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Introduction

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VI. Conflict Resolution in Africa

Introduction

G.E Crovetto, UMICLR Executive Editor

For its first of two volumes for 2001-2002, the International and Comparative Law Review decided to publish, among others, the following three powerful articles on Sierra Leone and more generally what is required for African nations to live in peace. Whatever the requirements may be, it will be a daunting task of overwhelming proportions. In reading these articles and in the post September 11th tragedy, it is all too clear that evil lurks and that peace and prosperity need to be cherished for they are non-elastic commodities. Thus it is hoped, these articles will provide to the law student as well as to the accomplished legal scholar, a comprehensive look at the efforts of a nation, a region and an international community at achieving and maintaining peace through legal, diplomatic and politic as well as economic means.

Sierra Leone by University of Miami International & Comparative Law Review Editor-in-Chief Ian Martinez exposes the reader to the history of a country 700 millions carat rich of cursed diamonds. It is a fascinating story of death, greed, power and waste. From the English domination and colonial schemes to the Sierra Leonese themselves, the nation has lost its best and its wealth. Come a new millennium and the United Nations' (U.N.) renewed efforts and one can hope, as the author concludes, that Sierra Leone has indeed come full circle. Perhaps we will see economic development and empowerment for the honest Sierra Leonese.

Martinez's article does a wonderful job at putting in perspective the next two articles on Sierra Leone and African Human Rights in general and providing an insight into what a failure will mean, if it is anything like a return to the past.

Ademola Abass's article; The Implementation Of ECOWAS New Protocol And Security Council Resolution 1270 In Sierra Leone: New Developments In Regional Intervention, provides a much needed and dreadfully realistic look at the complicated politics of the region and its players, U.N included. In light of the September, 11th tragedy and our renewed vigor for peace and liberty we can appreciate this piece all the more. Abass takes us to the trenches, he shows us what it takes to be free and to live in peace. From the warring front to the war of diplomacy, from compassion to determination, this is a masterpiece at exploring the role of the new peacemaking. A peacemaking that requires devotion, risk taking and vision. The latter is clearly expressed by the Economic Community of African States (ECOWAS) which set to tailor its own suit in order to attend its own gala. The U.N. is clearly invited but it needs to dance in tempo. Abass concludes that ECOWAS is a good partner (if not

a good instructor) and one can only hope it is the case. As the last article of this series indicates failure is not an option in Sierra Leone anymore.

New Trends in African Human Rights Law: Prospects of an African Court of Human Rights by Yemi Akinseye-George examines African Human Rights Law development in the post colonial era from 1960 to the present in Africa. Akinseye-George details the evolution stemming from the development of Human Rights Law while exploring the impetus for the latter change coming to a reality, such as dictators' obvious lack of care for human rights, the West's blind eye to abuses and the cold war, and not least, a lack of political will of the part of Member States with the then Organization of African Unity.

Akinseye-George traces the recent development in African Human Rights law to the creation in 1981 of the African Charter on Human and Peoples' Rights. This charter effectively became a stepping stone, through opening the door to international scrutiny, for the implementation of multiple "generations of rights." The road ahead, from first generation rights such as equality before the law and right to fair hearing, presumption of innocence, to second generation rights like those emboldened by the U.N.'s separation of human rights as an International Covenant on Civil and Political Rights and Economic, Social and Cultural Rights, now seems traced. Unfortunately, Africa remains plagued by problems ranging from politics to treaty implementation (lack of infrastructure) or even drafting (such as the inclusion in the law of "clawback clauses"). Thus, even when the African Charter contains "corresponding duties which States to the convention are expected to perform towards the attainment of the objectives of the charter", the continent still only has one mechanism for enforcement; the African Commission on Human and People's Rights. And while the Commission has been successful at times, like most other endeavor in Africa, action has been delayed and diluted by social, political and cultural difficulties.

Regardless, the impact of the African Charter as Akinseye-George points out has been tremendous and positive. For example, the lack of action of the part of government has led to a decentralization of rights in the pursuance of legal remedies and a private party can now initiate a human rights violation investigation against a government. In that light, several states have adopted the Charter as law and the African Commission has acted as a focus point for African Non-Governmental Organizations thereby furthering cooperation and helping in exchanges of ideas. In 1998, the African Court, with for mandate the defense and application of the African Charter, was created. The Court is to be fast (with a 90 days deliberation to opinion timeframe) and omnipotent (no appeals). It seems, perhaps, Africans have now gotten themselves a dog with teeth to defend their right to democracy.

Finally, the last effort towards democracy and sustainability is the March 2001 creation of the African Union, based on the European

Union model with the same economic and community goals in mind. However, in nothing less than an African twist, Libya's Colonel Gaddafi was its promoter and the creation of the African Union drew skepticism from all quarters.

Conclusion

The latest efforts are perhaps the most significant. As U.S. President George Bush often advocates; there must be consequences to actions, there must be accountability. It seems the U.N. listened as it announced on January 3, 2002 that it will put in place an international tribunal for Sierra Leone to bring to justice those responsible for over 200,000 dead and thousands of mutilated in the last ten years. A resolution on the implementation of this decision will follow an upcoming ten day U.N. mission in Freetown to determine the legal foundation for such tribunal. The financing of this latest move seems assured as \$14 of \$16.2 millions in start up costs have already been contributed.¹

This tribunal will now show potential perpetrators of human rights violations that, in due time, they will be brought to justice and forced to answer for their actions. The tribunal will also enhance ECOWAS and the African Charter's [on Human and Peoples' Rights] efforts to promote democracy, accountability, and conflict deflation. Thus, the next five years will probably be crucial for Sierra Leone and for Africa. Both will either be equipped with the tools for economic development, and democracy will follow or these efforts will be nothing but stale paper agreements and the status quo will prevail. Africa being Africa, no one can tell, but everyone hopes.

¹ Kofi Annan *Veut un Tribunal International pour le Sierra Leone*, LE MONDE, Jan. 3, 2002, at 5.

New Trends in African Human Rights Law: Prospects of an African Court of Human Rights

Yemi Akinseye-George*

Introduction

African Human rights law refers to the various national, regional and international legal instruments concerning the liberties of the people of Africa.¹ These include the human rights provisions in the constitutions of African countries,² the growing body of case law³ emerging from the courts and international human rights instruments that are of application

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1 See OSITA EZE, *HUMAN RIGHTS IN AFRICA*, 141 (Lagos: Nig. Inst. of Int'l Affairs and Macmillan, 1984); T.O. Elias, *Human Rights and the Developing Countries* 1-29 (1977); HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT*, 689-705 (Clarendon Press, 1996); Asmarom Legesse, *Human Rights in African Political Culture* 123 (Kenneth Thompson ed. 1980); Olusola Ojo Ahmadu Sessay, *The OAU and Human Rights: Prospects for the 1980s and Beyond*, 8 HUM. RTS. Q. 89 (1994).

2 Most African constitutions contained, either in their preambles and/or substantive provisions, measures for the promotion and protection of human rights. See ALG. CONST. ch. IV (1976); La Loi Fondamentale, Benin, Aug. 26, 1977, *Afrique Contemporaine*, 93 Sept.-Oct. at 23 (1977), *et seq.*, preamble and ch. VIII; ETH. CONST. ch. III, (revised 1955); GHANA CONST. pmb. and ch.4 (1969); GUINEA CONST. pmb. & pt. X (1958); KENYA CONST. ch. V (1969); MAURITIUS CONST. ch. II (1968); MOROCCO CONST. pmb. & art.8-12 (dealing with the political rights of the citizen) & art. 13-18 (dealing with the economic and social rights of the citizen) (1962); NIG. CONST. ch. III (1963); NIG. CONST. ch. IV (1979 & 1999); SEN. CONST. pmb. & pt. II (1963); TANZ. CONST. (Interim) pmb. (July 1965); ZAMBIA CONST. pt. III (1973); CONGO CONST. (1969); see also CONGO CONST. pt. II, (1973); Georges Lavroff, *La Constitution De La Republique Populaire du Congo du 12 Juillet 1973*, 1 REVUE JURIDIQUE ET POLITIQUE, 3-4 (1974) (for the text of the Constitution of 1973 see 1 REVUE JURIDIQUE ET POLITIQUE, 15-26, (1974)); ZAIRE CONST. pmb. & title II (amended July 1976); see also GHANA CONST. ch.6 (1979); ZIMB. CONST. ORDER ch. III (1979).

3 Gino J. Naldi, *Supreme Court of Zimbabwe declares Judicial Corporal Punishment on Juveniles unconstitutional*, 2 REVUE AFRICAINE DE DROIT INTERNATIONAL ET COMPARÉ (RADIC) 488-492 (1990); Chidi Anselm Odinkalu, *The Judiciary and the Legal Protection of Human Rights in Common Law Africa: Allocating Responsibility for the failure of Post-Independence Bills of Rights*, 8 PROCEEDINGS OF THE AM. SOC'Y OF INT'L L., (ASIL Proc.) 124-137 (1996); J.K Minkah-Premo, *The Role of Judicial Enforcement of ECOSOC Rights in National Development: The Case of Ghana*, 11 PROCEEDINGS OF THE AM. SOC'Y OF INT'L L., (ASIL Proc.) 52-89 (1999).

to African countries.⁴ For the present purpose, this article will focus on the African Charter of Human and Peoples' Rights,⁵ which is the main human rights instrument that is applicable to all of Africa.

First, some preliminary issues need to be addressed. Africa has never been short of human rights laws. Since the early independence days in the 1960s, the constitutions of virtually all African countries displayed elaborate human rights provisions generally referred to as bill of rights. Credit for this goes to the erstwhile colonial masters. Although they had given little or no regard to the human rights of Africans under colonial rule,⁶ they often left behind elaborate human rights laws and administrative institutions. Unfortunately, however, soon after the foreign overlords departed, their African successors began to jettison the inherited structures. In places such as Nigeria, where the human rights laws were retained in the postcolonial constitutions, these laws were of little effect in improving the welfare of the great majority of the people. The great majority of Africa's postcolonial leaders, under the guise of searching for an indigenous system of political organization, opted for heavy-handed rule paying little or no attention to human rights. In order to shield their misrule from international observers, the leaders claimed unfettered sovereignty over matters of human rights, which they regarded as domestic affairs. Regimes such as those of Jean-Bedel Bokassa in Central Africa, Idi Amin in Uganda, and Fernando Macias Nguema in the Republic of Equatorial Guinea demonstrated the depths of state brutality. In most African countries, human rights were replaced with human suffering as the rulers, one after another, imposed one-party rule, suppressed political dissent and personalized the resources of the state. The continent became a breeding ground for despots like Mobutu Sese Seko, Mengistu, and others. The idea of human rights never gained popularity with these despots. Their palpable misrule gave rise to brutal civil wars and humanitarian catastrophes in Sudan, Ethiopia, Nigeria (1967-1970), Liberia, Sierra Leone, Angola and Democratic Republic of Congo (formerly Zaire).

The cold war did not help matters. As is often said, (in Africa) "when two elephants fight, the grass suffers." This saying depicts the effect of the East-West power struggle of the cold war era on African societies. Turned into a major geopolitical battleground for the two super powers, the continent became a dumping ground for deadly arms and ammunitions. Several years after the cold war, the arms have continued

4 For a table showing the state of ratification of international human rights treaties by African countries, see Frans Vijoer, *The Six Major United Nations Human Rights Treaties and Monitoring Mechanisms: Their Relevance For Africa*, 11 PROCEEDINGS OF THE AM. SOC'Y OF INT'L L., (ASIL Proc.) 132-133 (1999).

5 A full text is available in 21 I.L.M. 59.

6 CLAUDE AKE, *DEMOCRACY AND DEVELOPMENT IN AFRICA*, 3 (The Brookings Inst. 1996).

to be used with tragic consequences. Starting with Congo in 1960, the super powers tried to influence the ideological orientation of African governments. One of the rewards given to friendly governments was that the superpowers would turn a blind eye toward their human rights violations, no matter how serious. Another reward was that they would stabilize and subsidize governmental authority even if it was corrupt and oppressive.⁷

Then came the tragic wave of military intervention in government, which ravaged the continent, like bush fire in the harmattan. Within the first twenty years of independence, virtually all African countries had experienced some form of military insurrection. Needless to say that these had devastating effects on human rights and the rule of law.⁸

Amidst all these problems the Organization of African Unity was powerless to alleviate the suffering of the Africans. Formed in 1963, at a time when the newly independent states of the continent feared clashes over their arbitrary, colonially defined borders and neocolonialist meddling from their recently estranged colonial overlords, the organization adopted a conservative outlook aimed at preserving the existing order while defending the colonial borders. Consequently, it could not mediate effectively in African conflicts nor could it provide any meaningful protection for the human rights of Africans.⁹

I. The African Charter on Human and Peoples' Rights

Although it has been castigated as a "meaningless document"¹⁰ the African Charter on Human and Peoples' Rights remains the first major attempt by African leaders to establish a regional machinery for the implementation of the rights of Africans.¹¹ Adopted on June 17, 1981 by the eighteenth Assembly of Heads of State and Government, the Charter reaffirms the support of African leaders for international protection of human rights and freedom, as declared in the Universal Declaration of Human Rights. Having thus given consent to the

7 Nana K.A. Busia, *The New World Order and Its Implications for Human Rights and Democracy in Africa- A Cortical Appraisal*, 11 PROCEEDINGS OF THE AM. SOC'Y OF INT'L L., (ASIL Proc.) 133-152 (1993).

8 GEORGE AYITTEH, *AFRICA IN CHAOS* (1998).

9 Christopher Mulei, *The Role of the OAU in the Democratization Process- A Case of Lack of Clear-Cut Policies and Political will Towards an Open Society*, 6 PROCEEDINGS OF THE AM. SOC'Y OF INT'L L., (ASIL Proc.) 56-72 (1994).

10 Makay Wa Mutawa, *The African Human Rights System in a Comparative Perspective*, 3 REVUE AFRICAINE DES DROITS DE L'HOMME 6 (1993).

11 For a balanced assessment of the Charter, see R. M. D'sa, *Human and Peoples' Rights: Distinctive Features of the African Charter*, 1 J. AFR. L. 29, 74 (1985).

internationalization of human rights, the African leaders could no longer plead that human rights were matters reserved exclusively for the domestic jurisdiction. Therefore, the façade of 'national sovereignty' would no longer provide a cover up for grave breaches of human rights. Although many critics of the African Charter often underestimate the significance of this development, it is one of the most important achievements of the adoption of the Charter. While it is ironic that a group of despotic rulers would establish such machinery for the implementation of human rights, the historical and political significance of their action must not be underestimated.

Just like its predecessors, (The European Convention on Human Rights and the Inter American Convention on Human Rights), the African Charter provides for a number of civil and political rights traditionally referred to as "first generation rights."¹² These include, the right to freedom from discrimination (art. 2), equality before the law, equal protection of the law (art. 3), inviolability of the human person and respect for human life, integrity and legal status including prohibition of slavery, slave trade, torture, cruel and inhuman or degrading treatment (art. 4 & 5), right to fair hearing including an effective appeal to competent national organs, presumption of innocence, right to counsel of one's choice and trial within a reasonable time and prohibition of retroactive laws (art. 6 & 7). The Charter further guarantees the freedom of conscience and religion (art. 8), right to receive information, express and disseminate opinions (art. 9), freedom of association and the right to assemble freely with others (art. 10 & 11), right of entry and residence of aliens (art. 12), right of participation in government (art. 13) and the right to property (art. 14). These rights are however subject to "clawback" clauses or restrictions of law and order, national security, the safety, health, ethics and the rights and freedoms of others.¹³ The Charter avoids the use of general derogation clauses.¹⁴ Yet it permits the imposition by domestic law of a wide range of limitations. However, in view of the obligations of member states under the Charter and general international law, including the Universal Declaration of Human Rights, the Charter limits the liberty of any state to enact laws imposing restrictions on its guaranteed rights.

¹² Traced to the natural rights philosophy of the late 18th Century, these rights have traditionally been given priority by western states. See D.J. HARRIS, *CASES AND MATERIALS ON INTERNATIONAL LAW*, 601 (Sweet & Maxwell, 4th ed. 1979).

¹³ See *supra* note 11.

¹⁴ International Covenant on Civil and Political Rights, Dec. 16, 1966, art.4, 14668 U.N.T.S. 171.; European Convention on Human Rights, Nov. 4, 1950, art.15, 213 U.N.TS. 221, E.T.S. 5.; American Convention on Human Rights, July 18, 1978, art.27, 1144 U.N.T.S. 123. The general derogation clauses in these three instruments are similar.

The second broad category of rights guaranteed by the African Charter consists of economic, social and cultural rights now widely referred to as “second generation rights.” These rights attained recognition in the twentieth century with the advent of socialism. Although there is jurisprudential debate and skepticism on the part of some western states as to the human rights character of “second generation” human rights, the Universal Declaration of Human Rights catalogues rights within both generations as human rights. Furthermore, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights impose legal obligations in respect of each. Moreover, the premise underlying all United Nations human rights texts is that civil and political, as well as economic, social and cultural rights are of equal priority, revealing that the two groups of rights are interdependent. This approach has been adopted by the African Charter on Human and Peoples’ rights, which makes provisions for both categories of rights without giving priority to either group.

The African Charter provides that every person shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work. (art. 15) The view has been correctly expressed that if the right to work is intended as imposing a legal duty on states to provide employment, then it is difficult to see how this can be translated into a concrete right capable of enforcement in Africa.¹⁵ The stark reality in Africa today appears to be the direct opposite of what the Charter seeks to guarantee. The right to work is virtually non-existent and the majority of the people who seem to be enjoying this right are working under harsh conditions almost akin to servitude. Workers retrenchment, non-payment of salaries, job insecurity and the like are common features of African labor markets.

Other rights provided include the rights to enjoy the best attainable state of physical and mental health (art. 16(1)). This imposes an obligation on the state parties to take necessary measures to protect the health of the people and to ensure that they receive medical attention when they are sick (art. 16(2)). There is also the right to education, and the right of every person to take part in the cultural life of his country, while a duty is imposed on the state to promote and protect the morals and traditional values recognized by a community (art. 17(3)).

The Charter recognizes the family as the natural unit and basis of society, which shall be protected and assisted by the state. The state is

15 EZE, *supra* note 1, at 226. *But see* AMECHI UCHEGBU, ECONOMIC RIGHTS, THE AFRICAN CHARTER ON HUMAN RIGHTS, 161-187 (J.A. Omotola and A.A. Adeogun eds., University Press 1987) (Professor Amechi Uchegbu, maintains that where a neo-colonial state sheds its responsibility towards its citizens by collaborating with the rich minority to deny the people the right to work and to earn decent wages, the government ceases to be legitimate.)

obligated to ensure the elimination of every form of discrimination against women and also to ensure the protection of the rights of women and children as stipulated in international instruments and conventions. Special measures are to be taken for the protection of the aged and the disabled in keeping with their moral and physical condition (art. 18).

The guarantee of these rights by the African Charter and other human rights instruments do not automatically make them available to the majority of the African peoples because the facilities required for their enjoyment are largely non-existent in the continent. Also, the political economy is under the grip of a minority elite who are out to preserve their privileged position, which in fact conditions the manner in which available resources are allocated and utilized. Many African leaders spend huge sums of money on white elephant projects such as construction of their official or personal mansions, churches and mosques while maintaining that they lack resources for implementing basic educational and health programs required to improve the living standards of the overwhelming majority of their people. The majority is invariably deprived of the basic necessities of life, while the ruling elite and their friends swim in oceans of opulence. Subsistence living becomes the order of the day, the right to property is rendered illusory as most people have no property worthy of protection, and the right to work is nothing but a mere theoretical guarantee hardly worth the paper on which it is written.

One of the unique features of the African Charter is its recognition and enunciation of group rights described as "people's rights and freedoms." Traditionally referred to as third generation rights, these rights began to take a distinctive form as recently as the 1970s and their chief proponents are the developing states.¹⁶ The inclusion of the rights of peoples in the Charter reflects the importance of the group or community under African customary law.¹⁷

The Charter guarantees non-domination of people (by another) as all peoples shall be equal and shall enjoy the same respects and rights (art. 19). The right of all peoples to existence and self-determination guaranteed by the Charter encompasses the freedom of people to determine their political status and to ensure their economic and social development according to the policy they have freely chosen (art. 20(1)). Colonized and oppressed peoples shall not only have the right to free themselves by resorting to any means recognized by the international community, but they shall also have the right to the assistance of the state

¹⁶ See Harris, *supra* note 12 at 601

¹⁷ Makau wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 6 REVUE AFRICAINE DES DROITS DE L'HOMME 16 (1996-7); 35 VA. J. INT'L L. 339 (1995).

parties in liberation struggle against foreign domination, be it political, economic or cultural (art. 2 (2) and (3)).

Moreover, the principle of sovereignty over natural resources is recognized. All peoples shall freely dispose of their wealth and natural resources in a manner, which is in their exclusive interest, and in no case shall a people be deprived of it. In case of expropriation, the dispossessed people shall have the right to the lawful recovery of property as well as to adequate compensation. However, the free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting an international economic co-operation on the basis of mutual respect, equitable exchange and the principle of international law.

The right to development is guaranteed. Thus, all peoples shall have the right to their economic, social and cultural development in strict respect of their freedom and identity and in the equal enjoyment of the common heritage of mankind (art. 22(1)). Recognizing that development is not possible in the absence of peace, the Charter further provides for the right of all peoples to national and international peace and security, while reaffirming the principles of solidarity and friendly relations between states contained in the Charter of the United Nations and the Organization of African Unity. Finally, the right of the peoples to a general satisfactory environment favorable to their development is guaranteed.

In addition to these rights, the Charter contains corresponding duties which state parties to the convention are expected to perform towards the attainment of the objectives of the Charter. Thus, state parties shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity (art. 21(4)). They shall also eliminate all forms of economic exploitation, particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their natural resources (art. 2(5)). Third, states shall also have the duty, separately or in co-operation with others, to ensure the exercise of the right to development. Finally, states shall not allow their territories to be used as bases for subversive or terrorist activities against the people of any other state party to the Charter.

II. The African Commission

The sole organ for the implementation of the African Charter is the African Commission on Human and Peoples' Rights. Established in 1987, the Commission consists of eleven members known as Commissioners who are elected by the OAU through secret ballot for a six-year term and serve in their personal capacities.¹⁸ The members are

¹⁸ African Charter on Human and Peoples' Rights, *supra* note 15, at art. 31, art. 33, art. 36, art. 42.

elected by the Assembly of Heads of State and Government of the OAU; the members in turn elect the Chairman and Vice Chairman. The Secretary-General of the OAU appoints the Secretary of the Commission.

The members are independent in the exercise of their functions as Commissioners. They must be Africans of the highest reputation known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights, particular consideration is given to persons having legal experience. The headquarters of the Commission is located in Banjul, Gambia, pursuant to a decision of the twenty-fourth session of the Assembly of Heads of State and Government of the OAU. The Commission conducts two regular sessions annually, each lasting a maximum of 15 days. Isaac Nguema, a former Chairman of the Commission, considers these annual sessions insufficient in light of the functions the Commission has to perform.¹⁹

The principal function of the African Commission is to ensure the promotion and protection of human and peoples' rights. The promotional mission is discharged through such programs as study, research, information, sensitization, consciousness-raising, education and leadership training in the field of human rights. The promotion function of the Commission extends to cooperation with both governmental and non-governmental organizations in the field of human rights. Further, the Commission's protection functions include the examining of complaints of human rights violations alleged either by the State parties or by private persons.²⁰ It also performs quasi-legislative functions such as interpretation of the Charter and elaboration of drafts of legislative or regulatory texts to be proposed to States in the area of human rights (art. 45). Under Articles 60 and 61 of the Charter, the Commission is authorized to make use of international and comparative human rights law and other principles of law in the interpretation and implementation of Charter provisions.

There are some who would condemn the African Commission for failing to take serious actions when dealing with grave human rights violations across Africa. However, in a number of cases, the Commission

¹⁹ Isaac Nguema, Africa, *Human Rights and Development*, REVUE AFRICAINE DES DROITS DE L'HOMME 91, 112 (1998).

²⁰ In its second session, Dakar, 8-14 Feb. 1988, the Commission adopted its internal regulations governing the procedure for the examination of complaints. With respect to duties, it has been suggested that the Commission should clarify which of the duties in the Charter are moral or legal obligations and what the scope of their application ought to be. Makau wa Mutua, *supra* note 16, at 45. See Onje Gye-Wado, *A Comparative analysis of the Institutional Framework for the Enforcement of Human Rights in Africa and Western Europe*, 2 REVUE AFRICAINE DE DROIT INTERNATIONAL ET COMPARÉ (RADIC) 187 (1990).

has intervened to protect human and peoples' rights. The case of Nigeria under military dictatorship provides an illustration of the proactive role of the African Commission in dealing with serious human right violations. At first, the Commission adopted a diplomatic approach and merely criticized the military regime through Resolutions passed at its ordinary sessions. For instance, in the resolution on Nigeria adopted on November 3, 1994 at the 16th Ordinary Session of the Commission held from October 25 through November 3, 1994 in Banjul, Gambia. The resolution among other things regretted the annulment of the June 12, 1993 Presidential election in Nigeria, though it had been adjudged free and fair by national and international observers. The commission condemned the gross violation of human rights in Nigeria as evidenced by:

The exclusion of the African Charter on Human and Peoples' Rights from the operation of decrees adopted by the military regime;

The detention of pro-democracy activists and members of the press;

The exclusion of the jurisdiction of the courts over decrees;

The discarding of court judgments;

The promulgation of laws without proper procedure or penal laws with retroactive effect; and

The closure of newspaper houses.

The resolution further called upon the Nigerian Government to respect the right of free participation in government and the right to self-determination and hand over power to the duly elected representatives of the people without unnecessary delay.

The Commission, during its 2nd Extraordinary Session in Kampala, Uganda, from December 18-19, 1995, condemned the human rights abuses of the Nigerian Military regime of General Abacha, and requested that the government prevent harm to the Ogoni detainees. The Commission resolved to send a delegation to Nigeria to discuss the situation with Nigerian Government officials.²¹ Unfortunately, notwithstanding the efforts of the Commission and other human rights bodies, the military government went ahead with the trial and execution of the Ogoni leaders including Ken Saro Wiwa.

The grave situation in Burundi and Rwanda was also addressed by the Commission at its 2nd Extraordinary Session. It decried the use of armed bandits to cause insecurity, assassinations and massive displacement of civilian populations. Yet it was powerless to stop the 1994 genocide in Rwanda and to prevent blood-letting in Burundi.²²

21 Final Communiqué of the 2nd Extraordinary Session of the African Commission on Human and Peoples' Rights, Dec. 18-19, 1995, Kampala, Uganda.

22 Abdelsalam A. Radwan Mohammed, *Article 58 of the African Charter on Human and Peoples' Rights*, 8 PROCEEDINGS OF THE AM. SOC'Y OF INT'L L., (ASIL Proc.) 290, 303-305 (1996).

The weakness of the Commission concerns its lack of freedom of action under Charter provisions. For instance after duly noticing a case of emergency or a situation of "serious or massive" violations of human or peoples' rights, it shall notify the chairman of the Assembly of Heads of State and Government "who may request an in-depth study." Poor funding, understaffing and reliance on the OAU for implementation of its sessions are additional problems limiting the effectiveness of the African Commission. However, there is optimism that the establishment of an African Court under the regime of a dynamic African Union would bring about greater effectiveness of the African human rights system.

III. The Impact of the African Charter on the Domestic Laws of African Countries

Notwithstanding its defects (and they are many), the African Charter and the African Commission have had some important beneficial effects on the domestic law and practice relating to human and peoples' rights in several African countries.

First, the Charter has positively impacted (albeit indirectly) the development of constitutional law with particular reference to human rights. The last decade has witnessed the adoption of new constitutions that incorporate bill of rights in a manner similar to those contained in the African Charter. The South African Bill of Rights, for instance, guarantees socio-economic rights such as the right to education. Similarly, Malawi and Namibia have adopted new constitutional pacts which show a commitment to the recognition and protection of human rights as enunciated in the African Charter and other international human rights instruments. These new bills of human rights differ from those of the immediate post colonial era in that, not only are they justiciable, but they also reflect changed political realities and on-going democratic struggles. As Maluwa observed, "The common theme running through all these changes has been the attempt to institute political pluralism and democratic rule in place of single-party dictatorships and autocratic oligarchies that had become the political order of the day in all but a handful of African states, and to build a political culture founded on a conception of human rights now taken for granted in the more established democracies."²³

Also, some African countries have incorporated the Charter into domestic law, thus facilitating its enforcement by domestic courts. In Nigeria for instance, the Charter was incorporated through the African Charter (Ratification and Enforcement) Act cap 10, Laws of the Federation of Nigeria, 1990. Consequently, Nigerian lawyers frequently cite the provisions of the Charter to support human rights actions in

23 Tiyanjana Maluwa, *Discourses on Democracy and Human Rights in Africa*, 9 REVUE AFRICAINE DE DROIT INTERNATIONAL ET COMPARÉ (RADIC) 55, 57 (1997).

domestic courts. In the case of *Abacha v. Fawehinmi*,²⁴ the Nigerian Supreme Court upheld a decision of the Court of Appeals on the superiority of the African Charter to domestic legislation. The Court, however, rejected an argument that the Charter was superior to the national constitution of the country.²⁵

The African Charter has also had some positive political impact in African countries. Nigeria has a good record of compliance with decisions of the African Commission. The few cases of non-compliance are exceptional. In fact, African countries often respond with less enthusiasm toward United Nations human rights mechanisms. They regard the African human rights system as “our own” while often viewing the United Nations system as foreign. It is believed that the Nigerian military government might have executed some *Zango Kataf* activists who were sentenced to death by a tribunal, but for the intervention of the African Commission. The Chairman of the Commission had written to the Nigerian Government urging it to postpone the planned execution of the activists pending the determination of their petition by the Commission. The government seems to have complied.

Again in *Katangese Peoples' Congress v. Zaire*,²⁶ although the Commission did not accept the claim of the people of Katanga to ‘self-determination in a manner that would have recognized their claim to secede from Zaire, the government was held to be under an obligation to recognize the peoples’ right to their indigenous culture and language.

Perhaps the most profound impact of the African human rights system on domestic law has been in the area of civil society empowerment. Before the establishment of the African Commission, African human rights NGOs used to work only with NGOs based in Europe and America. There was little interaction among African NGOs. However, the Charter, in its establishment of the Commission, has created a platform for NGOs to meet twice every year to exchange ideas. African NGOs with observer status at the African Commission are allowed to make submissions at the sessions of the Commission. During the military era, Nigerian NGOs learned a lot from South African NGOs through this platform. The African NGOs now have what is called the Civil Society Forum at the Summit of the Heads of State of OAU (now African Union). It is the work of the NGOs (African and non-African) that gave impetus to the emergence of the additional protocols of the African Charter including that of the African Court. The NGOs forum constituted a powerful lobbying group in convincing African leaders

24 *Abacha v. Fawehinmi*, Part 4 F.W.L.R. 533 (2000).

25 *Ogugu v. State*, 4 N.W.L.R. 1 (1994).

26 Eighth Annual Activity Report of the African Commission of Human and Peoples’ Rights, June 26-28, 1995, Parts 1 & 2, at 187-188.

about the need, not only for an African Court but also for an African Union. The following section considers these new features of the African human rights system.

IV. The African Court

In 1998, the OAU Assembly of Heads of State finally adopted the Protocol establishing an African Court on Human and Peoples' Rights (hereinafter the 'African Court'). The Court is designed to complement the protective mandate of the African Commission.²⁷ Its jurisdiction extends to all cases and disputes concerning the interpretation and application of the Charter, the Protocol, and any relevant Human Rights instrument ratified by the states concerned.²⁸

At the request of a member state of the OAU, any of its organs or any African Organization recognized by the OAU, the Court is entitled to give advisory opinions on any legal matter relating to the Charter on any other relevant human rights instruments.²⁹ Direct access to the Court is granted to the African Commission, state parties and African inter-governmental organizations.³⁰ Others, such as NGOs with observer status and individuals, are also entitled to institute cases directly before the Court in urgent matters or serious, systematic or massive violations of human rights provided that the Court shall not accept any

27 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, art. 2, 9 REVUE AFRICAINE DE DROIT INTERNATIONAL ET COMPARÉ (RADIC) 432-439 (1997). See also E.K. Quashigah, *The African Court of Human Rights: Prospects, in Comparison with the European Court and the Inter-American Court of Human Rights*, 10 PROCEEDINGS OF THE AM. SOC'Y OF INT'L L., (ASIL Proc.) 59-60 (1998). Gino J. Naldi and Konstantinos Magliveras, *The Proposed African Court of Human and Peoples' Rights: Evaluation and Comparison*, 8 REVUE AFRICAINE DE DROIT INTERNATIONAL ET COMPARÉ (RADIC) 944, 944-969 (1996).

28 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 3(1). Further, the Protocol, in Article 7, identifies the "sources of law" as "the provisions of the charter and any other relevant human rights instruments ratified by the states concerned."

For a history of the African Court, See Ben Kioko, *The Road to the African Court on Human and Peoples' Rights*, PROCEEDINGS OF THE AM. SOC'Y OF INT'L L., (ASIL Proc.) 70-85 (1998). The 34th Ordinary Session of the Assembly held in Ouagadougou, Burkina Faso from June 8-10, 1998 endorsed the recommendation of the Council of Ministers approving the Protocol on the establishment of the African Court.

29 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at Art. 4(1).

30 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 5(1).

petition from NGOs or individuals involving a state party that has not made a declaration accepting the competence of the Court under Article 6(3) and (5). The need to grant direct access to NGOs and individuals was informed by the reluctance of African States to file complaints against each other. Since the inauguration in 1987 of the African Commission, no member state had ever filed a complaint against another.³¹ The Court shall rule on admissibility of cases instituted by NGOs and individuals in accordance with the provisions of Article 56 of the Charter.³² In accordance with the philosophy of the African Charter, the Court may reach an amicable settlement in a case pending before it.³³

The Eleven judges of the Court shall be nationals of Member States of the OAU and there shall be adequate gender representation in the nomination process.³⁴ The quorum shall be at least seven judges.³⁵ The Assembly of Heads of State and Government shall elect the Judges by secret ballot. The Assembly shall ensure that there is representation of the main regions of Africa and their principal legal traditions.³⁶ This is an improvement to the African Charter, which contains no provision for geographical or gender representation.

Judges of the court are to be elected for a term of six (6) years and may be re-elected only once. The judges, except the President shall perform their functions on a part-time basis. The court shall elect its President and one Vice-President for a period of two years. They may be re-elected only once.³⁷ Provisions are made to guarantee the independence and immunity of the judges in accordance with international law. The position of judge is declared by Article 18 to be incompatible with any activity that might interfere with the independence or impartiality of such judge or the demands of the office.

31 Ben Kioko, *supra* note 28, at 82.

32 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 6(2).

33 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 9.

34 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 11 & 12.

35 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 23.

36 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 14.

37 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 21.

The Court shall make its decisions on the basis of written or oral evidence including expert testimony.³⁸ It may make appropriate orders including payment of fair compensation or reparation. It shall adopt such provisional measures as may be necessary in cases of extreme gravity and urgency in order to avoid irreparable harm to persons.³⁹

The Court shall render its opinion within ninety (90) days of completing its deliberations. A decision is not subject to appeal.⁴⁰

Unlike the African Commission, the African Court is endowed with power to give final and binding judgments.⁴¹ This capability, coupled with the right of access to the court granted NGOs and individual will greatly enhance the effectiveness of the African human rights mechanism.⁴² As a judicial body, the Court does its work openly. It is therefore more likely to attract media attention and generate more interest, while also raising the level of awareness about the African human rights system. This is preferable to the position of the African Commission, which could hold only private sessions.

The protection that would be available through the Court would place Africans, individuals and NGOs alike, in a better position to defend democratic rule in their countries. In this way the Court possesses the potential to strengthen the rule of law and help consolidate African democracies.⁴³

Moreover, the Court shall notify the parties of its judgment and transmit copies thereof to the Member States of the OAU, the Council of Ministers and the Commission. It is the responsibility of the Council of Ministers to monitor the execution of the judgment of the Court on behalf of the Assembly.⁴⁴ States parties undertake to comply with the judgment in any case to which they are parties within the time stipulated

38 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 26.

39 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 27.

40 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 28.

41 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art 28 (2). Since the African Commission is not a judicial body, lawyers could not argue before it. It is thus deprived of the assistance, which lawyers appearing before it could render in dealing with the numerous cases before it.

42 Franz Viljoen, *Arguments in Favor Of and Against an African Court on Human Rights*, 22 PROCEEDINGS OF THE AM. SOC'Y OF INT'L L., (ASIL Proc.) 10 (1998).

43 *Id.*

44 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art.29.

by the Court and also undertake to guarantee a judgment's execution.⁴⁵ The Court shall submit to each regular session of the Assembly, a report on its work during the previous year. The contents of the report shall include cases of non-compliance with the court's judgment by any state. Though the budget of the Court shall be funded by the OAU,⁴⁶ the Court shall draw up its own rules and determine its own procedures.⁴⁷

The Protocol of the African Court supplies the missing link in the African human rights mechanism. By so doing, it complies with the standard already set by other regional mechanisms, namely the European Convention and the Inter-American System, which provide effective judicial forum for enforcing human rights. It is hoped that the African Court, in developing authentic human rights jurisprudence, would follow the proactive approach of the European and Inter-American Human Rights Courts. However, the view has been expressed that the Inter-American System is of much more relevance to the African situation.⁴⁸

V. The African Union and Human Rights

At the conclusion of the two-day (March 1-2, 2001) extraordinary meeting of the Organization of African Unity held in Sirte, Libya, all member states of the Organization of African Unity unanimously decided to establish a pan-African organization as a way of creating closer relations among the different countries. Modeled on the European Union, the Organization, named the African Union is aimed at restoring dignity and economic strength after decades of economic backwardness and political instability. It replaced the Organization of African Unity, which had proved to be incapable of delivering the promise of a genuine African integration, common currency, foreign policy, defense structure and common economic programs as initially envisaged by the Pan African Movement of the 1950s.

All 53 OAU members have signed the declaration of the Union, but thirty-six ratifications are required for it to take effect.⁴⁹ When the Union eventually takes off, it is expected to have an Assembly of Heads of State, an Executive Council of Ministers, a parliament and a court of

45 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 30.

46 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 32.

47 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, *supra* note 27, at art. 33.

48 Franz Viljoen, *The Relevance of the Inter-American Human Rights System for Africa*, 11 REVUE AFRICAINE DE DROIT INTERNATIONAL ET COMPARÉ (RADIC) 661 (1999).

49 Constitutive Act of the African Union, art. 28, <http://www.dfa.gov.za/for-relations/multilateral/treaties/auact.htm>.

justice. The Secretary-General of the OAU, Dr. Salim Ahmed Salim has opined that the African Union would make a real difference in the lives of ordinary Africans.⁵⁰ On his part, Justice Kayode Eso, an eminent Nigerian jurist and Chairman of the Banjul-based African Center for Democracy and Human Rights Studies, says the establishment of the African Union is "a testimony to the commitment of the Heads of State and Government of the OAU to move Africa forward."⁵¹ But many are skeptical that an organization promoted by Colonel Gaddafi, a leader with questionable human rights records, is likely to place human rights high on its agenda.⁵² Only time will tell to what extent the African Union will be able to strengthen the African human rights system. If the Union brings about greater economic integration and closer ties among the African States as envisaged, there should be a reduction in political conflicts. This would in turn mean a better life for the war torn areas in the region. Further, a better economic performance that the Union is expected to bring about should mean an improved regime for the implementation of socio-economic rights in the African continent.⁵³

Conclusion

We have attempted to review the existing regime for the protection of human and peoples' rights in Africa. While the African Commission may not have done much to implement the human and peoples' rights in the African Charter, it has initiated some important moves in the direction of fulfilling its mandate. These include the creation of greater awareness about the African Charter and the establishing of a platform for co-operation and networking among African human rights NGOs. By its inability to enforce the provisions of the Charter, the Commission has underscored the necessity for a judicial forum capable of making authoritative and final pronouncements in cases

50 BBC NEWS, *African Union treaty comes into force* (May 26, 2001), at http://news.bbc.co.uk/1/hi/english/world/africa/newsid_1352000/1352707.stm.

51 Kayode Eso, *The Role of the African Human Rights System and Civil Society in the African Union 3* (Mar. 2001) (unpublished manuscript, on file with the Kayode Eso Library, Ibadan, Nigeria).

52 The objectives of the African Union, as stated in Article 3 of the Constitutive Act, include the following: a. Achieve greater unity and solidarity between the African countries and the peoples of Africa; b. Defend the sovereignty, territorial integrity, and independence of its Member States; c. Accelerate the political and socio-economic integration of the continent; d. Encourage international cooperation taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights; f. Promote and protect human and peoples' rights and other relevant human rights instruments. *Supra* note 49, at art. 3.

53 N.J. Udombana, *Towards the African Court of Human and Peoples' Rights: Better late than never*, 8 REVUE AFRICAINE DES DROITS DE L'HOMME 338-58 (1999).

of human rights violations. It is significant that although an adjudicatory forum has now been added to the African human rights system, the reconciliatory approach has not lost its appeal to the African leaders, who, notwithstanding the provision for a court, still provided for amicable settlement in Article 7 of the African Court's Protocol. It is also significant that access to the Court has been granted to individuals and NGOs in urgent cases or serious, systematic or massive violations of human rights. Fortunately, the Court has the rich experience of the African Commission as well as that of the other regional courts elsewhere to draw from. However, it may have to contend with the problems of inadequate funding⁵⁴ and other constraints such as the possibility of hostility from African governments with poor human rights records. The international community and others who are genuinely interested in advancing the cause of human rights in Africa must support the Court with such a level of funding⁵⁵ to ensure its financial independence. On its part, the African Union should be expected to create an enabling environment for the Court by tackling the problems of political instability, bad governance, massive poverty, widespread illiteracy and other impediments to the realization of human rights in Africa.

⁵⁴ Christof Heyns, *The Regional and Sub-Regional Protection of Human Rights in Africa: In Search of a Realistic Dream*, PROCEEDINGS OF THE AM. SOC'Y OF INT'L L., (ASIL Proc.) 8 (1996).

⁵⁵ Inger Osterdahl, *The Jurisdiction Ratione Materiae of the African Court of Human and Peoples' Rights: A Comparative Critique*, 7 REVUE AFRICAINE DES DROITS DE L'HOMME 132-150 (1998). The writer opines that the establishment of an African Court of Human and Peoples' Rights is a great success for the Organization of African Unity (OAU). This also marks a great step forward in the struggle for human rights in Africa. All efforts to strengthen human right in Africa must be encouraged.

The Implementation of ECOWAS' New Protocol and Security Council Resolution 1270 in Sierra Leone: New Developments in Regional Intervention

Ademola Abass*

Abstract

In October 1999, the Security Council adopted Resolution 1270 concerning the armed conflict in Sierra Leone shortly before the Economic Community of West African States (ECOWAS) adopted a new protocol in November 1999. The implementation of this Resolution by the United Nations Mission in Sierra Leone (UNAMSIL), first, side by side, and later, in conjunction with the ECOWAS Monitoring Group (ECOMOG) proved to be a telling moment in the history of joint peacekeeping operations between the United Nations and regional organizations. Three key ECOMOG contingents—Nigeria, Ghana, and Guinea—withdrew from Sierra Leone as a result of a deepening crisis between the leaderships of ECOWAS, dominated by Nigerians, and UNAMSIL, substantially composed of Indians. A later effort by the U.N. to fashion a cohesive mission under a unified command only brought more woes. The leadership of UNAMSIL under Major-General Vijay Jetley collapsed, leading to the withdrawal of the 3,000 strong Indian contingent from Sierra Leone. The purpose of this article is to examine Resolution 1270 and the new ECOWAS protocol, analyze the relationship between UNAMSIL and ECOWAS, and then consider the impact of ECOWAS' new protocol on the law of peacekeeping.

Introduction

The years 1990-2000 constituted a moment of truth for the hitherto little known sub regional organization, the Economic Community of West African States (hereinafter ECOWAS).¹ From being

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an economic community at its inception in 1975, ECOWAS literally reinvented its will in August 1990 to become, not only a collective security organization, but also a pacesetter in the development of regional collective security systems ingrained in the Chapter VIII of the United Nations Charter.²

In 1993, ECOWAS became the first regional alliance to undertake a joint 'peacekeeping' operation with the UN in the entire history of collective security.³ It matched this record in 1997 when it forcefully restored a democratically elected government in Sierra Leone, becoming the first regional organization to reinstate an overthrown government in Africa. It could be said that the alliance closed a decade of momentous events in its evolutionary history in December 1999 when it adopted a new protocol (hereinafter Protocol), which not only codified the controversial rights of humanitarian intervention and the use of force to restore democratic governments, but also empowered it to undertake enforcement action without the authorization of the Security Council.⁴

The concurrent application of the Protocol to the Sierra Leone conflict as the U.N. was implementing the mandate contained in its Security Council Resolution 1270 was fraught with telling legal and practical consequences. To wit, certain provisions of the Protocol depart from the decentralized enforcement regime of Chapter VIII of the U.N. Charter, which empowers regional arrangements to undertake enforcement action only with the authorization of the Security Council.⁵ Furthermore, the position of certain rules, widely believed to have

1 ECOWAS was formed on May 28, 1975, by the Treaty of the Economic Community of West African States (ECOWAS) and was amended in 1993. The Member States of ECOWAS are: The Republics of Benin, Burkina Faso, Cape Verde, Cote D'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, the (Islamic Republic of) Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo. 35 I.L.M. 660 (1996).

2 On August 7, 1990, the ECOWAS Standing Mediation Committee on the Liberia conflict established the ECOWAS Monitoring Group (ECOMOG) in Banjul, Republic of Gambia. See *United Nations, Security Council, Letter Dated 9 August 1990 From The Permanent Representative Of Nigeria To The United Nations Addressed To The Secretary-General*, U.N. Doc. S/21485 (1990) (annex); REGIONAL PEACE-KEEPING AND INTERNATIONAL ENFORCEMENT: THE LIBERIAN CRISIS, 6 CAMBRIDGE INT'L L. SERIES VI. 67 (Marc Weller ed., Cambridge Univ. Press, 1994) [hereinafter M. Weller]

3 Resolution 866 expressly states that this "would be the first peace-keeping mission undertaken by the United Nations in cooperation with a peace-keeping mission already set up by another organization, in this case ECOWAS." U.N. SCOR, 3281st mtg. at 1, U.N. Doc. S/RES.866 (1993).

4 *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security*, 5 J. CONFLICT & SECURITY LAW 231 (2000)

5 U.N. CHARTER art. 53, para. 1.

evolved into the corpus of the law of peacekeeping over time, would appear to have become greatly undermined.⁶

For purpose of this article, the intervention by ECOWAS in Sierra Leone is broadly divided into two phases. The first phase is designated as beginning with the overthrow of the democratic government of Tejan Kabbah and concluding with the restoration of that government by ECOMOG forces, and the eventual withdrawal of certain ECOMOG contingents from Sierra Leone. This article shall not be concerned with the legal analysis of this phase except insofar as references to it are necessary. The second phase of the intervention—the main focal point of this effort—commences with the deployment of U.N. peacekeepers under the aegis of UNAMSIL and the re-entry of the Nigerian contingent into Sierra Leone. The need to make this thematic delineation at the outset is informed by the fact that at least one legal commentary on the first phase of the intervention already exists.⁷ Moreover, the activities of ECOWAS under the first phase of its intervention in Sierra Leone were conducted under the auspices of its old legal regime, as represented by its Protocol on Non-Aggression⁸ and the Protocol on Mutual Assistance and Defense (PMAD).⁹ Although the specific decisions of ECOWAS concerning its actions on the Sierra Leone conflict are contained in the numerous Final Communiqués issued at the end of its myriad summits on the matter, ECOWAS substantively complied with the provisions of the U.N. Charter and performed obligations imposed on it by the Charter during this phase.¹⁰ It follows that a legal analysis of the first phase of ECOWAS' intervention under its old regime and in accordance with the U.N. Charter was in order.¹¹

6 Although there is no direct provision of the U.N. Charter on the law of peacekeeping, it is believed by commentators that certain features of peacekeeping operations such as consent, impartiality, limited force, and so on, have evolved into the customary law of peacekeeping.

7 See generally Karsten Nowrot and Emily Schabacker, *The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone*, 14 AM. U. INT'L L. REV. 321 (1998).

8 *Report of the Secretary-General on the Question of Liberia*, U.N. Doc. S/25402, at 6 (1993). The Protocol on Non-Aggression was adopted on April 22, 1978. See M. WELLER, *supra* note 2, at 18.

9 *Report of the Secretary-General on the Question of Liberia*, *supra* note 8, at 6. The Protocol on Mutual Assistance and Defence was adopted on May 29, 1981. See also 3 OFFICIAL J. ECOWAS 9 (1981); M. WELLER, *supra* note 2, at 19.

10 As early as July 10 1997, ECOWAS had reported to the U.N. its decision to impose sanctions on the rebel forces in Sierra Leone. Sierra Leone News Archives, (July 10, 1997), available at <http://www.sierra-leone.org/slnews0797.html> [hereinafter slnews].

11 Nowrot's and Schabacker's analysis was very comprehensive on the first phase insofar as this analysis was an inquiry into the legality of ECOWAS' use of force to restore a democratic

By contrast, ECOWAS conducts the second phase of its intervention under a totally different legal regime, which, as will be discussed below, does not conform to the provisions of, or perform the obligations imposed by, the Chapter VIII of the U.N. Charter.¹² The application of this new legal instrument demonstrably engenders different legal consideration, and since there has not been an inquiry into this matter, to the best of this writer's knowledge, it is appropriate to focus more specifically on that issue.

The remaining part of this article is divided into two parts. In the first part, I briefly recount the background to the armed conflict in Sierra Leone. I will then examine the implementation of the mandate issued to the United Nations Mission in Sierra Leone by Resolution 1270, and analyze the various factors that led to the breakdown in the relationship between UNAMSIL and the ECOWAS Monitoring Group, ECOMOG. In the second part, the article examines the effect of the Protocol on the 'law' of peacekeeping. Particular attention shall be devoted to the following issues: (1) whether the Protocol abrogated the 'customary' requirement of consent, and (2) whether the Protocol has caused member states to permanently cede their right to reject or terminate an intervention proposed by ECOWAS.

I. PART ONE

*A Brief Background to the Armed Conflict in Sierra Leone*¹³

The armed conflict that has engulfed Sierra Leone for nearly four years, with its accompanying brutality, was ignited on May 25, 1997, when a group of the country's armed forces toppled the democratically elected government of Alhaji Tejan Kabbah in a military coup d'état.¹⁴ The election of Tejan Kabbah brought to an end the 19 year one party stronghold of Joseph Momoh after a brief military regime led by Captain Valentine Strasser, who himself was ousted in yet another coup by his deputy, Julius Maada Bio.¹⁵ It then fell to the latter head of junta to transfer the reins of government in Sierra Leone to a democratically

government, a *casu foederis* that was neither included in its old legal regime or expressly permitted by the U.N. Charter.

¹² See Ademola Abass, *supra* note 4.

¹³ For a legal-historical explanation of Sierra Leone from the 15th century to the period before the conflict, see the article that follows.—Eds.

¹⁴ James Rupert, *Civilian Rule Overturned in Sierra Leone: Soldiers Seize Power, Loot W. African Capital*, WASH. POST, May 26, 1997, at A21. See the condemnation of the coup by the Organization of African Unity (OAU) in Andrew Meldrum, *Annan and OAU Leaders Endorse Intervention against "Usurpers"*, GUARDIAN (London), June 3, 1997, at 14.

¹⁵ Key Events in Sierra Leone's Conflict, available at <http://www.nytimes.com/library/world/africa/sierra-leone-chrono.html> [hereinafter Key Events].

elected government led by Kabbah.¹⁶ Upon his overthrow, President Kabbah had fled to the neighboring Guinea from where he allegedly invited ECOWAS to help reinstate him to the governance of Sierra Leone.¹⁷

On May 28, the leader of the military junta, Major Paul Koromah abolished the constitution of Sierra Leone and installed the Armed Forces Ruling Council (AFRC).¹⁸ Following a massive military campaign inaugurated by the Nigerians—albeit ostensibly operating under the auspices of ECOWAS—the ECOWAS Monitoring Group (ECOMOG), in a ground-breaking episode of regional peacekeeping in Africa, reinstated the deposed Tejan Kabbah to the governance of Sierra Leone on March 10, 1998.¹⁹

The defeat of the coupists at this time, however, soon turned out to be a temporary affair. The rebels loyal to Fodah Sankoh, the leader of the rebel group known as the Revolutionary United Front (RUF), acting in conjunction with the surviving ‘mutineers,’²⁰ launched fresh attacks against government positions. The RUF had mounted a guerrilla war against successive military and civilian governments of Sierra Leone on the ground that both connived with foreign countries to “milk the country’s diamond riches and impoverish its people.”²¹

ECOMOG troops had been stationed in Sierra Leone, under a Status of Force Agreement (SOFA) since the days of the Liberian crisis with the purpose of preventing a spillage of that crisis into Sierra Leone and to curb trans-border infiltration from Liberia into Sierra Leone.²² During its twentieth session held at Abuja, Nigeria, on August 28-29,

16 See <http://www.un.org/Depts/DPKO/missions/unomsil> (last visited Oct. 27, 2001)

17 *Id.* However, in reality, ECOWAS had already perfected plans to intervene in the crisis even before the supposed invitation came from the exiled president. The so-called invitation did not emanate from Kabbah until the ECOWAS summit August 27-28, 1997, (*slnews, supra* note 7) whereas ECOWAS had concluded deliberation on the actions to be taken a month earlier. *Meeting of the ECOWAS Committee of Four on Sierra Leone*, Abidjan, Cote d’Ivoire, July 17-18, 1997 (unpublished material, on file with author).

18 *Id.*

19 U.N. SCOR, 3861st mtg., U.N. Doc. S/RES.1156 (1998).

20 Although the events of May 25, 1997 constituted a *coup d’état*, President Tejan Kabbah had called it a mutiny. In one of his addresses to the nation shortly after his overthrow, he instructed the members of the Sierra Leone Army in similar terms; As your commander I hereby order you to report to the nearest ECOMOG base without arms in your possession and declare your loyalty. By doing so you will avoid being treated as a mutineer. See *slnews, supra* note 13.

21 Key Events, *supra* note 14.

22 *Final Communiqué, Meeting of Chiefs of Defence Staff of Contributing States of ECOMOG in Sierra Leone, Abuja*, (April 15, 1999), para. 9(a) (on file with author).

1997,²³ the Authority of Heads of State and Government of ECOWAS, having convinced itself of the need to extend the scope of activity of ECOMOG to Sierra Leone and to modify its mandate, approved a new mandate for ECOMOG.²⁴ Under the new mandate, Nigeria sent 700 troops to Sierra Leone, bringing the total number of that country's troops in Freetown, the Sierra Leone capital city, to 1,600.

From 1997 onward, ECOWAS, which had officially affirmed that "it is the only Force in the Sub-region capable of prompt response to any requests in this regard [intervention]"²⁵ became largely responsible for seeking a resolution of the Sierra Leone crisis. In May 2000, Nigeria, which has been, by far, the largest provider of both human and material resources for ECOWAS missions in the sub-region, withdrew from Sierra Leone.²⁶ The rebels capitalized on what the Security Council described as "a dangerous vacuum" created by the exit of the Nigerians to unleash on the civilian populace of Sierra Leone, an outrageous orgy of violence the proportions of which were widely reported to surpass any violence in history.²⁷ It was these circumstances that compelled the U.N. to deploy its peacekeepers to Sierra Leone, in order to implement the various resolutions its Security Council had adopted concerning the conflict, and also to supervise the implementation of the Lomé Peace Accord already agreed to by the conflicting parties.²⁸

B. Legal analysis of Resolution 1270

1. The UNAMSIL Mandate in Sierra Leone

23 *Final Communiqué of the Summit of the Economic Community of West African States, held at Abuja on 28 and 29 August 1997*, U.N. Doc. S/1997.695 (1997) [hereinafter Decision].

24 *Id.* at Art. 1.

25 Decision A/DEC.7/8/97 (1997) (on file with author).

26 BBC NEWS, *Nigeria Sets Intervention Terms*, (May 10, 2000), available at <http://news.bbc.co.uk/hi/english/world/africa>. Not only did Nigeria provide the largest contingent to Sierra Leone, it actually undertook to pay the salaries of the Sierra Leone contingent in ECOMOG when the Sierra Leone government failed to pay its troops beginning in September 1996.

27 *Second Progress Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone*, U.N. Doc. S/1998.960, at 2-5 (1998), noting in parts that the rebel attacks 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."

28 *Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone*, U.N. Doc. S/1999.777 (1999). This Accord recalled two earlier Peace initiatives, the Abidjan Peace Agreement of November 30, 1996 and the ECOWAS Peace Plan, October 23 1997, at <http://www.Sierraleone.org/lomeaccord.html>.

The first official response by the U.N. to the Sierra Leone conflict came in the form of Resolution 1132,²⁹ which had, at first, prohibited the sale and supply of arms and related materials to Sierra Leone as a whole.³⁰ The coverage of this resolution was later reduced by Resolution 1171 so that its operation targeted only the non-governmental forces.³¹ Notably, Resolution 1132 was adopted both under Chapter VII and Chapter VIII of the U.N. Charter. Acting under the latter, the resolution specifically authorized ECOWAS to ensure “strict implementation of the provisions of this resolution relating to the supply of petroleum and petroleum products, and arms and related materiel of all types, including, where necessary and in conformity with applicable international standards, by halting inward maritime shipping in order to inspect and verify their cargoes and destinations...”³²

This directive of the U.N. would seem to be superficial in light of the fact that the resolution was in response to ECOWAS’ request that the U.N. mandate all its members to respect the sanctions ECOWAS had already imposed on the junta.³³ However, with media reports and rumors mounting that certain member states of ECOWAS were aiding the ‘mutineers’, such a directive was quite necessary if the expected results were to be achieved.³⁴

Shortly after this embargo, the Security Council adopted Resolution 1181 which established the United Nations Observer Mission

29 U.N. SCOR, 3822d mtg., S/RES.1132 (1997).

30 *Id.* at 2.

31 U.N. SCOR, 3889th mtg., para. 2, U.N. Doc. S/RES.1171 (1998).

32 *Id.* at 3, para. 8. This resolution is analogous to Resolution 676 concerning the crisis in former Yugoslavia. However, whereas the latter had been silent on the specific organisations invited to act by the U.N., Resolution 1132 had mentioned ECOWAS specifically. It would appear that 1132 intended that ECOWAS could undertake enforcement action to achieve the stated objective. However, such an interpretation is difficult to arrive at without taking a closer look at the wording of the resolution. It avoided the usual euphemistic phrase ‘to use all necessary means’, but instead, expressly determined the kind of action ECOWAS might take: interdiction of ships. One query that arises is whether ECOWAS was authorized to use force to achieve this objective where a ship did not concur with its directives.

33 Art. 2 of Decision, *supra* note 23, at 5, stating that “Member States shall place immediately a general and total embargo on all supplies of petroleum products, arms and military equipment to Sierra Leone and abstain from transacting any business with that country.”

34 Although Cote d’Ivoire and Libya were prominently featured in the media reports as violating the sanction regime, the ECOWAS Ministerial Committee of Five on Sierra Leone noted that “certain individuals were contravening the embargo.” See *Communiqué, Fifth Meeting of the Ministers of Foreign Affairs of the Committee of Five on Sierra Leone*, Abuja, October 10-11, 1997 (on file with author).

in Sierra Leone (UNOMSIL).³⁵ The Resolution mandated UNOMSIL to, *inter alia*, “monitor the military and security situation in the country as a whole...”, “...and to monitor the disarmament and demobilization of former combatants.”³⁶ It was to function for an initial period of six months until January 13, 1999³⁷ but had its mandate severally extended in the following months.³⁸

Resolution 1181 is analogous to Resolution 866 concerning the Liberian conflict.³⁹ Resolution 866 established the United Nations Observer Mission in Liberia (UNOMIL) which was mandated to perform functions virtually similar to those entrusted upon UNOMSIL. Both resolutions were adopted after ECOWAS had been acting in the concerned countries. Resolution 1181 also welcomed the commitment of ECOMOG to protect UNOMSIL personnel just as the U.N. had requested ECOMOG to protect UNOMIL personnel in Liberia. Therefore, the relationship between ECOWAS and the U.N. under Resolution 1181 was that of co-operation with ECOWAS providing military coverage for the U.N.

Following a series of violations of the terms of the ceasefire established under the Lomé Peace Accord by the RUF, which led to fresh hostilities between the government and RUF rebels, the Security Council adopted Resolution 1270. This resolution affirmed that the situation in Sierra Leone constituted a threat to international peace and security in the region, in accordance with Article 39 of the U.N. Charter.⁴⁰ This resolution then established the United Nations Mission in Sierra Leone (UNAMSIL).⁴¹ UNAMSIL was given the mandate to “co-operate with the government of Sierra Leone and other parties to the Peace Agreement in the implementation of the Agreement [and] to assist in the implementation of disarmament, monitor adherence to the ceasefire [and] to facilitate delivery of humanitarian assistance” among other things.⁴² The initial mandate of UNAMSIL was for six months.⁴³ The resolution

35 U.N. SCOR, 3902d mtg., at 2, U.N. Doc. S/RES.1181 (1999).

36 *Id.* at 2, para. 6.

37 *Id.*

38 U.N. SCOR, 3986th mtg., para 1., U.N. Doc. S/RES.1231 (1999); U.N. SCOR, 4012d mtg., para. 1, U.N. Doc. S/RES.1245 (1999).

39 Resolution 866, *supra* note 3, at 2.

40 U.N. SCOR, 4054th mtg., U.N. Doc. S/RES.1270 (1999). The first determination by the Security Council that the situation in Sierra Leone constituted a threat to international peace and security in the region was made in Resolution 1132; *supra* note 29.

41 Resolution 1270, *supra* note 39, at para. 8.

42 *Id.* at para. 8 (a),(b),(c),and (g) respectively.

43 *Id.* at para. 8.

urges co-operation and co-ordination between ECOMOG and UNAMSIL.⁴⁴

Like many previous resolutions on the Sierra Leone crisis, Resolution 1270 was adopted under Chapter VII of the U.N. Charter. However, Resolution 1270 expressly approves a new mandate for ECOMOG, which had been formulated by ECOWAS and had not been adopted under any U.N. provision.⁴⁵ Furthermore, Resolution 1270 states that in the discharge of its mandate, UNAMSIL may take necessary action to ensure the security and freedom of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone and ECOMOG.⁴⁶

Insofar as Resolution 1270 was adopted under Chapter VII, it presupposes that UNAMSIL mandate would be an enforcement operation. This assertion is enhanced by a literal construction of the wording of the mandate of that Resolution, which enjoins the peacekeepers, not only to take necessary action to ensure the security and freedom of its personnel, but also to afford protection to civilians under imminent threat of physical violence. Unlike 1132 authorizing ECOWAS action against ships, actions under 1270 clearly targeted rebel forces who might act in any manner as to prevent UNAMSIL soldiers from performing the task assigned to them by their mandate, or endanger their safety.

Analytically, the wording of Resolution 1270, in the manner stated above, is fraught with many ambiguities. In practice, the U.N. rarely explicitly authorizes its peacekeepers to use force. Instead, it subsumes such authorizations under liberal phrases as “all necessary means.”⁴⁷ Often, the U.N. encourages states co-operating with a troubled state to render “all assistance necessary” to mitigate particular problem. Nevertheless, these types of phrases are commonly construed by states and commentators as indeed empowering U.N. troops to use force beyond the threshold of self-defense.⁴⁸

44 *Id.* at para. 12.

45 *Decision Redefining The Mandate of ECOMOG in Sierra Leone*, U.N. Doc. S/1999.1073 (1999) [hereinafter *Decision 1999*].

46 Resolution 1270, *id.* note 39, at 3, para. 14 (emphasis added).

47 *See, e.g.*, U.N. SCOR, 2963d mtg., U.N. Doc. S/RES.678 (1990), which authorises Member States co-operating with the Government of Kuwait...to use “all necessary means” to uphold and implement resolution 660.

48 U.N. SCOR, 2963d mtg., U.N. Doc. S/PV.2963 (1990). In this Security Council debate leading to the adoption of Resolution 678, the Council members variously expressed their understanding of the phrase. Mr. Al-Ashtal, representing Yemen, argued that the statement is “in effect authorizing States to use force”; Mr. Qian Qichen of China was of the opinion that the phrase, “in essence, permits the

Nevertheless, such mandates are usually contained in resolutions adopted within the framework of two types of operations. The first is where a U.N. operation is conceived as an enforcement action *ab initio*, as was Resolution 678 concerning the invasion of Kuwait by Iraq. The second is where an original peacekeeping operation is being transformed into an enforcement action, as was the case with Resolution 794 concerning Somalia.⁴⁹ The formula for signaling a change in the mandate of a peacekeeping mission is mostly by adopting a resolution that almost invariably empowers peacekeepers to take necessary actions for safe delivery of humanitarian assistance or relief.⁵⁰ Where a U.N. mission is conceived originally as a peacekeeping operation, and remains essentially so despite the changing circumstances of the conflict, the U.N. will not normally, as a matter of practice, imbue pure peacekeeping missions with such ambivalent mandates.

Issuing a peacekeeping mission with enforcement mandates, without a corresponding transformation of the operation into an enforcement action, would appear to be what the U.N. did with Resolution 1270. In providing, as it were, that UNAMSIL may, within its capabilities and areas of deployment, afford protection to civilians, UNAMSIL appears to have a mandate that is much wider in scope than a usual peacekeeping one, but still short of express authorization of an enforcement action. By contrast, during the Congo crisis, Security Council Resolution 169 had strengthened ONUC's mandate in order to maintain the territorial integrity and political independence of the Republic of Congo.

Although Resolution 169, like Resolution 794, did not expressly indicate that the U.N. mission was undergoing a metamorphosis, its real

use of military action." Mr. Abu Hassan of Malaysia noted the "force authorized by the Council." Mr. Hurd of the U.K. also noted that according to the resolution, Member States "are authorized to use force as may be necessary to compel compliance." The United States representative was even more explicit: "[t]oday's resolution is very clear. The words authorize the use of force." *See also* John Quigley, *The United States and the United Nations in the Persian Gulf War: New Order or Disorder?* 25 CORNELL INT'L L. J., 1 (1992).

49 U.N. SCOR, 3145th mtg., U.N. Doc. S/RES.794 (1992). The Security Council adopted this resolution after the failure of Security Council Resolution 732 of 1992 to make any significant impact on the warring factions. Resolution 794 authorized the U.S. to lead a mission using "all necessary means." It must be noted that whereas UNOSOM I had been an Observer Mission, with a mandate to monitor a ceasefire brokered between the factions, hence a peacekeeping operation, the U.S.-led United Task Force (UNITAF) established pursuant to Resolution 794 was construed as an enforcement action. *See also* H. MCCOUBREY & J MORRIS, *REGIONAL PEACEKEEPING IN THE POST COLD WAR ERA*, 130 (The Hague: Kluwer Int'l. L.) (2000).

50 Resolution 794, *supra* note 48. The mandate was to use "all necessary means to secure humanitarian relief."

import was not lost on anyone. Derek Bowett observed that although Resolution 169 did not amount to outright enforcement action, it authorized a robust peacekeeping—a hybrid position between classical peacekeeping and enforcement action.⁵¹ Nigel White argued, perhaps more persuasively, that “it would be best to summarize ONUC’s actions having as their constitutional base the enforcement of provisional measures under Article 40, but since these measures were increasingly widely drawn so as to cope with an ever-deteriorating crisis, they amounted to de facto enforcement action.”⁵²

Thus, when Resolution 1270 read, in part, that the peacekeepers should facilitate delivery of humanitarian assistance, the impression is created that the operation, though conceived originally as a peacekeeping one, would, in reality, be implemented in an enforcement mode. This indeed was ECOWAS’ assumption upon the adoption of Resolution 1270.

Notwithstanding the ambiguous nature of Resolution 1270 as revised by 1289,⁵³ it is clear from the explicit utterances of member states of the U.N. that the mandate was intended to be a peacekeeping one. During the Security Council’s emergency meeting to discuss the situation in Sierra Leone,⁵⁴ the Secretary-General reminded the Council that, “our mission was configured as a peacekeeping force. It was neither designed nor equipped to be an enforcement operation.”⁵⁵ He added “it was attacked by one of the parties that pledged to cooperate with it, before it had been properly deployed. Given that situation, we have to consolidate and reinforce our troops so that they can defend themselves and their mandates effectively.” Notably, the Secretary-General’s statement had fallen short of requesting an authorization of enforcement action for UNAMSIL.

The reactions of the states taking part in the meeting, to the request by African states for a revision of the UNAMSIL mandate referred to by the Secretary-General in his speech, is instructive on how the mandate should be construed. The Algerian delegate to the emergency meeting, Mr. Bali, impressed on the Council that “this test of UNAMSIL shows very clearly that the mandate and resources available to it are not and never were adequate to the situation.”⁵⁶ The delegate of the United Kingdom, Mr. Eldon, however, cautioned against

51 D. W. BOWETT, *UNITED NATIONS FORCES: A LEGAL STUDY*, 180 (Stevens, 1964).

52 HILAIRE MCCOUBREY & NIGEL D. WHITE, *THE BLUE HELMETS: LEGAL REGULATIONS OF UN OPERATIONS*, 53 (Dartmouth: 1996).

53 U.N. SCOR, 4099th mtg., U.N. Doc. S/RES.1289 (2000).

54 U.N. SCOR, 55th Sess., 4139th mtg., U.N. Doc. S/PV.4139 (2000).

55 *Id.* at 2-3.

56 *Id.* at 5. The ‘test’ referred to here is the capture of 500 UNAMSIL personnel by the RUF forces.

transforming UNAMSIL mandate into enforcement one. He noted that “for the moment, UNAMSIL’s mandate is sufficient for it to carry out its tasks,” and suggested that the U.N. Security Council should “be wary of adopting an over-hasty approach,” a veiled reference to Algeria’s position.⁵⁷

The position of the United Kingdom found strong support from the Americans. Mr. Cunningham, representing the United States, observed that United Nations peacekeepers “were organized and sent to Sierra Leone not to impose a settlement, not to enforce the peace, but to assist in the implementation of the Lomé Agreement.”⁵⁸ Russia followed this line when it argued that “the mandate given UNAMSIL in Security Council Resolution 1289 (2000) allows sufficiently strong measures to be taken to ensure the safety of international personnel in the country and of the Government of Sierra Leone.”⁵⁹

An official explanation of the ambiguous nature of the mandate contained in Resolution 1270 as amended, and the *raison d’être* underlining states’ support for this mandate at the relevant time, came from the delegates of Malaysia and Bangladesh to that meeting. In his opinion, Mr. Hasmy contended that Malaysia supported the “limited Chapter VII mandate then because there was an agreement on the table and because the cooperation of the parties was assured to be forthcoming. Clearly, many of us have been proven wrong and we will have to recalibrate our response appropriately.”⁶⁰ Mr. Chowdhury, representing Bangladesh agreed with Malaysia, affirming that “we placed our trust in Lomé, believing that it would work, and acted accordingly in mandating the United Nations Mission in Sierra Leone (UNAMSIL). With recent developments in Sierra Leone, we have to take a fresh look at the peace structure and the peacekeeping mandate we had approved.”⁶¹

From the foregoing statements, it is clear that, although there was disagreement at the meeting on whether or not to revise UNAMSIL mandate to enable it meet the changing circumstances in Sierra Leone, all participants agreed that the mandate was a peacekeeping one. No state argued that the mandate justified an inference of authorization of enforcement action by the Security Council. Hence, it is contended here that notwithstanding the wording of the mandate and the adoption of Resolution 1270 under Chapter VII, UNAMSIL mission was a peacekeeping operation, with limited power to use force under specified circumstances.

⁵⁷ *Id.* at 6-8.

⁵⁸ *Id.* at 11.

⁵⁹ *Id.* at 16.

⁶⁰ *Id.* at 11. The Agreement referred to by My Hasmy is the Lomé Peace Accord, *supra* note 27.

⁶¹ *Id.* at 12.

It is instructive to note that Resolution 1289, which revised the UNAMSIL mandate, removed from it any words that might give rise to an inference of authorization of enforcement action. It solely authorized UNAMSIL to “facilitate the free flow of people, goods and humanitarian assistance along specified thoroughfares.”⁶² The wording of this provision is remarkably different from that in Resolution 1270. In the latter, the UNAMSIL mandate had included the use of necessary means to “facilitate the delivery of humanitarian assistance.”⁶³ This phrase, it is contended, is much broader than the one contained in Resolution 1289 in that it does not define the limit beyond which UNAMSIL may not render humanitarian assistance. The effect of this alteration is that, under Resolution 1289, UNAMSIL has no authority to deliver humanitarian assistance beyond the specified thoroughfares.

Undoubtedly, the ambiguous nature of UNAMSIL’s mandate adversely affected its implementation. It is not clear what circumstances would qualify as threats of physical violence.⁶⁴ Nor is the phrase responsibilities of the Government of Sierra Leone and ECOMOG free from ambiguities. Although there was some co-operation between ECOMOG, which had at all times been implementing enforcement action, and protecting U.N. personnel with same, and UNOMIL troops at this stage, Resolution 1270 clearly envisaged a different mandate and command regime for UNAMSIL. Thus, there was a greater need for the Security Council to elaborate what the responsibilities of ECOMOG would be under this Resolution.

Unlike analogous resolutions adopted by the Security Council with respect to conflicts occurring elsewhere, in which the U.N. has had to act in conjunction with other international organizations,⁶⁵ Resolution 1270 does not provide for joint command of troops. Therefore, upon deployment of UNAMSIL troops to Sierra Leone, the troops had to operate alongside the ECOMOG troops but under a separate command regime. Resolutions 1289⁶⁶ and 1299,⁶⁷ which revised and increased UNAMSIL’s mandate respectively, and Resolution 1317,⁶⁸ which

62 Resolution 1289, *supra* note 52, at 3, para. 10(b).

63 *Supra* note 39.

64 Eleven British paratroopers were taken hostage by a Sierra Leone rebel faction, the “West Side Boys,” between late August and early September, an occurrence that typifies an instance that could have fallen under this provision had the Resolution already been adopted.

65 *See, e.g.*, U.N. SCOR, 4011th mtg. at 5, U.N. Doc. S/RES.1244 (1999). Resolution 1244 provides for joint command between the Kosovo Forces (KFOR) and NATO, which the Resolution expressly requests in order to substantially participate in the mission.

66 Resolution 1289, *supra* note 53.

67 U.N. SCOR, 4145th mtg., U.N. Doc. S/RES.1299 (2000).

68 U.N. SCOR, 4193d mtg., U.N. Doc. S/RES.1317 (2000).

extended its terms, did not touch upon this crucial aspect of 'joint' military operation involving two different international organizations.

2. Need Resolution 1270 be more precise?

There exist several reasons for it to be expected that the U.N. would spell out, as clear as possible, the rules of engagement and the nature of the relationship of its mission with that of ECOWAS. Up until the adoption of Resolution 1270, there were little or no practical problems between ECOMOG troops and their U.N. counterparts, at least in terms of command and control of their respective missions. The reasons for this calm relationship between the two organizations are not far fetched.

In the first phase of its intervention in Sierra Leone, ECOWAS acted under its two Protocols—the Protocol on Non-Aggression and the Protocol on Mutual Defense and Assistance—and was constantly informing the U.N. of its activities under Article 54 of the U.N. Charter.⁶⁹ It enjoyed absolute discretion over the command of its troops and exerted total control over political decisions governing their activities. It assumed its own mandate, as it deemed fit in the circumstances, and superintended virtually all of the peace accords with conflicting parties. On the other hand, UNOMSIL was only an observer mission. It had no peacekeeping roles to perform, except, like UNOMIL did in Liberia, to monitor the implementation of the disarmament agreement and the overall military and security situation in Sierra Leone. In fact, the respective roles to be performed by ECOMOG and UNOMSIL were formally set out in a letter from the President of Sierra Leone to the Security Council⁷⁰ which somehow complemented the details of the relationship between the two missions in Resolution 1181. In fact, UNOMSIL was to be protected by ECOMOG troops.⁷¹

The above scenario was, to say the obvious, superficially conducive for a 'co-operation' to be assumed between the two organizations. In reality, however, the two organizations had little or nothing to actually co-operate about as far as their mandates were concerned. At this stage of their missions, the two organizations were performing widely divergent tasks that could not possibly collide. ECOWAS was mainly preoccupied with seeking ways to completely route out the rebels from Sierra Leone's political landscape and consolidate the reinstated Tejan Kabbah on the governance of the

⁶⁹ *The Fourth Report of the Secretary-General on the Situation in Sierra Leone*, U.N. Doc. S/1998.249 (1998). See also *slnews*, *supra* note 10.

⁷⁰ *Disarmament, Demobilization and Reintegration Programme*, U.N. Doc. S/1998.741 (1998).

⁷¹ Art. 1 of Decision C/AHSG/DEC.1/8/99 *Redefining the Mandate of ECOMOG in Sierra Leone* (on file with author).

country, by means and measures it decided on with unlimited freedom.⁷² UNOMSIL, on the other hand, was only monitoring the military and security situation in Sierra Leone with no real concern, whatsoever with the fate of the rebels, or indeed, the safety of the democratic government of Tejan Kabbah.⁷³

Towards the end of 1999 however, the relationship between UNOMSIL and ECOMOG turned sour on account of two immediate factors. The first was the introduction of UNAMSIL into the political equation of the Sierra Leone crisis, equipped with a “peacekeeping” mandate.⁷⁴ It must be pointed out that before the adoption of Resolution 1270, the U.N. entirely endorsed the main objective of ECOWAS, the reinstatement of the Kabbah government⁷⁵, and heartily welcomed “the return of that government” to Sierra Leone, notwithstanding that it was restored by the use of unauthorized force by ECOMOG.⁷⁶

Naturally, ECOWAS had expected that the new resolution would complement the enforcement mandate ECOMOG forces were already implementing.⁷⁷ The second reason was the adoption by ECOWAS member states of a new protocol for the regulation of its interventions within two months of adopting Resolution 1270.⁷⁸ This protocol, it must be emphasized, empowers ECOWAS to undertake enforcement action without seeking the authorization of the Security Council.⁷⁹

In these circumstances, tension soon began to grow between the two sides. On December 21, 2000, the Nigerian President, Olusegun Obasanjo, informed the U.N. Secretary-General, Kofi Annan, that Nigeria could not accept two peacekeeping forces in the same country, and that Nigeria would withdraw from the ECOMOG force by the end of February.⁸⁰ The Ghanaian and Guinean contingents also gave similar

72 For the objectives of ECOWAS in Sierra Leone, see the *Declaration of the Committee of Four on the Situation in Sierra Leone*, Abidjan, 29-30 July 1997 (on file with author).

73 This role would however be assumed later by UNAMSIL. See the Russian’s statement during the 4139th meeting of the Security Council, *supra* note 53, at 16.

74 (emphasis added).

75 Final Communiqué, *Meeting of Foreign Affairs Ministers of ECOWAS*, Conakry 26 June 1997 (on file with author).

76 Resolution 1156, *supra* note 18.

77 The ECOWAS Director of Legal Affairs, Mr. Roger Laloupo, disclosed this fact to the author during an interview in March 2000. The author had asked specifically what led to the discord between ECOMOG and UNAMSIL forces. Interview with Roger Laloupo, Director of Legal Affairs, ECOWAS, in Abuja, Nig., (Mar. 2000).

78 The Protocol on collective security was adopted in furtherance of Article 58 of the Revised Treaty, *supra* note 1.

79 See discussion *infra*.

80 See generally <http://www.sierra-leone.org/slnews0100.html>.

indications.⁸¹ President Obasanjo's position, it must be pointed out, was complementary to the hostility already going on between the UNAMSIL and ECOMOG commanders. Thus, it seems appropriate to submit that it was the introduction of UNAMSIL, without a detailed demarcation of responsibilities between it and ECOMOG troops despite their divergent mandates, and the adoption of a new legal framework by ECOWAS, that undermined the supposed cooperative relationship between the U.N. and ECOWAS in Sierra Leone.

The failure of the U.N. to take these developments on board at the implementation stage of Resolution 1270's mandate led to serious consequences, such as the virtual erosion of U.N. command and control in Sierra Leone, leading to the withdrawal of the Indian contingent from UNAMSIL. The Nigerian, Ghanaian and Guinean ECOMOG contingent also withdrew from Sierra Leone, a situation that prompted the U.N. to increase UNAMSIL from 6,000 to 11,000 troops.

The next issue to examine is the practical effect of ECOWAS' new protocol on the implementation of Resolution 1270. The focus here shall be on the adoption of a peacekeeping mandate by UNAMSIL and the lack of clarity as to the command regime between UNAMSIL and ECOMOG forces. An outline of relevant provisions of the new protocol is included, but before embarking on a detailed examination of them, it is worthwhile to say a few words about the circumstances in which ECOWAS agreed to return to Sierra Leone. It is the combined effects of these occurrences that set the stage for the events that led to the collapse of the UNAMSIL command.

C. ECOWAS' New Protocol: A Brief Outline of its Objectives

The legal regime upon which ECOWAS premised the first phase of its intervention in Sierra Leone consisted of the provisions of the Protocol on Non-Aggression⁸² and the Protocol on the Mutual Defense and Assistance (PMAD)⁸³ as well as the principles of general international law governing peacekeeping. The adoption of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security [hereinafter Protocol] by ECOWAS member states on December 10, 1999,⁸⁴ provided a catalyst to

81 Resolution 1289, *supra* note 52, at 2, para. 7, "takes note of the decision of the Governments of Nigeria, Guinea and Ghana to withdraw their remaining ECOMOG contingents from Sierra Leone, as reported in the letter to the Secretary-general of 23 December 1999."

82 Adopted on April 22 1978; *See Report of the Secretary-General on the Question of Liberia*, U.N. Doc. S/25402, at 6 (1993); *See also* M. Weller, *supra* note 2, at 18.

83 Adopted May 29, 1981. *See also* M. Weller, *supra* note 2, at 19-20.

84 The Protocol was adopted at Lomé, Togo, on December 10, 1999. Although it is yet to be ratified, it entered into force provisionally (Article 57 (1)) upon signature by all Heads of State and

the ensuing discord between the ECOMOG troops and their UNAMSIL counterparts. The Protocol not only recast the role of ECOWAS in the collective security of its hemisphere, it indeed controverted the very foundation upon which the initial co-operation between UNOMSIL and ECOMOG had been based: the legal framework of Chapter VIII of the U.N. Charter.⁸⁵

To be sure, Article 10(c) of the Protocol empowers ECOWAS to dispense with the Security Council authorization as sine qua non to its enforcement actions in West African conflicts.⁸⁶ In addition, Article 34 contains comprehensive provisions that will enable ECOWAS to retain the command of its troops and the control of political decisions affecting their operation in the field of deployment.⁸⁷

It must be emphasized at this juncture that ECOWAS had manifested unequivocally, right from the days of its intervention in Liberia, a predilection for being in charge of its troops in terms of command and control.⁸⁸ The fact that an outright conflict did not arise between the ECOMOG forces and those of the United Nations Observer Mission in Liberia, UNOMIL, owes more to the docile nature of the task the latter had to perform than it being a manifestation of cordiality between the two groups.⁸⁹

With Sierra Leone, the ECOWAS quest for an unquestionable authority over the command of its troops and the political control of decisions concerning implementation of their mandate became ever more pronounced. At the meeting of chiefs of defense staff of contributing States to ECOMOG, held in Abuja, Nigeria, on April 15, 1999,⁹⁰ the organization "reiterated that the general [c]ommand and [c]ontrol of the

Governments of ECOWAS. The author obtained a copy from ECOWAS Headquarters in Nigeria while on an internship between March 25 and April 5, 2000. See also 5 J. CONFLICT & SECURITY LAW 231 (2000). For a commentary on the Protocol, see Ademola Abass, *supra* note 4.

85 In a personal interview with the Director of Legal Affairs, the author was informed that it would not be in the best interest of ECOWAS to wait for the authorisation of the Security Council at the outbreak of violence in West Africa. Interview with Roger Laloupo, Director of Legal Affairs, ECOWAS, in Abuja, Nig. (Mar. 28, 2000).

86 This Article empowers the Mediation and Security Council (MSC) to, *inter alia*, "authorise all forms of intervention and decide particularly on the deployment of political and military missions." 5 J. CONFLICT & SECURITY LAW 231, 237 (2000).

87 *Id.* at 248.

88 *First Session of the Community Standing Mediation Committee*, Banjul, 1990, Article II (2) (on file with author).

89 For an analysis of the joint action in Liberia, see Funmi Olonisakin, *UN Co-operation with Regional Organisations in Peacekeeping: The Experience of ECOMOG and UNOMIL in Liberia*, 3 INT'L PEACEKEEPING 33 (1996).

90 *Final Communiqué* (on file with author).

participating troops are vested on the Force Commander [sic].” Thus, it is contended that Article 10, outlining the enormous powers the new Mediation and Security Council possesses, especially subsection (2)(c), which empowers it to authorize all forms of actions, and Article 34, which sets out the chain of command, culminated from ECOWAS practice since it launched its intervention in the Liberian conflicts.

In effect, through its Protocol, ECOWAS signaled a radical departure, not only from the legal regime under which its first experience of intervention was perfected, but also from the classical relationship that existed between its own collective security regime and that of the U.N. In regards to the latter, ECOWAS did deliberately decide to do away with the provisions of Article 53(1) of the U.N. Charter mandating regional arrangements to first seek the authorization of the Security Council before embarking on an enforcement action. In response to the concern raised by Professor Margaret Vogt, one of the resource persons consulted when drafting the Protocol, about the potential impact of Article 10(2)(c) on Article 53(1) of the U.N. Charter, the ECOWAS Director of Legal Affairs responded that:

The meeting [of experts] considered these observations made by Prof. Vogt and was of the view that whilst the sub region appreciates the importance of its obligations under the United Nations Charter, its recent experience has shown that the cost of waiting for the United Nations authorization Could be very high in terms of life and resources.⁹¹

Noteworthy in the above quoted statement is that, right from the conception of its new legal regime, ECOWAS had decided not to contingent its legal ability to intervene in conflicts occurring within the region to a prior authorization by the Security Council. Indeed, in the meeting preceding its return to Sierra Leone, as discussed below, ECOWAS made this new position quite obvious.

1. ECOWAS' Conditions for Participating in Sierra Leone (Phase Two)

Shortly after the deployment of UNAMSIL in Sierra Leone, the rebel movement in Sierra Leone captured 500 hundred U.N. personnel.⁹² This development impelled the U.N. to request the re-entry of the Nigerian contingent—which, in substance, means ECOWAS—into the Sierra Leone crisis.⁹³ At a meeting held in Abuja, the capital city of Nigeria, ECOWAS accepted the U.N. invitation, but then laid down three vital conditions that would govern its action if it were to return to Sierra Leone.⁹⁴

91 Passage taken from Ademola Abass, *supra* note 4, at 223-4.

92 U.N. Doc. S/PV.4139, *supra* note 53, at 9.

93 *Id.* at 5.

94 <http://www.ngrguardiannews.com/news2/nn785902.html> (last visited May 22, 2000).

Under its first condition, the alliance presented to the U.N. three different modalities for participating in any operation directed toward the resolution of the conflict.⁹⁵ The first of these was for ECOWAS to contribute its own troops as part of the UNAMSIL soldiers.⁹⁶ Under this arrangement, soldiers of the ECOWAS monitoring group, ECOMOG, would operate under the United Nations command. As for the second alternative, ECOMOG would operate under the Lomé Peace Accord as partners with the U.N. However, the alliance did not specify what the arrangement would be as per the regime of command and control of forces under this option. Nevertheless, since the situation under the second option would have obliged the two organizations to work side by side as they did before ECOWAS withdrew from Sierra Leone, it is to be assumed that each organization would have retained the command of its troops. As to the last option, ECOMOG troops would completely supplant the U.N., forcing the U.N. to revert to the observer role it played during the operation in Liberia, or during the UNOMSIL period in Sierra Leone.⁹⁷

Irrespective of which of these three options ECOWAS might elect, the organization stated explicitly through its Director of Information, Dr. Adrienne Diop, that “the West African component under ECOMOG in Sierra Leone will have its own command.”⁹⁸ It follows from this assertion that, whatever might emerge from the three options proposed by ECOWAS, it will not, in the final analysis, affect the fundamental question of who commands and controls ECOMOG forces that might be deployed. ECOWAS indeed made good on the threat not to subjugate its troops to the U.N. command when, following a rift between its commander and its U.N. counterpart, ECOMOG forces obstinately refused to take orders from the latter.

The second condition laid down by ECOWAS at the Abuja meeting was that no matter what relationship might exist between ECOWAS and U.N. troops, ECOWAS would implement its own mandate.⁹⁹ This, it declared in advance, would be enforcement action

95 The Security Council recognised these modalities during its 4139th meeting, *supra* note 53, at 11; See also BBC NEWS, *Nigeria Sets Intervention Terms* (May 10, 2000), at http://www.bbc.co.uk/hi/english/world/africa/newsid_743000/743219.stm.

96 <http://www.nrguardiannews.com/news2/nm785902.html> (last visited May 22, 2000).

97 See Madu Onuorah, Segun Ayeoyenikan and Tunji Oketunbi, *ECOWAS to Deploy 3,000 Troops to Sierra Leone*, <http://www.nrguardiannews.com>.

98 *Id.*

99 *Id.* In fact, the Vice-President of Nigeria, Atiku Abubakar, expressed the view, with respect to the first phase of the ECOWAS mission that “the command ought to have gone to Nigeria, because Nigeria - having been in Sierra Leone for quite some time, and quite familiar with the terrain - would have made a better job of it.” See generally <http://news.bbc.co.uk/hi/english/world/africa>.

contrary to a peacekeeping mandate UNAMSIL was already implementing.¹⁰⁰ The third and final condition given by ECOWAS was that the U.N. would meet all expenses incurred by the organization in the course of discharging its mandate.¹⁰¹

Several aspects of these conditions merit consideration. However, we shall only focus our attention on two vital issues: first, the proposal by ECOWAS to retain the command of troops; second, the proposal to implement the enforcement mandate as against the U.N. peacekeeping alternative. Two factors would appear to have motivated these conditions. Firstly, ECOWAS was clearly unwilling to return to a conflict where it would not be in charge of its own troops. The events leading to its withdrawal during the first phase of its mission apparently informed the decision to set this matter straight well in advance of its return to Sierra Leone. Secondly, ECOWAS had adopted a new protocol, following the withdrawal of its key contingents from Sierra Leone, and was ready to commence the regulation of its collective security activities in West Africa, in accordance with its own law.¹⁰²

Obviously, it is strategically more rewarding for ECOWAS to return to Sierra Leone under its own legal regime which not only frees up its actions from the Security Council authorization but also relieves it of the obligation to report such activities under Article 54 of the Charter. Article 52(3) of its Protocol only obligates ECOWAS to “inform the United Nations of any military intervention undertaken in pursuit of the objectives of this Mechanism.”¹⁰³ As this writer has partly argued elsewhere, the insertion of the phrases ‘military intervention’ and ‘undertaken’ in this article, as against the requirement of Article 54 of the U.N. Charter that regional arrangements report actions “undertaken”

100 *Id.*

101 *Id.*

102 In a private interview with the ECOWAS Director of Legal Affairs in April 2000, the Director confirmed to the author that the real motivation behind the Protocol was the need to free ECOWAS from the many restrictions of the U.N. Charter. He explained that while the Charter has imposed many obligations on regional organisations, it has not imposed similar obligations on the U.N. to intervene in crises. He cited the tragedy in Rwanda as an example in which the U.N. Security Council had not been willing to do much. Thus, he put a question to the author: ‘Should the circumstances of Rwanda erupt in an ECOWAS State in the future and the U.N. adopt the approach it did in Rwanda, what do you think ECOWAS should do?’. Interview with Roger Laloupo, Director of Legal Affairs, ECOWAS, in Abuja, Nig. (Apr. 2000); For an official version of ECOWAS’ justification for designing a treaty that dispenses with the U.N. authorisation, *see also Meeting of Experts on the Draft Protocol Relating to the Mechanism on Conflict Prevention, Management, Resolution, Peace-keeping and Security*, 17-19 Nov. 1999, Lomé, Togo, at 6 (on file with author).

103 *See Ademola Abass, supra* note 4, at 220.

or in “contemplation,” provides a leeway for ECOWAS to circumvent this obligation in two ways.

It is contended that the rationale for Article 54 of the U.N. Charter requiring regional arrangements to report not only actions already “undertaken” but also those in “contemplation” is to enable the Security Council to exercise some control on the measures a regional arrangement proposes to undertake. ECOWAS will almost always present the U.N. with a *fait accompli*, since under its Protocol, it is only obligated to report actions it has already taken.

Moreover, under its Protocol the actions ECOWAS is obligated to report to the U.N. are more tightly defined than the ones under Article 54. The actions to be reported under the Protocol must be of military nature, and must constitute an intervention. Thus, where ECOWAS decides to use overwhelming non-military force, as economic sanction or oil embargo—its two potent sanctions in Liberia and Sierra Leone—to compel obedience with its own decisions, it has no duty to report that to the U.N.¹⁰⁴ Additionally, where ECOWAS applies a disproportionate military force within a peacekeeping operation, such that will normally bring the action within enforcement action under the U.N. Charter, it is not obligated to report to the U.N., for such actions are not ‘military interventions’ as such. At most, such usage of preponderant military force in the context of a peacekeeping operation might only impugn the legality of the action under the law of peacekeeping and compromise the integrity of the mandate.

Article 10(2)(c) of the Protocol empowers the Mediation and Security Council (MSC) to “authorize all forms of intervention and

¹⁰⁴ It is a common view among legal scholars that since states may, as a matter of course, impose economic sanctions individually, they may, as part of their privileges as states, pull such sanctions together and impose them collectively without recourse to the U.N. Security Council’s authorisation under Article 53(1). The crux of this contention is that economic sanctions do not constitute enforcement action in the language of the U.N. Charter. Thus, the enforcement action referred to by that Article must be assumed to be military action. This argument is faulty. There is a remarkable difference between a single state imposing an economic sanction against another state and a collection of states doing so. Where a collection of states impose sanction with the desire to hurt the target state and forcefully induce or coerce it to comply with certain obligations, there is no logical reason why that should not constitute enforcement action. Furthermore, in the light of the prohibition of use of force by Article 2(4) of the U.N. Charter, very few states find attraction in military force. Indeed, superpowers like the United States may actually cause as much harm, even if not as drastic, through economic sanctions rather than through military action, better still without legal repercussions under the U.N. Charter. Since such states are encouraged by the Charter’s non-penalisation of economic sanctions, it is predicted that the consequences for the worst future violations of Article 2(4) may consist of economic sanctions directed at undermining the political integrity of these states.

decide particularly on the deployment of political missions.”¹⁰⁵ The Protocol further provides for a Commander¹⁰⁶ and a Special Representative.¹⁰⁷ The whole structure of this Protocol is to make ECOWAS exert total control over whatever troops it may deploy, and to retain the command of its mission. This indeed is the underlying factor for the adoption of the Protocol.

The next question that arises therefore is, despite a background of distrust and crisis between UNAMSIL and ECOWAS in the first phase of the intervention, and the adoption of the ECOWAS Protocol, why did the U.N. not address the situation in the resolutions emerging after 1270? How did this contribute to the problem experienced by the UNAMSIL command in the second phase?

2. The Crisis of Command and Control in Sierra Leone: UNAMSIL vs. ECOMOG

At the close of the Abuja meeting, ECOWAS agreed to contribute troops to UNAMSIL.¹⁰⁸ This was an endorsement of its first condition, having jettisoned the idea of operating under the Lomé Peace Accord, which had been frequently breached by the rebels, or supplanting the U.N. altogether, a proposal that was, in the real sense of the matter, not a very realistic one. In effect, this means that ECOWAS agreed to become part of UNAMSIL and subordinate its troops to the UNAMSIL command. Yet, despite ECOWAS' adoption of the most credible and pragmatic of its three proposals under the circumstances, the participation of its troops in UNAMSIL was marked by mutual distrust between the two sides from the very start.

While the issues that catalyzed the rift between the UNAMSIL commander, Major-General Vajah Jetley and his ECOMOG counterpart, Major-General Victor Malu, were traceable to certain reports allegedly emanating from the former, it is believed that these issues only masked a deep-seated hostility between the two parties, dating back to the first phase of their mission.¹⁰⁹ A few months after the Nigerian contingent returned to Sierra Leone and formally joined forces with UNAMSIL, the ECOMOG commander, Major-General Malu, declared that “We [Nigerians] are not going to serve under the man [Jetley] in whatever

¹⁰⁵ See Ademola Abass, *supra* note 4, at 220.

¹⁰⁶ Protocol, *supra* note 4, Article 33.

¹⁰⁷ Protocol, *supra* note 4, Article 34(1).

¹⁰⁸ <http://www.ngrguardiannews.com>.

¹⁰⁹ See Jetley's Report on the Crisis in Sierra Leone (saying that “When General Kpamber went to the U.N. HQ., New York, he was very disappointed to learn that he was not going to be the Force Commander and that Nigeria would have three battalions out of this they had to concede one battalion to the Guineans.”) <http://www.Siera-Leone.org/jetley>.

circumstances. And if he is not removed he will not get our cooperation, and we are the largest contingent in the force.”¹¹⁰ In a more telling episode, General Malu had later alleged that General Jetley’s problem with the Nigerian contingent arose from the latter’s strident opposition to what they perceived as Jetley’s lack of consultation and the “dominance of Indian Generals” at UNAMSIL headquarters. In addition, Malu asserted that the Nigerian contingent stressed to the UNAMSIL commander, at a meeting attended by the U.N. Secretary-General, that “in a multinational force you do not exert the kind of control you apply over your national army.”¹¹¹

Whatever might be the real cause of the rift in the leadership of UNAMSIL may as well remain mysterious for our purpose. What is not controverted, however, is that there has been series of problems in the command of troops and the control of their mission. In an interview with a BBC correspondent concerning the withdrawal of the Indian UNAMSIL contingent,¹¹² the spokesman for the U.N. Secretary-General, Fred Eckhard, admitted, “I can’t exclude that the decision had something to do with the leadership problems that we’ve had with this mission.”¹¹³ The U.N. Secretary-General himself, Kofi Annan, had noted in an assessment report that there were “serious shortfalls in capability encountered by UNAMSIL in the recent past with regard to the command and control.”¹¹⁴ In a more categorical reference to the looming crisis, Mr. Fowler, the Canadian delegate to the Security Council’s 4139th meeting, after advocating the creation of “a strong, united and cohesive force” in Sierra Leone, noted that the proposed force “should take the form of an expanded UNAMSIL and should respect the fundamental military principle of unity of command, in this case the command of Major-General Jetley.”¹¹⁵

The reference to “unity of command” in that quoted statement perhaps answers the question why Resolution 1270 did not specify the

110 Sierra Leone Web, News Archives, (Sept. 10, 2000), at <http://www.sierra-leone.org/slnews0900.html>.

111 *Id.* (emphasis added).

112 On the Indians’ withdrawal from UNAMSIL, see the transcript of the UNAMSIL Press Briefing. *Press Briefing, United Nations: Daily Press Briefing of Office of Spokesman for Secretary-General*, available at http://www.un.org/News/briefings/docs/2000/20000922_db092200.doc.html (last visited Sept. 22, 2000).

113 *Press Briefing, United Nations: Daily Press Briefing of Office of Spokesman for Secretary-General*, available at http://www.un.org/News/briefings/docs/2000/20000922_db092200.doc.html (last visited Sept. 21, 2000).

114 Sierra Leone Web, News Archives, (Sept. 20, 2000), at <http://www.sierraleone.org/slnews0900.html>.

115 S/PV.4139, *supra* note 53, at 8.

command regime envisaged for an expanded UNAMSIL in Resolution 1289. Clearly, the Security Council had expected (or assumed) that insofar as ECOMOG forces would form part of UNAMSIL, a 'unified' command structure would become applicable. It seems plausible to observe that leaving such an inference to be drawn by ECOMOG forces seemed ill advised under the circumstances. With this unclear approach in Resolution 1270, the Security Council would appear to have charted a course of 'joint' action that, for all intent and purposes, was bound to founder during implementation.

4. Factors that Militated Against UNAMSIL Command in Sierra Leone

The difficulty experienced by UNAMSIL, in the area of command and control of its mission, would appear to have stemmed from two competing scenarios. On the one hand, the U.N. would appear to be reluctant to discountenance the predilection of the largest provider of ECOMOG, Nigeria, which would rather have things done in its own way.¹¹⁶ To antagonize the Nigerians would be to risk another exit of their ECOMOG contingent (and most probably) the Guineans and the Ghanaians contingents as well, from Sierra Leone.

On the other hand, the U.N. did not want to be seen as succumbing to the pressure mounted by the Nigerians to substitute the UNAMSIL commander Jetley with a Nigerian, an option that must be expected to have attracted unpleasant consequences under the circumstances. The current leader of UNAMSIL, Oluyemi Adeniji, is a Nigerian, and so is the deputy force commander, Brigadier General Mohammed who is, at the time of this writing, was acting in the stead of the departed Indian commander, General Jetley. To have consented to a substitution of Major General Jetley with yet another Nigerian would be to completely subordinate the UNAMSIL force to ECOWAS command, and, thus, subserve the collective will of the international community in Sierra Leone to the dictates of a regional hegemon. In short, such a decision would have made the UNAMSIL mission a regional action with international imprimatur.

The conflict between ECOWAS and the U.N. in the area of command and control succinctly exemplify the complications that characterize joint peacekeeping operations by the U.N. and regional organizations. It is to be expected that contributing countries, which are in charge of the command of troops, would almost certainly want to be in control of political decisions, especially those affecting their mandate. This problem is likely to feature more strongly in missions dominated by

¹¹⁶ The Nigerians clearly wanted an enforcement action and were first prepared to infer such a mandate from Resolution 1270. However, their inability to hold UNAMSIL to this sort of action led in part to their frustration with the UNAMSIL command.

states bearing the most of the human and material cost of a crisis.¹¹⁷ It is in this context that General Malu's reference to the "dominance of Indian Generals" is quiet revealing.

In fact, in the U.N. practice, precedents indicate that there is a strong link between the command of troops and the control of political decisions relating to their actions. Nowhere is this linkage better manifested than perhaps in the 1991 Operation Desert Storm.¹¹⁸ The allied states, having the command of troops, so marginalized other participating states, and the U.N. itself, in controlling the action, that the U.N. Secretary-General of the day, Javier Perez de Cuellar, lamented that all "we know about the war" is "what we hear from the three members of the Security Council which are involved—Britain, France and the United States—which every two or three days report to the Council, after the actions have taken place. The Council, which has authorized all this, is informed only after the military actions have taken place."¹¹⁹

Concerning Sierra Leone, the problems of command and control between the UNAMSIL and ECOWAS was worsened by many factors. The prospect of this problem abating in future joint operations between the U.N. and ECOWAS, or other regional organizations for that matter, is indeed very dim. In many respects, Resolution 1270, which authorized the UNAMSIL mission, was, in effect, a dead horse by the time it came into force.¹²⁰ Although the Resolution came into existence before ECOWAS adopted its new protocol, its implementation by UNAMSIL should have, in the very least, addressed the changes that have occurred within ECOWAS' collective security framework. This did not happen. Hence vital issues, such as command and control and divergent mandate, to state the obvious, were left hanging precariously.

It would have been thought that Resolution 1270 and those that followed would take cognizance of the circumstances before their adoption. This would include recognizing the particular position of ECOWAS and its predilections: it was under its own command and implementing its own mandate. Paying particular attention to these issues would have, in the least, impressed it upon the Security Council the

117 It is generally acknowledged that Nigeria bore the substantial part of the human and materials cost of ECOWAS mission in Liberia between 1989 and 1997 and Sierra Leone between 1997 and 1999 when the U.N. decided to take over the peacekeeping mission itself. See BBC NEWS, *Nigeria Sets Intervention Terms, May 10, 2000*, available at <http://news.bbc.co.uk/1/hi/english/world/africa/newsid>

118 See John Quigley, *supra* note 47, at 1.

119 Leonard Doyle, *Crisis in the Gulf: U.N. 'Has No Role in Running War'* INDEPENDENT (London), Feb. 11, 1991, at 2 (interview with Pérez de Cuellar).

120 See statements of the representatives of Malaysia and Bangladesh at the Security Council 4139th meeting, *supra* notes 59, 60.

urgent need to spell out details about command and control, especially since UNAMSIL tasks were to be radically different from those performed by UNOMSIL. In contrast, during the Liberian crisis, Resolution 866 had noted that the deployment of UNOMIL in Liberia “would be the first mission undertaken by the United Nations in cooperation with a peace-keeping mission already set up by another organizations.”¹²¹ Remarkably, the then Secretary-General of the U.N. had issued a report which detailed the respective roles to be performed by UNOMIL and ECOMOG.¹²² This despite the fact that UNOMIL was only an observer mission with no real possibility of running into any problems with ECOWAS which had been in Liberia three years before the U.N. moved in. A similar step was particularly more desirable in Sierra Leone where UNAMSIL had a peacekeeping mandate.

Furthermore, Resolution 1270 was all but clear in its few specifications, especially as to the distribution of roles between ECOWAS, which naturally assumed the right to take decisions regarding Sierra Leone,¹²³ and the U.N., which arrived late on the scene and consistently shunned the robust mandate favored by ECOWAS.¹²⁴ Unfortunately, the Security Council missed an opportunity to arrest the problem when Resolution 1289, which revised Resolution 1270, failed to address this perennial problem. Coming, as it did, in the aftermath of the withdrawal of three ECOMOG contingents from Sierra Leone, and after the declaration by Nigeria that it could not accept two peacekeeping forces in the same country, the Security Council had reasons to anticipate the future of a joint operation between UNAMSIL and ECOMOG. Thus, it was more crucial at this point for the Security Council to use its subsequent resolutions to put these matters straight. This was not to be.

In sharp contrast to the Sierra Leone scenario, Resolution 1244 concerning Kosovo was by far more succinct as to the relationship between the Kosovo Forces (KFOR), which was to operate with the full participation of the U.N. and NATO member states, and Operation Allied Force, executed only by the latter.¹²⁵ In the Security Council debate leading to the adoption of Resolution 1244, Russia and China

121 Resolution 866, *supra* note 3, at 1.

122 *Report of the Secretary General on Liberia*, U.N. Doc. S/26422, at 4 (1993).

123 For instance, in responding to General Jetley’s report on Nigeria’s leadership of UNAMSIL, the Nigerian president charged: “When did he (Jetley) get there? How far has he gone? What has he achieved?” Sierra Leone Web, News Archives, (Sept. 17, 2000), at <http://www.sierra-leone.org/slnews0900.html>.

124 Mark Tran and Claudia McElroy, *U.N. Failure in Sierra Leone Feeds Recriminations: Foreigners Await Rescuers as Nigeria Sends Troops to Reverse Coup*, *GUARDIAN* (London), May 29, 1997, at 15.

125 Resolution 1244, *supra* note 64.

maintained that the KFOR should not be seen as an ex post ratification of NATO's military action against FRY.¹²⁶ In recognition of a partnership between the U.N. and NATO in the new arrangement, the resolution provides for a joint command regime.¹²⁷ In practical terms, this implies that the line of command and control pursued by NATO during its intervention in Kosovo, and the regime of mandate therein, ceased upon the entering into force of Resolution 1244. This, apart from the fact that the major contributing states to KFOR, the United Kingdom, France and US, are all permanent members of the Security Council, and so is Russia. These states could expectedly resolve any crisis respecting command and control within themselves.

An indication made by Russia and China during the Council's 4011th meeting, or a categorical specification of the command regime in Resolution 1270, was highly desirable in the Sierra Leone situation. Although the Canadian representative referred to the need of all forces to respect UNAMSIL's unified command, this was not adequate due to the present circumstances. The need for a more vigorous demarcation of command structure was all the more compelling in the light of the perceived excessive use of force by ECOMOG troops against one of the parties to the Sierra Leone conflict. Unarguably, ECOWAS had used force markedly disproportionate to the type associated with peacekeeping operations during the first phase of the intervention. It is through such a use of force that it had reinstated the government of Tejan Kabbah in 1997. While the ends of that unauthorized use of force could be regarded as a laudable achievement in itself, this cannot obviate the fact that the means for accomplishing it was in total disregard of both the U.N. Charter and customary principles of peacekeeping.

Thus, whether ECOWAS viewed the first phase of its intervention in Sierra Leone as a peacekeeping operation per se, or an enforcement action, a huge question mark hangs over the legality of its use of force to restore Kabbah. Regional arrangements may not undertake enforcement action without the authorization of the Security Council.¹²⁸ When such arrangements are operating in a peacekeeping version, the use of force is forbidden except in self-defense. At the material time, ECOWAS' collective security activities were still governed by its previous protocols and customary rules of peacekeeping. Under both regimes, it observed its obligations under the Chapter VIII of the U.N. Charter, and its action during those times would be measured in accordance with those laws.

126 See the views of Russia and China in the debate leading to the adoption of Resolution 1244, in the 4011th of the Security Council, 10 June 1999.

127 Resolution 1244, *supra* note 64, at 6.

128 U.N. Charter art. 53, para. 1.

In these circumstances, the sub-regional alliance could not be regarded as having pursued a pure peacekeeping mandate during the first phase of its intervention, for it had compromised its impartiality. If there was any doubt about the real intention of ECOWAS as to how it wanted to pursue the resolution of the Sierra Leone crisis in the second phase, it cleared this when it openly endorsed an enforcement operation during the Abuja meeting. This could only mean one thing then: that from the start of the second phase of its intervention in Sierra Leone, the vision of ECOWAS greatly differed from that of the U.N.

D. How may the U.N. Tackle the Problem of Command and Control in Joint Operations?

It is to be expected that the problem of command of troops and the political control of their action would be more pervasive in situations where the largest providing states in a joint operation are not in command of the U.N. mission in a region where they have major influence.¹²⁹ One possible way of minimizing this problem would be for the U.N. to be more precise in its resolutions, about its relationship with a regional arrangement already mediating in a conflict prior to its involvement.

To this end, adopting Resolution 1270 under Chapter VIII, as it did under Resolution 1132, would have put ECOMOG squarely under the U.N.'s direct authority. Legally speaking though, the absence of such direct subordination of ECOWAS to the U.N. command regime by means of a resolution should not really matter, since, in any case, Article 54 of the U.N. Charter obligates regional arrangements to report all activities they undertake or contemplate.

However, by the time ECOWAS accepted to return to Sierra Leone, a huge cloud already hung over its readiness and willingness to abide by its obligation under Article 54, or any of the provisions of Chapter VIII of the U.N. Charter for that matter. Upon adopting a new protocol, ECOWAS charted an independent regime of collective security and arrogated to itself all the legal apparatuses of that institution.

Aside from a possible clarification of relationship by means of its enabling resolutions, the U.N. could have reduced the potential areas of collision between its mission and that of ECOWAS in yet another way. Where a regional arrangement stipulates a mandate different from that pursued by the U.N., as a condition for its participation in an operation, it is suggested that the U.N. should not encourage or entertain, as the case may be, the participation of such an organization. This is especially necessary where troops from the member states of the organizations are expected to form part of the U.N. mission. However,

¹²⁹ Tim Butcher & George Jones, *British Troops Face UN Threat To Shoot*, DAILY TELEGRAPH (London), May 16, 2000, at 1.

such a decision should not preclude the participation of member states of that organization as may be interested in joining the U.N. mission in their own right.

Had the U.N. rejected ECOWAS' proposal to retain the command of troops contributed to UNAMSIL by its member states as a condition for further participation in Sierra Leone, two major problems would have been averted. Firstly, there would not have been operational incoherence, which constantly resulted from ECOWAS implementing a robust mandate as against the U.N.'s peacekeeping one. Divergent mandates would necessarily elicit different implementation methods and this, inevitably, will adversely affect the coherence of the command of troops. Secondly, had there been a unified mandate, the mission in Sierra Leone would have been implemented solely in accordance with the principles of the U.N. Charter and general international law governing collective security. In the instant case, the decisions, mandate and operations of ECOWAS, concerning the second phase of its intervention in the Sierra Leone crisis, entirely originated from its Protocol.

Clear and precise mandates will undoubtedly help in securing a more concerted effort early in the mission's life. Conversely, multiple mandates will widen areas of tensions between the U.N. and other regional arrangements, on the one hand, and between all states participating in the operation, on the other. For instance, when the British first deployed to Sierra Leone they consistently maintained that they were in that country only to rescue their and other Commonwealth nationals trapped therein.¹³⁰ Soon thereafter other reasons began to emerge.¹³¹ However, the British clearly indicated that they would always remain under their own command.¹³²

Although there might be, as it was in Sierra Leone, a dovetailing of efforts at a later stage in the course of an operation with multiple mandates, it is potentially dangerous for the U.N. to permit member states to implement separate mandates alongside its own operation in the same conflict. At the very least, this development could warrant negative implications. It could discourage other states from joining the mission, and for those already participating, it might hasten a decision to withdraw. A clear example is the persistent complaint by the UNAMSIL Jordanian contingent that unless NATO member states join UNAMSIL,

¹³⁰ See the statement of Eldon, the U.K. delegate to the 4139th meeting of the Security Council, *supra* note 53, at 7.

¹³¹ *Id.*

¹³² Kim Sengupta, Colin Brown, & Alex Duval Smith, *Sierra Leone: Britain Set To Give Arms Aid*, INDEPENDENT (London), May 16, 2000, at 1, (reporting that "Secretary of State for Defence, Geoff Hoon, assured the Commons yesterday that British Forces would not be drawn into the escalating war").

they too would withdraw.¹³³ Britain is a NATO member state, but by implementing its own mandate and retaining the command of its troops and control of its mission in Sierra Leone, it operated outside the purview of the UNAMSIL. Certainly, the problem of states implementing individual mandates alongside U.N.'s presence is capable of further fragmenting whatever cohesion seems achievable in the interaction of U.N.-regional arrangements under the auspices of ambiguous resolutions like 1270.

To conclude this part, it is submitted that vague, unclear and divergent mandates are a recipe for operational chaos in the joint implementation of collective security measures. As Sierra Leone demonstrates the effects of lack of coherence, non-clarification of relationship between the U.N. and ECOWAS and divergent mandates are not only felt in the area of command and control, they have deeper impact on the overall well-being of the mission.

Having considered the difficulties experienced by the UNAMSIL in the areas of command and control, the nature of UNAMSIL mandate and its relationship with ECOMOG in the joint implementation of UNAMSIL mandate, we now turn to the effect of ECOWAS' new protocol on the customary rules of peacekeeping.

PART TWO

II. The Effects of ECOWAS' New Protocol on the 'Law' of Peacekeeping

Under its new protocol, ECOWAS no longer requires the consent of any of its member states in order to intervene in their conflicts, whether intra or inter-state. Article 27 of the Protocol dispenses with the rule requiring peacekeeping states to seek and obtain the consent of a concerned state and other parties to a conflict before they could intervene. This article states that "the Mechanism shall be applied according to any of the following procedures."¹³⁴ The procedures empower the Executive Secretary of ECOWAS to "inform Member States of the Mediation and Security Council, and in consultation with the Chairman, take all necessary and urgent measures."¹³⁵

Furthermore, Article 27(b) provides that the Mediation and Security Council (MSC) "shall consider several options and decide on the most appropriate course of action to take in terms of intervention."¹³⁶ Nothing in the entire provision of this Article makes reference to an

133 Sierra Leone Web, News Archives, (Sept. 21, 2000), at <http://www.sierra-leone.org/slnews0900.html>.

134 Protocol, *supra* note 4, at 245.

135 *Id.*

136 *Id.*

invitation by the Host State or any other conflicting party as a *sine qua non* for ECOWAS intervention. Significant too is the first part of the latter provision that the MSC shall consider several options. This could very well be interpreted to mean that the MSC is not bound on a particular course of action, for instance, such that the affected state may particularly favor. Apart from that, it appears that the MSC is the main originator of the process of intervention in contradistinction from traditional peacekeeping where the government of the Host State is expected to ask for or accept an offer of assistance from outsiders.

The legal ramification of this provision raises fundamental questions about regional interventions and the law of peacekeeping. *Prima facie*, this provision transforms ECOWAS into a super organization which is not only competent to intervene in the affairs of member states, but is entirely at liberty to decide on when to intervene, how to intervene, and in which crises it will intervene.

In contrast to Article 27 of the ECOWAS Protocol, Article 16 of the PMAD, under which ECOWAS intervention in Sierra Leone (phase one) was conducted, codified the relatively stable customary rule on invitation or consent by Host State. That provision states that “when an external armed threat or aggression is directed against a Member State of the Community, the Head of State of the country shall send a written request for assistance to the current Chairman of the Authority of ECOWAS, with copies to other Members. This request shall mean that the Authority is duly notified and that the AAFC are placed under a state of emergency. The Authority shall decide in accordance with the emergency procedure as stipulated in Article 6.”¹³⁷

Although controversy has arisen about whether the invitation sent by Samuel Doe at the outbreak of the Liberian crisis, or that sent by Tejan Kabbah to ECOWAS from Guinea, met the formal requirement of this article,¹³⁸ it has been observed that the institutional structures of regional arrangements are not meant to be exclusive.¹³⁹ Hence, mere non-compliance with the strict formality of a procedure, without more, should not be regarded as invalidating the process in itself, provided, de

137 PMAD, *supra* note 9.

138 C. GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE*, 213 (Oxford Univ. Press) (2000) (noting that “it is clear that the normal decision-making processes of ECOWAS were not followed”); Kofi Oteng Kufor, *The Legality of the Intervention in the Liberian Civil War by the Economic Community of West African States*, 5 *RADIC* 525, 538 (1993) (arguing particularly that “[t]he decision making process was subverted”).

139 Georg Nolte, *Restoring Peace by Regional Action*, 23 *ZAÖRV* 53/3 602, 615 (1993) (Arguing that “[e]xisting precedents show that the institutional aspects of collective security arrangements are normally not meant to be exclusive”).

minimis, there is conformity with the fundamental element of the requirement: that there must be an invitation.

For example, the Arab League operated the Arab Deterrent Force in Lebanon between 1976 and 1983¹⁴⁰ without complying with the institutional structure provided for by the Treaty of Joint Defense and Economic Cooperation. Also, the U.N. has always implemented the provisions of Chapter VII of its Charter without complying with the procedural mechanism of Article 43.¹⁴¹ It would be incredulous to argue that such U.N. actions against North Korea and Iraq were invalid simply because the actions were not implemented by the troops that were contemplated by Article 43 of the U.N. Charter. Such defects, if submitted, are of form not of substance.

However, legally speaking, a distinction is to be made between a mere non-compliance with the formality of a normative rule and the absence of the constitutive elements of an action when considering its validity in international law. In the second phase of the Sierra Leone crisis, ECOWAS applied a provision that did not require the consent of conflicting parties before its intervention. The question that arises thus is, in the aftermath of the ECOWAS Protocol, wither the rule of peacekeeping on host state consent?

A. Did ECOWAS' new Protocol Terminate the Right of Host State to Invite Intervention Under International Law?

It is trite that there is no specific provision of the U.N. Charter that regulates peacekeeping operations whether undertaken by the U.N. or by regional arrangements. Whereas the legal rules governing enforcement action are to be found in the U.N. Charter, especially Chapter VII and Chapter VIII, the 'law' of peacekeeping has evolved mainly through practice by the U.N., individual states and regional arrangements.

Through practice, certain constant and pervasive features of peacekeeping operations have come to be regarded as constituting the 'law' on peacekeeping. These include the principle that peacekeeping operations cannot be used to affect the outcome of a conflict. This principle is guaranteed by the requirement that peacekeepers must

140 For an analysis of the role played by Arab League in the Middle East, see I. O. Pogany, *The Arab League and Regional Peacekeeping*, 34 NILR 54, 54-74 (1987) (discussing the Arab Deterrent Force in Lebanon).

141 The International Court of Justice, in the *Certain Expenses Case*, observed that such forces have their legal basis in the U.N. Charter since they were designed "for the fulfilment of one of the stated purpose of the United Nations." The Court held further that this function created "the presumption that such action is not ultra vires the Organization." *Certain Expenses of the United Nations*, 1962 I.C.J. 151 at 167-168.

remain, at all times, neutral. They may not intervene in a crisis, except with the invitation of parties to the crisis,¹⁴² or use force except in self-defense.¹⁴³ They must remain permanently impartial throughout the duration of an operation.¹⁴⁴ Although there have been instances when some or all of these principles have been compromised by peacekeepers, there is yet a strong consensus among writers and states that these principles constitute the very foundation of peacekeeping operations.

Although it is true that consent of an affected state and other parties to a conflict must be sought and obtained by peacekeeping states before intervening in conflicts, there is no requirement that this consent must be express or, at all times, prior, to intervention.¹⁴⁵ And while it is reasonable to expect that consent will precede intervention, state practice is generally uncertain in this regard, and as such, we cannot rule out further developments. While a prior invitation is practically desirable and reduces the risk of abuses and meddlesomeness, this has not been possible in some circumstances, especially where there are several parties to a conflict. Therefore, in certain circumstances, the existence of consent may be inferred and could be obtained after the commencement of intervention.

In Liberia, the Charles Taylor-led National Patriotic Movement of Liberia (NPFL) did not give its consent expressly before ECOWAS deployed its monitoring group (ECOMOG) to Liberia and, in fact, violently opposed its presence at the early stages. Nevertheless, it subsequently tolerated ECOWAS, participated in the Yamoussoukro Accord IV and agreed to a cease-fire among all the parties. This suggests that, even though the consent of a party to a conflict might not have been

142 Dag Hammarskjöld, the U.N. Secretary-General under whose leadership the idea of peacekeeping operations was hatched, once pointed out to the Advisory Committee of the U.N. that "the very basis and starting point of this effort (UNEP) was the 'recognition of the General Assembly of the unlimited sovereign rights of Egypt'." See FRYE, A. A UNITED NATIONS FORCE 15 (date unknown).

143 *But see* Dan Ciobanu, *The Power Of The Security Council To Organize Peace-Keeping Operations, United Nations Peace-Keeping: LEGAL ESSAYS* 19, (A. Cassese, ed., Alphen Aan Den Rijn: Sijhoff & Noordhoff 1978) (arguing that "the use of force is not entirely excluded from the carrying out of the peace-keeping operations").

144 *See* LARRY L FABIAN, *SOLDIERS WITHOUT ENEMIES: PREPARING THE UNITED NATIONS FOR PEACEKEEPING*, 16 (Brookings Institution 1971); D. WAINHOUSE, *INTERNATIONAL PEACEKEEPING AT THE CROSSROADS*, 1 (Johns Hopkins Univ. Press 1973); I. RIKHYE et al, *THE THIN BLUE LINE: INTERNATIONAL PEACEKEEPING AND ITS FUTURE*, 10 (Yale Univ. Press 1974); I. RIKHYE, *THE THEORY AND PRACTICE OF PEACEKEEPING*, 57 (St. Martin's Press 1984) cited in Pogany, *supra* note 139, at 57, note 19.

145 *See for instance* Pogany, *supra* note 139, at 57, arguing that "in terms of international law, at least some of these requirements may be unnecessarily restrictive."

obtained before deployment, it is possible to gain this consent at a later stage by necessary implication.

Conversely, an expressly or implicitly given consent may be withdrawn by overt means or by the conduct of one or all the parties to the disputes. Thus, when Charles Taylor eventually turned its fire on ECOMOG troops, and later, on the UNOMIL, this clearly indicated a withdrawal of the implicit consent given by the NPFL by necessary implication. On the contrary, when confronted with the possible invasion of his country by Israel, President Abdel Nasser of Egypt expressly withdrew his consent to the deployment of U.N. troops in the Sinai area.¹⁴⁶

However, the scenario in Sierra Leone is much more complex, and cannot be easily regarded as a case of implicit consent as the one in Liberia. The truth of the matter is that ECOWAS did not require the consent of the government of Sierra Leone, or that of any of the other conflictual parties, when it decided to return to Sierra Leone. The explicit decision, at the Abuja meeting, to undertake enforcement action overrode any consideration of consent or invitation. This is because, when an operation is declared to be an enforcement action, all the principles of peacekeeping take their leave.

Insofar as Sierra Leone ratified the new protocol, notwithstanding that it purportedly terminates member states' right to formally invite ECOWAS to come into their conflict, this new obligation takes precedence over any customary rule in that respect. Article 26 of the treaty lists five parties who may initiate an intervention upon the outbreak of a conflict. These are: the Authority of Heads of State and Government of ECOWAS, the MSC, a member state, the Executive Secretary of ECOWAS, and the Organization of African Unity or the United Nations.¹⁴⁷ It is interesting to note that the only specification in that article that provides that a member state may request an intervention does not state that such a member state must be the one on whose territory the conflict is occurring. Had that been the intention of ECOWAS, it would have undoubtedly said so in the same vein it stated it under Article 16 of PMAD. It is contended here that the use of the phrase 'a member state' in the new protocol as against 'that country' in PMAD is in line with the overall nature of the treaty. ECOWAS deliberately frees its passage of intervention in a situation where the Member State, being a subject of a conflict refuses to invite an intervention. It means any other member State is not precluded from requesting an intervention.

Thus, it is not implausible to conclude that ECOWAS member states have conceded to ECOWAS the sole authority to decide for them

146 W. DURCH, *THE EVOLUTION OF UN PEACEKEEPING: CASE STUDIES AND COMPARATIVE ANALYSIS*, 124 (St. Martin's Press 1993).

147 Protocol, *supra* note 4, at 245.

when to intervene in their intra and inter state conflicts and the means by which it will intervene.

It is submitted further that it is not an aberration in international law for states to bind themselves to this kind of obligation, notwithstanding the apparent effect such might have on their sovereignty. Legal writers of note have expressed the opinion that “the right of intervention may arise as a result of a treaty by which one state, expressly or by implication, consents to intervention for certain purposes by another state.”¹⁴⁸ Sierra Leone did, not only agree under the new Protocol that ECOWAS could come into its territory in the manner already discussed, it also agreed to pre-determined occasions that might lead to such interventions. These are the circumstances enumerated in Article 25 of the Protocol as constituting the *casu foederis* for ECOWAS action.¹⁴⁹ Thus, by agreeing in advance that ECOWAS may intervene in certain times in specific crises affecting member states, these states waive their ‘customary’ right to specifically invite ECOWAS intervention in terms of crises.

It is contended that no rule of international law governing peacekeeping operations forbids the coming together of member states of an international organization for the purpose of giving to the organization in advance, and collectively, a privilege or right they are legally able to give to it individually and when the need arises.

It seems entirely credible that the provision of Article 27, which relates to the procedural application of the Protocol, culminated from ECOWAS’ previous practice in Liberia and its experience in the first phase of the Sierra Leone crisis. Thus, it is a perfect instance in which treaty provisions developed from customary international law. The constant practice by ECOWAS intervening in the affairs of member states, with or without clear invitation, would appear to have matured into a situation in which its position as having the *de facto* authority to intervene in West African crises is now a *fait accompli*. The evolution of customs into treaty law is an affirmation of Anthony D’Amato’s observation that “if treaties generate customary rules when they come into force, treaties do not “freeze” such customary rules forever. Rather

148 OPPENHEIM, INTERNATIONAL LAW 446 (9th ed. 1992).

149 This article provides that the Protocol shall apply “(a) in cases of aggression or conflict in any Member State or threat thereof; (b) In case of conflict between two or several Member States; (c) In case of internal conflict: (i) that threatens to trigger a humanitarian disaster, or (ii) that poses a serious threat to peace and security in the sub-region; (d) In the event of an overthrow or attempted overthrow of a democratically elected government; (f) Any other situation as may be decided by the Mediation and Security Council. Protocol, *supra* note 4, at 244.

new customary rules may arise out of the practice of states, and these new rules may alter the previous treaty-generated rules."¹⁵⁰

B. Did Sierra Leone and Other ECOWAS States Forever Bind Themselves to ECOWAS Sole Discretion on Intervention in their Affairs?

The next issue that arises for determination is whether, under the new regime, ECOWAS member states perpetually bind themselves by consenting in advance to ECOWAS' intervention in their conflicts. Article 27 of the Protocol seems to warrant an affirmative answer to this question. Indeed, since there is no requirement of any form of invitation in the article, it would appear that the act of consenting in advance by ECOWAS' member states has curtailed their right to decline an intervention by ECOWAS in their conflicts.

The rationale for the non-inclusion of the requirement of invitation or consent in the Protocol indicates that Member States may not terminate ECOWAS missions in their conflicts at will, or prevent its intervention upon the outbreak of violence. Often, it is difficult to obtain consents from all parties to a conflict. Somalia is a classical example of this. General Farah Aideed refused to give his consent and opposed the intervention by the U.N. from the outset. Furthermore, despite the claim by ECOWAS that it was invited by Samuel Doe into Liberia, the fact that ECOWAS did not obtain the consent of the de facto ruler of Liberia at the relevant time, Charles Taylor, cast a long shadow over the legality of that action. In addition, even where consent of all parties is obtained before deployment of troops, sustaining the consent to the very end of the conflict is quite problematic. In the Suez Canal crisis, UNEF pulled out because Egypt withdrew its consent.

ECOWAS was clearly unwilling to subject its ability to police its hemisphere to the whims and caprices of conflictual parties who cannot always be expected to be enthusiastic of ECOWAS' intervention bid. Experience in Liberia, where Charles Taylor's NPFL and Sierra Leone where the RUF consistently opposed ECOWAS actions means that rebel factions will always use their consent as a trump card whenever ECOWAS chooses a path different from their dictates. Apart from that, obtaining consent in advance will go a long way in helping ECOWAS to deal not only with conflictual parties, but also certain of its member states acting against their collective decision. In the Liberia crisis for instance, Côte d'Ivoire and Burkina Faso were alleged to be acting against the collective interest of the organization by siding with the rebels.¹⁵¹ During the Liberia crisis these countries did not consent to

150 A. D'Amato, *The Invasion of Panama Was a Lawful Response to Tyranny*, 84 AJIL 516, 523 (1993).

151 Communiqué, *supra* note 33.

ECOWAS action although they did not explicitly oppose it. With advance consent in place, it is legally difficult for states to prevent ECOWAS intervention by withholding their consents, except, of course, if such is implemented at the level of the Authority decision.

Nevertheless, it is yet difficult to argue that when ECOWAS member states ratified the new protocol in November 1999 they, for all intents and purposes, intended to bind themselves forevermore to ECOWAS' sole authority to intervene in members' conflicts. Article 91 of the Revised treaty of ECOWAS states that "Any Member State wishing to withdraw from the Community shall give to the Executive Secretary one year's notice in writing who shall inform Member States thereof. At the expiration of this period, if such notice is not withdrawn, such a State shall cease to be a member of the Community." In accordance with this provision, a member State not willing to accept ECOWAS intervention in a conflict occurring within its territory, or between it and another state, is legally able to withdraw from the Organization. Upon such withdrawal, ECOWAS cannot legally intervene in such conflict even if it threatens the peace and security of the region.

The provision of Article 91 however raises one practical problem. The duration between the serving of a notice and the notice maturing into an effective withdrawal is one year. A notice served is thus not effective until after the expiration of this period. Could ECOWAS then continue its plan to intervene, or its intervention, in a conflict affecting a member state which has served a withdrawal notice under that article, but which notice has not matured into an effective withdrawal? The question is answered by the second paragraph of Article 91. This states that "[d]uring the period of one year referred to in the preceding paragraph, such a Member State shall continue to comply with the provisions of this Treaty and shall remain bound to discharge its obligation under this Treaty."

This provision is extremely significant concerning the inquiry whether ECOWAS states perpetually bind themselves to the obligation to entertain intervention by the organization in their conflicts. Article 91(2) binds member states to their obligations under the ECOWAS constituent treaty of 1975 as revised. The Protocol was adopted in conformity with the provisions of Article 58 of the constituent treaty of ECOWAS, which imposes an obligation of the nature in question on member states.¹⁵² Thus, the obligation incurred under the constituent treaty extends to the obligation assumed under the subsequent treaties. In

¹⁵² Article 58 of the Revised Treaty states that "member States undertake to work to safeguard and consolidate relations conducive to the maintenance of peace, stability and security within their region. In pursuit of these objectives, member States undertake to co-operate with the Community in establishing and strengthening appropriate mechanisms for the timely prevention and resolution of intra-State and inter-State conflicts." Revised Treaty, *supra* note 1.

addition, the terms of Article 91(2) are mandatory and not open to the discretion of member states. It states that such a member state shall continue to comply with the provisions and shall remain bound to discharge its obligation under the treaty. Although it may prove practically difficult for ECOWAS to be able to enforce the terms of this provision against a state that has served a notice of withdrawal on the organization, this does not affect the import of that provision. During the pendency of the notice to withdraw, a state is theoretically bound to accept ECOWAS intervention.

The Rules of Procedure of the Mediation and Security Council¹⁵³ may, in practice, become the only procedural solution to the problem of member states which are unwilling to remain bound to their obligation under the Protocol. By virtue of Article 34 of the Rules, "a member of the Security Council may move that the consideration of [a] matters be postponed." This provision however only avails a state which is a member of the MSC. Where a reluctant state is not a member of the MSC, it may act to stop the consideration of a proposal to intervene in its conflict under Article 30 of the Rules. Under this article,

Where an objection is recorded on behalf of a member State to a proposal submitted for the decision of the Security Council, the proposal shall, unless such objection is withdrawn, be referred by the Ambassadors to the Ministerial meeting and to the meeting of Heads of State and Government if emanating from a meeting of Ministers.

Thus, it is submitted that notwithstanding the stringent terms of Article 91(2), a member state which is unwilling to accept an intervention by ECOWAS in its conflict may prevent such intervention by raising a preliminary objection before the proposal is considered by the MSC. Should the latter fail to resolve the matter, a final recourse is to be had to the Authority of Heads of States and Government on which the head of state of the concerned state sits whether or not his or her state is a member of the MSC.

In Sierra Leone, for example, the government was able to regulate the activities of ECOWAS and UNOMSIL through letters issued by its president to the Security Council demarcating the responsibilities of the two organizations on its soil. Had Sierra Leone had any reason to reject ECOWAS intervention, it would either have expressly said so during the ECOWAS summit that preceded its return to Sierra Leone, or would have served a withdrawal notice under Article 91 of the new protocol which had entered into effect at the relevant time. While it is admitted that the procedures by which a reluctant state may wriggle out off what looks like a perpetual obligation under the new protocol, it is submitted that the matter would be resolved procedurally.

¹⁵³ On file with author.

CONCLUSION

The *joint* implementation of Resolution 1270 by UNAMSIL and ECOMOG forces highlights the many problems that attend to this kind of action. One lesson the Sierra Leone experiment does teach is that the last is yet to be seen as to the development of new trends by regional arrangements. It seems appropriate thus to observe that it is too early in the day to arrive at definitive conclusions about the nature of relationship between the U.N. and regional organizations. It should not always be assumed, as most analysts of regional collective security tend to do, that once the U.N. peacekeepers are afield and are joined by the forces of a regional organization, then the collective security equation is automatically tantamount to a peacekeeping action. It is urged that each action, each operation that involves two or more organizations should be assessed in accordance with the particular facts and dynamics of the case. A generic assumption about joint operations may obliterate evolving trends as Sierra Leone clearly demonstrates.

The U.N. Charter codifies, amongst other things, the laws of armed conflict and use of force. States implement those laws. It is this implementation of these laws that is referred to as collective security. Whilst states incur certain obligations under the Charter, the Charter has not carved how states may apply its laws in stone. The Charter is an evolutionary document with ample life in its lungs still. States, through their practice, must make meaning out of Charter provisions. Whilst a single act by a regional arrangement may not constitute an acceptable departure from the Charter norm, a recurrent pattern of events, even by a single regional arrangement may be signaling a new trend in how states perceive a particular provision of the U.N. Charter.

The Charter prescribes, but states apply. In this application, states have their own assessment of the Charter laws, as to their adequacy or otherwise to specific scenarios. When states perceive the need, they adopt other treaties which may complement the Charter or depart from it. ECOWAS did. Whether one perceives the ECOWAS Protocol as complementing or departing from the Charter is up to individual assessment. But what is undoubted is that the provisions of that treaty signal a new development in the law and practice of regional collective security.

The U.N. must adjust to new trends in the regional collective security system. Obstinate adherence to classical notions could only lead to further complexities. Peacekeeping developed because the centralized collective security machinery of the Chapter VII of the U.N. Charter could not be realized. Since the end of the Cold War, the world has witnessed a momentous involvement of regional arrangements in collective security. Can the U.N., then, afford to stay faithful to classical notions of peacekeeping, which evolved in response to the circumstances of the 1950s?

In Sierra Leone, the U.N. stuck to a peacekeeping mandate in a situation where there was no peace to keep. Yet, it accepted to work in conjunction with an organization which is committed to enforcement action. Divergent mandates are a recipe for disaster. The relationship between UNAMSIL and ECOMOG attests to that much. Unclear regime of command and control in joint missions is all that is required for the forces to pull in different directions. If there was any lesson the U.N. must learn from this so-called joint-peacekeeping, it is that in reality the action was neither *joint* nor a substantial part of it *peacekeeping*.

The law of peacekeeping develops through the practice of its practitioners. Regional arrangements are one of the most legitimate practitioners of peacekeeping. ECOWAS pioneered joint-peacekeeping operations. It is undoubtedly one of the most active regional arrangements since the end of the Cold War. As such, its recent trends—a wider conception of peace and security, broader framework of collective security, and a new approach to the rules of peacekeeping—will most likely influence how operations by regional arrangements must be viewed and evaluated in international law henceforth. It is our view that the future of the relationship between the U.N. and regional organization does not lie in the perception that the Charter obligations are immutable, but that a harmonious *modus operandi* can be worked out between the two organizations, even if they must occasionally or at all times operate under different legal regimes.

Sierra Leone's "Conflict Diamonds": The Legacy of Imperial Mining Laws and Policy

Ian Martinez*

Introduction¹

A common misconception is that the current civil war in Sierra Leone is the result of illicit diamond mining. True, diamonds were the fuel of the latest flare-up of fighting. Illicit diamond digging emerged simultaneously with the discovery of alluvial diamonds in the country. The British, unwilling to pay for the costs of patrolling or controlling the hinterland—where diamonds are found—sought a colonial compromise. Their policy was twofold: a) to institute indirect rule through the traditional paramount chiefs and b) to use a tributary system whereby miners received a share of diamonds they recovered in lieu of wages. Eventually this system degraded government rule and led to a rise in corruption. The efforts to control the illicit diamond led, in time, to the rise of a "shadow state."² The colonial governance planted the current mindset that infects Sierra Leone like a malignant tumor. The patient lived, infused with donor medicine as its lifeblood, diamonds, were sucked away. Finally, the 1990s saw the tumor explode into an orgy of violence. This article explores the genesis of the illicit diamond trade and the continuation of that policy after independence.

I. Colonial Development

A. Early History and British West African Policy

The British settled the area now known as Freetown as a settlement for freed slaves in 1787. Freetown, "province of freedom" was the site of missionaries and a university—Fourah Bay College, established in 1827. While the coastal settlement flourished, the colonial government was unwilling to enter the interior and establish their control over it. In 1898 the Hut Tax War erupted against British rule and taxation. After the treaties and a pacifying war, the British solidified their position in Sierra Leone. Nonetheless, in a tacit recognition of their incomplete domination of the interior of the colony, colonial officials sought to co-opt the interior chiefs and assign them various tasks.³

*(J.D.) University of Miami School of Law; 2002; U.M. Int'l & Comp. L. R., Editor-In-Chief; (M.A.) Florida International University; (B.A.) Temple University; former Intelligence Officer with the U.S. Central Intelligence Agency covering Africa. I want to dedicate this article to my wife and new born daughter, Isabella. All errors in this article are mine.

1 For another view on the Sierra Leone conflict, please see the preceding.—Eds.

2 See WILLIAM RENO, CORRUPTION AND STATE POLITICS IN SIERRA LEONE, 29 (1995); JOHN HIRSCH, SIERRA LEONE: DIAMONDS AND THE STRUGGLE FOR DEMOCRACY, 23 (2001).

3 *Id.*

British Imperial policy in Africa had two forms of government: a) colonies under traditional local rulers such as chiefs; and b) colonies of white European settlement overseen by British administrators.⁴ The first was representative of most of West Africa, the latter of places like Kenya, South Africa, and Southern Rhodesia. Yet, in Sierra Leone the British initiated a dualistic approach to governance. Chiefs governed the interior of the country, and Freetown was governed by Creoles, overseen by British colonial administrators.

In line with their policy and in recognition of their inability to exercise full control of the interior, the British sought an accommodation with the country's chiefs. The British aimed to support a stable class of intermediaries—the tribal chiefs of the interior of the country—who would promote internal stability and colonial efficiency at a low cost. Ten percent of the population in Kono lived in servitude to the chiefs. "It was the chiefs, not Freetown, who exercised direct control over the protectorate's population."⁵ To further save money, the chiefs were even given control of their own police force in 1921.⁶

The interior of the colony was still a "malaria-infested swamp" in the 1920s. Young colonial officers were sent to Sierra Leone, with the hope of transferring out as quickly as possible. As a result they turned a blind eye to informal appropriations of state resources and illegal activities in return for assurances from chiefs and others to maintain the peace.⁷ This further led to indiscriminate acts by chiefs who knew local or London officials would not question their actions.

As the British built up their presence in the interior of the country through colonial officers, London worried about administrative costs and the colony's chronic fiscal shortfalls. To exploit Sierra Leone economically and to pay for the growing costs of colonizing the interior, the British colonial government began a systematic routine geological survey in 1926. The survey led to the discovery of several mineral deposits in 1927. In 1927 the Minerals Ordinance Act vested control over mineral rights in Sierra Leone upon the British Crown.⁸ Digging by Africans for minerals was made illegal.⁹ The colonial government envisioned no role for Sierra Leoneans, other than laborers for British mining companies who would have monopolies over all minerals.¹⁰ In January 1930, the Sierra Leone Geological Survey Department

4 P.J. MARSHALL, *THE CAMBRIDGE ILLUSTRATED HISTORY OF THE BRITISH EMPIRE*, 102 (1996).

5 Reno, *supra* note 1, at 44.

6 Reno, *supra* note 1, at 37.

7 *See id.* at 31.

8 *See* Laws of Sierra Leone, Minerals Ordinance, Vol. IV Chapter 196, 1 (Jan. 1, 1960).

9 *See id.* at 2.

10 *See* Reno *supra* note 2, at 47.

announced to the world and to the British Empire, that alluvial diamonds had been discovered in Sierra Leone's southeast Kono District.¹¹ The discovery would be a blessing and curse for the people of Sierra Leone.

The Selection Trust Ltd., a London-based holding company with investments in mining copper, zinc, diamonds, and gold, formed Consolidated African Selection Trust Ltd. (CAST) in 1922 for the sole purpose of mining in British West Africa, particularly in Sierra Leone. Selection Trust Ltd., held a controlling interest in CAST, with the other shares held by De Beers and the public. In March 1931 CAST led a second diamond expedition into Sierra Leone's Kono district. CAST reconfirmed the original discovery and found more deposits. CAST then immediately applied for an Exclusive Prospecting License (EPL) from the Colonial Office in London.¹² In what would be a nominal policy of vesting control of mining to successive concessionaries or parastatals for the next 50 years, on June 1, 1932 CAST was given an EPL from the Colonial Office. The EPL covered 4,170 square miles of territory inside Sierra Leone. In return, CAST was to pay rent, a five percent export tax, and a five percent profits tax to the Colonial Administrators in Freetown.¹³

The government's decision to extend the SLST lease to include the whole country coincided with a shift in colonial macro-economic policy. From 1850 until 1932 the British Empire was governed by free trade. But in 1932, the British introduced protectionism to the Empire in response to the Great Depression. Raw materials and food shipped to Britain were exempt from high tariffs meant to block out non-imperial trade.¹⁴ Colonies were thus encouraged to focus on one commodity and to ship it to the Imperial metropolis for processing.

One advantage of a corporate mining monopoly was that it possessed the legal means to control illicit indigenous mining since the colonial government did not have, nor would London provide, the resources to eradicate it.¹⁵ To control illicit mining, SLST made informal payments to any chief who agreed to withhold settler rights and control migration in Kono. Restricting settlements in the area meant fewer people would be outside the control of the chiefs or inclined to mine

11 GREENHALGH, PETER, WEST AFRICAN DIAMONDS 1919-1983: AN ECONOMIC HISTORY 47 (1985); TIMOTHY GREEN, THE WORLD OF DIAMONDS 113 (1981) (Alluvial diamonds form the bulk of world-wide diamonds and are found over large land areas where they have been scattered by ancient rivers).

12 *Id.* at 60.

13 *See id.* at 49.

14 *See* Marshall *supra* note 4, at 112.

15 *See* Reno *supra* note, 2 at 48.

illegally. A single British company similarly monopolized the iron ore industry. Both companies refused to publish their profits.¹⁶

B. The SLST Diamond Monopoly

By 1933 more discoveries were made which hastened a second EPL application and introduced the possibility of a countrywide monopoly over diamond mining. In 1935 the Sierra Leone Colonial Legislative Council granted CAST exclusive mining, exploration, production, marketing, and prospecting rights in the colony for a period of 99 years.¹⁷ In exchange, CAST would create a new company, which would be the actual vested owner of the rights, pay a yearly rent of £7000, and pay 27.5 percent of net profits to the colonial government of Sierra Leone which would be used for indigenous purposes.¹⁸ The Sierra Leone Selection Trust Ltd. (SLST) was formed in April 1934 with CAST holding all the shares.¹⁹

Since alluvial diamonds are scattered in wide areas, they therefore require mechanized equipment to move massive tones of gravel to sift for meager carats. In order to exploit those alluvial diamonds, mechanization was introduced in 1935 to sift faster. This is one reason why the Colonial Office may have opted for an international firm with the financial backing to purchase and import the heavy machinery required to move large amounts of earth.

C. The Relationship Between SLST & Local Africans

The relationship between SLST and the local Africans was rocky from the start. Although SLST paid surface rent to the Colonial Tribal Authorities, the amount was trivial. SLST did compensate local Africans for the destruction of any housing, crops, or sacred ritual sites caused by mining operations.²⁰ But the money paid was nowhere near the profits being raked in. Local Africans soon realized the value of this precious mineral and began to illegally mine near the SLST sites. Since mining by local Africans was illegal, SLST turned to the colonial administrators to further curtail this lucrative operation. In 1931, SLST pressed for legislation limiting Africans' access and right to deal in diamonds. By

16 H.L. VAN DER LAAN, *THE SIERRA LEONE DIAMONDS: AN ECONOMIC STUDY COVERING THE YEARS 1952-1961* 54 (1965).

17 See *Laws of Sierra Leone: Diamond Agreements and License (Ratification)*, Vol. IV, Ch. 196 (Jan. 1, 1960); I. Smillie et al., *The Heart of the Matter: Sierra Leone, Diamonds and Human Security* (2000), available at <http://www.web.net/pac/pacnet-1/msg0009.html> (last visited Oct. 12, 2001).

18 See Grennhalgh, *supra* note 11, at 52; BRITISH INFORMATION SERVICES, *SIERRA LEONE: THE MAKING OF A NATION* 15 (1960).

19 See Grennhalgh, *supra* note 11, at 48; BRITISH INFORMATION SERVICES, *supra* note 18, at 15.

20 See Grennhalgh, *supra* note 11, at 109.

the mid-1930s, illegal African digging was sapping revenue in the EPL and lowering SLST’s contribution to colonial coffers.²¹ In 1934, in response to these events, possession of diamonds by persons other than members of SLST was made illegal.²² In a prelude of the 1990s and the use of private armies, by 1935, the SLST had established its own Diamond Protection Force to guard against thefts and illegal diamond mining.²³

Sir Ernest Oppenheimer seized the reins of De Beers (the diamond empire of Cecil Rhodes, eponymous founder of Rhodesia and of the prestigious Rhodes Scholarships) in 1929—mere months before the U.S. stock market crash. Demand for diamonds had decreased significantly because of the Great Depression. Several mines were closed in South Africa, and the Oppenheimer family was seeking lower production in Africa, particularly in Sierra Leone. The SLST balked, but other events soon forced the company to rethink its policies. In 1938 Ernest Oppenheimer found himself with no place to market his wares. Rather than risk a plunge in the status and price of diamonds, he sent his 29-year-old son, Harry, from Johannesburg, South Africa, to New York to meet with the N.W. Ayer advertising agency. The plan was to transform America’s taste for small, low-quality stones into a luxury market taste that would absorb the excess production of higher quality gems that were no longer selling in Europe. N.W. Ayer saw the challenge as one requiring a solid grasp of mass psychology, and consequently, Ayer meticulously researched the attitudes of American men and women about romance and gift giving. From this research, the slogan “A Diamond Is Forever” was born. Ayer and De Beers launched the most sophisticated marketing campaign known to the world, which equated one’s love to the size of a diamond. The resulting diamond sales in the United States of America (U.S.) managed to keep the diamond industry afloat.

In 1939 war broke out in Europe and the non-industrial diamond market all but collapsed. The U.S. was the sole market for diamond sales. Profits fell as labor shortages and a lack of spare parts led to rising operating costs.²⁴ As a result of these inefficiencies, production fell even further and revenues into the colonies’ coffers suffered accordingly.

D. Post World War II & the Road to Independence

After World War II (WWII), African participation in the mining industry rose dramatically. This can be traced to: first, the ease of mining in alluvial plains without making large investments; second, the

²¹ See *id.* at 152.

²² See BRITISH INFORMATION SERVICES *supra* note 17, at 15.

²³ See Hirsch *supra* note 2, at 27

²⁴ See Grennalgh, *supra* note 11, at 55.

loosening of colonial and foreign control over mining; third, the rise in diamond prices following World War II; and fourth, returning African soldiers and their increased desire for colonial independence.²⁵

As far as control over mining went, the new Labour government in Britain instituted a new policy for the colonies. Labour wanted to see flourishing colonial economies upon which self-government could be built. Labour also wanted the colonies to increase commodity production in order to earn hard currency for the metropolis before independence.²⁶ These colonial commodities would outlast the Empire and bind those newly independent nations to the markets in Britain. Colonial officials were instructed to bring Africans directly into the modern economy and to take a more direct role in shaping the colonial economies in order to meet that goal.²⁷

The third reason Africans began to mine diamonds was the soaring costs of diamonds. The U.S. accounted for most of the consumption. With the demobilization of U.S. forces following WWII and the increase in post-war marriages, the diamond market rebounded. As Europe recovered from the war, De Beers turned to the reconquest of its old market.

Finally, returning African Commonwealth soldiers soon discovered the true price of diamonds, according to an African dealer in Sierra Leone: "It was not until our brothers, who had been traveling in the war, came back and told us they were worth much money that we started looking [at them]."²⁸ Africans, who wanted self-determination as recompense for their participation in fighting for the Allied cause, also wanted a piece of mining operations. This increased self-awareness led Africans to challenge the SLST's monopoly. Returning soldiers soon increased pressure at all levels, and the early 1950s were pivotal years for their actions and demands. The African-led Sierra Leone Legislative Council forced the diamond and iron ore companies to publish their profits for the first time in 1952.

The local Africans continued their relentless pressure, and in late 1952, the Legislative Council—controlled by Freetown's Creoles—went to Britain to renegotiate the terms of SLST's and DELCO's iron-ore monopolistic agreements. A new combination tax, the Income and Diamond Industry Profit Tax, was introduced. The tax placed a 60 percent levy on diamond profits and repealed the former Income tax of 45 percent. The rise in taxation was offset by a reduction of British

²⁵ See *id.* at 25.

²⁶ See Marshall *supra* note 4, at 90.

²⁷ See Reno *supra* note 2, at 56.

²⁸ See Grenhalgh, *supra* note 11, at 114.

corporate taxes on both companies.²⁹ As SLST's control lapsed, illegal diamond mining increased with deleterious consequences.

Sierra Leone's food scarcity problems in the 1950s illustrated the flaw in colonial economics. The capital, Freetown (which was receiving generous development funds from the Labour government), was at the mercy of the interior food-producing areas. In 1952, crop failures devastated eastern Sierra Leone. Without food to cultivate, many turned to illicit digging to supplement their earnings.³⁰ As word spread about the lucrateness of illegal mining, teachers, public service workers and other laborers left their jobs to try their luck in digging.³¹ Agriculture, construction, trade, and the transportation industries were all affected by the transfer of labor. Soon, prices rose for basic commodities as thousands left the cities to mine. The rice market—the main staple crop—collapsed in 1954 due to crop failures and farmers leaving their fields to dig for diamonds. Rice prices soon rose beyond the reach of laborers in Freetown, and in February 1955, food rioting broke out. In 1955, a group of miners also stormed the SLST security forces and police station. The riots underscored the economic upheaval caused by the massive transfer of labor resources from the agricultural sector and other vital industries to illegal diamond mining. To stem the flow of skilled urban workers and rural farmers to the fields in Kono, the colonial government responded by raising skilled and semi-skilled wages by 20 percent.

The turmoil of the early 1950s led to a sharp increase in illegal African diggers.³² The presence of so many illicit diggers increased their share of production. African diggers smuggled out illicit diamonds through Liberia, robbing the SLST of its stock and the Colonial government of revenue. Corruption by the interior police, who were controlled by the chiefs, led to increased illegal digging. According to a British Mining Executive, "anything can be fixed with a little 'dash' (bribe); this is the land of the waving palms."³³ In 1954, SLST dove into co-opting the chiefs by providing them payoffs to control illicit mining. The company began making unauthorized payments to chiefs for "development purposes," provided security for the chiefs, and extended loans to them for cars and building materials. Soon the local chiefs were wielding immense economic and political power. These efforts undermined the colonial government's efforts to regulate the diamond-mining sector and to stamp out corruption in the waning days of the colony.³⁴

29 See Van der Laan *supra* note 16, at 4.

30 See British Information Services *supra* note 17, at 15.

31 See Van der Laan *supra* note 16, at 9.

32 See *id.* at 9.

33 See Green *supra* note 11, at 114.

34 See Reno *supra* note 2, at 65.

In 1954, legislation to limit African digging, which was already illegal, was supported by African Ministers who had been running Sierra Leone's internal affairs since 1951. A detachment of the Sierra Leone Police Force was sent to augment the Diamond Protection Force of the SLST. The SLST began constructing security posts, manned by the SLST force on important sites.³⁵ After the riots in Freetown, the number of illicit African diggers rose to nearly 40,000 and their share of diamonds increased from around 200,000 carats in 1952 to some 2 million carats in 1956.³⁶

In 1955, growing government sensitivities and African pressure forced the SLST to reduce its exclusive mining rights to an area of just 230 square miles for thirty years.³⁷ SLST's 99-year monopoly was finally crushed. SLST received £1,570,000 in compensation from the colony for the confiscated lands.³⁸ The colonial administrators granted local miners the right to engage in legalized small mining operations.

In 1956, the Alluvial Diamond Mining Scheme (ADMS), composed of the Alluvial Diamond Mining Rules, the Alluvial Diamond Mining Ordinance, and other legislation, was passed.³⁹ ADMS made all previously illicit African mining areas into licensed areas. As a result, Africans could legally mine for the first time since 1927 when mineral possession by Africans was criminalized.⁴⁰ The ADMS, although amended several times, still forms the basis of licensed digging in Sierra Leone today. The digging licenses last for about six months, but there are provisions for one- or five-year licenses.⁴¹ The licenses can be issued to either Sierra Leoneans or firms in which they have a majority ownership.⁴² The filing fees were set low, about £9 for a yearly license in 1956. The digger has to pay additional fees to the tribal authorities, called surface rents, which usually were about £10 a year. In addition, the Ordinance established a diamond buying organization and a system

³⁵ See Van der Laan *supra* note 16, at 57.

³⁶ IRVING KAPLAN, et al., AREA HANDBOOK FOR SIERRA LEONE, 305 (Foreign Area Studies - American University, 1976).

³⁷ See Sierra Leone Diamond Agreement, Ch. 210 (1955); Greenhalgh, *supra* note 11, at 57; PACNET, *supra* note 17.

³⁸ British Information Services, *supra* note 18, at 16.

³⁹ See Sierra Leone Alluvial Diamond Mining Ordinance, Ch. 198 (1956); Diamond Industry Protection Ordinance, Ch. 199 §3(2) (1956).

⁴⁰ See *supra*. Ch. 198, at § 4(1); *Habib v. Attorney-General*, 1957-60 ALR S.L. 24 (Sierra Leone Sup. Ct. 1957) (illegal trading in diamonds abrogated by Alluvial Diamond Mining Ordinance).

⁴¹ See Van der Laan *supra* note 16, at 67; Alluvial Diamond Mining Ordinance, *supra* note 38, at §3 (2).

⁴² See Van der Laan *supra* note 16, at 71; Kaplan, *supra* note 36, at 305; PACNET, *supra* note 17. In 1956, it was estimated that 75,000 illicit miners were in the Kono District alone.

for exporting diamonds—which in 1959 became the sole exporter of diamonds—under license from the government.⁴³ Diggers were also allowed to sell diamonds to the Diamond Corporation, an affiliate of De Beers. Penalties were set for those who were not licensed or possessed illegally mined diamonds.⁴⁴ In 1956, the Diamond Industry Protection Ordinance was passed, requiring that strangers (non-residents of the Kono District) obtain a license to settle in the Diamond Protection Areas.⁴⁵ Nonetheless, some 40,000 foreigners (Lebanese, Guineans, and others) were removed from Kono and driven out by the colonial government.⁴⁶

But as always, colonial officials were weary of spending money on equalizing the playing field for Africans. London would not pay for what it preached. To implement this new licensing scheme, the colonial officials turned once again to the chiefs—the true middlemen in the country. Kono chiefs approved licenses, assigned lands for mining, and collected surface rent. The only individuals with enough money to purchase the diamond licenses were Lebanese businessmen and Freetown Creoles. These two groups once again alienated the inclusion of Africans in the new post-monopoly economy. A Kono businessman complained that unofficial payments to chiefs increased 500% as a result of the chief's authority under the licensing scheme.⁴⁷

These moves were meant to supply a steady stream of revenue into the Sierra Leonean treasury, to provide jobs, and to minimize the depletion of diamonds. Economic development flowed through the now regulated industry. Markets were built and communications were improved and shopkeepers did brisk business.⁴⁸ The new regulations and tightening of security led to smugglers leaving to Liberia and creating a conduit for diamonds through that country.⁴⁹ In order to work in conjunction with African diggers, the SLST introduced contract mining on its lands in 1959.⁵⁰

43 See British Information Services *supra* note 18, at 16; Alluvial Diamond Mining Ordinance, *supra* note 36, at Ch. 198 §9.

44 See Alluvial Diamond Mining Ordinance *supra* note 38, at Ch. 198 §18(1-4), §21, §24(1).

45 See Diamond Industry Protection Ordinance *supra* note 36, at Ch. 199 §3(2); *Saccoh v. Commissioner*, 1958 ALR S.L. (Sierra Leone Sup. Ct. 1958) (Defendant was not within a diamond producing area and hence could not be prosecuted under Diamond Industry Protection Ordinance for being a stranger).

46 See Hirsch *supra* note 2, at 27

47 See Reno *supra* note 2 at 63.

48 See Van der Laan *supra* note 16 at 19.

49 See PACNET *supra* note 17.

50 See *id.* at 73; British Information Services, *supra* note 18, at 16.

On the eve of independence, diamonds accounted for nearly half of all domestic imports.⁵¹ Sierra Leone left the 1950s on its way towards independence. Nonetheless, the British, in their final days, did little to dispel the economically powerful chiefs, the inequities of poverty, and the lucrateness of illegal mining. Within the colonial government, there were doubts about the post-independence viability of the colony.⁵² The question seemed to be whether Sierra Leone would be blown away by the "winds of change" sweeping Africa.

II. Post-Independence, a Continuation of British Policy: Government Policy from 1961 to the Stevens Years.

A. Government Meddling Begins

On 27 April 1961, Sierra Leone, led by Freetown's Creoles, became the third British dependency in West Africa to gain independence. The Sierra Leone People's Party (SLPP) was the first governing party. The SLPP was controlled by the Mende ethnic group and supported by the Creoles from Freetown who wished to continue the traditional role of chiefs in the economy.⁵³ At independence time, Sierra Leoneans were invited to join the boards of both DELCO and SLST.

The first economic crisis for the new government started before independence in January 1961. From 1932 to 1960, SLST earned hard currency by selling its diamonds to the De Beers controlled CSO. CAST, the parent company of SLST, and the CSO negotiated the contracts in five-year periods. In January 1961, SLST did the yet unheard of action of breaking away from the De Beers' cartel, selling its diamonds to two American firms. The reason for opting out of the De Beers CSO were the low prices paid to SLST for diamonds mined.⁵⁴

The reasons for the clash with De Beers for higher prices are twofold. First, the ADMS SLST had only a thirty-year contract to mine the remaining diamonds in its exclusive areas. Thus, it needed to extract and sell its production as fast as possible. Yet, this was counter to De Beers' policy of not flooding the market with diamonds. The price of diamonds remains high because De Beers, through the CSO, buys diamonds and controls their supply. Without the CSO and the De Beers marketing campaign of the 1930s, diamonds would be worthless.

Second, African diggers had depleted diamonds at the surface or had pock-marked the surface of the land to such an extent as to hamper SLST's heavy equipment from operating properly, forcing SLST to dig

51 See British Information Services *supra* note 18 at 15.

52 See THOMAS PAKENHAM, *THE SCRAMBLE FOR AFRICA: WHITE MAN'S CONQUEST OF THE DARK CONTINENT FROM 1876 TO 1912* 675 (Random House, 1991).

53 See Kaplan *supra* note 36, at 174.

54 See Van der Laan *supra* note 16, at 148.

deeper and longer for diamonds. No longer could the company simply search the surface for diamonds. SLST now had to dig deep to recover diamonds.

The American firms were willing to pay higher prices to circumvent the CSO. The break meant that Sierra Leone received higher income taxes from SLST and higher Diamond Industry Profit Taxes. Nonetheless, in 1962 the SLPP, under pressure from De Beers, passed an act that required that all diamonds mined by SLST be sold to the government, who in turn would sell the diamonds to the CSO.⁵⁵ Rather than going through De Beers, SLST stopped exporting diamonds altogether in September 1961.⁵⁶ Freetown sided with the CSO's estimate that diamond reserves were not as low as the SLST feared and that it was more important to have a stable diamond market.⁵⁷ The SLPP wanted long-term revenue and jobs rather than a quick infusion of revenue. SLST refused to budge and continued to withhold its diamonds for export until January 1963, when a new law was passed. The law allowed SLST to sell fifty percent to the CSO and the remainder to purchasers who would be licensed by the government.⁵⁸ SLST released 700,000 carats (a full years' worth of production) in January 1963 as a result of the new law.⁵⁹

B. Trying to Shore up the Economy & the Government

The late 1960s were economically and politically tumultuous for Sierra Leone. In 1966, GDP declined by 2.1%. Exports dropped in 1965 and 1966 to dangerous levels, exhausting foreign reserves. In October 1966, a stabilization program from the IMF was implemented.⁶⁰ In 1967, two steps were taken to reverse the decline in foreign exchange. First, the SLPP introduced new legislation that raised SLST's tax liability from 60 percent to 70 percent.⁶¹ Second, the government devalued the currency, the Leone.

During the 1967 campaign season the former Minister of Mines, Stevens, called for the expulsion of SLST altogether.⁶² In March 1967, Stevens was victorious at the polls by pledging anything to anybody. Stevens quickly turned the presence of SLST into a political issue. On March 23, 1967 the Sierra Leonean army, led by ethnic Mendes,

55 See Act to Control the Marketing of Diamonds Produced in Sierra Leone, Act No. 3 (1962).

56 See Van der Laan *supra* note 16, at 145.

57 See *id.* at 151.

58 See Sierra Leone Public Notice No. 79 (July 21, 1962).

59 See Kaplan *supra* note 36, at 217.

60 See *id.* at 213.

61 See The Diamond Supplementary Agreement (1967) Ratification Act 1970.

62 See Greenhalgh *supra* note 11, at 217.

launched a coup d'état, claiming they wanted to halt government corruption.⁶³ On January 25, 1968, another coup rocked Sierra Leone. Then on April 18, 1968, the coup was reversed by another coup and Stevens was allowed to assume power. In November 1968, violence ripped the capital and was brutally suppressed by Stevens. Sierra Leone's political and economic house was unraveling by the close of the 1960s.

C. The 1970s: The Deconstruction of the Inherited Colonial Movement

Stevens wanted to build a political organization capable of replacing the inherited colonial authority he wished to destroy—the old Creole elite and the chiefs. To create and reward his new following, Stevens would dismantle his inherited colonial economy. To do so, Stevens needed to control the resources of Sierra Leone—diamonds being foremost—so that he could redistribute through state patronage the resources to his followers. The nationalization of the SLST would be the first step and would allow him to control all of the wealth that flowed from legitimate mining. Stevens would then divert the mining revenue flow into the state's coffers, where he would exercise direct control.⁶⁴ Stevens could then award mining contracts, digging licenses, and money, as well as appoint positions where necessary. This new economic order amounted to “Black Colonialism” for the majority of Sierra Leone's population.⁶⁵

As his first step, the government took over 51% of the SLST's shares and changed the name to the National Diamond Mining Company (DIMINCO) in October 1970.⁶⁶ The SLST was retained to provide technical management. Stevens and his right hand-man, a Lebanese diamond businessman named Jamil Mohammed, now took all DIMINCO's decisions.⁶⁷ The creation of DIMINCO allowed Stevens to award his people with jobs, money and accesses to diamonds.⁶⁸

Stevens used Lebanese middlemen because they could be expelled at will due to their foreign status and due to the inherent unpopularity of the fact that they kept wealth out of the hands of blacks.⁶⁹ Stevens' followers, who were mining diamonds, wanted to opt out of the De Beers purchasing scheme. They quickly found that most

63 See PACNET *supra* note 17; SAMUEL DECALO, COUPS & ARMY RULE IN AFRICA: MOTIVATIONS & CONSTRAINTS, 8 (Yale Univ. Press) (1990).

64 See Reno *supra* note 2, at 88.

65 See *id.* at 131.

66 See Kaplan *supra* note 36, at 306; Green, *supra* note 11, at 116.

67 See PACNET *supra* note 17.

68 See Reno *supra* note 2, at 93.

69 See *id.* at 133.

banks, such as Barclays, refused to extend them credit. The only ones that did were Lebanese banks.

In the 1973 election, the SLPP was intimidated and harassed by Stevens' followers and militia. The SLPP also saw its newspaper banned.⁷⁰ In 1974, another unsuccessful coup was launched. Finally in 1975, Stevens banned all political parties and declared Sierra Leone a one-party state.

In 1974, Stevens introduced a five-year plan whose major objectives were to raise the standard of living, provide greater self sufficiency and diversification, and reduce regional economic imbalances. The mining of bauxite, ilmenite, and rutile, as well as the production of rice (the staple crop), were given top priority.⁷¹ From 1973 to 1976 one-third of the total value of DIMINCO's diamond production went to the government in dividends and income taxes.⁷² In 1973, the government shut down DIMINCO's railways, which linked the mines with Freetown.⁷³ The rail lines had been poorly maintained since the date of independence, and by 1974, much of it had been ripped up in portions and sold for scrap.⁷⁴

A year after the 1973 election, Stevens granted private diamond export licenses totaling 20% per annum of the country's total production to five personal friends. One close friend, Jamil, alone received 12%. Other friends received the favor of not being required to repatriate foreign exchange earnings from the overseas sale of diamonds. This generous exemption from repatriation contributed to chronic foreign exchange crunches since diamonds were the number one foreign exchange earner.⁷⁵ After the installation of Stevens' cronies, revenue from diamonds dropped, as the cronies skimmed from the top of DIMINCO, creating a cash shortage of more than 60% by 1976.⁷⁶ Income Tax collection had also ceased by that time.⁷⁷ As the economy contracted, foreign direct investment (FDI) dried up. In 1978, FDI stood at \$102.7 million. By 1983, FDI had fallen to -\$26.9 million.⁷⁸

Official government revenue was needed to maintain international creditor confidence in the economy, so that foreign loans

⁷⁰ See Kaplan *supra* note 36, at 183.

⁷¹ ALAN BEST, *AFRICAN SURVEY*, 189 (Wiley & Sons) (1977).

⁷² See Kaplan *supra* note 36, at 306.

⁷³ *TROPICAL AFRICAN DEVELOPMENT*, 255 (M.B.Gleave ed., Longman Scientific & Technical) (1992).

⁷⁴ See *id.* at 232; Best, *supra* note 71, at 192.

⁷⁵ See Reno *supra* note 2, at 109-110.

⁷⁶ See *id.* at 95.

⁷⁷ *Id.* at 134.

⁷⁸ *Id.*

would continue to come in order to subsidize state industries and benefit Stevens' cronies. To that end, the government took two steps in 1977 to increase diamond revenue. First, the government sought to attract more illegal diamonds into official channels. To accomplish this goal, the government cut its export duty from 7.5% to 2.5% in 1977.⁷⁹ Second, the government sought to end the De Beers controlled Diamond Corp. West African's (DICORWAF) monopoly and also sought to introduce additional international buyers to encourage price competition.⁸⁰ Although appearing benign, this last measure was intended to benefit Stevens' cronies as they could now sell diamonds abroad and repatriate less hard currency. Nonetheless, DICORWAF still bought the majority of DIMINCO's output.⁸¹ Despite all of this, by the late 1970s DIMINCO was a company in decline. DIMINCO had pruned personnel, halved the security force, closed some treatment plants, unsuccessfully searched for new minerals, and reduced capital expenditures.⁸² By 1977, the SLST—who had been retained as technical managers—recommended the closure of some operations.⁸³

D. Enter the 1980s and Exit Stevens

In 1981, a general strike, the first since independence, occurred as a result of worsening economic conditions. In 1984, Fulah Bay College, in operation since 1814, was closed. Stevens turned to the IMF and World Bank for help in securing short-term credit. The IMF required Stevens to privatize many state-run enterprises. The IMF had correctly recognized that his cronies played a major role in running the state enterprises.⁸⁴ The IMF pressured Stevens to adopt austerity measures, chief of which was ending the subsidy for imported rice.

Domestic rice production, never able to meet the demands of the country, suffered as government-subsidized imported rice was introduced. Farmers of cocoa and coffee—the main agricultural exports—were hard hit because of global price decreases for the commodities. Rice in Sierra Leone was used as a tool to undermine the power of the chiefs. Stevens gave out to his cronies distribution rights to foreign-grown rice. The government bought the rice with credit and then resold it at subsidized prices to the cronies. The cronies, in turn, distributed the rice to rural dwellers at a mark-up that was still below the price for domestically produced rice. The goal of rice distribution was to reward

⁷⁹ See Green *supra* note 11, at 119.

⁸⁰ *Id.*

⁸¹ See Kaplan *supra* note 36, at 308.

⁸² See Greenhalgh *supra* note 11, at 219.

⁸³ See *id.* at 220.

⁸⁴ See Reno *supra* note 2, at 138.

loyal chiefs and to punish those with an independent streak.⁸⁵ It was this scheme that the IMF sought to eliminate. It was unsuccessful.

In 1983, an agreement was signed with the SLST and the government for production of kimberlite diamonds.⁸⁶ In 1984 the SLST, the original mining company in Sierra Leone, folded its tent and sold its remaining shares to Precious Metals Mining Company (PMMC).⁸⁷ Jamil, Stevens' right hand man, controlled PMMC. The official diamond sector was clearly failing and being subsumed by the informal sector, which had now spun out of control. The state had finally lost control of the production of diamonds, enabling private entrepreneurs to take over Kono. The table below illustrates the progression from slide to collapse of the legitimate diamond industry.

By the time Stevens retired in 1985, he had succeeded in eliminating the inherited colonial economic order and in creating his own. His economy thus looked somewhat like the following. Diamonds were mined by his hand-picked cronies and then sent to Freetown. The diamonds were exported with the assistance of Lebanese banks. The diamonds were then used to obtain international credits to be used later for rice imports, loans, and government patronage. Next, rice and other goods were imported and distributed in order to co-opt chiefs at the local level. Thus, the dissolution of the old system was complete. Stevens' cronies, Lebanese businessmen and local chiefs, effectively marginalized the Creoles. Stevens' last years in power, 1981-86, saw the GDP per capita annual growth rate contract by -2.1% and the industrial growth rate contract by -3.5%.⁸⁸

E. The Slippery Slope to Collapse and De-Industrialization

Joseph Momah became Prime Minister following Stevens' retirement in 1985. Momah gave Jamil direct control of DIMINCO. Jamil, the Lebanese businessman with ties to Lebanese militiamen fighting in Lebanon, controlled Sierra Leone's official diamond mining.⁸⁹ Under Jamil, DIMINCO's legitimate exports dropped dramatically, and by 1988, DIMINCO was exporting only 48,000 carats. Jamil apparently had his own followers and ambitions to take care of.

Meanwhile, Momah wanted to create and reward his own followers and curb the nation's new elite, the Lebanese businessmen. Jamil and some of his closest advisors were implicated in a 1987 coup attempt and Jamil fled to London. Momah then invited an Israeli firm to

⁸⁵ See *id.* at 145.

⁸⁶ See Greenhalgh *supra* note 11, at 220.

⁸⁷ See PACNET *supra* note 17.

⁸⁸ *Adjustment in Africa: Reforms, Results, and the Road Ahead*, World Bank Policy Research Report 241 (Oxford Press, 1994) Table A.15., "GDP per Capita Growth."

⁸⁹ See PACNET *supra* note 17.

control the diamond market and import rice with foreign exchange earned from diamond sales abroad.⁹⁰

To keep the economy afloat, Momah entered into agreements with the Israelis and a structural adjustment program with the IMF and World Bank. Under the Israelis, diamond exports rose 280% between 1985 and 1986. This allowed Momah to pay IMF arrears and guarantee the structural adjustment program. From 1987 to 1991, the annual growth rose to 0.8%.⁹¹

But unfortunately this turn for the better was not to last, as the Israelis, in next to no time, pulled out of the economy by 1987. Nevertheless, Momah still needed to maintain and co-opt his cronies. The Israeli pullout and Momah's continued spending resulted in the government spending more than the tax revenue could cover by 1989. This imbalance led the government to borrow from the central bank and to increase the money supply by printing more of it. The hope was that these measures would help pay for expensive imports like rice.⁹² Foreign exchange reserves fell further as export growth was -10.5% from 1981 to 1986.⁹³ By 1990, inflation was at 106.8%.⁹⁴ To shore up its diamond production, 49% of the government's shares in DIMONCO were privatized.

III. The State Collapses: Sierra Leone from 1991 to the Present.

A. Government Collapse & Rebellion

Scandal rocked the government in 1991 when it was discovered that no work had been done on 32 government development contracts even though \$2 million had been spent on those projects.⁹⁵ In 1991, the government announced its intention of repurchasing 49% of DIMINCO, which had been privatized by Stevens.⁹⁶ By 1993, the source of diamond production was mainly small-scale mining. DIMINCO ceased operations in March 1993 and went into liquidation in October 1993.⁹⁷ In January 1994, the government instituted a new mining policy that allowed non-citizens to form companies while requiring the non-citizens to maintain

90 See Reno *supra* note 2, at 158.

91 See World Bank-Adjustment *supra* note 88, at 138.

92 GEORGE AYITTEY, AFRICA IN CHAOS, 258 (1998); World Bank Adjustment, *supra* note 88, at 171. Meanwhile, spending on health and education from 1980 to 1989 fell 82.8%.

93 See World Bank Adjustment *supra* note 88, at 249.

94 See *id.* at 268.

95 See Ayittey *supra* note 92, at 72.

96 See Minerals Y.B., Vol. III, Mineral Ind. of Afr. (U.S. Dept. of the Interior, 1992) 199-200.

97 See Minerals Y.B., Vol. IV, Mineral Ind. of Afr. (U.S. Dept. of the Interior, 1993) 141-142

minimum levels, or else their licenses would be revoked.⁹⁸ Next, rebels entered the country through Liberia. Foday Sankoh, the 1971 coup instigator, whose personal friendship with Charles Taylor, the Liberian President, gained the rebels safe passage into Sierra Leone through Liberia, led the rebels. The rebels had left Sierra Leone in 1987 due to economic turmoil and had been training in Libya.⁹⁹ In Libya, Sankoh teamed up with Ibrahim Bah, a Senegalese, who trained in Libya and had fought in Afghanistan and then with the Hezbollah Terrorist group in Lebanon. Bah, a close friend of Blaise Compaore's—the president of Burkina Faso and future arms supplier to the region—in turn, introduced Sankoh and another of Africa's infamous rebel leaders Charles Taylor, to Gaddafi.¹⁰⁰ This group of would-be rebel leaders would form an "axis" of West African instability with its pole being Tripoli.

Once in Sierra Leone, Sankoh set about recruiting disaffected urban youths, many of whom had not benefited from illegal diamond digging and the "new economy."¹⁰¹ Sankoh would pay his foreign friends, like Stevens and Momah did, in diamonds.

The rebels of Revolutionary United Front (RUF) intended to encircle the regional centers of Bo and Kenema. Bo is 25 miles south of the former SLST Tongo Lease, which is a 15-mile long vein of kimberlite diamonds.¹⁰² The RUF executed those who refused to join their ranks and kidnapped boys and girls for guerilla training. The RUF began their hallmark campaign of crude amputations that included feet, hands, lips, ears, and noses. The focus of these brutal amputations was on women and children.¹⁰³ The RUF amputated to usurp the power of the chiefs and introduce themselves as the new power brokers. The RUF soon turned to mining and diamonds in order to enrich themselves and their foreign supporters.

B. Of Guerillas, Diamonds & Mercenaries

By early 1992, the Sierra Leonean Army (SLA), with the assistance of the Economic Community of West African States Ceasefire Monitoring Group (ECOMOG), led by Nigeria and Guinea (who had a defense pact with Sierra Leone) pushed the RUF back to the Sierra

98 *See id.* at 141

99 IBRAHIM ABDULLAH & MUANA, PATRICK, *THE REVOLUTIONARY UNITED FRONT OF SIERRA LEONE* 176-177 (Christopher Clapham ed.) (1998); L. Renda, *Ending Civil Wars: The Case of Liberia*, 23 FLETCHER F. WORLD AFF. 68 (1999).

100 *An Axis Connected to Gaddafi: Leaders Trained in Libya Have Used War to Safeguard Wealth*, WASHINGTON POST, Nov. 2, 2001.

101 *See Renda, supra* note 99 at 177.

102 PAUL RICHARDS, *FIGHTING FOR THE RAIN FOREST: WAR, YOUTH AND RESOURCES IN SIERRA LEONE*, 178 (1996).

103 PACNET, *supra* note 15.

Leone-Liberia border. In 1992, disaffected SLA soldiers (the leaders were sent to law school in the U.K. on scholarships after their removal) launched a coup due to conditions at the front and a lack of pay.¹⁰⁴ The coup was successful, and the soldiers instituted a commission to look into corruption and soon discovered malfeasance at ministerial levels.¹⁰⁵ Yet, the soldiers also succumbed to graft and corruption in no time.¹⁰⁶ Soldiers sent to the front no longer fought the RUF, but instead turned to diamond mining.¹⁰⁷ In October 1992, Koidu, the main town in the diamond mining areas, fell to the RUF. Seesaw battles raged, and by early 1995, the RUF had the upper hand.

Facing imminent defeat by mid-1995, the military government hired Executive Outcomes (EO), a private South African mercenary outfit consisting of former Apartheid troops, to fight the rebels.¹⁰⁸ With experience gained from fighting South Africa's wars in Angola and Namibia, EO checked the RUF's advance and in less than a month had nearly cleared them from the country.¹⁰⁹ Branch Energy, an offshoot-mining component of EO, was given a 25-year lease on Sierra Leonean diamond concessions.¹¹⁰ By 1996, EO had killed several thousand RUF combatants and forced the RUF into peace negotiations.

Sierra Leone had no foreign exchange to speak of, so the government, as usual, signed away the diamonds to foreigners. In 1996, allegations began to surface that EO officials were engaged in illegal mining.¹¹¹ Between 1994 and 1996, Branch Energy had invested \$12 million in exploratory mining. EO's success meant that a peace treaty would be signed in November, but with a provision requiring EO and ECOMOG to leave by January 1997. As EO prepared to pull out in late 1996, Branch Energy sold its entire stake in Sierra Leone to Diamond Works, a company with connections to Sandline International Ltd., which was itself a mercenary company composed of former British

104 Africa Confidential Special Reports, *Chronology of Sierra Leone: How Diamonds Fuelled the Conflict*, available at <http://www.africa-confidential.com/special.htm> (Last Visited Oct. 12, 2001).

105 See NEW AFRICAN September 1992 at 17.

106 See African Guerrillas *supra* note 99, at 181.

107 See *id.* at 182.

108 See *id.* at 185.

109 See *id.* at 187; PACNET, *supra* note 16.

110 Andres Perez, *Sierra Leone's Diamond Wars*, LE MONDE DIPLOMATIQUE, (June 2000), available at <http://www.monde-diplomatique.fr/en/2000/06/02sierraleone> (last visited Oct. 12, 2001); PACNET, *supra* note 16.

111 *Supra.*; Africa Confidential *supra* note 102; Conciliation Resources, *Primary Industry and Conflict in Sierra Leone* (1997), available at http://www.c-r.org/occ_papers/briefing3.htm (last visited Oct. 12, 2001).

Secret Service members.¹¹² Diamond Works' security would be provided by Lifeguard, a mining security subsidiary of EO.¹¹³

Elections were held in February 1996. EO's success and the new president helped forge the Abidjan Accords in November 1996, which ended the war.¹¹⁴ The RUF would register as a political party and disarm, and international observers would keep and monitor the peace.¹¹⁵ Yet, the U.N. Security Council felt that the Clinton Administration would not support a U.N. peacekeeping effort in Sierra Leone, and hence, none was sent.¹¹⁶ The RUF failed to disarm or demobilize, and on 25 May 1997, RUF soldiers overthrew the civilian administration of President Kabbah and demanded \$47 million before restoring the government.¹¹⁷ The RUF assumed power, and Kabbah fled to Guinea and asked Nigeria to intervene militarily. An orgy of violence gripped Freetown, with increased murder, rape, looting, and torture, while all formal banking and commerce operations ceased throughout the country. Even ECOMOG forces were overpowered.

In February 1998, Kabbah was restored to power by Liberia.¹¹⁸ The RUF was pushed into the countryside and exacted its humiliation on civilians by mutilating thousands more. The rebellion that began in 1991 claimed more than 75,000 lives, caused half a million refugees, internally displaced 2.25 million people, and left thousands of mutilated people.

C. From U.N. Protection to British Intervention

In 1997 the U.N. Security Council imposed an arms embargo on Sierra Leone.¹¹⁹ The U.N. responded to the deconstruction of Sierra Leone in July 1998 by creating a peacekeeping operation, named UNOMSIL, which consisted of 70 observers.¹²⁰ The U.N. Security

112 See Africa Confidential *supra* note 104; Conciliation Resources, *supra* note 111.

113 See Conciliation Resources *supra* note 111.

114 K. Nowrot & E. Schabacker, *The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone*, 14 AM. U. INT'L L. REV. 321, 326 (1998).

115 *Id.*

116 *Id.*

117 See Ayittey, *supra* note 92, at 70; Restore Democracy, *supra* note 114. Nowrot blames the coup on soldiers who were angry at not being paid.

118 See Restore Democracy *supra* note 114, at 335; Le Monde Diplomatique, *supra* note 110.

119 Amnesty International, *Sierra Leone: Cutting the Link Between Diamonds and Guns* (May 5, 2000), available at <http://www.web.amnesty.org/ai.nsf/index/AFR510272000> (last visited Oct. 12, 2001); United Nations Department of Public Information, Conflict of Diamonds: Sanctions and War 2001, available at <http://www.un.org/peace/africa/Diamond.html> (last visited Oct. 12, 2001).

120 See *EIU Country Report: Guinea, Sierra Leone, Liberia*, THE ECONOMIST INTELLIGENCE UNIT, 4th Quarter 1998, at 18, 23.

Council modified the embargo in 1998 to allow the government to rearm itself, but maintained the embargo inasmuch as it denied the RUF any weapons. Regardless, the RUF continued to arm itself through the sale of illegal diamonds, and from 1991 to 1999, the RUF was estimated to have earned approximately \$200 million a year from diamond smuggling.¹²¹ In 1998 and 1999, five flights carrying weapons from Ukraine to Burkina Faso—whose president was the Libyan-trained acquaintance of Sankoh, Compaore—were diverted to the RUF.¹²² In 1998 Bah, former Afghan freedom fighter and Hezbollah member and co-founder of the RUF, met with operatives of bin Laden's al Qaeda network in order to sell them diamonds. The connection to al Qaeda was cemented in September 1998, when Bah arranged for an al Qaeda visit to Monrovia. Bah and Abdullah flew into Sierra Leone to discuss buying diamonds on a regular basis.¹²³ A few weeks later Bah arranged a visit for two more al Qaeda operatives now on the FBI list, Ahmed Khalfan Ghailani and Fazul Abdullah Mohammed—both prime suspects in the 1998 U.S. Embassy bombings in Africa—who took \$100,000 in cash and received a parcel of diamonds in an introductory deal.¹²⁴

On the military front, in 1998 the RUF launched "Operation Spare No Soul" targeting civilians because of the capture of Sankoh by ECOMOG forces.¹²⁵ In January 1999, the RUF attacked UNOMSIL and ECOMOG troops and reentered Freetown. During two weeks in Freetown, the RUF torched homes and buildings, murdered 6,000 people, dismembered hundreds and kidnapped 2,000 children before being repulsed by ECOMOG forces.¹²⁶

In July 1999 Kabbah and Sankoh signed the Lomé Treaty, ending the rebellion by the RUF. Sankoh was made chairman of the Strategic Resources Commission, with responsibility over diamond mining. Anyone who wished to mine diamonds had to go through him to obtain a license.¹²⁷ In essence a power shift had occurred, and rather than the chiefs controlling the issuance of licenses as was once done in the old

121 *Swiss Liberian Diamond Imports Rise in Sierra Leone War*, REUTERS, Aug. 9, 2000.

122 BBC NEWS, *Sierra Leone: The Balance of Forces* (2000), available at http://news.bbc.co.uk/1/hi/english/world/africa/newsid_743000/743718.stm (last visited Oct. 12, 2001).

123 *Al Qaeda Cash Tied to Diamond Trade: Sale of Gems from Sierra Leone Rebels Raised Millions*, WASHINGTON POST, Nov. 2, 2001.

124 *Id.*

125 See EIU Sierra Leone *supra* note 120, at 24.

126 See PACNET *supra* note 18.

127 See Le Monde Diplomatique *supra* note 110; BBC NEWS, *A Rebel's Best Friend* (2000), available at http://news.bbc.co.uk/1/hi/english/world/africa/newsid_745000/745194.stm (last visited Oct. 12, 2001).

economy, Sankoh would now personally seek to engage in this kleptocracy. Sankoh set out to sell his own personal collection of diamonds through the ministry,¹²⁸ and rebels came out of the bush selling their own diamonds.¹²⁹

In April and May 2000, the Lomé Accords fell apart as U.N. forces came under attack in east Sierra Leone. In April 2000, ECOMOG (except the Nigerian contingent that came under U.N. command) pulled out. By May 2000, three key events had occurred: 1) 300 U.N. troops were kidnapped, leading to the unraveling of the U.N. force; 2) 1,000 British troops and six Royal Naval warships arrived in Freetown to restore order and train and arm Sierra Leone's army; 3) Sankoh was arrested. The RUF's leadership, including three ministers, their spokesman, the secretary general and two colonels, were also arrested.

D. The RUF's Renewable Fuel: "Conflict Diamonds"

The RUF supported their offensives through illegal diamond mining in the occupied regions, which continued after the Lomé Treaty required the RUF to turn over occupied regions to the U.N.¹³⁰ Like its predecessors, the RUF was aware of the resources to be had in the diamond sector. Sankoh lined his pockets and encouraged his cronies—just like Stevens and Momah before him—to rape the diamond industry and co-opt the chiefs. Thus, the RUF did the same as others before them, but co-opted the chiefs through violence. In May 2000 the Sierra Leone Attorney General charged Sankoh with corruption and diamond smuggling.¹³¹

As for the RUF's diamonds, they were smuggled through the old smuggling routes to Liberia and sold in RUF-friendly Monrovia.¹³² From 1998 to 2000, diamond exports from Sierra Leone were around \$30 million while diamond exporting from Liberia—which possesses fewer diamond fields—exploded to over \$300 million.¹³³ In July 2000, Charles Taylor, President of Liberia, responded to allegations of his involvement in arms and diamond smuggling to and with the RUF: "When someone gets up and says that Liberia is involved in diamond smuggling and gun

128 Corina Schuler, *Sierra Leone: Papers Detail Rebel's Guilt*, THE CHRISTIAN SCIENCE MONITOR, 1 (May 15, 2000).

129 *Diamond Dealers Rush to Sierra Leone to Buy Rebel Diamonds*, AFRICAN MINING MONITOR (Oct. 12, 1999).

130 See A Rebel's Best Friend *supra* note 127.

131 See Papers Details Guilt *supra* note 128.

132 BBC NEWS, *Liberia's Diamond Links* (2000), available at http://news.bbc.co.uk/hi/english/world/africa/newsid_839000/839206.stm (last visited Oct. 12, 2001).

133 See A Rebel's Best Friend *supra* note 127.

running like a movie, you've got to be joking. What we have said, is with all of the Western intelligence—for God's sake, these people have satellites ... please bring me one photograph of a convoy."¹³⁴ In August Western Intelligence, mainly the U.K. and U.S., showed Taylor and the world his convoys.¹³⁵ The evidence was presented to the U.N. Sanctions Committee, thereby implicating Charles Taylor and Blaise Compaore, President of Burkina Faso. The evidence included allegations that Taylor orchestrated the rebels, supplied food, medical supplies, and military equipment, all in return for 60% of illegal diamonds smuggled out of Sierra Leone.¹³⁶ Burkina Faso, which received around 30% of illegal diamonds smuggled out of Sierra Leone, made fraudulent end user certificates for weapons purchased in Bulgaria, which were then diverted to the RUF.¹³⁷ But even the U.N. became tarred when, in September 2000, Nigerian troops, originally part of ECOMOG and later part of the U.N. operation, were accused of diamond smuggling by the Indian individual commanding the U.N. force.¹³⁸ As late as July 2001 Bah and the RUF were mining diamonds for al Qaeda operatives.

Presently, Sierra Leone's legal system has collapsed because of corruption and the recent civil war. The country's institutions for the administration of justice (both civil and criminal) are barely functional. The courts in Freetown have no law library for research, recording facilities, or secretarial staff.¹³⁹ The court system outside Freetown is nonexistent, with courtrooms destroyed and personnel killed. There is no police force to bring perpetrators to justice.¹⁴⁰ Jails do not provide food for inmates. The British have provided assistance to the rebuilding effort by developing programs aimed at re-establishing and training the national police force.¹⁴¹

Conclusion

British colonial policy in West Africa created a system of patronage. Unlike other countries in West Africa, Sierra Leone also had a

¹³⁴ *Id.*

¹³⁵ BBC NEWS, *West African Diamond Racket Exposed*, available at http://news.bbc.co.uk/1/hi/english/world/africa/newsid_868000/868338.stm (last visited Oct. 12, 2001).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *A Line in the Sand*, THE ECONOMIST, Sept. 16, 2000.

¹³⁹ Amnesty International, *Sierra Leone Ending Impunity—An Opportunity not to be missed* (2000), available at <http://www.web.amnesty.org/ai.nsf/index/AFR10602000> (last visited on Oct. 12, 2001).

¹⁴⁰ *Id.* During the RUF invasion of January 1999, 200 police officers were killed and police stations were targeted for destruction.

¹⁴¹ *Id.*

Creole urban population of freed slaves. These Creoles were educated and given jobs in the civil service. The interior was known as the "white man's grave," and no systematic effort was made to develop the hinterland until pressure from another expanding colonial power pushed the British colonial officials to go to the hinterland to protect Freetown. Unwilling to pay for the administration of the interior, Sierra Leone became a hybrid of British Imperialism using both systems employed in Africa. The discovery of diamonds led to the granting of a monopoly over the diamonds, in response to colonial protectionism in the face of the Great Depression. The monopoly followed the colonial policy of using local chiefs and co-opting them.

At independence, Sierra Leone inherited a system of reliance on one major export—diamonds. It also inherited the economic dominance of the Creoles and the subservience of the chiefs. Resentment for the Creoles, and to a lesser extent, fear of Mende domination, led to Stevens' political victory. Stevens' rule was akin to Mobuto's in Zaire, but much less publicized. Where the West financed Mobuto's kleptocracy, diamonds financed Stevens. Stevens' creation of a new economy eliminated the inherited monopoly and alienated the Creoles and co-opted the chiefs. The economy suffered widely as Stevens and his cronies sought to enrich themselves. This disconnect led to the rise of frustrated urban youths who eventually became the backbone of Sankoh's RUF. The RUF needed to finance their movement and what better way than through diamonds—symbol of the elite that had caused great misery and had instituted the new "Black Colonialism."

Sierra Leone has now come back full circle. Freetown is the economic heart of the country with the diamond district tenuously held by a foreign force—the U.N. The U.N. and the country are watched over by British troops who do not stray too far from Freetown and leave the interior as the black man's grave.

