University Press, 1956, 224).

⁸ See for discussion of the views of Anzilotti on the isolation of international law as an autonomous entity in relation to national law: Dupuy, *Anzilotti*, op cit, 143 and G Gaja, *Positivism and Dualism in Dionisio Anzilotti*, 1 *EJIL* (1992) 123, at 134. See for the relationship between the dichotomy state-individual, on the one hand, and international law-national law, on the other: H Kelsen, *Law and Peace in International Relations. The Oliver Wendell Holmes Lectures, 1940-41* (Cambridge: Harvard University Press, 1942), 96; and P Allott, 'State Responsibility and the Unmaking of International Law', 29 *Harvard International Law Journal* (1988) 1, at 14.

⁹ C Tomuschat, 'International Law: Ensuring the Survival of Mankind on the Eve of a New Century' 281 *Recueil des Cours* (1999) 9, at 281-2.

¹⁰ G Arangio-Ruiz, 'State Fault and the Forms and Degrees of International Responsibility: Questions of Attribution and Relevance', in *Le droit international au service de la paix, de la justice et du développement* (1991) 25, at 26. Arangio-Ruiz notes that the main theories excluding fault from the elements of an international delinquency were proposed by dualist writers as Triepel, Anzilotti, and Kelsen.

¹¹ See section V.D below.

the efficacy of international law. Lauterpacht wrote: 'there is cogency in the view that unless responsibility is imputed and attached to persons of flesh and blood, it rests with no one.'¹² Philip Allott said: 'the moral effect of the law is vastly reduced if the human agents involved are able to separate themselves personally both from the duties the law imposes and from the responsibility which it entails.'¹³ These considerations have been given some effect. A large number of criminal law treaties, prosecutions of individuals in national and international courts and the establishment of the International Criminal Court have taken individuals away from behind the shield of the state. International law leaves it no longer to the national legal order to determine which individuals are subjected to obligations and responsibilities and confronts individuals now directly with legal consequences of their acts.¹⁴ This holds also if the individuals act as state agents.¹⁵

The result is that a limited number of acts can lead both to state responsibility and individual responsibility. These acts include planning, preparing, or ordering wars of aggression,¹⁶ genocide,¹⁷ crimes against humanity,¹⁸ killings

¹² H Lauterpacht, *International Law and Human Rights* (reprint 1968) (Hamden: Archon Books, 1950) 40.

¹³ Allott, *op cit*, 14.

¹⁴ As of yet, the individualisation of responsibility takes the form of international criminal responsibility. However, there is no principled reason why it could not also manifest itself in international civil responsibility; see Lauterpacht, *op cit*, 41–2; C Scott, 'Translating Torture into Transnational Tort: Conceptual Divides in the Debate on Corporate Accountability for Human Right Harms', in Craig Scott (ed), *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation* (Oxford: Hart, 2001) 45.

¹⁵ Although the fact that an individual acted as organ of the state may shield that individual from prosecution, it does not take away the responsibility; see *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)*, Judgment of 14 Feb 2002, para 60.

¹⁶ Individual responsibility was recognised in Art IV of the Charter of the International Military Tribunal of Nuremberg, 82 UNTS 279. While the ICC (temporarily) excludes aggression from the jurisdiction of the International Criminal Court (Art 5 ICC Statute), this does not necessarily affect individual responsibility. For state responsibility see *Military and Paramilitary Activities Case*, ICJ Reports (1986), 101; Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, GA Res 3314 (XXIX), (1974), UN Doc A/RES/36/103. See also Y Dinstein, *War, Aggression and Self-Defence* (Cambridge: Cambridge University Press, 2001) 98.

¹⁷ Convention on the Prevention and Punishment of the Crime of Genocide, UNTS, vol 78, No 1021 (1951) 277; Art 7 (2) ICTY Statute, 32 ILM (1993) 1192; Art 6 (2) ICTR Statute 33 ILM (1994) 1602; Art 27 ICC Statute. The ICJ indicated that state responsibility can not only arise for failure to prevent or punish individuals committing genocide, but also for an act of genocide perpetrated by the state itself. *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia)* (Preliminary Objections) para 32.

¹⁸ See for individual responsibility, eg, Art 7 ICC Statute. State responsibility for crimes against humanity is expressly recognised for the crime of apartheid: see International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973, Art 1 and 2. A Greek Court has held that violations of Art 46 of the Fourth Hague Convention of 1907 could be qualified as crimes against humanity, see *Prefecture of Voiotia v Federal Republic of Germany*, Greek Court of Cassation, 4 May 2000, reported in 3 *Yearbook of International Humanitarian Law* (2000) 511, at 514–15. Otherwise, acts for which individuals could be charged with crimes against humanity could in any case be considered in terms of state responsibility for (gross) violations of human rights.

of protected persons in armed conflict,¹⁹ terrorism,²⁰ and torture.²¹ These acts can be attributed twice: both to the state and the individual. State practice provides no support for the proposition that, in cases where responsibility has been allocated to an individual, there can be no room for attribution to the state. After the Second World War, both Germany and Japan were declared liable, even though the political and military leaders were prosecuted for individual crimes.²² The fact that four individuals, who were assumed to be agents of Libya, were held responsible for bomb attacks in a bar in Berlin in 1986²³ did not discourage the suggestion that Germany should claim compensation from the state of Libya.²⁴ The prosecution and conviction of the individual responsible for the Lockerbie bombing, considered to be an agent of Libya,²⁵ did not preclude subsequent claims against Libya for compensation by the United

¹⁹ Such acts can be qualified as grave breaches under Art 146 Geneva Convention [IV]. Also, such acts could be considered as breaches of the prohibition of states to murder protected persons under Art 32 of the same Convention.

²⁰ Individuals can be held responsible for terrorism under, eg, the 1993 International Convention for the Suppression of the Financing of Terrorism, UN Doc. A/RES/54/109, 39 ILM (2000) 568 and the 1997 International Convention for the Suppression of Terrorist Bombings, UN Doc. A/RES/52/164, 37 ILM (1998) 751. In his Dissenting Opinion in *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie case (Libyan Arab Jamahiriya v United Kingdom)*, *Preliminary Objections. Judgment*, ICJ Reports (1998) 9, President Schwebel suggested that the Montreal Convention 'may be interpreted to imply that the Convention does not apply to allegations against persons accused of destroying an aircraft who are claimed, as in the instant case, to be acting as agents of a contracting State' (at 64). However, his wording is cautious and Judge Schwebel proceeded on the assumption that the Convention does apply to persons allegedly State agents who are accused of destroying an aircraft. Judge Bedjaoui noted that the words 'any person' in Art 1 of the Montreal Convention mean that 'the Convention applies very broadly to "any" person, whether that person acts on his own account or on behalf of any organisation or on the instructions of a State', *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie case (Libyan Arab Jamahiriya v United Kingdom)*, *Provisional Measures, Order of 14 April 1992*, ICJ Reports (1992) 3, *Diss op*, at 37, para 10. As to state responsibility: L. Condorelli, 'The imputability to states of acts of international terrorism', 19 *Israel Yearbook on Human Rights* (1989) 233. S. Sucharitkul, 'Terrorism as an international crime: questions of responsibility and complicity', 19 *Israel Yearbook on Human Rights* (1989) 252.

²¹ In *Prosecutor v Furundzija*, Judgment of 10 Dec 1998, IT-95/17/1, para 142, the ICTY said: 'Under current international humanitarian law, in addition to individual criminal liability, State responsibility may ensue as a result of State officials engaging in torture or failing to prevent torture or to punish torturers.'

²² Dupuy, *op cit*, 1086.
²³ In November 2001 a German court convicted four individuals, see <http://www.labelle-trial.de/mainmid/verdict_main_en.htm>. The German court was 'convinced that the Libyan state bears a considerable co-responsibility at least' for the bomb attack, as 'agents of the Libyan secret service played a leading role in planning it'.

²⁴ Foreign Minister Joschka Fischer's officials pointed out that 'das Ministerium erst loslegen koenne, wenn ein rechtskraeftiges Urteil da sei. Aus diesem Grunde passierte in dem Fall auch seit der muendlichen Urteilsverkuendung im November vergangenen Jahren nichts.' See 'Berliner Richter belasten Gaddafis regime', at <<http://www.spiegel.de/politik/deutschland/0,1518,228970,00.htm>> last visited on 14 April 2003.

²⁵ The Scottish Court in the Netherlands acquitted one suspect and convicted Abdel Basset al-Megrahi. Scottish High Court of Justiciary at Camp Zeist (The Netherlands), *iter Majesty's Advocate v Al Megrahi* (31 Jan 2001), 40 ILM 582. The conviction was confirmed on appeal on 14 Mar 2002.

Kingdom and the United States.²⁶ The effectuation of responsibility of individual agents of Yugoslavia for acts during the armed conflict between 1991 and 1995 in the ICTY and national courts did not preclude claims by Bosnia-Herzegovina and Croatia in the ICJ. It does not appear that in any of these cases the states against which claims were made invoked the argument that these acts could not be attributed to the state since they already had been attributed to individual agents.

Several authorities have recognised the non-exclusive nature of individual and state responsibility. In *Prosecutor v Furundzija*, the ICTY said: 'Under current international humanitarian law, in addition to individual criminal liability, State responsibility may ensue as a result of State officials engaging in torture or failing to prevent torture or to punish torturers.'²⁷ In its judgment on Preliminary Objections in the *Application of the Genocide Convention* case, the ICJ said with respect to Article IX of the Genocide Convention:

the reference in Article IX to the responsibility of a State for genocide or for any of the other acts enumerated in Article III does not exclude any form of State responsibility. Nor is the responsibility of a State for acts of its organs excluded by Article IV of the Convention, which contemplates the commission of an act of genocide by 'rulers' or 'public officials'.²⁸

The possibility of double attribution is also recognised in the law on war crimes.²⁹ Both in its work on the Draft Code of Crimes and on State Responsibility, the ILC has taken the position that responsibility of individual state organs does not exclude state responsibility.³⁰

For these reasons, individual responsibility does not necessarily result in the atomisation of the state, a situation feared by Sir Gerald Fitzmaurice.

It is only by treating the State as one indivisible entity, and the discharge of the

²⁶ After the conviction of Abdel Basset al-Megrahi, who was said to be a member of the Libyan secret service, the United States and the United Kingdom made renewed calls on Libya to provide compensation. See *The Guardian* (London), 15 Mar 2002, 4.

²⁷ Judgment of 10 Dec 1998, 38 ILM 317 (1999), para 142.

²⁸ *Application of the Genocide Convention* case, Preliminary Objections, para 32.

²⁹ Art 29 Geneva Convention [IV] provides that 'The party to the conflict, in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, *irrespective of any individual responsibility which may be incurred*' (emphasis added). See generally on state responsibility for war crimes: F Kalshoven, 'State Responsibility for Warlike Acts of the Armed Forces', 40 *ICLQ* (1991) 827; Rosenne, 'War Crimes and State Responsibility', *op cit*.

³⁰ In its commentary to former Art 19, the ILC said that individual responsibility 'certainly does not exhaust the prosecution of the international responsibility incumbent upon the state for internationally wrongful acts which are attributed to it in such cases by reason of the conduct of its organs' and that 'the state may thus remain responsible and be unable to exonerate itself from responsibility by invoking the prosecution or punishment of the individuals who committed the crime' (Report of the International Law Commission on the work of its forty-eighth session (Doc A/51/10), General Assembly Official Records Fifty-First Sess, Suppl No 10, 30). It also stated that 'the criminal responsibility of individuals does not eliminate the international responsibility of States for the acts committed by persons acting as organs or agents of the State' (Report of the International Law Commission on the work of its thirty-sixth session (Doc A/39/10), YILC (1984), II, Part Two, 11, para 32).

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international obligations concerned as being incumbent on that entity as such, and not merely on particular individuals or organs, that the supremacy of international law can be assured—the atomization of the personality of State is necessarily fatal to this.³¹

Individual responsibility does not necessarily mean that the state is atomised and that the state could negate its own responsibility by having responsibility shifted towards individual state organs—state responsibility can exist next to individual responsibility.

II. THE CASE FOR EXCLUSIVE INDIVIDUAL RESPONSIBILITY

Although technically individual responsibility does not exclude state responsibility, occasionally it has been suggested that for reasons of legal policy, individual responsibility should be of an exclusive nature. The Nuremberg Tribunal stated that since crimes against international law are committed by men, not by abstract entities, ‘only by punishing individuals who commit such crimes can the provisions of international law be enforced’.³² Judges Vereshchetin and Shi en Oda considered in their individual Opinions in the *Application of the Genocide Convention* case whether the fact that the Genocide Convention envisages individual responsibility may imply that there is no room for state responsibility.³³ They wrote:

The determination of the international community to bring individual perpetrators of genocidal acts to justice, irrespective of their ethnicity or the position they occupy, points to the most appropriate course of action. We share the view expressed by Britain’s Chief Prosecutor at Nuremberg, Hartley Shawcross, in a recent article in which he declared that ‘There can be no reconciliation unless individual guilt for the appalling crimes of the last few years replaces the pernicious theory of collective guilt on which so much racial hatred hangs’ (*International Herald Tribune*, 23 May 1996, 8). Therefore, in our view, it might be argued that this Court is perhaps not the proper venue for the adjudication of the complaints which the Applicant has raised in the current proceedings.³⁴

The argument need not be rejected offhand. If a breach of fundamental rules of international law is brought about by a small group of leaders of a state, against the apparent wishes of the population, and these leaders have been taken from

³¹ G Fitzmaurice, ‘The General Principles of International Law—Considered from the Standpoint of the Rule of Law’, 92 *Recueil des Cours* (1957) 1, at 88. See also WE Beckett, ‘Les Questions d’Intérêt Général au Point de Vue Juridique dans la Jurisprudence de la Cour Permanente de Justice Internationale’, 39 *Recueil des Cours* (1934) 131, at 155.

³² The Trial of Major War Criminals: Proceedings of the International Military Tribunal Sitting at Nuremberg Germany, Part 22, at 447. But see Bos, *op cit*, 225–6, noting that it was intended to exclude criminal liability of legal persons.

³³ Joint declaration of Judge Shi and Judge Vereshchetin ICJ Rep 1996, 631; Declaration of Judge Oda, *ibid*, 625.

³⁴ *Ibid*, 632.

behind the veil of the state and held individually responsible, the question can be asked whether it is still useful to strive for separate responsibility of the state. Removal of the leadership of a state may be sufficient,³⁵ would spare the innocent (parts of the) population and thus would prevent primitive collective responsibility.³⁶ However, for reasons considered below, in many factual situations there may be good reasons not to allocate responsibility exclusively to individuals.

III. FUNCTIONS OF STATE RESPONSIBILITY IN CASES OF CONCURRENCE

The functions of state responsibility in regard to acts that are also subjected to individual responsibility can be divided into two categories: reparatory functions and systemic functions. Which function in any particular case will be appropriate and may be pursued by states or the international community depends largely on the circumstances of the case.

A. Reparatory Functions

Mostly concurrent state responsibility will serve the normal reparatory functions of state responsibility: remedying damage caused to injured states or other persons.³⁷ This situation may be compared to a civil law attachment to individual criminal responsibility—a construction also known in national legal systems.³⁸ Depending on the circumstances of the case, reparation may entail cessation, compensation, restitution (return of looted objects, release of illegally detained individuals), or satisfaction. The fact that the individual agent is prosecuted or convicted separately need not affect any of these functions.

To confine state responsibility to its reparatory functions is clearly appropriate when state responsibility springs from acts which, although they may lead to individual responsibility, constitute relatively minor transgressions of international law. Examples are isolated killings of protected persons in armed conflict by soldiers of low ranks in breach of official rules and orders, terrorist acts by lower members of the secret service in violation of laws and orders of their state and torture by lower police officials in violation of laws and orders of their state. Each of these acts can both be attributed to the individuals concerned and to the state. However, it does not seem useful to say that in

³⁵ Tomuschat, *op cit*, 290.

³⁶ Kelsen, *op cit*, 97–8; Antonio Cassese, *International Law* (Oxford: Oxford University Press, 2001), 6–8; D Cooper, 'Collective responsibility, "moral luck", and reconciliation', in A Jokic (ed), *War Crimes and Collective Wrongdoing* (Malden: Blackwell, 2001), 205.

³⁷ C Gray, *Judicial Remedies in International Law* (Oxford: Clarendon Press, 1987) 28; Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (London: Stevens and Sons, 1953), 234–6.

³⁸ See, eg, in the Netherlands, Supreme Court, 25 Nov 1927, NJ 1928, 364.

³⁹ Triffterer, *op cit*, 342–3.

such cases the state as a whole is 'criminally responsible' and that remedies should be of a criminal law nature or be targeted at the 'system' of the state.³⁹ Because the system of the state as a whole cannot be said to be part of the individual criminal act, there is no need to transcend the normal reparatory functions of state responsibility, as may be the case with respect to aggravated responsibility (Section III.B below).

The 2001 ILC Articles recognise this situation. Article 40 creates a special regime for responsibility that is entailed by 'a serious breach by a State of an obligation arising under a peremptory norm of general international law'. Technically, a war crime or act of torture by a lower official may also be qualified as a violation of peremptory norms of international law. However, the threshold 'serious' in Article 40 serves precisely to exclude breaches that are not 'gross' or 'systematic'. The acts therefore would fall under the normal reparatory scheme of the law of state responsibility.

In some cases individual responsibility is subjected to a threshold of gravity. This holds for instance for grave breaches under the Fourth Geneva Convention or for the jurisdictional provisions of the ICC Statute that limit the jurisdiction in respect of war crimes to war crimes 'committed as part of a plan or policy or as part of a large-scale commission of such crimes'.⁴⁰ If individual crimes satisfy these thresholds, in particular those of the ICC Statute, they may also satisfy the threshold of Article 40 ILC Articles. However, the thresholds are not necessarily identical. In any case, not all cases of individual responsibility are subjected to these thresholds, and one thus can envisage acts leading to individual responsibility, yet not amounting to serious breaches of peremptory norms in terms of Article 40.⁴¹

The reparatory functions of state responsibility are not limited to 'trivial' breaches of international law. In cases where acts do have a systematic character, and may qualify as serious breaches of *ius cogens* in terms of Article 40, the normal reparatory counterparts to individual responsibility may be appropriate. In the *Application of the Genocide Convention* case, involving facts that could easily satisfy the criteria of Article 40 of the ILC Articles, Bosnia and Herzegovina claimed 'normal' restitution and compensation.⁴² Likewise, in the Lockerbie incident the injured states confined themselves to demanding that the Government of Libya must 'surrender for trial all those charged with the crime; and accept responsibility for the actions of Libyan officials' and 'pay appropriate compensation', even though it generally was assumed that the highest organs of the state were involved in the Lockerbie bombing.⁴³ In these cases the injured state(s), or the international community, may wish to move beyond normal reparation by invoking (also) aggravated responsibility. However, that does not exclude 'normal' reparation.

⁴⁰ Art 8 ICC Statute.

⁴¹ Bos, *op cit*, 236.

⁴² *Application of the Genocide Convention* case. Preliminary Objections, para 14.

⁴³ UN Doc. A/46/827; S/23308 (1991), Ann.

B. Systemic Functions

The term 'systemic functions' is used here to refer to functions of state responsibility in regard of aggravated responsibility as provided for in Article 40 of the ILC Articles. Article 40 characterises this aggravated responsibility by the fact that it flows from 'a serious breach by a State of an obligation arising under a peremptory norm of general international law'. The underlying characteristic, also expressed in the definition of 'serious' in terms of 'systematic' in Article 40(2), mostly will be that the acts that led to the breach of international law were part of a systematic policy of the state.

It seems that the majority of cases in which the international community is concerned with individual responsibility will be part of a systematic policy of the state. For instance, in the cases of Germany and Japan after the Second World War, Cambodia after the Khmer Rouge regime and Yugoslavia after the armed conflict of 1991–5, the individual transgressions of international law could not be separated from the acts of the state.⁴⁴ In particular in cases of aggression,⁴⁵ genocide,⁴⁶ and crimes against humanity,⁴⁷ it will mostly be impossible to separate the individual from the state. This may also be true for torture if carried out as an extensive practice of state officials.⁴⁸ In particular cases, not only the larger state structures but also the population may be involved.⁴⁹

Hannah Arendt wrote on the acts of Eichmann: 'crimes of this kind were, and could only be, committed under a criminal law and by a criminal state.'⁵⁰ In international relations theory it is well accepted that reductionistic explanations of international relations that confine themselves to analyses of acts of individuals, may provide an incomplete understanding of the acts of states.⁵¹

⁴⁴ Crawford notes: 'It is a characteristic of the worst crimes of the period since 1930 that they have been committed within and with the assistance of State structures', 4th report, UN Doc A/CN.4/490/Add 3 (1998), para 89. Also: Dupuy, *op cit*, 1092; Triffterer, *op cit*, 346.

⁴⁵ See, eg, the Consolidated text of proposals on the crime of aggression discussed in the Preparatory Commission for the International Criminal Court, UN Doc. PCNICC/2001/L 3/Rev 1, Annex III of 11 Oct 2001.

⁴⁶ This was expressed by some states in the negotiations of the Genocide Convention. The United Kingdom took the position that the Convention should be directed at states and not individuals, as it was impossible to blame any particular individual for actions for which whole governments or states are responsible. W. Schabas, *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), 419. Also Denmark considered that in cases of genocide or aggression, the responsibility cannot be limited to the individual acting on behalf of the state, *ibid*, at 442.

⁴⁷ Cf the definition of 'crimes against humanity' in Art 7 ICC Statute.

⁴⁸ *Prosecutor v Furundzija*, *op cit*, para 142.

⁴⁹ Arangio-Ruiz, 5th Report, UN Doc A/CN 4/453/Add 3 (1993), para 158; Bos, *loc cit*, 237.

⁵⁰ Hannah Arendt, *Eichmann in Jerusalem. A Report on the Banality of Evil* (New York: the Viking Press, 1963), 240. See also Allott, *op cit*, 15; Triffterer, *op cit*, 346; *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)*, Judgment of 14 Feb 2002, Diss op of Judge Al-Khasawneh (noting that such acts 'are definitionally State acts' (para 6)) 1. This last remark may overstate the issue, as also other organised groups, that may oppose the state, may provide for the necessary systemic context.

⁵¹ KN Waltz, *Man, the State and War. A Theoretical Analysis* (New York: Columbia University Press, 1959) ch 4–5 and *id*, *Theory of International Politics* (New York: Columbia University Press, 1979). Note that Waltz adds as a third explanatory level the system of interna-

For these reasons, the basis of the dogma of individual responsibility that 'Crimes against international law are committed by men, not by abstract entities, and *only* by punishing individuals who commit such crimes can the provisions of international law be enforced'⁵² is doubtful at best.⁵³ The word 'only' simplifies the relationship between individual and state. Indeed, it may be more important for the enforcement of 'the provisions of international law' to address states, rather than to confine legal responses to single individuals who carry out a state policy.

The systematic nature of the breaches needs to have consequences for the type of responses to that responsibility. These may need to address systemic causes, rather than merely repairing damage. Many have referred to the functions of aggravated state responsibility in terms of their criminal law nature.⁵⁴ The term is controversial and is better left aside as long as structures and procedures to implement criminal state responsibility are non-existent.⁵⁵ Concurrence between individual criminal responsibility and state responsibility thus does not necessarily (and certainly not as a matter of positive law) involve criminal state responsibility. It is clear though, that as a matter of legal policy the consequences of aggravated responsibility which supplement individual responsibility may need to go beyond reparation. In their most extreme form, they may resemble the functions of punishment of individuals: to end the transgression of fundamental norms of international law, to remove the threat to international society and to prevent repetition. It would be odd were the international community to consider that a president of a state should have to be imprisoned for many years, whilst leaving in place the structures that made possible and facilitated his acts.

The precise contents of the responses will depend on the circumstances of the case. When the acts are due primarily to a relatively small group or leadership of a state, sanctions may be targeted to that group, for instance by seeking to remove that leadership.⁵⁶ Other responses may include coercion to

tional relations between states and more in particular the anarchy that characterises that system. Obviously, this level is not easily addressed by the principles of international responsibility. See A Nollkaemper, 'On the Effectiveness of International Rules', 27 *Acta Politica* (1992) 49.

⁵² The Trial of Major War Criminals: Proceedings of the International Military Tribunal Sitting at Nuremberg Germany, Part 22, at 447.

⁵³ See for a strongly worded statement to the same effect, R Jennings, 'The Pinochet Extradition Case in the English Courts', in L Boisson de Chazournes and V Gowlland-Debbas (eds), *The International Legal System in Quest of Equity and Universality. Liber Amicorum George Abi-Saab* (The Hague: Nijhoff, 2001), 677, at 693, referring to the words of the Nuremberg Tribunal cited above as a 'net and high sounding but dangerous, not to say dishonest, half-truth' that has 'a considerable currency with the great and the good, who have been willing to deceive themselves into believing that this aphorism represented the essence of wisdom'.

⁵⁴ Dupuy, *op cit*, 1089, referring to 'double crimes'. See for a discussion of the terminology, A Pellet, 'The New Draft Articles of the International Law Commission on the Responsibility of States for Internationally Wrongful Acts: A Requiem for States' Crime?', 32 *Netherlands Yearbook of International Law* (2001) 58–60.

⁵⁵ James Crawford, 'Revising the Draft Articles on State Responsibility', 10 *EJIL* (1999) 443.

⁵⁶ Tomuschat, *op cit*, 290.

secure the fulfilment of the obligation and restoration of rights,⁵⁷ *deballatio* of a state that started a war of aggression or a genocide, occupation of its territory, by UN administration or otherwise, or imposed measures of arms control.⁵⁸ State practice provides limited but unequivocal support for these responses, for instance in respect of the administrations of Germany and Japan after the Second World War and the economic sanctions imposed on Yugoslavia and Iraq.

The ILC Articles on state responsibility are not irrelevant to these forms of aggravated responsibility. The general objective of state responsibility (restoring the situation that existed, both materially and legally between the states involved in the responsibility relationship) also may support such systemic objectives. The ILC recognised that the normal principles concerning reparation would not in all cases be adequate to achieve the necessary systemic effects. The consequences provided for in respect to serious breaches of peremptory norms in Article 41 go some way to providing a legal basis for what may be needed by providing for an obligation to cooperate to bring to an end serious breaches of peremptory norms, for a prohibition of recognition of a situation created by such breaches, and for a prohibition to render aid or assistance in maintaining that situation. However, the ILC recognised that these steps might not go far enough. Article 41(3) provides that these consequences are without prejudice to further consequences that a serious breach of peremptory norms may entail under international law.⁵⁹

States have preferred to keep the responses to serious breaches of peremptory norms of international law outside the law of state responsibility as formulated by the ILC. Illustrative is the position of the United States that 'the responsibility for dealing with violations of international obligations that the [ILC] interprets as rising to the level of 'serious breaches' is better left to the Security Council rather than to the law of State responsibility'.⁶⁰ However, the fact that practice will develop outside the law covered by the ILC Articles does not mean that it is not properly considered in terms of state responsibility. Both unilateral⁶¹ and multilateral responses, including those by the Security

⁵⁷ This was the definition of 'sanctions' by the ILC in its early consideration of the concept of crimes; see Yearbook ILC 1973, Vol II, 175, para 5 of the commentary to Art. 1.

⁵⁸ Arangio-Ruiz, Fifth Report, op cit, para 88. See also B Graefrath and M Mohr, 'Legal Consequences of an Act of Aggression: the Case of Iraqi Invasion and Occupation of Kuwait', 43 *Austrian Journal of Public International Law* (1992) 127–8; PN Drost, *The Crime of State*, 1 (Leyden: Sythoff, 1959), 296–7.

⁵⁹ Also, Art 59 states that the Articles are without prejudice to the Charter of the United Nations.

⁶⁰ Comments United States, in UN Doc. A/CN.4/515 (2001) 53. See also Crawford, *The International Law Commission's Articles on State Responsibility*, op cit, commentary to Art 40, para 9.

⁶¹ See B Conforti, *International Law and the Role of Domestic Legal Systems* (Dordrecht: Martinus Nijhoff Publishers, 1993) 176, noting that self-help is the normal reaction to an internationally wrongful act. This includes use of force legitimised under Art 51 UN Charter and counter-measures. See also Kelsen, op cit, 32 ff.

Council,⁶² to breaches of international law may well be construed in terms of allocation and implementation of responsibility. Conceptually also these responses thus can be part of a concurrence of individual and state responsibility.

It need not be detailed here that the implementation of aggravated responsibility is not satisfactorily regulated by international law and that much work needs to be done to bring them under proper legal control.⁶³ The ILC recognised that the legal regime governing the consequences of serious breaches of peremptory norms of international law is in a state of development.⁶⁴ This unsatisfactory state of affairs is set in a new light by the development of procedures for individual responsibility that respond to exactly the same acts. Both individual state responsibility and aggravated state responsibility are consequences of breaches of fundamental norms of concern to the international community. Yet a disconcerting difference exists in the contents of these forms of responsibility and the procedures the international community has in its possession for their implementation. The relative sophistication of the law on individual responsibility makes one acutely aware of the lack of proper legal procedure in the multilateral responses to state responsibility.⁶⁵

IV. CONNECTIONS BETWEEN THE IMPLEMENTATION OF INDIVIDUAL AND STATE RESPONSIBILITY

The above implies that in particular cases international responsibility can be effectuated at the same time against an individual and against the state—either through implementation of ‘ordinary’ or ‘aggravated’ responsibility. These tracks of individual and state responsibility can be connected. The linkages can be illustrated by the concurrence of individual and state responsibility in the Lockerbie incident. At the time when the Libyan suspects were indicted in Scotland, the United Kingdom and the United States already had pressed for formal responsibility of and compensation by the state, declaring that the

⁶² See R Higgins, *Problems and Process, International Law and How We Use It* (Oxford: Clarendon Press, 1994) 181–4. A similar broad conception is adopted by Triffterer, *op cit*, 343 (referring to the sanctions imposed or authorised by the Security Council as one example of ‘prosecution’ of states for crimes of state). See also M Herdegen, *Befugnisse des UN-Sicherheitsrates: afgeklärter Absolutismus im Völkerrecht* (Heidelberg: Müller, 1998) 20 (stating that ‘In der Regel wird eine Friedensbedrohung durch die schwerwiegende Verletzung von Völkerrechtspflichten begründet’); B Graefrath, *International Crimes—A Specific Regime of International Responsibility of States and its Legal Consequences*, in: JHH Weiler, A Cassese and M Spinedi (eds), *International Crimes of States: A Critical Analysis of the ILC’s draft Article 19 on State Responsibility* (Berlin/New York: Walter de Gruyter, 1988), 164.

⁶³ B Simma, ‘Bilateralism and Community Interest in the Law of State Responsibility’, in Yoram Dinstein (ed.), *International Law at a Time of Perplexity. Essays in Honour of Shabtai Rosenne* (Dordrecht: Nijhoff, 1989) 821, at 844; Pellet, ‘The New Draft Articles’, *op cit*, 72–9.

⁶⁴ Crawford, *The International Law Commission’s Articles on State Responsibility*, *op cit*, commentary to Art 41, para 14.

⁶⁵ *Lockerbie case*, Provisional measures, Dissenting Opinion of Judge Bedjaoui, ICJ Reports (1992) 33–49.

Government of Libya must 'surrender for trial all those charged with the crime; and accept responsibility for the actions of Libyan officials' and 'pay appropriate compensation'.⁶⁶ Judge Shahabuddeen noted:

Since the ground on which the United Kingdom made its demand for payment of compensation was that Libya had engaged international responsibility for the crimes allegedly committed by its two accused nationals, the making of the demand for payment 'promptly and in full' constituted a public and widely publicized announcement by the Respondent State of a prior determination by it, as a State, that the two accused were in fact guilty of the offences charged . . . the Solicitor General for Scotland affirmed to the Court that 'their guilt or innocence will be determined not by the Lord Advocate nor by the United Kingdom . . .'. True, in the sense that guilt is for the courts; but it is nevertheless clear that guilt has already been determined 'by the United Kingdom' as a State.⁶⁷

Eventually, the findings of individual responsibility in connection to the Lockerbie bombing supported subsequent claims of state responsibility.⁶⁸ On the other hand, if the Scottish Court sitting in the Netherlands would have found that the individuals who were indicted were not remotely related to the bombing, the factual basis for the claim of the responsibility of the state of Libya would have fallen away. It is difficult to envisage that a court charged with determining state responsibility would in a subsequent proceeding find evidence of individual involvement that a court charged with determining individual responsibility would have missed. While the former court could make its own factual determinations under a more liberal standard of proof, the handling of evidence and witnesses in an interstate case is much less attuned to making such factual determinations. Assuming that the court exculpating the individuals is considered impartial, an international court can be expected to defer to such findings.

Any weight that in an interstate procedure on state responsibility may be given to prior factual or legal findings on individual responsibility is not contingent on a formal legal effect of such findings. No hierarchical relationship between international courts exists in the sense that a court charged with determining state responsibility should follow a court that has made determinations on individual responsibility.⁶⁹ Rather, it is a matter of deference to findings made by a tribunal authorised and equipped to do so. It is not uncommon for a body charged with determining matters of state responsibility to attach weight to findings of fact, or mixed fact and law, made by other international bodies. For instance, in the *Corfu Channel* case, the ICJ said of the

⁶⁶ Above, n 43.

⁶⁷ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United Kingdom)*, Provisional Measures, Order of 14 April 1992, ICJ Reports (1992) 3, Separate Opinion of Judge Shahabuddeen, at 31.

⁶⁸ Above, n 26.

⁶⁹ See generally J Charney, 'Is international law threatened by multiple international tribunals?', 271 *Recueil des cours* (1998) 356-63.

report of the committee of experts it has established: 'The Court cannot fail to give great weight to the opinion of the Experts who examined the locality in a manner giving every guarantee of correct and impartial information.'⁷⁰ Similarly, it would seem that weight could be given to factual determinations made by international courts charged with determining individual responsibility.

That weight will vary with the institution that has made these determinations. Differences may have to be made between the different phases of criminal proceedings, such as indictments, review and confirmation of indictments,⁷¹ interlocutory appeals, and judgments. Also, distinctions may need to be drawn between judgments of decisions by a trial chamber and judgment by an appeals chamber. There are no hard and fast rules on the weight of such determinations. In general, however, findings by each of those may carry substantial weight.

A distinction also will need to be drawn between decisions of international courts and decisions of national courts. Findings of national courts may be considered with more circumspection and in considering the weight to be attached to their decisions, the circumstances in which such findings were made, in particular the impartiality of the court, will be relevant. However, in particular cases, international courts charged with state responsibility may treat findings by national courts with deference.⁷² The ECHR stated in *McCann v United Kingdom*:

While accepting that the Convention institutions are not in any formal sense bound by the decisions of the inquest jury, the Government submitted that the verdicts were of central importance to any subsequent examination of the deaths of the deceased. Accordingly, the Court should give substantial weight to the verdicts of the jury in the absence of any indication that those verdicts were perverse or ones which no reasonable tribunal of fact could have reached. In this connection, the jury was uniquely well placed to assess the circumstances surrounding the shootings. The members of the jury heard and saw each of the seventy-nine witnesses giving evidence, including extensive cross-examination. With that benefit they were able to assess the credibility and probative value of the witnesses' testimony. The Government pointed out that the jury also heard the submissions of the various parties, including those of the lawyers representing the deceased.⁷³

⁷⁰ ICJ Reports (1949) 4, at 21.

⁷¹ For example, in the Review of the Indictment of Karadzic and Mladic, Judge Riad found that, *prima facie* the facts presented in the indictment disclose 'above all, the commission of genocide'. ICTY, Trial Chamber, Review of the Indictment, *The Prosecutor v Radovan Karadzic & Ratko Mladic*, Case No. IT-95-18-I, 16 Nov 1995.

⁷² *Schenk v Switzerland*, series A No 140 (1988) 13 EHRR 242. See also DJ Harris, M O'Boyle, and C Warbrick, *The Law of the European Convention on Human Rights* (London: Butterworths, 1995), 680.

⁷³ *McCann v UK*, series A No 324 (1996) 21 EHRR 97, para 165.

The renewed claims after the convictions by national courts of Libyan nationals for the *La Belle* and *Lockerbie* bombings indicate that the fact that these judgments were made by national rather than international courts did not undermine their credibility and value. In both cases, the convictions were followed by repeated claims for compensation against the state.⁷⁴ Obviously, if judgments to the contrary had been made by Libyan courts, a similar reliance on national judicial decisions would have been unlikely.⁷⁵

If a court or tribunal were to find that no factual basis exists for individual responsibility, this need not preclude a finding of state responsibility. The standard of proof in interstate proceedings is different and generally lower than the standard applying in cases of individual responsibility. It is based on the balance of evidence submitted by both parties rather than on the 'beyond a reasonable doubt' threshold and therefore generally will be lower than the standard of proof that applies in matters of individual responsibility.⁷⁶

However, when state responsibility concerns such serious matters as allegations of responsibility for genocide or terrorism, an international court arguably should translate the seriousness of the allegations into a more stringent standard of proof.⁷⁷ Holding a state responsible for genocide or crimes against humanity, and certainly the adoption of measures that aim to remove the source of these crimes, should not be based on un rebutted statements of fact by an injured state. There must be a difference between the standard of proof required for showing a minor injury to a foreign investor and a claim of genocide, in particular if such violations of peremptory norms are reflected in different remedies. This would argue for a synergy in procedural standards for individual and aggravated state responsibility. There appears to exist little practice on this point. Indeed, human rights courts show a contrary practice as

⁷⁴ Above n 24 and n 26.

⁷⁵ SC Res. 748 (1992), calling on Libya to comply with the request of the United States and the United Kingdom to extradite the suspects might be said to be based on the assumption that an impartial trial by the national courts of Libya was unlikely.

⁷⁶ For determining individual responsibility in the ICC, the standard is proof 'beyond a reasonable doubt'; see Art 66(3) ICC Statute. For proof required for establishing state responsibility, no uniform standard exists, but in principle the standard will be lower than in cases on individual responsibility. See D Sandifer, *Evidence before International Tribunals*, rev edn (Charlottesville: University Press of Virginia, 1975) 127. For the ICJ, see S Rosenne, *The Law and Practice of the International Court, 1920-1966*, 3rd edn (The Hague: Nijhoff, 1997) 1089-90. For the IACHR: T Buergenthal, 'Judicial Fact-Finding: Inter-American Human Rights Court', in *Fact-Finding Before International Tribunals* (New York: Ardsley-on-Hudson, 1992) 270-271 and D L Shelton, 'Judicial Review of State Action by International Courts', 12 *Fordham International Law Journal* (1989) 384-7; for the Human Rights Committee: D McGoldrick, *The Human Rights Committee: its Role in the Development of the International Covenant of Civil and Political Rights* (Oxford: Clarendon Press, 1994), 150 (standard of proof: 'balance of probabilities' rather than 'beyond reasonable doubt').

⁷⁷ Judge Shahabuddeen stated that 'the standard of proof varies with the character of the particular issue of fact'; and that 'a higher than ordinary standard may . . . be required in the case of a charge of "exceptional gravity against a State"'. *Qatar v Bahrain* (Jurisdiction and Admissibility), ICJ Reports (1995) 63, Diss op Judge Shahabuddeen, referring to *Corfu Channel*, Merits, Judgment, ICJ Reports (1949), 17.

they use the seriousness of the allegations as a criterion to liberalise the standard of proof in favour of the applicant rather than of the defendant state.⁷⁸

The connections between implementation of individual and state responsibility become particularly undeveloped if one turns to the connections between judicial procedures for individual responsibility and the political procedures to which implementation of aggravated state responsibility commonly is subjected. Matters of standard of proof and evidence, and thus also the relevance of parallel proceedings against individuals, are underdeveloped in the Security Council and other multilateral frameworks. The gap between the procedures applying to individuals and states is disconcerting and hides the possible relevance of findings on individual responsibility for state responsibility.

V. CONSEQUENCES FOR THE PRINCIPLES OF STATE RESPONSIBILITY

With the emergence of concurrent responsibility, the development of international law of state responsibility takes a dialectical turn. Individualisation of responsibility, in itself a reaction to the monolithic and sometimes powerless principles of state responsibility, influences the nature and contents of the pre-existing law on state responsibility.

However, it would not be correct to say that it is the emergence of individual responsibility that induces changes in the principles of state responsibility. The true causal variable is the emergence of a hierarchy of norms in international law and more in particular the recognition of a limited number of norms that are of fundamental importance for the international community.⁷⁹ The emergence of this category of norms underlies both the individualisation of responsibility and the disruption of the unity of state responsibility. Articles 40 and 41, and in particular also the forward-looking Article 41(3), recognise as much. The main features of the concurrence of individual and state responsibility, notably the (semi-)transparency of the state, the role of the international community in defining and implementing responsibility and the potentially systematic consequences of state responsibility can indeed only be understood as a function of the recognition of a category of peremptory norms in international law and their *erga omnes* character.

⁷⁸ See *Velazques-Rodriguez* case, para 129 (noting that the Court cannot ignore the special seriousness of finding that a State Party to the Convention has carried out or has tolerated a practice of disappearances in its territory and that 'This requires the Court to apply a standard of proof which considers the seriousness of the charge'). See further IACHR, *Raquel Marti de Mejia v Perú*, Case 10.970, Report No. 5/96, Inter-Am CHR, OEA/Ser.L/V/II.91 Doc 7, at 157 (1996) (noting that while the ICJ must seek to preserve the interests of the parties in dispute, within the sphere of the American Convention, Art 42 of its Regulations (pertaining to the weight to be attached to submission to which governments have not responded, 'must be interpreted in light of the basic purpose of the Convention, ie protection of human rights').

⁷⁹ Generally: I. Seiderman, *Hierarchy in International Law. The Human Rights Dimension* (Antwerpen: Intersentia, 2001).

With the recognition of a set of fundamental norms recognised by the international community and the related emergence of individual responsibility, the traditional dualities between state and individual that characterise the law of state responsibility cannot be upheld in their strict form. The increasing transparency makes it possible to revisit some of the classic principles of state responsibility.⁸⁰ The influence of individual responsibility on the principles and implementation of state responsibility is discussed under four headings: attribution, fault, defences, and remedies.

A. Attribution

The traditional law of state responsibility makes no distinction between attribution of acts of heads of state or other high officials, on the one hand, and attribution of acts of lower ranking officials, on the other. Acts of all state organs are attributed to the state.⁸¹ The question must be considered whether nonetheless a distinction is to be drawn between these categories in cases of concurrence between state and individual.

The answer to this question appears to depend primarily on whether one accepts a separation between ordinary and aggravated state responsibility and, if so, whether the consequences of that aggravated responsibility can take the drastic consequences that sometimes are described as criminal sanctions.⁸² If so, it might be argued that it would not be justified to hold a state 'criminally' responsible, with all the related consequences, for an isolated act of torture by a lower police official in violation of laws and orders of the state. Attribution of course would be possible in the scheme of normal responsibility, but not in the scheme of aggravated responsibility. On the other hand, there would be less reason to object to attribution of a criminal act of the head of state to the state and to implement the resulting aggravated responsibility. It has indeed been suggested that given the potential more far-reaching consequences of a finding of aggravated responsibility, such distinctions might be appropriate.⁸³ A criminal act by a head of state would then imply 'criminal' responsibility of the state, whereas an act of a lower official would only lead to ordinary state responsibility. The matter may be further complicated if the high official, whose acts in principle could be directly attributed to the state, is held respon-

⁸⁰ A Pellet, 'Can a State Commit a Crime? Definitely, Yes!', 10 *EJIL* (1999) 432; id, *The New Draft Articles*, op cit, 77.

⁸¹ Art 4(1) ILC Articles.

⁸² See section IIIB.

⁸³ Triffterer, op cit, 342–3, distinguishes between cases where at high level decisions are taken that lead the state to violate international law, on the one hand, and cases where individual state organs with limited power to act on behalf of the state commit such crimes, for instance by not applying certain regulations, on the other. In the ILC it was noted: 'to use the legal fiction of attribution to make a state liable to compensate for damage caused by its officials is one thing, while casting the shadow of a crime over the population was another', *Yb ILC* (1995), Vol I, Part Two, 48–9.

sible under the principles of command responsibility and is thus responsible for acts of another person.⁸⁴ Is it proper to attribute that criminal responsibility to the state?⁸⁵

Another construction is possible. If one does not assume a strict separation between ordinary state responsibility and aggravated responsibility but rather a united concept with possibly differentiation in the sphere of reparation, one could take the position that all acts are attributed to the state, but that only the acts of the higher officials justify the consequences attached to aggravated responsibility. The matter is then not so much a problem of attribution as of the consequences of serious breaches of international law. This appears to be the approach that is consistent with the approach of the ILC Articles. While the ILC did recognise that the law in respect of serious breaches of peremptory norms of international law was in need of further development, it envisaged that development only in regard to the consequences of these breaches. If in the future a separate regime for aggravated responsibility would emerge, it may be appropriate to revisit this matter.

B. Fault

One of the distinguishing features of the law of individual responsibility and the law of state responsibility is that, while the mental state of the author of the act is critical in the determination of individual responsibility, it generally is either irrelevant or manifests itself in a different, objectified, form in the determination of state responsibility. For instance, for the qualification of killings of protected persons as grave breaches under Article 146 of the 4th 1949 Geneva Convention, it needs to be proven that such acts were committed wilfully. In contrast, for the responsibility of a state under Article 32 of this Convention no such intent needs to be established. Similarly, a finding that there is no psychological intent in an act that was qualified as a terrorist attack does not preclude state responsibility for failure to exercise due diligence to prevent the attacks.⁸⁶

In cases of concurrent responsibility, the question is to be considered whether the individual fault that is inherent in individual responsibility would not be more directly relevant for the responsibility of the state. The answer to this question of course primarily depends on the applicable primary norms. Some norms that may trigger concurrent state responsibility incorporate an element of fault. The *Genocide* case is an example. However, it appears that

⁸⁴ Art 28 ICC Statute.

⁸⁵ The issue is raised by Fox, *op cit*, 161–2.

⁸⁶ K Zemanek, 'Schuld- und Erfolgshaftung im Entwurf der Völkerrechtskommission über Staatsverantwortlichkeit', in: *Festschrift für R. Bindschedler* (1980) 322; R Pisillo-Mazzeschi, 'The due diligence rule and the nature of the international responsibility of states', in 35 *German Yearbook of International Law* (1992), 9.

intent is an inherent element of aggravated responsibility—whatever the contents of the primary norms.⁸⁷

In principle the fault of the state is not necessarily the same as the fault of the individual and generally it will be more objectified.⁸⁸ But does that difference still exist if, first, the determination of the responsibility of the state would largely depend on the responsibility and thus on the intent of a few officials, and, secondly, the consequences of state responsibility are not confined to reparation but assume quasi-criminal law features? It might be said that the intent of a state is directly contingent on the intent of, for instance, the head of state,⁸⁹ and that his or her intent can directly be attributed to the state. For instance, a finding by the ICTY in the *Milosevic* case that intent to commit genocide existed, would be directly relevant to a determination of 'state intent' to be made by the ICJ in the *Application of the Genocide Convention* case. On the other hand, if an alleged case of state responsibility for genocide would hinge primarily on the role of a head of state, a finding that intent of that person could not be proven would not be irrelevant for a subsequent determination on the intent of the state of which the head of state is the personification. It may not be obvious that if no individual intent is found, the state is still assumed to have had the intention to commit genocide and can be confronted with drastic measures that seek objectives comparable to those of individual responsibility, would it have been determined, would have served. Individual fault thus may transgress into the domain of state responsibility.⁹⁰

The reasons underlying the traditional resistance against giving fault a place in the law on state responsibility are indeed qualified in case of concurrent responsibility. The normal international law of state responsibility is not concerned with individual fault, which is left to national law. In contrast, the law of individual responsibility attributes fault directly to the individual as a matter of international law. Also, the argument that state fault cannot be relevant because individuals cannot be isolated within a state⁹¹ loses much of its force. The transparency of the state may allow for imputation of the intent to

⁸⁷ Pellet, 'Can a State Commit a Crime?', op cit, 434; Crawford, *The International Law Commission's Articles on State Responsibility*, op cit, commentary to Art 40, para 8.

⁸⁸ See for a discussion of the concept of individual and state intent in the context of the Genocide Convention: M Koskeniemmi, 'Evil Intentions of Vicious Acts? What is *prima facie* evidence of genocide?', in Matti Tupamäki (ed), *Liber Amicorum Bengt Broms, Celebrating His 70th Birthday 16 October 1999* (Helsinki: Finnish Branch of International Law Association, 1999), 180.

⁸⁹ A Watts, 'The Legal Position in International Law of Heads of States, Heads of Government and Foreign Ministers', 247 *Recueil des Cours* (1994) 9, at 31–2.

⁹⁰ Pellet, remarks in ILC, 2993rd Meeting, *Yb ILC* (1995), Vol I, p. 97. See for a critique on the treatment of fault in the work of the ILC on state responsibility also A Gattine, 'La notion de faute à la lumière du projet de convention de la Commission du Droit International sur la responsabilité internationale', 3 *EJIL* (1992) 253; and id, 'Smoking/No Smoking: Some Remarks on the Current Place of Fault in the ILC Draft Articles on State Responsibility', 10 *EJIL* (1999) 397. Dupuy, op cit, 1096 notes that intention does remain individual and is only in a sense communicated to the state because the origin of the state is men.

⁹¹ Jiménez de Aréchaga, *International Responsibility*, in Max Sorensen, et al (eds), *Manual of Public International Law* (London: Macmillan, 1968), 535.

the state.⁹² Another barrier to considering fault in the determination or implementation of state responsibility was that the nature of international legal procedures for interstate adjudication would not be adequate for determining individual guilt.⁹³ For interstate procedures that still may be true. But in a case when individual guilt would be determined in a separate procedure for individual responsibility, the availability of such a procedure would take away the objection against considering individual guilt in an interstate procedure.

The relevance of fault for the principles on state responsibility is not confined to aggravated responsibility. Individual fault may influence form and amount of remedies, for instance, in the determination amount of compensation and in particular the forms of satisfaction.⁹⁴ That influence may well manifest itself in the normal reparatory functions of state responsibility (see Section III.A). The influence can be expected to become stronger and more visible, however, in case of aggravated responsibility.

C. Defences

In principle, the defences for individual responsibility and state responsibility are different. Most defences for individual responsibility are not recognised in the same form in the law of state responsibility. For instance, if the author of an act acted because of a mistake of law or fact⁹⁵ that may constitute a defence against individual responsibility, but if damage nonetheless occurred, the injured state will be entitled to reparation. Also in case of a defence of superior orders⁹⁶ or a mental disease,⁹⁷ the fault that is necessary for the assignment of individual responsibility may fall away, but (objective) state responsibility may still be possible.

One defence which to a certain extent applies to both individual and state responsibility is the principle that a person cannot be held responsible for an act that was committed to save his or her life. If this defence is found applicable, the act will lead neither to state responsibility⁹⁸ nor to individual responsibility.⁹⁹ The link between the provisions is particularly close, as also the principle of state responsibility, at least as formulated by the ILC, is expressly focused on the act of an individual. It is the distress of the individual author of the act, not of an abstract state, that constitutes the defence.

Otherwise the defences for the law of individual responsibility generally are wider. This may be justified because individual responsibility concerns criminal responsibility. However, that justification looses some if its force when state responsibility assumes the form of aggravated responsibility. This is particularly visible for the defence of duress. Under the ICC Statute, duress

⁹² Arangio-Ruiz, *State fault*, op cit, 29.

⁹³ J Basdevant, 'Règles Générales du Droit de la Paix', 58 *Recueil des Cours* (1936) 672.

⁹⁴ See Arangio-Ruiz, *State Fault*, op cit, 36.

⁹⁶ Art 33 ICC Statute.

⁹⁸ Art 24(1) ILC Articles.

⁹⁵ Art 32 ICC Statute.

⁹⁷ Art 31(1)(a) ICC Statute.

⁹⁹ Art 31(d) ICC Statute.

can be invoked as defence against allegations of international crimes.¹⁰⁰ In contrast, Article 26 of the ILC Articles provides that the otherwise applicable defences do not preclude 'the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law'. The defences under the law of individual responsibility thus would appear to be wider than under the law of state responsibility. While this may be perfectly proper if we understand responsibility in its normal reparatory function, it is less obvious in the case of serious breaches that may at the same time make the author of the act more visible and may seek trigger more serious consequences.

It may be added that if the acts which will result in aggravated responsibility are indeed systematic and widespread, the problem identified here is of a theoretical nature. It is unlikely that their systematic nature can be explained by duress. But the terms and conditions for aggravated responsibility are by no means settled. In a further development of the law, the relationship between individual defences and those of the state may require further attention.

D. Remedies

The remedies for state responsibility and for individual responsibility are different. The former leads to reparation, the latter to punishment of individuals. This difference is directly related to the invisibility of the individual (and his or her fault) in the law of state responsibility. In cases of partial transparency, that distinction loses some of its ground. Punishment of individuals can then be part of the remedy for state responsibility.

The obligation of states to punish individuals is primarily a matter for primary rules. Most of the acts which entail individual responsibility imply for the state the obligation to prosecute. This is the case for obligations in relation to torture,¹⁰¹ war crimes,¹⁰² and genocide.¹⁰³ When individual conduct (which may lead to individual responsibility) is attributed to the state, this will result in the (continued) duty of performance of the obligation to prosecute individual perpetrators.¹⁰⁴ This is not primarily a matter of remedies, but rather of the primary norms. Incorporating obligations to punish individuals who violate

¹⁰⁰ Art 31(d). In contrast, the Trial Chamber of the ICTY in the *Erdemovic* case held that duress could not afford a 'complete defense to a soldier charged with crimes against humanity or war crimes in international law involving the taking of innocent lives'. ICTY, *Prosecutor v Erdemovic*, Case No: IT-96-22-A, Judgment, (Oct 7, 1997), 37 ILM 1182 (1998), Joint Separate Opinion of Judges McDonald and Vohrah, para 88.

¹⁰¹ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc E/CN.4/1984/72, reprinted in 23 ILM 1027 (1984), Art 4-7. This obligation also is based on human rights law, see eg *Godínez Cruz* Case, Judgment of 20 Jan 1989, Inter-Am Ct HR (Ser C) No 5 (1989), stating that the obligation to punish was part of the 'legal duty to take reasonable steps to prevent human rights violations' (paras 184-5).

¹⁰² Art 146 Geneva Convention [IV].

¹⁰³ Art 4-6 Genocide Convention.

¹⁰⁴ Art 29 ILC Articles.

fundamental norms of law appears to be the prime way in which individual responsibility can be integrated in the law of state responsibility.

The obligation to punish responsible individuals also can be construed as a form of reparation due by the state to which the act can be attributed. Article 45(2)(d) of the 1996 ILC draft Articles¹⁰⁵ provided that the injured state is entitled to satisfaction that may consist in cases where the internationally wrongful act arose from the serious misconduct of officials or from criminal conduct of officials or private parties, disciplinary action against, or punishment of, those responsible.¹⁰⁶

The ILC did not appear to have considered in this context acts which were criminalised by international law and which would result in individual responsibility. Also the few cases that have arisen in state practice, such as the *Aerial Incident* case¹⁰⁷ and the *Rainbow Warrior* case, did not involve acts which entailed individual culpability under international law.¹⁰⁸ This also is true for the practice of human rights courts.¹⁰⁹ However, punishment as form of satisfaction would appear to apply *a fortiori* to acts that can be attributed to individuals.¹¹⁰

¹⁰⁵ This Article has not been included in the Articles as adopted in 2001, but the exclusion appears unrelated to the principle discussed here.

¹⁰⁶ This is not included in the final Articles of the ILC, but is understood to be covered by the words 'or another appropriate modality' in Art 37(2). See Statement of the Chairman of the Drafting Committee, Mr Peter Tomka at the 53rd session of the ILC, available at <http://www.un.org/law/ilc/sessions/53/english/dc_resp1.pdf> and J Crawford, *The International Law Commission's Articles on State Responsibility* (Cambridge: Cambridge University Press, 2002), 233.

¹⁰⁷ Following the shooting down of an Israeli plane by Bulgarian agents, Israel asked the Court to take note 'of the failure of the Government of Bulgaria to implement its undertaking to identify and punish the culpable persons'. *Case concerning the Aerial Incident of July 27th, 1955 (Israel v Bulgaria)*, Preliminary Objections, Judgment of 26 May, ICJ Reports (1959), 127.

¹⁰⁸ The UN Secretary General ordered the detention of the two responsible French Service agents as part of the reparation due to New Zealand; *Rainbow Warrior* case (*New Zealand v France*), 74 ILR 241, at 271–2. Action against the guilty individuals was requested in the case of the killing in 1948, in Palestine, of Count Bernadotte while he was acting in the service of the United Nations (Whiteman, Digest, vol 8, 742–3) and in the case of the killing of two United States officers in Tehran (RGDIP, vol 80, 257).

¹⁰⁹ Eg *Clemente Teherán et al*, Order of the Court of 19 June 1998, Inter-Am Ct HR (Ser E) No 2 (1998), calling on Columbia to 'investigate the acts denounced which gave rise to these measures, for the purpose of obtaining effective results that would lead to the discovery and punishment of those responsible'; *Godínez Cruz*, Compensatory Damages (Art 63(1) American Convention on Human Rights), Judgment of 21 July 1989, Inter-Am Ct HR (Ser C) No 8 (1989), para 31. In some cases the distinction between a remedy and a continued obligation is not drawn sharply. In the *Godínez Cruz* case, Judgment of 20 Jan 1989, Inter-Am Ct HR (Ser C) No 5 (1989), the Court stated that the obligation to punish was part of the 'legal duty to take reasonable steps to prevent human rights violations' (para 184–5). See also the *Giraldo Cardona* case, Order of the Court of 30 Sept 1999, Inter-Am Ct HR (Ser E) No 2 (1999) and the *Blake* case, Reparations (Art 63(1) American Conventions on Human Rights), Judgment of 22 Jan 1999, Inter-Am Ct HR (Ser C) No. 48 (1999), para 63–5.

¹¹⁰ Rosenne, *State Responsibility and International Crimes*, loc cit. Austria commented on the first draft of the ILC Articles by stating that Art 45(2)(d) should better reflect the growing number of international obligations to prosecute or extradite individuals, see UN Doc A/CN.4/488, 111.

An obligation to punish individuals as part of the remedy (or continued duty of performance) can be ordered by a court specifically charged with determining and implementing state responsibility, depending of course upon the powers of the court in question.¹¹¹ A synergy between individual and state responsibility may then occur, as the implementation of an obligation to punish is at the same time a remedy against both the state and the individual.

This form of reparation falls within the normal scheme of reparation as that which exists for ordinary wrongful acts and, also when primary rules are silent, there is not necessarily a need to move to a new and special regime for aggravated responsibility. Nonetheless, the fact that the individual can be held separately responsible may well be relevant for the implementation of this remedy. It can be recalled that, traditionally, orders to prosecute individuals as a form of satisfaction have been considered as undue interference in the internal affairs of states.¹¹² When the individuals whose acts caused the responsibility of the state are no longer 'hidden', but themselves subject of international responsibility, courts that are asked to determine consequences of state responsibility may be less cautious in granting remedies aimed at particular individuals.

Punishment of individuals also can be ordered by a court or tribunal charged with determining individual responsibility. A judgment against an individual perpetrator can be considered as a (partial) remedy against the state. Dupuy notes that 'the promoters of the various international criminal courts undoubtedly intended, by punishing individuals, also to punish the actions of the State to which the acts may be attributed'.¹¹³ Although it is not likely that these courts would construe their role in this manner, it is possible to conceive of the criminal and the interstate courts as cooperating in the joint implementation of international responsibility.

¹¹¹ As to the ICJ, it would appear to be within its powers to order in appropriate cases prosecution of individual authors of acts or, alternatively, cooperation with international criminal tribunals. Cf. the *Iranian Hostages* case: ICJ Reports (1980), 1. See Gray, loc cit, 59–68. In the second order in the *Application of the Genocide Convention* case, ICJ Reports (1993) 348, para 56, the Court noted the decision to establish to ICTY to prosecute individuals, but did not draw direct conclusions from it; see also Rosenne, 'War Crimes and State Responsibility', loc cit, 100. Also the Inter-American Court on Human Rights has assumed the power to order punishment. The European Court on Human Rights on the other hand has not interpreted its own competence as extending to orders for prosecution or punishment. See Harris, O'Boyle, Warbrick, op cit, 684.

¹¹² *Yb ILC* (1993) Vol. II (Part Two), 76–81. In the commentary to the draft Articles, it was noted that this provision 'covered a domestic concern regarding disciplinary action against officials which should not be covered in the draft articles', see A/CN.4/504, 120, para 72.

¹¹³ Dupuy, loc cit, 1091. Also Triffterer, loc cit, 346 (noting that since the crimes within the jurisdiction of the ad hoc tribunals are 'typically committed at least partly by persons who act as government representations on behalf of the state or with the silent toleration or even active support of the state' and that a judgment of individual criminal responsibility in many cases 'implies an *obiter dictum*' about the engagement of the state itself in these crimes).

VI. CONCLUSION

In respect to a limited number of breaches of international law, the international community may proceed along two paths—the path of individual responsibility and the path of state responsibility. It may be possible to speak of a law of international responsibility, of which the law of individual responsibility and the law of state responsibility are component parts and which in particular cases are interrelated.

Perhaps the focus of lawyers has recently been too fixed on the former. The law on state responsibility has an important role to play: either as a reparatory counterpart or to address the systemic causes of individual criminality. While the recognised law on state responsibility properly deals with the reparatory counterpart, it is underdeveloped with respect to the aggravated responsibility that characterises cases of concurrent responsibility. This is in part a matter for primary rules, which can acknowledge the interplay, for instance in the sphere of fault or the obligation to prosecute. It also is a matter for secondary rules, in particular for the principles governing attribution, defences, and remedies.

The influence of individualisation of responsibility on state responsibility can in part manifest itself within the principles for ordinary state responsibility, for instance in the form of prosecution of individuals as a remedy (though its implementation may well be influenced by parallel individual responsibility). In part it will manifest itself in aggravated responsibility. In particular in the latter case, problems of attribution, defences, and remedies may need further thought and development.

The ILC Articles do not deal with these aspects in an exhaustive manner. The finalisation of the Articles, developed over a period of several decades, coincided with the period in which individualisation of international responsibility, and thereby concurrence, emerged. In a different context, Shabtai Rosenne said that the 1996 version of the draft Articles of the ILC on state responsibility are ‘inadequate, if not substantially flawed’ and ‘do not take sufficient account of the consequences of the breakdown of the traditional State system of the nineteenth century, nor of its replacement by a new system which is slowly taking place before our very eyes’.¹¹⁴ In large part this remains true of the 2001 Articles. The ILC did envisage development of the law, but confined that to the consequences of aggravated responsibility. It needs further thought as to whether that will be sufficient or whether matters of attribution and defences may also need development.

The ILC Articles do not preclude interactions between the law of individual responsibility and the law of state responsibility (to which it should be added that many of the practical manifestations of the interactions concern

¹¹⁴ Rosenne, ‘State Responsibility and International Crimes’, *op cit*, 165.

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matters of evidence and presumptions in interstate proceedings—issues not covered at all by the Articles). However, they also do not provide them with much guidance. Now that the ICC is starting its work, developing the law on aggravated forms of responsibility – which inevitably will touch on the problems of concurrent forms of state responsibility – should be a key area for the development of international law.

ECONOMIC COMMUNITY OF WEST AFRICAN STATES**SIXTH MEETING OF FOREIGN AFFAIRS MINISTERS
OF THE COMMITTEE OF FIVE ON SIERRA LEONE****CONAKRY, 22-23 OCTOBER 1997****COMMUNIQUE**

1. The ECOWAS Ministerial Committee of Five on Sierra Leone held a meeting in Conakry on 22-23 October, 1997.
2. In continuation of the negotiations initiated in Abidjan on 17 and 18 July, 1997 and 29 and 30 July, 1997, the Committee held discussions with an enlarged delegation of Major Johnny Paul Koroma.
3. The meeting reviewed the situation in Sierra Leone since the break-down of negotiations between the Committee of Five and the representatives of the junta since 30 July 1997. It recalled the ECOWAS decisions concerning the monitoring of the ceasefire, the imposition of sanctions and the embargo, as well as the restoration of peace to Sierra Leone by ECOMOG. It also recalled Resolution 1132 of the United Nations Security Council dated 8 October 1997 placing an embargo on Sierra Leone.
4. The Committee of Five and the junta's delegation agreed to accelerate efforts towards the peaceful resolution of the Sierra Leonean crisis.
5. To this end, the Committee of Five and the representatives of Major Johnny Paul Koroma adopted an ECOWAS peace plan for Sierra Leone and a time-table for its implementation over a six-month period with effect from 23 October, 1997.
6. It is recognised that Corporal Foday Sankoh as a leader of RUF could continue to play an active role and participate in the peace process. In the spirit of the Abidjan Accord and in the context of this Agreement Corporal Foday Sankoh is expected to return to his country to make his contribution to the peace process.
7. The ECOWAS peace plan for Sierra Leone provides for:
 - the reinstatement of the legitimate government of President Tejan Kabbah within a period of six months
 - the immediate cessation of hostilities
 - cooperation of the junta with ECOMOG in order to peacefully enforce the sanctions
 - disarmament, demobilisation and reintegration of combatants
 - the provision of humanitarian assistance
 - return of refugees and displaced persons
 - immunities and guarantees to the leaders of the May 25, 1997 coup d'état
 - modalities for broadening the power base in Sierra Leone.
8. The Committee of Five and the representatives of Major Johnny Paul Koroma agreed

to continue negotiations towards effective and prompt implementation of the peace plan.

9. The meeting renewed its appeal to the international community to provide appropriate humanitarian assistance to the refugees and displaced persons and to facilitate their return.

10. The meeting reiterated its appeal to the international community to provide adequate assistance to the neighbouring countries of Sierra Leone which have recorded an increased influx of refugees on their territory.

11. The meeting expressed its appreciation to the UN and the OAU for their cooperation with ECOWAS and appealed to them for material, logistic and financial support to ECOMOG to enable it (to) carry out the mandate given by the Authority of Heads of State and Government and the United Nations Security Council.

12. The Committee expressed its deep gratitude to His Excellency, General Lansana Conte, President of the Republic of Guinea, Head of State, and to the Government and People of Guinea for the excellent facilities put at their disposal and for the hospitality accorded to all the delegations.

DONE AT CONAKRY THIS 23RD DAY OF OCTOBER, 1997



Security Council

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GENERAL

S/1998/249
18 March 1998

ORIGINAL: ENGLISH

FOURTH REPORT OF THE SECRETARY-GENERAL ON THE SITUATION
IN SIERRA LEONE

I. INTRODUCTION

1. The present report is submitted pursuant to the presidential statement issued by the Security Council on 26 February 1998 (S/PRST/1998/5), by which the Council requested me to submit detailed proposals concerning the role of the United Nations and its future presence in Sierra Leone. It covers the developments in Sierra Leone since the issuance of my third report on 5 February 1998 (S/1998/103).

II. IMPLEMENTATION OF SECURITY COUNCIL RESOLUTION 1132 (1997)

Action taken by the Economic Community of West African States and the Economic Community of West African States Monitoring Group

2. On 5 February 1998, the Economic Community of West African States (ECOWAS) Committee of Five on Sierra Leone came to New York to brief the members of the Security Council and myself on the situation in Sierra Leone. The Chairman of the Committee of Five, the Foreign Minister of Nigeria, Chief Tom Ikimi, said an impasse had been reached in the implementation of the Conakry Agreement. He pointed out that the junta had raised three issues which, in its view, stood in the way of the implementation of the Agreement, namely, the release of Corporal Foday Sankoh, the proposed exemption of the Republic of Sierra Leone Military Forces from the disarmament process and the composition of the ECOWAS Monitoring Group (ECOMOG) which consisted primarily of Nigerian troops.

3. Minister Ikimi noted that because of this impasse, ECOMOG had been unable to deploy in Sierra Leone to carry out the disarmament and demobilization of the Sierra Leonean combatants, and it had therefore not been possible to deploy United Nations military observers alongside ECOMOG.

4. Minister Ikimi requested my support in launching a high-level effort to support ECOWAS through the establishment of a group of friends of Sierra Leone, and expressed the view that the Security Council should endorse the 22 April 1998 deadline for the restoration of constitutional authority and the full implementation of the Conakry Agreement of 23 October 1997.



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5. I reaffirmed to the Committee of Five the desire of the United Nations for close cooperation between the United Nations and ECOWAS, and stated that ECOMOG needed to develop a concept of operations on the basis of which the United Nations could finalize its own deployment plan. ECOMOG should also compile a statement of its own logistical requirements in order to attract the necessary support from potential donors.

6. On the same day, responding to an attack by junta forces on their position at Lungi, ECOMOG launched a military attack on the junta, which culminated approximately one week later in the collapse of the junta and its expulsion by force from Freetown after heavy fighting. The fall of the city on 13 February, which was accompanied by widespread looting and some reprisal killings, led to the flight or capture of many soldiers and leaders of the junta. ECOWAS has assured me that the International Committee of the Red Cross (ICRC) has been allowed to visit prisoners detained by ECOMOG in Freetown. However, some of the former leaders of the Armed Forces Revolutionary Council (AFRC), including its Chairman, Johnny Paul Koroma, are believed to be still at large. Acting in concert with the local Kamajors and other traditional hunter militia (known as the Civil Defence Unit), ECOMOG has subsequently taken control of the towns of Bo, Kenema and Zimmi in the south of the country, and Lunsar, Makeni and Kabala in the north. ECOMOG has also reported the capture of Daru, which would mean that the remnants of the junta have now been dislodged from every major town except for Kailahun. Following scattered fighting in the latter part of February, the country now appears to be quiet. A number of foreign aid workers and missionaries taken hostage by armed elements in February were later released unharmed. However, press reports in mid-March indicated that Revolutionary United Front (RUF) members in Kono had murdered civilians and taken 200 hostages, reportedly including foreign nationals.

7. On 18 February, accompanied by the Executive Secretary of ECOWAS, Mr. Lansana Kouyaté, Minister Ikimi visited Sierra Leone to assess the situation on the ground. They interviewed some former junta soldiers now detained by ECOMOG and visited the State House complex and the Parliament buildings. Many of the government buildings were found to have been looted and were in poor condition, and a number of unexploded bombs were scattered about. However, the ECOWAS team, which was enthusiastically greeted by crowds, found that in many respects life had returned to normal in the capital. As noted below, my Special Envoy also visited Freetown on the same day.

8. From 25 to 27 February 1998, the Committee of Five met in the margins of the meeting of the Organization of African Unity (OAU) Council of Ministers held in Addis Ababa to review the situation in Sierra Leone. The Committee issued a communiqué, which was subsequently circulated as document S/1998/170.

9. On 4 March 1998, the members of the Committee of Five returned to New York and met again with members of the Security Council and with me. Chief Ikimi briefed me on his visit to Freetown on 18 February and his subsequent meeting with President Tejan Kabbah in Conakry. Following this meeting, it was announced that President Kabbah would return to his country on 10 March 1998.

10. ECOMOG has also prepared a detailed list of logistical requirements for its operations in Sierra Leone. During the visit to New York of the Committee of

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Five, Chief Ikimi requested the assistance of the United Nations and the international community in ensuring that these requirements could be met. That request was reaffirmed by the Chairman of ECOWAS, General Sani Abacha, in his statement at the ceremony held to mark the return of President Kabbah to Freetown on 10 March.

Action taken by the United Nations

11. On 18 February 1998, a few days after ECOMOG had established control over most of the city of Freetown, my Special Envoy, Mr. Francis G. Okelo, led a security and humanitarian assessment mission to the capital and to Lungi comprising United Nations and non-governmental organization officials. The mission determined the most immediate needs of the population. Mr. Okelo handed over a quantity of medicines donated by the World Health Organization (WHO) to local hospitals and began preparations for the re-establishment of a United Nations presence in Freetown. A few days later, the World Food Programme (WFP) delivered 857 metric tons of food to Freetown by ship.

12. Early in February, pursuant to a request by members of the Security Council for a technical assessment of the humanitarian situation in Sierra Leone since the coup d'état of 25 May 1997, an inter-agency mission travelled to the subregion. Its report is contained in document S/1998/155. Further information on the humanitarian situation in Sierra Leone can be found in section III of the present report.

13. Pursuant to the statement issued by the President of the Security Council on 26 February, I have initiated the necessary action to establish a Trust Fund for Sierra Leone. Contributions would help finance logistical assistance to ECOMOG, rehabilitation assistance to the Government of Sierra Leone and activities, including disarmament, demobilization and human rights.

14. On 7 March 1998, my Special Envoy reopened the United Nations office in Freetown, which had been closed shortly after the 25 May 1997 coup d'état and was temporarily relocated in Conakry, Guinea. The office is now being strengthened to comprise civilian political and humanitarian officers, a military adviser and, in due course, human rights and civilian police advisers and public information personnel. The function of the office is to liaise with the Government of Sierra Leone, ECOWAS, ECOMOG and the United Nations and its agencies, as well as non-governmental organizations, and to act as the overall authority for all United Nations activities in the country. My proposals for deploying military liaison personnel as part of the United Nations presence on the ground can be found in section IV of the present report. My Special Envoy will also temporarily retain a small office in Conakry, but he expects to be fully established in Freetown by the end of March, thus paving the way for the return of all United Nations agencies to Sierra Leone.

Action taken by the Government of Sierra Leone

15. On 13 February 1998, President Kabbah called a meeting in Conakry of potential donors, including the European Union, Germany, the United Kingdom of Great Britain and Northern Ireland and the United Nations, to discuss his Government's priorities; the nature of the assistance the international

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community could provide; and the urgent provision of humanitarian assistance. The President announced that he had created a task force to prepare the ground for the resumption of work by his Government, to assess damage to the infrastructure and to prepare for the resumption of education. President Kabbah identified the immediate priorities of his Government as the provision of humanitarian supplies and petroleum products, the reactivation of international aid programmes and the disarmament and demobilization of former combatants. Three other areas that required special attention have been identified as the training and restructuring of the police force, the creation of job opportunities for young people and the construction of low-cost housing. President Kabbah also indicated that he intended to streamline his administration and appoint technical experts to cabinet positions.

16. Following the removal by ECOMOG of the military junta from power, President Kabbah issued a statement announcing his intention to submit proposals to Parliament concerning the rebuilding of his country. The President also spoke out against the reprisal killings, which, in some cases, had accompanied the seizure of control from the junta.

17. On 10 March 1998, accompanied by General Sani Abacha, Chairman of ECOWAS and Head of State of Nigeria, as well as the Heads of State of Guinea, Mali and Niger, President Lansana Conteh, President Alpha Oumar Konare and President Ibrahim Bare Mainassara, and the Vice-President of Gambia, President Tejan Kabbah returned to Freetown to resume his office as Head of State of Sierra Leone. He was greeted by large and enthusiastic crowds. Mr. Ibrahima Fall, Assistant Secretary-General for Political Affairs, delivered on my behalf a message of congratulations to the President stating that his return represented the accomplishment of a major objective not only of the people of Sierra Leone, but also of ECOWAS, OAU, the United Nations and the entire international community. I expressed my deep regret at the violence, loss of life and property and immense suffering undergone by the people of Sierra Leone since the coup d'état and extended my condolences to the families of those who lost their lives in opposing it. Furthermore, I informed the President that the United Nations looked forward to working closely with him in helping his Government to reassert its authority and strengthen its capacity throughout the country.

18. In a statement made at the ceremony marking his return to Sierra Leone, President Kabbah declared his intention to embark on the process of national reconciliation and reconstruction of the country, to form a broad-based Government and to appoint a policy advisory committee. In his first meeting with my Special Envoy after his return, President Kabbah stressed the need for an early deployment of United Nations military personnel, the urgent provision of humanitarian assistance and the prompt establishment of the Trust Fund for Sierra Leone.

Military and security situation in Sierra Leone

19. Freetown is now fully under the control of ECOMOG and is increasingly secure. Some unexploded ordnance and landmines have been found, but these are not a threat to security. The peninsula on which the capital stands has also been secured. With the capture of almost every other major town in the country,

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and through its deployment further into the countryside in the north, south and east, ECOMOG has established itself successfully across most of the country.

20. Nevertheless, the fact that many of the senior junta leaders, including the former Chairman of the AFRC, Johnny Paul Koroma, have not thus far been apprehended, as well as the continuing violence inflicted on civilians during their retreat from ECOMOG forces by RUF and other armed elements, indicate that the security situation in Sierra Leone is still a source of concern. Though ECOMOG has begun to collect weapons in Freetown, a major disarmament, demobilization and reintegration exercise will be needed to ensure security.

21. ECOMOG has also developed a concept of operations for its deployment throughout Sierra Leone that sets out the preliminary planning for the disarmament and demobilization of Sierra Leonean combatants. In summary, the tasks ECOMOG has set for itself include:

- (a) Deployment throughout Sierra Leone;
- (b) Manning of selected entry points by land, sea or air in order to ensure that no arms, ammunition or war matériel are brought into the country;
- (c) Disarmament of ex-combatants at designated sites;
- (d) Establishment of road blocks to check the movement of arms and ammunition and to assist in extending protection to refugees and internally displaced persons;
- (e) Conducting patrols to create an atmosphere conducive to freedom of movement and the restoration of established authority;
- (f) Providing security for key individuals, United Nations personnel, including military personnel, and non-governmental organizations.

22. The plan calls for the deployment of 15,000 troops in four sectors: western, northern, southern and eastern. The western sector, comprising Freetown and the airports of Lungi and Hastings, is further subdivided, and would support the deployment of seven battalions, an air force detachment and an artillery brigade. This appears to be an ample level of force for the protection of the capital and its airport.

23. In the northern sector, ECOMOG would deploy a brigade headquartered at Makeni, with battalions located at Port Loko, Magburaka and Kabala. In the south, ECOMOG will locate its brigade headquarters at Bo and deploy battalions at Moyamba, Pujehun and Kenema. Naval assets would also be required. The eastern sector is described as strategic in view of its mineral resources, the presence of heavy RUF and Kamajor concentration, and the border with Liberia. ECOMOG therefore considers that operations in the east could prove difficult and risky and demand a robust approach, alertness and deployment in strength. Battalions would be located at Yengema, Zimmi and Kailahun.

24. ECOMOG would also establish a disarmament committee which would be charged, inter alia, with selecting disarmament sites; setting standards and guidelines

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for disarmament; conducting the disarmament, coordination of resources and cooperation with other organizations; classifying and transporting recovered weapons and ammunition; disseminating information about the process and providing security for all participants. A ceasefire violations committee and a humanitarian services committee would also be created.

25. My Special Envoy and his staff are actively discussing with the Government and with ECOMOG the further elaboration and implementation of its concept of operations, which provides a suitable basis for the possible subsequent deployment of United Nations military personnel, subject to the authorization of the Security Council. I will revert to the Council with further recommendations on such deployment following a further assessment by my Special Envoy.

Other action taken pursuant to resolution 1132 (1997)

26. Since my previous report, a number of States have written to me, in compliance with paragraph 13 of resolution 1132 (1997), concerning the steps they have taken to give effect to the provisions contained in paragraphs 5 and 6 of the resolution relating to the sanctions imposed by the Council on Sierra Leone. The latest list of those States can be found in a separate report to the Security Council contained in document S/1998/112.

27. In a letter dated 9 March 1998 addressed to the President of the Security Council (S/1998/215), the Chargé d'affaires a.i. of the Permanent Mission of Sierra Leone to the United Nations conveyed a request from his Government for the convening of an urgent meeting of the Security Council to consider the lifting of the sanctions imposed on the importation of petroleum and petroleum products into the country in paragraph 6 of resolution 1132 (1997). On 16 March, the Council adopted resolution 1156 (1998) terminating, with immediate effect, the prohibitions on the sale or supply to Sierra Leone of petroleum and petroleum products referred to in resolution 1132 (1997).

III. HUMANITARIAN SITUATION

28. A number of United Nations humanitarian assessment missions have now been undertaken to Freetown, Kambia, Bo, Kenema and Makeni. These missions determined that the current humanitarian situation in Sierra Leone remains serious. The primary health care system has been devastated by lack of supplies, looting and the exodus of medical personnel at all levels. Widespread neglect of water and sanitation facilities has increased the exposure of hundreds of thousands to disease. The normal distribution of food to vulnerable groups has been disrupted, affecting children in particular. Many children have also suffered exposure to acts of violence by being sent into battle as combatants. The public education system has collapsed; all schools have been closed since the coup d'état last May. The combination of fighting and looting has led to extensive damage to housing and infrastructure in the provincial towns. The number of internally displaced people has increased, and the welfare of some 14,000 Liberian refugees remains a matter of concern, as many fled from their camps during the recent fighting. The majority of Sierra Leoneans who took refuge in Conakry during the fighting in Freetown have returned. However, some 24,000 Sierra Leoneans have arrived in Liberia since mid-February and the

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influx continues, albeit at a reduced rate. A further influx of 3,000 refugees from the Kailahun area, still not under ECOMOG control, has been registered by the Office of the United Nations High Commissioner for Refugees (UNHCR) at its camp in Kissidougou, Guinea.

29. United Nations agencies prepared a consolidated inter-agency flash appeal, which was launched on 3 March 1998. Through this appeal, I am seeking financial contributions from Member States in the amount of \$11.2 million to meet priority humanitarian needs in Sierra Leone over the next three months. Priority needs include support to agriculture through the provision of seeds and tools, the re-establishment of basic health and education services, the resumption of food aid distributions and the provision of assistance and protection to the most vulnerable groups affected by the current conflict. The flash appeal complements the 90-day programme of the Government of Sierra Leone, which serves as a framework for action following the restoration of democratic civilian rule in the country.

30. The full deployment of ECOMOG and the restoration of the legitimate Government is expected to provide increased opportunities for the humanitarian community to accelerate its activities in response to the humanitarian crisis in Sierra Leone, and will also encourage the return to their homes of internally displaced persons. It is hoped that the international community will contribute generously to the humanitarian programme outlined in the flash appeal, in order to provide the crucial assistance needed to sustain lives and to promote stability in Sierra Leone.

31. Medium-term tasks, such as the assisted repatriation of Sierra Leonean refugees and reintegration of ex-combatants, are not covered in the flash appeal. However, United Nations agencies are already re-establishing their offices in Freetown and are eager to restart their social and economic development programmes, important components of which must be the re-building of the capacity of the Government of Sierra Leone to deliver services, stimulate economic recovery and promote national reconciliation and reconstruction.

Commencement of the repatriation of refugees

32. At the request of President Kabbah, and with the help of a donation of \$120,000 from the Government of Japan, UNHCR has begun to prepare for the repatriation from Conakry of up to 5,000 Sierra Leonean refugees, including 200 civil servants who fled Freetown after the May coup d'état and who will be engaged in the administration of the country.

33. ECOMOG control of major towns in southern Sierra Leone is also likely to encourage the early repatriation by road of Sierra Leonean refugees from Liberia. It is further expected that the removal of the junta could lead to the repatriation of the 400,000 Sierra Leonean refugees in the West African subregion.

34. Of the total caseload of Liberian refugees in Sierra Leone, some 2,800 have thus far been re-registered with UNHCR, about half of them requesting repatriation. UNHCR has begun making arrangements for them to be repatriated by sea.

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United Nations Development Programme mission to Sierra Leone

35. A multi-unit mission to Sierra Leone dispatched by the United Nations Development Programme (UNDP) has proposed four projects for immediate implementation following their approval by the Government. These are:

(a) A start-up project for the demobilization of various categories of combatants;

(b) Support for national institutions to enable a rapid return to normal functioning;

(c) Resettlement with emphasis on quick-impact micro-projects, reconciliation and youth development;

(d) Awareness-raising in order to help the country come to terms with the problems it faces and to promote national reconciliation and peace-building.

36. The mission is also assisting the Government to prepare a document for a donors' consultation proposed to be held in Brussels on 31 March 1998. UNDP plans to close its Coordination Office in Conakry by the end of March if the security situation continues to stabilize, and to return the staff of its Country Office to Freetown.

IV. OBSERVATIONS AND RECOMMENDATIONS

37. The developments that have taken place in Sierra Leone since the submission of my last report should be seen as positive in the context of the wider situation in which they transpired. The removal of the junta by the action of ECOMOG has opened the way for the re-establishment not just of the legitimate Government, but also of civil order, the democratic process and the beginnings of economic and social development. The return of President Kabbah to Freetown on 10 March therefore presents the people of Sierra Leone and the international community with a challenge and an opportunity which must be grasped with a sense of urgency. We must not let slip the chance to restore Sierra Leone to the ranks of democratic nations and to help strengthen the stability of the subregion.

38. I commend the consistent diplomacy of ECOWAS and, in particular, its Committee of Five on Sierra Leone, and the contribution made by ECOMOG officers and men to the removal of the military junta. I call on ECOWAS and ECOMOG to continue their efforts to bring peace to Sierra Leone in accordance with the relevant provisions of resolution 1132 (1997) and of the Charter of the United Nations. Sierra Leoneans committed to the democratic system also played their part in maintaining a stubborn resistance to the illegal regime. These included not only the members of the Civil Defence Forces, but also countless unarmed civilians who persistently withheld their cooperation from the regime and denied it legitimacy. I salute the courage of the Sierra Leonean people and honour the memory of those who died opposing the junta.

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39. I also congratulate President Ahmad Tejan Kabbah on his resumption of his responsibilities as Head of State of Sierra Leone following his return. The United Nations should give his Government every possible assistance in its efforts to promote national reconciliation among his people and to strengthen the authority and capacity of his Government.

40. As I stated in my message to the annual summit meeting of the Organization of African Unity at Harare, and in the special message which was delivered by my Special Envoy, Mr. Ibrahima Fall, on the occasion of President Kabbah's return, Africa can no longer tolerate or accept as faits accomplis coups d'état against elected Governments or the illegal seizure of power by military cliques.

Strengthening the office of the Special Envoy

41. In order to take full and prompt advantage of the changed situation, I wish to propose a comprehensive set of measures to assist the Government and people of Sierra Leone in both their immediate and longer-term needs. As a first step, I intend to strengthen the office of my Special Envoy in Freetown. In order to contribute to the restoration of respect for the rule of law, civil order and human rights in Sierra Leone, I have consulted with the United Nations High Commissioner for Human Rights concerning the possible deployment of human rights observers. In the meantime, a human rights officer will be attached to the office of my Special Envoy at an early date.

42. I am also considering attaching to the office two civilian police officials to advise the Government on police training and procedures in a democratic society. An additional political officer and a military adviser would assist my Special Envoy in his consultations with ECOMOG on the development of planning for disarmament and demobilization, while a humanitarian officer would facilitate the coordination of activities of the United Nations and non-governmental organizations in Sierra Leone and advise my Special Envoy on all issues involving non-governmental organizations. The office will also require a public information programme to disseminate information among the population about its activities, in particular in connection with the disarmament and demobilization of ex-combatants and their reintegration into society.

Deployment of military liaison personnel

43. I also recommend the deployment to Sierra Leone of up to 10 United Nations military liaison officers, whose functions would be as follows:

(a) To liaise closely with ECOMOG and to report on the military situation in the country;

(b) To ascertain the state of and to assist in the finalization of planning by ECOMOG for future tasks such as the identification of the former combatant elements to be disarmed and the design of a disarmament plan.

44. Should the Security Council decide to authorize the deployment of these military liaison officers, as well as the military and civilian police advisers, as indicated in my third report (S/1998/103, para. 35), the costs relating

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thereto should be considered an expense of the Organization to be borne by Member States in accordance with Article 17, paragraph 2, of the Charter of the United Nations and the assessments to be levied on Member States should be credited to the special account to be established for Sierra Leone. The related cost estimates will be issued shortly as an addendum to the present report.

45. The military liaison team would complement the role of the military advisers who will, under the authority of my Special Envoy, continue to assist the Government of Sierra Leone to resolve issues related to the disarmament process. The military advisers will also be instrumental in assisting the Government of Sierra Leone in the development of planning for bilateral programmes to restructure and rebuild appropriate security forces for Sierra Leone in the future. In view of the importance of such retraining, I appeal to potential donors to show generosity in providing bilateral assistance.

46. The presence of United Nations military liaison officers, perhaps later supplemented by human rights observers, could also assist in the process of national reconciliation in Sierra Leone. Their close cooperation with ECOMOG in the countryside and their impartial reporting to my Special Envoy would reassure former combatants that they can surrender their weapons in safety.

Provision of humanitarian assistance

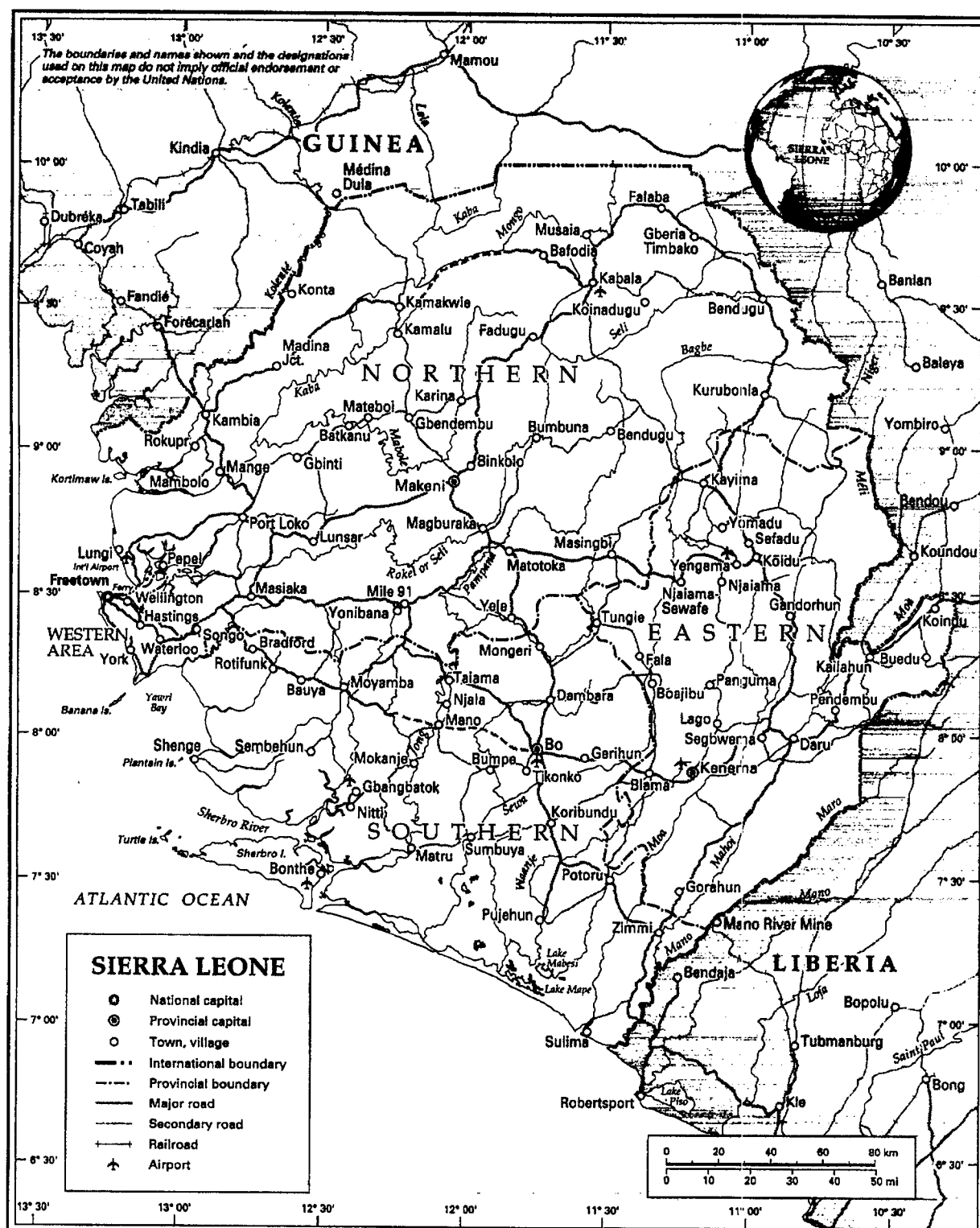
47. The provision of humanitarian assistance must also proceed expeditiously. The plight of Sierra Leoneans deprived of food, medical care and shelter by the recent fighting and the abuses of junta rule is acute, and it must be addressed as a matter of urgency with all the resources available to the aid agencies. While I remain deeply concerned about the humanitarian situation in many parts of the country, I am encouraged by news that humanitarian needs are beginning to be addressed. Food aid and emergency medical supplies have entered the country through the port of Freetown and have been delivered to some provinces by plane, helicopter and overland in a prompt and coordinated manner.

Contributions to the Trust Fund

48. I call on Member States to display generosity in contributing to the Trust Fund for Sierra Leone which, with the encouragement of the Security Council, I have established. My appreciation goes to the Government of the United Kingdom, which has already announced its readiness to contribute £2 million, and has been actively assisting in the provision of aid to Sierra Leoneans. I also urge all Member States to provide generous assistance to ECOMOG to enable it to meet its logistical requirements and to fulfil its mandate in Sierra Leone.

49. The events that have taken place in Sierra Leone over the past year carry a warning that similar crises may arise and challenge the international community to consider how it should respond to them. Democracy in Sierra Leone may have deep roots, but it is a fragile plant and must be nurtured. The international community must maintain its vigilance and support, not least in the prompt provision of emergency bilateral and multilateral aid. Assistance for the laudable efforts of ECOWAS and the logistical requirements of ECOMOG as it continues its deployment through the countryside will also be required. I trust that such support will be forthcoming.

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FIFTH REPORT OF THE SECRETARY-GENERAL
ON THE SITUATION IN SIERRA LEONE

I. INTRODUCTION

1. By paragraph 5 of its resolution 1162 (1998) of 17 April 1998, the Security Council authorized the deployment, with immediate effect, of up to 10 United Nations military liaison and security advisory personnel in accordance with paragraph 44 of my report of 18 March 1998 (S/1998/249) to Sierra Leone for a period of up to 90 days, to work under the authority of my Special Envoy, to coordinate closely with the Government of Sierra Leone and with ECOMOG, the Monitoring Group of the Economic Community of West African States (ECOWAS), to report on the military situation in the country, to ascertain the state of and to assist in the finalization of planning by the Government of Sierra Leone and ECOMOG for future tasks, such as the identification of the former combatant elements to be disarmed and the design of a disarmament plan, as well as to perform other related security tasks as identified in other paragraphs of my above-mentioned report.

2. By paragraph 10 of that resolution, the Council requested me to report periodically, including on the activities of those military liaison and security advisory personnel and on the work of the office of my Special Envoy in Sierra Leone, within the reporting time-frame set out in paragraph 16 of resolution 1132 (1998) of 8 October 1997. The present report is submitted in accordance with that time-frame, by which the Security Council requested the submission of a report every 60 days.

II. DEVELOPMENTS SINCE MY LAST REPORT

Action taken by the Government of Sierra Leone

3. Following its restoration on 10 March 1998, the Government of Sierra Leone has acted to consolidate its authority throughout the country as far as possible. On 16 March, President Kabbah, acting with the support of Parliament, proclaimed a state of emergency empowering him to take measures to ensure security and stability. These measures included the right to detain suspects and restrict their movements, the imposition of a curfew and the right to



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requisition property. The Government also announced the expulsion of 22 persons and the deprivation of 10 others of Sierra Leonean citizenship for collaborating with the junta and for economic crimes and immigration irregularities.

4. On 20 March 1998, President Kabbah announced that his new streamlined Cabinet would comprise persons of known competence and integrity. The members of the Cabinet, which consists of 15 Ministers, 11 Deputy Ministers and 5 Ministers of State, have all been confirmed by Parliament, as have the President's nominees for the post of Chief Justice and many positions in parastatal bodies. The President has also appointed a Policy Advisory Committee to guide the Government on crucial issues of national interest and to monitor the functioning of the public institutions.

5. The Government has also taken steps to establish a National Commission for Reconstruction, Resettlement and Rehabilitation, responsible for stimulating and coordinating related donor, Government and non-governmental activities. In accordance with its terms of reference, the National Commission would, in close collaboration with domestic and international funding agencies, draw up a two-year national rehabilitation, resettlement and reconstruction plan involving, inter alia, the repatriation and resettlement of internally displaced persons and refugees.

6. On 27 March 1998, the Minister for Foreign Affairs of Zimbabwe, Mr. Stan Mudenge, led a five-person Commonwealth delegation on a visit to Freetown in order to explore ways in which the Commonwealth could assist Sierra Leone in the task of national reconstruction and peace-building. At the conclusion of the visit, the participants announced that they would urge all member Governments of the Commonwealth to assist Sierra Leone bilaterally in every practicable way in its efforts to achieve national reconstruction and reconciliation, and to contribute to the Trust Fund to support peacekeeping and related activities in Sierra Leone.

7. On 21 April 1998, a three-man team of British police experts visited Sierra Leone to advise the Government on the restructuring of the police force and the improvement of its equipment. The team also discussed the recruitment and role of police advisers and relations between the police and armed forces, among other matters. The United Kingdom of Great Britain and Northern Ireland has also provided the Government with communications equipment for the police.

8. From 4 to 8 May 1998, the Government received a multi-donor joint mission by the World Bank, the United Nations Development Programme (UNDP), the African Development Bank (AfDB), the United Kingdom Department for International Development and the European Union (EU) to discuss a range of development-related matters. The joint mission also discussed the demobilization and reintegration of ex-combatants, as described in more detail in section V below.

9. As described in section III below, on 6 May 1998, the Government instituted, in Freetown, the trials of a number of persons accused of plotting, participating in or collaborating with the coup d'état and the illegal junta.

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10. On 22 May 1998, President Kabbah, in a comprehensive policy statement delivered at the State opening of the second session of Parliament, outlined major national policies his Government intends to pursue. These include: establishing guidelines for development activities, a framework for the creation of a new army and the restructuring and retraining of the police force; improving relations with neighbouring countries; reviving the national economy; strengthening key sectors of activity; and promoting civic education to sensitize Sierra Leoneans to the true meaning of peace and democracy. The President has also called for national reconciliation.

11. From 30 to 31 May 1998, the Minister of Internal Affairs, Mr. Charles Margai, and the Deputy Defence Minister, Chief Hinga Norman, visited Makeni and Kenema and called on all remnants of the Armed Forces Revolutionary Council/Revolutionary United Front (AFRC/RUF) forces to surrender within two weeks, promising them that they would be protected and treated fairly in accordance with the law.

12. On 4 June 1998, at a summit meeting of the leaders of the three Mano River Union countries, President Conteh and President Kabbah of Sierra Leone met at Conakry to discuss mutual cooperation in the subregion and relations between Liberia and Sierra Leone. Liberia was represented by the Vice-President, Mr. Enoch Dogolea.

Action taken by the Monitoring Group of the Economic Community of West African States

13. Following the expulsion of the illegal military junta from the capital, Freetown, in mid-February and the restoration of the democratically elected Government of President Ahmad Tejan Kabbah in the capital, ECOMOG moved swiftly to secure the area around Freetown, as well as the northern and southern provinces of the country, especially the towns of Makeni, Kambia and Kabala in the north and Bo and Kenema in the south. ECOMOG forces also advanced eastwards towards the Kono and Kailahun districts, where the forces of the former junta were concentrated.

14. Though ECOMOG has continued to make progress, it is severely overextended and its advance has been beset by logistical constraints, as well as by fierce resistance from elements of the AFRC and the RUF, the partners in the former junta. In mid-May, however, ECOMOG seized Koindu and Buedu on the eastern border of Sierra Leone with Guinea.

15. As ECOMOG troops approached, armed former junta elements attacked the local civilian population, killing, raping and mutilating hundreds of them, causing tens of thousands of Sierra Leoneans to flee into Liberia and Guinea in the last few weeks and tens of thousands more to flee into the interior of Sierra Leone. Hundreds of patients have been admitted to hospitals suffering from amputation of limbs and ears and severe lacerations. Humanitarian organizations fear that the actual number of victims may be much larger (see sect. III below).

16. ECOMOG is being supported by units of the Sierra Leonean Civil Defence Force (CDF), which is composed of irregular community-based fighters who fought the junta before the restoration of the legitimate Government. The Civil

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Defence Force includes Kamajors, who are regionally based rural militia mainly from the south and parts of the east, as well as Tamaboros from the Koinadugu district, Donsos from the Kono district and Kapras, who are mainly from the Tonkolili district in the north. Though many CDF members are hunters who use traditional weapons, others are primarily farmers or students who joined the armed struggle against the junta. They are armed with a wide variety of weapons and often lack formal training and discipline. Though technically under ECOMOG control, their command and control structures are loose and informal.

17. On 4 and 5 May 1998 at Accra, my Special Envoy attended the seventeenth meeting of ECOWAS Chiefs of Staff convened to discuss the situation in Sierra Leone. At the meeting, the Nigerian Chief of Defence Staff, Major-General A. A. Abubakar, outlined ECOMOG's objectives in Sierra Leone as follows: the attainment of peace, the training of a new Sierra Leonean army, and the disarmament, demobilization and reintegration of Sierra Leonean combatants into society, accompanied by humanitarian assistance. The achievement of these objectives would be followed by the withdrawal of ECOMOG.

18. ECOMOG has deployed three brigades and an independent battalion, altogether comprising approximately 12,000 men, in Sierra Leone and has appealed for a further 6,000 to enable it to carry out its functions more effectively. A number of participants expressed willingness, in principle, to contribute forces to ECOMOG's operations in Sierra Leone. However, the countries concerned stressed that they were not in a position to do so without substantial financial and logistical assistance.

Action taken by the United Nations

19. Beginning on 4 May 1998, pursuant to resolution 1162 (1998), eight military liaison personnel were deployed in Freetown under the authority of my Special Envoy. The military officers, who are led by a Brigadier-General from India, are from Kenya (two), the Russian Federation (two), the United Kingdom (one) and Zambia (two). Two police advisers, one from Namibia and one from Kenya, as well as an adviser on planning for disarmament and demobilization, are expected to be deployed shortly. Some vehicles and communications equipment have also been deployed to Sierra Leone for the use of the officers.

20. The liaison officers have begun to travel through parts of the country to assess the situation with a view to finalizing plans for their deployment and for the disarmament of former combatants. The ECOMOG Force Commander, Brigadier-General Maxwell Khobe, has welcomed their arrival and promised his full cooperation.

21. The office of my Special Envoy has also been strengthened by the addition of a political affairs officer and a human rights adviser. In addition, I have taken steps to strengthen the human rights element of the office of my Special Envoy and have approached a number of Governments on an urgent basis to request them to make available suitably qualified trial monitors.

22. From 26 to 29 May 1998, my Special Representative for Children in Armed Conflict, Mr. Olara A. Otunnu, visited Sierra Leone to assess the plight of children affected by the conflict. During his visit, Mr. Otunnu met with

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President Kabbah, Ministers and Parliamentarians, as well as with the Force Commander of ECOMOG, the National Coordinator of CDF and representatives of United Nations agencies and non-governmental organizations. He visited Daru, Segbwema and Kenema, accompanied by the Minister for Social Welfare, Gender and Children's Affairs, Mrs. Shirley Gbujama, my Special Envoy, the United Nations Resident Coordinator and the representative of UNICEF.

23. In discussions with the Government, ECOMOG and CDF, important commitments were made to my Special Representative in relation to the rights, protection and welfare of children. It was agreed that a joint task force for the demobilization of child combatants, comprising the Government, ECOMOG, CDF, the United Nations and international humanitarian agencies, would be constituted. The Government agreed not to recruit children under 18 years of age into a new national army. The Civil Defence Force committed to stop recruiting and initiating children under 18 and to begin the process of demobilization of child combatants within their ranks. Along with ECOMOG, CDF also undertook that children captured in or fleeing from areas held by junta elements would receive special protection. President Kabbah directed that a coordination group consisting of relevant Ministries, United Nations agencies and non-governmental organizations, be established to coordinate an effective national response to the needs of children affected by armed conflict. Following their discussion with Mr. Otunnu, an all-party group of Parliamentarians constituted a caucus to serve as parliamentary advocates for the rights, protection and welfare of children affected by armed conflict in Sierra Leone.

24. At the conclusion of his visit, Mr. Otunnu proposed that the international community make Sierra Leone one of the pilot projects for a more concerted and effective response in the context of post-conflict peace-building.

Military and security situation in Sierra Leone

25. The security situation in Freetown continues to be favourable, with a strong but discreet ECOMOG presence and widespread deployment of the Sierra Leonean police. Schools, banks and markets are functioning normally, some international air links to the airport at Lungi have been restored and food and fuel products are widely available. Nevertheless, ECOMOG has continued to recover weapons in house-to-house searches conducted on the basis of information received about the presence in Freetown of former junta members and common criminals.

26. Despite ECOMOG's initial success in driving the elements of the junta rebels back towards the east of the country, several groups of rebels appear to have broken out of the Kailahun district and have moved northwards and westwards in an apparent attempt to re-establish some of their former bush camps in the north. They have been attacking towns and villages, terrorizing local communities and extorting food from them. The situation in the north is now considered unsatisfactory and food convoys have to be guarded by armed escort.

27. Moreover, in the course of their retreat towards the eastern part of the country, former junta elements inflicted extensive damage and engaged in indiscriminate looting and property destruction. In particular, hospitals in most communities lack beds, drugs and equipment.

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28. The United States has contributed \$3.9 million to ECOMOG over a four-month period through the logistics services company Pacific Architects and Engineers, which provided services to ECOMOG in Liberia. Some vehicles have already been made available. It is anticipated that this assistance will result in further gains by ECOMOG against the former junta forces. However, this contribution is not expected to assist in the deployment of additional ECOMOG forces, for which further contributions, whether bilaterally or through the Trust Fund to support peacekeeping and related activities in Sierra Leone, will be needed.

29. There are reports that many of the fighters supporting the former junta in the east are in fact Liberian nationals. The Monitoring Group of the Economic Community of West African States believes it has identified some of the dead combatants as Liberians after clashes with junta elements and has reportedly captured more than 100 Liberian fighters in the vicinity of Kailahun and in Kono district.

30. On 5 May 1998, President Taylor wrote to me deprecating the "disturbing allegation" that the Government of Liberia was involved in the conflict in Sierra Leone and stressing his commitment to the maintenance of peace in the region. President Taylor informed me that he had proposed to the Chairman of ECOWAS that ECOMOG "cordon off" the border between the two countries, and said he would welcome the concurrence of the United Nations with his suggestion that United Nations monitors be deployed in the border area.

31. On 7 May 1998, the Liberian Government issued a policy statement reaffirming that it would not permit its territory to be used to destabilize any neighbouring country and stating that President Taylor had approved the deployment of an ECOMOG observer unit at the border between Liberia and Sierra Leone in Lofa County, Liberia.

32. The Government of Sierra Leone has welcomed the issuance of the policy statement and has disclosed that a Liberian delegation visiting Freetown to attend the funeral of the late spouse of the President, Mrs. Patricia Kabbah, had met with President Kabbah and discussed the improvement of relations between the two countries.

33. In some parts of the country, misconduct by some members of CDF, arising from their indiscipline and lack of training, has given rise to complaints from civilians.

III. HUMAN RIGHTS

34. Since early May 1998, a human rights adviser has been attached to the office of my Special Envoy. His main tasks have included the observation of the treason trials and, in close consultation with the Special Envoy and the United Nations High Commissioner for Human Rights, examining modalities to increase the capacity of the office to monitor the human rights situation in Sierra Leone and to assist the Government in meeting its international human rights obligations in a sustainable manner. In carrying out its human rights functions, the office will work closely with all relevant elements of civil society, including national and international non-governmental organizations. Both the

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Attorney-General and the Chief Justice of Sierra Leone have offered their full cooperation to my Special Envoy and his staff in the exercise of his human rights functions.

35. The main focus of human rights concerns since my last report has been the attacks on civilians by armed, uniformed groups, which are consistently reported to be members of the rebel forces. They have systematically mutilated or severed the limbs of non-combatants around the towns of Koidu and Kabala, in a zone that stretches as far west as Masiaka, south of Port Loko. The scale of the attacks can be estimated from the accounts of victims who have been admitted to hospital. For instance, in the period from 6 April to 21 May 1998, 225 people were admitted to Connaught Hospital in Freetown with war wounds. All but one were reported to be civilians. Of these, a quarter were amputees and half were victims of deep lacerations. The patients report that for every one person who reached the hospital, some five other victims of attacks are either dead or missing. In the same period, there have been some 500 admissions of war-wounded persons to other hospitals in Sierra Leone.

36. Of those victims who have received treatment, most are male, ranging in age from 8 to 60 years. The youngest amputee admitted to hospital is, however, a six-year-old girl, one of whose arms was completely severed. Victims also report that babies have been taken from their mothers' arms and burned alive. There are numerous reports of rape, including one of the multiple rape of a 12-year-old girl. Doctors at one hospital state that lacerations inflicted on one 60-year-old woman are the result of a failed attempt to behead her.

37. The office of my Special Envoy continues to receive information about human rights abuses perpetrated by forces loyal to the junta in the period before the restoration of the Government. From all parts of the country there are reports of extrajudicial killings, rape, arbitrary detention, including for purposes of sexual abuse, torture of children (especially of child-combatants), forced labour and the looting and destruction of residential and commercial premises and property. It will remain important to document these actions with a view to tackling issues of impunity and as an element in the process of promoting reconciliation and healing of society.

38. Information has also been received regarding widespread acts of extrajudicial revenge killings perpetrated against alleged junta collaborators following the restoration of the Government. In just one town, Kenema, there are reports of some 50 revenge killings. Some of those killed were children, with at least one case occurring in Freetown. There are reportedly still many people in hiding for fear of being subjected to revenge attacks. Reportedly some 100 of those hiding in the Freetown area are children. The Government has given assurances that revenge attacks will be investigated and prosecuted.

39. Reports indicate that elements of the Kamajors are responsible for violation of the human rights and rights under humanitarian law of both combatants and non-combatants. This militia force continues to include large numbers of male children. Concerns have been expressed to the Government on these matters and it has indicated that it is taking action to correct the situation (see paras. 22-24 above).

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40. My Special Envoy continues to monitor the implementation of the state of emergency declared by the President on 10 March 1998, under which, *inter alia*, persons may be detained indefinitely without being charged or tried. There are more than 1,000 such detainees held at Pademba Road Prison in Freetown. The Government has established a screening committee to expedite the process of releasing detainees and bringing others to trial.

41. The Government is prosecuting 59 persons in the regular courts for charges, variously, of treason, murder and arson. Another trial of some 20 people is scheduled to start in the coming weeks, as are a number of courts martial. The civilian trials have, so far, proceeded in conformity with normal criminal procedure. Matters of concern are brought to the attention of the Government. The office of my Special Envoy will continue to observe the trials and will seek to augment its capacity in this regard.

42. On 27 May 1998, a delegation of Amnesty International, which had been studying the situation in Sierra Leone, met with my Special Envoy. The purpose of the Amnesty mission was to examine incidents that had occurred during the period of junta rule, as well as the extent of atrocities currently being committed by the remnants of the junta. Amnesty International is also reviewing the detention and trial in Freetown of persons accused of participating in or collaborating with the junta.

IV. HUMANITARIAN SITUATION

43. The humanitarian situation in Sierra Leone is fluid. In the western area and the southern and eastern provinces (with the exception of Kailahun district), aid agencies have begun to reactivate programmes as they have benefited from improved security and access. In northern and north-eastern Sierra Leone, however, the situation has continued to deteriorate as a result of the activity of the former junta forces described above.

44. The humanitarian consequences of the wave of atrocities are very severe. Government hospitals in Makeni, Magburaka and Kabala and health clinics throughout the north have been overwhelmed by the influx of civilians suffering from amputations and maimings and are hampered by staff shortages and logistical constraints.

45. There has already been an outbreak of measles in two camps in the north and there is a severe risk of further outbreaks of epidemics such as cholera with the imminent onset of the rainy season. Furthermore, the non-governmental organization Action contre la Faim, which operates therapeutic feeding centres in Makeni and Magburaka, has reported a large influx of malnourished children under the age of five. Admissions have doubled during the past week. Malnutrition levels are increasing, and there are indications that the 10 per cent global acute malnutrition threshold, at which an emergency response is required, is being breached. If the security situation in the north continues to deteriorate, there is a serious risk that the harvest will be looted by armed elements, thus further undermining the food security of the rural population.

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46. The Office of the United Nations High Commissioner for Refugees (UNHCR) has reported that refugees from Sierra Leone are continuing to flow into Faranah, Kissidougou and Guéckédou prefectures in eastern Guinea at a rate of 300 people per day. Many new arrivals, particularly children, suffer from malnutrition. UNHCR has documented the recent cases of at least 82 victims of rebel atrocities, including 28 who were mutilated. The refugees come mainly from the districts of Kailahun, Kono and Kenema. The influx is taking place despite reported attempts by the remnants of the junta to prevent people from leaving those areas. At the same time, about 40,000 internally displaced persons have flooded into the towns of Masingbi, Makeni, Kabala and Magburaka. Over the past three months, some 237,000 Sierra Leoneans have poured into Guinea and Liberia, bringing the total number of Sierra Leonean refugees in the two neighbouring countries to 530,000 people since the start of the conflict in 1991.

47. On 2 June 1998, UNHCR issued an urgent appeal for \$7.3 million to help refugees who have fled from the rebel forces. The amount is designed to cover relief assistance to new arrivals in Guinea and Liberia until the end of the year. This followed a visit to Freetown from 2 to 3 June 1998 by the Assistant High Commissioner for Refugees, Mr. Soren Jessen-Petersen.

48. The humanitarian response to the crisis in the north has been severely constrained by the difficulty of access owing to security risks. Road travel from Freetown to Makeni and Koidu is restricted, since agencies are reluctant to travel by road for fear of attacks. Furthermore, many aid agency staff were threatened by AFRC/RUF elements during the period of the ECOMOG intervention and no relief agency has deployed international staff permanently up-country since then.

49. Nevertheless, the United Nations Children's Fund (UNICEF), the World Health Organization (WHO) and the non-governmental organization Médecins sans Frontières have sent medicines, bedding and plastic sheeting to the north. The International Committee of the Red Cross (ICRC) and Médecins sans Frontières have offered to coordinate the joint distribution of medical supplies to hospitals in Makeni, Magburaka and Kabala. UNICEF has delivered supplies to Kenema and supported efforts by the local authorities to immunize more than 400 children against measles, and the World Food Programme (WFP) is providing assistance to health institutions.

50. From 5 to 6 May 1998, the Humanitarian Assistance Coordination Unit also co-sponsored a workshop for community leaders in the Bo district concerning the code of conduct that governs the activities of relief workers. The workshop was planned in response to incidents of the commandeering of vehicles by Kamajors and ECOMOG in the area. Non-governmental organizations have since reported that the Kamajors have facilitated the safe passage of relief supplies and it is now intended to conduct similar workshops in other parts of the country, including Kenema.

51. An inter-agency mission led by the United Nations Humanitarian Coordinator on 19 May 1998 to Daru and Segbwema found the situation in the south-east of the country, which had been inaccessible for some months for security reasons, more favourable than expected in some respects. However, large numbers of

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unaccompanied children were identified who are in need of family-tracing services, feeding and health care.

52. Mr. Sergio Vieira de Mello, Under-Secretary-General for Humanitarian Affairs, will visit Sierra Leone from 10 to 12 June 1998 in order to observe at first hand the ongoing humanitarian programmes and the current difficulties faced by the humanitarian community.

V. DISARMAMENT AND DEMOBILIZATION

53. Both the Abidjan Agreement of 30 November 1996 between the Government of Sierra Leone and RUF and the Conakry Agreement of 23 October 1997 between ECOWAS and AFRC contain provisions for the disarmament and demobilization of Sierra Leonean fighters and their reintegration into society. In his statement at the State opening of Parliament, President Kabbah called on all remnants of the AFRC/RUF to surrender, offering them assurances that they would be treated humanely in accordance with the Geneva Convention and its additional Protocols. The President also indicated that elements of the Conakry Agreement and the Abidjan Agreement would be taken into consideration in the implementation of the disarmament and demobilization programme. The prompt implementation of such a programme is regarded as essential to the stability of Sierra Leone and of the subregion in general.

54. Following the removal of the junta by force by ECOMOG in February and the subsequent ECOMOG action throughout the rest of the country, the Abidjan Agreement and the Conakry Agreement are considered to have been effectively superseded. However, in the parts of the country that have now been brought under Government control, some aspects of those instruments that govern the disarmament and demobilization of former Sierra Leonean fighters might still be applicable. These include the following categories: members of the former Republic of Sierra Leone Military Forces (RSLMF), including members of AFRC, the country's former army, which has now effectively been dissolved; members of RUF; members of CDF; and child soldiers.

55. Both ECOMOG and the Government have developed plans for the disarmament and demobilization of former combatants and for their reintegration into society. Pursuant to the recommendations of the joint mission described in paragraph 8 above, the Government has adopted a comprehensive framework for the disarmament, demobilization, reinsertion and reintegration of ex-combatants and their families. The plan envisages the establishment of a Sierra Leone veterans assistance board to be chaired by President Kabbah, which would, in close cooperation with ECOMOG, the United Nations and donors, supervise the disarmament and demobilization of an estimated 32,000 former combatants in three phases, provisionally over the next 19 months. A small executive secretariat will be charged with the implementation of the policies of the Board in close coordination with ECOMOG and the United Nations.

56. The demobilization process will begin with a rigorous registration process to ensure that eligible ex-combatants receive identification documents. The first priority is the demobilization of some 5,000 to 7,000 former members of the Republic of Sierra Leone Military Forces already disarmed by ECOMOG and

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assembled in camps around Freetown, i.e., at Wilberforce Barracks, Benguema Training Centre and Lungi. ECOMOG has recently reported that the numbers of men at each camp have fallen, apparently because some of the men have been provisionally released. Units of CDF in parts of the country deemed secure by the Government and local authorities will also be demobilized in phase I and will undergo a similar and registration exercise. Some CDF units have already returned to their communities of origin in preparation for the disarmament process, though many CDF fighters have also recently been moved up to the Daru area, apparently to join the offensive against the former junta forces at Kailahun. On 25 March 1998, President Kabbah formally requested the international community to provide food for the maintenance of the 7,000 ex-combatants for a two-month period.

57. Preliminary estimates indicate that there are some 1,000 disabled soldiers, 500 female ex-combatants and about 2,500 children. Under the plan, all adult ex-combatants will receive the same reinsertion assistance, the level and nature of which will be determined by the Sierra Leone Veterans Assistance Board, in consultation with donors. The reinsertion assistance will be provided in instalments in order to provide a transitional safety net to ex-combatant families, to encourage them to remain in their areas of resettlement and to monitor their reintegration progress. Furthermore, the Government intends to provide a community-based social and economic reintegration assistance to assist ex-combatants to return to sustainable and productive lives in their communities. Particularly vulnerable groups of ex-combatants, such as child soldiers and the disabled, will receive specialized assistance.

58. The Government intends to proceed with the disarmament, demobilization, reinsertion and reintegration process as far as possible, notwithstanding continuing fighting in some parts of the country. The rapid demobilization of the encamped RSLMF will reduce the security and cost burden borne by the Government and ECOMOG in maintaining the camps. Insofar as adequate reinsertion and reintegration assistance and effective monitoring systems are put in place as planned, the Government is confident that this process will contribute to national reconciliation and reconstruction.

59. Though the plan envisages specific phases, provisionally scheduled to culminate in January 2000, these depend in part on the willingness of those who are still resisting ECOMOG's advance and terrorizing civilians in the north to surrender. It is not clear at this time whether these men, who appear to include the most violent and ruthless supporters of the former junta, intend to surrender or, if so, under what circumstances this might take place.

60. Another important aspect of the plan that remains to be clarified concerns the source of the funding. The plan is not accompanied by a cost estimate, but an earlier Government assessment of the likely costs arrived at a figure of some \$14 million. Since that estimate was arrived at in respect of a more modest operation, the likely cost of the current exercise is likely to exceed it. No commitment has yet been made by donors for the funding of the exercise. However, the Government believes it has made some progress in identifying sufficient funds to continue to feed the surrendered soldiers for the next two months or so.

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61. On 5 June 1998, my Special Envoy convened a meeting of United Nations agencies, non-governmental organizations and donor representatives to discuss the coordination of international support and contributions to the disarmament, demobilization and reintegration of the 7,000 ex-combatants.

62. On 12 June 1998, the World Bank, which participated in the multi-donor joint mission mentioned in paragraph 8 above, will send two consultants to Sierra Leone to discuss with all participants the further refinement of the plan, including practical arrangements to make it operationally effective. These arrangements are expected to include the provision of strong technical assistance to the executive secretariat of the Sierra Leone Veterans Assistance Board.

VI. PROPOSED ACTION TO BE TAKEN BY THE UNITED NATIONS

63. In the complex and volatile situation currently prevailing in Sierra Leone, the priority task is to promote stability and security by disarming and demobilizing as many former combatants as possible, as soon as possible. The plan adopted by the Government on the advice of the multi-donor joint mission provides a useful basis to accomplish this goal, though much remains to be done in terms of identifying sources of funding and determining the precise roles to be played by the international community. In general terms, I would envisage that, under the overall authority of the Government, my Special Envoy would ensure that the various donors continued to coordinate their activities closely. Within that framework the United Nations Development Programme (UNDP), working through the United Nations Office for Project Services, and in close cooperation with donors and implementing partners, would carry out the arrangements put in place for disarmament and demobilization prior to the May 1997 coup.

64. In this context, I intend to convene a high-level conference in the near future in order to mobilize assistance for the disarmament, demobilization and reintegration process, and for the reconstruction, rehabilitation of Sierra Leone. The conference would also address the need to provide logistical and other support to ECOMOG in order to improve its capacity to carry out its peacekeeping role, as well as for emergency and humanitarian needs.

65. Moreover, I believe the United Nations could render immediate assistance to Sierra Leone by deploying a limited number of unarmed military observers to assist in tasks of pressing importance. Such a deployment at this stage could lend much-needed impetus to a fragile but vital process, which deserves the support of the international community. It could also assist my Special Envoy to avert further bloodshed among civilians and combatants alike - both ECOMOG and Sierra Leonean - by helping to encourage the surrender of former junta elements in the event that this appeared to be possible. Finally, a more visible United Nations presence could serve to bolster the confidence of the Government and people of Sierra Leone in the commitment to their cause of the international community and encourage more substantial donor support for disarmament, demobilization and longer-term rehabilitation and development.

66. I have therefore developed a concept of operations for a United Nations peacekeeping observer mission, initially for a six-month period, whose immediate objectives would be the following:

(a) To monitor the military and security situation in the country as a whole with a view to assisting the Government and ECOMOG in the subsequent implementation of disarmament and demobilization phases as outlined in the Government's plan;

(b) To monitor the demobilization of former combatants already disarmed by ECOMOG and concentrated in secure areas of the country. This would involve collaboration with ECOMOG in its activities, including the provision of security and arms collection and destruction;

(c) To assist in monitoring respect for international humanitarian law at disarmament and demobilization sites;

(d) To monitor the voluntary disarmament and demobilization of members of CDF in their home regions and to monitor progress in the creation of a new national army;

(e) To observe, as security conditions permit, the situation in the north and east of the country, with a view to assisting in the disarmament and demobilization of surrendering former junta forces;

(f) To continue to provide my Special Envoy for Sierra Leone with regular information concerning the military and security situation in the country as a whole.

67. The mission would be known as the United Nations Observer Mission in Sierra Leone (UNOMSIL) and would be led by my Special Envoy, Mr. Francis G. Okelo, who would be designated Special Representative for Sierra Leone. The Chief Military Observer would be Brigadier-General Subhash C. Joshi (India), who is currently the team leader of the small military liaison cell deployed to Sierra Leone pursuant to resolution 1162 (1998). UNOMSIL would subsume the office of my Special Envoy and its staff and the related cost estimates will be issued shortly as an addendum to the present report.

68. The activities described above would require up to 70 officers, as well as a medical unit of up to 15 persons, with the necessary equipment and civilian administrative support staff.

69. In view of the volatile security situation outside the capital, the deployment would take place in phases, with the first group of approximately 40 military observers being deployed, starting during the month of July 1998, to Freetown, Hastings and Lungi. The timing of subsequent deployments would then depend on the security situation, the progress of implementation of the Government's disarmament and demobilization plan and the availability of the necessary logistical equipment and resources. In this connection, I would call on the Government of Sierra Leone to be prepared to make available to the mission such premises and services as they can. At this stage, I would provisionally anticipate that the second phase of deployment would then take place in August-September, with the final phase beginning in October.

70. The observers would be deployed at each of the three camps where former Republic of Sierra Leone Military Forces are now being detained, i.e.,

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Wilberforce Barracks, Benguema Training Centre and Lungi; at the three ECOMOG Brigade headquarters at Hastings, Makeni and Bo; and at a headquarters location to support the Chief Military Observer. During the next phases, subject to the considerations identified above, observers could be deployed outside the immediate area of Freetown, including to the home regions of CDF members returning to undertake voluntary disarmament and demobilization as and when they considered their home communities sufficiently secure.

71. The mission would be provided with adequate air support in order to ensure mobility and security, as well as casualty and medical evacuations. A boat would also be required to facilitate travel and communications between Lungi and Freetown.

72. Should the Security Council agree to these measures, I will establish security arrangements for United Nations personnel with the Chairman of ECOWAS and conclude a status of mission agreement with the Government of Sierra Leone.

73. The deployment described above would require a commensurate expansion in the size of the office of the Special Representative, including information and political officers, as well as the necessary administrative and support staff.

74. I would also propose to increase to four the number of human rights officers attached to the office of my Special Envoy. These officers, under the direction of the Special Representative, and in close cooperation with the United Nations High Commissioner for Human Rights, would have a monitoring role and the task of addressing the country's long-term human rights institution building needs.

75. An increase in the number of civilian police advisers from two to five would also be required. These officers would advise the Government and local police officials on police practice, training and recruitment, in particular on the need to respect internationally accepted standards of policing in democratic societies. They would also monitor the progress of the restructuring of the Sierra Leonean police force.

76. At this point, it is difficult to assess whether an expansion of the mission might be needed six months from now and, if so, what form it might take. My recommendations on this matter will depend on ECOMOG's progress in restoring security throughout the country. If the presence of United Nations personnel in areas of continuing insecurity is considered desirable in order to reduce bloodshed by encouraging armed elements to surrender, or if areas of Sierra Leone now secure come under threat from hostile elements, thought must be given to ensuring the security of United Nations personnel. Although ECOMOG is a capable force and has indicated it would guarantee the security of the observers, it is also a potential target of attacks by the remnants of the junta. Unarmed military observers under its protection might not be regarded as neutral by hostile armed elements and their safety might therefore be jeopardized.

77. For those reasons, I could envisage the possibility, at a future stage, of recommending the deployment of a highly mobile unit of armed United Nations troops, operating in close cooperation with ECOMOG but independent of it, to

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protect observers in locations where their security might be at risk, but where their neutral presence may be helpful in encouraging armed elements to surrender. However, I do not believe that the time is ripe to make such a recommendation to the Council at this stage.

78. The deployment of ECOMOG troops at the border with Liberia could help lay to rest allegations of the influx of arms or the provision of armed assistance to the junta by foreign forces. I commend the Government of Liberia for its policy statement reaffirming that it will not permit its territory to be used to destabilize any neighbouring country. Verification that this was the case would, in my view, improve the security climate throughout the entire subregion and improve mutual confidence among its member countries. I hope there will be further discussions between the Heads of State of the subregion on these matters.

79. I therefore intend to pursue with President Taylor his proposal for the deployment of a small contingent of United Nations military observers at the border with Sierra Leone, in order to assist in verifying that Liberian territory is not being used to destabilize Sierra Leone and that foreign forces are not assisting the remnants of the former junta there. I will also discuss the matter with President Kabbah and with the Chairman of ECOWAS and revert to the Council in due course.

VII. OBSERVATIONS AND RECOMMENDATIONS

80. Since my last report, the situation in Sierra Leone has in some respects improved considerably. Since its restoration on 10 March 1998, the Government has moved rapidly to reassert its authority throughout much of the country. President Kabbah has nominated a compact Cabinet of acknowledged experts in their fields, all of whom have been confirmed by Parliament, as well as a Chief Justice.

81. However, in the eastern part of Sierra Leone and parts of the north, the remnants of the former junta continue to resist ECOMOG forces and attack Sierra Leonean civilians. I join with the Council in deploring the continued resistance to the legitimate Government, in calling on the supporters of the junta to lay down their arms, and in condemning the mutilations, rapes, looting and other atrocities carried out by junta elements against the civilian population. I also align myself with the commendation expressed for ECOWAS and ECOMOG in the presidential statement adopted on 20 May 1998 (S/PRST/1998/13) for the important role they are playing to restore peace and security in Sierra Leone, and support the call for Member States to provide technical and logistical support to assist ECOMOG to continue to enhance its ability to carry out its peacekeeping role and contribute to bringing an end to the atrocities being committed against the people of Sierra Leone. In this context, I welcome the logistical assistance provided by the United States. I am also grateful for the contribution made by the United Kingdom, and invite other Member States to make contributions to the Trust Fund to support peacekeeping and related activities in Sierra Leone.

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82. It is clear that there are a significant number of victims of rebel atrocities who remain in the bush or who are otherwise unable to receive medical attention. I applaud the efforts of United Nations humanitarian personnel, ECOMOG and the non-governmental organizations in locating and aiding victims. However, more must be done as a matter of urgency, including the provision of additional medical and surgical capacity, including hospital beds. In the longer term, the agencies and the non-governmental organizations concerned will need to offer support in the form of prosthesis services for all amputees and psycho-social treatment of traumatized victims and their families. In this context, I welcome the intention of ICRC to dispatch a surgical team to Sierra Leone to augment local medical facilities.

83. I call on the Government of Sierra Leone to continue to show the necessary resolve to adhere to international human rights standards and its own distinguished legal traditions in ensuring that those accused of the gravest crimes against the State and its people receive fair trials. I am aware that the Government has held to this course so far in the face of strongly voiced public contempt for the accused.

84. I express my appreciation to those Member States and others who have contributed to the flash appeal for humanitarian assistance and for various humanitarian projects.

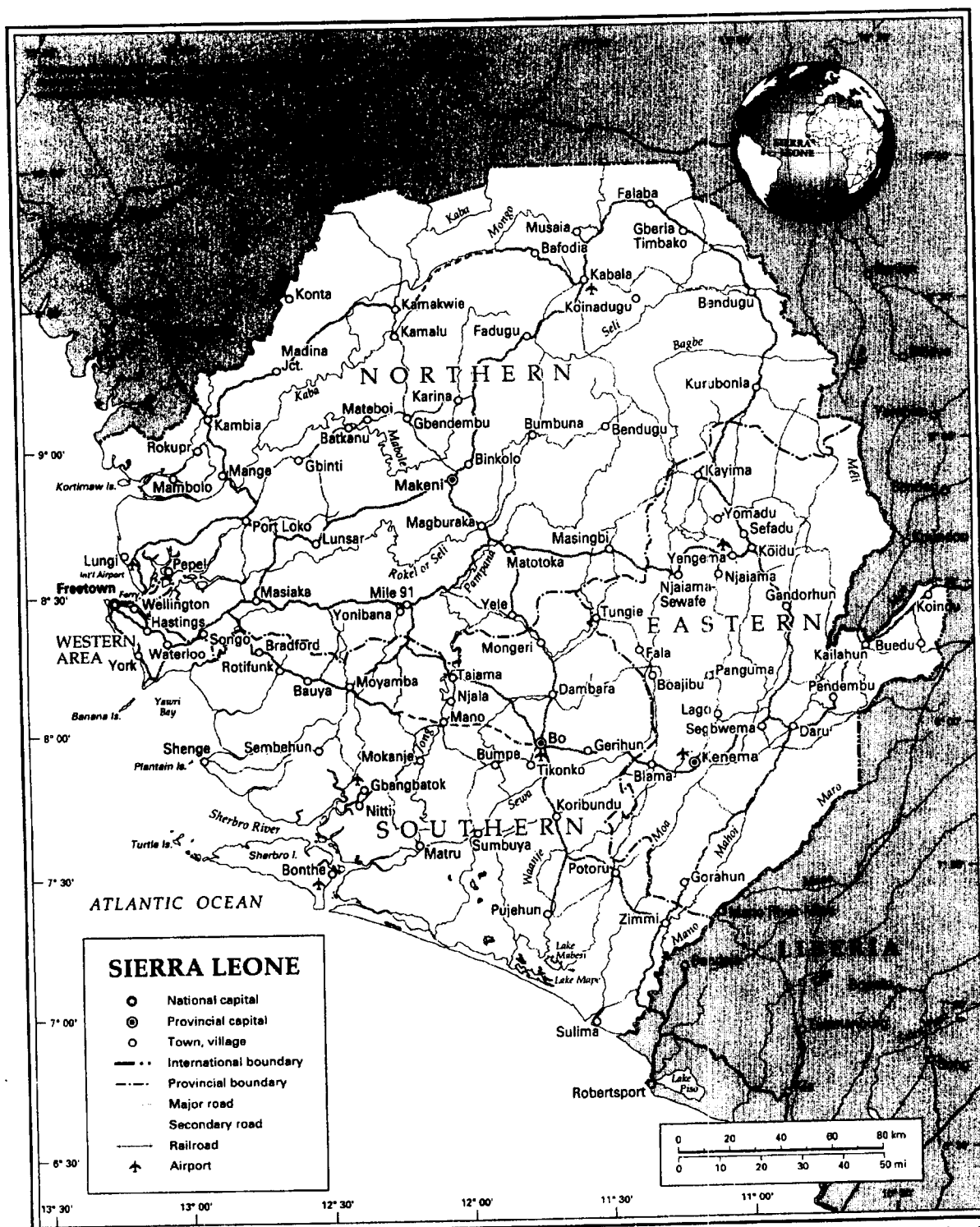
85. I recommend that the Security Council establish an observer mission in Sierra Leone, to be known as the United Nations Observer Mission in Sierra Leone (UNOMSIL), with the mandate and concept of operations described in paragraphs 66 to 71 above and with the necessary augmentation of civilian and civilian police staff as set out in paragraphs 73 to 75 above.

86. During the six-month period of the mandate, I would keep the situation closely under review and would make further recommendations to the Council concerning a possible extension or expansion of the mission as the circumstances permitted.

87. I support the recommendation of my Special Representative for Children in Armed Conflict that Sierra Leone be made one of the pilot projects for a more concerted and effective response in the context of post-conflict peace-building.

88. Finally, I wish to express my appreciation to my Special Envoy and to all United Nations staff in Sierra Leone for their efforts over the past several weeks.

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A project of the International Peace Academy

LIBERIA'S CIVIL WAR

Nigeria, ECOMOG, and
Regional Security in West Africa

Adekeye Adebajo



chapter 4

Seamen from Renaissance Africa,
August 1990–December 1991

Military maps were not available except the tourist maps of Monrovia which was what the initial planning was based on.
—Brigadier Cyril Iweze, ECOMOG chief of staff,
August–November 1990

In this chapter we will assess ECOMOG's performance during the first sixteen months of its existence. We focus on Pax Nigeriana and the domestic, subregional, and external constraints to its attainment. The chapter assesses the military difficulties encountered by ECOMOG, including opposition from the NPFL as well as its own logistical shortcomings.

At the domestic level, Charles Taylor controlled 90 percent of the country and derived resources from the lucrative export trade in areas under his control. The NPFL provided a strong military challenge to ECOMOG's ill-equipped peacekeepers, and ECOMOG's alliance with the INPFL and AFL compromised its stated neutrality. Another faction, ULIMO, emerged in September 1991 to challenge NPFL control of territory and resources and further complicated peacemaking efforts.

At the subregional level, we analyze the diplomatic difficulties encountered by ECOWAS as it tried to bridge its diplomatic divisions through peace conferences at Bamako, Lomé, and Yamoussoukro, where francophone states were given the lead role in peacemaking. Despite Mali and Togo playing a more supportive role, Burkina Faso and Côte d'Ivoire continued to support the NPFL while Guinea, Sierra Leone, and Nigeria furnished military support to ULIMO. Tension erupted between ECOMOG's two main contingents, Ghana and Nigeria, after a Nigerian general replaced the Ghanaian force commander in September 1990. Accra also opposed

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a force threatening to break into pockets of nationalist sentiment, with Ghanaians adhering to one set of rules, Guineans to another, and Sierra Leoneans and Gambians marginalised by their numerical inferiority. Nigerians were becoming overlords of a badly disenchanted and demoralised force.⁴⁸

The Nigerian general set about trying to restore troop morale and discipline. He arrived just as NPFL elements launched attacks into Sierra Leone on 23 March 1991. Nigeria sent 1,200 troops to Sierra Leone to bolster its security. Guinea also sent troops and, along with Sierra Leone, cooperated with a new faction—ULIMO—to launch military attacks against the NPFL. Nigerian and Sierra Leonean instructors were involved in training ULIMO fighters.⁴⁹

The Abuja-Accra Axis

This period saw tensions rise between Nigeria and Ghana on ECOMOG policy. Ghana complained that it had not been properly consulted on the removal of its force commander, General Arnold Quamo. Brigadier Francis Agyemfra, Ghana's army chief of staff from 1992 to 1996, later complained that Ghana had heard this news through BBC radio.⁵⁰ With the Ghanaian press calling for its contingent to be brought back home, Accra started attaching conditions to the use of its troops, insisting that it be consulted before any changes were made to ECOMOG's mandate.⁵¹ Quamo returned to Ghana a bitter man in October 1990, recommending that Ghana withdraw its 2,000 men, warships, and planes from ECOMOG unless better Nigerian cooperation could be assured.⁵²

Addressing his military officers in November 1990, Jerry Rawlings made clear that Ghana would remain neutral in the conflict and did not object to anyone becoming president.⁵³ In a similar vein, the Ghanaian foreign minister, Obed Asamoah, said: "ECOMOG is completely neutral as to what the outcome should be, as to who should be leader of Liberia. . . . We are not against any particular individual."⁵⁴ Asamoah sent a letter to the ECOMOG executive secretary, Abass Bundu, in April 1991, informing him that Ghana was rethinking its ECOMOG policy and expressing a wish for its troops to "maintain only a defensive posture" rather than engage in offensive fighting. Asamoah continued by noting that the "realities on the ground" should determine the political arrangement that emerged in Liberia.⁵⁵ General Kpohlani received a letter from Ghana's defense headquarters warning that Ghanaian troops not be used to undertake any military "adventures" in Liberia.⁵⁶ Also, Balfour Assasi-Gyimah, Ghana's former ambassador to Burkina Faso and a deputy security adviser at the time, later noted: "We are practical. Nigeria saw things differently. We had not

come to impose someone there as a ruler. We had come as peacekeepers. We did not go there with any preferences."⁵⁷

Accra, unlike Abuja, was prepared to tolerate a Taylor presidency and wanted his troops to engage strictly in peacekeeping functions, not in a peace-enforcement role. Ghana objected to what it saw as Nigeria's obsession with eliminating Taylor, and this policy division remained a feature of ECOMOG's presence in Liberia under the Babangida regime. Accra reportedly was also under pressure from its old Libyan ally not to frustrate Taylor's presidential ambitions.⁵⁸

Nigeria was worried about the possible withdrawal of ECOMOG's second-largest contingent. As Ambassador A. O. Esan, former director of the West Africa division of the Nigerian foreign ministry, put it: "If Ghana withdrew, it would be a totally Nigerian affair, which we didn't want."⁵⁹ Though some senior Nigerian military officials saw Ghanaian preparedness to accommodate Charles Taylor as anti-Nigerian, Abuja's approach was to make all necessary efforts to keep Ghanaian troops in Liberia. General Babangida stopped over in Accra during a visit to Uganda in September 1990 to heal the widening rift. Nigeria provided fuel to the Ghanaian troops, and there were reports that Nigeria threatened to cut off commercial oil sales if Ghana withdrew its troops from ECOMOG.⁶⁰

Nigeria

At this time, there appeared to be three distinct views within Nigerian policymaking. The hawks, epitomized by the chief of general staff, Admiral Augustus Aikhomu, General Joshua Dogonyaro, and Ambassador Joshua Iroha (the special representative of the ECOMOG executive secretary to Liberia), saw the elimination or military defeat of Taylor as the only way to resolve the conflict. The doves, epitomized by Nigerian Foreign Minister General Ike Nwachukwu, ECOMOG Commander General Kpohlani, and the Nigerian ambassador to Liberia, Ayo Ajakaiye, considered ECOMOG an unnecessary burden on Nigeria's finances. They called for greater burden-sharing with other ECOWAS states and the United Nations, sought to avoid further alienating an already hostile Nigerian public. These distinctions were not always clear cut: the dovish General Nwachukwu was close to the hawkish Ambassador Iroha, whom he had nominated as ambassador to Brussels while serving as military governor of Imo State.⁶¹ There was friction between Kpohlani and Ambassador Iroha, who complained that Kpohlani did not listen to his advice and took his instructions directly from General Sani Abacha. Nigeria's chief of army staff,⁶² Kpohlani, for his part, accused Iroha of colluding with Amos Sawyer and ECOWAS

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superpower in the Southern African setting, gained international glory thanks to her former President Nelson Mandela. When the SADC meeting made the decision to intervene militarily in the Congo war in the absence of South Africa, Zimbabwe saw an opportunity to raise her geopolitical influence in Southern Africa.

Namibia also used to support politically Kabila. Namibia sent troops into the Democratic Republic of Congo slightly after Angola and Zimbabwe. Outside the SADC cooperation, however, Namibia's interests are far less visible than the others'. The country faces no security problem whatsoever due to the Congo war — in effect, Namibia and Congo do not even share a common border. The only security concern is the fact that UNITA's battles have occasionally been extended from Angola onto the Namibian ground. Not even ethnicity seems to be an appropriate starting point. The serious explanations are, hence, friendship and alliance between Kabila and President Sam Nujoma of Namibia, and the new deal of Congo's immense natural resources. The Namibian involvement can, therefore, be explained by both push and pull factors.

3.3 THE WESTERN CONNECTION

Angola dispatched tanks to support Kabila on the western front as early as at the onset of the war. UNITA (*União Nacional para a Independência Total de Angola*) rebel movement, which is fighting a paralyzing civil war against the Angolan government for already the third decade, has had military bases in northern Angola and Bas-Congo (Kunene 1997: 10; Vesely 1997: 12–13). Mobutu allowed, in his time, the presence of UNITA in the area of then-Zaire. Despite Kabila's official prohibition of UNITA to settle within the Congo borders, controlling proved too demanding for the country itself is crisis.

Both the governing MPLA (*Movimento Popular de Libertação de Angola*) and UNITA finance the Angolan civil war by selling the country's raw materials. The Angolan government receives funding from oil drilled in the Atlantic Ocean, far away from the war zones. Oil production has continued undisturbed. UNITA has, in turn, penetrated into Angola's diamond areas from where it smuggles diamonds abroad and imports arms to Angola. The Angolan government is anxious to intervene in this chain. By backing Kabila, the Angolan government endeavors to ruin UNITA's guerrilla activities. Angola has, in turn, received diamonds from Katanga of Congo as a payment of military services (Vesely 1997: 13). Some UNITA fragments were initially combating with CRD and the Rwandans for the control of the Inga hydropower station in Bas-Congo, but they had to withdraw. After the internal dissolution of the rebel Coalition, UNITA's support was directed rather to CLM in northern Congo (Mutond 1999).

Angola's vital oil drilling area, Cabinda, is an enclave from Angola, on the northwestern side of Bas-Congo, on the Atlantic coast. UNITA or Cabinda's possible own separatist aspirations could easily disrupt the Angolan connection to

oil and devastate the country's already ailing economy (Misser & Rake 1997: 12). This strategic threat may have also pushed the Angolan government to enter her neighbor's internal war. Both the Angolan government's and UNITA's activities can, hence, be explained by natural resources and security pull factors.

4. THE WAR IN SIERRA LEONE

Sierra Leone became independent in 1961 from the rule of Great Britain. The fresh years of independence were filled with great hopes in this small West African nation. Enthusiasm was crystallized in smooth infrastructural development and construction of schools and clinics. The 1967 elections, however, ruined promising progress. After the failed elections, a military regime was established in the country. Democracy and dictatorship have been playing a fierce tug-of-war ever since.

The Sierra Leonean economy has experienced a steep downside as of the 1980s. Mounting external debt, accelerated inflation, continuous depreciation of the currency, yawning budget deficits, widespread corruption and ailing foreign trade resulted in stubborn energy and food crises. Serious unemployment drove young men to Freetown's dilapidated shantytowns and diamond mines in the countryside. (Pratt 1999.) Societal decay created fertile soil for the radicalization of the marginalized people.

Noteworthy is also ethnic bifurcation in Sierra Leone. The northern and western ethnic group, Temne, and the southern and eastern population, Mende, are occasionally thought of as constituting a bipolar ethnic division in multicultural Sierra Leone. This has indeed been relatively clearly manifested in the few elections organized in the country. (Bangura 2000.) Nevertheless, as widely recognized as the bifurcated voting pattern, RUF has not really received any support from its occupied areas or from any ethnic entity either.

4.1 THE CONTEMPORARY MASSACRE IN SIERRA LEONE

The civil war broke out in 1991 in Sierra Leone. In that time, the *Revolutionary United Front* (RUF) rebel movement and former army soldiers invaded the eastern border village of Bomanu from Liberia. Formally, the Front took up arms to combat the country's corrupted government and insisted on multiparty democracy. The years to come were filled with chaos and misery; during the past ten years, Sierra Leone has had eight different governments and five heads of state.

President of that time Joseph Momoh had to step aside in 1992. Captain Valentine Strasser, who overthrew Momoh, ruled for nearly four years. In the 1996 palace coup, Brigadier Julius Maada Bio, in turn, endorsed power to the winner of the rapidly organized elections, Ahmad Tejan Kabbah. The elections

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known also as the *Civil Defense Force* (CDF), was first created as a people's militia movement to provide for security in the pressured countryside. Currently, CDF forms an integral part of the institutionalized military force. (Bangura 2000.) CDF is formally headed by deputy minister for defense Samuel Hinga Norman. A good number of independent armed militias are also active in Sierra Leone; however, their contribution to the constellation of the war likely remains negligible. One of the best known could be the *West Side Boys* that kidnapped 11 British soldiers for two weeks in August–September 2000.

4.2 FOREIGN INVOLVEMENT

RUF controls diamond mines in the northern and eastern parts of Sierra Leone (Figure 4). By the same token, the crucially important center for diamond trade, Koidu, near the eastern border, is rebel held. The southern diamond areas, on the eastern border of Southern province, remain under the Tejan Kabbah rule for the time being. The government has troops also in the north indicating an incomplete spatial stretch by RUF. The key target is the city of Kabala. Various estimates have stated that RUF will by no means give up the country's diamond fortunes since no political, ideological or ethnic controversies seem to explain the rebels' stubborn eagerness to wage war. RUF has managed to export diamonds to the West and, thereby, finance its military adventure with the help of neighboring Liberia. As an indirect but reliable indication, the Liberian diamond exports amount to 40-fold in comparison with Liberia's own diamond production. Liberia has, in turn, delivered arms to Sierra Leone. President Charles Taylor of Liberia, who is a very close friend of Sankoh's, has seen to the continuation of diamond smuggling profitable for Liberia. (Torstevim 2000.)

Sierra Leone's war deviates, nonetheless, from the conflict in the Democratic Republic of Congo in one crucial respect; in Congo, fighting has remained within the country's national borders whereas the Sierra Leonean battles have escalated also onto the Liberian and Guinean ground. In addition to the RUF–Liberia axis, the Liberian guerrillas campaigning against Taylor's regime have attacked Liberian targets from the Sierra Leonean side (Lederer 2001). As an indication, the recent recapture of Liberia's crisis has its roots in the northwestern section of the country.

Guinea has been recently pulled into this West African nightmare, as well. According to Taylor's accusations, the Liberian antigovernment forces — the *United Liberation Movement for Democracy in Liberia*–K (ULIMO–K) under Alhaji G. V. Kromah's leadership — have marched also to Guinea. The Liberian rebels as well as RUF have been recruiting members among the Liberian and Sierra Leonean refugees in the camps in southeastern Guinea. The rumored hosting of the ULIMO–K fighters by Guinea has badly upset Taylor. Various

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were held for "relatively free and fair" despite multiple riggings. For instance, ghost voting proved prominent in the war-torn southern and eastern parts of the country. Both in the parliamentary and presidential elections, voting distinctly reflected ethnic affiliations. (Bangura 2000.)

The *Armed Forces Revolutionary Council* (AFRC) military government, which was formed by the government soldiers, drove Tejan Kabbah in exile jointly with RUF in the next year. Major Johnny Paul Koroma assumed the post of the Head of State. During the RUF/AFRC coadministration, Sierra Leone drifted dramatically close to anarchy. The *Economic Community of the West African States* (ECOWAS) and UN imposed economic sanctions on Sierra Leone in late 1997 that they hoped to draw the warring parties around the same table. The wish remained unmet albeit the country's GDP nosedived by even 20% in that year. In early 1998, the military division of ECOWAS, called ECOMOG (*ECOWAS Monitoring Group*), intervened in the conflict in the name of restoring peace. The Nigerian-led ECOMOG managed to turn the RUF/AFRC military junta away from the capital Freetown. Ousted President Tejan Kabbah returned to occupy his office.

Peace seemed to be very close. In July 1998, UN dispatched military observers into Sierra Leone to prepare for a cease-fire. The peace agreement, which had raised great hopes — already the third in order —, was finally signed in Lomé, the capital of Togo, in 7 July 1999.

The cease-fire was, nonetheless, broken in spring 2000. The already negotiated peace agreement would have guaranteed four ministerial posts and four deputy ones for RUF and Vice-Presidency for the hated leader of the rebel movement, former army corporal and photographer, Foday Sankoh, responsible solely to the President. Moreover, the agreement paper included a promise not to accuse RUF of any wartime cruelties, which truly upset human rights organizations. (Masland & Bartholet 2000.) This was not, however, enough for Sankoh. RUF took up arms again.

The international community supports West-minded President Ahmad Tejan Kabbah. The international UNAMSIL (*United Nations Mission in Sierra Leone*) and West African ECOMOG peacekeeping forces are striving together so as to restore peace in devastated Sierra Leone. The peacekeeping troops have, in fact, found themselves in tricky situations every now and then. In May 2000, RUF kept some 500 peacekeepers as hostages for several weeks. In June 2000, in turn, 235 UN soldiers were blocked on the eastern border of Sierra Leone. Particularly the United States and Great Britain of the key Western countries have expressed their sympathy for the contemporary political leadership. Great Britain has even dispatched paratroops in Sierra Leone although their mission has officially read as "evacuation of Western people" (Johnson 2000). At home, the Sierra Leoneans have lost patience with his failure to settle the war with RUF (*Africa Confidential* 2001a).

Tejan Kabbah's forces have enjoyed military assistance from a former opponent; the 15,000–35,000-strong Kamajor militia group led by Johnny Paul Koroma is actively fighting in Tejan Kabbah's lines (Pratt 1999). Kamajor,

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