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Map

[**N.B.:** This case study was written by Thomas de Saint Maurice in view of its publication in the 2001 French edition of this book. It is based exclusively on documents available to the public, such as press releases, reports by agencies or United Nations documents.]

N.B. As per the disclaimer ^[1], **neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.



[2]

Map of Sierra Leone, Liberia and Guinea. Country names and borders on this map are intended to facilitate reference and have no political significance.

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Abbreviations

ECOWAS: Economic Community of West African States

ECOMOG: Economic Community of West African States (ECOWAS) Monitoring

Group

Sierra Leone:

CDF: Civil Defence Forces (Kamajors)

NPCR: National Provisional Ruling Council

RUF: Revolutionary United Front

SLA: Sierra Leone Army

UNAMSIL: UN Observer Mission in Sierra Leone

Liberia:

AFL: Armed Forces of Liberia

LPC: Liberia Peace Council

NPFL: National Patriotic Front of Liberation

ULIMO: United Liberation Movement of Liberia (later called LURD: Liberians United for Reconciliation and Democracy)

Guinea:

RFDG: Rally of the Democratic Forces of Guinea

1. Multiple actors

A. Internal actors

1) The situation in Sierra Leone

[Source: PEREZ Andres, “UN peacekeeps for rival gangsters. Sierra Leone’s diamond wars”, in *Le Monde diplomatique*, June 2000, footnotes omitted; available on <http://www.monde-diplomatique.fr> ^[3]]

UN PEACEKEEPS FOR RIVAL GANGSTERS

Sierra Leone’s diamond wars

It was a short-lived peace: signed last July between the Freetown government and the RUF, it broke down in early May when 300 blue berets were taken captive by the rebels. The arrest of the RUF’s leader Foday Sankoh by British troops on 10 May did not bring a halt to the fighting. The background to the civil war is a no-holds-barred fight between the international mining companies for control of Sierra Leone’s diamonds.

That a criminal economy can eat away at the heart of states and whole nations is nothing

new. But recent events in Sierra Leone have shown that it can also divert to its own advantage an entire peace-keeping operation run by the United Nations and supported by the main foreign powers. The UN Observer Mission in Sierra Leone (UNAMSIL) – the largest UN peace-keeping mission in the world with its 9,000 men – was supposed to bring an end to a ghastly, 10-year-long civil war [...]. [In November 2001, it was composed of 16 600 men.]

We must be clear about who is involved. Barbaric, drug-crazed and dragooned by the warlords as they may be, armed and desperate young men could not have brought UNAMSIL to its knees all on their own. The UN has been ensnared by something different, something newer and more insidious: by a struggle between two rival groups supported by businessmen intent on gaining control of mineral wealth. By refusing to declare an embargo on diamonds from Sierra Leone, or indeed the economic exclusion zone that many experts have been calling for, the Security Council and UN Secretary General have left the field wide open for a mafia-like conflict in which their soldiers have become pawns in the game.

On one side, the rebel Revolutionary United Front (RUF), the true masters of the territory, controls one half of the country and, over the other half, spreads an insecurity that renders impossible any heavy mining activity of the kind the small, “junior” companies would like to start up. Its base lies in the zone of military and commercial influence wielded by Charles Taylor, today the president of Liberia (dubbed Taylorland). Monrovia, his base, is where a large proportion of the smuggled Sierra Leone diamonds are traded, channelling some \$200m a year “linked with the markets in arms, drugs and money-laundering in Africa” and elsewhere. [...]

Facing the RUF are the “legitimist” forces around the president, Ahmed Tejan Kabbah. His government includes the powerful deputy minister for defence and head of the Kamajor

militia, Samuel Hinga Norman, and Johnny Paul Koroma, an earlier coup leader and torturer, with his militia. [...]

It has been the brutal clash between these two alliances that scuppered any hope of peace and changed the nature of a UN mission, after fanning for 10 long years the flames of a war whose only victims have been civilians, and especially children. And it is because what is at stake is real and sizeable – over a billion dollars’-worth of stones sold in the jewellers’ shops each year, the world’s second biggest field of rutile, and bauxite deposits that could have an effect on world prices – that Britain, the old colonial power, is coming forward and deploying its military strength to back up the government of Sierra Leone without having to hide behind the smoke-screen of the Sandline International mercenaries as it did before. [...]

“The Kalashnikov lifestyle helps our business”, sing the child-soldiers of the RUF. [...]

As these children saw it, the blue berets with their UN badges were no different from the mercenary *Gurkha Security Guards* hired by private companies in 1994, or the men of *Executive Outcomes* (1996), or of *Sandline International* (1997), or the *Lifeguards* they had been holding at bay since 1998. And besides, BBC radio had told them last December that the Indian battalions of the blue berets included *Gurkhas* who were to operate in the diamond-mining areas. It is even known that last March UN high-ups met the leaders of a number of private armies (including *Executive Outcomes*, *Sandline International* and *Israel’s Levdan*), to look at ways of working together. [...]

2) The situation in Liberia

[Source: STEAD David, “Troubled past of Africa’s first republic”, *BBC News Online*, August 12, 1999, available on <http://news.bbc.co.uk> ^[4]]

Troubled past of Africa’s first republic

For much of the last 20 years Liberia has been one of the most unstable countries in Africa.

Plagued since the early 1980s by coup attempts and later by civil conflict its economic assets were squandered and rival ethnic fighters outdid each other in brutal savagery. [...]

At the root of Liberia's political problems have been the conflicts between the descendents of American freed slaves settled during the 19th Century and the indigenous ethnic groups. [...]

The wide disparity between the wealthy coastal elites and the rest of the population created civil disunity sparking a military coup led by a member of the Krahn ethnic group, Master Sergeant Samuel Doe in 1980. [...]

On Christmas Eve, 1989, Charles Taylor and his National Patriotic Front of Liberia (NPFL) began a rebel assault from the north-eastern province of Nimba – reaching Monrovia by September 1990. [...]

Three armed groups competed for Monrovia – the NPFL, a breakaway group led by Prince Yormie Johnson and the Armed Forces of Liberia (AFL), remnants of Doe's army.

It was Prince Johnson's forces which captured Doe, and savagely hacked him to death.

From 1990 onwards there was an escalation of war in Liberia, with new rebel groups establishing powerbases throughout the country.

An African peace-keeping force – ECOMOG – of mainly Nigerian soldiers secured Monrovia [...] but rebel groups continued to control wide swathes of land outside the capital. [...]

Continued efforts at establishing peace and re-uniting the country failed and a new rebel movement, the United Liberation Movement of Liberia (ULIMO) emerged to challenge the NPFL.

ULIMO, which invaded from Sierra Leone, succeeded in wresting large areas of Lofa and Cape Mount counties in western Liberia from Taylor's forces.

The movement later split into two: ULIMO-J, led by Roosevelt Johnson, which was mainly Krahn and ULIMO-K, led by Alhaji Kromah, which was principally Mandingo.

By 1993 another armed faction had emerged – the Liberia Peace Council (LPC) – which battled the NPFL in south-eastern Liberia. [...]

The breakthrough came with a peace agreement signed at Abuja in Nigeria in August 1995 and the subsequent deployment of ECOMOG troops throughout Liberia. [...]

After many last minute hitches on 19 July 1997 Liberia finally went to the polls – with Charles Taylor securing an outright victory.

Shortly after his inauguration, President Taylor accused ULIMO-K of re-assembling in Sierra Leone with the aim of destabilising his government. [...]

3) The situation in Guinea

[Source: *The Forces involved in the fighting in Guinea*, Agence France Presse, February 14, 2001.]

The Forces involved in the fighting in Guinea

CONAKRY, Feb 14 (AFP) – Southern Guinea has been rocked since September by fierce fighting between government troops and rebel groups operating out of neighbouring Sierra Leone and Liberia. More than 1,000 people have been killed and hundreds of thousands of refugees put to flight.

The United Nations has warned that it currently faces its worst humanitarian crisis in the troubled region. Also implicated in the fighting are Guinean dissidents.

Following is a list of groups, movements and factions regarded as “enemies” of Guinea and branded by Conakry as being part of a “rebel coalition”:

- The revolutionary United Front (RUF), [...] based in the north and east of Sierra Leone. [...]
- ULIMO, the Liberian United Liberation Movement for Democracy. Founded at the beginning of 1991, the group was one of the principle rivals of Charles Taylor’s National Patriotic Front of Liberia (NPFL), which started the Liberian civil war in December 1989. In 1994, one of ULIMO’s leaders, Roosevelt Johnson, broke away and founded ULIMO-J, comprising members of the Krahn ethnic group. [...] Since coming to power, Taylor has regularly accused ULIMO faction ULIMO-K of having bases in southern Guinea and, with the support of Conakry, of launching raids into northern Liberia.
- ULIMO-K, [...]. Mercenaries [of the mandingue ethnic group] trained by warlord Alaji Kromah [...].
- RFDG, the ally of Democratic forces of Guinea, an external movement opposed to the Guinean government. [...]

In its fight against these groups, the Guinean army is supported by:

- The “Volunteers”, Guinean civilians who have been recruited en masse by the authorities to “repulse the invaders”, and who are organised as self-defence militia equipped with shotguns, spears, bows and arrows and other traditional weapons of

war.

- Kamajors, Sierra Leone's militant traditional hunters [...] one of the most faithful supporters of the [...] Sierra Leone President Ahmad Tejan Kabbah and among the most dreaded enemies of the RUF. [...] According to sources in Conakry, there are currently about one thousand Kamajor fighters in Guinea.

B. External actors

1) Intervention by private armed forces: the example of *Executive Outcomes* mercenaries

[Source: United Nations, E/CN.4/1996/27, 17 January 1996; available on <https://www.ohchr.org> ^[5]]

COMMISSION ON HUMAN RIGHTS THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 1995/5 and Economic and Council resolution 1995/254 [...]

C. Sierra Leone

62. Sierra Leone is in the grip of an internal armed conflict which broke out in March 1991 when an opposition group known as the Revolutionary United Front (RUF) was formed as an armed resistance movement and launched an invasion from neighbouring Liberia with a view to occupying part of the southern and eastern regions of the country. The conflict did not come to an end when, in 1992, a military-nationalist movement calling itself the National Provisional Ruling Council (NPRC),

headed by Captain Valentine Strasser, seized power in a coup, suspended the 1991 Constitution and declared a state of emergency. [...]

63. In the course of the internal armed conflict, both the NPRC and the RUF rebel forces, led by Foday Sankoh, have committed serious violations of and disregarded, basic provisions of international humanitarian law. [...] The civilian victims of this conflict are estimated to number in the thousands.
64. There is clear evidence of mercenary involvement in this internal armed conflict. [...] [T]he NPRC has strengthened its military capability by hiring mercenaries supplied by *Executive Outcomes*, a private company officially registered in Pretoria as a security company, but in this case said to have been paid in cash and, in particular, in the form of mining concessions, for supplying specially trained mercenaries and weapons. According to information made available to the Special Rapporteur, *Executive Outcomes* is involved in the recruitment, contracting and training of the mercenaries and the planning of their operations. It uses them in a variety of situations where, in return for payment, it has carried out all kinds of illegal acts. *Executive Outcomes* is reported to have provided Sierra Leone with about 500 mercenaries from various countries, usually paying them between US\$ 15,000 and US\$ 18,000 per month, depending on their qualifications and experience, in addition to providing them with generous life-insurance cover and weapons.
65. [...] According to the sources consulted, *Executive Outcomes* is receiving about US\$ 30 million and mining [...]. In recruiting mercenaries, *Executive Outcomes* is said to work through a network of security companies operating in various countries, soldiers of fortune and intelligence circles. Its work in Sierra Leone is said to involve the following activities: training of officers and other ranks; reconnaissance and aerial photography; strategic planning; training in the use of new military equipment; advising on arms purchases; devising psychological campaigns aimed at creating panic among the civilian population and discrediting the leaders of the RUF, etc. According to the source consulted, all these activities are supervised by executives of the company. [...]
66. [...] In any event, this would appear to be yet another instance of an internal armed conflict in which the involvement of mercenaries prolongs and adds to the cruelty of

that conflict, while at the same time undermining the exercise of the right to self-determination of the people of the country involved.

2) Intervention by a regional force: ECOMOG

[Source: PEYRO LLOPIS Ana, “La Sierra Leone ou le renouveau des opérations de paix”, in *Actualité et Droit international*, Paris, February 2001, footnotes omitted. Original in French, unofficial translation.]

SIERRA LEONE OR RENEWED PEACE OPERATIONS

[...] The conflict in Sierra Leone dates back to March 1991 when the RUF launched an offensive against the government headed by Joseph Momoh. That government was toppled in April 1992 – not by the RUF, but by its own officials led by Valentine Strasser. He proclaimed himself head of the new government, which was, in turn, overthrown in January 1996 by one of its members, Brigadier Julius Maada Bio. He organized elections which were won in March 1996 by Ahmad Tejan Kabbah. He, too, was removed from power on 25 May 1997 by a coalition comprising a sector of the Sierra Leone army and the RUF and led by Major Johnny Paul Koroma. Mr Kabbah was again the “effective” head of the Sierra Leone government from March 1998, following intervention by the Economic Community of West African States (ECOWAS) and ECOMOG (ECOWAS Monitoring Group or ECOWAS Military Observer Group). [...]

I. A regional peace operation with variable geometry [...]

A. ECOMOG’s implementation of the United Nations embargo

Initially, pursuant to Chapter VIII of the Charter of the United Nations, the Security Council authorized ECOWAS to ensure the implementation of the embargo on the supply of arms and petroleum products stipulated in Resolution 1132 of 8 October 1997. Even if

the Council did not quote it explicitly, this was, more precisely, a matter of implementing Article 53 of the Charter, which requires enforcement action taken under regional arrangements or by regional agencies to be authorized by the Security Council. The Charter thus subjects regional agencies to the authority of the Security Council. In order to implement the embargo stipulated by the Security Council, ECOWAS sent the first ECOMOG contingents to Sierra Leone. [...]

B. ECOMOG: a regional peace force

[...] From its initial role as the body responsible for monitoring compliance with the embargo, ECOMOG became a regional peacekeeping force whose activities came within the scope of the peaceful settlement of disputes pursuant to Chapter VI and Article 52 of the Charter. However, it soon resorted to using force – without Security Council authorization. Was that [...] a breach of international law?

Following the breakdown of the peace agreement signed in Conakry on 23 October 1997 between Major Koroma, who was then in power, and ECOWAS, the latter decided to strengthen ECOMOG with new contingents, which entered Sierra Leone territory in February 1998. The peace agreement had provided for ECOMOG to be present in the country to supervise compliance with the ceasefire, to deal with the disarmament, demobilization and reintegration of combatants, and to monitor humanitarian assistance. That step was taken without any Security Council authorization whatsoever. [...]

In accordance with a bilateral defence agreement signed with President Kabbah, troops from Nigeria had already been in Sierra Leone before that date and had tried to topple the new Koroma government the day after the *coup d'État* in May 1997. The Nigerian troops soon began to act in the name of ECOMOG. Although it is accurate to say that, as from February 1998, a regional peacekeeping operation was deployed in Sierra Leone, during the

period extending from the *coup d'État* of May 1997 to February 1998, the status of the ECOMOG and Nigerian forces in Sierra Leone was very controversial. President Kabbah said that he had asked Nigeria to intervene by virtue of the bilateral defence agreement with that country whereas Nigeria maintained that “it had launched its offensive under the ECOMOG banner”. However, ECOMOG, which the Security Council had authorized solely to monitor the embargo, had never been given such a mandate. In fact, ECOMOG, which was set up in 1991 to intervene in Liberia, had always been an instrument of Nigerian foreign policy. [...]

In its Resolution 1162 of 17 April 1998, the Security Council commended “ECOWAS and ECOMOG on the important role they [were] playing in Sierra Leone in support of ... the restoration of peace and security”. In similar terms, it commended ECOMOG on 20 August 1999 for the “outstanding contribution that it [had] made to the restoration of security and stability in Sierra Leone, the protection of civilians and the promotion of a peaceful settlement of the conflict”. The Security Council thus avoided confronting the issue of ECOMOG’s true nature: it was easier to consider it a classic force concerned with the peaceful settlement of disputes, where the basic principle governing relations between the universal organisation and the regional organisations is coordination (Article 52 of the Charter), than to make it subordinate to the Security Council (Article 53 of the Charter).

Once President Kabbah’s government had been reinstated as a result of ECOMOG’s operations, the Security Council decided to deploy “a United Nations military liaison group and security advisers“ which was to be coordinated with the Sierra Leone government and ECOMOG. The United Nations thus acknowledged the essential role of ECOWAS and ECOMOG. However, in July 1998 the Security Council decided to set up its own peacekeeping operation.

3) UN intervention: UNAMSIL

a) The mandate

[Source: UNAMSIL mandate, United Nations, available on <http://www.un.org> ^[6]]

**According to Security Council resolution 1270 (1999) of 22 October 1999,
UNAMSIL has the following mandate:**

- To cooperate with the Government of Sierra Leone and the other parties to the Peace Agreement in the implementation of the Agreement
- To assist the Government of Sierra Leone in the implementation of the disarmament, demobilization and reintegration plan
- To that end, to establish a presence at key locations throughout the territory of Sierra Leone, including at disarmament/reception centres and demobilization centres
- To ensure the security and freedom of movement of United Nations personnel
- To monitor adherence to the ceasefire in accordance with the ceasefire agreement of 18 May 1999 [...] through the structures provided for therein
- To encourage the parties to create confidence-building mechanisms and support their functioning
- To facilitate the delivery of humanitarian assistance [...]

**According to Security Council resolution 1289 (2000) of 7 February 2000
(under Chapter VII of the Charter of the United Nations),
the mandate has been revised to include the following tasks:**

- To provide security at key locations and Government buildings, in particular in Freetown, important intersections and major airports, including Lungi airport
- To facilitate the free flow of people, goods and humanitarian assistance along specified thoroughfares
- To provide security in and at all sites of the disarmament, demobilization and reintegration programme
- To coordinate with and assist, the Sierra Leone law enforcement authorities in the

discharge of their responsibilities

- To guard weapons, ammunition and other military equipment collected from ex-combatants and to assist in their subsequent disposal or destruction

The Council authorized UNAMSIL to take the necessary action to fulfil those additional tasks, and affirmed that, in the discharge of its mandate, UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone.

b) The concept of operations

[Source: United Nations, S/2001/228, Ninth report of the Secretary-General on the United Nations Mission in Sierra Leone, 14 March 2001; available on <http://www.un.org>
[6]]

[...]

VI. Concept of Operations

57. UNAMSIL has revised its concept of operations, [...] to take into account the ABUJA Ceasefire Agreement, [10 November 2000] the changes in the Mission's military structure and the circumstances on the ground. [...]
58. The main objectives of UNAMSIL in Sierra Leone remain to assist the efforts of the Government of Sierra Leone to extend its authority, restore law and order and stabilize the situation progressively throughout the entire country, and to assist in the promotion of a political process which should lead to a renewed disarmament, demobilization and reintegration programme and the holding, in due course, of free and fair elections.
59. The Mission's updated concept of operations integrates military and civilian aspects

and envisages the deployment, in successive phases, into RUF-controlled areas of UNAMSIL troops, United Nations civil affairs, civilian police and human rights personnel, representatives of humanitarian agencies, and governmental personnel and assets to establish and consolidate State authority and basic services in these areas. [...]

60. In its movement and deployment forward, UNAMSIL will continue to project the necessary military strength and determination to deter any attempt to use force against United Nations and its mandate in Sierra Leone. The mission's rules of engagement allow it to respond robustly to any attack or threat of attack, including, if necessary, in a pre-emptive manner. [...]

4) Intervention by foreign forces: the United Kingdom

[Source: Rémy Ourdan, "La Grande-Bretagne mène en Sierra Leone sa plus vaste opération militaire depuis les Malouines", in *Le Monde*, 25 May 2000. Original in French, unofficial translation.]

The United Kingdom in Sierra Leone - its largest military operation since the Falklands

[...] The British military operation in Sierra Leone has now taken Her Majesty's soldiers beyond the scope of their official mission, which was to evacuate European Union and Commonwealth citizens. [...] The fact that a sense of security has been restored in the capital of Sierra Leone is clearly due to "Operation Palliser" having been more than an airlift to Dakar. The operation has now become the hub of an outright political and military counter-attack against the Revolutionary United Front (RUF) rebels.

The 800 British soldiers first secured Lungi airport and the Aberdeen peninsula, the location of the Mammy Yoko heliport and United Nations headquarters, but from the moment they arrived, the impression they conveyed was that of being set to defend Freetown against rebel offensives. Patrols were extended to every part of the capital and

military “advisers” seconded to the Sierra Leone army (SLA) ensured that pro-government forces were deployed in such a way as to best defend the city.

Contracted “advisers”

An attack by some 40 rebels 15 kilometres outside of Lungi then thrust the paratroopers into a new phase of their military operation. They retaliated in an act of self-defence but, according to a military source, they also pursued their attackers. Helicopters flew over and lit up the retreating RUF combatants, allowing them to be picked out easily by the paratroopers as they made their way along the road. British soldiers allegedly killed about 15 rebels that night.

Another aspect of British intervention is the assistance rendered, on the one hand, by army instructors to the Sierra Leone forces and, on the other, by the paratrooper battalion to the United Nations forces. [...] The pro-government coalition, made up of soldiers loyal to President Ahmad Tejan Kabbah, traditional Kamajor hunters led by Sam Hinga Norman and former rebels headed by Johnny Paul Koroma, is at the forefront of the battle. The fighters have obviously been supplied with automatic rifles, mortars and munitions by the United Kingdom. Within the SLA hierarchy, British officers are quietly seconding their Sierra Leone colleagues. [...]

Once the battle is over, the United Nations forces go back to the positions that they abandoned after Blue Helmets were taken captive and the RUF rebels advanced. Once again British officers ensure that the men are deployed smoothly, give advice on how to set up more effective observation posts and supply communication equipment.

The naturally secret operations of the SAS (Special Air Service) commandos should not be overlooked. There are said to be 120 of these elite British army combatants deployed beyond the front lines in Sierra Leone, deep in the heavily forested and diamond-producing

regions under RUF control. [...]

2. Violations of International Humanitarian Law

A. Violations of International Humanitarian Law by the parties to the conflict in Sierra Leone

[Source: Sierra Leone, Annual Report 2001, Amnesty International; available on <http://www.amnesty.org> ^[7]]

[...]

Abuses by rebel forces

In early 2000 human rights abuses against civilians – abduction, rape, looting and destruction of villages – by rebel forces occurred almost daily in Northern Province, [...]. From May deliberate and arbitrary killings, mutilation, rape, abduction and forced labour and recruitment increased. Aid workers were attacked and forced to withdraw from rebel-held areas.

[...] [R]efugees forced to return from Guinea were attacked and pressured to join RUF forces in Kambia District.

A group of renegade soldiers known as the West Side Boys terrorized civilians through killings, rape, torture, abduction and ambushes along major roads in the Occra Hills area east of Freetown until September, when their leader was captured and many surrendered or were arrested.

Deliberate and arbitrary killings

Large numbers of civilians were killed by rebel forces from May, particularly in areas around Port Loko, Lunsar, Makeni and Magburaka.

On 8 May RUF members killed about 20 people and injured dozens of others when they fired on some 30,000 people protesting outside Foday Sankoh's residence in Freetown against RUF attacks on UNAMSIL. [...]

In early September rebel forces attacked Guinean villages close to the Sierra Leone border, killing Sierra Leonean refugees.

Torture, including mutilations and rape

Many civilians had limbs deliberately amputated; others had the letters RUF carved into their flesh. Abduction of girls and women, rape and sexual slavery were systematic and widespread. Most victims had contracted sexually transmitted diseases and many became pregnant. [...]

Civilians near Mongeri who escaped from six months' captivity in October had been used as forced labour and repeatedly beaten and threatened with death; women had been repeatedly raped. [...]

Human rights violations by government forces

Members of the CDF and the Sierra Leone Army were responsible for summary executions, arbitrary detention and torture of captured or suspected rebels and recruitment and use of child combatants. The CDF, operating in Eastern and Southern Provinces, became increasingly undisciplined and usurped police authority. Civilians were also arbitrarily detained at CDF headquarters, including in Bo, Koribundu and Kenema. Ill-treatment and extortion of money and property at checkpoints were common and several incidents of rape, previously rare, were reported. [...]

A detainee captured by the CDF in May and held in Bo lost an ear and suffered cuts to his back after being beaten with a bayonet; others reported being stripped and beaten with sticks until they bled.

In September, two men were killed and a third injured when they resisted recruitment by the CDF. [...]

Civilian casualties from aerial attacks

In May and June, attacks by government forces from a helicopter gunship on suspected rebel positions in Northern Province resulted in up to 30 civilian deaths and many other casualties. Attacks often appeared to be indiscriminate and undertaken without adequate measures to safeguard civilians. Although warning leaflets were dropped in Makeni and Magburaka, attacks followed shortly afterwards. Civilians fleeing Makeni, however, said that they were forced out of their homes by rebel forces as the gunship flew overhead. At least 14 civilians were killed in Makeni and at least six were killed in an early afternoon attack on the market in Magburaka.

Child combatants

The resumption of hostilities in May halted demobilization of child combatants, leaving several thousand still to be released by rebel forces, and resulted in further recruitment.

RUF forces continued to abduct and forcibly recruit children in Northern Province. Recruitment of children by the CDF also continued in Southern Province, [...]. In May about 25 per cent of combatants fighting with government forces near Masiaka were observed to be under 18, some as young as seven. The government reiterated that 18 was the minimum age for recruitment and instructed the acting Chief of Defence Staff to ensure demobilization of all those under the age of 18. [...]

B. Violations of International Humanitarian Law by ECOMOG

[Source: Francis Kpatinde, “Les ‘casques blancs’ aussi ...”, in *Jeune Afrique*, 26 February 1999. Original in French, unofficial translation.]

“White Helmets” too

Civilians are treated little better by ECOMOG soldiers than by Revolutionary United Front (RUF) rebels. [...] Since the beginning of the year, ECOMOG members have repeatedly attacked, raped, beaten and summarily executed civilians alleged to be rebels or rebel sympathizers. This was disclosed in an unpublished United Nations report presented by the Secretary-General, Kofi Annan, to a closed meeting of the Security Council on 11 February. Although human rights violations by ECOMOG and the civil defence forces [...] have not matched the scale of the RUF’s campaign of terror, they are nonetheless, as the text underlines, “totally unacceptable.” The report came from the United Nations Observer Mission in Sierra Leone [UNOMSIL, which was succeeded by UNAMSIL in October 1999], which was sent by the Security Council to Sierra Leone in June 1998 [...]. The United Nations observers, who collected eyewitness accounts from around 100 people in Freetown, also report ECOMOG’s mishandling of civilians at checkpoints. People suspected of rebel allegiance – including women and children – are stripped naked in public and sometimes whipped. Several witnesses said that they saw Nigerian soldiers execute three people after cursory questioning. Similarly, an eight-year-old boy spotted holding a gun that he had picked up off the ground was shot down on the spot. Witnesses also claimed that ECOMOG had shot women and children without any kind of trial and, on 12 January, killed around 20 patients at Connaught Hospital in Freetown. The same report claims that [...] Nigerian soldiers indiscriminately shelled working-class districts, deliberately opened fire on civilians being used by the rebels as human shields and mistreated humanitarian staff – notably from the Red Cross – who were trying to assist people. The Nigerian General Timothy Shelpidi, who is in charge of the West African contingent of 15,000 men, most of whom are Nigerians, initially denied the facts before admitting, on 17 February, that around 100 of his men had been placed in custody pending

questioning in connection with atrocities committed against the civilian population. [...] Since RUF combatants infiltrated Freetown in January, humanitarian organizations have reported witnessing several cases of what were clearly “punitive raids” organized by ECOMOG soldiers and carried out under the indifferent gaze or even with the approval of their superior officers. [...] When things are relatively calm, the soldiers of the West African force – comprising contingents from Nigeria, Ghana and Guinea – hold the civilian population to ransom. When hostilities begin, they behave like a gang of ruffians.

C. Analysis of the humanitarian situation in Sierra Leone

[Source: PRATT David, *Sierra Leone: Danger and Opportunity in a Regional Conflict. Report to Canada’s Minister of Foreign Affairs*, July 27 2001.]

[...]

The Humanitarian Situation

The general humanitarian situation in Sierra Leone is serious and likely to get worse before it gets better. Officially, the humanitarian community is dealing with a caseload of over 400,000 IDPs, but this represents only a small proportion of the total. Estimates of IDPs living on their own or with host families run as high as two million, almost half the population. [...] The caseload for humanitarian agencies has risen since the fighting in Guinea. As of September 2000, an estimated 57,000 Sierra Leonean refugees have returned to the country, although not to their areas of origin. The actual numbers may be much higher.

The organized camps and host communities in which IDPs live are crowded and unsanitary. Morbidity and mortality rates are high, shelter and all forms of infrastructure are abysmal, food rations are inadequate and many people are now in their tenth year of exile from their homes. [...] UN agencies and NGOs work with the most rudimentary

budgets to provide food, shelter, emergency health services, child protection, tracing assistance and other services.

People desperately want to go home, and as new areas are declared “safe”, this will begin to present new problems. Once an area is declared safe, it is intended that IDPs will be resettled and their food allowance will stop. [...]

In the immediate future, therefore, the demand for food assistance will remain high regardless of weather [*sic*] people return home or not. If they do, shelter will be one of the most serious problems with an estimated 80 per cent of housing damaged or destroyed in rebel-controlled areas. The Office for the Coordination of Humanitarian Affairs (OCHA) estimates that out of 439,000 farming households nationwide, 331,200 are vulnerable and require emergency agricultural assistance.

One of the biggest short-term requirements will be assistance for the building or rebuilding of health infrastructure. Health services are poor or non-existent in large parts of the country and even hospitals in major towns outside rebel-held areas are seriously under-equipped. [...]

Progress in the peace process may give the impression that the humanitarian situation is easing. With the onset of the rainy season and the possible return of more than 100,000 refugees from Guinea, however, the situation is likely to become much worse through 2001. In fact the refugee situation in Guinea remains precarious. Cote d’Ivoire has also been affected. In mid-June 2001, some 2,000 new Liberian refugees arrived at Danane near the Liberian border. [...]

D. Violations of International Humanitarian Law in Liberia

[Source: *Liberia: Killings, torture and rape continue in Lofa County*, Amnesty

International, London, 1 August 2001; AI Index: AFR 34/008/2001; available on <http://www.amnesty.org> [71]

Liberia: Killings, torture and rape continue in Lofa County

Introduction

Widespread and gross abuses against unarmed civilians, including women and children, continue unabated in Lofa County, the northern region of Liberia bordering Guinea and Sierra Leone. There has been armed conflict in the area since renewed incursions by armed opposition groups into Lofa County from Guinea in July 2000. Hundreds of civilians have been victims of killings, arbitrary detention, torture and rape and the number of civilians fleeing fighting – estimated to be tens of thousands – has now reached an unprecedented level.

Testimonies and reports gathered by Amnesty International suggest that since late April 2001, government security forces, especially the Anti-Terrorist Unit (ATU), a special military unit [...], have extrajudicially executed, arbitrarily detained or tortured – including by the rape of women and girls – more than 200 civilians suspected of supporting armed opposition groups. Civilians fleeing Lofa County have often been prevented from moving to safer areas by the security forces, on suspicion that dissidents were among them.

Armed opposition combatants, reportedly based in Guinea and belonging to the Liberians United for Reconciliation and Democracy (LURD), have also been responsible for abuses in recent months. They have reportedly carried out summary executions, torture and rape of civilians suspected of collaborating with the Liberian security forces. [...]

E. Violations of International Humanitarian Law in Guinea

[Source: in *Fraternité Matin*, Abidjan, 2 October 2000. Original in French, unofficial

translation.]

Guinea: 70 die in series of armed attacks on Liberian and Sierra Leonean borders

A police source in Conakry has reported that almost 70 people were killed in two “rebel” attacks carried out on Friday and Saturday in south-west and south-east Guinea. According to the police, some 60 people were killed in one “rebel” attack in N’delenou, a village near Macenta (south-east Guinea) near the Liberian border, in the night from Friday to Saturday. And according to information from a spokesman for the President of the Republic of Guinea, about 10 people were killed in an attack on Farmoreya [...] (in south-west Guinea) close to the Sierra Leone border on Saturday. The fighting in Farmoreya was “particularly vicious”, the spokesman said, adding that the Guinean army was immediately dispatched to the area and succeeded in “restoring order” in the course of the afternoon. “Calm now reigns”, he said. “But the attackers, who came from Sierra Leone, devastated the sub-prefecture, lighting many fires.” [...] Most of the victims were civilians, the spokesman said, but at least three members of the Guinean armed forces were also reported to have been killed and several others wounded. [...]

3. Towards repression and reconciliation

A. Statute of the Special Court for Sierra Leone

[Source: United Nations, S/2000/915, *Report of the Secretary-General on the establishment of a Special Court for Sierra Leone*, 4 October 2000; available on <http://www.un.org> ^[6]]

Statute of the Special Court for Sierra Leone

Having been established by an Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000, the Special Court for Sierra Leone (hereinafter “the Special Court”) shall function in accordance with the provisions of the present Statute.

Article 1: Competence of the Special Court

The Special Court shall have the power to prosecute persons most responsible for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

Article 2: Crimes against humanity

The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:

- a. Murder;
- b. Extermination;
- c. Enslavement;
- d. Deportation;
- e. Imprisonment;
- f. Torture;
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;
- h. Persecution on political, racial, ethnic or religious grounds;
- i. Other inhumane acts.

Article 3: Violations of article 3 common to the Geneva Conventions and of Additional Protocol II

The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8

June 1977. These violations shall include:

- a. Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- b. Collective punishments;
- c. Taking of hostages;
- d. Acts of terrorism;
- e. Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- f. Pillage;
- g. The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- h. Threats to commit any of the foregoing acts.

Article 4: Other serious violations of international humanitarian law

The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:

- a. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- b. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- c. Abduction and forced recruitment of children under the age of 15 years into armed forces or groups for the purpose of using them to participate actively in hostilities.

Article 5: Crimes under Sierra Leonean law [...]

Article 6: Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted

in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.

2. The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
 3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
 4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.
- [...]

Article 7: Jurisdiction over persons of 15 years of age

1. The Special Court shall have jurisdiction over persons who were 15 years of age at the time of the alleged commission of the crime.
2. At all stages of the proceedings, including investigation, prosecution and adjudication, an accused below the age of 18 (hereinafter “a juvenile offender”) shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society.
3. In a trial of a juvenile offender, the Special Court shall:
 - a. Consider, as a priority, the release of the juvenile, unless his or her safety and security requires that the juvenile offender be placed under close supervision or in a remand home; detention pending trial shall be used as a measure of last resort;
 - b. Constitute a “Juvenile Chamber” composed of at least one sitting judge and one alternate judge possessing the required qualifications and experience in juvenile justice;
 - c. Order the separation of his or her trial, if jointly accused with adults;

- d. Provide the juvenile with the legal, social and any other assistance in the preparation and presentation of his or her defence, including the participation in legal proceedings of the juvenile offender's parent or legal guardian;
- e. Provide protective measures to ensure the privacy of the juvenile; such measures shall include, but not be limited to, the protection of the juvenile's identity, or the conduct of in camera proceedings;
- f. In the disposition of his or her case, order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

Article 8: Concurrent jurisdiction

1. The Special Court and the national courts of Sierra Leone shall have concurrent jurisdiction.
2. The Special Court shall have primacy over the national courts of Sierra Leone. At any stage of the procedure, the Special Court may formally request a national court to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence.

Article 9: Non bis in idem

1. No person shall be tried before a national court of Sierra Leone for acts for which he or she has already been tried by the Special Court.
2. A person who has been tried by a national court for the acts referred to in articles 2 and 4 of the present Statute may be subsequently tried by the Special Court if:
 - a. The act for which he or she was tried was characterized as an ordinary crime; or
 - b. The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted.
3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Special Court shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already

been served.

Article 10: Amnesty

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

B. Eleventh report of the Secretary General on the United Nations Mission in Sierra Leone

[Source: United Nations, S/2001/857, *Eleventh report of the Secretary-General on the United Nations Mission in Sierra Leone*, 7 September 2001; available on <http://www.un.org> ^[6]]

[...]

Truth and Reconciliation Commission

44. UNAMSIL continued to engage the RUF leadership on the issue of the Truth and Reconciliation Commission. A sensitization campaign in the Northern Province was launched at Makeni on 2 August 2001. In general, RUF appears receptive to the Truth and Reconciliation Commission. Nevertheless, they express concern over the independence of the Commission and the relationship between it and the Special Court.
45. On 1 August 2001, the United Nations High Commissioner for Human Rights addressed a letter to potential donors with a preliminary budget and information on the Truth and Reconciliation Commission. According to the initial estimates, the first year of operation of the Commission would cost approximately \$10 million. Currently, the Office of the High Commissioner is working with UNAMSIL to revise the preliminary budget prior to the formal launching of a special appeal by the High Commissioner. The High Commissioner is also considering the establishment of an interim secretariat for the Truth and Reconciliation Commission, which will initially function under the auspices of UNAMSIL. In the meantime, the selection process of

international commissioners has made progress. The High Commissioner will soon forward her recommendations to the selection panel. Regarding the national commissioners, the Advisory Committee to the Special Representative of the Secretary-General met recently and submitted a shortlist of nominees for his consideration.

Special Court

46. Following the exchange of communications between the Secretary-General and the Security Council (S/2001/693 and S/2001/722), in which the Council concurred with the recommendation to commence the operation of the Special Court, the Secretariat, on 23 July 2001, sent a letter to the countries that had made pledges for the first year of operation of the Special Court, and requested that they deposit their contributions with the United Nations within 30 days. Of a total amount pledged of \$15,492,500, only a third had been received by the end of the 30-day period.
47. When sufficient contributions have been received to permit the operation of the Trust Fund, the Secretariat will dispatch a planning mission to Sierra Leone to discuss with the Government the practical arrangements for the establishment of the Special Court.
[...]
48. The Revolutionary United Front has indicated that, while it will not stand in the way of the Court's establishment, it expects that the Court will be impartial and that it will try all those who have been accused of atrocities during the period in question, not only members of RUF. The Government, for its part, has continued to express its full support for the Court. However, on 20 August the Government sent a letter to the Legal Counsel of the United Nations in which it requested that the temporal jurisdiction of the Court be extended to cover the period since March 1991, when the conflict started. The draft statute and the draft agreement had provided that the temporal jurisdiction would begin on 30 November 1996.

C. Balancing peace and justice in Sierra Leone

[Source: PARLEVLIET Michelle, "Truth Commissions in Africa: the Non-case of Namibia and the Emerging Case of Sierra Leone", in *International Law Forum*, vol. 2,

Balancing peace and justice in Sierra Leone

[...] [T]he Lomé Peace Agreement in July 1999 [...] granted free and absolute pardon and reprieve from prosecution to the leader of the RUF, Foday Sankoh. [...] It also provided for the establishment of a Truth and Reconciliation Commission (TRC) to address impunity, break the cycle of violence, establish what happened and provide a forum for those affected and involved to tell their stories. [...] [T]he amnesty provision has been widely criticised. Even the UN seemed [...] embarrassed about it: when signing the Agreement, Francis Okelo, the Secretary-General's Special Representative for Sierra Leone, added a disclaimer that the UN did not consider the amnesty to be applicable to genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. [...]

The Office of the United Nations High Commissioner for Human Rights (UNOHCHR) has played a pivotal role [...]. It is the first time that the UNHCHR has been so closely involved in setting up a truth commission. [...] The office [of the High Commissioner Mary Robinson] assisted in preparing the legislation for the Commission. [...]

In February [2000], the Parliament of Sierra Leone adopted the *Truth and Reconciliation Commission Act*. [...] The objectives of the Commission [are]: “to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict; to address impunity; to respond to the needs of victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered” The period under investigation is from the beginning of the war in March 1991 to the signing of the Lomé Agreement. [...]

It is the first time that a truth commission mandate explicitly refers to “violations of international humanitarian law”. This was probably done to ensure that acts by state actors

as well as non-state actors fall within the mandate of the Commission. [...]

It [...] remains to be seen whether the TRC will be able to draw in perpetrators to any large extent. No immediate incentive exists for them to participate in the process given the blanket amnesty already granted. [...]

D. The amnesty clause in the Lomé peace agreement

[Source: United Nations, S/2000/915, *Report of the Secretary-General on the establishment of a Special Court for Sierra Leone*, 4 October 2000; available on <http://www.un.org> ^[6]]

[...]

1. The amnesty clause in the Lomé Peace Agreement

22. While recognizing that amnesty is an accepted legal concept and a gesture of peace and reconciliation at the end of a civil war or an internal armed conflict, the United Nations has consistently maintained the position that amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law.
23. At the time of the signature of the Lomé Peace Agreement, the Special Representative of the Secretary-General for Sierra Leone was instructed to append to his signature on behalf of the United Nations a disclaimer to the effect that the amnesty provision contained in article IX of the Agreement (“absolute and free pardon”) shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. This reservation is recalled by the Security Council in a preambular paragraph of resolution 1315 (2000).
24. In the negotiations on the Statute of the Special Court, the Government of Sierra Leone concurred with the position of the United Nations and agreed to the inclusion of an amnesty clause which would read as follows:

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

Discussion

1. Multiple actors

1. How would you qualify the fighting in Sierra Leone between:
 - the Sierra Leone government army and the RUF rebels?
 - the Kamajors and the RUF?
 - UNAMSIL soldiers and the RUF?
 - the mercenaries and the RUF?
 - ECOMOG soldiers and the RUF?
 - the British army and the RUF?
2. Should the conflict be divided into different parts depending on the nature of the armed groups? Even at the risk of having different qualifications depending on the actors? What would be the consequences, under IHL, of qualifying the same conflict as international in some respects and non-international in other respects? Is it possible (and desirable) for people to benefit from a specific status if they are in the hands of one party to the conflict but not if they are in the hands of a different party?
3. In each of the situations enumerated in question 1, what would be the status of possible detainees? What about UNAMSIL members in the hands of the RUF? Is hostage-taking a violation of IHL? Is this valid for combatants taken as “hostages”? If the members of two different groups are held (for example) by the RUF, can they have different statuses? (GC I-IV, Art. 3 ^[8]; GC III, Art. 4 ^[9]; ICC Statute, Art. 8 ^[10]; See The International Criminal Court ^[11])
4. How would you qualify the conflict in Liberia between:

- the government forces (of Samuel Doe) and the NPFL?
 - the government forces and those of Prince Johnson?
 - the NPFL as the new government and the other armed groups (ULIMO, LPC)?
 - Liberian rebel groups or factions fighting between themselves?
5. What if the fighting takes place in part or entirely outside Liberian territory (in Guinea, for example)?
 6. Can ULIMO be held responsible for acts committed by Doe's governmental army, since it was created by former members of the army loyal to Doe? Can Charles Taylor's government be held responsible for acts committed by the NPFL as a rebel group? [See International Law Commission, Articles on State Responsibility [Part A., Art. 10(1)] ^[12]]
 7. How would you qualify the fighting in Guinea between:
 - the government forces and mutineers?
 - the government forces and Guinean rebels of the RFDG?
 - the government forces and foreign rebels (RUF, ULIMO)?
 - Sierra Leone's Kamajors and the mutineers or members of the RFDG?
 - the Guinean "volunteers" and the mutineers, the RFDG or foreign rebels?
 8. How would you qualify fighting involving the governmental forces of Liberia, Sierra Leone or Guinea outside their territory:
 - if their attacks are aimed at rebel forces of the country where the fighting takes place, for example between the Guinean government and the RUF on the territory of Sierra Leone?
 - if their attacks are aimed at rebel forces of the attacking forces' country that are based on foreign territory, for example attacks by the Liberian government on ULIMO in Guinea?
 9. What is the position of mercenaries in IHL? In the IHL of non-international armed

conflicts? Is the use of mercenaries authorized or not under international law (for a State, the United Nations, rebel forces)? What would be their status if they were captured? Are they bound by the rules of IHL? Are the staff of private security agencies hired, for example, to protect mining operations, mercenaries? If they use armed force to fulfil their mission? In terms of criminal and international responsibility, who can be held responsible for acts committed by mercenaries: the State and members of the government that used the mercenaries, such as Sierra Leone and the United Kingdom, the leaders of companies employing mercenaries, the mining companies who used the mercenaries? [See OAU Convention of 1977 ^[13], United Nations Convention of 1989 ^[14], available on <http://www.icrc.org/ihl> ^[15], and The Issue of Mercenaries; P I, Art. 47 ^[16]]

10. The head of the Kamajor militia, Samuel Hinga Norman, is the Deputy Minister of Defence in Sierra Leone. How could this affect IHL (qualification of the conflict, applicable law, State responsibility, etc.)?
11. Are ECOMOG forces bound by IHL? As Nigerian soldiers make up the bulk of the force, can ECOMOG be equated with the Nigerian army? What would be the consequences of doing so? If the Security Council authorized armed intervention by ECOMOG, what would be the consequences in terms of the application of IHL and responsibility?
12. Are UN forces, in this case UNAMSIL, bound by IHL? Discuss the provisions of IHL that are specific to UN forces. [See Convention on the Safety of UN Personnel; ICC Statute, Art. 8 ^[17]; See The International Criminal Court ^[11], and UN, Guidelines for UN Forces ^[18]]
13. What would be the status of members of the British Special Air Service (SAS) under IHL? What would be the legal consequences of fighting between the SAS and the RUF? In case of capture? Could the SAS members be qualified as spies? What rules of IHL are applicable to spies? Are they applicable if the conflict is qualified as non-international? (GC IV, Art. 5 ^[19]; P I, Art. 46 ^[20])

2. Violations of International Humanitarian Law

1. Are the abuses listed in these documents banned by IHL? Are they also criminalized? Can we talk about crimes against humanity? About genocide? Are the facts described

criminalized in the same way in the law of international armed conflicts and that of non-international armed conflicts? Is this distinction of importance for the qualification of crimes against humanity and genocide?

2. Are these bans and/or this criminal liability part of customary law or treaty-based law?
3. In this instance, do the government's aerial attacks violate IHL? What measures should be taken before launching an attack? Is dropping pamphlets sufficient? Can the rebels be held (partially) accountable? What does IHL say about "human shields"? (GC IV, Art. 28 [21]; P I, Arts 51 [22], 57 [23] and 58 [24]; ICC Statute, Art. 8 [10]; See The International Criminal Court [11])
4. What does IHL say about "child soldiers"? What is the age limit for recruitment into the armed forces? Are there any specific provisions in IHL that protect all children? Is there a ban on killing a child even if it is carrying weapons? And if the child is part of an armed group and openly carrying weapons? (P I, Art. 77 [25]; P II, Art. 4 [26]; See 1989 Convention on the Rights of the Child [27] and Optional Protocol to the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict [28]; ILO Convention No. 182, available on <http://www.ilo.org> [29]; ICC Statute, Art. 8 [10])
5. Are the abuses inflicted on Red Cross humanitarian personnel banned/criminalized? Does Red Cross personnel benefit from additional protection in comparison to other humanitarian workers? (GC I-IV, Arts 9 [30]/9 [31]/9 [32]/10 [33] respectively; GC III, Art. 122 [34]; GC IV, Art. 142 [35]; P I, Arts 8 [36], 17 [37], 18 [38], 38 [39], 71 [40] and 81 [41]; P II, Arts 9 [42], 12 [43] and 18 [44])
6. What is the difference between the "internally displaced" and refugees? Are they protected by IHL? Are the camps of internally displaced persons and refugees specifically protected? What if they shelter members of armed groups? Do the internally displaced and refugees have a specific right to humanitarian aid? What obligations do the parties to the conflict have in regard to them? Can civilians be prevented from fleeing the conflict? Can they be forced to flee? (GC IV, Arts 44 [45] and 48 [46]; P I, Arts 58 [24] and 73 [47]; P II, Art. 17 [48])
7. Is the destruction of a sub-prefecture by Sierra Leonean rebels banned/criminalized by IHL? Is the sub-prefecture a military objective? What are the criteria defining a military objective? Is the definition applicable in non-international armed conflicts? Is

this latter qualification possible even though borders were crossed in this case? (P I, Art. 52 ^[49])

3. Towards repression and reconciliation

1. What are the differences between the Special Court for Sierra Leone, the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda and the International Criminal Court?
2. Is the Special Court's lack of jurisdiction over crimes committed before 30 September 1996 acceptable? Does Article 1 of its Statute put an end to all possibility of prosecuting serious violations committed before this date? Will the International Criminal Court be able to try the suspected perpetrators of these crimes? Is there a statute of limitations for breaches of IHL? [See UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 26 November 1968 ^[50]; ICC Statute, Arts 11 ^[51] and 29 ^[52]; See The International Criminal Court ^[11]]
3. Art. 2 of the Special Court's Statute ^[53], on crimes against humanity, uses the words "widespread or systematic attack", but the French version uses "attaque généralisée et systématique". Art. 7 of the ICC Statute ^[54] uses the words "widespread or systematic attack". Does this difference change the provision's scope? Is one version preferable to the other?
4. Is Art. 4(c) of the Statute designed for children who willingly took up weapons? Is the voluntary enrolment of children under the age of 15 legal? What does Art. 3 of the Optional Protocol to the Convention on the Rights of the Child say about this [See Optional Protocol to the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict ^[28]]?
5. Is the Special Court competent to judge foreign forces (Liberian, Nigerian or others) who committed violations on the territory of Sierra Leone? Does it have jurisdiction to prosecute crimes committed, for example, by the RUF in Guinea?
6. If Foday Sankoh (deceased in July 2003) had to appear before the court, would he have been able to invoke the amnesty afforded to him in the 1999 Lomé Agreement? Is an amnesty acceptable in IHL? (P II, Art. 6 ^[55])
7. Is it not contradictory to have both the Truth and Reconciliation Commission and the

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=732D7EA50DF1A5ECC12563CD>

[22]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4BEBD9920AE0AEAEC12563CD>

[23]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=50FB5579FB098FAAC12563CD>

[24]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=C995BF5C5BCFB0E2C12563CD>

[25]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8F7D6B2DEE119FBAC12563CD>

[26]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F9CBD575D47CA6C8C12563CD>

[27] <https://www.icrc.org/ihl/INTRO/540?OpenDocument>

[28] <http://www.icrc.org/ihl.nsf/FULL/595>

[29] <http://www.ilo.org>

[30]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=200E2B4090502A4AC12563CD0>

[31]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=CC0363215F494314C12563CD00>

[32]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=D999735D6309998BC12563CD00>

[33]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=1855276F9F74E437C12563CD00>

[34]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=D5DB08032EF1E670C12563CD00>

[35]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6C28A7413D651828C12563CD00>

[36]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F8579DB5D12F282FC12563CD00>

[37]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=2AC10852C781CE9BC12563CD00>

[38]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=0067C552E5E428C4C12563CD00>

[39]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=1FCA9F6DD470F5A9C12563CD00>

[40]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=B67EDFC718BF74E3C12563CD00>

[41]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=063D6AD8E9D05433C12563CD0>

[42]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=DBB61BF5533D3F52C12563CD0>

[43]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=43EA5AB396FAE400C12563CD0>

[44]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=C97EBA985969303BC12563CD0>

[45]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=9F16FC090F0199F0C12563CD00>

[46]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=A9CC9555B17BBF7CC12563CD0>

[47]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=319C8D02127ADAD2C12563CD0>

[48]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=D1E091435298F4C2C12563CD00>

[49]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F08A9BC78AE360B3C12563CD0>

[50] <https://www.icrc.org/ihl/INTRO/435?OpenDocument>

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