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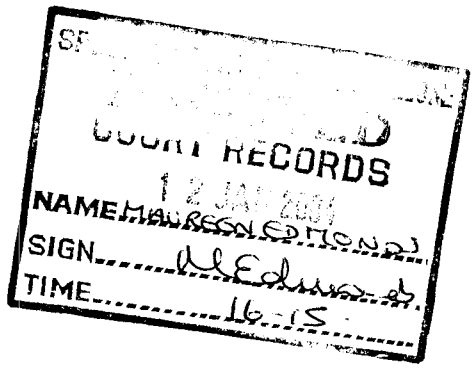
SCSL-2003-11-PT
(3120-3258)

THE APPEALS CHAMBER

Before: Judge Geoffrey Robertson, President
Judge Emmanuel Ayoola
Judge George Gelaga King
Judge Renate Winter
Fifth Judge to be determined

Registrar: Mr. Robin Vincent

Date: 12 January 2004



THE PROSECUTOR

Against

MOININA FOFANA

CASE NO. SCSL-2003-11-PT

ADDITIONAL SUBMISSIONS PERTAINING TO THE PRELIMINARY MOTION BASED ON LACK OF JURISDICTION: THE NATURE OF THE ARMED CONFLICT

Office of the Prosecutor:

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1. On 14 November 2003, the Defence for Mr. Fofana filed its "Preliminary Motion on the Lack of Jurisdiction: Nature of the Armed Conflict" ("Preliminary Motion"). The Prosecution response to this Preliminary Motion was filed on 24 November 2003 ("Prosecution Response"). The Defence filed its reply to the Prosecution Response on 30 November 2003 ("Reply"). On 10 December 2003, the Trial Chamber referred the Preliminary Motion, the Prosecution Response and the Reply to the Appeals Chamber for determination pursuant to Rule 72(E) of the Rules of Procedure and Evidence. The Defence now makes use of its right to file additional written submissions.

2. The Defence will not repeat here the arguments set forth in the Preliminary Motion and Reply. Rather it will identify what appear to be the main points of controversy between Defence and Prosecutor and provide, with regard to these points, further authorities to develop and support its argument. Wherever relevant, it will refer to arguments made in the Preliminary Motion and Reply.

3. The core of the argument of the Defence is that the Special Court lacks subject matter jurisdiction to deal with crimes listed in Articles 3 and 4 of the Statute as the jurisdiction under these provisions is limited to internal armed conflicts. The facts relevant to the armed conflict in Sierra Leone in the period covered by the indictment of the Defendant, however, unquestionably prove that the conflict was of an international nature.

4. In its Response, the Prosecution essentially argues that the nature of the conflict, internal or international, is irrelevant for the Special Court and need not be established in order to find the Defendant culpable. According to the Prosecution, the element of internationality or otherwise does not form a jurisdictional (or other) element of the offences created by Articles 3 and 4 of the Statute.[1]

5. The Prosecution has not contested the Defence argument that the Statute of the Special Court was intended and drafted to apply to an internal armed conflict.[2] The Defence would like to add here that the references in the indictment to the parties as "organised armed

[1] Prosecution Response, para. 5.
[2] Prosecution Response, para. 22.

factions"[3] and to the CDF as "an organised armed force comprising various tribally based traditional hunters", terms commonly used to describe non-state actors, also imply that the conflict was between non-state entities and in consequence a non-international armed conflict.

6. The main issues on which the Prosecution appears to disagree with the Defence are (1) whether the wording of Articles 3 and 4 of the Statute can be read to include or extended to cover customary law prohibitions which apply in international armed conflicts; (2) whether the nature of the conflict is a matter to be proved at this preliminary stage or at the trial; (3) whether the available facts sufficiently attest the international character of the conflict in Sierra Leone.

7. The second point has been effectively addressed in paragraphs 18 to 20 of the Reply, where it is contended that the nature of the conflict affects the power of the Court to try the defendant under Articles 3 and 4 of the Statute, a contention that must necessarily be decided upon before the start of the trial. Reasons of trial-efficiency and rights of the Defendant further dictate that the nature of the conflict be determined in the pre-trial phase. On the two remaining points the Defence deems it appropriate to offer a number of additional submissions.

Articles 3 and 4 of the Statute only apply in non-international conflicts

8. The Prosecution concedes that Common Article 3 and Additional Protocol II apply to non-international armed conflicts. However, it maintains, despite the explicit wording of these instruments to the contrary, that they also apply to international armed conflicts, that the nature of the conflict is therefore irrelevant to the charges, and that the Trial Chamber's jurisdiction over these crimes would be unaffected if it were ultimately to find that the conflict was international in character.[4]

9. The Defence position on these issues has been adequately argued in paragraphs 7 to 14 of the Reply. In summary, the point is that the jurisdiction of the Special Court under Article 3 of the Statute is limited to specifically identified instruments – Common Article 3 and

[3] Paras. 5 and 3 of the Indictment.
[4] Prosecution Response, paras. 10-11.

Additional Protocol II – that expressly apply to internal armed conflict[5]. The Defence concedes that the prohibitions referred to in that article have equivalents in customary law that apply in international armed conflict. However, the Statute does not refer to these, and the Special Court therefore has no jurisdiction to enforce them.

10. The Prosecution's argument only touches upon the *acts* prohibited by Common Article 3, Additional Protocol II, and the relevant parts of Article 8 of the International Criminal Court ("ICC") Statute, without taking into consideration the conditions of applicability of these instruments. It is only when these conditions are fulfilled that the prohibited act constitutes an international crime. The conditions of applicability are an integral part of the crimes and of the instruments in question, and any reference to these prohibitions, as in Article 3 and – implicitly – Article 4 of the Statute, should be understood as a reference to the provisions in their entirety, including elements concerned with their personal, temporal and geographical scope of application. By focussing solely on the acts prohibited by Common Article 3 and the other relevant instruments, the Prosecution betrays a misunderstanding of the distinction which international law makes between international and non-international armed conflicts. International humanitarian law systems applicable to internal and international conflicts are characterised by features distinguishing one situation from the other. The Prosecution ignores the legal system in which the substantive norms are embedded.

11. It would be a major misunderstanding of the humanitarian law system to argue that the humanitarian law body relevant to non-international conflict can be substituted for the humanitarian law body relevant to international conflict. This holds not only for the threshold of applicability, but also for example for the question of protected persons. Different categories of people are protected by Common Article 3 and Additional Protocol II, the grave breaches provisions applicable in international armed conflict, and by the customary law minimum standard applicable in all conflicts.

12. In the *Tadic* case, the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") made an argument similar to the argument of the Prosecution in this case, but then the other way around. It argued that Article 2 of the ICTY Statute, which gives

[5] The legal situation here is comparable to that of the International Tribunal for Rwanda. As the situation in Rwanda is generally considered to be a non-international armed conflict in the sense of Common Article 3 and Additional Protocol II, the Rwanda Statute contains a provision making violations of those *instruments* punishable.

it power to prosecute grave breaches of the Geneva Conventions, was drafted "autonomously".[6] In other words, it needed not refer to the legal system established by these Conventions and the grave breaches provisions could be equally applied in internal conflicts. The purpose of Trial Chamber was - as is undoubtedly the purpose of the Prosecution in the current case - to simplify the subsequent treatment of cases based on Article 2 of by the ICTY. However, the autonomy principle, which would have immediately made it possible to settle the controversy over the nature of the conflict, was rejected by the Appeals Chamber who ruled decisively that the grave breaches provisions could not be taken out of context and enforced irrespective of the conditions of the applicability set out in the conventions.[7]

13. Many of the acts prohibited in the grave breaches provisions are also prohibited under customary international law in various situations and by Common Article 3 in non-international armed conflicts. These prohibitions are expressions of the "general principles of humanitarian law ... accepted by States, and extending to activities which occur in the context of armed conflicts, whether international in character or not" which establish a minimum yardstick of treatment, noted by the International Court of Justice in the *Nicaragua* case and cited by the Prosecution in the Prosecution Response.[8] The Defence acknowledges the existence of these principles and their expression as crimes in a variety of contexts, with differing conditions of applicability. Article 3 of the Statute of the Special Court empowers it to try two categories of these crimes: those set out in Common Article 3 of the Geneva Conventions and those set out in Additional Protocol II, both of which exist only in the context of a non-international conflict. The Court cannot extend its jurisdiction to cover prohibitions of similar acts committed in conflicts which are international in nature.

Evidence as to the nature of the conflict

14. The essential legal question that needs to be resolved is that of the criteria the Special Court should apply in characterising the conflict in Sierra Leone from 1996 onwards as either international or non-international. The legal criteria for establishing the nature of the armed

[6] *See* ICTY Trial Chamber, Prosecutor *v.* Tadic, Decision on the Defence Motion on Jurisdiction, case no. IT-94-1, 10 August 1995, para 49.
[7] *See* ICTY Appeals Chamber, Prosecutor *v.* Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, case no. IT-94-1, 2 October 1995, paras. 79-84.
[8] Prosecution Response, para. 7.

conflict in Sierra Leone have been efficiently addressed in the Preliminary Motion.[9] The Prosecution has not disputed these criteria; rather it has asserted that the factual evidence presented by the Defence is insufficient to prove the fulfilment of the criteria.[10] The legal criteria for determining the international character of an armed conflict are, in brief: (i) participation of two or more states as parties to the conflict (Common Article 2 of the Geneva Conventions); (ii) overall control of two or more states over two or more non-state parties to the conflict; (iii) involvement in the armed conflict of an international or regional organisation in enforcement action, thereby becoming a party to the conflict.

15. There is abundant evidence that the conflict in Sierra Leone from 1996 onwards was international. The international nature of the conflict is caused by both the involvement of Liberia and ECOMOG in the conflict in Sierra Leone between the government of Sierra Leone and the CDF on the one hand, and the RUF and AFRC on the other hand. Liberia internationalised the conflict as it (a) directly participated in the conflict and/or (b) exercised overall control over the RUF and AFRC. The enforcement role of ECOMOG in Sierra Leone also internationalised the conflict (c), as did the overall control ECOMOG and the government of Sierra Leone exercised over the CDF (d).

16. The Preliminary Motion presented some evidence in support of these propositions.[11] As the Prosecution considered this evidence to be insufficient, the Defence will give additional supportive evidence underneath. The Defence will also take the opportunity to further explain the legal criteria that are to be fulfilled in order to qualify the conflict in Sierra Leone as international.

Ad (a): Direct participation of Liberia in the conflict in Sierra Leone

17. The first criterion to characterise the conflict, as identified by the Appeals Chamber of the ICTY in the Tadic Interlocutory Appeal Decision in 1995, is "direct participation" of a state in the conflict on the territory of another state. The existence of an international armed conflict arises out of the participation of the armies of two states, even though one of them may be allied with a local armed group and operates from within its midst.[12]

[9] Paras. 16-25.
[10] Prosecution Response, paras. 15-22.
[11] Preliminary Defence Motion, paras 26-40.
[12] *See* Common Article 2 of the 1949 Geneva Conventions.

18. As mentioned in the Preliminary Motion[13], Mr. Charles Taylor's indictment offers strong support for Liberia's direct involvement in the conflict.

19. In the indictment against Mr. Charles Taylor, the Prosecution acknowledges that Mr. Charles Taylor was president of the Republic of Liberia, for at least at certain periods relevant to his indictment.[14] Charles Taylor acted as the formal president of Liberia as from July 1997. Mr. Charles Taylor exercised *de facto* authority in Liberia during the months preceding his rise to presidency, as Liberia lacked a formal head of state. It follows that at all times relevant to Mr. Charles Taylor's indictment he was either *de iure* or *de facto* president of the Republic of Liberia.

20. The indictment against Mr. Charles Taylor leaves no room for doubt about Mr. Charles Taylor and therefore Liberia's direct involvement in the conflict in Sierra Leone:

> "At all times relevant to this Indictment, members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF), supported and encouraged by, acting in concert with and/or subordinate to CHARLES GHANKAY TAYLOR, conducted armed attacks throughout the territory of the Republic of Sierra Leone [...]".[15]

Elsewhere Mr. Charles Taylor's indictment states:

> "The RUF and the AFRC shared a common plan, purpose or design (joint criminal enterprise), which was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas.
>
> The natural resources of Sierra Leone, in particular the diamonds, were to be provided to persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise. The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimise resistance to their geographic control, and to use members of the population to provide support the members of the joint criminal enterprise.

[13] Preliminary Motions, paras. 31-31.
[14] Taylor Indictment para. 18.
[15] Taylor Indictment, para. 29.

> The crimes alleged in this indictment [against Taylor] ... where either actions within their joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise. The accused [Taylor] participated in this joint criminal enterprise as part of his continuing effort to gain access to the mineral wealth of Sierra Leone and to destabilise the government of Sierra Leone."[16]

21. The Prosecution argument that Mr. Charles Taylor committed the crimes he is charged with in a personal capacity has been efficiently addressed in the Reply. There can be no doubt that these crimes have been committed while Mr. Charles Taylor was *de jure* or *de facto* head of state of Liberia.[17]

22. The Defence would like to add that, in any case, if a distinction between official and private acts does exist in international criminal law, private acts form an extremely small category. Very few acts could seemingly be qualified as private. Arguably, only acts with a purely internal effect, for example vis-à-vis family and private property, could fall within this category. It is impossible to argue that the commission of a crime cannot be part of the functions of a head of state. The crimes allegedly committed by Mr. Charles Taylor were carried out by the military. According to Mr. Charles Taylor's indictment, he ordered the commission of these crime as head of state of Liberia. No order from a head of state in his capacity of commander of the military to his subordinates can ever be qualified as "private", "personal" or "non-official".[18]

23. The Prosecution maybe confuses the discussion above with the issue of immunity. A distinction between official and private acts committed in office is – to a limited extent - relevant for the question of immunity, as may be inferred from the 2002 Judgement of International Court of Justice in the case of *The Democratic republic of the Congo vs. Belgium*.[19] The Prosecutor may also have had in mind article 6 of the Statute of the Special Court which article stipulates that "the official position of any accused person, whether as head of state or government or as a responsible government official, shall not relieve such a

[16] Taylor Indictment paras. 23-25.
[17] Taylor Indictment para. 17.
[18] L. Zegveld, "The Bouterse Case", in: *Netherlands Yearbook of International Law,* vol. XXXII, 2001, pp. 113-116.
[19] ICJ, Democratic Republic of the Congo *v.* Belgium, 14 February 2002. Available at: www.icj-cij.org.

person of criminal responsibility nor mitigate punishment".[20] There is, however, no doubt that involvement of a head of state – whether in an official or private capacity - is an issue important for the determination of the character of the conflict, not in the least because of Article 8 of the International Law Commission "Articles on State Responsibility", which attributes to a state the behaviour of persons purportedly acting on behalf of that state. There is little question that the crimes Mr. Charles Taylor is charged with were carried out purportedly on behalf of the state he headed at the time.[21]

Ad (b): Overall control of Liberia over the RUF and AFRC

24. If the Court does not accept the direct involvement of Liberia in the conflict in Sierra Leone, the above facts effectively show the overall control of Liberia over the RUF and/ or the AFRC.

25. The absence of direct participation does not mean that the conflict should then be characterised as non-international. States can intervene through an intermediary (a party to the conflict) and thus act indirectly to pursue their own strategy. The primary issue in such a case is to determine the degree of organisation of the armed factions and their relationship with the intervening state.

26. The indictments against both the Defendant and Mr. Charles Taylor account of the organised nature of the RUF. The indictment against the Defendant states:

> "The RUF was founded about 1988 or 1989 in Libya and began *organized* armed operations in Sierra Leone in or about March 1991."[22]

In the Indictment against Mr. Charles Taylor the Prosecution states that:

> "For the purposes of this Indictment, *organized* armed factions involved in this conflict included the Revolutionary United Front (RUF)".[23]

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[20] L. Zegveld, 'The Bouterse Case', in: *Netherlands Yearbook of International Law,* vol. XXXII, 2001, p. 97-118, at p. 113-116.

[21] The relevance of the Rules on State Responsibility is supported by the ICTY in the *Tadic*-case, where the Appeals Chamber maintained that it is necessary to resort to legal criteria, "provided by general rules on the responsibility of states" in order to characterise the conflict, ICTY Appeals Chamber, Prosecutor *v.* Tadic, Judgement, case no. IT-94-1-A, 15 July 1999, paras. 104-105.

[22] Indictment against Defendant, para. 6.

27. As determined by the ICTY in the *Tadic* case, the criterion applicable to the determination of the international character of armed conflicts - when the armed faction is military organised - is overall control of a state over the group. According to the Appeals Chamber overall control:

> "may be deemed to exist when a State ... has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group."[24]

These are exactly the acts the prosecution has charged Mr. Charles Taylor with, as according to the indictment:

> "[Taylor] provided financial support, military training, personnel, arms, ammunition and other support and encouragement to the RUF, led by FODAY SAYBANA SANKOH, in preparation for RUF armed action in the Republic of Sierra Leone, and during the subsequent armed conflict in Sierra Leone."[25]

28. Additional sources, evidencing the overall control of Liberia over the RUF and/or AFRC, are listed in the Preliminary Motion, such as Amnesty International reports, the report from the United Nations Panel of Experts, and statements by state representatives.[26]

Ad (c): Enforcement role of ECOMOG in the conflict in Sierra Leone

29. In the Preliminary Motion the Defence argued that the involvement of ECOMOG, an international or regional enforcement force, internationalises the armed conflict in Sierra Leone.

30. Erroneously, in its Response, the Prosecution rephrased the Defence's position as stating that the involvement of *peacekeeping* forces would internationalise the conflict.[27] The Defence never made this argument. It did make the argument that peace-keeping forces

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[23] Taylor Indictment, para. 2; see also para. 4.
[24] ICTY Appeals Chamber, Prosecutor *v.* Tadic, Judgement, case no. IT-94-1-A, 15 July 1999, para. 137.
[25] Indictment Taylor, para. 20.
[26] Preliminary Defence Motion, paras. 27-30.
[27] Prosecution Response, para 21.

employing force become a party to the conflict, thereby internationalising it. Peacekeepers may, for example, be deployed in an area where there is still fighting going on, or even become involved in conflict-like situations. The doctrine of so-called 'wider-peacekeeping' goes even further in not ruling out the use of force for selective purposes other than self-defence.[28] UNPROFOR, the United Nations operation in Somalia, but also ECOMOG are typical examples of this doctrine.

31. Most commentators even maintain that involvement of international or regional peaceforces by definition internationalises the conflict. This was the position of the drafters of the 1994 Convention on the Safety of UN and Associated Personnel and of the Secretary General's Bulletin on Observance by UN Forces of International Humanitarian Law.[29]

32. Whether ECOMOG was originally intended as a peacekeeping or peace-enforcement force – commentators differ on this point – is not decisive for the problem at hand. Important is to establish that at all times relevant ECOMOG acted as and was perceived as a military party fighting against RUF and/or AFRC forces. As such, ECOMOG *de facto* acted as a peace-enforcer in Sierra Leone and, as a result, internationalised the conflict. That the conflict in Sierra Leone was internationalised by ECOMOG was acknowledged by various commentators:

Quoting Akinrinade:

> "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 Liberia and Burkino Faso. The involvement of ECOMOG troops adds another dimension to the conflict. ECOMOG as an organ of the sub-regional ECOWAS fought on the side of the elected Government of President Kabbah, particularly when he requested the assistance of the sub-regional body ECOWAS to reinstate him after being overthrown in a coup. Even if the Liberian connection were

[28] *See* Article 2(2) of the 1994 Convention on the Safety of UN and Associated Personnel: 'This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies". *See also* M. Zwanenburg, "The SG's Bulletin on Observance by UN Forces of IHL: Some Preliminary Observations", in: 5 *International Peacekeeping*4-5, 1999, p. 134.
[29] *Id.* p. 136.

ignored, the involvement of ECOWAS after 1997 makes it difficult to characterize the conflict as a purely internal armed conflict."[30]

Quoting Stedman:

"By turning the war into a protracted one, the ECOWAS intervention succeeded in spreading the fighting to other countries in the region. [..] In addition to becoming an active belligerent in the war, the intervention force has engaged in war profiteering and racketeering."[31]

Quoting Wippman:

"Perhaps most important, the largest of the warring factions again perceives ECOMOG as a military adversary rather than a neutral peacekeeper."[32]

"Even when it became clear that the NPFL would forcibly resist ECOMOG's initial deployment, many ECOWAS leaders continued to describe the monitoring group's mission as peacekeeping only."[33]

Quoting Levitt:

"At times the ECOMOG seems less a "peace-making force" and more like an unintended party to the conflict. Notwithstanding, ECOMOG action must be viewed in light of its mandate to stop the war and restore law and order." [34]

33. There are numerous examples of ECOMOG acting as an party to the conflict. The international non-governmental organisation No Peace Without Justice produced a draft report on the conflict in Sierra Leone, which in October 2003 it also presented to the Registrar

[30] B. Akinrinade, "International Humanitarian Law and the Conflict in Sierra Leone", in: *15 Notre Dame J.L. Ethics & Pub. Pol'y 391,* p. 12.
[31] S. J. Stedman,"Conflict and Conciliation in Sub-Saharan Africa", in: M. E. Brown (ed.), *International Dimensions of Internal Conflict,* Cambridge: The MIT Press 1996, p. 252.
[32] D. Wippman, "Enforcing the Peace: ECOWAS and the Liberian Civil War", in: L. F. Fisler Damrosh (ed.), *Enforcing Restraint, Collective Intervention in Internal Conflict*, New York: Council of Foreign Relations Press 1993, p. 195.
[33] *Ibid.*, p. 177.

of the Special Court: the "First Draft Factual Analysis of the Conflict in Sierra Leone". This report contains numerous examples of ECOMOG troops actively participating in the fighting:

> "In February of early March 1998, there was a major battle between RUF/AFRC and ECOMOG forces in Bo Town."[35]
>
> "ECOMOG fought several battles along the way to Freetown. At Porte Junction, a fierce battle was fought which made the RUF/AFRC forces retreat towards the West end of Freetown [...]. During these battles, a lot of civilians lost their lives and a lot more seriously wounded by explosions and other stray bullets, some were deliberate whilst others were not.."[36]
>
> "The ECOMOG troops based at Lungi frequently launched missiles and shells from their Lungi bases to Freetown and environs in 1997."[37]
>
> "The ECOMOG forces then moved to Lumpa, where they established a base and a checkpoint by the Banga Farm area. They executed a young man and maltreated many other there. They then advanced to Campbell Town and attacked remnants of RUF/AFRC forces killing six of them." [38]
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> "In the evening of the same day [i.e. 21 December 1998], ECOMOG forces based at Waterloo Post Office launched several mortar bombs towards Banga Farm, followed by an aerial bombardment by the Alpha Jet at the same location."[39]
>
> "In April 1999, ECOMOG launched an attack on Waterloo by continuously shelling the town."[40]
>
> "[...] under constant attack from ECOMOG Alpha Jets, AFRC/RUF were forced to retreat from Freetown through the hills surrounding the town."[41]

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[34] J. Levitt, "Humanitarian Intervention by Regional Actors in Internal Conflicts: The Cases of ECOWAS in Liberia and Sierra Leone", in: *12 Temp. Int'l & Comp. L.J. 333*, p. 7.
[35] NPWJ, p. 224.
[36] NPWJ, pp. 287-288. This took place in 1998.
[37] NPWJ, p. 287.
[38] NPWJ, p. 288. This took place in February 1998.
[39] NPWJ, p. 290.
[40] NPWJ, p. 292.

"[...] ECOMOG initiated "Operation Hot Pursuit" in which RUF bases along the Guinean-Sierra-Leonean border were attacked.[42] In the following weeks, ECOMOG attacked Tukuray and the RUF headquarter town of Kamakwie. The villages of Sanya and Somathai were attacked as well by ECOMOG [...]."[43]

"Chasing the RUF forces the ECOMOG troops attacked Gberefeh [...] and Dolar to unseat the RUF/AFRC bases."[44]

"After 13 March 1998, ECOMOG forces commanded by entered the town of Alikalia from the north. A company of ECOMOG forces remained in Alikalia, whilst a platoon was dispatched to Yiffin town, in pursuit of RUF/AFRC forces. [...] In both Yiffin and Alikalia, ECOMOG forces and Section Chiefs accepted the surrender of unknown numbers of RUF/AFRC forces [...]."[45]

"In early April 1998, a contingent of Guinean ECOMOG troops attacked Serekolia town [...], entering from the direction of Kabala. Residents report seeing 13 trucks, ground troops and a helicopter gunship."[46]

"On 28 January in Fadugu [...] there was a battle between SLA forces and ECOMOG against RUF/AFRC forces."[47]

"Some ECOMOG forces based in Lunsar were deployed in Sendugu and at one time, two jets flying towards the area of the RUF/AFRC forces dropped bombs at Maron and killed four civilians."[48]

"The RUF/AFRC forces reached Port Loko [...] and embarked on a five-day battle with ECOMOG forces. The RUF/AFRC forces captured the east part of the town, [...]. However, the ECOMOG resistance was very strong, assisted by the bombing of

[41] NPWJ, p. 32. This took place on 6 January 1999.
[42] NPWJ, p. 47.
[43] NPWJ, p. 47. This took place in September 2000.
[44] NPWJ, p. 63.
[45] NPWJ, p. 67.
[46] NPWJ, p. 68.
[47] NPWJ, p. 74. This took place in 1999.

RUF/AFRC positions by air. On 3 January 1999, the RUF/AFRC forces left the town using the same route to the east route."[49]

34. In summary, there is abundant evidence that ECOMOG acted as a military party fighting against RUF and/or AFRC forces. As such, ECOMOG *de facto* acted as a peace-enforcer in Sierra Leone and, as a result, internationalised the conflict.

Ad (d) Overall control of ECOMOG and/or the Government of Sierra Leone over the CDF

35. If the Court does not accept the direct involvement of ECOMOG as a party to the conflict in Sierra Leone, the evidence laid out above suggests that at least ECOMOG exercised overall control over the CDF.[50]

36. Both ECOMOG and CDF forces were striving for the same goal, namely restoring democracy in Sierra Leone by defeating and expelling all RUF and AFRC forces. This common intent is clearly illustrated by numerous joint or concerted operations carried out by ECOMOG and CDF forces against the RUF and AFRC. Again, the above-mentioned No Peace Without Justice report sets out in detail numerous examples of this relationship between ECOMOG and CDF:

"On 1 October 1998, the Civil Defence Forces, with strong ECOMOG support, launched an offensive to capture one of the rebels' main strongholds in Kailahun district and thus disrupt their operations elsewhere in the country."[51]

"RUF forces were driven out of Koidu by ECOMOG and CDF in April 1998."[52]

"[...] Kabala town, at the time (i.e. July 1997) a stronghold of ECOMOG and CDF."[53]

"ECOMOG co-operated with the CDF to set up a town defence plan (Fadugu town) that included civilians."[54]

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[48] NPWJ, p. 89. This took place in 1998.
[49] NPWJ, p. 93.
[50] Compare Prosecution Response, para 21.
[51] Second Progress Report of the Secretary-General on the UN Observer Mission in Sierra Leone, S/1998/960, 16 October 1998, para. 11.
[52] NPWJ, p. 187.

"On 23 May 1998, ECOMOG, SSD and CDF forces attacked Fadugu with the assistance of air support."[55]

"On 8 October 1998, RUF/AFRC forces attacked Alikali [...] from Firawa [...] in the north. Although CDF and ECOMOG resisted the attack, RUF/AFRC burned down 20 houses along their retreat route. CDF and ECOMOG forces pursued the RUF/FRC unit over 2 miles out of Alikalia towards Firawa."[56]

"Between 1 and 7 November 1998, RUF/AFRC forces attacked Alikalia. They were repelled by combined ECOMOG and CDF forces [...]."[57]

"While CDF and ECOMOG forces were based in Mange, they were overpowered by RUF/AFRC forces, retreated to their headquarters in Port Loko."[58]

"The ECOMOG and CDF forces launched a first attack on Koidu town but were repelled by RUF/AFRC forces and went back to Lebanon. However, ECOMOG and CDF forces launched a second attack and were able to overpower RUF/AFRC forces, who moved out of Koidu town."[59]

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[53] NPWJ, p. 64.
[54] NPWJ, p. 66. This took place around 15 February 1998.
[55] NPWJ, p. 70.
[56] NPWJ, p. 72.
[57] NPWJ, p. 72.
[58] NPWJ, p. 87.
[59] NPWJ, p. 191. This took place somewhere in March-April 1998.

37. There is other evidence, which the Defence will not discuss in greater detail, which confirms the suggestion that ECOMOG in effect exercised overall control over the CDF.[60] This was, for example, also acknowledged by Mr. Samuel Hinga Norman, who at one point stated that the CDF was under the control of ECOMOG.[61] On 28 April 1998, President Kabbah also announced that the CDF had been placed under the command of ECOMOG.[62]

59. In addition to the overall control of ECOMOG over the CDF, there is evidence suggesting a strong relationship between the Government of Sierra Leone and the CDF. [63] [64] [65] The consent of the Government of Sierra Leone to the presence of ECOMOG troops on its territory reflects the Sierra Leonean Government's support to ECOMOG.[66] In addition, the Prosecutor indicated in his indictment against Mr. Samuel Hinga Norman, that the latter served as Deputy Minister of Defence in the government of Sierra Leone.[67] According to the same indictment, Mr. Samuel Hinga Norman also exercised *de jure* and *de facto* control over the Kamajors.[68] His alleged double function illustrates the relationship between the Government of Sierra Leone and the CDF, the one supporting the other and *vice versa*.

62. In summary, there is strong evidence that suggests the government of Sierra Leone and ECOMOG exercised overall control over the CDF during the armed conflict in Sierra Leone.

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[60] *See* First Progress Report of the Secretary-General on the UN Observer Mission in Sierra Leone, S/1998/750, 12 August 1998, para. 16.
[61] Report of Human Rights Watch, *Sierra Leone: Sowing Terror*, July 1998, Vol. 10, No. 3(A).
[62] Report of Amnesty International: *Sierra Leone: 1998 – a year of atrocities against civilians*, 1 November 1998, p. 34.
[63] Sixth Report of the Secretary-General on the United Nations Mission in Sierra Leone, S/2000/832, 24 August 2000, para. 11.
[64] Third Progress Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone, S/1998/1176, 16 December 1998, para. 24.
[65] NPWJ, p. 276. This took place in late 1997.
[66] See R. Mortimer, "From ECOMOG to ECOMOG II: Intervention in Sierra Leone", in: J.W. Harbeson & D. Rothchild (eds.), *Africa in World Politics: The African State System in Flux*, Westview Press (2000), p. 189. Here Sierra Leone's willingness to permit ECOMOG troops on its territory is set out. Although these ECOMOG forces were initially ECOMOG troops meant for the war in Liberia, these troops continued to be on the territory of Sierra Leone during the war-years in Sierra Leone.
[67] *See* Norman Indictment, para. 2.
[68] *See* Norman Indictment, para. 12.

Conclusion

63.It is concluded that the distinction between international and internal armed conflicts is still relevant for the applicable legal system, and that there is abundant evidence that the conflict in Sierra Leone from 1996 onwards must be characterised as international.

64. The parties to the conflict are on the one hand Liberia, the RUF and the AFRC, and on the other hand the Government of Sierra Leone and ECOMOG, assisted or supported by the CDF. The combination of (i) the direct involvement of Liberia and the control of the Liberian authorities over the RUF and AFRC; (ii) the role of ECOMOG as a party to the conflict; and (iii) the relationship between the Government of Sierra Leone/ECOMOG and the CDF renders the conflict international.

65. It follows that Articles 3 and 4 of the Statute are not applicable and that the Special Court has no jurisdiction to try the Defendant.

COUNSEL FOR THE ACCUSED

PP:
Mr. Michiel Pestman
Prof. André Nollkaemper
Dr. Liesbeth Zegveld

Defence list of authorities

1. ICTY Trial Chamber, Prosecutor *v.* Tadic, Decision on the Defence Motion on Jurisdiction, case no. IT-94-1, 10 August 1995, para 49.

2. ICTY Appeals Chamber, Prosecutor *v.* Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, case no. IT-94-1, 2 October 1995, paras. 79-84.

3. Taylor Indictment, SCSL-2003-01-I, 7 March 2003.

4. L. Zegveld, "The Bouterse Case", in: Netherlands Yearbook of International Law, vol. XXXII, 2001, pp. 113-116.

5. ICJ, Democratic Republic of the Congo *v.* Belgium, 14 February 2002. Available at: www.icj-cij.org.

6. ICTY Appeals Chamber, Prosecutor *v.* Tadic, Judgement, case no. IT-94-1-A, 15 July 1999, paras. 104-105.

7. ICTY Appeals Chamber, Prosecutor *v.* Tadic, Judgement, case no. IT-94-1-A, 15 July 1999, para. 137.

8. M. Zwanenburg, "The SG's Bulletin on Observance by UN Forces of IHL: Some Preliminary Observations", in: 5 *International Peacekeeping*4-5, 1999, pp. 134-136.

9. B. Akinrinade, "International Humanitarian Law and the Conflict in Sierra Leone", in: *15 Notre Dame J.L. Ethics & Pub. Pol'y 391,* p. 12.

10. S. J. Stedman,"Conflict and Conciliation in Sub-Saharan Africa", in: M. E. Brown (ed.), *International Dimensions of Internal Conflict,* Cambridge: The MIT Press 1996, p. 252.

11. D. Wippman, "Enforcing the Peace: ECOWAS and the Liberian Civil War", in: L. F. Fisler Damrosh (ed.), *Enforcing Restraint, Collective Intervention in Internal Conflict,* New York: Council of Foreign Relations Press 1993, pp. 177, 195.

12. J. Levitt, "Humanitarian Intervention by Regional Actors in Internal Conflicts: The Cases of ECOWAS in Liberia and Sierra Leone", in: *12 Temp. Int'l & Comp. L.J. 333,* p. 7.

13. Report of No Peace Without Justice, Conflict Mapping Report, Factual Analysis, First draft, 31 October 2003

14. Second Progress Report of the Secretary-General on the UN Observer Mission in Sierra Leone, S/1998/960, 16 October 1998, para. 11.

15. First Progress Report of the Secretary-General on the UN Observer Mission in Sierra Leone, S/1998/750, 12 August 1998, para. 16.

16. Report of Human Rights Watch, *Sierra Leone: Sowing Terror*, July 1998, Vol. 10, No. 3(A).

17. Report of Amnesty International: *Sierra Leone: 1998 – a year of atrocities against civilians*, 1 November 1998, p. 34.

18. Sixth Report of the Secretary-General on the United Nations Mission in Sierra Leone, S/2000/832, 24 August 2000, para. 11.

19. Third Progress Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone, S/1998/1176, 16 December 1998, para. 24.

20. R. Mortimer, "From ECOMOG to ECOMOG II: Intervention in Sierra Leone", in: J.W. Harbeson & D. Rothchild (eds.), *Africa in World Politics: The African State System in Flux*, Westview Press (2000), p. 189.

21. Mr. Samuel Hinga Norman Indictment, SCSL-2003-08-I, 7 March 2003.

22. Convention on Safety of United Nations and Associated Personnel, 9 December 1994, Article 2(2), available at: http://www.un.org/law/cod/safety.htm.

Before: Judge McDonald, Presiding

Judge Stephen

Judge Vohrah

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision: 10 August 1995

PROSECUTOR

v.

DUSKO TADIC A/K/A "DULE"

DECISION ON THE DEFENCE MOTION ON JURISDICTION

The Office of the Prosecutor:

Mr. Grant Niemann
Ms. Brenda Hollis
Mr. Alan Tieger
Mr. William Fenrick
Mr. Michael Keegan

Counsel for the Accused:

Mr. Michail Wladimiroff
Mr. A.M.M. Orie
Mr. Milan Vujin
Mr. Krstan Simic

II. Subject-Matter Jurisdiction

45. The Trial Chamber must turn now to what are truly matters of jurisdiction. The Defence contends that the charges laid against the accused do not fall within the subject-matter jurisdiction of this Tribunal and it is necessary accordingly to examine the limits of that jurisdiction.

A. Article 2 : Grave Breaches of the Geneva Convention of 1949

46. The Statute of the International Tribunal confers jurisdiction by Articles 1 to 8 and supplements, and in one respect qualifies, that jurisdiction in Articles 9 and 10. However it is essentially Articles 1, 2, 3 and 5 with which this motion is concerned.

47. Article 1 does no more than confer power to prosecute for serious violations of international humanitarian law and confines that power, spatially, to breaches committed in the territory of the former Yugoslavia and, temporally, to the period since 1991. It further requires that the power thus conferred be exercised in accordance with the provisions of the Statute.

48. Article 2 confers subject-matter jurisdiction to prosecute in respect of grave breaches of the Geneva Conventions and identifies those breaches by the phrase, "namely the following acts against persons or property protected under the provisions of the relevant Geneva Conventions." There then follows an enumeration of acts, culled from the four Conventions and, with very slight variations, repeating and in effect consolidating, the terms of the grave breaches provisions to be found in varying form in each of those Conventions.

49. The Article has been so drafted as to be self-contained rather than referential, save for the identification of the victims of enumerated acts; that identification and that alone involves going to the Conventions themselves for the definition of "persons or property protected." In the present case it is not contended that the alleged victims in the several charges were not protected persons; in any event that will be a matter for evidence in due course.

Before:
Judge Cassese, Presiding
Judge Li
Judge Deschênes
Judge Abi-Saab Judge Sidhwa

Registrar:
Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of:
2 October 1995

PROSECUTOR

v.

DUSKO TADIC a/k/a "DULE"

DECISION ON THE DEFENCE MOTION FOR INTERLOCUTORY APPEAL ON JURISDICTION

The Office of the Prosecutor:

Mr. Richard Goldstone, Prosecutor
Mr. Grant Niemann
Mr. Alan Tieger
Mr. Michael Keegan
Ms. Brenda Hollis

Counsel for the Accused:

Mr. Michail Wladimiroff
Mr. Alphons Orie
Mr. Milan Vujin
Mr. Krstan Simic

In light of this understanding of the Security Council's purpose in creating the International Tribunal, we turn below to discussion of Appellant's specific arguments regarding the scope of the jurisdiction of the International Tribunal under Articles 2, 3 and 5 of the Statute.

3. Logical And Systematic Interpretation Of The Statute

(a) Article 2

79. Article 2 of the Statute of the International Tribunal provides:

> "The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
>
> (a) wilful killing;
>
> (b) torture or inhuman treatment, including biological experiments;
>
> (c) wilfully causing great suffering or serious injury to body or health;
>
> (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
>
> (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
>
> (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
>
> (g) unlawful deportation or transfer or unlawful confinement of a civilian;
>
> (h) taking civilians as hostages."

By its explicit terms, and as confirmed in the Report of the Secretary-General, this Article of the Statute is based on the Geneva Conventions of 1949 and, more specifically, the provisions of those Conventions relating to "grave breaches" of the Conventions. Each of the four Geneva Conventions of 1949 contains a "grave breaches" provision, specifying particular breaches of the Convention for which the High Contracting Parties have a duty to prosecute those responsible. In other words, for these specific acts, the Conventions create universal mandatory criminal jurisdiction among contracting States. Although the language of the Conventions might appear to be ambiguous and the question is open to some debate (see, e.g.,[*Amicus Curiae*] Submission of the Government of the United States of America Concerning Certain Arguments Made by Counsel for the Accused in the Case of *The Prosecutor of the Tribunal v. Dusan Tadic*, 17 July 1995, (Case No. IT-94-1-T), at 35-6 (hereinafter, *U.S. Amicus Curiae Brief*), it is widely contended that the grave breaches provisions establish universal mandatory jurisdiction only with respect to those breaches of the Conventions committed in international armed conflicts. Appellant argues that, as the grave breaches enforcement system only applies to international armed conflicts, reference in Article 2 of the Statute to the grave breaches provisions of the Geneva Conventions limits the International Tribunal's jurisdiction under that Article to acts committed in the context of an international armed conflict. The Trial Chamber has held that Article 2:

> "[H]as been so drafted as to be self-contained rather than referential, save for the identification of the victims of enumerated acts; that identification and that alone involves going to the Conventions themselves for the definition of 'persons or property protected'."
>
> [. . .]

> [T]he requirement of international conflict does not appear on the face of Article 2. Certainly, nothing in the words of the Article expressly require its existence; once one of the specified acts is allegedly committed upon a protected person the power of the International Tribunal to prosecute arises if the spatial and temporal requirements of Article 1 are met.
>
> [. . .]
>
> [T]here is no ground for treating Article 2 as in effect importing into the Statute the whole of the terms of the Conventions, including the reference in common Article 2 of the Geneva Convention [sic] to international conflicts. As stated, Article 2 of the Statute is on its face, self-contained, save in relation to the definition of protected persons and things." (Decision at Trial, at paras. 49-51.)

80. With all due respect, the Trial Chamber's reasoning is based on a misconception of the grave breaches provisions and the extent of their incorporation into the Statute of the International Tribunal. The grave breaches system of the Geneva Conventions establishes a twofold system: there is on the one hand an enumeration of offences that are regarded so serious as to constitute "grave breaches"; closely bound up with this enumeration a mandatory enforcement mechanism is set up, based on the concept of a duty and a right of all Contracting States to search for and try or extradite persons allegedly responsible for "grave breaches." The international armed conflict element generally attributed to the grave breaches provisions of the Geneva Conventions is merely a function of the system of universal mandatory jurisdiction that those provisions create. The international armed conflict requirement was a necessary limitation on the grave breaches system in light of the intrusion on State sovereignty that such mandatory universal jurisdiction represents. State parties to the 1949 Geneva Conventions did not want to give other States jurisdiction over serious violations of international humanitarian law committed in their internal armed conflicts - at least not the mandatory universal jurisdiction involved in the grave breaches system.

81. The Trial Chamber is right in implying that the enforcement mechanism has of course not been imported into the Statute of the International Tribunal, for the obvious reason that the International Tribunal itself constitutes a mechanism for the prosecution and punishment of the perpetrators of "grave breaches." However, the Trial Chamber has misinterpreted the reference to the Geneva Conventions contained in the sentence of Article 2: "persons or property protected under the provisions of the relevant Geneva Conventions." (Statute of the Tribunal, art. 2.) For the reasons set out above, this reference is clearly intended to indicate that the offences listed under Article 2 can only be prosecuted when perpetrated against persons or property regarded as "protected" by the Geneva Conventions under the strict conditions set out by the Conventions themselves. This reference in Article 2 to the notion of "protected persons or property" must perforce cover the persons mentioned in Articles 13, 24, 25 and 26 (protected persons) and 19 and 33 to 35 (protected objects) of Geneva Convention I; in Articles 13, 36, 37 (protected persons) and 22, 24, 25 and 27 (protected objects) of Convention II; in Article 4 of Convention III on prisoners of war; and in Articles 4 and 20 (protected persons) and Articles 18, 19, 21, 22, 33, 53, 57 etc. (protected property) of Convention IV on civilians. Clearly, these provisions of the Geneva Conventions apply to persons or objects protected only to the extent that they are caught up in an international armed conflict. By contrast, those provisions do not include persons or property coming within the purview of common Article 3 of the four Geneva Conventions.

82. The above interpretation is borne out by what could be considered as part of the preparatory works of the Statute of the International Tribunal, namely the Report of the

Secretary-General. There, in introducing and explaining the meaning and purport of Article 2 and having regard to the "grave breaches" system of the Geneva Conventions, reference is made to "international armed conflicts" (Report of the Secretary-General at para. 37).

83. We find that our interpretation of Article 2 is the only one warranted by the text of the Statute and the relevant provisions of the Geneva Conventions, as well as by a logical construction of their interplay as dictated by Article 2. However, we are aware that this conclusion may appear not to be consonant with recent trends of both State practice and the whole doctrine of human rights - which, as pointed out below (see paras. 97-127), tend to blur in many respects the traditional dichotomy between international wars and civil strife. In this connection the Chamber notes with satisfaction the statement in the *amicus curiae* brief submitted by the Government of the United States, where it is contended that:

> "the 'grave breaches' provisions of Article 2 of the International Tribunal Statute apply to armed conflicts of a non-international character as well as those of an international character." (U.S. *Amicus Curiae* Brief, at 35.)

This statement, unsupported by any authority, does not seem to be warranted as to the interpretation of Article 2 of the Statute. Nevertheless, seen from another viewpoint, there is no gainsaying its significance: that statement articulates the legal views of one of the permanent members of the Security Council on a delicate legal issue; on this score it provides the first indication of a possible change in *opinio juris* of States. Were other States and international bodies to come to share this view, a change in customary law concerning the scope of the "grave breaches" system might gradually materialize. Other elements pointing in the same direction can be found in the provision of the German Military Manual mentioned below (para. 131), whereby grave breaches of international humanitarian law include some violations of common Article 3. In addition, attention can be drawn to the Agreement of 1 October 1992 entered into by the conflicting parties in Bosnia-Herzegovina. Articles 3 and 4 of this Agreement implicitly provide for the prosecution and punishment of those responsible for grave breaches of the Geneva Conventions and Additional Protocol I. As the Agreement was clearly concluded within a framework of an internal armed conflict (*see above,* para. 73), it may be taken as an important indication of the present trend to extend the grave breaches provisions to such category of conflicts. One can also mention a recent judgement by a Danish court. On 25 November 1994 the Third Chamber of the Eastern Division of the Danish High Court delivered a judgement on a person accused of crimes committed together with a number of Croatian military police on 5 August 1993 in the Croatian prison camp of Dretelj in Bosnia (The Prosecution v. Refik Saric, unpublished (Den.H. Ct. 1994)). The Court explicitly acted on the basis of the "grave breaches" provisions of the Geneva Conventions, more specifically Articles 129 and 130 of Convention III and Articles 146 and 147 of Convention IV (The Prosecution v. Refik Saric, Transcript, at 1 (25 Nov. 1994)), without however raising the preliminary question of whether the alleged offences had occurred within the framework of an international rather than an internal armed conflict (in the event the Court convicted the accused on the basis of those provisions and the relevant penal provisions of the Danish Penal Code, (see id. at 7-8)). This judgement indicates that some national courts are also taking the view that the "grave breaches" system may operate regardless of whether the armed conflict is international or internal.

84. Notwithstanding the foregoing, the Appeals Chamber must conclude that, in the present state of development of the law, Article 2 of the Statute only applies to offences committed within the context of international armed conflicts.

SCSL-2003-01-I
7 MARCH 2003

7 MAR 2003

4 3146

17.00 hrs.

002

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL – 03 – – I

THE PROSECUTOR

Against

CHARLES GHANKAY TAYLOR also known as
CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR

INDICTMENT

The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute) charges:

CHARLES GHANKAY TAYLOR also known as
(aka) CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR

with **CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II and OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW, in violation of Articles 2, 3 and 4 of the Statute** as set forth below:

THE ACCUSED

1. **CHARLES GHANKAY TAYLOR aka CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR** (the **ACCUSED**) was born on or about 28 January 1948 at Arthington in the Republic of Liberia.

GENERAL ALLEGATIONS

2. At all times relevant to this Indictment, a state of armed conflict existed within Sierra Leone. For the purposes of this Indictment, organized armed factions involved in this conflict included the Revolutionary United Front (RUF), the Civil Defence Forces (CDF) and the Armed Forces Revolutionary Council (AFRC).

3. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.

4. The organized armed group that became known as the RUF, led by FODAY SAYBANA SANKOH aka POPAY aka PAPA aka PA, was founded about 1988 or 1989 in Libya. The RUF, under the leadership of FODAY SAYBANA SANKOH, began organized armed operations in Sierra Leone in March 1991. During the ensuing armed conflict, the RUF forces were also referred to as "RUF", "rebels" and "People's Army".

5. The CDF was comprised of Sierra Leonean traditional hunters, including the Kamajors, Gbethis, Kapras, Tamaboros and Donsos. The CDF fought against the RUF and AFRC.

6. On 30 November 1996, in Abidjan, Ivory Coast, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement which brought a temporary cessation to active hostilities. Thereafter, the active hostilities recommenced.

7. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of the Republic of Sierra Leone via a coup d'état on 25 May 1997. Soldiers of the Sierra Leone Army (SLA) comprised the majority of the AFRC membership. On that date JOHNNY PAUL KOROMA aka JPK became the leader and Chairman of the AFRC. The AFRC forces were also referred to as "Junta", "soldiers", "SLA", and "ex-SLA".

8. Shortly after the AFRC seized power, at the invitation of JOHNNY PAUL KOROMA, and upon the order of FODAY SAYBANA SANKOH, leader of the RUF, the RUF joined with the AFRC. The AFRC and RUF acted jointly thereafter. The AFRC/RUF

Junta forces (Junta) were also referred to as "Junta", "rebels", "soldiers", "SLA", "ex-SLA" and "People's Army".

9. After the 25 May 1997 coup d'état, a governing body, the Supreme Council, was created within the Junta. The governing body included leaders of both the AFRC and RUF.

10. The Junta was forced from power by forces acting on behalf of the ousted government of President Kabbah about 14 February 1998. President Kabbah's government returned in March 1998. After the Junta was removed from power the AFRC/RUF alliance continued.

11. On 7 July 1999, in Lomé, Togo, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement. However, active hostilities continued.

12. The **ACCUSED** and all members of the organized armed factions engaged in fighting within Sierra Leone were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986.

13. All offences alleged herein were committed within the territory of Sierra Leone after 30 November 1996.

14. All acts and omissions charged herein as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.

15. The words civilian or civilian population used in this Indictment refer to persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities.

INDIVIDUAL CRIMINAL RESPONSIBILITY

16. Paragraphs 1 through 15 are incorporated by reference.

17. In the late 1980's **CHARLES GHANKAY TAYLOR** received military training in Libya from representatives of the Government of MU'AMMAR AL-QADHAFI. While in Libya the **ACCUSED** met and made common cause with FODAY SAYBANA SANKOH.

18. While in Libya, the **ACCUSED** formed or joined the National Patriotic Front of Liberia (NPFL). At all times relevant to this Indictment the **ACCUSED** was the leader of the NPFL and/or the President of the Republic of Liberia.

19. In December 1989 the NPFL, led by the **ACCUSED**, began conducting organized armed attacks in Liberia. The **ACCUSED** and the NPFL were assisted in these attacks by FODAY SAYBANA SANKOH and his followers.

20. To obtain access to the mineral wealth of the Republic of Sierra Leone, in particular the diamond wealth of Sierra Leone, and to destabilize the State, the **ACCUSED** provided financial support, military training, personnel, arms, ammunition and other support and encouragement to the RUF, led by FODAY SAYBANA SANKOH, in preparation for RUF armed action in the Republic of Sierra Leone, and during the subsequent armed conflict in Sierra Leone.

21. Throughout the course of the armed conflict in Sierra Leone, the RUF and the AFRC/RUF alliance, under the authority, command and control of FODAY SAYBANA SANKOH, JOHNNY PAUL KOROMA and other leaders of the RUF, AFRC and AFRC/RUF alliance, engaged in notorious, widespread or systematic attacks against the civilian population of Sierra Leone.

22. At all times relevant to this Indictment, **CHARLES GHANKAY TAYLOR** supported and encouraged all actions of the RUF and AFRC/RUF alliance, and acted in concert with FODAY SAYBANA SANKOH and other leaders of the RUF and AFRC/RUF alliance. FODAY SAYBANA SANKOH was incarcerated in Nigeria and Sierra Leone and subjected to restricted movement in Sierra Leone from about March 1997 until about April 1999. During this time the **ACCUSED**, in concert with FODAY SAYBANA SANKOH, provided guidance and direction to the RUF, including SAM BOCKARIE aka MOSQUITO aka MASKITA.

23. The RUF and the AFRC shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be provided to persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise.

24. The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimize resistance to their geographic control, and to use members of the population to provide support to the members of the joint criminal enterprise. The crimes alleged in this Indictment, including unlawful killings, abductions, forced labour, physical and sexual violence, use of child soldiers, looting and burning of civilian structures, were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise.

25. The **ACCUSED** participated in this joint criminal enterprise as part of his continuing efforts to gain access to the mineral wealth of Sierra Leone and to destabilize the Government of Sierra Leone.

26. **CHARLES GHANKAY TAYLOR**, by his acts or omissions, is individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes the **ACCUSED** planned, instigated, ordered, committed or in whose planning, preparation or execution the **ACCUSED** otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which the **ACCUSED** participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which the **ACCUSED** participated.

27. In addition, or alternatively, pursuant to Article 6.3. of the Statute, **CHARLES GHANKAY TAYLOR**, while holding positions of superior responsibility and exercising command and control over his subordinates, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. The **ACCUSED** is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so

and the **ACCUSED** failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

CHARGES

28. Paragraphs 16 through 27 are incorporated by reference.

29. At all times relevant to this Indictment, members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF), supported and encouraged by, acting in concert with and/or subordinate to **CHARLES GHANKAY TAYLOR**, conducted armed attacks throughout the territory of the Republic of Sierra Leone, including, but not limited, to Bo, Kono, Kenema, Bombali and Kailahun Districts and Freetown. Targets of the armed attacks included civilians and humanitarian assistance personnel and peacekeepers assigned to the United Nations Mission in Sierra Leone (UNAMSIL), which had been created by United Nations Security Council Resolution 1270 (1999).

30. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property.

31. As part of the campaign of terror and punishment the AFRC/RUF routinely captured and abducted members of the civilian population. Captured women and girls were raped; many of them were abducted and used as sex slaves and as forced labour. Some of these women and girls were held captive for years. Men and boys who were abducted were also used as forced labour; some of them were also held captive for years. Many abducted boys and girls were given combat training and used in active fighting. AFRC/RUF also physically mutilated men, women and children, including amputating their hands or feet and carving "AFRC" and "RUF" on their bodies.

COUNTS 1 – 2: TERRORIZING THE CIVILIAN POPULATION AND COLLECTIVE PUNISHMENTS

32. Members of the AFRC/RUF supported and encouraged by, acting in concert with and/or subordinate to **CHARLES GHANKAY TAYLOR** committed the crimes set forth below in paragraphs 33 through 58 and charged in Counts 3 through 13, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 1: Acts of Terrorism, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.d. of the Statute;

And:

Count 2: Collective Punishments, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.b. of the Statute.

COUNTS 3 – 5: UNLAWFUL KILLINGS

33. Victims were routinely shot, hacked to death and burned to death. Unlawful killings included, but were not limited to, the following:

Bo District

34. Between 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembehun, Gerihun and Mamboma, unlawfully killing an unknown number of civilians;

Kenema District

35. Between about 25 May 1997 and about 19 February 1998, in locations including Kenema town, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Kono District

36. About mid February 1998, AFRC/RUF fleeing from Freetown arrived in Kono District. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF unlawfully killed several hundred civilians in various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya;

Bombali District

37. Between about 1 May 1998 and 31 July 1998, in locations including Karina, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Freetown

38. Between 6 January 1999 and 31 January 1999, AFRC/RUF conducted armed attacks throughout the city of Freetown. These attacks included large scale unlawful killings of civilian men, women and children at locations throughout the city, including the State House, Parliament building, Connaught Hospital, and the Kissy, Fourah Bay, Upgun, Calaba Town and Tower Hill areas of the city.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 3: Extermination, a **CRIME AGAINST HUMANITY**, punishable under Article 2.b. of the Statute;

In addition, or in the alternative:

Count 4: Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

Count 5: Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute.

COUNTS 6 – 8: SEXUAL VIOLENCE

39. Widespread sexual violence committed against civilian women and girls included brutal rapes, often by multiple rapists. Acts of sexual violence included, but were not limited to, the following:

Kono District

40. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF raped hundreds of women and girls at various locations throughout the District, including Koidu, Tombodu, Kissi-town (or Kissi Town), Foendor (or Foendu), Tomendeh, Fokoiya, Wondedu and AFRC/RUF camps such as "Superman camp" and Kissi-town (or Kissi Town) camp. An unknown number of women and girls were abducted from various locations within the District and used as sex slaves;

Bombali District

41. Between about 1 May 1998 and 31 July 1998, members of AFRC/RUF raped an unknown number of women and girls in locations such as Mandaha. In addition, an unknown number of abducted women and girls were used as sex slaves;

Kailahun District

42. At all times relevant to this Indictment, an unknown number of women and girls in various locations in the District were subjected to sexual violence. Many of these victims were captured in other areas of the Republic of Sierra Leone, brought to AFRC/RUF camps in the District, and used as sex slaves;

Freetown

43. Between 6 January 1999 and 31 January 1999, members of AFRC/RUF raped hundreds of women and girls throughout the Freetown area, and abducted hundreds of women and girls and used them as sex slaves.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 6: Rape, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

And:

Count 7: Sexual slavery and any other form of sexual violence, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

In addition, or in the alternative:

Count 8: Outrages upon personal dignity, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.e. of the Statute.

COUNTS 9 – 10: PHYSICAL VIOLENCE

44. Widespread physical violence, including mutilations, was committed against civilians. Victims were often brought to a central location where mutilations were carried out. These acts of physical violence included, but were not limited to, the following:

Kono District

45. Between about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Tombodu, Kaima (or Kayima) and Wondedu. The mutilations included cutting off limbs and carving "AFRC" and "RUF" on the bodies of the civilians;

Freetown

46. Between 6 January 1999 and 31 January 1999, AFRC/RUF mutilated an unknown number of civilian men, women and children in various areas of Freetown, including the northern and eastern areas of the city, and the Kissy area, including the Kissy mental hospital. The mutilations included cutting off limbs.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 9: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

Count 10: Other inhumane acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.i. of the Statute.

COUNT 11: USE OF CHILD SOLDIERS

47. At all times relevant to this Indictment, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 11: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute.

COUNT 12: ABDUCTIONS AND FORCED LABOUR

48. At all times relevant to this Indictment, AFRC/RUF engaged in widespread and large scale abductions of civilians and use of civilians as forced labour. Forced labour included domestic labour and use as diamond miners. The abductions and forced labour included, but were not limited to, the following:

Kenema District

49. Between about 1 August 1997 and about 31 January 1998, AFRC/RUF forced an unknown number of civilians living in the District to mine for diamonds at Cyborg Pit in Tongo Field;

Kono District

50. Between about 14 February 1998 and 30 June 1998, AFRC/RUF forces abducted hundreds of civilian men, women and children, and took them to various locations outside the District, or to locations within the District such as AFRC/RUF camps, Tombodu, Koidu, Wondedu, Tomendeh. At these locations the civilians were used as forced labour, including domestic labour and as diamond miners in the Tombodu area;

Bombali District

51. Between about 1 May 1998 and 31 July 1998, in Bombali District, AFRC/RUF abducted an unknown number of civilians and used them as forced labour;

Kailahun District

52. At all times relevant to this Indictment, captured civilian men, women and children were brought to various locations within the District and used as forced labour;

Freetown

53. Between 6 January 1999 and 31 January 1999, in particular as the AFRC/RUF were being driven out of Freetown, the AFRC/RUF abducted hundreds of civilians, including a large number of children, from various areas within Freetown, including Peacock Farm and Calaba Town. These abducted civilians were used as forced labour.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 12: Enslavement, a **CRIME AGAINST HUMANITY**, punishable under Article 2.c. of the Statute.

COUNT 13: LOOTING AND BURNING

54. At all times relevant to this Indictment, AFRC/RUF engaged in widespread unlawful taking and destruction by burning of civilian property. This looting and burning included, but was not limited to, the following:

Bo District

55. Between 1 June 1997 and 30 June 1997, AFRC/RUF forces looted and burned an unknown number of civilian houses in Telu, Sembehun, Mamboma and Tikonko;

Kono District

56. Between about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning in various locations in the District, including Tombodu, Foindu and Yardu Sando, where virtually every home in the village was looted and burned;

Bombali District

57. Between 1 March 1998 and 30 June 1998, AFRC/RUF forces burned an unknown number of civilian buildings in locations such as Karina;

Freetown

58. Between 6 January 1999 and 31 January 1999, AFRC/RUF forces engaged in widespread looting and burning throughout Freetown. The majority of houses that were destroyed were in the areas of Kissy and eastern Freetown; other locations included the Fourah Bay, Upgun, State House and Pademba Road areas of the city.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 13: Pillage, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.f. of the Statute.

COUNTS 14 – 17: ATTACKS ON UNAMSIL PERSONNEL

59. Between about 15 April 2000 and about 15 September 2000, AFRC/RUF engaged in widespread attacks against UNAMSIL peacekeepers and humanitarian assistance workers within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko, and Kono Districts. These attacks included unlawful killing of UNAMSIL peacekeepers, and abducting hundreds of peacekeepers and humanitarian assistance workers who were then held hostage.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 14: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.b. of the Statute;

In addition, or in the alternative:

Count 15: For the unlawful killings, Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

Count 16: Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

Count 17: For the abductions and holding as hostage, Taking of hostages, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.c. of the Statute.

Dated this 3rd day of March 2003

Freetown, Sierra Leone

David M. Crane

David M. Crane

The Prosecutor

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the December killings had Dutch nationality, instead focussing solely on universal jurisdiction.

5. IMMUNITY

To be distinguished from jurisdiction of national courts is the question of immunity. Bouterse's counsel had submitted that at the time of the alleged commission of the December killings, Bouterse was head of state and, as such, enjoyed immunity in Dutch courts. The Supreme Court did not address the question of Bouterse's immunity. The decision of the Amsterdam Court of Appeal on this matter was thus left intact. The latter found that the claim to immunity needed not be examined "because the commission of very grave criminal offences of this kind cannot be regarded as part of the official duties of a head of state".[48]

The Court of Appeal thus distinguished between official duties and other duties of heads of state, implying that only the first exempts state officials from prosecution. The Court of Appeal then separates grave crimes from other crimes, suggesting that immunity does not apply to the first category. Although the Court of Appeal failed to substantiate its finding, it did not seem at odds with current thinking. The discussion has been launched in 1999 by the *Pinochet* decision of the British House of Lords, rejecting the claim to immunity of the former head of state of Chile. The *Pinochet* case and the Court of Appeal's decision in the *Bouterse* case have their origins in the statutes of international criminal courts and tribunals, established to prosecute and try the most serious international crimes. These instruments provide that immunities of state officials do not bar the criminal courts and tribunals from exercising their jurisdiction over such persons.[49]

Notwithstanding the rapid developments in international criminal law at international and national level, in *the Congo* v. *Belgium* case, the International Court of Justice determined that immunities remain opposable before national courts. In this case the International Court of Justice was asked, *inter alia,* to address the question of immunity of the Minister for Foreign Affairs of the Congo from criminal jurisdiction of a Belgian court and the distinction in this respect between official and non-official acts. Furthermore, it examined the pertinence of international crimes for the matter of immunity.

The International Court of Justice confirmed the international customary rule that, throughout the duration of his office, a minister for foreign affairs enjoys

48. Para. 4.2. of the judgment of the Amsterdam Court of Appeal.

49. Art. 27 ICC Statute provides: 'Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the court from exercising its jurisdiction over such a person.' Similar rules are laid down in Art. 7(2) Yugoslavia Tribunal Statute and in Art. 6(2) Rwanda Tribunal Statute.

full immunity from national criminal jurisdiction. The main reason for this is that in the performance of his diplomatic functions a minister for foreign affairs is frequently required to travel internationally. He must be in a position freely to do so.[50] The International Court of Justice explicitly rejected the distinction, accepted in the *Pinochet* decision, between official and private acts committed in office: for both categories of acts functioning ministers for foreign affairs enjoy immunity.

A different question is the *duration* of immunities. At the time the Amsterdam Court of Appeal examined the complaint against Bouterse, the latter no longer occupied an official function. Similarly, pending the examination of the case before the International Court of Justice, Mr Yerodia had seized to hold office as Minister for Foreign Affairs of the Congo and later held no ministerial office at all.

The International Court of Justice ruled that the termination of the function does not entail cessation of immunity. After a person seizes to hold the office of minister for foreign affairs, he continues to enjoy immunity from criminal prosecution in other states. Yet, this is only true as far as official acts performed during office are concerned. No immunity applies in respect of acts committed during their period of office in a private capacity.[51]

This reasoning is hard to follow. The rationalism to grant full immunity for all acts follows, according to the International Court of Justice, from the necessity for a minister of foreign affairs *in office* to exercise his functions without fear of being arrested abroad on a criminal charge. The immunity accorded to ministers for foreign affairs is thus not absolute but functional in character. It is not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective states.[52] Why then continue entitlement to immunity *after* office, for any act including those committed during office?

Furthermore, the distinction made by the International Court of Justice between official and private acts is problematic. The Amsterdam Court of Appeal in the *Bouterse* case and the House of Lords in the *Pinochet* case, applied a different concept, distinguishing between 'official' and 'non-official' acts.[53] It is appreciated that 'private acts' is an even smaller category than 'non-

50. Para. 53.

51. Para. 55. In para. 61, the International Court of Justice stipulates: 'Thirdly, after a person ceases to hold the office of Minister for Foreign Affairs, he or she will no longer enjoy all of the immunities accorded by international law in other States. Provided that it has jurisdiction under international law, a court of one State may try a former Minister for Foreign Affairs of another State in respect of acts committed prior or subsequent to his or her period of office, as well as in respect of acts committed during that period of office in a private capacity.'

52. Para. 53.

53. In the *Pinochet* case, the House of Lords found that former heads of state cannot invoke immunity for acts committed in a non-official capacity.

official acts'. In any case, both distinctions appear to be pointless. Very few acts could seemingly be qualified as private and therewith could not rank for immunity purposes. Arguably only acts with a purely internal effect, for example *vis-à-vis* family and private property, could fall within this category. It cannot be said that the commission of a crime cannot be part of the functions of a head of state. In the *Bouterse* case, the December killings were carried out by the military. They were said to be ordered by Bouterse who claimed to be head of state and commander-in-chief of the Surinam army at the time. In my view, no order from a head of state in his capacity of commander of the military to its subordinates could be qualified as 'non-official'. The decision of the Amsterdam Court of Appeal, that the December killings are 'non-official' acts and in consequence fall outside the immunity claim, should therefore be rejected.

Another question addressed by the International Court of Justice, and also raised implicitly by the Court of Appeal in the *Bouterse* case, was whether immunities accorded to incumbent ministers for foreign affairs can equally protect them when they are suspected of having committed *serious international crimes*.

Unlike the Amsterdam Court of Appeal, the International Court of Justice could not deduce from international[54] or national[55] practice that there exists under customary international law an exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent ministers for foreign affairs suspected of having committed an international crime.[56]

It is true that, the jurisprudence of international criminal tribunals do not deal with the question of immunities of heads of state or foreign ministers before *national* criminal courts.[57] Still, the International Court of Justice fails to explain how the fundamental developments in the practice of international courts and tribunals affect or should affect the decision of national courts. The non-recognition by international criminal courts of the official position of a suspect

54. The International Court of Justice examined the rules concerning the immunity or criminal responsibility of persons having an official capacity contained in the legal instruments creating international criminal tribunals, and which are specifically applicable to the latter. It examined the Charter of the International Military Tribunal of Nuremberg (Art. 7), the Charter of the International Military Tribunal of Tokyo (Art. 6), the Statute of the Yugoslavia Tribunal (Art. 7 para. 2) and the Statute of the Rwanda Tribunal (Art. 6 para. 2) and the Statute of the ICC (Art. 27). The Court found that these rules do not enable it to conclude that any such an exception exists in customary international law in regard to national courts, para. 58.

55. The Court has examined state practice, including national legislation and those few decisions of national higher courts, such as the House of Lords or the French Court of Cassation. It considered the *Pinochet* decision, which recognizes an exception to the immunity rule when Lord Millett stated that 'international law cannot be supposed to have established a crime for having the character of *ius cogens* and at the same time to have provided an immunity which is co-extensive with the obligation it seeks to impose', para. 58.

56. Para. 58.

57. International Court of Justice, *Congo* v. *Belgium*, case of 14 February 2002, para. 58.

has been the result of long debates and has its origins in the practice of the Nuremberg Tribunal. Furthermore, it is difficult to see how the functional argument that the exercise of the office of minister for foreign affairs should not be limited so to ensure their freedom to travel internationally, applies to prosecutions of high ranking state officials by international courts and tribunals.

Without doubt the judgment of the International Court of Justice granting almost full immunity to ministers for foreign affairs applies equally to heads of state, exercising comparable duties. The question may be posed whether it can also be extended to other ministers and members of the cabinet. The better view seems to be that this extension is permitted by international law. While a minister of defense merits no particular privileges as a person and for that reason may not enjoy full protection, arguably, in order to preserve the integrity of his activities abroad, like heads of state and ministers for foreign affairs, he enjoys immunity from criminal jurisdiction of foreign states.[58]

In sum, notwithstanding extension of criminal jurisdiction on the basis of the universality principle, immunities under customary international law remain opposable before the courts of a foreign state. On the basis of the judgment of the International Court of Justice, Bouterse's acts would have to be qualified as committed in a 'official' capacity. If the submission – that Bouterse was a head of state at the time of the December killings – were accepted, he would enjoy immunity from national jurisdictions, including Dutch jurisdiction, up until today.

6. PROSPECTS FOR PROSECUTION IN THE NETHERLANDS

The Supreme Court's judgment in the *Bouterse* case means that foreigners, present in the Netherlands, suspected of torture committed abroad can only be prosecuted in Dutch courts when the acts concerned were committed after the coming into force of the 1984 Convention against Torture in the Netherlands, on 20 January 1989. The moderate monistic view prevailing in the Netherlands bars the self-execution of the criminalization of torture under international customary law as it stood before 1989 in the Dutch legal order.

It is uncertain whether crimes against humanity, which may include acts of torture, offer a better perspective. The Netherlands has not penalized crimes against humanity in its national law. At the same time, the Supreme Court did not rule out prosecution and trial in Dutch courts on the basis of a treaty or a decision of an international organization. Crimes against humanity are

58. The Dutch International Crimes Act, currently submitted to Dutch parliament as a legislative proposal, recognizes in addition to immunity of heads of state, heads of government and ministers for foreign affairs, immunitis of persons that flow from international customary law (Art. 16).

INTERNATIONAL COURT OF JUSTICE

YEAR 2002

2002
14 February
General List
No. 121

14 February 2002

CASE CONCERNING THE ARREST WARRANT OF 11 APRIL 2000

(DEMOCRATIC REPUBLIC OF THE CONGO *v.* BELGIUM)

Facts of the case — Issue by a Belgian investigating magistrate of "an international arrest warrant in absentia *" against the incumbent Minister for Foreign Affairs of the Congo, alleging grave breaches of the Geneva Conventions of 1949 and of the Additional Protocols thereto and crimes against humanity — International circulation of arrest warrant through Interpol — Person concerned subsequently ceasing to hold office as Minister for Foreign Affairs.*

* *

First objection of Belgium — Jurisdiction of the Court — Statute of the Court, Article 36, paragraph 2 — Existence of a "legal dispute" between the Parties at the time of filing of the Application instituting proceedings — Events subsequent to the filing of the Application do not deprive the Court of jurisdiction.

Second objection of Belgium — Mootness — Fact that the person concerned had ceased to hold office as Minister for Foreign Affairs does not put an end to the dispute between the Parties and does not deprive the Application of its object.

Third objection of Belgium — Admissibility — Facts underlying the Application instituting proceedings not changed in a way that transformed the dispute originally brought before the Court into another which is different in character.

Fourth objection of Belgium — Admissibility — Congo not acting in the context of protection of one of its nationals — Inapplicability of rules relating to exhaustion of local remedies.

Subsidiary argument of Belgium — Non ultra petita *rule — Claim in Application instituting proceedings that Belgium's claim to exercise a universal jurisdiction in issuing the arrest warrant is contrary to international law — Claim not made in final submissions of the Congo — Court unable to rule on that question in the operative part of its Judgment but not prevented from dealing with certain aspects of the question in the reasoning of its Judgment.*

* *

Immunity from criminal jurisdiction in other States and also inviolability of an incumbent Minister for Foreign Affairs — Vienna Convention on Diplomatic Relations of 18 April 1961, preamble, Article 32 — Vienna Convention on Consular Relations of 24 April 1963 — New York Convention on Special Missions of 8 December 1969, Article 21, paragraph 2 — Customary international law rules — Nature of the functions exercised by a Minister for Foreign Affairs — Functions such that, throughout the duration of his or her office, a Minister for Foreign Affairs when abroad enjoys full immunity from criminal jurisdiction and inviolability — No distinction in this context between acts performed in an "official" capacity and those claimed to have been performed in a "private capacity".

No exception to immunity from criminal jurisdiction and inviolability where an incumbent Minister for Foreign Affairs suspected of having committed war crimes or crimes against humanity — Distinction between jurisdiction of national courts and jurisdictional immunities — Distinction between immunity from jurisdiction and impunity.

Issuing of arrest warrant intended to enable the arrest on Belgian territory of an incumbent Minister for Foreign Affairs — Mere issuing of warrant a failure to respect the immunity and inviolability of Minister for Foreign Affairs — Purpose of the international circulation of the arrest warrant to establish a legal basis for the arrest of Minister for Foreign Affairs abroad and his subsequent extradition to Belgium — International circulation of the warrant a failure to respect the immunity and inviolability of Minister for Foreign Affairs.

* *

Remedies sought by the Congo — Finding by the Court of international responsibility of Belgium making good the moral injury complained of by the Congo — Belgium required by means of its own choosing to cancel the warrant in question and so inform the authorities to whom it was circulated.

JUDGMENT

Present: *President* GUILLAUME; *Vice-President* SHI; *Judges* ODA, RANJEVA, HERCZEGH, FLEISCHHAUER, KOROMA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN, KOOIJMANS, REZEK, AL-KHASAWNEH, BUERGENTHAL; *Judges* ad hoc BULA-BULA, VAN DEN WYNGAERT; *Registrar* COUVREUR.

In the case concerning the arrest warrant of 11 April 2000,

between

the Democratic Republic of the Congo,

represented by

H.E. Mr. Jacques Masangu-a-Mwanza, Ambassador Extraordinary and Plenipotentiary of the Democratic Republic of the Congo to the Kingdom of the Netherlands,

as Agent;

H.E. Mr. Ngele Masudi, Minister of Justice and Keeper of the Seals,

Maître Kosisaka Kombe, Legal Adviser to the Presidency of the Republic,

Mr. François Rigaux, Professor Emeritus at the Catholic University of Louvain,

Ms Monique Chemillier-Gendreau, Professor at the University of Paris VII (Denis Diderot),

Mr. Pierre d'Argent, *Chargé de cours*, Catholic University of Louvain,

Mr. Moka N'Golo, *Bâtonnier*,

Mr. Djeina Wembou, Professor at the University of Abidjan,

as Counsel and Advocates;

Mr. Mazyambo Makengo, Legal Adviser to the Ministry of Justice,

as Counsellor,

and

the Kingdom of Belgium,

represented by

Mr. Jan Devadder, Director-General, Legal Matters, Ministry of Foreign Affairs,

as Agent;

Mr. Eric David, Professor of Public International Law, *Université libre de Bruxelles*,

Mr. Daniel Bethlehem, Barrister, Bar of England and Wales, Fellow of Clare Hall and Deputy Director of the Lauterpacht Research Centre for International Law, University of Cambridge,

as Counsel and Advocates;

H.E. Baron Olivier Gillès de Pélichy, Permanent Representative of the Kingdom of Belgium to the Organization for the Prohibition of Chemical Weapons, responsible for relations with the International Court of Justice,

Mr. Claude Debrulle, Director-General, Criminal Legislation and Human Rights, Ministry of Justice,

Mr. Pierre Morlet, Advocate-General, Brussels *Cour d'Appel*,

Mr. Wouter Detavernier, Deputy Counsellor, Directorate-General Legal Matters, Ministry of Foreign Affairs,

Mr. Rodney Neufeld, Research Associate, Lauterpacht Research Centre for International Law, University of Cambridge,

Mr. Tom Vanderhaeghe, Assistant at the *Université libre de Bruxelles*,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 17 October 2000 the Democratic Republic of the Congo (hereinafter referred to as "the Congo") filed in the Registry of the Court an Application instituting proceedings against the Kingdom of Belgium (hereinafter referred to as "Belgium") in respect of a dispute concerning an "international arrest warrant issued on 11 April 2000 by a Belgian investigating judge . . . against the Minister for Foreign Affairs in office of the Democratic Republic of the Congo, Mr. Abdulaye Yerodia Ndombasi".

In that Application the Congo contended that Belgium had violated the "principle that a State may not exercise its authority on the territory of another State", the "principle of sovereign equality among all Members of the United Nations, as laid down in Article 2, paragraph 1, of the Charter of the United Nations", as well as "the diplomatic immunity of the Minister for Foreign Affairs of a sovereign State, as recognized by the jurisprudence of the Court and following from Article 41, paragraph 2, of the Vienna Convention of 18 April 1961 on Diplomatic Relations".

In order to found the Court's jurisdiction the Congo invoked in the aforementioned Application the fact that "Belgium ha[d] accepted the jurisdiction of the Court and, in so far as may be required, the [aforementioned] Application signifie[d] acceptance of that jurisdiction by the Democratic Republic of the Congo".

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was forthwith communicated to the Government of Belgium by the Registrar; and, in accordance with paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

3. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise the right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case; the Congo chose Mr. Sayeman Bula-Bula, and Belgium Ms Christine Van den Wyngaert.

4. On 17 October 2000, the day on which the Application was filed, the Government of the Congo also filed in the Registry of the Court a request for the indication of a provisional measure based on Article 41 of the Statute of the Court. At the hearings on that request, Belgium, for its part, asked that the case be removed from the List.

By Order of 8 December 2000 the Court, on the one hand, rejected Belgium's request that the case be removed from the List and, on the other, held that the circumstances, as they then presented themselves to the Court, were not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures. In the same Order, the Court also held that "it [was] desirable that the issues before the Court should be determined as soon as possible" and that "it [was] therefore appropriate to ensure that a decision on the Congo's Application be reached with all expedition".

5. By Order of 13 December 2000, the President of the Court, taking account of the agreement of the Parties as expressed at a meeting held with their Agents on 8 December 2000, fixed time-limits for the filing of a Memorial by the Congo and of a Counter-Memorial by Belgium, addressing both issues of jurisdiction and admissibility and the merits. By Orders of 14 March 2001 and 12 April 2001, these time-limits, taking account of the reasons given by the Congo and the agreement of the Parties, were successively extended. The Memorial of the Congo was filed on 16 May 2001 within the time-limit thus finally prescribed.

6. By Order of 27 June 2001, the Court, on the one hand, rejected a request by Belgium for authorization, in derogation from the previous Orders of the President of the Court, to submit preliminary objections involving suspension of the proceedings on the merits and, on the other, extended the time-limit prescribed in the Order of 12 April 2001 for the filing by Belgium of a Counter-Memorial addressing both questions of jurisdiction and admissibility and the merits. The Counter-Memorial of Belgium was filed on 28 September 2001 within the time-limit thus extended.

7. Pursuant to Article 53, paragraph 2, of the Rules, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and documents annexed would be made available to the public at the opening of the oral proceedings.

8. Public hearings were held from 15 to 19 October 2001, at which the Court heard the oral arguments and replies of:

For the Congo: H.E. Mr. Jacques Masangu-a-Mwanza,
H.E. Mr. Ngele Masudi,
Maître Kosisaka Kombe,
Mr. François Rigaux,
Ms Monique Chemillier-Gendreau,
Mr. Pierre d'Argent.

For Belgium: Mr. Jan Devadder,
Mr. Daniel Bethlehem,
Mr. Eric David.

9. At the hearings, Members of the Court put questions to Belgium, to which replies were given orally or in writing, in accordance with Article 61, paragraph 4, of the Rules of Court. The Congo provided its written comments on the reply that was given in writing to one of these questions, pursuant to Article 72 of the Rules of Court.

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10. In its Application, the Congo formulated the decision requested in the following terms:

> "The Court is requested to declare that the Kingdom of Belgium shall annul the international arrest warrant issued on 11 April 2000 by a Belgian investigating judge, Mr. Vandermeersch, of the Brussels *tribunal de première instance* against the Minister for Foreign Affairs in office of the Democratic Republic of the Congo, Mr. Abdulaye Yerodia Ndombasi, seeking his provisional detention pending a request for extradition to Belgium for alleged crimes constituting 'serious violations of international humanitarian law', that warrant having been circulated by the judge to all States, including the Democratic Republic of the Congo, which received it on 12 July 2000."

11. In the course of the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of the Congo,

in the Memorial:

> "In light of the facts and arguments set out above, the Government of the Democratic Republic of the Congo requests the Court to adjudge and declare that:
>
> 1. by issuing and internationally circulating the arrest warrant of 11 April 2000 against Mr. Abdulaye Yerodia Ndombasi, Belgium committed a violation in regard to the DRC of the rule of customary international law concerning the absolute inviolability and immunity from criminal process of incumbent foreign ministers;
>
> 2. a formal finding by the Court of the unlawfulness of that act constitutes an appropriate form of satisfaction, providing reparation for the consequent moral injury to the DRC;

3. the violation of international law underlying the issue and international circulation of the arrest warrant of 11 April 2000 precludes any State, including Belgium, from executing it;

4. Belgium shall be required to recall and cancel the arrest warrant of 11 April 2000 and to inform the foreign authorities to whom the warrant was circulated that, following the Court's Judgment, Belgium renounces its request for their co-operation in executing the unlawful warrant."

On behalf of the Government of Belgium,

in the Counter-Memorial:

"For the reasons stated in Part II of this Counter-Memorial, Belgium requests the Court, as a preliminary matter, to adjudge and declare that the Court lacks jurisdiction in this case and/or that the application by the Democratic Republic of the Congo against Belgium is inadmissible.

If, contrary to the preceding submission, the Court concludes that it does have jurisdiction in this case and that the application by the Democratic Republic of the Congo is admissible, Belgium requests the Court to reject the submissions of the Democratic Republic of the Congo on the merits of the case and to dismiss the application."

12. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of the Congo,

"In light of the facts and arguments set out during the written and oral proceedings, the Government of the Democratic Republic of the Congo requests the Court to adjudge and declare that:

1. by issuing and internationally circulating the arrest warrant of 11 April 2000 against Mr. Abdulaye Yerodia Ndombasi, Belgium committed a violation in regard to the Democratic Republic of the Congo of the rule of customary international law concerning the absolute inviolability and immunity from criminal process of incumbent foreign ministers; in so doing, it violated the principle of sovereign equality among States;

2. a formal finding by the Court of the unlawfulness of that act constitutes an appropriate form of satisfaction, providing reparation for the consequent moral injury to the Democratic Republic of the Congo;

3. the violations of international law underlying the issue and international circulation of the arrest warrant of 11 April 2000 preclude any State, including Belgium, from executing it;

4. Belgium shall be required to recall and cancel the arrest warrant of 11 April 2000 and to inform the foreign authorities to whom the warrant was circulated that Belgium renounces its request for their co-operation in executing the unlawful warrant."

On behalf of the Government of Belgium,

"For the reasons stated in the Counter-Memorial of Belgium and in its oral submissions, Belgium requests the Court, as a preliminary matter, to adjudge and declare that the Court lacks jurisdiction in this case and/or that the Application by the Democratic Republic of the Congo against Belgium is inadmissible.

If, contrary to the submissions of Belgium with regard to the Court's jurisdiction and the admissibility of the Application, the Court concludes that it does have jurisdiction in this case and that the Application by the Democratic Republic of the Congo is admissible, Belgium requests the Court to reject the submissions of the Democratic Republic of the Congo on the merits of the case and to dismiss the Application."

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13. On 11 April 2000 an investigating judge of the Brussels *tribunal de première instance* issued "an international arrest warrant *in absentia*" against Mr. Abdulaye Yerodia Ndombasi, charging him, as perpetrator or co-perpetrator, with offences constituting grave breaches of the Geneva Conventions of 1949 and of the Additional Protocols thereto, and with crimes against humanity.

At the time when the arrest warrant was issued Mr. Yerodia was the Minister for Foreign Affairs of the Congo.

14. The arrest warrant was transmitted to the Congo on 7 June 2000, being received by the Congolese authorities on 12 July 2000. According to Belgium, the warrant was at the same time transmitted to the International Criminal Police Organization (Interpol), an organization whose function is to enhance and facilitate cross-border criminal police co-operation worldwide; through the latter, it was circulated internationally.

15. In the arrest warrant, Mr. Yerodia is accused of having made various speeches inciting racial hatred during the month of August 1998. The crimes with which Mr. Yerodia was charged were punishable in Belgium under the Law of 16 June 1993 "concerning the Punishment of Grave Breaches of the International Geneva Conventions of 12 August 1949 and of Protocols I and II of 8 June 1977 Additional Thereto", as amended by the Law of 19 February 1999 "concerning the Punishment of Serious Violations of International Humanitarian Law" (hereinafter referred to as the "Belgian Law").

Article 7 of the Belgian Law provides that "The Belgian courts shall have jurisdiction in respect of the offences provided for in the present Law, wheresoever they may have been committed". In the present case, according to Belgium, the complaints that initiated the proceedings as a result of which the arrest warrant was issued emanated from 12 individuals all

resident in Belgium, five of whom were of Belgian nationality. It is not contested by Belgium, however, that the alleged acts to which the arrest warrant relates were committed outside Belgian territory, that Mr. Yerodia was not a Belgian national at the time of those acts, and that Mr. Yerodia was not in Belgian territory at the time that the arrest warrant was issued and circulated. That no Belgian nationals were victims of the violence that was said to have resulted from Mr. Yerodia's alleged offences was also uncontested.

Article 5, paragraph 3, of the Belgian Law further provides that "[i]mmunity attaching to the official capacity of a person shall not prevent the application of the present Law".

16. At the hearings, Belgium further claimed that it offered "to entrust the case to the competent authorities [of the Congo] for enquiry and possible prosecution", and referred to a certain number of steps which it claimed to have taken in this regard from September 2000, that is, before the filing of the Application instituting proceedings. The Congo for its part stated the following: "We have scant information concerning the form [of these Belgian proposals]." It added that "these proposals . . . appear to have been made very belatedly, namely *after* an arrest warrant against Mr. Yerodia had been issued."

17. On 17 October 2000, the Congo filed in the Registry an Application instituting the present proceedings (see paragraph 1 above), in which the Court was requested "to declare that the Kingdom of Belgium shall annul the international arrest warrant issued on 11 April 2000". The Congo relied in its Application on two separate legal grounds. First, it claimed that "[t]he *universal jurisdiction* that the Belgian State attributes to itself under Article 7 of the Law in question" constituted a

> "[v]iolation of the principle that a State may not exercise its authority on the territory of another State and of the principle of sovereign equality among all Members of the United Nations, as laid down in Article 2, paragraph 1, of the Charter of the United Nations".

Secondly, it claimed that "[t]he non-recognition, on the basis of Article 5 . . . of the Belgian Law, of the immunity of a Minister for Foreign Affairs in office" constituted a "[v]iolation of the diplomatic immunity of the Minister for Foreign Affairs of a sovereign State, as recognized by the jurisprudence of the Court and following from Article 41, paragraph 2, of the Vienna Convention of 18 April 1961 on Diplomatic Relations".

18. On the same day that it filed its Application instituting proceedings, the Congo submitted a request to the Court for the indication of a provisional measure under Article 41 of the Statute of the Court. During the hearings devoted to consideration of that request, the Court was informed that in November 2000 a ministerial reshuffle had taken place in the Congo, following which Mr. Yerodia had ceased to hold office as Minister for Foreign Affairs and had been entrusted with the portfolio of Minister of Education. Belgium accordingly claimed that the Congo's Application had become moot and asked the Court, as has already been recalled, to remove the case from the List. By Order of 8 December 2000, the Court rejected both Belgium's submissions to that effect and also the Congo's request for the indication of provisional measures (see paragraph 4 above).

19. From mid-April 2001, with the formation of a new Government in the Congo, Mr. Yerodia ceased to hold the post of Minister of Education. He no longer holds any ministerial office today.

20. On 12 September 2001, the Belgian National Central Bureau of Interpol requested the Interpol General Secretariat to issue a Red Notice in respect of Mr. Yerodia. Such notices concern individuals whose arrest is requested with a view to extradition. On 19 October 2001, at the public sittings held to hear the oral arguments of the Parties in the case, Belgium informed the Court that Interpol had responded on 27 September 2001 with a request for additional information, and that no Red Notice had yet been circulated.

21. Although the Application of the Congo originally advanced two separate legal grounds (see paragraph 17 above), the submissions of the Congo in its Memorial and the final submissions which it presented at the end of the oral proceedings refer only to a violation "in regard to the . . . Congo of the rule of customary international law concerning the absolute inviolability and immunity from criminal process of incumbent foreign ministers" (see paragraphs 11 and 12 above).

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22. In their written pleadings, and in oral argument, the Parties addressed issues of jurisdiction and admissibility as well as the merits (see paragraphs 5 and 6 above). In this connection, Belgium raised certain objections which the Court will begin by addressing.

* *

23. The first objection presented by Belgium reads as follows:

> "That, in the light of the fact that Mr. Yerodia Ndombasi is no longer either Minister for Foreign Affairs of the [Congo] or a minister occupying any other position in the . . . Government [of the Congo], there is no longer a 'legal dispute' between the Parties within the meaning of this term in the Optional Clause Declarations of the Parties and that the Court accordingly lacks jurisdiction in this case."

24. Belgium does not deny that such a legal dispute existed between the Parties at the time when the Congo filed its Application instituting proceedings, and that the Court was properly seised by that Application. However, it contends that the question is not whether a legal dispute existed at that time, but whether a legal dispute exists at the present time. Belgium refers in this respect *inter alia* to the *Northern Cameroons* case, in which the Court found that it "may pronounce judgment only in connection with concrete cases where there exists at the time of the adjudication an actual controversy involving a conflict of legal interests between the parties" (*I.C.J. Reports 1963*, pp. 33-34), as well as to the *Nuclear Tests* cases *(Australia* v. *France)* and

(New Zealand v. *France)*, in which the Court stated the following: "The Court, as a court of law, is called upon to resolve existing disputes between States . . . The dispute brought before it must therefore continue to exist at the time when the Court makes its decision" (*I.C.J. Reports 1974*, pp. 270-271, para. 55; p. 476, para. 58). Belgium argues that the position of Mr. Yerodia as Minister for Foreign Affairs was central to the Congo's Application instituting proceedings, and emphasizes that there has now been a change of circumstances at the very heart of the case, in view of the fact that Mr. Yerodia was relieved of his position as Minister for Foreign Affairs in November 2000 and that, since 15 April 2001, he has occupied no position in the Government of the Congo (see paragraphs 18 and 19 above). According to Belgium, while there may still be a difference of opinion between the Parties on the scope and content of international law governing the immunities of a Minister for Foreign Affairs, that difference of opinion has now become a matter of abstract, rather than of practical, concern. The result, in Belgium's view, is that the case has become an attempt by the Congo to "[seek] an advisory opinion from the Court", and no longer a "concrete case" involving an "actual controversy" between the Parties, and that the Court accordingly lacks jurisdiction in the case.

25. The Congo rejects this objection of Belgium. It contends that there is indeed a legal dispute between the Parties, in that the Congo claims that the arrest warrant was issued in violation of the immunity of its Minister for Foreign Affairs, that that warrant was unlawful *ab initio*, and that this legal defect persists despite the subsequent changes in the position occupied by the individual concerned, while Belgium maintains that the issue and circulation of the arrest warrant were not contrary to international law. The Congo adds that the termination of Mr. Yerodia's official duties in no way operated to efface the wrongful act and the injury that flowed from it, for which the Congo continues to seek redress.

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26. The Court recalls that, according to its settled jurisprudence, its jurisdiction must be determined at the time that the act instituting proceedings was filed. Thus, if the Court has jurisdiction on the date the case is referred to it, it continues to do so regardless of subsequent events. Such events might lead to a finding that an application has subsequently become moot and to a decision not to proceed to judgment on the merits, but they cannot deprive the Court of jurisdiction (see *Nottebohm, Preliminary Objection, Judgment, I.C.J. Reports 1953*, p. 122; *Right of Passage over Indian Territory, Preliminary Objections, Judgment, I.C.J. Reports 1957*, p. 142; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 23-24, para. 38; and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 129, para. 37).

27. Article 36, paragraph 2, of the Statute of the Court provides:

> "The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

(a) the interpretation of a treaty;

(b) any question of international law;

(c) the existence of any fact which, if established, would constitute a breach of an international obligation;

(d) the nature or extent of the reparation to be made for the breach of an international obligation."

On 17 October 2000, the date that the Congo's Application instituting these proceedings was filed, each of the Parties was bound by a declaration of acceptance of compulsory jurisdiction, filed in accordance with the above provision: Belgium by a declaration of 17 June 1958 and the Congo by a declaration of 8 February 1989. Those declarations contained no reservation applicable to the present case.

Moreover, it is not contested by the Parties that at the material time there was a legal dispute between them concerning the international lawfulness of the arrest warrant of 11 April 2000 and the consequences to be drawn if the warrant was unlawful. Such a dispute was clearly a legal dispute within the meaning of the Court's jurisprudence, namely "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons" in which "the claim of one party is positively opposed by the other" (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 17, para. 22; and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 122-123, para. 21).

28. The Court accordingly concludes that at the time that it was seised of the case it had jurisdiction to deal with it, and that it still has such jurisdiction. Belgium's first objection must therefore be rejected.

* *

29. The second objection presented by Belgium is the following:

"That in the light of the fact that Mr. Yerodia Ndombasi is no longer either Minister for Foreign Affairs of the [Congo] or a minister occupying any other position in the . . . Government [of the Congo], the case is now without object and the Court should accordingly decline to proceed to judgment on the merits of the case."

30. Belgium also relies in support of this objection on the *Northern Cameroons* case, in which the Court considered that it would not be a proper discharge of its duties to proceed further

in a case in which any judgment that the Court might pronounce would be "without object" (*I.C.J. Reports 1963*, p. 38), and on the *Nuclear Tests* cases, in which the Court saw "no reason to allow the continuance of proceedings which it knows are bound to be fruitless" (*I.C.J. Reports 1974*, p. 271, para. 58; p. 477, para. 61). Belgium maintains that the declarations requested by the Congo in its first and second submissions would clearly fall within the principles enunciated by the Court in those cases, since a judgment of the Court on the merits in this case could only be directed towards the clarification of the law in this area for the future, or be designed to reinforce the position of one or other Party. It relies in support of this argument on the fact that the Congo does not allege any material injury and is not seeking compensatory damages. It adds that the issue and transmission of the arrest warrant were not predicated on the ministerial status of the person concerned, that he is no longer a minister, and that the case is accordingly now devoid of object.

31. The Congo contests this argument of Belgium, and emphasizes that the aim of the Congo — to have the disputed arrest warrant annulled and to obtain redress for the moral injury suffered — remains unachieved at the point in time when the Court is called upon to decide the dispute. According to the Congo, in order for the case to have become devoid of object during the proceedings, the cause of the violation of the right would have had to disappear, and the redress sought would have to have been obtained.

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32. The Court has already affirmed on a number of occasions that events occurring subsequent to the filing of an application may render the application without object such that the Court is not called upon to give a decision thereon (see *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 26, para. 46; and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 131, para. 45).

However, it considers that this is not such a case. The change which has occurred in the situation of Mr. Yerodia has not in fact put an end to the dispute between the Parties and has not deprived the Application of its object. The Congo argues that the arrest warrant issued by the Belgian judicial authorities against Mr. Yerodia was and remains unlawful. It asks the Court to hold that the warrant is unlawful, thus providing redress for the moral injury which the warrant allegedly caused to it. The Congo also continues to seek the cancellation of the warrant. For its part, Belgium contends that it did not act in violation of international law and it disputes the Congo's submissions. In the view of the Court, it follows from the foregoing that the Application of the Congo is not now without object and that accordingly the case is not moot. Belgium's second objection must accordingly be rejected.

* *

33. The third Belgian objection is put as follows:

> "That the case as it now stands is materially different to that set out in the [Congo]'s Application instituting proceedings and that the Court accordingly lacks jurisdiction in the case and/or that the application is inadmissible."

34. According to Belgium, it would be contrary to legal security and the sound administration of justice for an applicant State to continue proceedings in circumstances in which the factual dimension on which the Application was based has changed fundamentally, since the respondent State would in those circumstances be uncertain, until the very last moment, of the substance of the claims against it. Belgium argues that the prejudice suffered by the respondent State in this situation is analogous to the situation in which an applicant State formulates new claims during the course of the proceedings. It refers to the jurisprudence of the Court holding inadmissible new claims formulated during the course of the proceedings which, had they been entertained, would have transformed the subject of the dispute originally brought before it under the terms of the Application (see *Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, pp. 447-448, para. 29). In the circumstances, Belgium contends that, if the Congo wishes to maintain its claims, it should be required to initiate proceedings afresh or, at the very least, apply to the Court for permission to amend its initial Application.

35. In response, the Congo denies that there has been a substantial amendment of the terms of its Application, and insists that it has presented no new claim, whether of substance or of form, that would have transformed the subject-matter of the dispute. The Congo maintains that it has done nothing through the various stages in the proceedings but "condense and refine" its claims, as do most States that appear before the Court, and that it is simply making use of the right of parties to amend their submissions until the end of the oral proceedings.

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36. The Court notes that, in accordance with settled jurisprudence, it "cannot, in principle, allow a dispute brought before it by application to be transformed by amendments in the submissions into another dispute which is different in character" (*Société Commerciale de Belgique, Judgment, 1939, P.C.I.J., Series A/B, No. 78*, p. 173; cf. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 427, para. 80; see also *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, pp. 264-267, in particular paras. 69 and 70). However, the Court considers that in the present case the facts underlying the Application have not changed in a way that produced such a transformation in the dispute brought before it. The question submitted to the Court for decision remains whether the issue and circulation of the arrest warrant by the Belgian judicial authorities against a person who was at that time the Minister for Foreign Affairs of the Congo were contrary to international law. The Congo's final submissions arise "directly out of the question which is the subject-matter of that Application" (*Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 203, para. 72; see also *Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 36).

In these circumstances, the Court considers that Belgium cannot validly maintain that the dispute brought before the Court was transformed in a way that affected its ability to prepare its defence, or that the requirements of the sound administration of justice were infringed. Belgium's third objection must accordingly be rejected.

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37. The fourth Belgian objection reads as follows:

> "That, in the light of the new circumstances concerning Mr. Yerodia Ndombasi, the case has assumed the character of an action of diplomatic protection but one in which the individual being protected has failed to exhaust local remedies, and that the Court accordingly lacks jurisdiction in the case and/or that the application is inadmissible."

38. In this respect, Belgium accepts that, when the case was first instituted, the Congo had a direct legal interest in the matter, and was asserting a claim in its own name in respect of the alleged violation by Belgium of the immunity of the Congo's Foreign Minister. However, according to Belgium, the case was radically transformed after the Application was filed, namely on 15 April 2001, when Mr. Yerodia ceased to be a member of the Congolese Government. Belgium maintains that two of the requests made of the Court in the Congo's final submissions in practice now concern the legal effect of an arrest warrant issued against a private citizen of the Congo, and that these issues fall within the realm of an action of diplomatic protection. It adds that the individual concerned has not exhausted all available remedies under Belgian law, a necessary condition before the Congo can espouse the cause of one of its nationals in international proceedings.

39. The Congo, on the other hand, denies that this is an action for diplomatic protection. It maintains that it is bringing these proceedings in the name of the Congolese State, on account of the violation of the immunity of its Minister for Foreign Affairs. The Congo further denies the availability of remedies under Belgian law. It points out in this regard that it is only when the Crown Prosecutor has become seised of the case file and makes submissions to the *Chambre du conseil* that the accused can defend himself before the *Chambre* and seek to have the charge dismissed.

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40. The Court notes that the Congo has never sought to invoke before it Mr. Yerodia's personal rights. It considers that, despite the change in professional situation of Mr. Yerodia, the character of the dispute submitted to the Court by means of the Application has not changed: the dispute still concerns the lawfulness of the arrest warrant issued on 11 April 2000 against a person

who was at the time Minister for Foreign Affairs of the Congo, and the question whether the rights of the Congo have or have not been violated by that warrant. As the Congo is not acting in the context of protection of one of its nationals, Belgium cannot rely upon the rules relating to the exhaustion of local remedies.

In any event, the Court recalls that an objection based on non-exhaustion of local remedies relates to the admissibility of the application (see *Interhandel, Preliminary Objections, Judgment, I.C.J. Reports 1959*, p. 26; *Elettronica Sicula S.p.A. (ELSI), Judgment, I.C.J. Reports 1989*, p. 42, para. 49). Under settled jurisprudence, the critical date for determining the admissibility of an application is the date on which it is filed (see *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 25-26, paras. 43-44; and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 130-131, paras. 42-43). Belgium accepts that, on the date on which the Congo filed the Application instituting proceedings, the Congo had a direct legal interest in the matter, and was asserting a claim in its own name. Belgium's fourth objection must accordingly be rejected.

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41. As a subsidiary argument, Belgium further contends that "[i]n the event that the Court decides that it does have jurisdiction in this case and that the application is admissible, . . . the *non ultra petita* rule operates to limit the jurisdiction of the Court to those issues that are the subject of the [Congo]'s final submissions". Belgium points out that, while the Congo initially advanced a twofold argument, based, on the one hand, on the Belgian judge's lack of jurisdiction, and, on the other, on the immunity from jurisdiction enjoyed by its Minister for Foreign Affairs, the Congo no longer claims in its final submissions that Belgium wrongly conferred upon itself universal jurisdiction *in absentia*. According to Belgium, the Congo now confines itself to arguing that the arrest warrant of 11 April 2000 was unlawful because it violated the immunity from jurisdiction of its Minister for Foreign Affairs, and that the Court consequently cannot rule on the issue of universal jurisdiction in any decision it renders on the merits of the case.

42. The Congo, for its part, states that its interest in bringing these proceedings is to obtain a finding by the Court that it has been the victim of an internationally wrongful act, the question whether this case involves the "exercise of an excessive universal jurisdiction" being in this connection only a secondary consideration. The Congo asserts that any consideration by the Court of the issues of international law raised by universal jurisdiction would be undertaken not at the request of the Congo but, rather, by virtue of the defence strategy adopted by Belgium, which appears to maintain that the exercise of such jurisdiction can "represent a valid counterweight to the observance of immunities".

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43. The Court would recall the well-established principle that "it is the duty of the Court not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions" (*Asylum, Judgment, I.C.J. Reports 1950*, p. 402). While the Court is thus not entitled to decide upon questions not asked of it, the *non ultra petita* rule nonetheless cannot preclude the Court from addressing certain legal points in its reasoning. Thus in the present case the Court may not rule, in the operative part of its Judgment, on the question whether the disputed arrest warrant, issued by the Belgian investigating judge in exercise of his purported universal jurisdiction, complied in that regard with the rules and principles of international law governing the jurisdiction of national courts. This does not mean, however, that the Court may not deal with certain aspects of that question in the reasoning of its Judgment, should it deem this necessary or desirable.

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44. The Court concludes from the foregoing that it has jurisdiction to entertain the Congo's Application, that the Application is not without object and that accordingly the case is not moot, and that the Application is admissible. Thus, the Court now turns to the merits of the case.

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45. As indicated above (see paragraphs 41 to 43 above), in its Application instituting these proceedings, the Congo originally challenged the legality of the arrest warrant of 11 April 2000 on two separate grounds: on the one hand, Belgium's claim to exercise a universal jurisdiction and, on the other, the alleged violation of the immunities of the Minister for Foreign Affairs of the Congo then in office. However, in its submissions in its Memorial, and in its final submissions at the close of the oral proceedings, the Congo invokes only the latter ground.

46. As a matter of logic, the second ground should be addressed only once there has been a determination in respect of the first, since it is only where a State has jurisdiction under international law in relation to a particular matter that there can be any question of immunities in regard to the exercise of that jurisdiction. However, in the present case, and in view of the final form of the Congo's submissions, the Court will address first the question whether, assuming that it had jurisdiction under international law to issue and circulate the arrest warrant of 11 April 2000, Belgium in so doing violated the immunities of the then Minister for Foreign Affairs of the Congo.

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47. The Congo maintains that, during his or her term of office, a Minister for Foreign Affairs of a sovereign State is entitled to inviolability and to immunity from criminal process being "absolute or complete", that is to say, they are subject to no exception. Accordingly, the Congo contends that no criminal prosecution may be brought against a Minister for Foreign Affairs in a foreign court as long as he or she remains in office, and that any finding of criminal responsibility by a domestic court in a foreign country, or any act of investigation undertaken with a view to bringing him or her to court, would contravene the principle of immunity from jurisdiction. According to the Congo, the basis of such criminal immunity is purely functional, and immunity is accorded under customary international law simply in order to enable the foreign State representative enjoying such immunity to perform his or her functions freely and without let or hindrance. The Congo adds that the immunity thus accorded to Ministers for Foreign Affairs when in office covers *all* their acts, including any committed before they took office, and that it is irrelevant whether the acts done whilst in office may be characterized or not as "official acts".

48. The Congo states further that it does not deny the existence of a principle of international criminal law, deriving from the decisions of the Nuremberg and Tokyo international military tribunals, that the accused's official capacity at the time of the acts cannot, before any court, whether domestic or international, constitute a "ground of exemption from his criminal responsibility or a ground for mitigation of sentence". The Congo then stresses that the fact that an immunity might bar prosecution before a specific court or over a specific period does not mean that the same prosecution cannot be brought, if appropriate, before another court which is not bound by that immunity, or at another time when the immunity need no longer be taken into account. It concludes that immunity does not mean impunity.

49. Belgium maintains for its part that, while Ministers for Foreign Affairs in office generally enjoy an immunity from jurisdiction before the courts of a foreign State, such immunity applies only to acts carried out in the course of their official functions, and cannot protect such persons in respect of private acts or when they are acting otherwise than in the performance of their official functions.

50. Belgium further states that, in the circumstances of the present case, Mr. Yerodia enjoyed no immunity at the time when he is alleged to have committed the acts of which he is accused, and that there is no evidence that he was then acting in any official capacity. It observes that the arrest warrant was issued against Mr. Yerodia personally.

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51. The Court would observe at the outset that in international law it is firmly established that, as also diplomatic and consular agents, certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal. For the purposes of the present case, it is only the immunity from criminal jurisdiction and the inviolability of an incumbent Minister for Foreign Affairs that fall for the Court to consider.

52. A certain number of treaty instruments were cited by the Parties in this regard. These included, first, the Vienna Convention on Diplomatic Relations of 18 April 1961, which states in its preamble that the purpose of diplomatic privileges and immunities is "to ensure the efficient performance of the functions of diplomatic missions as representing States". It provides in Article 32 that only the sending State may waive such immunity. On these points, the Vienna Convention on Diplomatic Relations, to which both the Congo and Belgium are parties, reflects customary international law. The same applies to the corresponding provisions of the Vienna Convention on Consular Relations of 24 April 1963, to which the Congo and Belgium are also parties.

The Congo and Belgium further cite the New York Convention on Special Missions of 8 December 1969, to which they are not, however, parties. They recall that under Article 21, paragraph 2, of that Convention:

> "The Head of the Government, the Minister for Foreign Affairs and other persons of high rank, when they take part in a special mission of the sending State, shall enjoy in the receiving State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law."

These conventions provide useful guidance on certain aspects of the question of immunities. They do not, however, contain any provision specifically defining the immunities enjoyed by Ministers for Foreign Affairs. It is consequently on the basis of customary international law that the Court must decide the questions relating to the immunities of such Ministers raised in the present case.

53. In customary international law, the immunities accorded to Ministers for Foreign Affairs are not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States. In order to determine the extent of these immunities, the Court must therefore first consider the nature of the functions exercised by a Minister for Foreign Affairs. He or she is in charge of his or her Government's diplomatic activities and generally acts as its representative in international negotiations and intergovernmental meetings. Ambassadors and other diplomatic agents carry out their duties under his or her authority. His or her acts may bind the State represented, and there is a presumption that a Minister for Foreign Affairs, simply by virtue of that office, has full powers to act on behalf of the State (see, e.g., Art. 7, para. 2 *(a)*, of the 1969 Vienna Convention on the Law of Treaties). In the performance of these functions, he or she is frequently required to travel internationally, and thus must be in a position freely to do so whenever the need should arise. He or she must also be in constant communication with the Government, and with its diplomatic missions around the world, and be capable at any time of communicating with representatives of other States. The Court further observes that a Minister for Foreign Affairs, responsible for the conduct of his or her State's relations with all other States, occupies a position such that, like the Head of State or the Head of Government, he or she is recognized under international law as representative of the State solely by virtue of his or her office. He or she does not have to present letters of credence: to the contrary, it is generally the Minister who determines the authority to be conferred upon diplomatic agents and countersigns their letters of credence. Finally, it is to the Minister for Foreign Affairs that *chargés d'affaires* are accredited.

54. The Court accordingly concludes that the functions of a Minister for Foreign Affairs are such that, throughout the duration of his or her office, he or she when abroad enjoys full immunity from criminal jurisdiction and inviolability. That immunity and that inviolability protect the individual concerned against any act of authority of another State which would hinder him or her in the performance of his or her duties.

55. In this respect, no distinction can be drawn between acts performed by a Minister for Foreign Affairs in an "official" capacity, and those claimed to have been performed in a "private capacity", or, for that matter, between acts performed before the person concerned assumed office as Minister for Foreign Affairs and acts committed during the period of office. Thus, if a Minister for Foreign Affairs is arrested in another State on a criminal charge, he or she is clearly thereby prevented from exercising the functions of his or her office. The consequences of such impediment to the exercise of those official functions are equally serious, regardless of whether the Minister for Foreign Affairs was, at the time of arrest, present in the territory of the arresting State on an "official" visit or a "private" visit, regardless of whether the arrest relates to acts allegedly performed before the person became the Minister for Foreign Affairs or to acts performed while in office, and regardless of whether the arrest relates to alleged acts performed in an "official" capacity or a "private" capacity. Furthermore, even the mere risk that, by travelling to or transiting another State a Minister for Foreign Affairs might be exposing himself or herself to legal proceedings could deter the Minister from travelling internationally when required to do so for the purposes of the performance of his or her official functions.

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56. The Court will now address Belgium's argument that immunities accorded to incumbent Ministers for Foreign Affairs can in no case protect them where they are suspected of having committed war crimes or crimes against humanity. In support of this position, Belgium refers in its Counter-Memorial to various legal instruments creating international criminal tribunals, to examples from national legislation, and to the jurisprudence of national and international courts.

Belgium begins by pointing out that certain provisions of the instruments creating international criminal tribunals state expressly that the official capacity of a person shall not be a bar to the exercise by such tribunals of their jurisdiction.

Belgium also places emphasis on certain decisions of national courts, and in particular on the judgments rendered on 24 March 1999 by the House of Lords in the United Kingdom and on 13 March 2001 by the Court of Cassation in France in the *Pinochet* and *Qaddafi* cases respectively, in which it contends that an exception to the immunity rule was accepted in the case of serious crimes under international law. Thus, according to Belgium, the *Pinochet* decision recognizes an exception to the immunity rule when Lord Millett stated that "[i]nternational law cannot be supposed to have established a crime having the character of a *jus cogens* and at the same time to have provided an immunity which is co-extensive with the obligation it seeks to impose", or when Lord Phillips of Worth Matravers said that "no established rule of international law requires state immunity *rationae materiae* to be accorded in respect of prosecution for an international crime". As to the French Court of Cassation, Belgium contends that, in holding that, "under international law as it currently stands, the crime alleged [acts of terrorism], irrespective of its gravity, does not come within the exceptions to the principle of immunity from jurisdiction for incumbent foreign Heads of State", the Court explicitly recognized the existence of such exceptions.

57. The Congo, for its part, states that, under international law as it currently stands, there is no basis for asserting that there is any exception to the principle of absolute immunity from criminal process of an incumbent Minister for Foreign Affairs where he or she is accused of having committed crimes under international law.

In support of this contention, the Congo refers to State practice, giving particular consideration in this regard to the *Pinochet* and *Qaddafi* cases, and concluding that such practice does not correspond to that which Belgium claims but, on the contrary, confirms the absolute nature of the immunity from criminal process of Heads of State and Ministers for Foreign Affairs. Thus, in the *Pinochet* case, the Congo cites Lord Browne-Wilkinson's statement that "[t]his immunity enjoyed by a head of state in power and an ambassador in post is a complete immunity attached to the person of the head of state or ambassador and rendering him immune from all actions or prosecutions . . .". According to the Congo, the French Court of Cassation adopted the same position in its *Qaddafi* judgment, in affirming that "international custom bars the prosecution of incumbent Heads of State, in the absence of any contrary international provision binding on the parties concerned, before the criminal courts of a foreign State".

As regards the instruments creating international criminal tribunals and the latter's jurisprudence, these, in the Congo's view, concern only those tribunals, and no inference can be drawn from them in regard to criminal proceedings before national courts against persons enjoying immunity under international law.

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58. The Court has carefully examined State practice, including national legislation and those few decisions of national higher courts, such as the House of Lords or the French Court of Cassation. It has been unable to deduce from this practice that there exists under customary international law any form of exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent Ministers for Foreign Affairs, where they are suspected of having committed war crimes or crimes against humanity.

The Court has also examined the rules concerning the immunity or criminal responsibility of persons having an official capacity contained in the legal instruments creating international criminal tribunals, and which are specifically applicable to the latter (see Charter of the International Military Tribunal of Nuremberg, Art. 7; Charter of the International Military Tribunal of Tokyo, Art. 6; Statute of the International Criminal Tribunal for the former Yugoslavia, Art. 7, para. 2; Statute of the International Criminal Tribunal for Rwanda, Art. 6, para. 2; Statute of the International Criminal Court, Art. 27). It finds that these rules likewise do not enable it to conclude that any such an exception exists in customary international law in regard to national courts.

Finally, none of the decisions of the Nuremberg and Tokyo international military tribunals, or of the International Criminal Tribunal for the former Yugoslavia, cited by Belgium deal with the question of the immunities of incumbent Ministers for Foreign Affairs before national courts where they are accused of having committed war crimes or crimes against humanity. The Court accordingly notes that those decisions are in no way at variance with the findings it has reached above.

In view of the foregoing, the Court accordingly cannot accept Belgium's argument in this regard.

59. It should further be noted that the rules governing the jurisdiction of national courts must be carefully distinguished from those governing jurisdictional immunities: jurisdiction does not imply absence of immunity, while absence of immunity does not imply jurisdiction. Thus, although various international conventions on the prevention and punishment of certain serious crimes impose on States obligations of prosecution or extradition, thereby requiring them to extend their criminal jurisdiction, such extension of jurisdiction in no way affects immunities under customary international law, including those of Ministers for Foreign Affairs. These remain opposable before the courts of a foreign State, even where those courts exercise such a jurisdiction under these conventions.

60. The Court emphasizes, however, that the *immunity* from jurisdiction enjoyed by incumbent Ministers for Foreign Affairs does not mean that they enjoy *impunity* in respect of any crimes they might have committed, irrespective of their gravity. Immunity from criminal jurisdiction and individual criminal responsibility are quite separate concepts. While jurisdictional immunity is procedural in nature, criminal responsibility is a question of substantive law. Jurisdictional immunity may well bar prosecution for a certain period or for certain offences; it cannot exonerate the person to whom it applies from all criminal responsibility.

61. Accordingly, the immunities enjoyed under international law by an incumbent or former Minister for Foreign Affairs do not represent a bar to criminal prosecution in certain circumstances.

First, such persons enjoy no criminal immunity under international law in their own countries, and may thus be tried by those countries' courts in accordance with the relevant rules of domestic law.

Secondly, they will cease to enjoy immunity from foreign jurisdiction if the State which they represent or have represented decides to waive that immunity.

Thirdly, after a person ceases to hold the office of Minister for Foreign Affairs, he or she will no longer enjoy all of the immunities accorded by international law in other States. Provided that it has jurisdiction under international law, a court of one State may try a former Minister for Foreign Affairs of another State in respect of acts committed prior or subsequent to his or her period of office, as well as in respect of acts committed during that period of office in a private capacity.

Fourthly, an incumbent or former Minister for Foreign Affairs may be subject to criminal proceedings before certain international criminal courts, where they have jurisdiction. Examples include the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda, established pursuant to Security Council resolutions under Chapter VII of the United Nations Charter, and the future International Criminal Court created by the 1998 Rome Convention. The latter's Statute expressly provides, in Article 27, paragraph 2, that "[i]mmunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person".

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62. Given the conclusions it has reached above concerning the nature and scope of the rules governing the immunity from criminal jurisdiction enjoyed by incumbent Ministers for Foreign Affairs, the Court must now consider whether in the present case the issue of the arrest warrant of 11 April 2000 and its international circulation violated those rules. The Court recalls in this regard that the Congo requests it, in its first final submission, to adjudge and declare that:

> "[B]y issuing and internationally circulating the arrest warrant of 11 April 2000 against Mr. Abdulaye Yerodia Ndombasi, Belgium committed a violation in regard to the Democratic Republic of the Congo of the rule of customary international law concerning the absolute inviolability and immunity from criminal process of incumbent foreign ministers; in so doing, it violated the principle of sovereign equality among States."

63. In support of this submission, the Congo maintains that the arrest warrant of 11 April 2000 as such represents a "coercive legal act" which violates the Congo's immunity and sovereign rights, inasmuch as it seeks to "subject to an organ of domestic criminal jurisdiction a member of a foreign government who is in principle beyond its reach" and is fully enforceable without special formality in Belgium.

The Congo considers that the mere issuance of the warrant thus constituted a coercive measure taken against the person of Mr. Yerodia, even if it was not executed.

64. As regards the international circulation of the said arrest warrant, this, in the Congo's view, not only involved further violations of the rules referred to above, but also aggravated the moral injury which it suffered as a result of the opprobrium "thus cast upon one of the most prominent members of its Government". The Congo further argues that such circulation was a fundamental infringement of its sovereign rights in that it significantly restricted the full and free exercise, by its Minister for Foreign Affairs, of the international negotiation and representation functions entrusted to him by the Congo's former President. In the Congo's view, Belgium "[thus] manifests an intention to have the individual concerned arrested at the place where he is to be found, with a view to procuring his extradition". The Congo emphasizes moreover that it is necessary to avoid any confusion between the arguments concerning the legal effect of the arrest warrant abroad and the question of any responsibility of the foreign authorities giving effect to it. It points out in this regard that no State has acted on the arrest warrant, and that accordingly "no further consideration need be given to the specific responsibility which a State executing it might incur, or to the way in which that responsibility should be related" to that of the Belgian State. The Congo observes that, in such circumstances, "there [would be] a direct causal relationship between the arrest warrant issued in Belgium and any act of enforcement carried out elsewhere".

65. Belgium rejects the Congo's argument on the ground that "the character of the arrest warrant of 11 April 2000 is such that it has neither infringed the sovereignty of, nor created any obligation for, the [Congo]".

With regard to the legal effects under Belgian law of the arrest warrant of 11 April 2000, Belgium contends that the clear purpose of the warrant was to procure that, if found in Belgium, Mr. Yerodia would be detained by the relevant Belgian authorities with a view to his prosecution for war crimes and crimes against humanity. According to Belgium, the Belgian investigating judge did, however, draw an explicit distinction in the warrant between, on the one hand, immunity

from jurisdiction and, on the other hand, immunity from enforcement as regards representatives of foreign States who visit Belgium on the basis of an official invitation, making it clear that such persons would be immune from enforcement of an arrest warrant in Belgium. Belgium further contends that, in its effect, the disputed arrest warrant is national in character, since it requires the arrest of Mr. Yerodia if he is found in Belgium but it does not have this effect outside Belgium.

66. In respect of the legal effects of the arrest warrant outside Belgium, Belgium maintains that the warrant does not create any obligation for the authorities of any other State to arrest Mr. Yerodia in the absence of some further step by Belgium completing or validating the arrest warrant (such as a request for the provisional detention of Mr. Yerodia), or the issuing of an arrest warrant by the appropriate authorities in the State concerned following a request to do so, or the issuing of an Interpol Red Notice. Accordingly, outside Belgium, while the purpose of the warrant was admittedly "to establish a legal basis for the arrest of Mr. Yerodia . . . and his subsequent extradition to Belgium", the warrant had no legal effect unless it was validated or completed by some prior act "requiring the arrest of Mr. Yerodia by the relevant authorities in a third State". Belgium further argues that "[i]f a State had executed the arrest warrant, it might infringe Mr. [Yerodia's] criminal immunity", but that "the Party directly responsible for that infringement would have been that State and not Belgium".

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67. The Court will first recall that the "international arrest warrant in absentia", issued on 11 April 2000 by an investigating judge of the Brussels *Tribunal de première instance*, is directed against Mr. Yerodia, stating that he is "currently Minister for Foreign Affairs of the Democratic Republic of the Congo, having his business address at the Ministry of Foreign Affairs in Kinshasa". The warrant states that Mr. Yerodia is charged with being "the perpetrator or co-perpetrator" of:

> "—Crimes under international law constituting grave breaches causing harm by act or omission to persons and property protected by the Conventions signed at Geneva on 12 August 1949 and by Additional Protocols I and II to those Conventions (Article 1, paragraph 3, of the Law of 16 June 1993, as amended by the Law of 10 February 1999 concerning the punishment of serious violations of international humanitarian law)
>
> — Crimes against humanity (Article 1, paragraph 2, of the Law of 16 June 1993, as amended by the Law of 10 February 1999 concerning the punishment of serious violations of international humanitarian law)."

The warrant refers to "various speeches inciting racial hatred" and to "particularly virulent remarks" allegedly made by Mr. Yerodia during "public addresses reported by the media" on 4 August and 27 August 1998. It adds:

"These speeches allegedly had the effect of inciting the population to attack Tutsi residents of Kinshasa: there were dragnet searches, manhunts (the Tutsi enemy) and lynchings.

The speeches inciting racial hatred thus are said to have resulted in several hundred deaths, the internment of Tutsis, summary executions, arbitrary arrests and unfair trials."

68. The warrant further states that "the position of Minister for Foreign Affairs currently held by the accused does not entail immunity from jurisdiction and enforcement". The investigating judge does, however, observe in the warrant that "the rule concerning the absence of immunity under humanitarian law would appear . . . to require some qualification in respect of immunity from enforcement" and explains as follows:

"Pursuant to the general principle of fairness in judicial proceedings, immunity from enforcement must, in our view, be accorded to all State representatives welcomed as such onto the territory of Belgium (on 'official visits'). Welcoming such foreign dignitaries as official representatives of sovereign States involves not only relations between individuals but also relations between States. This implies that such welcome includes an undertaking by the host State and its various components to refrain from taking any coercive measures against its guest and the invitation cannot become a pretext for ensnaring the individual concerned in what would then have to be labelled a trap. In the contrary case, failure to respect this undertaking could give rise to the host State's international responsibility."

69. The arrest warrant concludes with the following order:

"We instruct and order all bailiffs and agents of public authority who may be so required to execute this arrest warrant and to conduct the accused to the detention centre in Forest;

We order the warden of the prison to receive the accused and to keep him (her) in custody in the detention centre pursuant to this arrest warrant;

We require all those exercising public authority to whom this warrant shall be shown to lend all assistance in executing it."

70. The Court notes that the *issuance*, as such, of the disputed arrest warrant represents an act by the Belgian judicial authorities intended to enable the arrest on Belgian territory of an incumbent Minister for Foreign Affairs on charges of war crimes and crimes against humanity. The fact that the warrant is enforceable is clearly apparent from the order given to "all bailiffs and agents of public authority . . . to execute this arrest warrant" (see paragraph 69 above) and from the assertion in the warrant that "the position of Minister for Foreign Affairs currently held by the accused does not entail immunity from jurisdiction and enforcement". The Court notes that the warrant did admittedly make an exception for the case of an official visit by Mr. Yerodia to

Belgium, and that Mr. Yerodia never suffered arrest in Belgium. The Court is bound, however, to find that, given the nature and purpose of the warrant, its mere issue violated the immunity which Mr. Yerodia enjoyed as the Congo's incumbent Minister for Foreign Affairs. The Court accordingly concludes that the issue of the warrant constituted a violation of an obligation of Belgium towards the Congo, in that it failed to respect the immunity of that Minister and, more particularly, infringed the immunity from criminal jurisdiction and the inviolability then enjoyed by him under international law.

71. The Court also notes that Belgium admits that the purpose of the international *circulation* of the disputed arrest warrant was "to establish a legal basis for the arrest of Mr. Yerodia . . . abroad and his subsequent extradition to Belgium". The Respondent maintains, however, that the enforcement of the warrant in third States was "dependent on some further preliminary steps having been taken" and that, given the "inchoate" quality of the warrant as regards third States, there was no "infringe[ment of] the sovereignty of the [Congo]". It further points out that no Interpol Red Notice was requested until 12 September 2001, when Mr. Yerodia no longer held ministerial office.

The Court cannot subscribe to this view. As in the case of the warrant's issue, its international circulation from June 2000 by the Belgian authorities, given its nature and purpose, effectively infringed Mr. Yerodia's immunity as the Congo's incumbent Minister for Foreign Affairs and was furthermore liable to affect the Congo's conduct of its international relations. Since Mr. Yerodia was called upon in that capacity to undertake travel in the performance of his duties, the mere international circulation of the warrant, even in the absence of "further steps" by Belgium, could have resulted, in particular, in his arrest while abroad. The Court observes in this respect that Belgium itself cites information to the effect that Mr. Yerodia, "on applying for a visa to go to two countries, [apparently] learned that he ran the risk of being arrested as a result of the arrest warrant issued against him by Belgium", adding that "[t]his, moreover, is what the [Congo] . . . hints when it writes that the arrest warrant 'sometimes forced Minister Yerodia to travel by roundabout routes'". Accordingly, the Court concludes that the circulation of the warrant, whether or not it significantly interfered with Mr. Yerodia's diplomatic activity, constituted a violation of an obligation of Belgium towards the Congo, in that it failed to respect the immunity of the incumbent Minister for Foreign Affairs of the Congo and, more particularly, infringed the immunity from criminal jurisdiction and the inviolability then enjoyed by him under international law.

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72. The Court will now address the issue of the remedies sought by the Congo on account of Belgium's violation of the above-mentioned rules of international law. In its second, third and fourth submissions, the Congo requests the Court to adjudge and declare that:

"A formal finding by the Court of the unlawfulness of [the issue and international circulation of the arrest warrant] constitutes an appropriate form of satisfaction, providing reparation for the consequent moral injury to the Democratic Republic of the Congo;

The violations of international law underlying the issue and international circulation of the arrest warrant of 11 April 2000 preclude any State, including Belgium, from executing it;

Belgium shall be required to recall and cancel the arrest warrant of 11 April 2000 and to inform the foreign authorities to whom the warrant was circulated that Belgium renounces its request for their co-operation in executing the unlawful warrant."

73. In support of those submissions, the Congo asserts that the termination of the official duties of Mr. Yerodia in no way operated to efface the wrongful act and the injury flowing from it, which continue to exist. It argues that the warrant is unlawful *ab initio*, that "[i]t is fundamentally flawed" and that it cannot therefore have any legal effect today. It points out that the purpose of its request is reparation for the injury caused, requiring the restoration of the situation which would in all probability have existed if the said act had not been committed. It states that, inasmuch as the wrongful act consisted in an internal legal instrument, only the "withdrawal" and "cancellation" of the latter can provide appropriate reparation.

The Congo further emphasizes that in no way is it asking the Court itself to withdraw or cancel the warrant, nor to determine the means whereby Belgium is to comply with its decision. It explains that the withdrawal and cancellation of the warrant, by the means that Belgium deems most suitable, "are not means of enforcement of the judgment of the Court but the requested measure of legal reparation/restitution itself". The Congo maintains that the Court is consequently only being requested to declare that Belgium, by way of reparation for the injury to the rights of the Congo, be required to withdraw and cancel this warrant by the means of its choice.

74. Belgium for its part maintains that a finding by the Court that the immunity enjoyed by Mr. Yerodia as Minister for Foreign Affairs had been violated would in no way entail an obligation to cancel the arrest warrant. It points out that the arrest warrant is still operative and that "there is no suggestion that it presently infringes the immunity of the Congo's Minister for Foreign Affairs". Belgium considers that what the Congo is in reality asking of the Court in its third and fourth final submissions is that the Court should direct Belgium as to the method by which it should give effect to a judgment of the Court finding that the warrant had infringed the immunity of the Congo's Minister for Foreign Affairs.

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75. The Court has already concluded (see paragraphs 70 and 71) that the issue and circulation of the arrest warrant of 11 April 2000 by the Belgian authorities failed to respect the immunity of the incumbent Minister for Foreign Affairs of the Congo and, more particularly,

infringed the immunity from criminal jurisdiction and the inviolability then enjoyed by Mr. Yerodia under international law. Those acts engaged Belgium's international responsibility. The Court considers that the findings so reached by it constitute a form of satisfaction which will make good the moral injury complained of by the Congo.

76. However, as the Permanent Court of International Justice stated in its Judgment of 13 September 1928 in the case concerning the *Factory at Chorzów*:

> "[t]he essential principle contained in the actual notion of an illegal act — a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals — is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed" (*P.C.I.J., Series A, No. 17*, p. 47).

In the present case, "the situation which would, in all probability, have existed if [the illegal act] had not been committed" cannot be re-established merely by a finding by the Court that the arrest warrant was unlawful under international law. The warrant is still extant, and remains unlawful, notwithstanding the fact that Mr. Yerodia has ceased to be Minister for Foreign Affairs. The Court accordingly considers that Belgium must, by means of its own choosing, cancel the warrant in question and so inform the authorities to whom it was circulated.

77. The Court sees no need for any further remedy: in particular, the Court cannot, in a judgment ruling on a dispute between the Congo and Belgium, indicate what that judgment's implications might be for third States, and the Court cannot therefore accept the Congo's submissions on this point.

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78. For these reasons,

THE COURT,

(1) (A) By fifteen votes to one,

Rejects the objections of the Kingdom of Belgium relating to jurisdiction, mootness and admissibility;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judges* ad hoc Bula-Bula, Van den Wyngaert;

AGAINST: *Judge* Oda;

(B) By fifteen votes to one,

Finds that it has jurisdiction to entertain the Application filed by the Democratic Republic of the Congo on 17 October 2000;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judges* ad hoc Bula-Bula, Van den Wyngaert;

AGAINST: *Judge* Oda;

(C) By fifteen votes to one,

Finds that the Application of the Democratic Republic of the Congo is not without object and that accordingly the case is not moot;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judges* ad hoc Bula-Bula, Van den Wyngaert;

AGAINST: *Judge* Oda;

(D) By fifteen votes to one,

Finds that the Application of the Democratic Republic of the Congo is admissible;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judges* ad hoc Bula-Bula, Van den Wyngaert;

AGAINST: *Judge* Oda;

(2) By thirteen votes to three,

Finds that the issue against Mr. Abdulaye Yerodia Ndombasi of the arrest warrant of 11 April 2000, and its international circulation, constituted violations of a legal obligation of the Kingdom of Belgium towards the Democratic Republic of the Congo, in that they failed to respect the immunity from criminal jurisdiction and the inviolability which the incumbent Minister for Foreign Affairs of the Democratic Republic of the Congo enjoyed under international law;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Buergenthal; *Judge* ad hoc Bula-Bula;

AGAINST: *Judges* Oda, Al-Khasawneh; *Judge* ad hoc Van den Wyngaert;

(3) By ten votes to six,

Finds that the Kingdom of Belgium must, by means of its own choosing, cancel the arrest warrant of 11 April 2000 and so inform the authorities to whom that warrant was circulated;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Rezek; *Judge* ad hoc Bula-Bula;

AGAINST: *Judges* Oda, Higgins, Kooijmans, Al-Khasawneh, Buergenthal; *Judge* ad hoc Van den Wyngaert.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this fourteenth day of February, two thousand and two, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Democratic Republic of the Congo and the Government of the Kingdom of Belgium, respectively.

(Signed) Gilbert GUILLAUME,
President.

(Signed) Philippe COUVREUR,
Registrar.

President GUILLAUME appends a separate opinion to the Judgment of the Court; Judge ODA appends a dissenting opinion to the Judgment of the Court; Judge RANJEVA appends a declaration to the Judgment of the Court; Judge KOROMA appends a separate opinion to the Judgment of the Court; Judges HIGGINS, KOOIJMANS and BUERGENTHAL append a joint separate opinion to the Judgment of the Court; Judge REZEK appends a separate opinion to the Judgment of the Court; Judge AL-KHASAWNEH appends a dissenting opinion to the Judgment of the Court; Judge *ad hoc* BULA-BULA appends a separate opinion to the Judgment of the Court; Judge *ad hoc* VAN DEN WYNGAERT appends a dissenting opinion to the Judgment of the Court.

(Initialled) G.G.

(Initialled) Ph.C.

Judge Antonio Cassese
Judge Wang Tieya
Judge Rafael Nieto-Navia
Judge Florence Ndepele Mwachande Mumba

Registrar:
Mrs. Dorothee de Sampayo Garrido-Nijgh

Judgement of: 15 July 1999

PROSECUTOR

v.

DUSKO TADIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Upawansa Yapa
Ms. Brenda J. Hollis
Mr. William Fenrick
Mr. Michael Keegan
Ms. Ann Sutherland

Counsel for the Appellant:

Mr. William Clegg
Mr. John Livingston

104. What is at issue is not the distinction between the two classes of responsibility. What is at issue is a *preliminary question*: that of *the conditions on which under international law an individual may be held to act as a de facto organ of a State*. Logically these conditions must be the same both in the case: (i) where the court's task is to ascertain whether an act performed by an individual may be attributed to a State, thereby generating the international responsibility of that State; and (ii) where the court must instead determine whether individuals are acting as *de facto* State officials, thereby rendering the conflict international and thus setting the necessary precondition for the "grave breaches" regime to apply. In both cases, what is at issue is not the distinction between State responsibility and individual criminal responsibility. Rather, the question is that of establishing the criteria for the legal imputability to a State of acts performed by individuals not having the status of State officials. In the one case these acts, if they prove to be attributable to a State, will give rise to the international responsibility of that State; in the other case, they will ensure that the armed conflict must be classified as international.

105. As stated above, international humanitarian law does not include legal criteria regarding imputability specific to this body of law. Reliance must therefore be had upon the criteria established by general rules on State responsibility.

IN THE APPEALS CHAMBER

Before:
Judge Mohamed Shahabuddeen, Presiding
Judge Antonio Cassese
Judge Wang Tieya
Judge Rafael Nieto-Navia
Judge Florence Ndepele Mwachande Mumba

Registrar:
Mrs. Dorothee de Sampayo Garrido-Nijgh

Judgement of: 15 July 1999

PROSECUTOR

v.

DUSKO TADIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Upawansa Yapa
Ms. Brenda J. Hollis
Mr. William Fenrick
Mr. Michael Keegan
Ms. Ann Sutherland

Counsel for the Appellant:

Mr. William Clegg
Mr. John Livingston

137. In sum, the Appeals Chamber holds the view that international rules do not always require the same degree of control over armed groups or private individuals for the purpose of determining whether an individual not having the status of a State official under internal legislation can be regarded as a *de facto* organ of the State. The extent of the requisite State control varies. Where the question at issue is whether a *single* private individual or a *group that is not militarily organised* has acted as a *de facto* State organ when performing a specific act, it is necessary to ascertain whether specific instructions concerning the commission of that particular act had been issued by that State to the individual or group in question; alternatively, it must be established whether the unlawful act had been publicly endorsed or approved *ex post facto* by the State at issue. By contrast, control by a State over subordinate *armed forces or militias or paramilitary units* may be of an overall character (and must comprise more than the mere provision of financial assistance or military equipment or training). This requirement, however, does not go so far as to include the issuing of specific orders by the State, or its direction of each individual operation. Under international law it is by no means necessary that the controlling authorities should plan all the operations of the units dependent on them, choose their targets, or give specific instructions concerning the conduct of military operations and any alleged violations of international humanitarian law. The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) *has a role in organising, coordinating or planning the military actions* of the military group, in addition to financing, training and equipping or providing operational support to that group. Acts performed by the group or members thereof may be regarded as acts of *de facto* State organs regardless of any specific instruction by the controlling State concerning the commission of each of those acts.

INTERNATIONAL PEACEKEEPING

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2.2 *Discrimination*

The UN has held that peacekeeping operations act on behalf of the international community at large. They could not be a 'party to an armed conflict' in the sense of humanitarian law because impartiality is one of the basic principles of peacekeeping. Humanitarian law in principle only applies to parties to an armed conflict.

In essence, the UN has claimed that the rules that apply between equal states cannot apply between states and an international organization that may bind states against their will, and is empowered to determine whether the use of force is authorized or not.[8] As a result, the UN should be able to discriminate with regard to the application of humanitarian law.[9]

The objection has been made that this reasoning confuses the issues of *jus ad bellum* and *jus in bello*. The UN has been given the exclusive right to determine whether the use of force is legal. As such it has a privileged position in the field of the *jus ad bellum*. From this the *jus in bello* – the law that regulates the actual use of force whether it is legally resorted to or not must be clearly distinguished. The equality of the parties is a fundamental principle of the *jus in bello*. This is reaffirmed in the preamble to Additional Protocol I to the Geneva Conventions[10] and was also the conclusion of the Institut de Droit International, which stated in 1971 that:

'[t]he humanitarian rules of the law of armed conflict apply to the United Nations as of right, and they must be complied with in all circumstances by United Nations Forces which are engaged in hostilities.'[11]

2.3 *The United Nations is not a party to treaties of humanitarian law*

The United Nations also relies on the fact that it is not a party to any treaty of international humanitarian law, particularly the 1949 Geneva Conventions and their Additional Protocols. These treaties do not explicitly provide for the accession of international organizations, and it is questioned whether such an accession is possible. The Conventions only refer to the possibility of accession by 'Powers', arguably meaning only states. A suggestion by the ICRC to include a provision to allow international organizations to accede in Additional Protocol I was not adopted.[12]

It is objected that this does not preclude the applicability of international customary law. The UN is a subject of international law bound and capable of having rights and duties like states.[13] Large parts of the Geneva Conventions and the Additional Protocols are considered to have customary status.

2.4 *The United Nations cannot apply certain parts of humanitarian law*

The UN maintains that it is unable to apply certain parts of humanitarian law.[14]

Many provisions of humanitarian law are designed to be applied by states. The United Nations does not have the administrative or juridical capacities of a state, such as courts and broad legislating powers. Consequently, it could not apply provisions on grave breaches, for example. To this it can be objected that if the UN cannot strictly apply certain parts of humanitarian law, it can at least apply them *mutatis mutandis*. The use of national resources for exercising criminal jurisdiction is one example of this, although it has serious shortcomings. More generally, it is argued that where states give the UN powers and functions which bring the organization into a situation where certain rules apply, they must also give the organization the necessary means to comply with these rules.[15]

2.5 *The threshold question*

Humanitarian law applies in situations of armed conflict. It has been argued that action undertaken by peacekeeping operations does not reach this threshold. One of the basic principles of peacekeeping is the non-use of force except in self-defense, closely linked to the principle of host-state consent. In principle, the mandates of peacekeeping operations are weighted against the use of force, and thus against situations in which humanitarian law provides guidance.[16]

Nevertheless, situations may arise in which peacekeepers resort to the use of force, such as self-defense. The UN has broadly interpreted the concept of self-defense to include everything from resistance to forceful attempts to prevent the peacekeepers from carrying out their mandate. The doctrine of so-called 'wider peacekeeping' goes even further in not ruling out the use of force for selective purposes other than self-defense. It could be argued that the UN Protection Force (UNPROFOR) was an example of wider peacekeeping.[17] The UN operation in Somalia (UNOSOM I and II) may provide another example. Many states have disagreed with the UN's narrow interpretation of 'armed conflict', considering that judgments delivered by international tribunals support a broad interpretation. Thus, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) gave the following definition:

'An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.'[18]

Without going as far as saying that humanitarian law applies from the first shot, this statement suggests a broad definition of armed conflict.

3. The Secretary-General's Bulletin

3.1 *History of the Bulletin*

Since the earliest peacekeeping efforts by the UN, the ICRC has consistently called attention to the application of humanitarian law by UN forces.[19] Particularly after the end of the Cold War, sensitivity for this issue also grew

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distinguished in humanitarian law instruments, including protection of the civilian population, means and methods of combat and protection of the wounded, the sick and medical and relief personnel. Section 10 sets the date of entry into force of the Bulletin at 12 August 1999, exactly fifty years after the adoption of the four Geneva Conventions.

In the following paragraph, a number of the specific provisions of the Bulletin are analyzed. It is outside the scope of this article to discuss all the provisions. Instead, a number provisions, that are particularly relevant in the light of UN forces' practice or provisions that deviate from treaty norms of humanitarian law, are analyzed.

3.4 Field of Application and Relation to Other Instruments and Sources of Law

The preamble to the Bulletin declares that it is promulgated 'for the purpose of setting out the fundamental principles and rules of international humanitarian law applicable to United Nations forces conducting operations under United Nations command and control'. The difference between the term principles and rules, and the term principles and spirit traditionally used by the UN is immediately apparent. It underlines the fact that this is the first time the UN has issued specific rules of humanitarian law for its forces in contrast to the very general undertaking to respect the principles and spirit of humanitarian law. Until now, it was unclear what that undertaking really comprised. The Bulletin is extremely important from the perspective of legal certainty by giving that obligation substance. Section 2 adds that the Bulletin's provisions do not prejudice the application of other principles and rules of humanitarian law. This provision suggests that in addition to the rules included in the Bulletin, the UN may be bound also by rules of customary law. Until the promulgation of the Bulletin, it was frequently submitted that customary law bound the UN to humanitarian rules.[29]

The Bulletin only applies to forces under UN command and control. Consequently, forces authorized but not commanded by the UN such as SFOR and KFOR are not concerned. Article 1 (1) declares the Bulletin applicable to UN forces in situations of armed conflict where they are actively engaged as combatants, to the extent and for the duration of their engagement. Article 1 (2) adds that the Bulletin does not affect the protected status of UN personnel under the Safety Convention as long as members of UN forces are entitled to the protection given to civilians under the international law of armed conflict. Combatant status excludes the status as a civilian and in this respect the two regimes are mutually exclusive. The Safety Convention, however, states that it applies to:

> '1. (c) 'United Nations operation' means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control.
> 2. (1) This Convention applies in respect of [...] United Nations operations, as defined in article 1. (2) This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.'

Consequently, the regimes of the Safety Convention and the Bulletin overlap in the case of operations that meet the criteria stipulated in Article 1 (1) of the Bulletin but not those of Article 2 (2) of the Safety Convention. This category notably includes 'traditional' peacekeeping operations that are not established under Chapter VII but may nevertheless become involved in protracted hostilities with organized armed forces, to which humanitarian law would otherwise apply. This overlap of regimes is very problematic. The Safety Convention criminalizes attacks on UN personnel while under humanitarian law it is fully legal to attack them as long as they are combatants. It is precisely this fundamental difference that inspired the wish of the drafters of the Safety Convention to clearly delineate between mutually exclusive regimes of humanitarian law and the Convention, a wish they did not succeed in fulfilling. The provisions of the Bulletin reproduce this overlap creating possible confusion concerning which regime applies in a particular situation.

The Bulletin in Article 1 (1) refers to situations of armed conflict without reference to the different regimes applicable to international and non-international armed conflicts respectively. The draft Directives[30] did include such a reference, stating that they were applicable to international and non-international armed conflicts as might be relevant. This represented a departure from the view of most commentators, who maintain that UN involvement by definition internationalizes a non-international armed conflict and that therefore only the humanitarian law regime applicable to international conflicts can apply to UN forces.[31] This was also the position of the drafters of the Safety Convention.[32] The provisions of the Bulletin are more supportive of this position than the draft Directives. This is also reflected in Article 5 (1) of the Bulletin that states the principle of distinction between combatants and civilians. The draft Directives used the expression 'persons directly participating in hostilities' instead of 'combatants' in this provision, the latter term only being appropriate for the regime applicable to international armed conflicts. The use of this term in the Bulletin suggests that the regime for non-international conflicts is not deemed applicable to UN forces.

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*391 INTERNATIONAL HUMANITARIAN LAW AND THE CONFLICT IN SIERRA LEONE

Babafemi Akinrinade [FNa1]

according to Georges Abi- Saab such a construction would be exaggerated. [FN105]

However, there has not been similar difficulty in defining a civil war, which is closely related to internal armed conflicts. *413 Hans Kelsen defines a civil war in very simple terms as "the fight of a revolutionary group against the legitimate government." [FN106] 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). [FN107]

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," [FN108] and it goes even further, satisfying the strict requirements of Protocol II as well. [FN109]

D. Internationalized (Internal) Armed Conflicts

An internationalized internal armed conflict is a civil war in which the armed forces of a foreign power intervene. [FN110] However, *414 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. [FN111]

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. [FN112] 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. [FN113] 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 *415 would contend that all of this law should apply, even though the conflict is at best, a mixed conflict. [FN114] 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. [FN115] Meron notes further the finding of the I.C.T.Y. that the

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The International Dimensions of Internal Conflict

Editor
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Indeed, the ECOWAS intervention created the very situation it hoped to prevent.[35] As Taylor escalated his attacks against the ECOMOG forces, ECOMOG increased its initial deployment from 3,000–17,000 troops. The intervention transformed a war that probably would have ended in a quick victory for Taylor into a protracted struggle that continued until 1995, when a peace agreement established a tenuous cease-fire. In August 1990, when ECOMOG intervened, an estimated 4,000–5,000 people had died in the Liberian war; by October 1994, an estimated 150,000 people had been killed.[36] The continuation of the war led to a proliferation of combatant groups, as remnants of the Doe regime reorganized and Taylor's forces splintered into competing factions, thus complicating the task of reaching a negotiated settlement.[37]

By turning the war into a protracted one, the ECOWAS intervention succeeded in spreading the fighting to other countries in the region. In August 1990, the conflict had generated an estimated 250,000–375,000 refugees; by October 1994, the war had produced an estimated 1.25 million refugees. Denied resources in Liberia, Taylor's forces invaded Sierra Leone and instigated a civil war there in February 1991.[38] Taylor's forces have also plundered parts of Guinea. In addition to becoming an active belligerent in the war, the intervention force has engaged in war profiteering and racketeering.[39]

This is not to say that a Taylor victory in 1990 would have created a

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35. William J. Foltz, "Regional and Sub-Regional Peacekeeping in Africa," paper presented to the African Studies Association Annual Meeting, Orlando, Florida, November 1995, pp. 24–26.

36. The 1990 estimates can be found in Mark Huband, "Doe's Last Stand," *Africa Report*, Vol. 35, No. 3 (July–August 1990), p. 49, and Rick Wells, "The Lost of Liberia," *Africa Report*, Vol. 35, No. 5 (November–December 1990), p. 21. The estimate of 150,000 deaths is a common one; see Howard W. French, "War Engulfs Liberia, Humbling the Peacekeepers," *New York Times*, October 7, 1994, p. A4.

37. See Stephen Ellis, "Liberia 1989–1994: A Study of Ethnic and Spiritual Violence," *African Affairs*, Vol. 94 (April 1995), pp. 165–197.

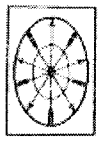
38. William Reno attributes Taylor's invasion to the need for resources. Stephen Ellis argues that Taylor invaded Sierra Leone to punish it for participating in the ECOMOG intervention. Both considerations can be traced to the ECOMOG intervention, and both probably influenced Taylor's decision. See William Reno, "Reinvention of an African State," *Third World Quarterly*, Vol. 16, No. 1 (January 1995), pp. 109–120; Ellis, "Liberia 1989–1994," p. 170.

39. Herbert M. Howe, "ECOMOG and Its Lessons For Regional Peacekeeping," paper presented to the African Studies Association Annual Meeting, Orlando, Florida, November 1995, p. 22.

ENFORCING RESTRAINT

Collective Intervention in Internal Conflicts

Edited by Lori Fisler Damrosch



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NEW YORK

ECOMOG as a Peacekeeping Force

As its name suggests, ECOMOG was initially conceived as a peacekeeping force. All of the West African states recognized that intervention would be more acceptable—and more likely successful—if it had the consent of the warring parties. Thus, for many months, ECOWAS sought through diplomatic pressure to induce the warring parties to accept a cease-fire, which ECOMOG would monitor, pending a larger political settlement. When the ECOWAS Standing Mediation Committee was formed, its mandate was to achieve a cease-fire through mediation. Similarly, when ECOMOG was created, its mission was described as "keeping the peace, restoring law and order and ensuring that the cease-fire is respected."[58] Abass Bundu, the ECOWAS executive secretary, initially stated that ECOMOG would enter Liberia only after a cease-fire had been achieved.[59] Discussion shifted to the possibility of forcible intervention only when the impossibility of achieving a negotiated cease-fire agreement became apparent. Even when it became clear that the NPFL would forcibly resist ECOMOG's initial deployment, many ECOWAS leaders continued to describe the monitoring group's mission as peacekeeping only.[60]

In an effort to limit ECOMOG to a peacekeeping role, ECOWAS leaders ordered it to avoid any military engagements upon arrival in Monrovia, in the hope that the mere deployment of community forces would induce Taylor to agree to a cease-fire.[61] That strategy proved unworkable when NPFL forces attacked ECOMOG troops. Consequently, ECOMOG began to pursue a "strategy of limited offensive." As described by ECOWAS chairman Dawda Jawara, under that strategy, ECOMOG was still acting principally as a peacekeeping force, but one "obliged to fire back and attack," given the NPFL refusal to accept a cease-fire.[62] Within a month, ECOMOG's strategy had evolved into a conventional offensive, with the aim of driving Taylor's forces out of the capital and creating a protected buffer zone around it.

If Taylor's forces had agreed to the initial deployment of ECOMOG troops, then the subsequent fighting, even the offensive that drove the NPFL out of Monrovia, might have qualified

states will decide to pursue that involvement to a satisfactory resolution, even if it means the further use of military force.

CONCLUSION

To some extent, ECOMOG's initial success as peace enforcer has complicated and protracted the job of political broker and peacekeeper. When ECOMOG stopped the fighting in 1990 by separating the warring parties, it also created the conditions for political stalemate. With the monitoring group present, Taylor could not exercise control over the entire country. But at the same time, he had little incentive to surrender what he did control. When ECOWAS did not move quickly to back its diplomatic pressure on Taylor with either economic or military coercion, the result was stasis.

The long delays in implementing the ECOWAS peace plan gave ULIMO the time it needed to organize itself as a political and military entity, and to mount a surprisingly successful military offensive. The formation of ULIMO gave Taylor the excuse he needed not to disarm, and ULIMO's offensive gave Taylor an excuse for attacking Monrovia. As a result, ECOWAS must now reconsider its mission and the viability of its peace plan, and find ways to adapt that plan to deal with the open hostility of the NPFL and the existence of a major new warring faction. Thus, if the future of Liberia is not to be decided in a military contest between the NPFL and ULIMO, ECOWAS will have to find ways to pressure both factions to accept a cease-fire, disarmament, and elections.

It is difficult to see how ECOWAS will accomplish that task. The character of the war now being fought, with its shifting fronts and uncertain battle lines extending through much of the country, makes effective military intervention far more difficult than it was when fighting was confined to Monrovia. Moreover, the size of the contending forces is considerably greater than it was at the time of the initial ECOWAS intervention. Perhaps most important, the largest of the warring factions again perceives ECOMOG as a military adversary rather than a neutral peacekeeper.

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Fall 1998

Article

*333 HUMANITARIAN INTERVENTION BY REGIONAL ACTORS IN INTERNAL CONFLICTS:

The Cases of ECOWAS in Liberia and Sierra Leone

Jeremy Levitt [FNa1]

INTRODUCTION

Since the end of the cold war it appears that customary international law [FN1] has taken a normative legal shift from traditional prohibitions against forcible intervention in the internal affairs of states, toward the recognition of a right to humanitarian intervention [FN2] by groups of states and regional actors [FN3] in internal conflicts. [FN4] Although a role for regional organizations in humanitarian *334 intervention has been established, until the advent of the Economic Community of West African States (ECOWAS) missions in Liberia and Sierra Leone, [FN5] states' practices suggested that prior approval by the Security Council was a prerequisite to any humanitarian intervention. [FN6] However, for the first time the ECOWAS Cease-fire Monitoring Group (ECOMOG) missions in Liberia and Sierra Leone provide two clear examples of unilateral humanitarian intervention by a regional actor that enjoyed support from the whole of the international community. [FN7] Likewise, for the first time there exists contemporary examples of popular humanitarian interventions that have derived their legal basis from customary international *335 law, rather than the U.N. Charter. [FN8] The ECOWAS interventions in Liberia and Sierra Leone, and the Inter- African Mission to Monitor the Implementation of the Bangui Agreements (MISAB) in the Central African Republic (CAR) are cases in point. [FN9] As a result, the customary international law doctrine of humanitarian intervention seems to have been "revived." [FN10]

For purposes of this article, "humanitarian intervention" can be taken to mean: Intervention in a state involving the use of force (U.N. action in Iraq and Somalia or ECOWAS action in Liberia and Sierra Leone) or threat of force (U.N. action in Haiti), where the intervenor deploys armed forces and, at the least, makes clear that it is willing to use force if its operation is resisted - as it attempts to alleviate conditions in which a substantial part of the population of a state is threatened with death or suffering on a grand scale. [FN11]

Presently, customary international law appears to recognize four exceptions to the principle of non-intervention in the domestic or internal affairs of states: (1) when a de jure government requests or consents to intervention; (2) when a group of states or a regional actor invokes a right to humanitarian intervention; (3) when a state acts in self-defense; and (4) counter- intervention by a state to offset an illegal prior intervention by another state. [FN12]

Moreover, in consonance with the above exceptions, international law *336 seems to recognize the following four types of intervention: (1) unilateral intervention by a state or group of states acting on their own initiative (United States and allies in Iraq, MISAB in the CAR and Nigeria in Sierra Leone); (2) unilateral intervention by a regional actor acting on its own initiative (ECOWAS in Liberia and Sierra Leone); (3) intervention authorized by the United Nations but not taken by it (United States in Somalia and Haiti, and France and Senegal in Rwanda); and (4) intervention taken by the United Nations (Liberia, Yugoslavia and the CAR). The foregoing article is primarily

Surely, in the legal sense, referring to the Banjul Conference, political acquiescence by various political entities and elites would not suffice to create a de jure government. Nor would it negate claims by Taylor (the de facto ruler) to be President of Liberia. [FN85] By late July 1990, since Taylor was the only de facto ruler, he appears to have been the only domestic authority entitled to authorize intervention. At the very least, ECOWAS needed to obtain Taylor's consent prior to intervention. It is a well established fact that it did not.

Under international law, a government may request foreign assistance to thwart internal disorder or restore rule. However, as previously stated, international law does not permit intervention to quash civil war. Once conflict has exploded into violent civil war, foreign intervention on behalf of either party is illegal. [FN86] Thus, in the Liberian case, if it can be shown that intervention *350 was based solely on Doe's consent, the intervention would have to be deemed illegal, since it would have assisted Doe and averted the NPLF's (Liberian people's) right to self-determination. [FN87] Nonetheless, there does not appear to be any substantive evidence showing that ECOWAS relied on Doe's letter as a basis for intervention, or that ECOWAS intervened to support Doe's regime. Likewise, not one decision or resolution of the ECOWAS Standing Mediation Committee makes mention of Doe's letter. [FN88] This suggests that Doe's request was a minor factor in the ECOWAS decision to intervene.

Although intervention appears to have been based on humanitarian grounds, ECOWAS leaders were keenly aware that peace would have to be obtained by force. [FN89] Upon landing in Liberia, on August 24, 1990, ECOMOG troops came under fierce attack by NPLF forces. [FN90] In self-defense, ECOMOG forces retaliated with "mortars, artillery and automatic weapons." [FN91] By September 17, 1990, approximately one week after the assassination of Doe, fighting escalated between the NPLF, the IPLF and ECOMOG. [FN92] In an attempt to prevent Taylor from taking Monrovia, ECOMOG launched offensive missile attacks by land and air against the NPLF. [FN93] At times, ECOMOG seemed less like a "peace-making force" and more like an unintended party to the conflict. Notwithstanding, ECOMOG action must be viewed in light of its mandate to stop the war and restore law and order.

ECOWAS seems to have validly invoked a right to humanitarian intervention because the de jure government of Liberia collapsed, causing the state to slide into anarchy, which resulted in death and suffering on a grand scale. Moreover, the intervention marked the first time that unilateral humanitarian *351 intervention by a group of states (regional actors) in a purely internal matter was supported by the whole of the international community, and the first time the United Nations co-deployed with another organization already in the field. [FN94] Commenting on the ECOWAS intervention, Wippman remarks, "[t]he legitimacy of humanitarian intervention under international law is, of course, much debated. But for those who believe it is or should be considered lawful, the ECOWAS intervention in Liberia satisfies virtually every proposed test, and in many respects constitutes an excellent model." [FN95]

In retrospect, considering the international community's response to the MISAB intervention in the CAR, and the ECOWAS mission in Sierra Leone, it may also be the case that the Liberian intervention generated instant customary international law or "diritto spontaneo," namely, that unilateral humanitarian intervention by groups of states in domestic conflicts is lawful. [FN96]

III. THE UNITED NATIONS AND HUMANITARIAN INTERVENTION IN IRAQ, SOMALIA, YUGOSLAVIA, RWANDA HAITI AND THE CENTRAL AFRICAN REPUBLIC: EXPANDING THE CRITERIA FOR INTERVENTION?

Since 1990, [FN97] the United Nations has engaged in more peace-keeping activities than at any other time in the organization's history. [FN98] Although the following case studies derive their legal basis from the U.N. Charter and not customary international law, [FN99] they sequentially demarcate new trends in international law and U.N. practice. Furthermore, all six interventions occurred during the Liberian Civil War and prior to the ECOWAS intervention in Sierra Leone. In order to properly assess new trends which have developed with regard to the validity of forcible military intervention in states for humanitarian ends, it is necessary to examine the following case studies chronologically (Iraq 1991, Somalia 1992, Yugoslavia 1992, Rwanda 1993, Haiti 1993, and the CAR 1997). These cases offer valuable insight into when the international community is willing to condone the puncturing of *352 states' sovereignty for humanitarian ends. As a result, it can be argued that the Security Council has been used as a mechanism to legitimize humanitarian intervention.

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No Peace Without Justice

Sierra Leone Conflict Mapping Program

First Draft Factual Analysis
31 October 2003

These preparations would put the logs beneath the stones of large scale AFRC/RUF action in December.

Kono town was overrun by AFRC/RUF forces on 20 December 1998, beginning a chain of attacks across the northern province that that culminated in the invasion of Freetown on 6 January 1999. While retreating south from Koidu, ECOMOG left with thousands of civilians, hundreds of whom were abducted during by AFRC/RUF ambushes on convoys. Moving from Kono on 21 December, AFRC/RUF forces advanced towards Magburaka, taking control of Makeni on 23 December. The attack from Magburaka was coordinated with attacks on Makeni from AFRC/RUF positions north east of the town. ECOMOG forces were displaced north to Kamakwie, which would by 28 December also be in AFRC/RUF hands.

AFRC/RUF forces continued the westwards movement from Makeni directly to Port Loko town. From 28 December 1998 until 3 January 1999, they launched a sustained attack from three directions on ECOMOG forces stationed in Port Loko town. As with Makeni, this attack was coordinated with AFRC/RUF forces already stationed in Port Loko and Bombali Districts. Meanwhile, on 30 December 1998, AFRC/RUF forces in Kailahun moved from their headquarters in Buedu and successfully forced SLA and ECOMOG units from the town of Segbwema. This move was to pre-empt any possible counterattack on Freetown from SLA and ECOMOG forces based in Moa Barracks at Daru. A second such pre-emptory measure was taken in mid January at Mile 91.

On 6 January, AFRC/RUF entered Freetown from the Eastern part of the town and shortly after advanced further West. During their advance in the town, hundreds of civilians were killed, mutilated or raped. The westwards movement of AFRC/RUF forces into Freetown was halted by ECOMOG at the Congo Cross bridge on Freetown's Main Motor Road, held by ECOMOG, SLA and CDF forces. Unable to advance further into the Freetown urban area, and under constant attack from ECOMOG Alpha Jets, AFRC/RUF were forced to retreat from Freetown through the hills surrounding the town. During the retreat, AFRC/RUF forces burned down many houses and buildings.

Following their failure to hold positions in Freetown and the wider Western Area, between February and July 1999 AFRC/RUF forces consolidated their positions as of December 1998. Across the northern province and Kono, AFRC/RUF forces devised methods of rationalising the use of civilians by making them participate in their own administration. In Koinadugo, for example, individuals were selected to be "G5" civil-military intermediaries, communicating AFRC/RUF demands for foodstuffs and manpower to local communities. In western Tonkolili, civilians were required to register with the military police. Unregistered civilians were deemed "CDF collaborators" and were flogged, fined or killed. In various locations across Port Loko and Kambia, taxes were levied on houses and petty traders.

South of Kono, the AFRC/RUF retook control of Tongo field, the most important diamond mining area in Kenema District. CDF forces continually attacked RUF positions in Tongo field, but did not disrupt mining operations. South east of Tongo field, AFRC/RUF forces maintained a hold

Loko District) and drove to Makeni. In April 1999, there was a fight between this RUF commander and another one, as well as between their respective factions in Makeni. One of the RUF commanders was shot and killed. Following this battle, the AFRC returned to Lunsar led by a different commander[28].

In February or March 2000, diamonds were found in Kambia Makuhun (Gbanti Kamaranka Chiefdom). The RUF commander oversaw the mining operation, in which abducted civilians were forced to work as miners. Within the month, RUF/AFRC forces went from Kamakwie to reinforce Kamaranka, a village at the intersection of a route that leads to Kambia Makuhun and the Gbundema– Kamakwie highway. At around this time, other RUF/AFRC forces went from Makeni to Kambia Makuhun around this time as well.

During 2000, the RUF grip on the Bombali district was challenged by UNAMSIL.[29] In April 2000, RUF forces abducted UN peacekeepers in Bumban, Biriwa and transported them to Kailahun.[30] UNAMSIL[31] began bombing Makeni and the surrounding area in May. During this month, there was a battle between the RUF led by General Issa Sesay and the UNAMSIL troops in Makeni. The latter moved towards Kabala End where at Panlap, a village nearby Makeni, RUF? snipers whose commanding officer was Captain Blood ambushed them. RUF forces attacked UNAMSIL in Masongbo, also a nearby village to Makeni. Despite UN attempts at expelling the RUF forces, they remained in control of Makeni until disarmament.[32]

In September, RUF activity along the Guinean border climaxed. Madina Oula, a Guinean town only 23 miles away from Pintonia, was attacked on 3 September. RUF forces attacked an ECOMOG base there stationing Guinean troops but were defeated. RUF forces then made plans to attack another Guinean town, Sekusoria. ECOMOG learned of these plans and reinforcements arrived in the town in time for the attack. In response to these encroachments, ECOMOG initiated "Operation Hot Pursuit", in which RUF bases along the Guinean–Sierra Leonean border were attacked. In the following weeks, ECOMOG attacked Tukukuray and the RUF headquarter town of Kamakwie. The villages of Sanya and Somathai were attacked as well by ECOMOG and Guinean vigilantes.[33]

b. Kambia District

1. Introduction[34]

[28] This information will require farther clarification, since it is also mentioned in the factual analysis for Tonkolili District.
[29] Detail is required from the records on which UNAMSIL battalion was deployed at this time and what happened.
[30] More detail is required from the records about this incident, including who was abducted, how and what happened to them at this time.
[31] Detail is required from the records on which UNAMSIL battalion was deployed at this time and what happened.
[32] More detail is required from the records here on the exact dates.
[33] In general, much more detail is required from the records on the events at this time.
[34] Additional geographic and territorial information required including the locations of the towns that provide the backbone to the conflict in Kambia District.

The RUF forces moved from Kurabonla along the main towards Masadu (Mongo Chiefdom) on 15 September. In the evening they attacked the villages of Madine, Kumba Wullen Balia and Masandu. In Madine, two houses were burnt down, one man was shot dead, 10 men arrested and property was taken.

On 5 November 1996, RUF forces attacked Alikalia (Neini) RUF forces looted property, burnt houses and killed 13 civilians. RUF forces also raped an unknown number of women.

On 26 November, armed RUF forces arrived in Kurubonla from Kaiamy (Sandor Chiefdom) from Kono and stayed overnight in the village. The town chief provided them with food. On 27 November 1996, they moved south eastwards through the villages of Marilia (Neya Chiefdom) and Toria (Neya Chiefdom). In Toria, the village was surrounded and all the houses searched. Food items were taken and 25 villagers were abducted to carry the load back to Kurobonla, where the Chief offered the commander one cow for the safe return of the Toria abductees.[76] From Kurobonla, the RUF unit moved to Mansofenia, where the 25 abductees from Toria were released. The Unit continued towards Kayia (Sandor Chiefdom, Kono District).

In December 1996,[77] RUF forces attacked Mansofinia where they arrested 20 young men and forced them to carry loads of property to Kaiyma, in Kono district.

On 12 December 1996, RUF forces attacked Foraya (Diang Chiefdom) from the village of Kulanko (Neini Chiefdom) using heavy machine guns, mortars and RPGs. ECOMOG forces, SLA and local militia engaged the RUF, but were repelled and retreated from the town northwards towards Badala, a crossing point over the Seli river. RUF forces killed one SLA soldier and captured one Nigerian ECOMOG soldier, about whom there is no further information.

1997[78]

In April 1997, RUF forces established a base in Serekolia (Mongo Chiefdom). Then they moved on to attack Dolar[79] and moved south to Kurubonla (Neya chiefdom. The ECOMOG forces occupied Kabala and moved on to Koinadugu, Sengbe chiefdom, searching for RUF forces.

In May 1997, RUF forces left Sengbe chiefdom towards a bordering chiefdom, apparently escaping from the advance of ECOMOG troops. Chasing the RUF forces the ECOMOG troops attacked Gberefeh (Sengbe Chiefdom) and Dolar[80] to unseat the RUF/AFRC bases. During this month, CDF captured some members of the RUF and took them to the ECOMOG base in Mongo

[76] It is not clear from the record whether this offer was accepted.
[77] More clarification is required from the records on the date, specifically when during December this happened.
[78] The records contain contradictory information on what happened in Koinadugu District in 1997. This whole section therefore requires further clarification, including verification through open source research.
[79] The location of this town is not clear, although it is likely to be either Mongo or Sengbe Chiefdom.
[80] The location of this town is not clear, although it is likely to be either Mongo or Sengbe Chiefdom.

chiefdom.[81] The RUF/AFRC forces counterattacked in Serekolia and Gberefeh where they engaged in a battle against the Tamaboros.

There were RUF/AFRC bases in Sereya (Mongo Chiefdom), whose presence caused people to flee to Guinea.[82]

In meantime, in the south eastern chiefdom of Neya, RUF forces attacked a number of towns, including Kurubonla, Porpon and Henekum, and set bases in Yiraia, Bendu, Kulia, Kumba Wullen Balia, Nerekoro, Mansofinia, Yarawalu and Konkowaboro. In these places they continued looting, killing and abducting people to carry their loads.[83]

In June 1997, senior RUF/AFRC commanders were based in Koinadugu town (Sengbe Chiefdom), where their men captured 80 young men, they raped women and girls in the bush and they killed 98 people. Then they moved on to Dankawali.[84]

In June RUF/AFRC forces coming from Mongo and Neya Chiefdoms, went to Freetown, passing through the towns of Kurubonla and Mansofinia. In Mansofinia RUF/AFRC formed the G 5, mixed units of RUF forces and civilians who were charged with various administrative functions, and stayed in the district.[85]

In July 1997, RUF/AFRC forces occupied the eastern part of the District in Neya, Mongo and Senghe chiefdoms, attacked many towns and villages and they planned the attack on Kabala town, at the time a stronghold of ECOMOG and CDF. The battle took place on 27 July 1997.[86]

On 17 September 1997, RUF/AFRC forces again attacked Kabala. The RUF forces did not meet any resistance from SLA and many people were killed. The next day the SLA, who had apparently delayed fighting the RUF forces for strategic reasons, started firing on their position killing many RUF forces and their commander, who was subsequently buried in one of the main mass graves.

On 19 September 1997, an RUF commando group left Mansofinia and headed to Kulero. On the way, they attacked Sumaworia and Sondordu (both in Neya Chiefdom). In Sumaworia, they abducted everyone in the town, including men, women and children. The women were then taken into empty houses and raped, while their husbands were forced to watch. Similar incidents took place in Sondordu. During that month a group, coming from Kumba Wullen Balia, attacked Kilimendu and Mansadu.

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[81] More information is required from the records about the location of the ECOMOG base in this chiefdom.
[82] More information is required from the records on this matter.
[83] More detail is required from the records on these incidents.
[84] This requires more detail, in particular whether all of these incidents took place on one day or over the month of June.
[85] More information is required from the records here about the "G5" system.
[86] More detail is required from the records about this battle and these incidents.

by RUF forces, who looted extensively. Twenty-six men and 15 women, all civilians, were forced to carry the looted property. RUF forces burned down four houses before departing Yarawadugu.

Between 12 and 13 January 1998, this RUF unit returned to Kurubonla from Yarawadugu passing through the villages of Tilikoro, Fasombnuya, Sandia, Tenkeya, Toroya and Marliya. In Tilikoro, two men were caught and their property taken away. In Fasonbnuya, three men were caught, and property including radios, casette tapes and a gun was taken. Five houses were also burned down. Many houses in other towns were also burnt down, including 10 in Sandia, two in Tenkeya, 10 in Toraya and 6 in Marliya. On 13 January, the unit arrived in Kurubonla, whereupon the people who had been abducted to carry stolen property on the patrol were released. A truck from the RUF base at Yiraia (Neya Chiefdom) was provided to carry the 50 man unit back to Koidu (Gbense Chiefdom, Kono District).

On 15 January 1998, RUF forces burned a total of 11 houses in the villages of Dunamara, Fandala and Henekuma (all Neya Chiefdom) en route from Kayima (Sandor Chiefdom, Kono District) to Mansofenia (Neya Chiefdom). In Mansofenia, RUF forces began to burn houses. Villagers report begin surprised, having been informed earlier by one of the RUF commanders that Mansofenia was an RUF base. That RUF commander shot dead another RUF commander with a pistol.[90]

February 1998

In February 1998, the combined forces of the AFRC and the RUF were driven out of Freetown by the Nigerian-led ECOMOG intervention force.

After 14 February 1998, a 1000-man RUF/AFRC unit known as "Junta One" arrived in Fadugu (Mambolo HQ town) and proceeded to attack many surrounding villages as part of "Operation Pay Yourself". Attacks were made upon Kagbasia, Kafogo, Kassasie, Thankorosidia, Madina, Kasandakoro, Kakayo and Kamanda.[91]

On 15 February 1998, ECOMOG forces entered Fadugu town forcing AFRC/RUF forces to retreat towards Kabala. Fadugu town became the focus point for surrenders by RUF/AFRC forces present in the surrounding villages, as a result of which ECOMOG set up a screening process.[92] At least two killings of surrendered RUF/AFRC forces by ECOMOG soldiers are recorded. ECOMOG cooperated with the CDF to set up a town defence plan that included civilians.

CDF forces had made the main route between Magburaka and Koidu impassable to retreating RUF/AFRC forces, so the main route used was through Bumbuna (Kalansogoia, Tonkolili) and Bendugu (Sambaia Bendugu, Tonkolili) into Neini chiefdom. After 14 February 1998, a large convoy of RUF/AFRC vehicles moved through the towns of Alikalia (Neini Chiefdom) and Yiffin (Neini Chiefdom) through towards Kayima (Sandor Chiefdom, Kono District). In both Alikalia and Yiffin, until early March 1998, there are reports of continual harassment of civilians and their property being taken by RUF/AFRC forces as part of "Operation Pay Yourself".

[90] More detail is required from the records on this.
[91] More detail is required from the records on these attacks.
[92] More detail is required from the records on the screening process.

Throughout March and April 1998 in Sebeneh chiefdom, the number of RUF/AFRC forces present grew. There are also reports of continual looting of civilian property and expropriation of dwellings to house RUF/AFRC forces and their families. Civilians in Kalkoia (Sengbeh Chiefdom) report seeing small ECOMOG patrols shortly after the arrival of the main ECOMOG 2nd Battalion reached Kabala in early March. Shortly after ECOMOG arrived in Kabala, RUF/AFRC forces occupied the town of Serekolia (Mongo Chiefdom).

After 13 March 1998, ECOMOG forces commanded by entered the town of Alikalia from the north. A company of ECOMOG forces remained in Alikalia, whilst a platoon was dispatched to Yiffin town (Neini Chiefdom), in pursuit of RUF/AFRC forces. ECOMOG met little resistance on entering Yiffin. In both Yiffin and Alikalia, ECOMOG forces and Section Chiefs accepted the surrender of unknown numbers of RUF/AFRC forces, who were issued with documents identifying them and then sent to Kabala or Makeni for further questioning by ECOMOG.

Immediately after entering both Yiffin and Alikalia, ECOMOG met with the Section Chiefs and requested that hunters be gathered together to assist ECOMOG troops. In Alikalia, 50 hunters were rapidly assembled and registered at the ECOMOG base. ECOMOG firstly provided training to those who registered in how to use an AK-47 rifle, and secondly ordered those trained to search the bush around Alikalia town for RUF/AFRC forces.

By 14 March 1998, ECOMOG troops had deployed to the northern town of Sinkunia (Dembelia Sinkunia Chiefdom) to the North of Kabala. Civilians in nearby Falaba (Sulima Chiefdom) report arresting and tying up a local AFRC leader and handing him over to ECOMOG forces in Sinkunia. After 14 March 1998, ECOMOG forces arrived in Falaba town.

On 26 March 1998, an RUF/AFRC unit attacked the town of Kosaba in the Republic of Guinea, bordering Mondo chiefdom The previous day this unit abducted 40 civilian men in Kamaron and Kiridu (both in Mongo Chiefdom) to guide them through to Kosaba. Two civilians were killed during the attack. RUF/AFRC forces took items like foam mattresses, guns, radios and foodstuffs from Kosaba. The abductees were forced to carry the looted property back to the RUF/AFRC base in Mansofenia.

On 28 March 1998, ECOMOG forces stationed in Falaba (Sulima Chiefdom) received reports of an RUF/AFRC buildup to the south of the town. A young boy reported that RUF/AFRC forces had captured his friend and killed him as a ritual sacrifice. An ECOMOG armoured car fired from Falaba (Sulima Chiefdom) in the direction of Alia (Alieya Chiefdom) village. In the early hours of the morning on 29 March, RUF/AFRC forces responded and attacked Falaba town with heavy machine guns and RPGs, killing 18 civilians, looting and burning down over 50 houses. ECOMOG withdrew to their pre-existing position in Sinkunia. Falaba was attacked by RUF/AFRC forces again on 3 April, thereby securing RUF/AFRC control of Falaba until the arrival of Guinean troops in late May 1998. The Guinean contingent remained until late November 1998.

On 30 March 1998, ECOMOG in Alkalia received reports from civilians of a large concentration of AFRC/RUF forces around Worombaia in the southern tip of Neini chiefdom, bordering with Tonkolili District. ECOMOG forces based in the town and 40 local hunters were dispatched by ECOMOG from Alikalia. Failing to locate RUF/AFRC forces, they returned to Alikalia in early April 1998.

In early April 1998, a contingent of Guinean ECOMOG troops attacked Serekolia town (Mongo), entering from the direction of Kabala. Residents report seeing 13 trucks, an unknown number of ground troops and a helicopter gunship. RUF/AFRC forces retreated from Serekolia towards Kurobonla. ECOMOG moved through Serekolia, and established a base in the nearby town of Mongo Bendugu (Mongo). There are also reports that shortly after moving from Serekolia, RUF/AFRC forces established a base in the town of Seria (Mongo Chiefdom), close to Mongo Bendugu, and on the main road southwards to the other RUF/AFRC bases in Neya chiefdom.[93]

On 11 April 1998, a large number of RUF/AFRC forces arrived in the village of Mansofenia (Neya Chiefdom). They had more than 20 Honda motorcycles and a large and a varied amount of weaponry including RPGs, LMGs, AK-47s, shotguns, mortars, grenades and bladed weapons. The town was sealed off by RUF/AFRC forces. On 13 April, a large meeting of civilians and all military forces was convened. The RUF/AFRC forces were divided into five groups, to be based at Mansofenia, Yiriaia, Kurobonla (Neya Chiefdom), Mansodugu (Mongo Chiefdom) and Alikalia (Diang Chiefdom). On 20 April, some of the RUF/AFRC forces moved towards Kurobonla, and a much smaller group moved to Mandodugu. The Alikalia and Mansofenia groups remained in Mansofenia.

Late morning on 27 April 1998, RUF/AFRC forces attacked Yiffin from the easterly directions of Krutor and Konombaia village (both in Nieni Chiefdom).[94] ECOMOG forces were ambushed with an RPG whilst setting up defences and retreated from Yiffin. The ECOMOG commander informed the Section Chief that the town should be evacuated because they were unable to defend against the RUF/AFRC attack. Many civilians fled the town into the nearby bush. RUF troops had red material tied around their heads and AFRC had white pieces tied around their heads. The house of the Town Chief was destroyed with an RPG. The chief was shot in the mouth but escaped to Alikalia. A number of the RUF/AFRC forces wore uniforms similar to that of ECOMOG and informed civilians that they should head to the centre of town where they would be protected. RUF/AFRC forces gathered between 200 and 300 people in a barn, firing into the building before setting it on fire. Later that afternoon, RUF/AFRC forces left Yiffin in the direction of Alikalia. On 28 April 1998, returning civilians buried over 200 dead civilians in a mass grave in Yiffin. Two ECOMOG forces were also killed in the attack, after which Yiffin was left undefended.

Around midday on 28 April 1998, RUF/AFRC troops attacked Alikalia. ECOMOG forces and hunters (specifically, two hunters and one ECOMOG soldier) were at that time dug into trenches, having been warned of the attack by civilians escaping the RUF/AFRC attack on Yiffin on 27 April.

[93] More information is required from the records on this base and whether it in fact existed.
[94] It is likely this groups moved from Mansofenia but further clarification is required from the records on this.

were dug, and for three weeks local militia and ECOMOG forces were placed on 24 hour-guard around the town.

By the early morning of 22 May 1998, a large number of RUF/AFRC forces attacking from the RUF base at Koinadugu village (Sengbe Chiefdom) had captured the town of Fadugu (Mambolo Chiefdom). The 40-man ECOMOG unit was briefly driven from town. One CDF member was shot dead and his body cut up by RUF forces. Eleven civilians were killed in the attack and an unknown number of houses were burned down. On the same day, by 1000, ECOMOG reinforcements from Kabala arrived, but were ambushed in Kafogo village, nearby Fadugu. On 23 May, ECOMOG, SSD and CDF forces attacked Fadugu with the assistance of air support. RUF/AFRC forces retreated towards Kabala. ECOMOG forces immediately performed a house-to-house search of Fadugu, during which civilian property was taken.

June 1998

On 2 June 1998, RUF/AFRC forces entered Yiffin (Neini Chiefdom), under heavy rainfall. Using cutlasses, they tore the corrugated zinc roofing from an unknown number of houses, claiming they were "repairing" the properties. RUF/AFRC forces remained in Yiffin until the next day, singing songs and harassing civilians throughout the night.

On 3 June 1998, RUF/AFRC forces attacked Kondembaiai (Diang). In this attack, RUF/AFRC forces cut off the limbs of an unknown number of children between the ages of three and five. The RUF/AFRC forces searched every house in town, with the exception of the mosque and the Roman Catholic church.

On 6 June 1998, RUF/AFRC forces coming from the direction of Yiffin and Kulankor (both in Diang Chiefdom) attacked Alikalia town. ECOMOG and local militia repelled the RUF/AFRC attack by midday on 7 June 1998. RUF/AFRC forces killed three civilian men in the bush nearby Alikalia and one woman was shot in the stomach while attempting to escape. On 9 June 1998, ECOMOG commanders in Alikali ordered a unit of 40 local militia to travel to Firawa (Diang Chiefdom), to establish the whereabouts of the RUF/AFRC forces that attacked Alikalia. On the road to Firawa, this unit stopped at Kulanakor and learned from residents that the RUF/AFRC forces had moved to Gbefereh (Senebeh Chiefdom) in search of livestock. On their return to Alikalia, on 10 June, ECOMOG ordered the local militia to return to the trenches, where they stayed until 17 June before being allowed to freely move around the town.

On 30 June and 10 July 1998, soldiers of the SLA 1st Battalion moved through Alikalia towards Yiffin, dislodging the RUF/AFRC forces, on way to engage RUF at Kayima (Kono District). ECOMOG in Alikalia were informed by the commander that SLA forces would remain in Yiffin as an advance defence for Alikalia. One company of SLA forces remained in Yiffin, whilst the remainder advanced to attack RUF/AFRC positions in Kayima (Sandor Chiefdom, Kono District).

At the end of June 1998, Alikalia, Yiffin and Kabala were out of the control of the RUF/AFRC. On 24 June, the CDF was officially formed in Diang chiefdom.

On 23 September 1998, RUF/AFRC forces left Kuronbonla (Neya Chiefdom) for the town of Kamaron (Mongo Chiefdom), arriving in the early evening. Twenty-five men and 15 women were detained by RUF forces in a church in the town. RUF/AFRC forces entered every house in the town and took property, including food items, livestock and domestic goods. The stolen property was loaded onto trucks and driven to Kuronbonla. Fifteen houses were burnt when the RUF/AFRC forces left Kamaron the next day.

October 1998

On 8 October 1998, RUF/AFRC forces attacked Alikalia (Neini Chiefdom) from Firawa (Neini Chiefdom) in the north. Although CDF and ECOMOG resisted the attack, RUF/AFRC burned down over 20 houses along their retreat route. CDF and ECOMOG forces pursued the RUF/AFRC unit over 2 miles out of Alikalia towards Firawa.

On 16 October 1998, RUF/AFRC forces moved from Kuronbonla (Neya Chiefdom) and destroyed the bridges over the Bafin and Bagbe rivers along the main road through Mongo chiefdom. This was to prevent ECOMOG forces stationed in Mongo Bendugu (Mongo Chiefdom) from entering the Neya chiefdom, and putting pressure on the RUF/AFRC bases in Kuronbonla and Mansofenia. At the Bagbe crossing point, they destroyed the concrete on both ends of one of the main support rails, causing the wooden slats that made up the bridges to fall into the river. The bridges were rendered impassable to vehicles.

On 28 October 1998, a large number of RUF/AFRC forces from Kurobonla attacked the ECOMOG base at Mongo Bendugu. Since they had earlier destroyed both bridges over the main road, the attack was carried out on foot. Two RUF/AFRC forces were sent into Mongo Bendugu to surrender to ECOMOG, distracting their attention away from the main attack, which came along the southern road from Seria. RUF/AFRC forces killed over 20 civilians and three ECOMOG soldiers. ECOMOG retreated from the town to an unknown location, leaving behind arms and ammunition. RUF/AFRC forces took possession of this weaponry, in addition to looting livestock and domestic goods from civilian residences. An unknown number of civilians were captured and forced to carry the stolen property over 30 miles to Kurobonla.[96]

November 1998

Between 1 and 7 November 1998, RUF/AFRC forces again attacked Alikalia. They were repelled by combined ECOMOG and CDF forces who, having received warning from a local farmer, engaged the RUF/AFRC attack a mile out of Alikalia. On 2 November 1998, RUF/AFRC forces attacked Kamarantak (Diang Chiefdom). SLA forces based in the village repelled the attack.

On 11 November 1998, RUF/AFRC forces entered the town of Musaia (Follosaba Dembelia Chiefdom) and occupied the town for the day. An unknown number of civilians were beaten with iron bars, sticks and belts. An unknown number of civilians were tied up and left in the sun.

[96] There are reports at this time of in-fighting within the RUF, which requires further information.

On 12 January a group of RUF/AFRC forces reinforced Kumba Wullen Balia (Neya Chiefdom) from Kono District. The leaders of those forces were saying that they wanted to join the fighters at Makeni to launch an attack on Guinea, but ECOMOG and SLA were based in Kabala, blocking the most convenient route Guinea.

Around 15 and 20 January 1999, a very large RUF/AFRC force comprised of different units led by different commanders on their way to Freetown stopped in Fadugu, Mambolo chiefdom causing the population to retreat to the surrounding bush.[98]

On 28 January in Fadugu (Mambolo Chiefdom) there was a battle between SLA forces and ECOMOG against RUF/AFRC forces.[99]

In February 1999, AFRC forces attacked Tomania (Sengbe Chiefdom) and then they skirted northwards on the main road avoiding Kabala, via Serekolia (Mongo Chiefdom), Gbenikoro (Sengbe Chiefdom), Fadugu (Mambolo Chiefdom), towards Makeni town. During this expedition, they were ambushed by CDF forces. In Tomania, they captured all the women and took them to a flat rock behind the town where they were sexually abused. They also abducted men and women to carry their looted foodstuff to Serekolia.[100]

Another RUF/AFRC unit was active in Wara Wara Bafodia chiefdom, where attacks were made on Magbgbe, Bafodia and Kakonsio. In Bafodia town, the RUF commanders gathered the population and divided it into three groups. One group remained in Bafodia, the second was deported to another village, possibly Katawuyia, and the third to Kakoyia After five days the RUF forces left for Kamawie.[101]

From 15 to 20 February 1998, RUF/AFRC forces passing through Fadugu (Mambolo) on the way to Freetown, arrested civilians, captured them and killed some of them. Seventy houses were burnt down and women, both young and old, were sexual abused.[102]

On 16 February 1998, a large number of RUF/AFRC forces attacked Bafodia (Wara Wara Bafodia Chiefdom), where they spent the day. During the attack, the RUF/AFRC forces amputated the limbs of four civilians, including children under five years of age, and they raped five women. Two of the amputees died. They also took property and abducted five people to carry the loads.

Between March and April 1999, a battle went on in Gbenekoro and Fogo, (Diang Chiefdom) between RUF forces and CDF forces. Towards mid-April, in Bafodia (Wara Wara Bafodia Chiefdom), RUF/AFRC forces entered the town and introduced themselves as "SLA loyal forces"

[98] More detail is required from the records on these incidents.
[99] More detail is required from the records on these incidents.
[100] More detail is required from the records on these incidents.
[101] More detail is required from the records on these incidents.
[102] More detail is required on these incidents.

area by SLA forces coming from the western part of Mile 38 along the Freetown Highway. Four days later, RUF forces mounted an ambush on SLA forces along the Mile 38 axis. At this time, ambushes and fighting along this road were common, as a result of which the SLA forces mounted checkpoints along the road. In an attempt to resolve the matter once and for all, about one week later, on 28 June 1995, SLA forces attacked Mile 38 with significant support from Alpha Jets, which bombarded the town. During this attack, a large number of people were killed, houses burnt down and vehicles were destroyed.[138]

1996

During 1996, Sanda Magbolontor, Dibia and Koya Chiefdoms were quiet and free from any activity. Throughout the year, the CDF were deployed in Kasseh section in BKM Chiefdom, which to a large extent prevented RUF incursions into that chiefdom.

In January 1996, a large number of RUF forces entered the north of TMS Chiefdom from Libeisaygahun Chiefdom, Bombali District. These forces passed through a number of towns, where they captured up to 300 civilians, in particular from Futa and Madina in the centre of the chiefdom. The RUF forces then moved to a hill called Fantima Hill, on the boundary with Buya Romende Chiefdom close to Makola Valley, in a forest called Kagberen-Gberem.[139]

On 5 February 1996, RUF forces coming from Robis along the Makeni Highway entered Buya Romende Chiefdom and burnt two vehicles near Foredugu. As a result, the civilians decided that they would organise themselves with cutlasses and launch an attack on the RUF forces. However, when the RUF forces started shooting at them, although there were no casualties, the civilians decided to disband and not fight the RUF forces any longer. In March 1996, some ECOMOG forces stationed in Lunsar arrived in Foredugu, where they were joined by the CDF. It should be noted that throughout the year, the RUF forces continued to launch attacks on Lunsar.[140]

During March and April, RUF forces based in Masimera (Marampa Chiefdom) went south to Rokatic, where they took property and abducted some people. This was to continue on a sporadic basis until the end of 1997.[141]

In November and December 1996, the Nigerian 28th Battalion of ECOMOG were deployed in Port Loko town.[142]

1997

During 1997, RUF/AFRC attacks appear to have taken place mainly on ECOMOG and Government positions, although not very many incidents are reported. It is possible that

[138] More detail is required from the records on these incidents.
[139] One report mentions that 300 people were killed at this time. This requires further cross checking from open source materials.
[140] More detail is required from the records on these attacks.
[141] More detail is required from the records on these incidents.
[142] More information is required from the records.

After the intervention in Freetown, some RUF/AFRC regrouped in Bainkro (BKM Chiefdom) at the border with Dibia and Sanda Magbolontor Chiefdoms. From there, some left through Sendugu (Sanda Magbolontor Chiefdom) to reach Kamakwie in Bombali district. In mid February 1998, some of these forces (called Brigade Advance) left Bainkro to go Barmoi in Kambia District, this troop was called Brigade advance. The RUF/AFRC forces burnt eight houses and abducted 50 civilians, who were forced to carry stolen property. Two days later, they reached Kambia Town (Kambia District), where they again took property, burnt houses and killed eight people.

From Kambia town, the RUF/AFRC forces launched simultaneous attacks on Rokupr (Kambia District) and on Mange (BKM Chiefdom). While CDF and ECOMOG forces were based in Mange, they were overpowered by the RUF/AFRC forces and retreated to their headquarters in Port Loko. In Mange, 62 houses were burnt down, six people killed and an unspecified number of people were abducted.

On the same day, combined RUF/AFRC forces went back to Bainkro. The Guinean contingent of ECOMOG and CDF left their Port Loko headquarters, equipped with armoured tanks, and went to attack the RUF/AFRC forces in Bainkro. However, they were repelled by the RUF/AFRC forces and so they established a temporary base in Kabatha, 5 miles from Port Loko town.

Two days later, RUF forces left Bainkro to Kasseh section. They attacked villages including Rokon and Robarh Kantakathe, where they encountered resistance from the Gbethies (CDF). The RUF forces were forced out of the town and chased by the Gbethies from Kasseh Section to Magbankitha, Makonteh section (BKM Chiefdom).

The CDF Commander in Port Loko called on the assistance of a Nigerian jet fighter. As a result, the RUF/AFRC forces suffered a heavy bombardment, which made them abandon their position.[354]

During the same period, in early 1998, retreating troops[355] from Freetown used the Freetown-Masiaka axis in Koya chiefdom and stopped temporarily in Masherry Potho and Mile 38. Both in Masherry Potho and in Mile 38, assailants - some dressed on combat uniform and some in combat t-shirts with red pieces handkerchief round their head – conducted a house-to-house search, taking property, forced civilians to carry their belongings, chased civilians into the bush, beat them and killed those who refused to tell them where their property was. Some civilians were also amputated, including one man from Masherry Potho, who had been abducted to carry stolen property, whose left hand was chopped off with a machete because he could no longer carry the load.

On hearing of the ECOMOG advance in the provinces in February, the RUF/AFRC forces dug deep holes across the Freetown-Masiaka highway, after which they left and proceeded further north, burning all the houses they had erected before leaving. Many civilians were forced to carry their property. One incident relates the amputation of both hands of one abductee from Mile 38 who had

[354] It is not specified where this group left for.

[355] We can not infer that this was the group who later on moved to Bainkro, because the dates mentioned for the events in Bainkro are before those stated for Koya chiefdom. This may the one who went to Makeni. Further clarification is required from the records.

civilians to carry the load. On their way back from Lunsar, they went through Magbenthan and Mamusa on 8 December 1998, burning all the houses as they passed through. This group then headed to Ro Gberray Junction[175] and on to Port Loko town, where they took part in an attack on the town on 28 December 1998.

In the months of November and December 1998, several attacks were launched on villages in Maforki Chiefdom. For example, in November 1998, at Ro Gbesseh, a village hosting displaced persons, over 20 men were abducted, people were killed and some houses were burnt. At Ro-Gbere Junction in early December 1998, RUF/AFRC forces looked for able-body men to join in the movement, capturing over 10 men for this purpose. In December 1998, dead bodies were found in Makokbo, Ma Purseh, Ma Barrkay and Rogbil.

Also in December 1998,[176] RUF/AFRC fighters attacked the town of Masiaka, which is a strategic location because it is where the Freetown highway divides into two highways, one leading to Port Loko town and the other to Mile 91. RUF/AFRC forces were coming from three different areas with the main aim of dislodging the Guinean forces and to take their arms and ammunitions. The RUF/AFRC forces burnt one armoured tank, some houses and the Headquarters of the Guineans forces, but were unable to seize any weapons. After a battle that night, which left over 20 civilians dead, the Guinean forces were able to repel the RUF/AFRC forces who, while leaving, abducted many civilians, including school children.

In December 1998, there was a battle to take control of Port Loko town. Prior to this attack being launched, Gbethies (CDF) from Mile 91 came to Port Loko town to reinforce the CDF and ECOMOG forces based in the town. On 28 December 1998, very large numbers of RUF/AFRC forces, heavily armed, passed through Ro-Gberray Junction from Lunsar before moving to Port Loko Town.[177] This attack on Port Loko Town involved many more RUF/AFRC coming from different directions, regrouping and heading for the town. Thus, fighters coming from Kambia Town, Rokupr (Kambia District) Mange (BKM chiefdom), Macoba (North of Mange) but also Rosos and Makeni in Bombali district took part in the attack.

The RUF/AFRC forces reached Port Loko the last days of December and embarked on a five-day battle with ECOMOG forces. The RUF/AFRC forces captured the east part of the town, called old Port Loko, and fought for the control of the whole town. However, the ECOMOG resistance was very strong, assisted by the bombing of RUF/AFRC positions by air. On 3 January 1999, the RUF/AFRC forces left the town using the same route to the east route.[178] During this battle, civilians were killed, including the Paramount Chief, women were raped and houses were looted. In

[175] On the development on Port Loko Town attack, it was mentioned that in December, Ro-Gberray Junction was attacked.
[176] Clarification is required from the records on the date.
[177] Clarification is required from the records as to where these forces came from, although it is likely that
[178] It is highly likely that some of these forces then headed for Freetown as their commander is reported to have been in the Western Area before 6 January 1999.

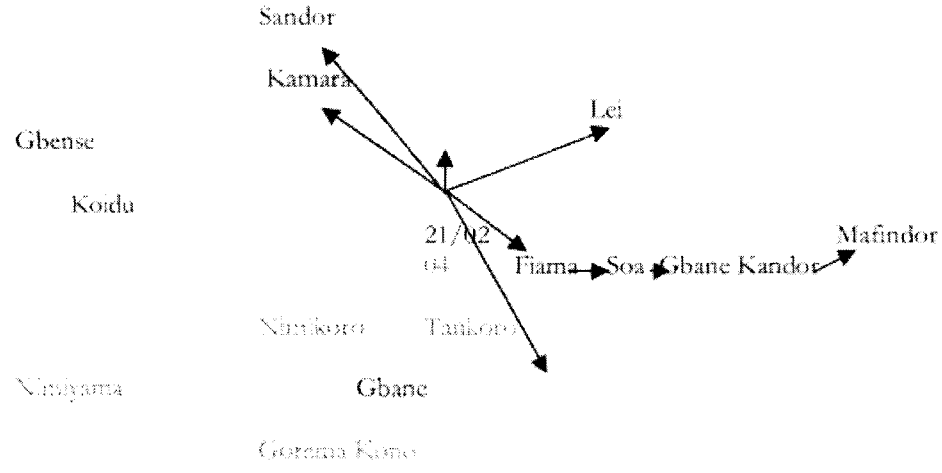
RUF/AFRC forces came again in Kangama (Gorama Kono Chiefdom) in June, taking advantage of the fact that the Kamajors had deserted their checkpoints during the night. Many civilians were captured, massive looting was carried out, houses were set on fire and civilians were forced to carry the stolen property to the RUF/AFRC base in Senehun (Tankoro Chiefdom). In August, CDF launched a successful offensive on the RUF base in Senehun, as a result of which Gorama Kono was free of attacks the rest of the year.

1998

Gbense – Kamara – Tankoro

RUF forces took Koidu in late February. RUF had a presence in Gbense, Kamara, Sandor and Tankoro Chiefdoms, where they committed many atrocities. RUF forces were driven out of Koidu by ECOMOG and CDF in April 1998. From that time until December, there were scattered all over the District in the bush, Koidu Town remaining under ECOMOG control. Many incidences of violence are reported throughout the year, although the rate was very high between late February and June. In December, RUF forces retook Koidu, which was the catalyst for the RUF/AFRC advance towards Freetown.

February – June 1998. RUF movement and presence.



Legend:

ECOMOG deployment

→ RUF/AFRC forces deployment

From January to February, violence against civilians and attacks on civilian property were rampant. One young boy was shot dead near the Koidu Central Mosque by an AFRC soldier after the young boy had helped him pushing his motorbike up the hill. Two days before ECOMOG drove the RUF/AFRC forces out of Freetown, a group of RUF/AFRC forces attacked the Branch Energy Lodge and Warehouse in Koidu and stole items valued at over hundreds of millions of Leones. On

ECOMOG arrived in Njaiama Sewafe in March-April 1998. The arrival of ECOMOG in Kono District was characterised by tensions with members of the CDF from Kono District. However, as ECOMOG came with some members of the CDF from Magburaka, the advancing ECOMOG troops were welcomed. While in Njaiama Sewafe, Brigadier Maxwell Khobe paid them a visit and gave order to advance on Koidu Town. Thus, a combined troop of ECOMOG and Donsos moved to Koidu, through Bumpe, Lebanon and Motema (all located on the highway), where a battalion was deployed. They also deployed at Koakuima where many civilians from the surrounding chiefdoms came to find refuge as the ECOMOG presence appeared as a safer haven. The ECOMOG and CDF forces launched a first attack on Koidu town but were repelled by RUF/AFRC forces and went back to Lebanon. However, ECOMOG and CDF forces launched a second attack and were able to overpower the RUF/AFRC forces, who moved out of Koidu town.

Between March and April, the Nigerian contingent of ECOMOG was sent to Torgbombu, an important town in the Gorama Kono Chiefdom. They came with heavy artillery such as Alpha jets, war tanks, mortar bombs and helicopter gunships. They deployed in Jaiama and Bumpe (Nimikoro Chiefdom) together with members of the CDF. The ECOMOG forces encouraged people to come out of their hiding places, so civilians started to come back to the headquarter town of Jaiama.

After taking Koidu in late February 1998, RUF/AFRC forces arrived in Sandor Chiefdom and organised themselves into different groups: food finding groups and mining groups. In this chiefdom, they were based in Yormandu, Kayima and Tefeya. From Kayima, they controlled Chiefdoms in Koinadugu District. Massive destruction of property took place in April and most of the farms were burnt down.[420]

AFRC/RUF were engaged in large-scale mining in the south of Sandor Chiefdom, in towns including Yormandu, Tefeya, Bakidu, Woidala and Bendu. The RUF/AFRC forces needed people to work in the mines and people to find food, so they forced civilians to undertake this work. Many people were captured to work in the mines and they were forced to work all day long. The civilians forced to work in the mines were divided into groups, namely tripping, extraction and washing. Mining workers were flogged, killed or burnt to death. Sick or tired workers were either killed or driven away after a severe beating/flogging. Mining workers caught stealing diamonds were burnt to death with a five-gallon rubber. RUF General Staff come every week to collect the diamonds.[421]

Promotion was given to soldiers according to the results of their missions. As an example, when soldiers, often child soldiers, were asked to burn houses and they burnt more than they had been told to, they were given rank promotion.

All over the chiefdom, RUF/AFRC forces began killing people in the bush, mainly for food because the RUF/AFRC food stores began to run out in April. "Where is the salt, where is the Maggi, where is the pepper" were common questions asked to civilians, who would be killed if they were

[420] More detail is required from the records on this incident.
[421] More detail is required from the records on this matter, including where the diamonds went and what they were used for.

April-May 1997 and in one incident, SLA soldiers were captured. During this period, Kamajors attacked Koribondo on several occasions and RUF/AFRC forces were driven out during the beginning of1998.

Tikonko – Kakua

During the second half of 1995, at the time the Kamajors initiation ceremony was introduced in the District, town and villages in Tikonko chiefdom sent men to be initiated. During the first round of initiations in 1995, only people above 15 were initiated, but this changed later, although no date for this change is specified. Tikonko chiefdom came soon under the control of the Kamajors.

A major incident took place in Tikonko Town, shortly after the coup in May 1997. On 10 June 1997, the Kamajors chiefdom ground commander received a letter from the high priest and initiator, Kundewai. The order was to gather all Kamajors in Tikonko chiefdom at Tikonko Town, for the purpose of participating in an attack on RUF/AFRC positions at Bo Town. Approximately 200 or 300 Kamajors came from all directions of the chiefdom and two days later, more Kamajors arrived. During their short stay, civilians were to feed them.

At this time, RUF/AFRC forces began to disguise themselves as Kamajors and attack towns. People were able to identify them as RUF/AFRC forces because they had RPGs, AK47s and grenade, whereas the Kamajors were armed with single barrel guns, cutlasses, sticks and knives. Once incident took place on 25 June 1997, some men dressed in full Kamajor attire came from the direction of Bo, riding Honda motorbikes. This was confusing to the people of Tikonko, because Kamajors never rode on motorbikes and, at the same time, rumours were going round that RUF/AFRC forces were heading for Tikonko. Shortly after the arrival of these men on motorbike, the sound of RPG fire was heard in the town. RUF/AFRC entered the town taking property and killing people. All those who were entrapped in their houses were killed, including 11 people in one house nearby the market and a woman who was disembowelled. One of the Kamajors based in Tikonko town was beaten and tortured before being killed. Many Kamajors died in the forest along Lembema Road, north of Tikonko Town. Another similar incident occurred in January 1998, RUF/AFRC forces coming from Bo went to Towama, between Bo and Tikonko towns, because saying it was a Kamajor base. Four civilians were killed, up to 25 houses were burnt and property was taken away. The RUF/AFRC forces went back to Bo and stayed there until ECOMOG forces arrived.

In February or early March 1998,[306] there was a major battle between RUF/AFRC and ECOMOG forces in Bo Town. Hundreds of people were running out of the town, fleeing the havoc. The town was set on fire, massively looted and dead bodies were to be seen on the streets of the town.[307] Shortly after, ECOMOG troops based at Kenema gained control of the town. However, on their way out of the town, civilians were thoroughly searched at Kamajors checkpoints. At one

[306] It is not clear from the records when ECOMOG arrived in Bo town. However, ECOMOG movements in the rest of the country, in particular in Port Loko, Moyamba and Tonkolili Districts, as well as their arrival date in Freetown suggests that ECOMOG troops had to be in Bo Town by the very beginning of March at the latest.
[307] There are no further details about this in the records. This will need to be addressed during the open sources phase.

However, this collaboration between SLA forces and the Kamajors soon started to deteriorate. In Barri chiefdom, quarrels over the dismounting of checkpoints arose and checkpoints mounted by SLA forces were destroyed by Kamajors, which led the SLA forces to leave the chiefdom. After the Coup in May 1997, CDF were defeated in many areas and went into hiding, operating from underground.

From May 1997 until they were repelled from the District in 1998, the combined RUF/AFRC forces imposed great harms on civilian population in general and on suspected Kamajors or Kamajors collaborators/sympathisers in particular.[630] For example, in Sowa chiefdom, AFRC forces were accusing civilians of being Kamajors and lots of them were killed. The RUF/AFRC forces used to patrol in the chiefdom and established themselves in Bandajuma, the chiefdom headquarters. The Bo-Pujehun Highway, which passes by Sowa chiefdom, was constantly patrolled at night and houses along the highway were set on fire and youth who happened to come across the combined forces were killed, accused of potentially being Kamajors.

Women were sexually abused and in Pujehun Town, one woman died as a result of having been sexually abused. Practices of padlocking the private parts of women are also reported.[631]

It is also reported that when they were loosing men at the battlefront, RUF/AFRC forces were killing a similar number of civilians. For example, in late 1997, in Gofor, Makpele chiefdom, RUF/AFRC forces placed 20 people in a house and set fire to it. The reason advanced for this was that these people were coming from a place where the Kamajors had previously ambushed and killed RUF/AFRC forces.

The Kamajors regrouped their forces and more initiation took place, initiating often children below the age of 15. At this time, Kamajors fought with ECOMOG troops to reinstall to power the Government. Starting late 1997, Kamajors attacked RUF/AFRC forces' positions and, after the ECOMOG intervention in Freetown in February 1998, the District became rapidly free of RUF and AFRC forces and the Kamajors had the control over it. They controlled the District by patrolling and mounted checkpoints in search of arms and ammunitions and alleged enemies, imposing passes.[632]

In October 1997, RUF/AFRC forces fell in an ambush near Fairo in Soro Gbema Chiefdom. Kamajors killed those caught in the ambush, together with their collaborators.
Between late 1997 and March 1998, many villages were burnt down in Soro Gbema chiefdom by both Kamajors and RUF/AFRC forces to prevent the other fighting faction from settling there.

In November 1997, the Kamajors repelled most of the combined forces from Sowa Chiefdom. While fleeing, the RUF/AFRC forces burnt 30 houses in Bandajuma and set many villages along the

[630] More detail is required from the records on what happened in the chiefdom at this time.
[631] More detail is required from the records on these incidents.
[632] More detail is required from the records on these incidents.

On 13 October 1997, RUF/AFRC forces attacked the Kossoh Town ECOMOG base from four flanks. Some members of the ECOMOG forces were captured by the RUF/AFRC forces and killed. This attack led the ECOMOG forces to go on the offensive in a bid to repel and capture all the surrounding towns and villages, including Kossoh town, Grafton, Jui and other nearby coastal villages, where they stayed until 6 February 1998, when they moved on Freetown to oust the AFRC.

The ECOMOG troops based at Lungi frequently launched missiles andshells from their Lungi bases to Freetown and environs. The shelling was aimed at locations such as BTC, Cockerel Military Headquarters, St. Michaels Lodge at Lakka, the Television transmitters at Leicester Peak, the FM 99.9 government Radio Station and other places, in particular places where they believed the RUF/AFRC forces had Anti-Aircraft guns. Some of the shells were blank and never hit any part of Freetown. There are reports that the AFRC used these attacks as a cover to kill civilians and blame it on ECOMOG, such as the killing of over 40 civilians in Mabailla on 3 September 1997.[662] This shelling led to the loss of many lives, including civilians. As a result of the resulting instability in the city, a mass exodus of civilians and their family members broke out. The only available route at that time was the peninsular leading to Tombo and Waterloo. This movement resulted to a major road traffic accident where over 70 people lost their lives at a place called Comfort Bridge, near Number Two River along the peninsular route. The bombings also led some AFRC forces deployed to these areas to leave their positions and go to the hilltops for safety, leaving behind many arms and ammunitions of various types.

This continuous shelling prompted the AFRC to negotiate peace with the ECOWAS mediators led by the then Nigerian Foreign minister, first in Abuja then later in Conakry, which led to the signing of the Conakry Peace Plan of 23 October 1997, aimed at restoring the government of President Kabbah. This Peace Plan contained details relating to disarmament and empowerment of RUF/AFRC forces and the restoration of civilian rule on 22 April 1998. However, the RUF/AFRC forces failed to abide by this plan and continued to attack ECOMOG troops.

1998

Although a Peace Plan had been signed by the ECOWAS Committee of Five and the RUF/AFRC, RUF/AFRC attacks on ECOMOG and their harassment of civilians, particularly businessmen and other high profile people, became rampant in the city and its environs. This instability in the city and the country at large provoked the February 1998 military intervention by the Nigerian-led ECOMOG forces.

The intervention was fought on three fronts. One front moved from Jui towards Freetown; a second front moved from Hastings Airfield towards Waterloo; and the third front moved from Kossoh Town through the hills to Regent and down Hill Station.

ECOMOG fought several battles along the way to Freetown. At Porte Junction, a fierce battle was fought which made the RUF/AFRC forces retreat towards the West end of Freetown, giving the ECOMOG forces the upper hand to flush them out of Freetown on to the villages via the

[662] More detail is required from the records on these incidents.

peninsular, which was the only exit out of the city. During these battles, a lot of civilians lost their lives and a lot more seriously wounded by explosions and other stray bullets; some were deliberate whilst others were not.[663] At this time, other auxiliary forces were also fighting alongside with the ECOMOG troops, namely the Organized Body of Hunters Society (OBHS) and the CDF (Kamajors and Gbethis). These auxiliary troops were responsible for carrying ammunition for the ECOMOG forces and some few "loyal"[664] SLA forces fighting alongside ECOMOG, and also for burying alleged rebels and civilians who were killed on the way.

RUF/AFRC forces stationed in Freetown, including very senior officers, moved along the peninsular route with family members, collaborators and friends. They commandeered hundreds of vehicles, mainly utility vans and 4WD jeeps, which they abandoned at Tombo. They then boarded fishing boats and ferried eastwards to the Ribbi River, landing at Fogbo Jetty. These abandoned vehicles, most of which had already been stripped down, were taken to Waterloo between February and March of 1998 by the ECOMOG forces and parked in front of the Rural Education Committee School near the Post Office. By early April, most of the best vehicles disappeared and it was rumoured by people that ECOMOG senior Officers took some and shipped them to Nigeria. Initially the Nigerian military Officers in town used them.[665]

The second ECOMOG front coming from Hastings dislodged the RUF/AFRC forces at Yams Farm and pursued them to Waterloo. These ECOMOG forces captured Waterloo at about 11am without any resistance on a Friday morning in February 1998.[666] During the shelling of Waterloo, a two-storey house was hit and destroyed by ECOMOG shells. At Waterloo they mounted a checkpoint at the Post Office and conducted a house-to-house search for RUF/AFRC forces, during which they tortured people, shot some civilians and detained some who were alleged "junta" collaborators. These people were sent to Kossoh Town near Hastings, where some were allegedly executed.[667]

Thousands of civilians, together with the RUF/AFRC forces based at BTC, Waterloo, Lumpa and satellite villages, moved towards the Waterloo displaced camp, which was east of Waterloo. In the afternoon of the ECOMOG capture of Waterloo, an Alpha jet flew over the village and the camp. The ECOMOG forces then moved to Lumpa, where they established a base and a checkpoint by the Banga Farm area. They executed a young man and maltreated many others there.[668] They then advanced to Campbell Town and attacked remnants of the RUF/AFRC forces killing six of them. Three days after the capture of Waterloo, several unarmed SSD officers surrendered to ECOMOG at

[663] Clarification is required from the records on this and on how we know some was deliberate and some was collateral.
[664] Namely those SLA forces who did not change their allegiance to the leaders of the AFRC and instead retained allegiance to President Kabbahh.
[665] More information is required from the records on this.
[666] Clarification is required on the date.
[667] More detail is required from the records on this incident.
[668] More detail is required from the records on this incident.

Between Freetown and Newton in the Koya Rural District, ECOMOG erected several checkpoints. At each of these checkpoints, ECOMOG forces intimidated people, took their money and killed people, among other things.[675] For example, people were killed for failing to produce an identity card or for being suspected of being a relative of any member of the AFRC, RUF or SLA forces.

After the reinstatement of President Kabbah, hundreds of alleged RUF/AFRC collaborators and surrendered SLA soldiers, former members of the AFRC, were detained at the Pademba Road prison. Some civilians who were members of the AFRC regime were charged with treason and sentenced to death. Thirty-four soldiers faced a Court Martial, of whom 24 were executed by firing squad at Goderich village along the Freetown peninsular.[676] Following the executions, there were a series of RUF attacks in the Koya Rural District. On 21 December 1998, Songo, Six-Mile and Newton villages were attacked, which resulted in a mass exodus of civilians to Waterloo.[677] In the evening of the same day, ECOMOG forces based at the Waterloo Post Office launched several mortar bombs towards Banga Farm, followed by an aerial bombardment by the Alpha Jet at the same location.

In the early hours of the morning on 22 December 1998, the SLA/AFRC forces attacked Waterloo. During this attack they took property, burnt down many houses, abducted women and children, and raped and killed people. After about two hours, they attacked BTC, captured a large cache of arms and ammunitions and set fire to the ammunition dump. This led to a big explosion that killed the commander of the forces. They then moved to a hilltop village called Kobba Water, off the Waterloo–Tombo highway near MacDonald, where they buried their dead commander. The RUF forces then took to the hills, where they planned another attack on Freetown.

On 26 December 1998, the Guinean contingent from Masiaka arrived in Waterloo and set up a base at the SDA School compound, moving later to the PSS School compound. Just after the Waterloo attack, RUF forces attacked Tombo during the last week of December 1998. Taken by surprise the ECOMOG Commander and his troops were dislodged and ran towards the direction of Kissy Town south of Tombo together with thousands of civilians. The RUF forces took property from the abandoned houses and then set fire to them. Civilians escaped by boats to Shenge and Plantain Island.

1999

On 4 and 5 January 1999, RUF forces attacked Hastings and Allen, encountering little or no resistance as the ECOMOG forces, who had been reduced considerably in number, progressively retreated towards Freetown.

In the early morning of the 6 January 1999,[678] RUF forces together with a large number of civilians advanced towards Freetown, attacking and killing ECOMOG troops forces put up any resistance on

[675] More detail is required from the records on this, including the types of violence inflicted on civilians at these checkpoints.
[676] More background and detail is required on the treason trials.
[677] More detail is required from the records on these attacks.
[678] In general, more details are required on the 6 January invasion of Freetown.

betrayed them during the 1998 military intervention, by failing to resist attacks by the Nigerian-led ECOMOG troops.

Most of the RUF forces were based at Ibo Town in the northern part of Waterloo, where they made their headquarter at the residence of a former Minister. From this base, the RUF forces made several nightly attacks on ECOMOG positions at Hastings Airfield, often using civilian abductees in these operations. The Alpha jet retaliated by bombing Waterloo on several occasions. RUF forces evaded the jet by using bush paths and moving mainly during the nighttime from Waterloo to surrounding villages, raping, looting, killing and burning of houses as they went. For example, one night they attacked Susu Town near Devil Hole at a location called Compound, where they gang raped a policewoman and later killed her. Many civilians escaped across the Madonke creek to Lower Koya in the Port Loko District at this time.

The arrival a notorious RUF commander in Waterloo led more civilians to flee. The Guinean soldiers based at the Peninsula Secondary School left after a series of daily attacks by the RUF. They were given free passage by the RUF in exchange for ammunition, which later discovered to be blind or blank. The Guineans were ambushed at the Displaced Camp as they pulled out towards Masiaka and one of their trucks was destroyed.

In April 1999, ECOMOG launched an attack on Waterloo by continuously shelling the town. Some of the shells landed at the creek at the Christian cemetery. The remnants of the AFRC, who were mainly ex-SLA soldiers, pulled out of Waterloo and the surrounding villages, for the most part using the Prince Alfred Road to Cole town and through the bush track to Waterloo Displaced Camp. By nightfall, all of them had left and headed towards Newton. The RUF forces based at Campbell town retreated to Malambay, where they burnt houses, raped women and abducted girls, young men and women. Some of the inhabitants of Malambay fled to Yamray, a village in the Koya chiefdom in the Port Loko district. The RUF forces finally left Koya Rural district in the Western Area and headed for Masiaka.

No sooner had the RUF forces left the Western area than the Kamajors entered and deployed at Bath Comp and Waterloo in the Koya and Waterloo rural districts respectively. At Bath Comp, the CDF raped, looted, burnt some remaining houses and intimidated the civilian population.[679]

At Waterloo where they were roughly numbered 50, the CDF was shown around the town by an individual who was identifying alleged rebel collaborators, whom they tortured and usually killed. This individual was also later killed by the Kamajors for having collaborated with the RUF. Similarly, at Hastings, the Kamajors killed many civilians whom they alleged to be rebels or collaborators.

At Kissy town, near the IDP camp, combined SLA/CDF on the one hand and ECOMOG on the other hand erected checkpoints. On reaching Masiaka, the RUF forces killed and tortured civilians, as a result of which many of them escaped and headed back towards Kissy town. On reaching Kissy

[679] More details are required on these incidents.

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SECOND PROGRESS REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS OBSERVER MISSION IN SIERRA LEONE

I. INTRODUCTION

1. By paragraph 19 of its resolution 1181 (1998) of 13 July 1998, the Security Council requested me to submit an initial report within 30 days of the adoption of the resolution and every 60 days thereafter on the deployment of the United Nations Observer Mission in Sierra Leone (UNOMSIL) and its progress in carrying out its mandate, and also to inform the Council on plans for the later phases of the deployment of UNOMSIL when security conditions permit these to be implemented. The present report is submitted pursuant to that request and describes developments since my first progress report on UNOMSIL (S/1998/750), of 12 August 1998.

II. POLITICAL DEVELOPMENTS

2. The Government and Parliament of Sierra Leone have continued to take steps to extend their authority and to reform and strengthen national institutions, with a view to increasing efficiency and eliminating corruption and duplication, as well as enhancing security and stability.

3. On 2 September 1998, President Ahmad Tejan Kabbah outlined plans for the creation of a new national security system, based on the reconstitution of national armed forces, the reform of the police force and the integration of the Civil Defence Forces (CDF). Under this policy, the new armed forces would comprise a total of 5,000 troops under effective civilian management and constitutional control.

4. Another prominent issue is the handling of the trial of the leader of the Revolutionary United Front (RUF), Corporal Foday Sankoh. After Corporal Sankoh had been brought back from Nigeria and placed in Government custody, RUF announced on 17 August 1998 a terror campaign against civilians, CDF and the Economic Community of West African States Monitoring Group (ECOMOG) if the Government failed to release Corporal Sankoh within seven days, suggesting that peace negotiations could resume only thereafter. However, the Government has made it clear that Corporal Sankoh will stand trial and that there will be no resumption of negotiations or peace talks in view of the failure of RUF and the

followed by some volatility in late August and September, marked by a considerable increase in rebel attacks. These were accompanied by a resurgence of atrocities of the nature and scale last observed during the period from April to June, including the complete destruction of villages, and the torture, mutilation and execution of large numbers of civilians. These disturbing developments are reflected in more detail below.

10. The rebel build-up has been most significant in the north and brought the area of rebel activity closer to the centre of the country. Activity around the Koinadugu area has also intensified, as well as around Kambia and Kabala. The current concentration of rebels in the north-west indicates that they may be preparing for a major strike against Makeni or Port Loko. Such operations would sever ECOMOG's main supply route between Guinea, Freetown and Makeni and provide the rebels with a foothold close to the capital city. On 8 October, the rebels attacked Mange, between Port Loko and Kambia on the road between Lungi and the Guinean border, but were driven off. The situation in Freetown itself has remained safe and stable, and the whole of the southern province has remained free of rebel activity.

Civil Defence Forces/ECOMOG offensive into Kailahun district

11. On 1 October 1998 the Civil Defence Forces, with strong ECOMOG support, launched an offensive to capture one of the rebels' main strongholds in Kailahun district and thus disrupt their operations elsewhere in the country. The effects of the offensive are starting to be reflected in a reduction of the intensity of rebel activities in the north. Reports of the dispersal of the rebel stronghold at Koinadugu have also been received. Continued logistics support to ECOMOG is needed from the international community in order to ensure the effectiveness of those operations.

12. Several countries in the region have already pledged to contribute some of the additional 6,000 ECOMOG troops required to assist ECOMOG troops already in the country, whose number has been estimated at 10,000 to 12,000. The Governments of Côte d'Ivoire, the Gambia, Guinea, Mali and the Niger have indicated their readiness to provide contingents, stating that they could be deployed if the international community is prepared to bear the costs of transporting them to Sierra Leone. My Special Representative, Mr. Francis G. Okelo, has initiated discussions on this matter, and the Chief Military Observer of UNOMSIL has been meeting with contingent commanders from the countries involved concerning their deployment and related expenses for in-country maintenance and other needs.

Deployment of the Mission

13. At the end of August 1998, UNOMSIL completed the first phase of the deployment of its military component, consisting of 40 military observers, the Chief Military Observer and a medical team of 15 personnel. In addition to mission headquarters in Freetown, UNOMSIL has deployed military observers to five team sites, namely, the three provincial capitals Bo, Kenema and Makeni, the main demobilization site at Lungi, and Hastings airport (see map). The observers have been well received by the communities and have established good relations with the local authorities as well as with ECOMOG and CDF personnel.

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UNITED NATIONS

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Security Council

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GENERAL

S/1998/750
12 August 1998

ORIGINAL: ENGLISH

FIRST PROGRESS REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS OBSERVER MISSION IN SIERRA LEONE

I. INTRODUCTION

1. By paragraph 19 of its resolution 1181 (1998) of 13 July 1998, the Security Council requested me to submit an initial report within 30 days of the adoption of the resolution and every 60 days thereafter on the deployment of the United Nations Observer Mission in Sierra Leone (UNOMSIL) and its progress in carrying out its mandate, and also to inform the Council on plans for the later phases of the deployment of UNOMSIL when security conditions permit these to be implemented. The present report, which is submitted pursuant to that request, describes developments since my fifth report on the situation in Sierra Leone (S/1998/486) dated 9 June 1998.

2. The present report is also submitted in accordance with paragraph 10 of resolution 1162 (1998) of 17 April 1998 and paragraph 8 of resolution 1171 (1998) of 5 June 1998.

II. SITUATION IN SIERRA LEONE

Activities of the Government of Sierra Leone

3. Since my last report, the Government of Sierra Leone has continued to strengthen its authority and improve its organization and functioning, including through the adoption, following a wide-ranging parliamentary debate, of a budget for the remainder of 1998. On 7 August, President Kabbah visited the provincial towns of Bo, Kenema and Makenie. Some 45 of the 52 paramount chiefs have returned to their districts in the south of the country.

4. Significant improvements have occurred in relations between Sierra Leone and Liberia. On 22 and 23 June, a Liberian delegation led by Senator Kekura Kpoto visited Freetown to deliver a special message from President Taylor to President Kabbah concerning ways to promote peace between Guinea, Liberia and Sierra Leone, the Mano River Union countries. The delegation also denied allegations that the Liberian Government was supporting the remnants of the Armed Forces Revolutionary Council (AFRC) and the Revolutionary United Front (RUF), and expressed concern that some Liberian dissidents were reported to be

civilian population, whom they threatened to use as human shields in the event of a counter-attack. No mutilations have been reported.

15. During the past few weeks, ECOMOG has inducted fresh troops into the Kenema sector in south-eastern Sierra Leone, with a view to reinforcing its presence near Kailahun. The deployment of an additional brigade, comprising three battalions, has enabled ECOMOG to mount more aggressive patrols, at times in conjunction with the Sierra Leonean Civil Defence Force. ECOMOG has also reinducted former Republic of Sierra Leone Military Forces (RSMLF) personnel, amounting to approximately three battalions, or 2,500 men, alongside its own troops to assist with the protection of supply lines and, in some cases, in combat duties. The provision of logistical assistance to ECOMOG, thanks to the bilateral contribution of the United States of America, has helped to improve operational capacity. ECOMOG has also been withdrawing exhausted troops with a view to rotating them. Nonetheless, ECOMOG, with an estimated 10,000 troops in theatre, is still overstretched and in need of significant additional logistical support, in order to contain the rebels and restore and maintain order in the eastern and northern parts of the country.

16. While the Civil Defence Force is nominally under the command and control of ECOMOG, reports continue to be received of unruly or criminal behaviour on the part of some members of the Force outside their own home districts. Strains that developed between ECOMOG and the Civil Defence Force in some places appear to have been successfully resolved or contained through the intervention of senior commanders. Some members of the Force have also been accused of human rights violations and criminal acts, including looting, confiscation of vehicles and civil disturbances, although allegations of summary killings and the torture of prisoners have dropped sharply since the end of May, apparently as a result of intervention by the Government and ECOMOG. The Civil Defence Force has made a commitment to end its practice of recruiting and initiating child soldiers, who comprise a high proportion of their ranks and who have been sent into combat.

III. ACTIVITIES OF THE UNITED NATIONS

Deployment of UNOMSIL

17. Pursuant to the creation of UNOMSIL by the Security Council by resolution 1181 (1998), I wrote to the President of the Council on 16 July 1998 to inform him of the countries that were contributing observers to the mission (see S/1998/673 and S/1998/674) and of the appointment of Brigadier-General Subhash C. Joshi (India) as Chief Military Observer. In accordance with paragraph 9 of resolution 1181 (1998), I took advantage of the presence of President Kabbah at the special conference on Sierra Leone, held at Headquarters on 30 July 1998, to propose to him the terms of a status of mission agreement. As I informed the President of the Security Council in my letter of 7 August 1998 (S/1998/714), the Minister for Foreign Affairs of Sierra Leone, Mr. Sama Banya, at once replied indicating his Government's acceptance. As I also mentioned in my 3 August letter, on the basis of the Government of Sierra Leone's programme for the disarmament, demobilization and reintegration of former combatants, issued to participants at the special conference, I have

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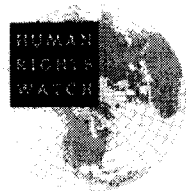

July 1998 Vol. 10, No. 3 (A)

SIERRA LEONE: SOWING TERROR

Atrocities against Civilians in Sierra Leone

Killings and Mutilation

The scale and nature of abuses committed by Kamajors and other members of CDFs differ significantly from atrocities carried out by the AFRC/RUF, but the abuses are often no less horrific. Many witnesses of abuses committed by Kamajors spoke of the grotesque nature of killings, at times including disembowelment followed by consumption of vital organs, such as the heart. Acts such as these were intended to transfer the strength of the enemy to those involved in the consumption. Killings by Kamajors usually targeted people they believed to be members of the AFRC/RUF and their civilian supporters.

A Sierra Leonean Catholic priest described how the Kamajors reacted to the presence of the AFRC/RUF in Koidu in early February, just following ECOMOG's takeover of Freetown:

> On February 7th, they [the AFRC/RUF] started "Operation Pay Yourself." On Friday the 13th, I went back to the mission. The youths had called the Kamajors who started arriving on the 11th, 12th, a day or two after "Operation Pay Yourself" had ended. They came from Sewafe, Punduru, Gondama... When they found AFRC, they would kill them immediately. The Kamajors and youths started burning [AFRC/RUF] soldiers and collaborators. On about February 11th, they [Kamajors] called a meeting at the town counsel. They said it was to restore law and order—they said if anyone knows where they are, they should tell us. They decapitated one surrendered soldier and I saw them eat his raw liver and heart.44

Another witness from Koidu remembered:

> After the first night of "Operation Pay Yourself," the youths and the Lebanese businessmen called the Kamajors. The Kamajors came, and if they and the youths caught soldiers, they burned them alive with tires and petrol.45

Several foreign residents of Sierra Leone that had worked with or observed Kamajors in the field concurred that this "take no prisoners" policy was widespread. One foreign trainer of the Kamajors claimed that the fighters were as "malicious as the AFRC/RUF"46 but committed fewer abuses due to their supervision, even though this was limited. The Kamajors have been led by Capt. Samuel Hinga Norman, deputy defense minister, who in recent months repeatedly stated that all CDFs were now under the control of ECOMOG.47 With their knowledge of the local terrain, Kamajors are frequently relied upon by ECOMOG as combatants and guides in unfamiliar rural areas.

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SIERRA LEONE

1998 - a year of atrocities against civilians

Amnesty International report 1 November 1998

AI INDEX: AFR 51/022/1998

11 and 12 February 1998 they captured and killed AFRC soldiers. Some were decapitated, others were doused with petrol or had tyres placed around them and were burned alive. Such killings also took place in Freetown in the days immediately following the removal of the AFRC and RUF. At least six people were killed by civilians in revenge attacks. They included Mohamed Bangura, also known as Saccoma, who was burned alive, Sheik Mustapha, who was beaten to death, and Musa Kabia.

Several independent sources referred to isolated incidents of extrajudicial execution together with ritual cannibalism by members of the CDF. Ritual cannibalism is not, however, accepted behaviour or policy among the CDF and is rejected as abhorrent by most CDF. It appears to be carried out only by a small number of *kamajors*, in particular in the region around Kenema, who subscribe to animist beliefs. One such incident was reported to have occurred on 27 March 1998 when a boy aged 17 from Kenema was detained by *kamajors* and accused of collaborating with the AFRC and RUF. He was taken to the market place and forced to buy vegetables and other ingredients. He was then reported to have been killed in a cannibalistic ritual. His partially burned body, with the heart removed, was later seen by witnesses. Other incidents of ritual cannibalism were reported to have taken place during April and May 1998 at Panguma, north of Kenema. These incidents must be investigated by the authorities and those responsible brought to justice. Longer-term measures, including increasing awareness and understanding of the cultural basis for this practice, are also needed in order to eradicate ritual cannibalism.

On 28 April 1998 President Kabbah announced that the CDF had been placed under the command of ECOMOG. The following day a *kamajor* leader in Bo was reported to have criticized the growing lawlessness of the *kamajors* and called for the registration of all CDF, who were apparently roaming the streets of Bo. Although nominally under the command and control of ECOMOG, the behaviour of the CDF continued to be undisciplined in the following months, particularly in areas other than their own villages, towns and districts. Reports of extrajudicial executions and torture of prisoners decreased significantly, however, from June 1998, apparently as a result of intervention by the government and ECOMOG, and the discipline of many CDF units improved significantly.

Some incidents of extrajudicial execution, torture and ill-treatment, however, continue to be reported. On 26 October 1998 four captured rebels were reported to have been extrajudicially executed in the village of Romeni, north of Port Loko. At least another 10 were reported to have been killed after being captured during the attack on Alikalia in October 1998.

In late August 1998 a young woman from the area around Kenema who had previously handled goods looted from the World Food Programme (WFP) by rebel forces was reported to have been interrogated by a group of about 20 CDF in the town of Kenema. When she made remarks considered offensive by the CDF, she was stripped and beaten. She was then taken to an unknown destination. Reports were also received in September 1998 of illegal arrest and detention of civilians by the CDF although it is unclear whether this practice is continuing.

Criminal acts, such as looting, confiscation of vehicles and civil disturbance, by the CDF have continued. Civilians have been harassed and money and goods extorted in exchange for permission to pass through checkpoints along major roads. The CDF have imposed their authority through fear and intimidation with the result that many people are afraid to make formal complaints to the authorities about their conduct. During September 1998 there were persistent reports of interference with the delivery of humanitarian supplies.

Little or no action is known to have been taken by the authorities against members of the CDF who have been responsible for illegal arrest and detention, torture and ill-treatment and extrajudicial

United Nations S/2000/832

Security Council

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Original: English

Sixth report of the Secretary-General on the United Nations Mission in Sierra Leone

I. Introduction

1. On 4 August 2000, the Security Council adopted resolution 1313 (2000), by which it extended the mandate of the United Nations Mission in Sierra Leone (UNAMSIL) until 8 September. In that resolution the Council expressed its intention to strengthen the mandate of UNAMSIL as established in its resolutions 1270 (1999) of 22 October 1999 and 1289 (2000) of 7 February 2000 with a number of priority tasks. The Council also considered that the military component of UNAMSIL should be reinforced, inter alia, through the provision of a strengthened force reserve and requested me to submit, after consultations with troop-contributing countries, a report on the proposals contained in resolution 1313 (2000) with recommendations to restructure and strengthen UNAMSIL.

2. The present report is submitted pursuant to that request. It contains a description of the tasks that would be required of UNAMSIL in the environment prevailing in Sierra Leone, its concept of operations and the necessary resources.

II. Mandate and tasks

3. In its resolution 1313 (2000) the Security Council observed that the widespread and serious violations of the Lomé Peace Agreement (S/1999/777, annex) by members of the Revolutionary United Front (RUF) since early May 2000 constituted a breakdown of the prior generally permissive environment, which was based on the Agreement and predicated on the cooperation of the parties. The Council also noted that there would continue to be a threat to UNAMSIL and to the security of the State of Sierra Leone until security conditions had been established that would allow progress towards the peaceful resolution of the conflict in Sierra Leone. In order to counter that threat, the Council noted that the structure, capability, resources and mandate of UNAMSIL required appropriate strengthening.

4. In this regard, the Security Council indicated its intention to strengthen the Mission's current mandate with a number of priority tasks. Accordingly, the main elements of the Mission's mandated tasks would be:

(a) To maintain the security of the Lungi and Freetown peninsulas and their major approach routes;

(b) To deter and, where necessary, decisively counter the threat of RUF attack by responding robustly to any hostile actions or threat of imminent and direct use of force;

(c) To deploy progressively in a coherent operational structure and in sufficient numbers and density at key strategic locations and main population centres;

(d) To assist, in coordination with the Government of Sierra Leone, through the presence of UNAMSIL and within the framework of its mandate, the efforts of the Government of Sierra Leone to extend State authority, restore law and order and further stabilize the situation progressively throughout the entire country;

(e) Within its capabilities and areas of deployment, to afford protection to civilians under threat of imminent physical violence;

00-62062 (E) 250800

(f) To patrol actively on strategic lines of communication, specifically main access routes to the capital, in order to dominate ground, ensure freedom of movement and facilitate the provision of humanitarian assistance;

(g) To assist in the promotion of the political process leading to a renewed disarmament, demobilization and reintegration programme where possible.

5. In addition, UNAMSIL may be required to provide assistance and support to the special court in Sierra Leone to be set up on the basis of negotiations and consultations with the Government of Sierra Leone, pursuant to Security Council resolution 1315 (2000) of 14 August.

6. It is understood that UNAMSIL, through its deployment, would be expected to continue to play a key role in supporting the disarmament, demobilization and reintegration programme and the disposal of weapons.

III. Overall security environment

7. In reviewing the resources required by UNAMSIL to implement the above-mentioned tasks, due account should be taken of the precarious security environment in which it has to operate, the continued threat posed by RUF and the regional dimension of the conflict. In addition, it should be emphasized that Sierra Leone's infrastructure, especially in the areas under RUF control, has suffered tremendous damage. Many roads have been damaged during hostilities, deliberately cratered by RUF or washed away by torrential rains. Consequently, movement in various areas of Sierra Leone is slow and, in many instances, any resupply of regular military units can be provided only by air, primarily by helicopters. The dense vegetation on the sides of the roads is favourable to guerrilla forces wishing to ambush military and civilian traffic. Sierra Leone's jungle also provides a natural hiding place and cover for concealed movement by guerrilla forces.

8. RUF is believed to have a strength of several thousand fighters. It is relatively well-equipped and, in spite of divisions between some groups, maintains a relatively well-established system of command and control.

9. At the same time, many members of the rank and file of RUF have been forcibly recruited into the guerrilla movement and, presumably, could be persuaded to come forward to disarm, given the proper incentives. Indeed, there have been some indications recently that some fighters may want to leave the ranks of RUF and disarm.

10. However, it may be more difficult to persuade RUF commanders at various levels to abandon their current posture, especially since some of them fear that they can be prosecuted for crimes committed during the conflict. Those commanders, who often exercise control over their fighters through violence, may try to maintain control over their areas for as long as they can. Accordingly, the possibility of coordinated offensives by RUF, in addition to ambushes, kidnapping and acts of banditry, must be taken very seriously. There are indications that RUF continues its forcible recruitment of new fighters and that it is regrouping and rearming with assistance from abroad. On 21 August RUF announced that it had designated Issa Sesay as its interim leader to replace Foday Sankoh, following intensive diplomatic efforts by leaders of the Economic Community of West African States (ECOWAS). The threat by RUF against the general population, government forces and UNAMSIL remains real and should not be underestimated.

11. The forces fighting on the side of the Government, mainly the Sierra Leone Army (SLA) and the Civil Defence Force (CDF), are still in the process of training and consolidating their presence. Although pro-Government forces have made some progress, they continue to experience problems relating to command and control and logistical support. It remains essential that, in their operations, all pro-Government forces coordinate closely with UNAMSIL.

12. While the United Kingdom of Great Britain and Northern Ireland is providing extremely valuable training to the new SLA, it is clear that it will take time and resources before the Government can rely on a security force capable of providing an effective presence throughout the country. The first batch of SLA soldiers trained by the United Kingdom completed a six-week programme on 22 July, and a second group is now undergoing training. According to current plans, the army will ultimately have a strength of about 8,500 troops organized to form 3 operational brigades. For the time being, however, the main burden of establishing and maintaining a credible security

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UNITED NATIONS

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Security Council

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S/1998/1176
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THIRD PROGRESS REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS OBSERVER MISSION IN SIERRA LEONE

I. INTRODUCTION

1. By paragraph 19 of resolution 1181 (1998) of 13 July 1998, the Security Council requested me to submit an initial report within 30 days of the adoption of the resolution and every 60 days thereafter on the deployment of the United Nations Observer Mission in Sierra Leone (UNOMSIL) and its progress in carrying out its mandate, and also to inform the Council on plans for the later phases of the deployment of UNOMSIL when security conditions permit these to be implemented. The present report is submitted pursuant to that request and describes developments since my second progress report on UNOMSIL (S/1998/960) of 16 October 1998. The present report is also submitted pursuant to paragraph 8 of resolution 1171 (1998) of 5 June 1998.

II. POLITICAL DEVELOPMENTS

2. Since my second progress report, the Government of Sierra Leone has continued its efforts to consolidate its position, to restore the stability of the country and to improve relations with its neighbours. The Government has launched initiatives to strengthen the civil service and to fight corruption. Sierra Leone is also increasingly active in the regional and international arena.

3. On 30 October 1998, the Government launched a nationwide consultative exercise, organized with the support of the United Nations Development Programme (UNDP), aimed at enhancing the capacity of Government ministries, other national institutions and civil society to take charge of the development process. The consultations exercise is expected to conclude on 14 December with the adoption of a national consensus on major policy issues, including national reconciliation.

4. The Government has also pursued legal proceedings against both military and civilian supporters of the illegal coup of May 1997 by the Armed Forces Revolutionary Council (AFRC). On 19 October 1998, after a court martial had sentenced 34 officers found guilty of treason to death, 24 of them were executed by firing squad. The executions took place despite appeals from the United

districts. This rebel force is believed to be under the command of S. A. J. Musa.

20. There is much speculation concerning the motive behind these attacks, which have taken place at a time when Musa has publicly offered to surrender to UNOMSIL. These atrocities are taking place against the background of a rift which appears to have arisen between the AFRC remnants in the north and the RUF in the east. ECOMOG and the Civil Defence Forces (CDF) have done much to disrupt the supply of arms and ammunition from Kailahun to the rebels in the north.

21. In the north-east, the rebel capacity to concentrate and coordinate their forces appears to have eroded since the time of their attack on Kabala in July. The rebel concentration in Koinadugu area was broken up by combined efforts of reconstituted battalions of former soldiers of the Republic of Sierra Leone Military Forces (RSLMF) and ECOMOG, thus reducing the threat to Makeni and to the Koidu-Lunsar road. Repeated rebel attempts to gain control of the diamond-rich Koidu area have been unsuccessful. However, the situation remains unpredictable and the area is still in danger from rebel attacks.

22. In the south-east, rebel attacks during October and November 1998 seemed designed to surround and cut off Kenema both from Freetown and from the Liberian border by controlling the road that links Daru with Joru and Zimmi. UNOMSIL, in close collaboration with ECOMOG and CDF units based at Kenema, is standing by in case the rebels' failure to achieve their objective should lead some of them to open talks with the Government.

23. The south and south-west of the country, including Freetown, have remained calm, though tension in the capital rose during December following a rebel attack on the road linking Masiaka and Rogberi.

Civil Defence Forces/ECOMOG/RSLMF

24. In the north, ECOMOG has shown increased willingness to engage the rebels in the bush, while the CDF, which essentially originated in southern Sierra Leone, has begun to operate in the north. These developments, as well as the reinduction of former RSLMF soldiers into combat alongside ECOMOG, appear to have taken a toll on rebel strength in the north-east. As noted above, an important objective of the pro-Government forces has been to disrupt ammunition supply lines between the main rebel stronghold in the Kailahun district and rebel units in the north of the country. In the south-east, the CDF, with ECOMOG support, has now established fairly effective control of the area south of Kenema after stemming the rebel offensive along the Daru-Joru-Zimmi road.

25. The CDF in both the north and the east has, however, been hampered by serious shortages of ammunition, communications, food, transportation and medicines. In addition to logistical shortages, there have been occasional lapses in coordination between ECOMOG and the CDF. Air strikes launched by ECOMOG to disperse rebel preparations for an attack on Joru on 15 November reportedly caused casualties among a CDF concentration nearby, underlining the need for improved coordination between the two forces.

Third Edition

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8

From ECOMOG to ECOMOG II: Intervention in Sierra Leone

ROBERT MORTIMER

Had any doubt ever existed that the Economic Community Monitoring Group (ECOMOG) was primarily an instrument of Nigerian foreign policy, it was dispelled by Nigeria's decision to mount an offensive against the junta in Sierra Leone in February 1998. Employing the banner of ECOMOG to cover an essentially unilateral operation, Nigeria moved to restore its regional ally Ahmed Tejan Kabbah to power. Victor in the 1996 presidential election, Kabbah had been ousted in May 1997 to virtually universal disapprobation. Yet the lack of any international support for the military junta did not overcome the reservations of several regional states to this unilateral display of Nigerian power. On the contrary, it enhanced long-standing fears of a Nigerian quest for hegemony in West Africa—fears already raised by its role in Liberia.

The concept of regional approaches to peacekeeping and conflict resolution is an attractive one to many theorists of international relations. Regional organizations like the Economic Community of West African States (ECOWAS) seem potentially well suited to the task of mediating local disputes in their own zones. They have an immediate interest in regional stability, especially in preventing spillover of civil strife from one country to another, and they have a considerable knowledge of the proxi-

mate environment. The UN Charter itself recognizes the role that regional organizations might be expected to play in the management of collective security within their respective regions. The creation of ECOMOG in August 1990 as a mechanism to halt the bloodshed in Liberia's civil war was widely hailed as a promising model of regional peacekeeping. Yet it soon become apparent that regional peacekeepers faced all the same political dilemmas that UN peacekeepers had confronted in the context of conflicting national interests that so often surrounds civil and interstate war. In the specific case of Liberia, ECOMOG became as much a party to the struggle for power in that warlord-ridden land as anything else. This was because Nigeria, always the dominant military power within ECOMOG, had strong preferences about who should wield power in Liberia—preferences that clashed with those of other regional actors such as Côte d'Ivoire and Burkina Faso. As John Inegbedion wrote in 1994, "Nigeria was, and remains, the backbone of ECOMOG";[1] this was no less true in 1997–1998 when Nigeria decided to project ECOMOG into Sierra Leone, where a military junta had unseated a staunch ally of the Nigerian regime. This chapter analyzes the extension of ECOMOG's mission into Sierra Leone against the backdrop of its role in Liberia. The preeminence of Nigeria in the battle for Freetown confirms the unilateral essence of a nominally multilateral force and explains why ECOMOG's victory has intensified the search for an alternative model of African peacekeeping.

The Sierra Leone Connection

Sierra Leone has been enmeshed in ECOMOG and the Liberian civil war from the outset. In July 1990 Freetown hosted the first meeting of the Standing Mediation Committee (SMC) that ECOWAS had only recently instituted at its May summit meeting. Even though it was not a member of the SMC, which took the decision to send an interventionary force into Liberia early in August, Sierra Leone decided to contribute soldiers to ECOMOG; moreover, Freetown served as the staging ground for the August 24 deployment of ECOMOG to Monrovia. Sierra Leone's apparent eagerness to participate stemmed from two related factors. Charles Taylor's insurrection was driving refugees across the border into Sierra Leone; and, even more important, Sierra Leonean President Joseph Momoh was fearful of the effects that a National Patriotic Front of Liberia (NPFL) victory might have upon his own fragile regime.

ECOMOG may well have been Momoh's best bet for containing the Liberian crisis's impact upon his country. In the stalemate that ensued between ECOMOG and the NPFL, however, Sierra Leone was inexorably drawn deeply into the conflict. Little inclined to respect conventional territorial boundaries in any case, Taylor sent his NPFL across the border, of-

SCSL-2003-08-I
7 MARCH 2003

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07 MAR 2003
17:00 hrs.

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL – 03 – – I

THE PROSECUTOR

Against

SAM HINGA NORMAN

INDICTMENT

The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute), charges:

SAM HINGA NORMAN

with **CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, and OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW in violation of Articles 2, 3 and 4 of the Statute,** as set forth below:

THE ACCUSED

1. **SAM HINGA NORMAN,** (the **ACCUSED**) was born on 1 January 1940, in Ngolala Village, Mongeri (or Monghere), Valunia Chiefdom, Bo District, in the Southern Province of the Republic of Sierra Leone.

2. The **ACCUSED** served in the Armed Forces of the Republic of Sierra Leone from about 1959 to 1972 rising to the rank of Captain. In 1966 he graduated from the Mons Officer Cadet School in Aldershot, United Kingdom. The **ACCUSED** has served as Liaison Representative and Chiefdom Spokesman in Mongeri, Valunia Chiefdom, as Regent Chief of Jaiama Bongor Chiefdom, and as Deputy Minister of Defence for Sierra Leone. He is currently serving as the Minister of the Internal Affairs for Sierra Leone.

GENERAL ALLEGATIONS

3. At all times relevant to this Indictment, a state of armed conflict existed in Sierra Leone. For the purposes of this Indictment the organized armed factions involved in this conflict included the Civil Defence Forces (CDF) fighting against the combined forces of the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC).

4. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.

5. The CDF was an organized armed force comprising various tribally-based traditional hunters. The Kamajors were comprised mainly of persons from the Mende tribe resident in the South and East of Sierra Leone, and was the predominant group within the CDF. Other groups playing a less dominant role were the Gbethis and the Kapras, both comprising mainly of Temnes from the north; the Tamaboros, comprising mainly of Korankos also from the north; and the Donsos, comprising mainly of Konos from the east.

6. The RUF was founded about 1988 or 1989 in Libya and began organized armed operations in Sierra Leone in or about March 1991. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of Sierra Leone via a coup d'état on 25 May 1997. Soldiers of the Sierra Leone Army comprised the majority of the AFRC membership. Shortly after the AFRC seized power, the RUF joined with the AFRC.

7. **SAM HINGA NORMAN** and subordinate members of the CDF were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986.

8. All offences charged herein were committed within the territory of Sierra Leone after 30 November 1996.

9. All acts or omissions charged herein as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.

10. The words civilian or civilian population used in this indictment refer to persons who took no active part in the hostilities, or were no longer taking an active part in the hostilities.

INDIVIDUAL CRIMINAL RESPONSIBILITY

11. Paragraphs 3 through 10 are incorporated by reference.

12. At all times relevant to this Indictment **SAM HINGA NORMAN** was the National Coordinator of the CDF. As such he was the principal force in establishing, organizing, supporting, providing logistical support, and promoting the CDF. The **ACCUSED** was also the leader and Commander of the Kamajors and as such had *de jure* and *de facto* command and control over the activities and operations of the Kamajors.

13. **SAM HINGA NORMAN**, by his acts or omissions is individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this indictment, which crimes the **ACCUSED** planned, instigated, ordered, committed, or in whose planning, preparation or execution the **ACCUSED** otherwise aided and abetted, or which crimes were within a common purpose, plan or design in which the **ACCUSED** participated or were a reasonably foreseeable consequence of the common purpose, plan or design in which the **ACCUSED** participated.

14. In addition, or alternatively, pursuant to Article 6.3. of the Statute, **SAM HINGA NORMAN**, while holding positions of superior responsibility and exercising command and control over his subordinates, is individually criminally responsible for the crimes referred to in Articles 2, 3, and 4 of the Statute. The **ACCUSED** is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinates were about to commit such acts or had done so and he

failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

15. The plan, purpose or design of **SAM HINGA NORMAN** and subordinate members of the CDF was to use any means necessary to defeat the RUF/AFRC forces and to gain and exercise control over the territory of Sierra Leone. This included gaining complete control over the population of Sierra Leone and the complete elimination of the RUF/AFRC, its supporters, sympathizers, and anyone who did not actively resist the RUF/AFRC occupation of Sierra Leone. The **ACCUSED** acted individually, and in concert with subordinates, to carry out the said plan, purpose or design.

16. **SAM HINGA NORMAN** as National Coordinator of the CDF and Commander of the Kamajors knew and approved the recruiting, enlisting, conscription, initiation, and training of Kamajors, including children below the age of 15 years. The **ACCUSED** knew and approved the use of such children to participate actively in hostilities.

CHARGES

17. Paragraphs 3 through 16 are incorporated by reference.

18. The Kamajors engaged the combined RUF/AFRC forces in armed conflict in various parts of Sierra Leone – to include, but not limited to Tongo Field, Kenema, Bo, and Koribondo and the surrounding areas. Civilians, including women and children, who were suspected to have supported, sympathized with, or simply failed to actively resist the combined RUF/AFRC forces were termed "**Collaborators**" and specifically targeted by the Kamajors. Once so identified, these "Collaborators" and any captured enemy combatants were unlawfully killed. Victims were often shot, hacked to death, or burnt to death. Other practices included human sacrifices and cannibalism.

19. These actions by the Kamajors, which also included looting and destruction of private property, were intended to threaten and terrorize the civilian population. Many civilians saw these crimes committed; others returned to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property. Typical Kamajor actions and the resulting crimes included, but were not limited to:

a. Between about 1 November 1997 and about 1 April 1998, multiple attacks on Tongo Field and the surrounding area and towns during which the Kamajors unlawfully killed or inflicted serious bodily harm and serious physical suffering on an unknown number of civilians and captured enemy combatants. Kamajors screened the civilians and those identified as **"Collaborators,"** along with any captured enemy combatants, were unlawfully killed.

b. On or about 15 February 1998 Kamajors attacked and took control of Kenema. In conjunction with the attack, both at and near Kenema and at a nearby location known as SS Camp, Kamajors continued to identify suspected **"Collaborators,"** unlawfully killing or inflicting serious bodily harm and serious physical suffering on an unknown number of civilians and captured enemy combatants. Kamajors also entered the police barracks in Kenema and unlawfully killed an unknown number of Sierra Leone Police Officers.

c. In or about January and February 1998, the Kamajors attacked Bo, Koribondo, and the surrounding areas. The practice of killing captured enemy combatants and suspected **"Collaborators"** continued and as a result, the Kamajors unlawfully killed or inflicted serious bodily harm and serious physical suffering on an unknown number of civilians and enemy combatants. Also, as part of these attacks in and around Bo and Koribondo, the Kamajors destroyed and looted an unknown number of civilian owned and occupied houses, buildings and businesses.

d. In an operation called Black December, Kamajors blocked all major highways and roads leading to major towns mainly in the southern and eastern Provinces. As a result of these actions, the Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants.

COUNTS 1 – 2: UNLAWFUL KILLINGS

20. Unlawful killings included, but were not limited to, the following:

a. between about 1 November 1997 and about 1 February 1998, at or near Tongo Field, an unknown number of civilians and captured enemy combatants;

b. on or about 15 February 1998, at or near Kenema and SS Camp, an unknown number of civilians and captured enemy combatants;

c. on or about 15 February 1998, at or near Kenema, an unknown number of Sierra Leone Police Officers;

d. in or about January and February 1998, at or near Bo and Koribondo, an unknown number of civilians and captured enemy combatants;

e. between about 1 November 1997 and about 1 February 1998, as part of Operation Black December in the southern and eastern Provinces of Sierra Leone, an unknown number of civilians and captured enemy combatants.

By his acts or omissions in relation, but not limited to, these events, **SAM HINGA NORMAN** pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 1: Murder, a **CRIME AGAINST HUMANITY,** punishable under Article 2.a. of the Statute of the Court;

In addition, or in the alternative:

Count 2: Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II,** punishable under Article 3.a. of the Statute.

COUNTS 3 – 4: PHYSICAL VIOLENCE AND MENTAL SUFFERING

21. Acts of physical violence and infliction of mental harm or suffering included, but were not limited to, the following:

a. between about 1 November 1997 and about 1 April 1998, at various locations to include Tongo Field, Kenema and the surrounding areas, the intentional infliction of serious bodily harm and serious physical suffering on an unknown number of civilians;

b. between about 1 November 1997 and about 1 April 1998, at Tongo Field, Kenema, Bo, Koribondo and surrounding areas, the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by the actions of the Kamajors, including, but not limited to, screening for **"Collaborators,"** unlawfully killing of suspected **"Collaborators,"** often in plain view of friends and relatives, the destruction of homes and other buildings, looting and threats to unlawfully kill, destroy and loot.

By his acts or omissions in relation, but not limited to, these events, **SAM HINGA NORMAN** pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 3: Inhumane Acts, a **CRIME AGAINST HUMANITY,** punishable under Article 2.i. of the Statute;

In addition, or in the alternative:

Count 4: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II,** punishable under Article 3.a. of Statute.

COUNT 5: LOOTING AND BURNING

22. Looting and burning included, but were not limited to, between about 1 November 1997 and about 1 April 1998, at various locations to include Bo, Koribondo and the surrounding areas, the unlawful taking and destruction by burning of private property.

By his acts or omissions in relation, but not limited to, these events, **SAM HINGA NORMAN** pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crime alleged below:

Count 5: Pillage, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II,** punishable under Article 3.f. of the Statute.

COUNTS 6 – 7: TERRORIZING THE CIVILIAN POPULATION and COLLECTIVE PUNISHMENTS

23. At all times relevant to this Indictment, Kamajors committed the crimes set forth in paragraphs 17 through 22 and charged in counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations. The Kamajors also committed the crimes to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.

By his acts or omissions in relation, but not limited to, these events, **SAM HINGA NORMAN** pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 6: Acts of Terrorism, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II,** punishable under Article 3.d. of the Statute;

And:

Count 7: Collective Punishments, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II,** punishable under Article 3.b. of the Statute.

COUNT 8: USE OF CHILD SOLDIERS

24. At all times relevant to this Indictment, The Civil Defense Forces did, in the Republic of Sierra Leone, conscript or enlist children under the age of 15 years into armed forces or groups, and in addition, or in the alternative, use them to participate actively in hostilities.

By his acts or omissions in relation, but not limited to, these events, **SAM HINGA NORMAN** pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crime alleged below:

Count 8: Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW,** punishable under Article 4.c. of the Statute.

Dated this 3rd day of March 2003
Freetown, Sierra Leone

David M. Crane
The Prosecutor

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Office of Legal Affairs
Codification Division

CONVENTION ON THE SAFETY OF UNITED NATIONS AND ASSOCIATED PERSONNEL

Article 2

Scope of application

1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in article 1.

2. This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.