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International Humanitarian Law and the Conflict in Sierra Leone

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ARTICLES

INTERNATIONAL HUMANITARIAN LAW AND THE CONFLICT IN SIERRA LEONE

BABAFEMI AKINRINADE*

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INTRODUCTION

A. Background to the Conflict

The conflict in Sierra Leone began in 1991 when the rebel Revolutionary United Front (R.U.F./S.L.) entered Sierra Leone from Liberia. The conflict started after many years of misrule, corruption, and governmental neglect of the population that characterized the polity in Sierra Leone.

Sierra Leone became a Crown Colony in 1808 and was, thus, the first modern political State in sub-Saharan Africa. It became an independent State in 1961 after many years of colonial rule. At independence, Sir Milton Margai of the Sierra Leone Peoples’ Party (S.L.P.P.) became its first Prime Minister and was succeeded by his brother Albert Margai in 1964. Within two years, Albert Margai’s rule was characterized by high levels of official corruption and mismanagement. In addition, Albert Margai made efforts to create a one-party State by amending the constitution.

The 1967 General Elections in Sierra Leone were badly mismanaged and there were charges of vote rigging and corruption. The All Peoples’ Congress (A.P.C.) appeared to have the most parliament seats and its leader, Siaka Stevens, was asked by the Governor-General to form the new Government. Stevens had been part of the S.L.P.P., but shortly before independence had broken with Milton Margai and formed the A.P.C.

The same day that Stevens was asked to form a Government, Army Commander David Lansana declared martial law and arrested both the Governor-General and Stevens on the ground that all election results had not been tallied. Three days later, as it was apparent that his intention was to restore Margai to power, Lansana was arrested by junior officers who proceeded to establish a military Government. One year later, the junior officers were overthrown by noncommissioned officers, who then invited Stevens to return from exile and form a new Government.

In 1971, Sierra Leone became a republic, with Siaka Stevens as the Executive President. Stevens ruled for seventeen years, during which he gradually became a corrupt politician and dictator. He established a repressive and brutal regime in which rights violations became rampant. There was a systematic subversion of the formal State apparatus and the growth of the informal economy, largely based on trade in illicit diamonds, the main mineral resource of Sierra Leone.

Generally, in the 1960s and 1970s, a “weak post-independence democracy was subverted by despotism and State-sponsored corruption. Economic decline . . . followed.” By the mid-1980s, the country was descending into insolvency. Growing foreign debt, rampant inflation, currency devaluation, budget deficits, corruption, and declining exports led to chronic fuel, power, and food shortages. Youth unemployment grew, and student radicalism at Fourah Bay University increased. By 1985, a year marked by violent labor and student unrest, Stevens was over eighty years old and decided to retire. He handed over power to Joseph Momoh, who had been the military commander.


The Momoh years were more of the same. Momoh had come to power, riding a wave of public enthusiasm, and it was hoped he might make things better for the economy and revive the collapsing State. However, corruption continued, as did high inflation, repeated blackouts, and shortages of currency, food, and fuel.5

The Momoh years were also characterized by two largely unnoticed trends that would have serious consequences later.6 The first trend was a steady and rapid growth in the number of the unemployed and disaffected youth.7 They drifted from the countryside to either Freetown, the capital, or to the diamond fields of Kono, and were deeply influenced by the climate of violence, drugs, and criminality. The second trend was a growth in student militancy. During the late 1980s, partly due to the Government’s violent suppression of demonstrations, many students became radicalized. Exposure to new ideas, including Colonel Muammar Ghaddafi’s *The Green Book*, also contributed to student radicalism.8 The students had even formed a Green Book study club.9 Libya openly sponsored students from Sierra Leone who wanted to travel to Libya until 1985, when forty-one students with alleged links to Libya were violently expelled.10 From 1987 to 1988, between twenty-five and fifty Sierra Leoneans were trained in Libya in the “art of revolution.”11

The first shots in the conflict in Sierra Leone were fired on March 23, 1991, when the R.U.F./S.L. entered Sierra Leone from Liberia.12 Momoh had to hurriedly recruit new troops to fight the guerrillas and these new recruits were mainly the urban youth who were disenchanted with the regime and the political leaders. The new recruits were “mostly drifters, rural and urban unemployed, a fair number of hooligans, drug addicts and thieves.”13 They lacked the necessary logistical support and soon began to brutally exploit civilians in the war zone.14

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5. See Pratt, supra note 1, at Part I—Background: The Momoh Years: 1985-92; see also Opala, supra note 1.
6. Id.
7. Id.
8. Id.
9. See Abdullah & Muana, supra note 4, at 175.
10. See Pratt, supra note 1, at Part I—Background: The Momoh Years: 1985-92; see also Abdullah & Muana, supra note 4, at 176.
11. Pratt, supra note 1, at Part I—Background: The Momoh Years: 1985-92; see also Abdullah & Muana, supra note 4, at 176–77.
12. See Abdullah & Muana, supra note 4, at 178.
13. Id. at 182.
14. See id.
Young military officers who were protesting pay and conditions in the war front overthrew Joseph Momoh on April 29, 1992. The new regime, the National Provisional Ruling Council (N.P.R.C.), was headed by 29-year-old Army Captain Valentine Strasser. The N.P.R.C. declared a revolution and a commitment to end the war, revamp the economy, and restore multi-party democracy. It entered into negotiations with the R.U.F., which ultimately floundered. The initial enthusiasm to end the war soon waned as the young officers became mired in the corruption that had characterized the previous regime. Meanwhile, the troops on the war front became hardly distinguishable from the rebels, and outside the war zone civilians came to detest the army, which had been expanded by the N.P.R.C. The soldiers were suspected of committing atrocities like the rebels, and the term "sobel" (a combination of "soldiers" and "rebels") was coined to account for the criminal behavior of these recruits.15

The young officers promised elections for February 1996. However, in January 1996, Strasser was overthrown by his deputy, Brigadier Julius Maada Bio. Pressure mounted on the regime to hold the elections as scheduled, since the coup was construed as an attempt by the military to hold onto power. The R.U.F. maintained pressure on the Government and talks were held between them only a few days before the elections, which eventually took place in March 1996. Talks between the Government and the R.U.F. continued with the newly elected Government of President Ahmed Tejan Kabbah.16

B. Impact of the Crises in Liberia

The conflict in Sierra Leone, which began during the civil war in Liberia, has been linked with the Liberian conflict. Charles Taylor, the Liberian warlord who later became the President of Liberia, was seen as a principal backer and possibly initiator of the conflict in Sierra Leone. Corporal Foday Sankoh, head of the R.U.F., had formed an alliance with Taylor, who helped him to launch the conflict. The conflict was seen as Taylor's way of getting even with the Joseph Momoh regime in Sierra Leone, which had backed the efforts of the West African regional body, Economic Community of West African States (E.C.O.W.A.S.),17

15. See id. at 183.
in its attempt to bring peace to Liberia. Taylor considered the E.C.O.W.A.S. intervention as a bid to thwart his ambition to take over the Government of Liberia through the civil insurrection he had launched in late 1989. Another reason advanced for Taylor's involvement in the conflict in Sierra Leone was the opportunity to plunder the diamond mines of Sierra Leone in order to fund his war in Liberia. While the conflict in Sierra Leone had its internal dimensions, it is clear that there were other causes. The conflict was also triggered by problems across its borders, including refugee, economic, and military problems.

C. A War for Diamonds?

It is undeniable that the conflict in Sierra Leone is a crisis of modernity, caused by the failed patrimonial systems of successive post-colonial Governments. While this view has been rejected in some quarters, it nevertheless is obvious that the State structure has been weak, due to large-scale corruption and a lack of efficient administration. However, these cannot be deemed to be sufficient reasons for the scale of brutality that has accompanied the conflict. As rightly noted by some analysts:

While there is no doubt about widespread public disenchantment with the failing state, with corruption and with a lack of opportunity, similar problems elsewhere have not led to years of brutality by forces devoid of ideology, political support and ethnic identity. Only the economic opportunity presented by a breakdown in law and order could sustain violence at the levels that have plagued Sierra Leone since 1991.

From the outset, it was not clear what the rebels in the R.U.F. stood for. As they manifested no clear ideology, it was difficult to define what the group wanted. Unlike many conflicts

23. Smillie, supra note 3, at Introduction.
in Africa that have roots in ethnicity, the conflict in Sierra Leone has a distinct lack of ethnic undertones. Thus, it has been hard explaining the conflict using the traditional paradigms. And, as noted by Ian Smillie and others, traditional theories of political science, economics, and military history are of little value in explaining the conflict in Sierra Leone. As they rightly note, "[t]he point of the war may not actually have been to win it, but to engage in profitable crime under the cover of warfare."  

The principal reason cited by the rebels for the conflict is that the misrule of Sierra Leone has resulted in widespread poverty. However, a closer look at the whole situation reveals that that may not have been the only reason for the war. While the aforementioned factors may have been the reasons for the beginnings of the war, the conflict certainly has assumed other dimensions, which are now making it impossible for the conflict to end and for full reconciliation to take place in the country.

The main export commodity for Sierra Leone is diamonds. The country is rich in diamonds and the precious mineral appears to be the main reason that the conflict is unending. The battle is for the control of the diamond fields and the revenue that flows from there.  

However, not much is known about the mining and trading of Sierra Leone diamonds. What is known is that some of the rebels trade in diamonds and that one of the leading rebel commanders, Colonel Sam Bockarie (a.k.a. Maskita or Mosquito), was an illicit diamond miner before he relocated to Liberia and was recruited by the R.U.F. Also, the R.U.F. recruited many of its force from youth that were engaged in illicit diamond mining. Without any viable alternative, it would be hard for these people to stop the illicit mining of diamonds, which is a steady source of income for them.

I. PARTIES TO THE CONFLICT IN SIERRA LEONE

The principal protagonists in the conflict in Sierra Leone are the Republic of Sierra Leone Military Forces and the Revolutionary United Front (R.U.F./S.L.). Other Parties have also been involved to varying degrees in various stages. These include the Armed Forces Revolutionary Council (A.F.R.C.), the Civil

24. Id.
25. See id. See also Pratt, supra note 1, at Part II--The Security Situation: The Diamond Connection.
27. See Abdullah & Muana, supra note 4, at 179.
Defense Forces (of which the best known is the Kamajo militia), fighters from other countries, and the regional peacekeeping force Economic Community of West African States Monitoring Group (E.C.O.M.O.G.).

A. The Republic of Sierra Leone Military Forces

The main components of the armed forces of Sierra Leone are the army and the navy. Before the conflict began, the estimated number of the army was between 3,000 and 4,000. By February 1998, the figure had risen to 14,000. Following the initial attack of the R.U.F. in March 1991, the army nearly doubled from 3,000 men to almost 6,000, most of whom the Momoh regime recruited from Freetown vagrants. After the takeover of power by young army officers in April 1992, the number of new recruits increased dramatically, particularly with the popularity of the new regime with young people. The new recruits into the Sierra Leone army in 1992 included many young people; and by 1993, the number of young soldiers under fifteen years old had reached 1,000 by some estimates. The current figures for the Sierra Leonean army and navy are estimated at 3,000 and 200, respectively. However, there are ongoing efforts to increase the strength of the army to 5,000 men, following the peace agreement signed in Lomé, Togo in 1999.

B. The Revolutionary United Front of Sierra Leone (R.U.F./S.L.)

The R.U.F. began its war against the Government of Sierra Leone in March 1991. It was set up by a former army corporal in the Sierra Leone army, Alfred Foday Saybana Sankoh, who had

28. The Kamajo militia is also called Kamajors.
33. See id.
formed an alliance with the Liberian warlord, Charles Taylor. Before the R.U.F. emerged to launch its guerrilla warfare, some of its members had undergone military training in Libya. Among the group that went to Libya in the 1980s for training in the art of revolution was Foday Sankoh, who had been cashiered and jailed in 1971 for plotting a coup against Siaka Stevens.35

When Sankoh arrived from Libya in 1988, along with Abu Kanu and Rashid Mansaray, he began a recruitment drive around the country for members for his proposed group, in order to prepare to stage a revolution in Sierra Leone. The three also toured Liberia in a bid to drum up support for their cause.36 It was in 1988 that Sankoh met Taylor in Liberia, and, thus, began an alliance that evidently still continues until today.

As a movement, the R.U.F. had some semblance of organization. At its inception, Sankoh claimed the title "head of ideology" and acted as spokesman for the group at various times.37 The R.U.F. was organized into various units. Its "battalions" were made up of combatants in the following categories:

1. "Vanguards": teachers of R.U.F. ideology, consisting of guerrilla trainers, senior battle group commanders, and junior battle front commanders;
2. Special Forces: also known as "Liberians," primarily of Liberian origin but with family connections to Sierra Leone (these accounted for a large number of R.U.F. senior officers);
3. Salon wosus: rank-and-file fighters, mainly captured recruits converted to the cause, trained, and permitted to carry weapons;
4. "Standbys": unproven captives;
5. "Recruits": new intakes.38

A "CO" was any soldier chosen to command a mission. "Battle front commanders" led assaults on major R.U.F. targets and were ranked Lieutenant or Captain. "Battle group commanders" had a rank of Major or higher, coordinated and commanded battle front commanders within their sectors, and were given a voice on the War Council.39

Although the "vanguard" and wosu groups had some female members, the greater number of women in the R.U.F. belonged to two groups—the Combat Support Unit and the Combat Wives
Unit—and were mainly recruited by capture. The Combat Wives Unit, equipped with “sista beretta” (mostly Beretta submachine guns), policed gatherings of captive population and occasionally performed bodyguard duties. Later, members were also involved in “special missions,” which required the women to infiltrate “enemy territory” and travel behind enemy lines on “survival missions” to buy essential commodities and medicines.\footnote{40}

The Internal Defense Unit (I.D.U.) was the intelligence arm of the R.U.F. The I.D.U. carried out reconnaissance missions, target assessment, general military intelligence, liaisons between commanders of battle groups and battlefronts, and liaisons with the R.U.F. head of ideology. They monitored the movement of civilians and R.U.F. personnel in R.U.F.-controlled enclaves and the movement of captured civilians.\footnote{41}

Even though Sankoh was ‘head of ideology’ of the R.U.F., the rebels had no clear ideology.\footnote{42} According to Abdullah and Muana, the R.U.F. has defied all available typologies of guerrilla movements. It is neither a separatist insurgency rooted in a specific demand, as in the case of Eritrea, nor a reformist insurgency with a radical agenda superior to the regime it sought to overthrow. It is a movement without any significant national following or ethnic support.\footnote{43} Until about 1995, it was unclear what the R.U.F. and Foday Sankoh wanted. Although the BBC had occasionally done radio-telephone interviews of Sankoh, no cohesive ideology was expressed until 1995, when Footpaths to Democracy: Toward a New Sierra Leone, an R.U.F. propaganda pamphlet, appeared.\footnote{44} The pamphlet, which has been described as “a pathetic and well-worn criticism of the APC regime,” was allegedly taken from work done by some of the expelled students in Ghana.\footnote{45}

There are varying figures for the strength of the R.U.F. Some estimate that the number is between 8,000, and 10,000 soldiers.\footnote{46} However, until 1998, the number was around 3,000 to 5,000.\footnote{47}

\footnote{40. See id. at 189.}
\footnote{41. See id.}
\footnote{42. See supra INTRODUCTION.}
\footnote{43. See Abdullah & Muana, supra note 4, at 190.}
\footnote{44. See Pratt, supra note 1, at Part I-Background: The N.P.R.C. Regime: 1992-96.}
\footnote{45. Abdullah & Muana, supra note 4, at 192.}
\footnote{46. See THE COALITION TO STOP THE USE OF CHILD SOLDIERS, AFRICA REPORT: SIERRA LEONE, at http://www.child-soldiers.org (last visited Mar. 7, 2001).}
C. The Armed Forces Revolutionary Council (A.F.R.C.)

On May 25, 1997, the elected Government of President Tejan Kabbah was toppled in a military coup. Junior officers of the Sierra Leone Armed Forces seized power and freed Major Johnny Paul Koroma, who at the time was in prison awaiting trial for conspiracy to overthrow the Government of Kabbah in September 1996. Koroma was immediately named Chairman of the new A.F.R.C., and one of his first acts on assuming power was to ban all political Parties and all public demonstrations and meetings. He also invited the R.U.F. to join the A.F.R.C. in ruling the country and declared the civil war to be over. The R.U.F. accepted the offer and became a powerful part of the Government; Foday Sankoh was named Vice-Chairman of the A.F.R.C. At that time, Sankoh was still under house arrest in Nigeria on charges of possession of arms and ammunition, even though he had gone to Nigeria for peacemaking purposes.

The A.F.R.C. joined forces with the R.U.F. to form the People's Army. Large numbers of R.U.F. forces arrived in Freetown. A complete breakdown of law and order followed as the two forces combined to commit various acts of violence against inno-

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49. See Pratt, supra note 1, at Part I—Background: The Period After 1996.


51. Some reports suggested that he was lured to Nigeria so that the peace process in Sierra Leone could go ahead without him. However, it appears that he went on his own volition to Nigeria, without contacting his Ivorian hosts to guarantee his security and without informing the Nigerian authorities. Sankoh was a personal friend of then Nigerian Head of State, Sani Abacha, and that fact seems to be the only plausible reason he would dare to undertake such a trip without prior warning or protocol. He wanted to persuade Abacha to use his office to find a solution to the conflict in Sierra Leone. But earlier in February, 1997, the O.A.U. Foreign Ministers decided to remove Sankoh from the scene because he had been frustrating the peace process. The Nigerian Foreign Minister had agreed to lure him to Nigeria, but at the time he went he had not been invited. His arrival was an opportunity for the Nigerians to perfect the decision made in February, even though the Nigerians were confused as to how to deal with him. The Sierra Leonian Government wanted Nigeria to turn him over so he could be prosecuted for war crimes, but Nigeria did not. See Alan Rake, The Sankoh Affair, New AFRICAN, June 1997, at 12–13.
cent citizens, supporters of Kabbah, and other opponents of the regime.

Following the E.C.O.M.O.G. intervention in 1998, President Kabbah was restored to power. The A.F.R.C./R.U.F. coalition retreated and began an offensive against the Government of Sierra Leone and the E.C.O.M.O.G. forces; at this stage, it became hard to distinguish between the A.F.R.C. and the R.U.F. The A.F.R.C. had a considerable number of combatants, numbering around 8,000 to 10,000 in 1997." The current combined strength of the A.F.R.C./R.U.F. is estimated at about 15,000.

D. Civil Defense Forces (C.D.F.) / Kamajo Militia

After the R.U.F. emerged from obscurity in 1991, there was some resentment from the local populace. The R.U.F. could not gain acceptance within some communities despite the alienation of those communities from the Government. Whatever potential goodwill the R.U.F. could have enjoyed was stifled by looting and indiscriminate violence by the Liberian "special forces," an integral part of the original invading force. Instead of condemning those acts, Foday Sankoh justified them as a reward. Therefore, it was easy for the civilian populace to detest the R.U.F.

The above, coupled with the inability of the armed forces of Sierra Leone to protect the entire territory of the country, led citizens in some areas of the country to organize themselves into civil defense units to fight the incursions of the R.U.F. Civil defense forces began appearing around the country and the popular Kamajo militia was the strongest of the C.D.F.s; other C.D.F. include the Temne Kapras and the Koranko Tamaboros.

The Kamajo forces were comprised of local youths supported by the local population, whose shared knowledge of local bush tracks and ambush points was usually superior to the enemy's. The mass mobilization of this group began in 1993-94 with the formation of the Eastern Region Defense Committee,

52. See infra Parts I.E., IV.B.
54. See SIPRI YEARBOOK 1999, supra note 22, at 32.
55. See Abdullah & Muana, supra note 4, at 180.
56. See id.
57. See id.
59. See Abdullah & Muana, supra note 4, at 185.
and continued to 1996, when regent chief Captain Hinga Norman was appointed Deputy Minister of Defense.\textsuperscript{60}

In some parts of the country, attempts were made by the local populace to occupy the communities hitherto abandoned to the R.U.F. Some localities, accompanied by Kamajo militia, began to resettle their chiefdoms. Young people were nominated and sponsored for Kamajo training and initiation. Units were organized in such a way that combatants were posted only to their chiefdoms in order to ensure loyalty, discipline, and a "bush knowledge" superior to that of the R.U.F. Additionally, the revered and esoteric Mende cult of invincible and heroic hunters was revived as a communal militia, chosen from, trained within, and responsible to the people. The Kamajo militia, however, was only lightly armed with shotguns, knives, and the occasional captured AK47. But they were armed with social and technical combat skills, with which the units began to counter-attack R.U.F. groups moving over bush paths to carry out raids or secure supplies. Thus, they began to limit the freedom of the R.U.F. to organize and exchange supplies.\textsuperscript{61}

As with the other forces involved in the conflict, there are differing figures for the combatants in the Kamajo militia. The 1997 estimate was 17,000,\textsuperscript{62} while the figure for 1998 was around 30,000.\textsuperscript{63} Another estimate puts the size of the Kamajo militia as between 20,000 and 37,000.\textsuperscript{64}

E. \textit{E.C.O.W.A.S. Monitoring Group (E.C.O.M.O.G.)}

The Economic Community of West African States (E.C.O.W.A.S.) created a cease-fire monitoring group in 1990, in response to the Liberian civil war. The purpose was to halt the "wanton destruction of human life and property . . . [and] . . . massive damage . . . being caused by the armed conflict to the stability of the entire Liberian nation."\textsuperscript{65} It was in the course of E.C.O.W.A.S. operations in Liberia that the conflict in Sierra

\textsuperscript{60} See id.
\textsuperscript{61} See id. at 185-86.
\textsuperscript{63} See SIPRI Yearbook 1999, supra note 22, at 32 (listing the Kamajo militia as the Government forces).
\textsuperscript{64} United Brethren Church Missionaries in Freetown, Chronology of the Evacuation of Sierra Leone, at http://www.realworldrescue.com/chronolo.htm (last visited Feb. 15, 2001).
Leone began and the group soon became involved in the conflict in Sierra Leone.

Following the military coup of May 25, 1997, deposed President Tejan Kabbah officially requested that Nigeria and E.C.O.W.A.S. intervene and restore him to power.\(^{66}\) Pursuant to its obligation under a Status of Forces Agreement (S.O.F.A.), the Nigerian Government sent extra forces to Sierra Leone not long after the coup in order to restore law and order.\(^{67}\) These additional forces joined the Nigerian Forces Assistant Group (N.I.F.A.G.), already on the ground in Sierra Leone. There were also E.C.O.M.O.G. forces in Sierra Leone; they had used the country as a base in their peacekeeping efforts in Liberia. N.I.F.A.G. and E.C.O.M.O.G. forces had been the subjects of a preemptive strike by the A.F.R.C. during the coup.\(^{68}\)

The A.F.R.C./R.U.F. forces strongly resisted the N.I.F.A.G. forces, which were forced to retreat. On August 30, 1997, E.C.O.W.A.S. officially mandated E.C.O.M.O.G. to enforce sanctions against the Government of A.F.R.C./R.U.F. and to restore law and order in Sierra Leone.\(^{69}\) In support of this action, the UN Security Council adopted Resolution 1132 on October 8, 1997.\(^{70}\) The resolution imposed an arms and petroleum embargo and travel restrictions against the military junta.\(^{71}\)

Thus began the involvement of E.C.O.M.O.G. in the conflict in Sierra Leone. It should be noted that after the coup, the N.I.F.A.G. and E.C.O.M.O.G. contingents merged their operations. On February 5, 1998, E.C.O.M.O.G. launched a military attack on the A.F.R.C./R.U.F. forces, claiming it was responding to an attack by those forces. This action of E.C.O.M.O.G. led to

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67. See Levitt, supra note 65, at 366 (citing Military Coup, supra note 66, at 12734).


69. See Paul Ejime, Tougher Measures Against Junta in Freetown, PANAFRICAN NEWS AGENCY, Aug. 31, 1997. See Levitt, supra note 65, at 366. Levitt notes that in early August 1997, pursuant to requests by E.C.O.W.A.S. Member States, former Nigerian Head of State and E.C.O.W.A.S. Chairman General Sani Abacha appears to have issued an "executive directive" authorizing an economic blockade against Sierra Leone to be enforced by E.C.O.M.O.G. Id. at 366 n.183.


71. See Levitt, supra note 65, at 366.
the removal from power of the A.F.R.C./R.U.F. Government on February 12, 1998. On March 10, 1998, President Kabbah returned to Freetown to resume his position as Head of State of Sierra Leone.\textsuperscript{72}

E.C.O.M.O.G. has been in Sierra Leone since and is now part of the efforts of the UN to restore peace to Sierra Leone. The number of E.C.O.M.O.G. forces at the end of 1999 stood between 10,000 and 15,000.\textsuperscript{73} Most of those forces have since been withdrawn and replaced by UN forces.

F. Other Groups

At different stages of the armed conflict in Sierra Leone, other actors featured prominently. One of these was Executive Outcomes (E.O.), a private security group from South Africa. As the R.U.F. rebellion spread and the rebels threatened Freetown, the N.P.R.C. Government under Valentine Strasser in May 1995 turned to E.O., which already had a record of successfully repelling U.N.I.T.A. rebels on behalf of the Angolan Government.\textsuperscript{74}

In May 1995, the first E.O. contingent came to Sierra Leone. They drove the R.U.F. out of Freetown within ten days of their operational start-up; within one month, the diamond areas were cleared of rebels.\textsuperscript{75} E.O. operated with limited combat personnel, but they had the necessary combat skills, as well as excellent air support, first-rate communications equipment, and good trainers. With these resources, they helped track down R.U.F. rebels, and by early 1996, the R.U.F. had been seriously damaged and driven away from the diamond mining areas.\textsuperscript{76}

However, following the peace agreement signed at the end of November 1996, between President Kabbah and R.U.F. leader Sankoh, E.O. was expelled from Sierra Leone. At the peace talks, the R.U.F. had demanded the withdrawal of E.O., and the agreement stipulated that E.O. would withdraw from the country within five weeks of signing the peace agreement.\textsuperscript{77} While E.O. was still in Sierra Leone, it had helped train the Kamajo militia, in addition to combating the rebels. When the E.O. was expelled, another security firm, Life Guard (an offshoot of E.O.)

\textsuperscript{72} See id.
\textsuperscript{73} See SIPRI YEARBOOK 1999, supra note 22, at 32. Other sources show this number to be as low as 1500-2500. See THE MILITARY BALANCE 1999/2000, supra note 34, at 273.
\textsuperscript{74} See Pratt, supra note 1, at Part I–Background: The N.P.R.C. Regime: 1992-96.
\textsuperscript{75} Id.
\textsuperscript{76} Id. See also Abdullah & Muana, supra note 4, at 185.
\textsuperscript{77} Pratt, supra note 1, at Part I–Background: The Period After 1996.
remained behind to protect the diamond mining areas and train the Kamajo militia.\textsuperscript{78}

E.O. had a definitive assignment, to assist in combating the rebels in Sierra Leone; such was not the case with Life Guard. The latter remained behind to provide security for the mining areas, even though it was involved in training the Kamajo militia. The involvement of private security companies in internal conflicts and the full implications of the phenomenon under international humanitarian law are a subject of unending debate.\textsuperscript{79}

Another significant part of the conflict in Sierra Leone is the involvement of foreign forces. As noted earlier, forces from Liberia have been part of the conflict from the beginning.\textsuperscript{80} However, Liberian President Taylor denies any official Liberian military involvement in Sierra Leone, describing his countrymen in Sierra Leone as mercenaries.\textsuperscript{81} Despite this denial, the assistance of Taylor's N.P.F.L. and the later Liberian Government to the R.U.F. is said to be well-documented and has included training, personnel, and considerable logistical support.\textsuperscript{82}

There is also evidence of military involvement by Burkina Faso on behalf of the R.U.F. Both the Government of Sierra Leone and E.C.O.M.O.G. claim that mercenaries from Ukraine


\textsuperscript{80} See generally Pratt, supra note 1.

\textsuperscript{81} SIPRI Yearbook 1999, supra note 22, at 24.

\textsuperscript{82} Human Rts. Watch, Sierra Leone: Getting Away with Murder, Mutilation and Rape, 11 New Report From the Field 3A, at http://www.hrw.org/hrw/reports/1999/sierra/SIERLE99-02.htm (June 1999) [hereinafter Getting Away with Murder]. See also Amnesty Int'l, Sierra Leone 1998–A Year of Atrocities Against Civilians, available at http://www.web.amnesty.org/ai.nsf/index/AFR510221998 (last visited Feb. 15, 2001) [hereinafter A Year of Atrocities Against Civilians]. This report notes the involvement of Liberian forces and some reported contact with the R.U.F. second-in-command, Sam Bockarie. It also notes a statement by the U.S. Department of State, on May 12, 1998, referring to:

[D]istressing rumors that R.U.F. and A.F.R.C. forces were being assisted in their campaign of terror by other governments. Although we cannot confirm these rumors, it should be clear that any government or other party that is found to be helping the rebels to prolong the tragedy in Sierra Leone will face the strongest condemnation of the United States and the international community.

\textit{Id.}
are also involved in the training of rebel forces. According to one report, events and evidence available indicate that small arms were coming from Eastern Europe (either Bulgaria or Ukraine) through Libya, Burkina Faso, and Liberia for delivery to the rebels just across the Liberia-Sierra Leone border.\textsuperscript{83} However, according to the same report, Libyan involvement seems to be more as a conduit, as opposed to a source of small arms.\textsuperscript{84} Though Sankoh was trained in Libya as Charles Taylor was, given the fact that this was a ready source of income, it was unlikely that Libya was providing the services for free.\textsuperscript{85}

Ukrainian arms and ammunition suppliers became involved under the N.P.R.C., and this involvement increased under the regime of Brigadier Maada Bio. During the January 1999 offensive, armed, white men fought next to and commanded members of the R.U.F. In April 1999, the E.C.O.M.O.G. Force Commander publicly accused the Presidents of Burkina Faso and Liberia of using Ukrainian registered aircraft and crews to supply the R.U.F. The Government of Sierra Leone also enlisted several foreign soldiers and pilots to fly, man, and maintain the E.C.O.M.O.G. attack helicopters.\textsuperscript{86}

All these outside forces have only served to complicate the conflict. Since they have no interest in the internal politics of Sierra Leone, the only plausible reason for their involvement is the availability of mineral resources, which are being exploited without any income accruing to Sierra Leone itself. Proceeds from the sale of diamonds mined by the rebels support the operations of the rebels.\textsuperscript{87} As noted by the Stockholm International Peace Research Institute:

The combination of weak states and rich natural resources has resulted in a dangerous structural environment fueling conflicts throughout [Sub-Saharan Africa]. Natural resources have become a cause for war as well as a necessary source of wealth for keeping the conflict going. The

\begin{itemize}
  \item \textsuperscript{83} Pratt, supra note 1, at Part II–The Security Situation: Trafficking in Small Arms. At some point, the arms shipments were in violation of the provisions of a UN Security Council resolution (U.N. Security Council Res. 1132 (Oct. 8, 1997)), which called on all Member States to observe an arms embargo on Sierra Leone. \textit{See A YEAR OF ATROCITIES AGAINST CIVILIANS, supra note 82.}
  \item \textsuperscript{84} Pratt, supra note 1, at Part II–The Security Situation: Trafficking in Small Arms.
  \item \textsuperscript{85} Id.
  \item \textsuperscript{86} \textit{Getting Away with Murder, supra note 82.}
  \item \textsuperscript{87} Id. According to the Stockholm International Peace Research Institute, "[i]n Sierra Leone control of the diamond mines is a key to power and wealth. Liberian soldiers in Sierra Leone, fighting alongside the R.U.F./A.F.R.C., are paid in diamonds." \textit{SIPRI YEARBOOK 1999, supra note 22, at 25.}
\end{itemize}
main actors in the struggle for Africa's natural resources are now primarily African, although foreign companies play a role. In several parts of Sub-Saharan Africa semi-political actors are fighting for the control of natural resources without any wider political ambition. This succinctly captures the situation in Sierra Leone and reinforces the view that diamonds motivate the conflict more than misrule, which has been a feature of Sierra Leone since independence.

II. CHARACTERIZATION OF THE CONFLICT IN SIERRA LEONE

It is necessary to attempt to classify the Sierra Leone conflict in order to determine the liability of the various actors. Generally, armed conflicts can be international or non-international armed conflicts, but they also can be a mix of the two. There are lesser situations of internal disturbances, tensions, and riots, which may not rise to the level of an armed conflict so as to trigger the provisions of international humanitarian law applicable to armed conflicts. These latter situations are governed by the general provisions of human rights law.

It is necessary to determine whether the conflict in Sierra Leone falls into any of these categories. Characterization will determine which rules of international humanitarian law, if any, are applicable to the conflict. Classification as international armed conflict means that the whole weight of the laws of war will apply to the conflict. If the conflict is a non-international armed conflict, the rules of international humanitarian law contained in Common Article 3 of the Geneva Conventions and in Protocol II may be applicable, depending on the intensity of the conflict and whether or not the State is a party to Protocol II. However, it becomes a matter of debate whether all the provisions of the laws of war or international humanitarian law will be applicable. If the conflict is classified as a mixed conflict, the applicable legal regime is also not certain; the law is still developing in this respect.

88. SIPRI YEARBOOK 1999, supra note 22, at 25.
89. See Opala, supra note 1, at “Sierra Leone After Independence (1961-1992).”
Certainly, the conflict in Sierra Leone, as seen in the previous chapter, is an armed conflict and not an internal disturbance because the Parties are organized under a single command and are capable of sustaining military operations over a certain period. This is true despite the fact that, at some point, it appeared as if the whole rebellion was fizzling out. The multiplicity of actors and the interests at stake ensure that it is not a mere disturbance or tension, which would deny the applicability of the rules of international humanitarian law in one form or another.

A. What is an "armed conflict"?

This term is an expression, which covers armed confrontations between:

1. two or more States;
2. a State and a body other than a State;
3. a State and a dissident faction; and,
4. two ethnic factions within a State.\(^{91}\)

In *The Prosecutor v. Jean-Paul Akayesu*,\(^{92}\) the International Criminal Tribunal for Rwanda (I.C.T.R.) tried to define armed conflict. The court referred to the decision of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (I.C.T.Y.), in *The Prosecutor v. Tadić*,\(^{93}\) wherein that Tribunal held that an armed conflict exists:

> [W]henever there is . . . protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostil-

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\(^{91}\) Pietro Vieri, *Dictionary of the International Law of Armed Conflict* 34 (Edward Markee & Susan Mutti trans., Int'l Comm. of the Red Cross 1992). This conceivably should include religious and other factions within a State. See also H. Victor Condé, *A Handbook of International Human Rights Terminology* (1999), where the term "armed conflict" is defined as "hostile military engagement between two or more States that may or may not constitute a state of war, or a civil war characterized by hostilities between the State and an opposing faction or between opposing factions."


According to the Rwandan Tribunal, the term "armed conflict" in itself suggests the existence of hostilities between armed forces organized to a greater or lesser extent. The definitions proffered by the two international tribunals give some clarity to the definition of "armed conflict."

B. International Armed Conflict

For a conflict to be termed "international armed conflict," it essentially has to be between two sovereign States. International armed conflict includes:

(1) the use of force in a warlike manner between States, whether or not they recognize themselves being at war; (2) all "measures short of war" whether or not they are compatible with Article 2(4) of the UN Charter; and, (3) wars of national liberation as set out in Article 1(4) of the 1977 Protocol I Additional to the Four Geneva Conventions of 1949.

When there is an exchange of hostilities between two or more States, international law considers this sufficient to trigger international humanitarian law. Therefore, when Parties to a conflict commit atrocities, their actions are measured by the rules of international humanitarian law, primarily the Four Geneva Conventions of 1949. There are also additional protocols to the conventions, principally Protocol I.

94. Tadic Appeal, supra note 93, at 54.
95. Id.
Under the Geneva Conventions, it would be difficult to characterize the conflict in Sierra Leone as an international armed conflict. The principal actors are Sierra Leoneans, even though there are other nationalities involved. There is no State formally at war with Sierra Leone, though the acts of some Liberians and alleged combatants from other countries, fighting on behalf of the rebels, would constitute a hostile act against the State of Sierra Leone. Even then, it would still be difficult to characterize the conflict as international armed conflict in the classic sense. There is insufficient proof that the Liberians fighting in Sierra Leone are under the command of the Liberian armed forces. If it were otherwise, and the participation of Liberians in the conflict could be proved as part of a plan by the Liberian armed forces, the conflict in Sierra Leone would be an international armed conflict.

C. Non-international Armed Conflict

This type of conflict involves the armed forces of a State and other forces within the same State, including those who fight liberation wars and rebels in different causes, but does not extend to situations of internal disturbances or tensions. Non-international armed conflicts are governed principally by Common Article 3 to the 1949 Geneva Conventions and the provisions of Protocol II.

Defining a non-international armed conflict or internal armed conflict has always been a difficult issue.\(^9\) Common Article 3 of the 1949 Geneva Conventions refers to an “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties.”\(^1\) This article defines the armed conflicts by stating what they are not; it does not enumerate any substantive or procedural criteria for their identifica-

\(^9\) HiLAIRE McCoubrey, INTERNATIONAL HUMANITARIAN LAW: THE REGULATION OF ARMED CONFLICTS 171 (1990). Cf. Condé, supra note 91, at 71 (defining “internal armed conflict” as “[a]n armed conflict that takes place solely within one State and between Parties from that State, whether between the government and a faction or between factions”).

tion. Without a substantive definition, the threshold issues become: What are the minimum required elements of an "armed conflict not of an international character?" What distinguishes such conflict from other forms of violence and civil disruption that do not meet that threshold? Protocol II elaborates on the provisions of international law applicable to non-international armed conflicts. The material field of application of the Protocol is defined as:

All armed conflicts . . . not covered by Article 1 of [Protocol I] . . . which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement [Protocol II].

While this provision appears to expand on Common Article 3, it has difficulties. It adds many restrictions that were not in the original draft submitted by the International Committee of the Red Cross (I.C.R.C.) to the 1974-1977 Diplomatic Conference. The I.C.R.C. draft provided a positive definition of non-international armed conflict, but the final version added other requirements that complicated the issues. Article 1(1) of the I.C.R.C. draft Protocol II provided, "The present Protocol shall apply to all armed conflicts not covered by Article 2 common to the Geneva Conventions of August 12, 1949 taking place between armed forces or other organized armed groups under responsible command." Additionally, Protocol II now requires territorial control by the rebels substantial enough to "enable them to carry out sustained and concerted military operations." This may not only require a high intensity armed conflict but may imply that the territorial control should be such as to allow the rebels to resort to conventional warfare, though according to Georges Abi-Saab such a construction would be exaggerated.

However, there has not been similar difficulty in defining a civil war, which is closely related to internal armed conflicts.


102. Id.

103. Protocol II, supra note 90, art. 1(1).

104. Abi-Saab, supra note 101, at 227.

105. See id.
Hans Kelsen defines a civil war in very simple terms as "the fight of a revolutionary group against the legitimate government." According to Michael B. Akehurst:

[A] civil war is a war between two or more groups of inhabitants of the same State. A civil war may be fought for the control of the government of a State, or it may be caused by the desire of part of the populace to secede and form a new State. These two types of civil war are the most common, but there can also be other types of civil war; for instance, the rebels may try to force the government to make concessions (e.g. the granting of regional autonomy) without trying either to overthrow the government or to form a new State. It is even possible for a civil war to be fought between factions while the government remains neutral and impotent (e.g. the Lebanese civil war of 1975-1976, or the hostilities between the Smith régime and the Patriotic Front in Rhodesia between 1972 and 1979, at a time when Rhodesia was legally still a British colony).

The conflict in Sierra Leone apparently satisfies the definition of a non-international conflict in the Geneva Conventions. The conflict involves the armed forces of Sierra Leone and the rebel movement R.U.F. As noted earlier, the conflict definitely rises above mere internal tensions and disturbances and satisfies the requirements of Common Article 3 of the Geneva Conventions. It is an armed conflict "not of an international character," and it goes even further, satisfying the strict requirements of Protocol II as well.

D. Internationalized (Internal) Armed Conflicts

An internationalized internal armed conflict is a civil war in which the armed forces of a foreign power intervene. How-
ever, this definition is not exhaustive. According to Pietro Vierri, a non-international armed conflict may become internationalized if:

[A] State victim of an insurrection identifies the insurgents as belligerents; (2) one or more foreign States assist one of the parties with their own armed forces; [or], (3) the armed forces of two foreign States intervene, each in aid of a different party.\(^\text{111}\)

It should be noted that an internationalized internal armed conflict lacks specific international provisions, unlike the two distinct categories of international and non-international armed conflicts.\(^\text{112}\) But it is a type of conflict that occurs with increasing frequency in the world today.

The conflict in Sierra Leone also comes close to being regarded as a mixed conflict. While it has strictly internal elements, it certainly has external dimensions, as seen in the involvement of troops from Liberia and Burkina Faso. The involvement of E.C.O.M.O.G. troops adds another dimension to the conflict. E.C.O.M.O.G., as an organ of the sub-regional body E.C.O.W.A.S., fought on the side of the elected Government of President Kabbah, particularly when he requested the assistance of the sub-regional body E.C.O.W.A.S. to reinstate him after being overthrown in a coup. Even if the Liberian connection were ignored, the involvement of E.C.O.W.A.S. after 1997 makes it difficult to characterize the conflict as a purely internal armed conflict.

Many conflict situations in the world today contain international and noninternational aspects. At present there is no agreed upon mechanism for definitively characterizing situations of violence.\(^\text{113}\) Even so, in light of the intervention by various actors, the conflict in Sierra Leone is easily characterized as a mixed case of international and noninternational armed conflict.

III. Rules of International Humanitarian Law Applicable to the Conflict in Sierra Leone

How international humanitarian law should be applied to the conflict in Sierra Leone is a matter of debate. Some analysts

\begin{quote}
conflicts wherein a people is fighting alien occupation, colonial domination, or apartheid in a struggle to achieve self-determination. These are considered 'internationalized' armed conflicts, which would otherwise only be noninternational).
\end{quote}

111. VIERI, supra note 91, at 35.
112. See id.
would contend that all of this law should apply, even though the conflict is at best, a mixed conflict.\textsuperscript{114} As Theodor Meron notes, there is an effort to blur the distinction between international and non-international armed conflicts, and the effect is to make all of international humanitarian law applicable to all conflicts, irrespective of their characterization.\textsuperscript{115} Meron notes further the finding of the I.C.T.Y. that the distinction between international and non-international armed conflicts was "losing its value" in relation to human beings. The Tribunal said:

[W]hy 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.\textsuperscript{116}

While there has been some relative progress toward collapsing the difference between international and non-international armed conflicts, others argue that there should still be some caution in seeking to apply the whole of international humanitarian law to internal armed conflicts and mixed conflicts. The international humanitarian law relating to internal armed conflicts is still not developed to the extent that it would apply to this category of conflict. In the case of Sierra Leone, some parts of international humanitarian law would apply. The parts for consideration are Common Article 3 to the 1949 Geneva Conventions, Protocol II Additional to the Four Geneva Conventions, and the whole of international humanitarian law subject to a special agreement between the Parties.

Whatever the level of development in the rules, one can safely posit that in this conflict, the norms of international humanitarian law designed to protect civilians should be applicable. In human rights and international humanitarian law, civilians should have the benefit of the law that gives them the greatest protection. This would not be the case for combatant

\textsuperscript{114} Id.

\textsuperscript{115} See id. at 261–62.

\textsuperscript{116} Tadic Appeal, supra note 93, at 63; Meron, supra note 113, at 262.
privilege since that solely applies to international armed conflicts.

A. Article 3 Common to the 1949 Geneva Conventions

Common Article 3 is usually considered as a “Convention within the Conventions” and a “Convention in miniature.”\textsuperscript{117} It provides that:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘\textit{hors de combat}’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour [sic], religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

   a. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
   b. taking of hostages;
   c. outrages upon personal dignity, in particular humiliating and degrading treatment;
   d. the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.\textsuperscript{118}

\textsuperscript{117.} Abi-Saab, \textit{supra} note 101, at 221.
\textsuperscript{118.} 1949 Geneva Conventions, \textit{supra} note 97, art. 3.
Common Article 3 applies to "low intensity, open, and armed confrontations between relatively organized armed forces or armed groups occurring exclusively within the territory of a particular State."\footnote{See Robert Kogod Goldman, International Humanitarian Law: Americas Watch's Experience in Monitoring Internal Armed Conflicts, 9 Am. U. J. Int'l. L. & Pol'y 49, 57 (1993).} As Robert Kogod Goldman notes, the article governs armed conflicts between Government forces and organized dissidents and not to mere outlawry or brief, disorganized rebellion.\footnote{See id.} It also controls when multiple armed factions within one country battle each other without governmental forces participating.\footnote{See id; see also supra note 107 and accompanying text (Akehurst applies a similar definition to civil war).}

As soon as an armed conflict is determined to exist, Common Article 3 automatically applies. The article imposes upon the Parties to an internal armed conflict the legal obligation to protect individuals who have not participated, or are no longer actively participating, in the hostilities.\footnote{See Goldman, supra note 119, at 57; see also 1949 Geneva Conventions, supra note 97, art. 3.} The provisions of Common Article 3 bind all the Parties to a conflict, both governmental and dissident forces.\footnote{See Goldman, supra note 119, at 58.} The fact that the dissident forces are not Parties to the Conventions does not excuse them from complying with the rules contained therein. This can be surmised from the language of Common Article 3 that "in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions . . . ."\footnote{1949 Geneva Convention, supra note 97, art. 3.} Thus, the duty to implement Common Article 3 is unconditional for both Parties and operates independently of the other party's obligation; and, a breach of Article 3 by one party cannot be invoked by the other party as grounds for its non-implementation of the mandatory provisions of the article.\footnote{Id.}

Because of the restrictive nature of the provisions of Common Article 3, certain benefits normally conferred on members of armed forces in warfare are not extended to internal armed conflicts. One fundamental difference between international and non-international armed conflicts is that there is no protected person status.\footnote{See How Does Law Protect in War, supra note 92, at 204.} The rules pertinent to internal armed
conflicts do not discuss the combatants’ privilege or entitlement to prisoner of war status. In internal armed conflicts, Governments are not required to confer that privilege on their opponents. Waldman A. Solf notes that many Governments are unwilling to confer prisoner of war status on rebellious combatants because to do so would prevent these Governments from enforcing their treason laws. These Governments fear that international protection for combatants in internal armed conflicts would enhance the status of insurgents, encourage rebellion by reducing the individual costs to rebels, and effectively give dissidents “a license to kill, maim, . . . kidnap . . . and . . . destroy . . . subject only to honorable detention as prisoners of war.”

However, captured insurgents without prisoner of war status are actually at the mercy of governmental forces. Without this protection, it is the Government that receives a license to kill or wound enemy combatants, destroy enemy military objectives, and cause incidental civilian casualties. Additionally, during and at the end of hostilities, the Government can try captured rebels for crimes committed during the conflict, in accordance with its domestic laws. Nothing in Common Article 3 precludes this, but such trials must conform to the standards set forth in Article 3, and also in Article 6, of Protocol II, if applicable. However, there is no rule that prohibits Governments from according prisoner of war status to insurgents in an internal armed conflict.

Generally, the provisions of Common Article 3 emphasize basic humane treatment and minimum procedural guarantees. In the terms of the article, those who take no active part in the hostilities, either having laid down their arms or having been rendered hors de combat for any reason, must be treated humanely. In this treatment, there must be no adverse distinc-

128. Id. at 59.
129. See id.
130. During the Civil War, the Government of the United States granted limited prisoner of war treatment to captured rebel combatants without expressly giving them immunity from prosecution for treason. See Goldman, supra note 119, at 60; see also Operational Code of Conduct for the Nigerian Army ¶ 4(e) (July 1967), reprinted in HOW DOES LAW PROTECT IN WAR, supra note 92, at 793–94. The operative part reads: “Soldiers who surrender will not be killed. They are to be disarmed and treated as prisoners of war. They are entitled in all circumstances to humane treatment and respect for their person and their honour [sic].” This Operational Code of Conduct was issued during the Nigerian Civil War, wherein government forces waged war against secessionists who had declared the “Republic of Biafra.” Id.
131. See McCoubrey, supra note 99, at 176.
tion on any grounds. Specific acts are prohibited, including the following violence toward life and person: murder, mutilation, cruel treatment and torture, taking of hostages, outrages upon personal dignity, and sentencing and carrying out of sentences without the due process of law.\textsuperscript{132} The article also requires collecting and caring for the wounded and sick,\textsuperscript{133} and encourages Parties to a conflict to enact the Conventions' provisions.\textsuperscript{134}

B. Protocol II Additional to the Geneva Conventions

Protocol II applies to any non-international armed conflict "which takes place in the territory of a High Contracting Party between members of its armed forces and dissident armed forces or other organized armed groups."\textsuperscript{135} Even though Common Article 3 is broader in scope, the Protocol applies together with Common Article 3.\textsuperscript{136}

Protocol II has a higher threshold of applicability. It lists certain objective qualifications, such as requiring the dissident forces to control a definite territory, and that the control must allow them to carry out "sustained and concerted operations."\textsuperscript{137} Thus, the rebels need to be able to house prisoners humanely and provide adequate medical care to the wounded and sick.\textsuperscript{138}

The Protocol provides that "the wounded, sick and shipwrecked must be respected, treated humanely and cared for without any distinction on any grounds other than medical ones."\textsuperscript{139} The principal rules of Protocol I relating to the protection of civilian populations against the effect of hostilities are extended to non-international armed conflicts through Protocol II.\textsuperscript{140} This is by way of analogy and as a means of interpreting the obligations of Protocol II, which also declares that "neither the civilian population as such, nor individual civilians may be the object of attacks . . . ."\textsuperscript{141} Acts of terrorism against civilians are also prohibited.\textsuperscript{142} According to Protocol II:

\begin{flushright}
132. 1949 Geneva Conventions, \textit{supra} note 97, art. 3(1).
133. \textit{Id.} art. 3(2).
134. \textit{See id.}
135. Protocol II, \textit{supra} note 90, art. 1(1).
137. \textit{Id.} at 63 (quoting Protocol II, \textit{supra} note 90, art. 1(1)).
138. \textit{See id.}
140. \textit{Id.} at 54.
141. Protocol II, \textit{supra} note 90, art. 13(2).
142. \textit{See id.}
\end{flushright}
Civilians benefit from this protection as long as they do not take a direct part in hostilities. Starvation of civilians is a prohibited method of combat. The displacement of the civilian population may only be ordered if safety or imperative military reasons require it, and only after all possible measures have been taken to ensure it will be received under satisfactory conditions.143

Article 4 of Protocol II contains provisions on humane treatment, beginning with a statement of principle144 that all protected persons, "whether or not their liberty has been restricted, are entitled to respect for their person, honour [sic] and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction."145 In Article 4, there is a list of acts that are prohibited at all times and in all places. This list repeats a number of acts already prohibited by Common Article 3, adding such acts as corporal punishment, terrorism, slavery and the slave trade, pillage, as well as threats to commit any of these acts.146 Children must be given the care and aid they require.147 In particular, "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities."148

Article 5 of Protocol II provides for "persons whose liberty has been restricted." This provision stands in sharp contrast with the provisions of conventional humanitarian law applicable in international armed conflicts.149 The Third Geneva Convention150 governs the treatment of prisoners of war in international armed conflicts, and the Fourth Geneva Convention151 relates to the treatment of civilians and civilian internees, among others. Article 5 of Protocol II deals with all persons deprived of, or restricted in, their liberty for reasons related to the conflict. However, the Article does not make any distinction among the reasons for restricted liberty.152 This underscores the fact that there is no special "prisoner of war" regime in Protocol II. According to Kalshoven, it is immaterial whether a person is

143. Id. arts. 13(3), 14 & 17.
145. Protocol II, supra note 90, art. 4(1).
146. See id. art. 4(2); see also Kalshoven, supra note 144, at 140.
147. See Protocol II, supra note 90, art. 4(3).
148. Id. art. 4(3)(c).
149. Kalshoven, supra note 144, at 141.
150. See Third Geneva Convention, supra note 97.
151. See Fourth Geneva Convention, supra note 97.
152. Kalshoven, supra note 144, at 142.
taken prisoner as a "participant in hostilities," or on the suspicion that he "incited to armed rebellion against the legitimate government," or because he engaged in espionage for one or the other side.\textsuperscript{155} Persons detained or interned for reasons related to the armed conflict must be accorded all guarantees with respect to medical care, food, hygiene, safety, relief, the practice of their religion, and working conditions.\textsuperscript{154}

Article 6 of Protocol II enumerates the rules for penal prosecutions of criminal offenses related to the armed conflict.\textsuperscript{155} Sentences are pronounced only by courts offering the essential guarantees of independence and impartiality.\textsuperscript{156} Accused persons must be afforded all necessary rights and means of defense\textsuperscript{157} and the act or omission must constitute a criminal offense under the law at the time it was committed.\textsuperscript{158} There is a prohibition of the death penalty for those who are under eighteen years at the time of the offense and for pregnant women or mothers of young children.\textsuperscript{159} Article Six recommends granting "the broadest possible amnesty" to persons who have participated in the armed conflict and to those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.\textsuperscript{160} Granting amnesty is a very delicate issue that frequently arises as a consequence of internal armed conflicts and is recommended in order to create circumstances conducive to peaceful co-existence.\textsuperscript{161} However, in a letter to the Prosecutor of the I.C.T.Y., a representative of the I.C.R.C. clarified the scope of the amnesty in Article 6(5) by stating that it could not be interpreted to support impunity for violations of international humanitarian law.\textsuperscript{162}

C. \textit{Rules of International Humanitarian Law as a Whole}

Certain conflicts arise in which it may be possible to apply the rules of international humanitarian law as a whole.\textsuperscript{163}

\begin{itemize}
\item \textsuperscript{153} \textit{Id.}
\item \textsuperscript{154} \textit{See Protocol II, supra note 90, art. 5(1).}
\item \textsuperscript{155} \textit{See id. art. 6(1).}
\item \textsuperscript{156} \textit{See id. art. 6(2).}
\item \textsuperscript{157} \textit{See id. art. 6(2)(a).}
\item \textsuperscript{158} \textit{See id. art. 6(2)(c).}
\item \textsuperscript{159} \textit{See id. art. 6(4).}
\item \textsuperscript{160} \textit{See id. art. 6(5).}
\item \textsuperscript{161} \textit{See Kalshoven, supra note 144, at 142.}
\item \textsuperscript{163} \textit{See How Does Law Protect in War, supra note 92, at 211.}
\end{itemize}
1. Recognition of Belligerency by the Government

According to Kelsen, one exception to the rule that war can exist only in relation among States is the instance where the insurgents in a civil war are recognized as a belligerent power.\(^{164}\) In such a case, the whole of the provisions of international humanitarian law is applicable. Belligerency, according to Condé, is an armed conflict of a non-international or international character that is governed by international law. When the term is applied to non-international armed conflict, it means that the level of conflict has risen to the point where the State recognizes a state of belligerency, as opposed to mere insurgency, or rebellion. When applied to international armed conflict, it means that the States involved have recognized the conflict as having risen to the level of belligerency, thus engaging the application of international law.\(^{165}\)

The Nigerian Civil War is an example of the situation described above. The Nigerian Government recognized a state of belligerency when secessionist rebels declared the “Republic of Biafra” in May 1967. In prosecuting the war against the rebels, the Nigerian Government adopted an “Operational Code of Conduct”\(^{166}\) to guide its soldiers, which was essentially a reaffirmation of the principles in the Geneva Conventions of 1949.\(^{167}\) Without such recognition, the conflict would have been regulated by the sparse rules of customary international law applicable to internal armed conflicts.\(^{168}\) Even though Nigeria was a signatory to the Geneva Conventions of 1949, it was bound to apply only the provisions of Common Article 3 of the Conventions relating to internal armed conflicts, and if possible, the

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164. See Kelsen, *supra* note 106, at 32. According to Oppenheim: In the proper sense of the term a civil war exists when two opposing parties within a State have recourse to arms for the purpose of obtaining power in the State, or when a large portion of the population of a State rises in arms against the legitimate Government. As war is an armed contention between States, such a civil war need not be war from the beginning, nor become war at all, in the technical sense of the term. But it may become war through the recognition of the contending parties, or insurgents, as a belligerent Power. See 2 OPPENHEIM'S INTERNATIONAL LAW: A TREATISE, DISPUTES, WAR AND NEUTRALITY 209 (H. Lauterpacht ed., 7th ed. 1948-52).


whole of the Geneva Conventions subject to an agreement between the Government and the secessionist forces, which was highly unlikely at that point in time. The recognition of belligerency was a unilateral act on the part of the Nigerian Government.

In any conflict where there is recognition of a state of belligerency, the Parties are bound by the whole of the provisions of international humanitarian law applicable in armed conflicts. In Prosecutor v. Tadic, the I.C.T.Y. noted that it is an established principle of customary international law that the laws of war might become applicable to non-international armed conflicts of a certain intensity through the doctrine of “recognition of belligerency.”

2. Special Agreements Among the Parties

Parties to an internal armed conflict can also agree to implement the whole of international humanitarian law in the course of the conflict. According to Common Article 3, the Parties to an internal armed conflict should endeavor to bring into force, by means of special agreements, all or part of the other provisions of the Geneva Conventions of 1949.

An example is the Memorandum of Understanding of November 27, 1991, between Yugoslavia and Croatia. The memorandum was agreed upon with the assistance of the I.C.R.C. when the conflict in the former Yugoslavia was still considered a non-international armed conflict. In the agreement, however, the Parties refrained from mentioning Common Article 3 in the text of the agreement. In Prosecutor v. Tadic, the International Tribunal for the former Yugoslavia noted the agreement between the various factions in the conflict in Bosnia...
This agreement was based on Common Article 3 of the Geneva Conventions, and it committed the Parties to abide by the substantive rules of internal armed conflict contained in Common Article 3. In addition, the Parties agreed on the strength of Common Article 3, paragraph 3, to apply certain provisions of the Geneva Conventions concerning international armed conflicts. According to the Tribunal, "[c]learly, this Agreement shows that the Parties concerned regarded the armed conflicts in which they were involved as internal but, in view of their magnitude, they agreed to extend the application of some provisions of the Geneva Conventions that are normally applicable in international armed conflicts only." The I.C.R.C. was the facilitator for the two agreements aforementioned and as the Yugoslav Tribunal rightly noted, the I.C.R.C. would have acted contrary to the provisions of the 1949 Geneva Conventions had it not believed that the conflicts governed by the agreements were internal.

D. Obligations of the Parties to the Conflict

Sierra Leone is a party to the Four Geneva Conventions of 1949, from which it succeeded in 1965; and the two Additional Protocols of 1977, which it ratified in 1986. With respect to the conflict, it should not be a matter of dispute that the provisions of Common Article 3 are applicable. For the duration of the conflict, the Government remained bound by its obligations under the Geneva Conventions. At no time did the Government seek to renounce its obligations or limit the applicability of the conventions. Protocol II also pertains to the conflict, since it applies in non-international armed conflicts.

The conflict in Sierra Leone was not one with fixed intensity. It ranged between low and high intensity at different times. In this case, however, there seems to be no dispute among the belligerents as to the applicability of the rules, so that while there

177. See id. at 1193 (citing BOSNIA AND HERZEGOVINA AGREEMENT, supra note 174).

178. Tadic Appeal, supra note 93, at ¶ 73, in HOW DOES LAw PROTECT IN WAR, supra note 92, at 1171.

179. See id.

180. The Government of Sierra Leone succeeded to the 1949 Geneva Conventions on June 10, 1965. This had retrospective effect, because the act of succession followed the ratification of the Conventions by the United Kingdom, the colonial master of Sierra Leone, and, thus, the Geneva Conventions entered into force for Sierra Leone on April 27, 1961, the date of independence. See Geneva Conventions of 12 August 1949: Succession, June 10, 1965, available at http://www.icrc.org/ihl.nsf/d49c744360dad07c1256314002ee738 (Sierra Leone: Ratifications/Accessions).
was difference in intensity, applicability of the rules was not an issue during the conflict. Until recently, the main issue was the complete disregard for the rules, particularly by the rebels.

The rules applicable during the conflict, while including Common Article 3 and Additional Protocol II, may not extend to the 1949 Geneva Conventions in their entirety. There was no formal recognition of belligerency by the Government for the duration of the conflict, nor was there any special agreement between the Parties to bring into operation the whole existing body of international humanitarian law. But at different stages of the conflict, the I.C.R.C. called upon the Parties to respect the relevant provisions of humanitarian law,\(^\text{181}\) stressing the adherence of Sierra Leone to the 1949 Geneva Conventions and the Additional Protocols. The I.C.R.C. did not insist that the whole of humanitarian law was applicable to the conflict in Sierra Leone; this is more or less demanded of E.C.O.M.O.G.

Even though it cannot be asserted that the whole of international humanitarian law is applicable to the conflict in Sierra Leone, the rules in Common Article 3 and Additional Protocol II, if fully complied with, contain some guarantees for civilians who are neither Parties to nor combatants in the conflict. Therefore, if there are violations of those rules, those responsible for such violations should be made to face the consequences.

Regarding the capacity of the actors, the R.U.F. had the requisite organizational capacity to implement the rules of humanitarian law as required in Protocol II. The R.U.F. held territorial control over some parts of the country, including the eastern parts, and their actions were not confined merely to cross-border raids. At some point, the R.U.F. could not sustain momentum, but later they gained the upper hand in the conflict, nearly entering Freetown before E.O. repelled them in an offensive in 1995. The combined R.U.F. and A.F.R.C. forces actually entered the capital Freetown in January 1999, causing mayhem in the city before the forces were repelled by E.C.O.M.O.G.

The A.F.R.C. also had capacity to implement the provisions of Protocol II. The A.F.R.C. consisted mainly of members of the armed forces who rebelled against the Government of President

\(^{181}\) For example, in June 1997, the I.C.R.C. addressed a memorandum on respect for international humanitarian law to the Executive Secretariat of E.C.O.W.A.S. in Abuja, Nigeria, which was to be forwarded to Member States with troops in Sierra Leone and to the Nigerian Chief of Defense Staff, in Lagos. The memorandum was also submitted to E.C.O.M.O.G. in Liberia. See INT'L COMM. OF THE RED CROSS, UPDATE No. 97/102 ON I.C.R.C. ACTIVITIES IN SIERRA LEONE, June 10, 1997, available at http://www.icrc.org/eng/africa (Sierra Leone).
Kabbah and many of them had fought the R.U.F. before the groups united as allies. Individuals within the group who violate humanitarian law can be held responsible for such violations.

IV. Violations of Rules of International Humanitarian Law in the Conflict in Sierra Leone

At nearly every stage of the conflict, there have been serious violations of the rules of international humanitarian law applicable to internal conflicts, particularly as enumerated in the preceding chapter. These violations have not been exclusive to any of the Parties; indeed, all Parties to the conflict, including the E.C.O.W.A.S. Monitoring Group serving as peacekeepers, have been accused of violations of the law. Even though violations of humanitarian law do not depend on the degree of violations by one or the other party, the rebels committed the greater part of the violations in the conflict in Sierra Leone. Whatever the degree of violations by either or all of the Parties to the conflict, responsibility attaches to every act of violation of the law.

This conflict has been one of the most brutal conflicts in African history. Nearly half of Sierra Leone’s 4.5 million people were internally displaced, while about 500,000 people are believed to be refugees in neighboring countries. The conflict claimed at least 50,000 lives, and there are an estimated 100,000 mutilation victims. The majority of the dead and the mutilated are victims of R.U.F., and later A.F.R.C., brutality.


At the outset, the conflict was mainly between the armed forces of Sierra Leone and the R.U.F. Responsibility for violations of humanitarian law at that stage of the conflict lies solely with the armed forces and the R.U.F. The armed forces committed acts of brutality just like the R.U.F., including murders, but particularly, looting and pillaging; the frequency of these acts increased as new recruits entered the force.

Common Article 3 prohibits violence of all sorts against life and persons, including murder, mutilation, cruel treatment, and torture. Despite this provision and its adherence to the 1949

182. See supra Part III.
184. See id.
185. Pillaging is prohibited by Article 4. See Protocol II, supra note 90, art. 4(2)(g).
Geneva Conventions and its additional Protocols, the Government forces (and their allies) engaged in these prohibited acts. Throughout the war zone and in many civilian areas, there were summary executions of prisoners and noncombatants, several cases of rape, mutilation, and civilian killings.

At various stages of the conflict, the Government and its allies summarily executed suspected rebels and suspected rebel collaborators. In January 1999, E.C.O.M.O.G. troops were alleged to have summarily executed twenty-two rebel captives and shot at least six suspected rebel collaborators in February 1999. Several others were killed in the course of house-to-house searches by E.C.O.M.O.G. for rebel collaborators and infiltrators in Freetown. According to a report by Human Rights Watch, Government and E.C.O.M.O.G. forces carried out more than 180 summary executions of rebels and their suspected collaborators in the course of the January offensive against the R.U.F. All sides showed little respect for captured combatants, with common extra judicial execution following surrender.

Prior to the 1996 elections, both Government soldiers and rebel forces terrorized many villages, cutting off fingers, hands, arms, ears, or lips with machetes. Sometimes these acts were those of renegade Government soldiers, and the Government only prosecuted a few of the cases in which there were violations. At the early stages of the conflict, there were a few court-martials of erring members of the Sierra Leonean army. Soldiers accused of serious offenses were transferred from field units to the Headquarters for trial. There are no certain statistics, but the court-martial system is reported to have convicted military personnel for murder, robbery, and other offenses, although such convictions later became a rarity. It appears that as rebels committed far graver offenses, it became harder to hold the military to higher standards, particularly as the rebel assault grew.

The summary executions usually took place within the context of joint operations involving E.C.O.M.O.G. and C.D.F.-Kamajo forces. After E.C.O.M.O.G. identified suspected rebels

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186. DEP'T OF STATE, 106th CONG., COUNTRY REPORTS ON HUMAN RIGHTS AND PRACTICES FOR 1999 434 (Joint Comm. Print 2000) [hereinafter SIERRA LEONE COUNTRY REPORT 1999].


188. See id. at 69.

189. See DEP'T OF STATE, 105th CONG., COUNTRY REPORTS ON HUMAN RIGHTS AND PRACTICES FOR 1996 244 (Joint Comm. Print 1997) [hereinafter SIERRA LEONE COUNTRY REPORT 1996].

190. See id. at 245.
or collaborators, they were frequently handed over to, and executed by, the C.D.F.-Kamajos. Also, members of local unarmed civil defense units (C.D.U.s), who during and after the offensive helped to maintain checkpoints around Freetown, frequently played a part in identifying rebels and their collaborators.\textsuperscript{191} According to Human Rights Watch, it is difficult to ascertain the level at which the E.C.O.M.O.G., C.D.F., and R.S.L.M.F. high command were aware of or sanctioned these killings. But as the killings were often carried out in highly public places and in front of very large groups of people, it is likely that knowledge of the executions reached the highest levels of command.\textsuperscript{192}

The difficult conditions under which the forces operate also make the situation worse. Many E.C.O.M.O.G. soldiers in Sierra Leone have been traumatized by the rebel atrocities they have seen in that country. One E.C.O.M.O.G. soldier, reported to have participated in an operation in which an execution took place, said, “We have a proper code of conduct. We know about the Geneva Conventions and have taken prisoners in the past, but this time was different. The things these people do. This time my unit took very few prisoners.”\textsuperscript{193} Another soldier said, “In many ways we felt we were doing it for the people. Sometimes we wonder if these rebels are human. After everything they’ve done, it was best to eliminate them.”\textsuperscript{194}

Even though there is no empirical data to back this up, it appears the attitude of the E.C.O.M.O.G. soldiers mentioned above was pervasive among the troops, granted the scale of atrocities committed by the rebels since the beginning of the conflict. But the problems and difficulties faced by the E.C.O.M.O.G. forces particularly do not excuse violations of the law committed by them. International law does not recognize abuses by one party to a conflict as being the legitimate ground for retaliatory abuses. Even if these were cases of reprisals, which are permitted under international law in exceptional cases, they are not excused in this conflict because reprisals are not permitted under international humanitarian law.\textsuperscript{195} Further, the obligation to respect and ensure respect for the Geneva Conventions is an independent obligation by each party to a conflict and is not contingent on respect by the other party. Common Article 3 pro-

\begin{itemize}
\item \textsuperscript{191} See Getting Away with Murder, supra note 82.
\item \textsuperscript{192} See id.
\item \textsuperscript{193} Id.
\item \textsuperscript{194} Id.
\item \textsuperscript{195} See 1949 Geneva Conventions, supra note 97, arts. 20, 46/47/13/33, 53-56; see also Additional Protocol I, supra note 98 (prohibiting reprisals in international armed conflicts).
\end{itemize}
vides in part that "each Party to the conflict shall be bound to apply, as a minimum, the following provisions . . . ."\textsuperscript{196}

With regard to the January 1999 E.C.O.M.O.G. offensive, no E.C.O.M.O.G. soldiers or officers have been formally investigated or court-martialed as a result of their conduct. According to its Chief Information Officer, there is within E.C.O.M.O.G. an internal mechanism set up for the investigation of violations of international humanitarian law, and although E.C.O.M.O.G. heard of individual complaints, none have been sufficient to activate the mechanism.\textsuperscript{197} But, according to another E.C.O.M.O.G. commander, there have been a few lower level investigations of executions following complaints by members of the public. Such allegations "were proven to be baseless and subsequently dropped."\textsuperscript{198} He reiterated the fact that there have been no formal inquiries or disciplinary actions taken against any soldier or officer under his command following the January 1999 rebel offensive.\textsuperscript{199}

Following a UN report in February 1999\textsuperscript{200} that expressed concern about summary executions, the E.C.O.M.O.G. high command indicated to the UN Secretary-General's Representative in Sierra Leone, Francis Okello, their intention to investigate and to take corrective action as necessary. And in April 1999, the E.C.O.M.O.G. Force Commander in Sierra Leone established a Civil/Military Relations Committee to investigate allegations of human rights violations against individual members of E.C.O.M.O.G. and C.D.F. and to recommend appropriate action to the high authorities. However, the starting date for complaints to be investigated was April 1, 1999, thus removing from investigation executions committed in January and February of 1999, and earlier operations.\textsuperscript{201}

Apart from summary executions, there were cases of torture committed by these forces. At various times, each of these forces was reported to have engaged in acts of brutality against the civilian population. There were also acts of looting, confiscation of property, and general mistreatment of the civilian population. Beyond that, there were cases of arbitrary arrests and detention of noncombatants, particularly of those suspected of having col-

\textsuperscript{196} See 1949 Geneva Conventions, supra note 97, art. 3 (emphasis added).

\textsuperscript{197} See GETTING AWAY WITH MURDER, supra note 82, at V.

\textsuperscript{198} Id.

\textsuperscript{199} See id.


\textsuperscript{201} See GETTING AWAY WITH MURDER, supra note 82, at V.
laborated with, or supported, the rebels. In some cases, they were released only after their families paid a sum to secure their release.202

B. The R.U.F./S.L. and the A.F.R.C.

The R.U.F. has waged a very brutal war against successive Governments in Sierra Leone since 1991. The rebels started the conflict with serious violations of humanitarian law. After its initial assault on eastern Sierra Leone in 1991, the R.U.F. envisaged support of those in the border region, particularly as they had been opposed to the ruling APC for many years. Because of this, the R.U.F. seized and summarily executed chiefs, traders, village elders, agricultural project workers, and other Government agents. It also made forcible attempts to recruit individuals known locally for their opposition to the A.P.C. regime.203 As the conflict progressed, any deserter from the R.U.F. ranks was tattooed with R.U.F. “ID” and risked summary execution by both R.U.F. and the Sierra Leonean army.204 The violations began very early, and with no one able to curb the R.U.F., the seriousness of the violations grew.

Since the conflict began, the rebels of the R.U.F. were the undisputed masters in the commission of heinous crimes. They had a particularly brutal strategy that included torture, physical mutilation, and murder of civilians. There were cases of amputations by machetes of one or both hands, one or more fingers, arms, feet, legs, ears, and buttocks; lacerations to the head, neck, arms, legs, feet, and torso; the gouging out of one or both eyes; rape; gunshot wounds to the head, torso, and limbs; burns from explosives and other devices; injections with acid; and beatings. There were also reports of sexual mutilation, such as the cutting off of breasts and genitalia, among other atrocities.205

Before the 1996 elections, as noted earlier, both Government soldiers and rebel forces terrorized many villages, conducting a campaign of physical mutilation of many people.

202. See Sierra Leone Country Report 1999; see also Getting Away with Murder, supra note 82, at V.
203. See Abdullah & Muana, supra note 4, at 178.
204. See id. at 180.
Some had slogans denouncing the elections cut into their back and chests,\textsuperscript{206} ostensibly by the R.U.F., which was opposed to the elections. While responsibility in the southern province was hard to determine, the R.U.F. conducted many attacks in the northern province. Several victims had their hands amputated. Others had “No Elections” cut into their backs or “R.U.F.” cut into their foreheads. Fingers, upper lips, and ears were amputated. On February 22, 1996, one man from Sumbuy, Lubu Chiefdom had “R.U.F.” and “No Elections” cut into his forehead and back. Also, his upper lip and right ear were cut off.\textsuperscript{207} This action was typical of the R.U.F. campaign as it passed through many parts of Sierra Leone.

Prior to the May 1997 coup, R.U.F. forces continued attacking the civilian population with the same ferocity. In addition to attacking villages; ambushing travelers; and killing, torturing, raping, and mutilating civilians; the R.U.F. also abducted children and forced them to commit atrocities, including the torture and murder of their relatives. The R.U.F. also raped and sexually abused young girls and women during attacks.\textsuperscript{208}

After the A.F.R.C. took power in May 1997, the R.U.F. and the A.F.R.C. combined forces to form the Peoples’ Army of Sierra Leone. Thereafter, the combined R.U.F./A.F.R.C. forces committed greater violations of humanitarian law and the scale of human rights abuses escalated and took on grotesque forms.\textsuperscript{209} There were several extra judicial tortures, mutilations, rapes, beatings, illegal searches, arbitrary arrests and detentions, and killings of unarmed civilians.\textsuperscript{210} All of these were in violation of the guarantees contained in Common Article 3 of the 1949 Geneva Conventions\textsuperscript{211} and in Additional Protocol II.\textsuperscript{212} For the latter half of 1997, there was fierce fighting between A.F.R.C./R.U.F. forces and the Kamajo militia in several areas of the country, with the A.F.R.C./R.U.F. forces routinely summarily executing captured Kamajo militiamen. In addition, A.F.R.C./R.U.F. forces often tortured civilians, shot them, and looted their property while searching for the Kamajos.\textsuperscript{213}
In February 1998, E.C.O.M.O.G. forces launched an offensive on Freetown in response to attacks on its bases outside Freetown. This offensive succeeded in driving the A.F.R.C./R.U.F. out of power. Chaos and violence ensued, which demonstrated the A.F.R.C./R.U.F. regime's utter disdain for any rules of civilized behavior. As in the previous years, civilians were the main victims. Joined by Liberian fighters, the A.F.R.C./R.U.F. forces also looted and destroyed homes and went from house to house to kill those suspected of opposing them.214

Throughout the year, A.F.R.C./R.U.F. forces continued with egregious violations, including brutal killings, severe mutilations, and deliberate dismemberments in a widespread campaign of terror against the civilian population, known as "Operation No Living Thing." As they retreated from Freetown after the E.C.O.M.O.G. assault, they continued these acts, particularly the vicious acts of cutting off the ears, noses, hands, arms, and legs of noncombatants who were unwilling to cooperate with, or provide for, the insurgents. The victims ranged from small children to elderly women; in some cases, one limb was cut off, in others, two limbs, typically two hands or arms. A.F.R.C./R.U.F. forces also detained, decapitated, burned alive, and inflicted bullet and machete wounds on civilians; many died from their wounds before they could receive any form of treatment. They abducted anyone in sight, including missionaries and aid workers, and they ambushed relief convoys and raided refugee sites, as well. There was also the abduction of villagers, using them as forced laborers, sex slaves, and as human shields in fighting with Government and E.C.O.M.O.G. forces. Boys were forced to become child soldiers, and rape was used as a terror tactic against women.215

In some cases, R.U.F. forces would require captives to draw a slip of paper from a hat with the word "hand," "leg," "eyes," or "life" on the paper, indicating what the rebels would take from them. Sometimes rebel soldiers forced those they abducted, including children, to commit atrocities against their own family members.216

In January 1999, the rebels again attacked Freetown, momentarily capturing parts of the city from Government troops

100 bodies) and on Bonthe island [sic] (more than 550 bodies); the latter had been considered a Kamajoh C.D.F. stronghold, and the killings apparently were reprisals against islanders for supporting the Kamajohs." Id.
214. See A YEAR OF ATROCITIES AGAINST CIVILIANS, supra note 82.
and E.C.O.M.O.G. forces. The battle for Freetown and the three-week rebel occupation of the city were characterized by systematic attacks and widespread perpetration of all sorts of atrocities against the civilian population. It was perhaps the most intensive period of fighting in all of the years of the conflict in Sierra Leone.\textsuperscript{217}

Following the E.C.O.M.O.G. offensive to recapture Freetown, the rebels withdrew and continued to commit large-scale atrocities as they retreated. The rebels murdered at least 2,000 persons, and the victims were chosen randomly. The rebels cut off the limbs of many people, including multiple cases of double-arm amputations. There was systematic, organized, and widespread sexual violence against girls and women, including individual and gang rape, with girls less than seventeen years of age being the specific targets. Some were held in sexual slavery after being "married" to rebel combatants.\textsuperscript{218} The horrific practice of mutilation continued until the signing of the Lomé peace agreement.

The rebels also systematically set large sections of central and eastern Freetown on fire, destroying most of it and rendering tens of thousands of persons homeless.\textsuperscript{219} In Freetown, entire city blocks, embassies, Government buildings, factories, churches, mosques, and historical landmarks were set on fire; and, housing authorities registered the destruction of 5,788 homes and residential buildings. The towns of Masiaka and Songo were also set on fire, as were scores of villages in their environs.\textsuperscript{220}

According to UN and health officials' estimates, between 5,000 and 6,500 combatants and civilian residents were killed in and near the capital, Freetown, before the rebels were driven out by Government and E.C.O.M.O.G. forces.\textsuperscript{221} More than 3,800 children and 570 adults were reported as missing or abducted following the rebel offensive. In all, the UN estimates that rebel forces abducted some 20,000 persons throughout the country during 1991-1999, and only a negligible number have been released.\textsuperscript{222}

\begin{footnotes}
218. See id. at 68.
220. See H.R.W. World Report 2000, supra note 187, at 68. "There was some destruction due to indiscriminate bombing by E.C.O.M.O.G. jets, particularly in the northern town of Kambia." Id.
222. See id; see also H.R.W. World Report 2000, supra note 187, at 68.
\end{footnotes}
The abuses perpetrated by the R.U.F. and the A.F.R.C. constitute the most egregious violations of international humanitarian law. The rules enunciated earlier are the minimum that each of the Parties to the conflict is bound to apply. The rebels made no distinction between civilians and military targets and sought to punish civilians for what they perceived to be the civilians' support for the existing Government. Such arbitrary attacks contributed to the climate of terror.223

The prohibitions in Common Article 3 and in Protocol II are not for governmental forces only, but are directed to all Parties to an internal conflict. Virtually all the prohibitions in the rules have been violated by the rebels and the Government forces; the Government's C.D.F. allies and E.C.O.M.O.G. forces bear some responsibility for violations of the law as well. Because of the large number of those involved in perpetrating the crimes, it may be difficult to assign individual responsibility in order to redress the violations of the law and give redress to surviving victims. However, this problem should not stand in the way of giving redress to victims of these horrendous violations, not only to assuage their grief, but also to serve notice that these kinds of crimes will not go unpunished.

Efforts to hold individuals responsible obviously cannot be limited to the foot soldiers that perpetrated the crimes; they must also include the commanders and the leadership of the R.U.F. and the A.F.R.C. In fact, if there is to be any selectivity in prosecuting those responsible for the crimes, the commanders are the ones who should be prosecuted and punished. They gave the orders and had the ability to stop the crimes but did nothing. This does not excuse the foot soldiers, but if there must be limited prosecutions, it should start with the commanders of the rebel forces.

V. RETURN TO PEACE IN SIERRA LEONE

The world rests on three pillars: on truth, on justice[,] and on peace.

—Rabban Simeon ben Gamaliel, (Abot 1, 18)224  

223. See GETTING AWAY WITH MURDER, supra note 82, at IV.

224. M. Cherif Bassiouni, Searching for Peace and Achieving Justice: The Need for Accountability, 59 LAW & CONTEMP. PROBS. 9, 9 (1996) (quoting Rabban Simeon ben Gamaliel, "A Talmudic commentary adds to this, saying: 'The three are really one. If justice is realized, truth is vindicated and peace results.'" (Abot 1, 18)).
If You Want Peace, Work For Justice.

—Pope Paul VI

There is a need to break the cycle of impunity in Sierra Leone and return the country to peace. The various actors in the conflict, particularly the rebels, have often operated beyond the reach of, and without any regard whatsoever for, the law. Initially, there was some prosecution and punishment of Government soldiers found responsible for crimes committed in the course of the conflict; however, prosecutions were not commonplace.

Subject to the constraints of international law, countries decide for themselves the means and method by which they end conflicts and by which they make peace. In the case of Sierra Leone, the options before it were limited, particularly because the governance structure has been very weak for long periods and the Government of Sierra Leone is not in a position to assert itself militarily to gain outright victory.

Michael Reisman identifies military victory as one technique available for stopping war and making peace in non-international conflicts. Other techniques identified include: creating or importing a Caesar or strongman to re-establish minimum order; partition of the State; integration or reintegration, often through the use of force; plebiscites and elections; and the adoption of Governments of national unity. Reisman adds another option: the use of international criminal tribunals in stopping wars and making peace. This has been used only on limited occasions; for example, for the conflict in the former Yugoslavia and for the genocide in Rwanda.

The relative weakness of the State has compelled Sierra Leone to end the conflict by taking the course of reconciliation, which involves the formation of an all-inclusive Government. That was why it chose to enter into negotiations with the rebels—first, for a cease-fire, and then, for a permanent end to hostilities.


226. See AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 1993 255; see also SIERRA LEONE COUNTRY REPORT 1996, supra note 189, at 245.


228. See id. at 41.

229. See id. at 41–46.

230. See id. at 46.
A. Peace Accords

Various attempts have been made to return the country to peace, with the signing of peace accords by the Government and the rebels. The first comprehensive peace accord was signed in November 1996, after nine months of negotiations begun by the N.P.R.C. military Government and concluded by the elected Government of President Kabbah. As part of the peace accord, there was a grant of amnesty to the rebels absolving them of responsibility for previous crimes. This grant was made in the name of peace.

The R.U.F. never complied with the terms of the accord, which soon broke down. There was no action taken with respect to violations of humanitarian law, in line with the provisions of the accord. It soon became clear that an amnesty would not end the violations. Following the takeover of power by the A.F.R.C., there was another peace accord, signed in October 1997, which was to pave the way for the restoration of President Kabbah to office. This accord was negotiated by E.C.O.W.A.S. and the A.F.R.C./R.U.F. regime under intense pressure from E.C.O.W.A.S., which wanted President Kabbah restored to power. Titled the "E.C.O.W.A.S. Six-Month Peace Plan for Sierra Leone," the accord contained an "immunities from prosecutions" clause. Clause 8 of the Peace Plan on "Immunities and Guarantees" provided that "[i]t is . . . essential that unconditional immunities and guarantees from prosecution be extended to all involved in the unfortunate events of 25 May 1997 with effect from 22 May 1998." The "unfortunate events" in reference included the army takeover of power on May 25, 1997, and the consequent abuses committed by the A.F.R.C./R.U.F. regime.

By the terms of the Peace Plan, the A.F.R.C./R.U.F. regime was expected to quit power peacefully in favor of the ousted Kabbah Government on May 22, 1998. However, E.C.O.M.O.G. intervened to forcefully remove the regime from power in February 1998, when it became apparent that the A.F.R.C. would not quit in May, as earlier agreed upon. Even with the guarantee of immunity from prosecution, the A.F.R.C./R.U.F. regime continued its abuses without any restraint whatsoever. The amnesty


seemed to have encouraged further abuses, since the rebels knew that in any event, they could always renegotiate another amnesty.

The most recent peace accord followed the events of January 1999, when the rebels were expelled from Freetown. President Kabbah and Foday Sankoh signed a cease-fire agreement on May 18, 1999 to facilitate on-going dialogue between the Parties. Thereafter, the Government of Sierra Leone entered into peace negotiations with the A.F.R.C./R.U.F. forces and conceded an amnesty to the rebels. This amnesty has been the subject of much debate.

B. The Lomé Peace Accord

The July 7, 1999 accord followed the negotiations, which took place in Lomé, Togo, under the auspices of the incumbent E.C.O.W.A.S. Chairman, Togo President Gnassingbe Eyadema. The accord followed weeks of intense pressure on President Kabbah to come to some form of understanding with the rebels, as it was clear that there could be no immediate military solution to end the conflict. Countries that contributed troops to the E.C.O.M.O.G. operation—Nigeria, Ghana, Guinea and Mali—mounted the pressure on Kabbah because the cost of the operations was too much of a drain on their economies. Nigeria was allegedly spending $1.1 million a day for the operation.

In the Preamble to the Peace Agreement, the Parties note that the Government of Sierra Leone and the R.U.F. were "[c]ommitted to promoting full respect for human rights and humanitarian law." The Agreement also noted the determination of the Parties "to establish sustainable peace and security; to pledge forthwith, to settle all past, present and future differences and grievances by peaceful means; and, to refrain from the threat and use of armed force to bring about any change in Sierra Leone."

With the above in view, the Agreement provided for pardon and amnesty in Article IX. Paragraph 1 of Article IX mandated the Government of Sierra Leone to "take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon" in order to "bring lasting peace to Sierra Leone." The same
absolute and free pardon and reprieve was to be granted to "all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the . . . Agreement."\(^{237}\) Another sweeping clause was added to the Agreement:

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 R.U.F./S.L., ex-A.F.R.C., ex-S.L.A. or C.D.F. 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 the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality.\(^{238}\)

Article IX(3) was as sweeping as it could be; it excluded everyone from prosecution for any or all violations committed since the conflict began in 1991. At the signing of the Agreement, the Special Representative of the UN Secretary-General, Francis Okello, had to attach a handwritten disclaimer to the Agreement, on the instructions of the UN Secretary-General,\(^{239}\) that the "United Nations interprets that the amnesty and pardon in article nine of [the] agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law."\(^{240}\)

In addition to the rider attached to the Agreement, some human rights groups took serious exception to the amnesty clause, stating that it violated international law.\(^{241}\) Within Sierra Leone itself, many were outraged at the deal with the rebels; they said the amnesty (and Sankoh's appointment as diamond over-

\(^{237}\) Id. art. IX(2).

\(^{238}\) Id. art. IX(3).


\(^{241}\) See id; see also AMNESTY INT'L, SIERRA LEONE: A PEACE AGREEMENT BUT NO JUSTICE (July 9, 1999), at http://www.web.amnesty.org/ai.nsf/index/AFR510071999.
lord) appeared to reward the rebels.\textsuperscript{242} But some in Sierra Leone thought that any deal was preferable to a war, which had displaced millions of people and seen some of the worst atrocities committed anywhere in the world.\textsuperscript{243} At the international level, the immediate response of some countries, particularly the United States and the United Kingdom, was to back the amnesty. They argued that a deal with the rebels was the fastest and perhaps the only practical way to end the fighting.\textsuperscript{244} The United States committed itself to support the implementation of the Agreement.\textsuperscript{245} But in response to the human rights community’s criticism of the amnesty provisions in the Agreement, U.S. Assistant Secretary of State for African Affairs, Susan Rice, underscored the commitment of the United States to the pursuit of accountability for serious violations of international humanitarian law everywhere in the world.\textsuperscript{246} Rice maintained that the amnesty was of a domestic nature and did not in any way obviate the interest of the international community in seeing that crimes against humanity, wherever they may occur, are dealt with in an appropriate fashion.\textsuperscript{247}

Clearly, Sierra Leone has some obligations under international law relating to ending the conflict. But what are the nature and reach of these obligations? Is Sierra Leone bound to deny amnesty for the offenses committed by anyone during the conflict? Can Sierra Leone choose its own methods of dealing with the crimes committed in the course of the conflict? And must any method chosen conform to international law?

Ordinarily, the method a Government chooses for dealing with the crimes committed in the course of a conflict should be its own business. However, this is true only to some extent. In practice, the method chosen is most likely to reflect what the Government perceives as its strength. The more durable and stable a Government perceives itself to be, the more likely it is to choose the option of prosecution over less invasive options like monetary compensation to victims or families, truth commis-


\textsuperscript{243} See id.


\textsuperscript{246} See id; see also Susan Rice & Gayle Smith, Briefing on Africa, Washington, D.C. (July 15, 1999), \textit{available at} http://www.state.gov/www/policy_remarks/1999/990715_ricesmith_africa.html.

\textsuperscript{247} See id.
sions, enactment of lustration laws, purges that keep abusers out of positions of public trust, or amnesty to perpetrators.248

C. Obligations of Sierra Leone Under International Law

Protocol II provides that at the close of hostilities, the authorities in power shall grant the broadest possible amnesty to all those who participated in the internal conflict.249 The object of this provision "is to encourage gestures of reconciliation which can contribute to reestablishing normal relations in the life of a nation which has been divided."250

In view of recent developments in the field of international humanitarian law, particularly through the work of the two international criminal tribunals—the I.C.T.Y. and I.C.T.R.—doubts have been cast on whether or not the amnesty applies to all crimes committed in the course of an internal conflict. International humanitarian law, as applied to international armed conflicts, certainly obliges prosecutions of crimes committed in the course of an armed conflict. The 1949 Geneva Conventions and Additional Protocol I contain extensive provisions for the repression of abuses and infractions.251 State Parties to the Conventions and Protocol are required to enact appropriate national legislation for the application of penal sanctions in cases of grave breaches and the suppression of all actions otherwise contravening humanitarian provisions.252

These provisions do not extend to internal armed conflicts, but the interlocking provisions of international human rights law and humanitarian law make it hard to argue for a blanket and sweeping amnesty in cases of serious abuse in times of internal armed conflicts.253 Any amnesty granted pursuant to the provisions of Article 6 of Protocol II would in essence be limited to the crime of rebellion against the State, treason, or allied political

249. See Protocol II, supra note 90, art. 6(5).
251. See 1949 Geneva Conventions, supra note 97. Specifically, see the First Geneva Convention, supra note 97, arts. 49-54; Second Geneva Convention, supra note 97, arts. 50-53; Third Geneva Convention, supra note 97, arts. 129-132; Fourth Geneva Convention, supra note 97, arts. 146-149; Protocol I, supra note 98, arts. 85-91. See also McCoubrey, supra note 99, at 211.
252. See McCoubrey, supra note 99, at 211.
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offenses. It should not extend to violations of the Protocol and the provisions of Common Article 3. Here, the Government of Sierra Leone may have an obligation to prosecute persons for crimes committed in the course of the conflict, but it still is a difficult proposition that Sierra Leone cannot, under any circumstance, grant amnesty to the rebels.

The Government still retains its right to prosecute offenders for violations of the law by the provisions of the same Article 6 of Protocol II. Amnesties should only be considered in exceptional cases, particularly where it would be helpful in realizing the objective of facilitating the reintegration into society of those who rose up in arms against the State. It becomes much easier to favor an amnesty where there are no serious violations of the law.

Beyond the provisions of Protocol II relating to amnesty, some scholars have asserted that there are emerging principles of international law which oblige States to prosecute perpetrators of serious violations of human rights and international humanitarian law. For international conflicts, that proposition does not generate much difficulty because there are provisions in relevant instruments that oblige States to prosecute. The difficulty arises when those principles are to be applied to internal armed conflicts where the law is not clear-cut. In these cases, some have argued that it is difficult to make out an obligation for States to prosecute and punish violators of the law.

As argued earlier, the conflict in Sierra Leone is more of an internationalized internal armed conflict. Thus, it is difficult to exclude application of the whole of international humanitarian law from the conflict. Insofar as other States were involved in the conflict as part of an international peace-restorative process, international humanitarian law is applicable. The Government was supported by the E.C.O.M.O.G. troops, while the rebels had some measure of support from Liberia and Burkina Faso. This certainly gives the conflict some strong international characteris-

255. See Protocol II, supra note 90, arts. 6(1) & (2).
257. See, e.g., 1949 Geneva Conventions, supra note 97; Protocol I, supra note 98.
tics,\textsuperscript{259} which would make it easy to argue in favor of prosecutions of those responsible for serious crimes.

State practice with regard to internal conflicts and their aftermath is worth noting. In many of the internal conflicts in the second half of the twentieth century, not much international attention was paid to prosecuting those responsible for crimes committed in the course of very serious internal armed conflicts. Exceptions to this include the conflicts in the former Yugoslavia and Rwanda, which had enough attention to warrant the establishment of criminal tribunals to try persons suspected of committing crimes in the course of the conflicts. Since these two are the only examples, it can be argued that there is still no firm obligation upon States to adopt any particular course of action, and thus the law is still fluid. The selectivity inherent in the choice of conflicts and the establishment of criminal tribunals makes it hard to develop a definite corpus of international humanitarian law applicable to internal armed conflicts, without the influence of politics.\textsuperscript{260}

While it is difficult to make a hard case for one course of conduct in Sierra Leone, it is important that those who committed atrocities not escape justice due to a steadfast adherence to the letter of the law. The problem here is not that the acts are not prohibited, but that there is no firm method for punishing the crimes; this is a mere technicality that should not stand in the way of justice. Criminals must not escape justice merely because the law makes a distinction between international and non-international armed conflicts.

In 1999, the UN Commission on Human Rights reminded all the Parties to the conflict in Sierra Leone that:

\textbf{[I]n any armed conflict, including an armed conflict not of an international character, the taking of hostages, willful killing and torture or inhuman treatment of persons taking no active part in the hostilities constitutes a grave breach of international humanitarian law, and that all countries are under the obligation to search for persons alleged to have committed or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts.}\textsuperscript{261}

\textsuperscript{259} See Sierra Leone Amnesty, supra note 240.

\textsuperscript{260} See Meron, International Criminalization of Internal Atrocities, supra note 253, at 555.

This resolution by the Commission was passed before the Lomé Peace Accord was signed. In that Accord, amnesties were granted just like in the other peace accords signed at various stages, without regard for international law. This act seems to have encouraged the rebels to continue with their utter disregard for the rules applicable in armed conflict. Not only was a sweeping amnesty granted in the Lomé Peace Accord, but the rebels were actually rewarded with positions in Government. Foday Sankoh, the R.U.F. leader, was made the Chairman of the Commission for the Management of Strategic Resources, National Reconstruction and Development.\(^\text{262}\) This Commission is responsible for the management of Sierra Leone's mineral resources of Sierra Leone, which have been identified as the main source of the conflict. In addition to being granted amnesty, Sankoh was definitely being rewarded for his rebellion.

Additionally, a Commission for the Consolidation of Peace was established pursuant to the Lomé Peace Accord.\(^\text{263}\) The chairman of that Commission is the leader of the A.F.R.C., Johnny Paul Koroma, who overthrew President Kabbah in a military coup in May 1997 and presided over a state of terror while in power. In the name of peace, Koroma was granted amnesty under the Conakry and Lomé Peace Accords. These acts demonstrate that the main concern of the Government of Sierra Leone was achieving peace, possibly at the expense of justice for the victims of the atrocities committed by these men.

Despite its relative weakness, the Government of Sierra Leone did try to achieve justice for the victims of these atrocities. It conducted a series of prosecutions in 1998 after the restoration of President Kabbah to office. The Nigerian authorities, which had held Sankoh in detention since 1997, released Sankoh in 1998 to the authorities in Sierra Leone. This was after Kabbah's restoration to power. Sankoh was immediately arrested upon arrival in Freetown and charged with treason, for which he was tried and found guilty. Thus, as far as the duty to prosecute goes, the Government of Sierra Leone at least partially complied with its obligation. Sankoh was sentenced to death at the end of the trial, but had to be released to take part in the peace negotiations in 1999.

The charges against Sankoh were restricted to treason. If this were the only charge for which he could be tried, an amnesty would not be easily challenged. For a man that directed the conflict and oversaw so many atrocities, treason charges are not

\(^{262}\) See Lomé Peace Accord, \textit{supra} note 233, art. VII(12).
\(^{263}\) See id. art. VI.
enough. Treason, rebellion, and sedition are like-offenses and can be the subject of amnesty encouraged by Protocol II. In March 1996, while in Côte d'Ivoire, Sankoh publicly admitted that the R.U.F. had committed atrocities. Other charges ought to have been brought against him, particularly those relating to atrocities against the civilian population, who were seriously affected by the conflict.

In 1998, the Government also detained several hundred individuals on suspicion of treason and other charges stemming from their involvement with the A.F.R.C./R.U.F. regime. Some individuals were released, and at least 103 persons were tried in four civilian trials and one court-martial proceeding. All of the trials were open to the public and the verdicts ranged from acquittals on all charges to guilty; the sentences ranged from five years imprisonment to execution. Twenty-four former army officers convicted of treason charges subsequently were executed.

D. Achieving Peace Through Accountability and Justice

The Government of Sierra Leone is caught in between the proverbial rock and a hard place. The structures of governance are weak and the State does not have total control of its territory. This has affected its dealings with the rebel forces since 1998, and particularly, since the aftermath of the rebel offensive against Freetown in January 1999. The Government has had to come to some understanding with the rebels, particularly with Foday Sankoh, who was tried for treason and had to be released for the sake of peace. The Government carried out prosecutions in 1998, but these also did not help to ease the tensions in the country. With help from the international community, the Government of Sierra Leone could have asserted itself and reclaimed its lost authority. Support from E.C.O.W.A.S. has been crucial at various stages, but without sufficient resources of their own, the

265. See Sierra Leone Country Report 1998, supra note 213, at 369–70. The U.S. State Department Report noted that observers generally agreed that the proceedings were conducted in a fair and open manner and that the defendants had adequate opportunities for counsel and to make their cases. But see Amnesty Int'l, Sierra Leone: Executions of 24 Soldiers After an Unfair Trial: A Blow to Reconciliation in Sierra Leone (Oct. 20, 1998), available at http://www.web.amnesty.org/ai.nsf/index/AFR510201998. In this press release, Amnesty International (AI) deplored the executions after condemning the trials as “unfair.” It is hard to comprehend the criticism of AI, knowing fully well that the Government of Sierra Leone was trying to do its best in pursuing justice against the accused persons.
ability of those countries to radically affect the situation has been limited. It is evident that more needs to be done for Sierra Leone to achieve stability in the country.

The UN became involved in the conflict with the establishment of the United Nations Observer Mission in Sierra Leone (U.N.O.M.S.I.L.) in June 1998.\textsuperscript{266} The mandate of U.N.O.M.S.I.L. included responsibility for monitoring and helping E.C.O.M.O.G. with the implementation of a program for the disarmament, demobilization, and reintegration of combatants (D.D.R.); reporting on the security situation; and monitoring respect for international humanitarian laws. In October 1999, the UN Security Council authorized the creation of the United Nations Assistance Mission in Sierra Leone (U.N.A.M.S.I.L.) to assist the Government and the Parties in carrying out provisions of the Lomé peace agreement.\textsuperscript{267} At the same time, the Security Council decided to terminate U.N.O.M.S.I.L. The mandate of U.N.A.M.S.I.L. is similar to that of U.N.O.M.S.I.L., except that it has a strong military component, which is intended to fill the gap created by the departure of Nigerian troops from Sierra Leone.

The efforts by the UN, though in the right direction, were too little and too late. The Security Council, in Resolution 1270, determined that the situation in Sierra Leone continued to be a threat to international peace and security, just like it did in the case of the former Yugoslavia and Rwanda. However, the Security Council did not create a mechanism to restore peace beyond the establishment of U.N.A.M.S.I.L. There was a need to strengthen the hands of the Government of President Kabbah, but that was not done. It engaged in mere platitudes, which did not help in the search for peace through justice.

For Sierra Leone to move forward and achieve lasting peace, there must be prosecutions of those responsible for the atrocities committed in the course of the conflict. It is not enough to prosecute the criminals for treason. There must also be a reckoning for the serious crimes committed, particularly against the civilian population. That way, there would be justice for the victims, and the country should be in a position to lay the ghosts of the past to rest.

The amnesty granted by the Lomé Peace Accord was a step in the wrong direction. If it is not possible to reverse it, there must be efforts to undertake international prosecutions of the leadership of the rebel groups and leaders, including Foday

Sankoh. Thus, it is up to the UN Security Council to establish a war crimes tribunal to prosecute those responsible for the crimes. If there is insufficient political will to establish a tribunal, the will must be found. This is not a case of asking for troops from Western nations to police Sierra Leone. Even if there is sufficient political will, the Governments in those countries may not be able to mobilize public opinion to accept the real sacrifices of blood and treasure necessary for such military action in a country like Sierra Leone, which holds no strategic interest or advantage for them.\textsuperscript{268}

As the law stands, amnesties for crimes, such as those committed in Sierra Leone, should not be upheld outside of Sierra Leone. They are of questionable legality and can only serve the short-term interest of achieving immediate peace.\textsuperscript{269} This fact is borne out by the fact that since the amnesty was declared, rebel abuses have continued.\textsuperscript{270} There has been no real peace. The first few months of 2000 have seemed to vindicate those who opposed the amnesty. And the victims are not restricted to Sierra Leoneans.\textsuperscript{271}

The peculiar nature of the conflict also calls for some measure of penal sanctions against the perpetrators of the atrocities. This has never been an ethnic conflict; instead, it has roots in the quest for control of the mineral resources of Sierra Leone. The rebels and their foreign backers are illegally mining the land. Such banditry and stealing should neither be rewarded with amnesty nor with political positions, such as the ones the rebel

\begin{footnotesize}
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\item \textsuperscript{268} Cf. Reisman, supra note 227, at 31.
\item \textsuperscript{269} See Dinah Shelton, Remedies in International Human Rights Law 326 (1999).
\item \textsuperscript{271} On May 2, 2000, at least seven UN peacekeepers were killed and three wounded in clashes with R.U.F. rebels. See Pledge to Release UN Troops, BBC News Online, May 3, 2000, available at http://news.bbc.co.uk/hi/english/world/africa/newsid_734000/734911.stm. Another 92 peacekeepers and other UN staff had been captured earlier. See Sierra Leone Protesters Shot, BBC News Online, May 8, 2000, available at http://news.bbc.co.uk/hi/english/world/africa/newsid_740000/740844.stm. On May 4, 2000, six UN staff members were freed by the rebels, but 208 Zambian peacekeepers were detained. On May 6, 2000, another 226 Zambian peacekeepers were missing; all abducted by the rebel R.U.F. forces. Id.
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leaders hold at present. In recent times, the value of official annual diamond exports by Sierra Leone has been halved to $30 million. In the same period, diamond exports by Liberia, which possesses relatively few diamond fields, has dramatically risen to $300 million. The rebels have been the means for looting and plundering the resources that belong to the people of Sierra Leone.

By the terms of the Lomé Peace Accord, the Government of Sierra Leone was to establish a truth and reconciliation commission, address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, and get a clear picture of the past in order to facilitate genuine healing and reconciliation. Pursuant to that objective, in February 2000, the Parliament of Sierra Leone approved legislation creating the Truth and Reconciliation Commission for Sierra Leone. The Commission is seen as part of the efforts to achieve healing and reconciliation in Sierra Leone. However, the Commission is still in the process of creating a constitution, and it is not yet functional.

If the Commission functions as intended, it may help restore normalcy to Sierra Leone. But if the prescription of the Truth Commission is to avoid the issues of accountability, particularly prosecutions, then it may turn out to be an unnecessary effort. In this case, the truth concerning the abuses and the identity of the perpetrators is not hidden. For anyone to hope for forgiveness, there must be reflection, judgment, and accountability for the past. This work, however, is not about pre-judging the

272. See David Bamford, Foday Sankoh: Rebel Leader, BBC NEWS ONLINE, May 5, 2000, available at http://news.bbc.co.uk/hi/english/world/africa/newsid_737000/737268.stm. In 1998, the Government of Sierra Leone recorded diamond exports of only 8,500 carats, but the Hoge Raad voor Diamant (H.R.D.)—the Diamond High Council—recorded imports of 770,000 carats. The annual Liberian diamond mining capacity is between 100,000 and 150,000 carats, but the H.R.D. recorded Liberian exports into Belgium of over 31 million carats between 1994 and 1998, an average of over six million carats a year. Côte d'Ivoire, where the small diamond industry was closed in the mid-1980s, apparently exported an average of more than 1.5 million carats to Belgium between 1995 and 1997. See Smillie, supra note 3.

273. See Lomé Peace Accord, supra note 230, art. XXVI.


275. See generally John J. Moore, Jr., Note, Problems with Forgiveness: Granting Amnesty Under the Arias Plan in Nicaragua and El Salvador, 43 STAN. L. REV. 733 (1991) (noting the comments of a criminologist discussing the case of El Salvador:

Inherent in social consciousness are the intertwined demands for truth and justice. These two issues can be translated practically into
impending work of the Commission. The Commission may still be effective in dealing with the issues assigned to it by the Act.

Apart from the Truth Commission, there are other initiatives that the Government of Sierra Leone may pursue in giving partial satisfaction to its people. The Government may file an official apology to the victims of the conflict on behalf of the State that has failed to offer them minimum protection against the predators that literally destroyed their lives. In this case, since the victims are numerous, the State may consider offering a national apology to all Sierra Leoneans.

The Government of Sierra Leone may also consider paying monetary compensation to all identified victims and/or their families. A mechanism like the Truth and Reconciliation Commission may be used to identify the proper person(s) to receive

the desire to see the truth established and the desire for punishment. It's a mysteriously powerful, almost magic notion, because in many cases almost everyone knows the truth. Everyone, for example, may know who the human rights abusers are and what they did; and the abusers know that everyone knows, and everyone knows that they know. Yet there remains a need to make everything explicit. Nagel, a legal philosopher, states "It's the difference between knowledge and acknowledgement.");

Id. at 763 n.185 (citing William Calathes, Salvadoran Amnesty: Criminology and the Development of a "Just" Justice System, Paper Presented at the First International Conference of Jurists Sponsored by the Salvadoran Institute of Legal Studies in San Salvador, El Salvador, 7-8 (Dec. 7-9, 1990)).

276. See Bassiouni, supra note 224, at 19; see also SHELTON, supra note 269, at 345-56.

277. The R.U.F. and the A.F.R.C. have at various times offered some apology to the people of Sierra Leone. In June 1997, the R.U.F. tendered an apology for the atrocities committed against Sierra Leoneans during the war. See Revolutionary United Front's Apology to the Nation (June 18, 1997), available at http://www.sierra-leone.org/rufapology.html. In September 1999, the A.F.R.C. offered an apology for "wrongs and misdeeds" it committed, while stating its demands. See Position Statement of the Sierra Leone Army (S.L.A.) and the Armed Forces Revolutionary Council (A.F.R.C.) (Sept. 18, 1999), available at http://www.sierra-leone.org/afrc091899.html.

The leader of the A.F.R.C., Johnny Paul Koroma, asked the people of Sierra Leone to forgive his men for the atrocities they might have committed. See Personal Statement by Lt. Col. J.P. Koroma (Oct. 1, 1999), available at http://www.sierra-leone.org/korama100199.html (emphasis added). Finally, the leaders of the R.U.F./S.L. and A.F.R.C. alliance tendered an apology to the nation in October 1999, as they announced that they would transform the alliance into a political party. See Statement on the Historic Return to Freetown, Sierra Leone, of the Leaders of the Alliance of the Revolutionary United Front of Sierra Leone and the Armed Forces Revolutionary Council (Oct. 3, 1999), available at http://www.sierra-leone.org/afrc-ruf%20statement.html. These series of apologies would have been meaningful if they had not been followed by more atrocities against the same people to whom they apologized. In effect, the apology was cosmetic and there was no genuine repentance for their evil acts.
compensation. But as the State is poor and lacks the necessary resources to pay any meaningful compensation, it may have to pay token sums in recognition of the damage suffered by the people. One proposition would be for an international fund, to which States and other willing donors could contribute, from which the compensation can be paid in order to help Sierra Leone back to normalcy. Granted, it would be difficult to convince States to give any kind of support to Sierra Leone at this stage. It would also be hard to persuade other States to use their taxpayers' money to compensate victims of brutality in another country for violence, which the donor Governments cannot be held directly responsible. Even in the absence of necessary funds, the Government of Sierra Leone may still create a memorial fund in the memory of dead victims, and some part of the annual budget of Sierra Leone could be placed into the fund for payment to the relatives of the deceased.

Laws should be passed by the Government of Sierra Leone to allow individuals who suffered any kind of damage to sue those whom they can identify as being responsible for their condition in a civil proceeding. The Government may also create a national park for all victims of the conflict with a roll of names of all that suffered one kind of injury or damage or another. It could also order a national holiday in honor of the victims, marking it a day of reconciliation as well. Official acknowledgement of the wrong suffered may go some way in assuaging the grief of the victims, particularly since they may not see the prosecution of those responsible for their fate.278

The Government of Sierra Leone must make all efforts to address the structural imbalances in society that afforded the rebels the excuse for their initial attack. It must promote a strong civil society and rehabilitate those who have surrendered their arms. Children who took part in the conflict need special care so that they can return to a normal life to whatever extent possible. The Government must make a provision for free and compulsory education for all children of school age in order to help them to avoid a life of crime.

The international community must also take a part in helping Sierra Leone in its present situation. The neglect suffered by Sierra Leone is indicative of the neglect suffered by the African continent as a whole. When the UN High Commissioner for

278. The Truth and Reconciliation Commission may adopt some of these as part of the remedial measures it has power to recommend by virtue of Section 15(2) of the enabling Act. See The Truth and Reconciliation Commission Act 2000, supra note 274, art. 15(2).
Human Rights, Mary Robinson, visited Sierra Leone in June 1999, she said there had been more loss of life in Sierra Leone than in Kosovo—more suffering, more mutilations, and more violations of human rights. Yet, Sierra Leone did not get a fraction of the attention devoted to Kosovo, even though the January rebel offensive against Freetown happened about the same time events were unfolding in Kosovo.\(^\text{279}\)

Cash constraints hampered efforts made by the U.N.H.C.R. to take care of the victims of the conflict, particularly the refugee population. According to Human Rights Watch (H.R.W.), “[i]t seem[s] axiomatic that international efforts to assist refugees and seek solutions to their plight should be equitable and based on human need, regardless of the nationality, race, geographic, political, or military importance of the refugee population.”\(^\text{280}\) H.R.W. notes that no African refugee population, including those from Sierra Leone, received anything near the outpouring of international concern and assistance demonstrated during the Kosovo crisis. One estimate calculated that in Africa, $0.11 was spent per refugee per day by the international community, compared to $1.23 per Balkan refugee per day; Kosovar refugees in Albania and Macedonia received $10 million per week. U.N.H.C.R.’s annual appeal for West Africa, which had a large Sierra Leone refugee population, set a $9 million goal, but raised only $1.3 million in pledges.\(^\text{281}\)

Thus, there must be a great measure of international assistance for Sierra Leone to assert itself against internal and external aggressors. As noted, the international community must not accept the amnesty and must make all efforts to see that the leaders of the rebel groups face international justice. It would also be beneficial to Sierra Leone if the international community assisted in the rebuilding of the judicial system, adding to current efforts by the Government of the United Kingdom to help rebuild the armed forces of Sierra Leone.\(^\text{282}\) All these efforts must complement each other for Sierra Leone to be able to achieve the goal of peace through justice.

E. Conclusions

This work has examined the conflict in Sierra Leone, a conflict not based on issues of ethnicity as in many African countries,
but driven solely by greed on the part of the rebels. The complexity of the problem is what makes it difficult to prescribe any particular solution as being the best for the country. In the end, the country must work out a solution that fits it best. In doing this, it must bear in mind the requirements of international law and the interests of its citizens. It cannot simply legislate or take actions for reasons of political expediency or survival; that would only create another set of problems. The country cannot thrive on the injustice to the rebellion victims, and the country cannot adopt collective amnesia to forget all that happened in the course of the conflict.

The problems raised by the conflict in Sierra Leone transcend international humanitarian law; they involve human rights and refugee issues as well. They are interrelated, and proposing one solution does not negate the requirements of the other branches of the law. If only the international community would assist, Sierra Leone should be able to rise above its present problems. There is a need to address the issues relating to the exploitation of Sierra Leone's mineral resources by outside forces, particularly the alleged involvement of Liberia in the mining of Sierra Leonian diamonds. This is well beyond the scope of this work and is being addressed by others.\(^{283}\)

In dealing with issues of accountability for violations of international humanitarian law, Sierra Leone must be given some latitude in deciding what course to take; in particular, if international assistance is not forthcoming. The UN peacekeepers presently on ground may still have some relevant work to do. However, it is doubtful that they can make much difference, for they are only bearing light arms, as the original intention of the Security Council was that they would supervise the disarmament of the warring groups. Now that they are facing challenges from the rebel forces, it remains to be seen whether they will have a more robust mandate, such as arresting the leaders of the rebel groups, including Sankoh and Koroma.

Whatever interpretation comes out as best in relation to the amnesty in the Lomé Peace Accord, efforts must be made to prosecute those responsible for the commission of heinous crimes after the amnesty was granted. The amnesty was granted with respect to anything done from March 1991, "up to the time of the signing of the ... Agreement."\(^{284}\) Thus, anything done after the agreement was signed is not covered. Therefore, it is necessary that those responsible for new crimes should be prose-

\(^{283}\) See, e.g., Smillie, supra note 3.

\(^{284}\) Lomé Peace Accord, supra note 233, art. IX (3).
executed and punished if found guilty. There must be accountability, and no one should be spared. It is clear that the original amnesty was ill-conceived, even if the Government of Sierra Leone conceded it in good faith. While abuses by other sides in the conflict have been held to a minimal level, the R.U.F. has not spared the civilian populace, who is now open to attacks from the rebels, as the country is being patrolled by lightly armed UN peacekeepers.

Additionally, one can argue that the recent acts of Foday Sankoh and his rebels are a repudiation of the peace agreement. A breach by one party effectively releases the other party from its obligations under the same agreement. The amnesty remained effective so long as the Parties respected the terms of the agreement. As this is no longer the case, Sankoh is open to prosecution by an international tribunal if one were established to prosecute crimes committed in the course of the conflict. In the absence of prosecution by Sierra Leone, it is also open to any State, under the principle of universal jurisdiction, to try and punish Foday Sankoh or any of his allies for those crimes. The net around him should be tightened to ensure that he does not escape justice.

The Lomé Peace Accord is fast unraveling and the international community should not sit idly by and watch Sierra Leone disintegrate under the nose of the UN peacekeepers. Western countries have had no interest in the peacekeeping operations beyond composing a force ill-equipped for the operations in Sierra Leone. Yet since the attack on the peacekeepers and the subsequent threatening by the rebels of an attack on the capital, Freetown, the U.K. authorities have found sufficient troops to undertake the evacuation of foreign nationals from Sierra Leone. This sends a wrong signal that the Western nations are only interested in their nationals, and that is the only purpose for which they will send forces into Sierra Leone.

The failure to establish a war crimes tribunal for the crimes committed in the conflict in Sierra Leone does not help the development of the law. If there are emerging norms that require punishment of this class of offenses that have been, and are still being, committed in Sierra Leone, then those norms must be applied in this case. Failure to do so makes it hard to argue that Sierra Leone has an obligation, when in fact it cannot, and is not, in a position to discharge the obligation. The conflict in Kosovo, which admittedly is not as bad as what happened in Sierra Leone, is being addressed by the I.C.T.Y. The law in this regard seems to be developing to favor those whom the Western powers and the five permanent members of the UN Security
Council are interested. It will be a sad thing if these crimes remain unpunished.

Sierra Leone itself must make the best efforts to prosecute those it can, even if it cannot prosecute all of the criminals. Recent events show that if it does not make those efforts, no matter how minimal, those who cry out for justice for victims in Europe will not help the victims in Sierra Leone. And very surely, if the path of justice is not neglected in the search for peace, peace may come, and Sierra Leone could still become the prosperous and peaceful country it should be.

Postscript

Events in Sierra Leone have taken different turns, some for the better. The UN has shown a little more interest in the issues since the incidents involving its troops on the ground in Sierra Leone. The Security Council has authorized the establishment of a special international court to try persons accused of serious violations of international humanitarian law in the conflict in Sierra Leone. In the resolution, the UN Secretary-General was asked to negotiate an agreement with the Government of Sierra Leone to create an "independent special court" and report back to the Security Council within a specified period. That court is being constituted.

The decision of the Security Council to support the U.S.-sponsored resolution marked another stage in the quest for justice in Sierra Leone. It is a welcome development, one that must be fully utilized in order to ensure the return of peace to the country. While there is a strong desire for justice, care must be taken to ensure that the process is not abused and that accused persons receive a fair trial.

It is also worthy to note that the A.F.R.C. of Johnny Paul Koroma has been disbanded. Koroma is now a very active member of the Kabbah Government and is overseeing disarmament and demobilization of rebel soldiers in Sierra Leone. Also, since the arrest of Foday Sankoh, the worst has not happened; even though the war has continued, it has not been on the scale that was predicted following the arrest of Sankoh. The rebels

286. See id.
have chosen a new leader to replace Sankoh, and it appears that they are able to continue the war despite his absence.

The Governments of the West African sub-region are also unrelenting in their efforts to see the return of peace to Sierra Leone. While they support calls for the trial of Sankoh and his men, they are maintaining the dual track approach initiated by Kabbah, working toward peace through justice and also through reconciliation with the rebels, inasmuch as they show interest in the peace efforts.