

EVALUATING THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW IN
INTERNAL ARMED CONFLICTS:
SIERRA LEONE AND LIBERIA AS CASE STUDIES

BY

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DECLARATION

I declare that this thesis entitled Evaluating the Application of International Humanitarian Law in Internal Armed Conflicts: Sierra Leone and Liberia as Case Studies was carried out by me in the Department of Public Law, Faculty of Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at this or any other institution.

Samirah Jibril IBRAHIM

Date

CERTIFICATION

This thesis entitled: **Evaluating the Application of International Humanitarian Law in Internal Armed Conflicts: Sierra Leone And Liberia As Case Studies** by Samirah Jibril IBRAHIM meets the regulations governing the award of the Degree of Master of Laws (LL.M) of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This thesis is dedicated to Allah Almighty for seeing me through my LL.M programme and for showering his blessings on me. It is also dedicated to my family especially my Mother for her support and encouragement; and to all the people who in one way or the other contributed in seeing me through my education to this level.

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ABSTRACT

International Humanitarian Law is applicable to Internal Armed conflict situations as provided by Article 3 Common to the Four Geneva Conventions 1949 and their Additional Protocol II of 1977. Provisions of these two Legal Regimes apply during extreme violence. Determining whether a particular situation is an Internal Armed Conflict is a question one should put in mind. Again even if a situation is determined to be an Internal Armed Conflict how do parties in an extreme violence implement and comply with these rules seem to be very difficult. In most situations, states deny a situation in their territory to be an armed conflict. They prefer to address the situation to be Internal Tensions and Disturbances which are not recognized by International Humanitarian Law. The research work aims at emphasizing on the compliance of International Humanitarian Law during extreme violence. The research work aims at enlightening the readers that International Humanitarian Law is Applicable to internal armed conflict that is within the confines of a single state. The objective of this research work is to show that states like Liberia and Sierra Leone and any other state facing the same armed conflict can begin to end the culture of impunity and bring in a sustainable peace by compliance with the rules of International Humanitarian Law. The working method chosen is more of a doctrinal approach which is qualitative in order to reach an understanding of the current position of Internal Armed Conflict and rules applicable to their violent activities. The primary source of materials for this research works are the Treaty Laws, textbooks, law reports and journals on international humanitarian law. The research work observed that the Armed Conflicts of Sierra Leone and Liberia have all the prerequisite conditions postulated by Common Articles 3 and Additional Protocol II to be applicable. The research work made some recommendations such Dialogue and Negotiation Common Article 3 and Additional Protocol II has laid down the minimum standard of rules that

determines a conflict to be an internal armed conflict. That is whether the state is part of the conflict or not should engage into dialogue or negotiations with opposition armed groups than refuse to listen to the yearnings of the opposition groups. Again the research work recommended Ceasefire Agreement in situations where the parties in the armed conflict are unable to implement and comply with the rules of IHL. That is there should be ceasefire from both parties as first attempt. In a ceasefire arrangement, parties to the conflict primary aim are to suspend hostilities. This helps parties to be committed to implement specific IHL obligations and avoid violating IHL. And even if hostilities resumes, it will help to remind the parties their obligations under IHL. The research work recommended the Domestication Internal Armed Conflict Rules that is states that are parties to Geneva Conventions and Additional Protocols domesticate in their laws the rules of Common Article 3 and its Additional Protocol II and to observe their implementation. This ties the states to international obligations. This will avoid states from denying that Internal Armed Conflict exists in their territory.

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LIST OF ABBREVIATIONS

AFRC	Armed Forces Revolutionary Council
ATU	Anti Terrorist Unit
APC	All People’s Congress
ECOWAS	Economic Community of West African States
ECOMOG	Economic Community of West African States Monitoring Group
EO	Executive Outcome
CRC	Central Revolutionary Council
CDF	Civil Defense Forces
CDC	Congress Democratic Change
CID	Criminal Investigation Division
INPFL	Independent National Patriotic Front of Liberia
IAC	International Armed Conflict
ICRC	International Committee of the Red Cross
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for former Yugoslavia
IHL	International Humanitarian Law
IGNU	Interim Government of National Unity
IMF	International Monetary Fund
LNP	Liberian National Police
LURD	Liberians United for Reconciliation and Democracy

MODEL	Movement for Democracy in Liberia
NBI	National Bureau Investigation
NPFL	National Patriotic Front of Liberia
NPP	National Patriotic Party
NPRC	National Provisional Ruling Council
NSA	National Security Agency
NTGL	National Transitional Government of Liberia
NIAC	Non-International Armed Conflict
PRC	People’s Redemption Council
RFDG	Rally of Democratic Forces of Guinea
RRU	Rapid Responsive Unit
RUF	Revolutionary United Front
SATU	Special Anti-Terrorist Unit
SCSL	Special Court for Sierra Leone
SLPP	Sierra Leone People’s Party
SLA	Sierra Leone Army
SSS	Special Security Service
SOD	Special Operation Division of the Liberian Police
SSS	State Security Service
SSU	Special Security Unit
TRC	Truth and Reconciliation Commission
ULIMO-J	United Liberation Movement of Liberation for Democracy-Johnson
ULIMO-K	United Liberation Movement of Liberation for Democracy-Kromah

UN	United Nations
UNICEF	United National Children’s Fund
UNMIL	United Nations in Liberia
UNAMSIL	United Nations Mission in Sierra Leone
USAID	United States Agency for International Development

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of Study

Within the modern regime of international law a branch has evolved referred to as law of armed conflict popularly known as International Humanitarian Law (IHL). International Humanitarian Law is found in the Four Geneva Conventions of 1949. Out of the 195 independent sovereign states in the world, virtually all the states have agreed to be bound by them¹. The Conventions have been developed and supplemented by two further agreements. Additional Protocols of 1977 (I) and (II) relating to the protection of victims of armed conflict². The States parties to the 1949 Geneva Conventions have entrusted International Committee of the Red Cross (ICRC) through the statutes of the International Red Cross and Red Crescent Movement, to work for the understanding and dissemination of knowledge of International Humanitarian Law, applicable in armed conflict and to prepare any development thereof.³ International Humanitarian Law distinguishes two types of armed conflict⁴ namely;

- (i) International Armed Conflicts (IAC), meaning fighting or opposition between two or more sovereign states.
- (ii) Non-International armed conflicts (NIAC), meaning fighting or opposition between state and governmental forces and non-governmental armed groups.

Non-International armed conflict occur today much more frequently and entail more suffering than International Armed conflict. IHL of Non-International Armed Conflict is codified mainly

¹ Out of 196 States in world, 195 States have ratified the Geneva Conventions of 1949. Retrieved August 26, 2009 from http://www.nationsonline.org/one_world/states.htm.

² 164 States have ratified the Additional Protocols. *Ibid*

³ International Committee of Red Cross (ICRC, 2008), *How is the term "Armed Conflict" defined in International Humanitarian Law?* Opinion paper. p.1. Retrieved March 23, 2009 from www.icrc.org/web/eng/siteeng.nsf/html/a_rmedconflictarticles.

⁴ *Ibid*

in Article 3 Common to the Four Geneva Conventions for protection of war victims and the 1977 Additional Protocol II to the Geneva Conventions of August 12, 1949 and relating to the protection of victims of Non-International Armed Conflict. Others are the 1980 Convention on certain Conventional Weapons, as amended and its Protocols. The 1998 Rome Statute of the International Criminal Court; the 1997 Ottawa Convention banning anti-personal land mines, the 1993 Chemical Weapons Conventions and the 1954 Hague Convention for the Protection of Cultural Property and its second Protocol.

International Humanitarian Law was applied to Sierra Leone Internal Armed Conflict that lasted for 11 years from 1991-2002. One particular inhuman practice was cutting off the ears, noses, hands, arms and legs of non-combatants who were unwilling to cooperate with the rebel group. The victims ranged from small children to elderly women, in some cases, one limb was cut off, in others two limbs, typically two hands or arms. Rebel forces also detained, decapitated, burned alive and inflicted bullets and machete wounds on civilians. Many died from their wounds before they could obtain any form of treatment. The rebel forces abducted missionaries and aid workers, ambushed humanitarian relief convoys and raided refugee sites.⁵ The Junta forces known as the Revolutionary United Forces (RUF) led by Foday Sankoh continued the long standing practice of abducting villagers and using them as forced labourers, sex slaves and human shields during confrontations with government and Economic Community of West African States Monitoring Group (ECOMOG) forces.⁶ Boys were conscripted to become child soldiers and rebel forces used rape as a terror tactic against women.

⁵Lloyd Axworthy, P.C, David Pratt, M.P, Nepanteton.(1999) 'Sierra Leone: The Forgotten Crisis' Report to the Ministry of Foreign Affairs, Special Envoy to Sierra Leone. Retrieved April 2, 2009, from [www.special court for sierraleone.org](http://www.specialcourtforSierraLeone.org)

⁶Lloyd Axworthy, P.C, David Pratt, M.P, Nepanteton.(1999) 'Sierra Leone: The Forgotten Crisis' Report to the Ministry of Foreign Affairs, Special Envoy to Sierra Leone. Retrieved April 2, 2009, from [www.special court for sierraleone.org](http://www.specialcourtforSierraLeone.org)

Liberia on the other hand, had two devastating armed conflicts, which lasted from 1989 to 1996 and 1999 to 2003.⁷The first conflict was led by Charles Taylor, leader of National Patriotic Front of Liberia (NPFL) who took over the government from Sergeant Samuel K. Doe in 1989.⁸In 1999, Liberian Reconciliation and Democracy (LURD)-a rebel group operating out of Guinea-attacked the town of Vioinjana in northwestern Liberia, marking the second civil war. In these two conflicts Liberian citizens were subjected to horrific abuses, including summary execution and numerous large-scale massacres, widespread and systematic rape and other forms of sexual violence, mutilation, and torture, and large-scale forced conscription and use of child combatants. The violence blighted the lives of tens of thousands civilians, displaced almost half the population and virtually grounded the country's infrastructures⁹.

On 14th August 2000, the UN Security Council adopted Resolution 1315 which requested "the Secretary General to negotiate agreement with the government of Sierra Leone to create an independent special court" whose subject matter and jurisdiction includes notable crimes against humanity, war crimes and other serious violations of International Humanitarian Law.¹⁰ The special court for Sierra Leone is composed of International and Sierra Leone judges, prosecutors and staff. It is hybrid court. This court indicted Charles Taylor for his part in atrocities related to his support for the RUF and issued an international warrant for his arrest. He was handed over in March 2006 for trial. The former Liberian head of state was found guilty of war crimes in Sierra Leone by the court and was sentence to prison terms of 50 years on Wednesday 16, May 2012. He is presently serving this punishment in United Kingdom.

⁷The Truth and Reconciliation Commission's Recommendations(2009), *International Domestic War Crimes Court in Liberia*, Retrieved April 22,2009, from www.insightonconflict.org

⁸*Ibid*

⁹Jalloh C. C. and Marong A.(2005). 'Ending Impunity: The case for War Crimes Trials in Liberia', *African Journal of Legal Studies*, University of Pittsburgh Legal Studies Research Paper Series. Vol. 1, p.53 Retrieved January 21,2009 from www.insightonconflict.org

¹⁰ Lloyd Axworthy, P.C , David Pratt, M.P, Nepancarteton.(1999), Op Cit.

1.2 Statement of the Problem

That International Humanitarian law is applicable to Internal Armed Conflict is quite clear. Sadly, countless examples of violations of IHL are on the increase and the victims of war are civilians, for example there was indiscriminate killing of people by the Nigerian Military in Baga, Borno State in the North Eastern Nigeria in April 2013. Given that this body of law applies during times of extreme violence, implementing the law will always be a matter of great difficulty and, striving for effective compliance remains as urgent as ever. This research work has raised the following problem likely to be attributed to internal armed conflicts.

(1) Determining if and when a given situation amounts to an Internal Armed Conflict remains sometimes difficult.

(2) Lack of respect for IHL in Internal Armed Conflict is also another challenge especially in relation to non-state parties to such conflicts.

(3) There is also the issue of denial of applicability of humanitarian law, for example Government authorities might disagree that a particular situation qualifies as armed conflict. They might claim instead that it is a situation of ‘Internal Tensions and Disturbances’. A state might also be reluctant to permit any negotiations or engagement that in its view would grant “legitimacy” to the armed group.

(4) On the other hand, non-state groups might also deny the applicability of humanitarian law by refusing to recognize a body of law created by states or by claiming that they cannot be bound by obligations ratified by the government against whom they are fighting.

(5) There is lack of political will to implement humanitarian law. For example the military wing of a party might recognize the importance of respecting the law, while its political representatives might neither concede the applicability of humanitarian law nor support the

implementation of its provisions. The case is also possible, where an Internal Armed Conflict is itself contrary to the principles, rules and spirit of humanitarian law, there will be no political will to implement the law, for example parties who perform certain acts as part of a widespread or systematic attack against a specific civilian population (Crime against Humanity) and who are interested only in seizing control of economic resources or wealth. The parties to such conflict lacks political will to recognize the existence of IHL, let alone to implement it just for them to achieve their objective.

1.3 Aims and Objectives

(a) The Aim of this research work is to evaluate the International Humanitarian Law rules applicable to internal armed conflicts.

(b) The research work aims at emphasizing on the compliance of International Humanitarian Law during extreme violence.

(c) The research work aims at enlightening the readers that International Humanitarian Law is Applicable to internal armed conflict that is within the confines of a single state.

(d) The objective of this research work is to show that states like Liberia and Sierra Leone and any other state facing the same armed conflict can begin to end the culture of impunity and bring in a sustainable peace by compliance with the rules of International Humanitarian Law.

1.4 Justification of the Research

(i) The research work finds it just and important that International Humanitarian Law is applicable to Internal Armed Conflict to promotes justice by distinguishing between civilians and combatants and protects those who civilians and non-combatants.

(ii) The research work would be of good benefit to students, lawyers, judges, military officers, diplomats and ambassadors. It is under international humanitarian law that powerful people such

as head of states and commanding officers as well as the lowest ranking soldiers in the field are indicted by international criminal court or tribunal for justice.

1.5 Significance of the Research

1. The research work finds it important to study the rules of IHL of Internal Armed Conflict for the reason that majority of armed conflicts today are internal in nature and have similar causes. Generally, these causes are ethnicity, religion and competition for resources particularly oil and mineral wealth.

2. The research work finds it significant to study IHL of Internal Armed Conflict by calling on parties involved in an armed conflict to respect IHL by putting emphasis on Government Armed Troops and the Non-Governmental Armed Groups, that targeting civilians during Armed Conflict is vehemently prohibited.

3. The research work significantly indicates to parties of Internal Armed Conflict on the consequence of the bad practice of recruitment of children as soldiers.

4. The research work importantly emphasizes on International Peacekeeping for the protection of the civilians, particularly children, women and old aged persons.

5. The research work significantly emphasizes on International Criminal Court should ensure that violators of the rules of IHL during Internal Armed Conflict are brought to justice

1.6 Scope of the Research

The scope of the research is on the applicability of International Humanitarian Law in internal armed conflicts and Common Article 3 and its Additional Protocol II of the Geneva Conventions that provided the Minimum Standard Rules governing Internal Armed Conflict situations.

1.7 Research Methodology

The research methodology adopted is doctrinal approach which is qualitative in order to reach an understanding of the current position of Internal Armed Conflict and rules applicable thereto.

The primary sources of materials for this research work are the Treaty Laws, Law Reports on international humanitarian law.

The secondary sources of materials for this research work are Textbooks, Journals and enormous amount of documents on ICRC'S data base and other electronic sources were useful during the research.

1.8 Literature Review

States across the world are increasingly involved in violent conflicts with non-state groups both within and across borders. The applicability of IHL must therefore be determined according to objective criteria and must not be left to the discretion of the warring parties. Although writers have been springing on IHL with the robust support of ICRC publications, however, even with that there are still some yawning gaps, this thesis intended to focus specifically on such gaps.

This research work reviewed the following text books below;

Shaw, M.N.¹¹ described internal armed conflict by making comparison of the international armed conflict with internal armed conflict that the link between the two conflicts may be drawn at the point which can be shown that a foreign state is either directly intervening in a civil conflict or exercising overall control over a group that is fighting in that conflict. The author also agreed that Common Article and its additional Protocol II is the applicable law of internal armed conflicts. The author also provide that international humanitarian law could be enforced by appointment of protecting power¹²

¹¹Shaw, M.N.(2003) *International Law*, (5th ed.) Cambridge University Press, London, p. 1054.

¹² Shaw, M.N.(2003) *International Law*, (5th ed.) Cambridge University Press, London, p. 1075

Yoram Dinstein¹³ explained IHL in three paragraphs and only mentioned IHL of Internal Armed Conflict in the third paragraph. However, his main concern is the protection of human rights which are in force during internal armed conflicts, he said "... internal armed conflict raises a number of legal, psychological and practical problems because of the unique circumstances of a conflict in which parties is not a government but a group of rebels"¹⁴. This statement is quite impressive and educative.

Henkaets, J.M and Doswald-Beck, L¹⁵. The authors emphasized on the issue of enforcement and implementation of International Humanitarian Law when of violated. They provided that the rules in common article 3 must be observed in all circumstances. They made emphasis on parties to an armed conflict are obliged to respect International Humanitarian Law even if the adversary does not do so.

Ladan, M.T.,¹⁶this author discussed on the meaning, types and purpose of International Humanitarian Law .The author described International Humanitarian Law as an instrument designed to ensure respect for human beings in so far as compatible with military requirements and public order and to ease the hardships caused by hostilities. The author also discussed generally on the Laws governing armed conflicts by enumerating the as the law of the Hague, the law of the Geneva and the mixed type law that is a fusion of the Geneva and Hague type law mainly found in Additional Protocols of 1977.

¹³ Dinstein, Y.(1984) *Human Rights in Armed Conflict: International Humanitarian Law In: Meron, T. (ed) Human Rights in International Law. Legal and Policy Issues*. Clarendon Press Oxford, pp. 345-348

¹⁴*Ibid* p. 348

¹⁵ Henkaets, J.M and Doswald-Beck, L. in the Contributions by Alvermann, C, Dormann, K. and Rolle, B. (2005), *Customary International Law*, Cambridge University Press reprinted with Corrections 2009, Vol. 2 pp. 495-499.

¹⁶Ladan,M.T.(2007) *Materials and cases in Public International Law*, Ahmadu Bello University Press, Zaria Kaduna State,Nigeria, pp. 200-210.

Sassoli, M.¹⁷ This author described “internal armed conflicts as distinguished from international armed conflicts by the parties involved rather than by the territorial scope”. He also gave references of cases and materials for researchers on how to get more discussions on law of non-international armed conflict.

C. de Rover,¹⁸ The author made a good point that “situations of internal disturbances and tensions can escalate to the point that a government decides to involve the armed forces in operations to restore order within its territory. Where this happens, armed confrontations between members of the armed forces and dissident armed forces or other organized armed groups can be said to constitute a situation of “non-international armed conflict” or “civil war”¹⁹

Lindsey C.²⁰ The author discussed on the protection on internment and detention of people deprived of their liberty during internal armed conflict as provided by Article 5(2)(c) of the Additional Protocol II of 1977 . This author raised the point that Additional Protocol II provided that, men and women detained during an armed conflict must be kept in separate quarters except they are of the same family and can be accommodated together. And those detainees must not be located close to the combat zone and not exposed to danger. Again children should be detained separate from adults and adolescent girls and boys should be held in separate accommodation²¹

Kalshoven, F. and Zegveld, L.²², internal armed conflict was described in the Geneva Conventions and Protocols. The authors emphasized that Common Article 3 and Additional

¹⁷Sassoli, M., (2006, March), *Transnational Armed Groups and International Humanitarian Law*, Occasional Paper Series at Program on Humanitarian Policy and Conflict Research, Harvard University, pp.8-9, Retrieved May 30, 2012 from www.icrc.org

¹⁸C.de Rover (2005) *To Serve and to Protect, Human Rights and Humanitarian Law for Police and Security Forces* ICRC, pp.116-117

¹⁹C.de Rover (2005) *To Serve and to Protect, Human Rights and Humanitarian Law for Police and Security Forces* ICRC, pp.116-117

²⁰Lindsey, C. (2001) *Women Facing War*, ICRC, p. 166.

²¹ Lindsey, C. (2001) *Women Facing War*, ICRC, p. 166, *Op Cit*, p.167

²²Kalshoven, F and Zegveld, L., (2001), *Constraints on the Waging of War. An Introduction to International Humanitarian Law*, ICRC, pp. 69-82.

Protocol II does not apply to riots, internal tensions and disturbance. More so, good suggestions were made on the implementation and enforcement of instruments and mechanisms for the violations of IHL of Internal Armed Conflict.

This research work had the advantage to borrow and develop on the work of other writers' contributions on the subject matter that is application of IHL in Internal Armed Conflict examining Sierra Leone and Liberia civil wars as case studies. The research work also made use of other related publications in advancing the study and in developing the research work.

1.9 Organizational Layout

This study is divided into five chapters:

Chapter One, focused on definitions of Internal Armed Conflict under International Humanitarian Law. These definitions indicates how the two legal regimes (Common Article 3 of the Geneva Conventions 1949 and its Additional Protocol II of 1997) their applicable thresholds for the characterization of Internal Armed Conflict. The chapter also made a summation of the statement of problems likely to develop in the application of the International humanitarian law applicable to Internal Armed Conflict. After that, this chapter indicates the approach employed which is guided by the object and purpose of choosing this topic under International Humanitarian Law; and the case studies of Sierra Leone and Liberian civil wars. This chapter also explained the justification and literature review of some authorities bringing out the role of International Humanitarian Law in situations of Internal Armed Conflict, which if misconstrued; its utility will be undermined. **Chapter Two**, the chapter examined the application of International Humanitarian Law to such situations that had evolved prior to the establishment of the Geneva Conventions of 1949. The evolution of the Common Article 3 of the Geneva Conventions 1949 and its Additional Protocol II of 1977.

Chapter Three, focused on the incidences of Internal Armed Conflicts that necessitated the application of Common Article 3 of the Geneva Conventions and its Additional Protocol II of 1977 to the extent of establishing an International Tribunals for former Yugoslavia and Rwanda, the International Criminal Court, and the Special Court for Sierra Leone. These International courts focused on the intensity of hostilities and the organization of the armed groups. The temporal and geographical scope of Internal Humanitarian Law will be examined by brief discussions of some decided cases handled by the International Tribunals and Special Court for Sierra Leone. The persons who need to be protected during Internal Armed Conflict being the scope of applicability of international Humanitarian Law and role of Protecting Power were all discussed under this chapter. This chapter shall also discuss on crimes likely committed in non-international armed conflict and those who are to be individually and criminally liable for such crimes.

Chapter Four, the chapter discussed on the case studies of this thesis. The Sierra Leone and Liberian Armed Conflicts will be discussed according to their time and geographical locations they occurred; which is almost the same time. This chapter went further to discuss on the Special Court for Sierra Leone which was the medium used to bring perpetrators of crimes committed during the two Internal Armed Conflicts, taking the former Liberian President Charles Taylor's case as an example.

Chapter Five, the chapter concluded the study with summary, finding and recommendations on the application of International Humanitarian Law in Internal Armed Conflict situations particularly in Sierra Leone and Liberia.

CHAPTER TWO

EVOLUTION OF INTERNATIONAL HUMANITARIAN LAW

2.1 Introduction

International humanitarian law has emerged over centuries as customary law based on religious and moral concept dominating particular period of history, such as Christianity and Islam²³. During the 16th century a trend appeared providing for some care of the wounded and sick and even prisoners²⁴. In the 18th century, under the impact of the ideas of enlightenment a more favorable climate for the development of humanitarian law arose²⁵. The law of warfare was born in the 19th century limiting the evils of warfare and outlawing new weapons. Thus at the last part of the 19th century only International Armed Conflicts were regulated. This chapter will trace all the historical trends of International Humanitarian Law as well as the International and Internal Armed conflict with a view to understand the background of the International Humanitarian Law and Internal Armed Conflict respectively.

2.2 Historical Evolution of International Humanitarian Law

Under the Christian Old Testament, the king of Israel prevented the slaying of the captured following the prophets Elisha's admonition to spare enemy prisoners: In answer to a question from the King, he said "you shall not slay them. Would you slay those who, you have taken captive with your sword and with your bow? Set bread and water before them that they may eat and drink and go to their master"²⁶.

²³Meurant, J.(1987). 'Inter Armed Caritus: Evolution and Nature of International Humanitarian Law', Journal of Peace Research, Vol. 24, No. 3, p.239, Retrieved August 12, 2009 from <http://www.jstor.org.thursday.july>.

²⁴ Meurant, J.(1987). 'Inter Armed Caritus: Evolution and Nature of International Humanitarian Law', Journal of Peace Research, Vol. 24, No. 3, p.239, Retrieved August 12, 2009 from <http://www.jstor.org.thursday.july>.

²⁵*Ibid*

²⁶*Ibid*

Under Islam, the rules of war possessed an organizational structure that is different from other religions²⁷. The Siyar (Islamic International Law) contains the body of Islamic law pertaining to public law, and addresses the proper justifications for war and method of war²⁸.

This includes the Quran and the Sunna, treaties enacted between Muslim leaders and the opinions of Muslim jurists, among others²⁹. The Siyar requires belligerents to distinguish between legitimate and illegitimate targets. Only the legitimates are intentionally targeted.

For example, one of the principles of Islamic legal texts, the Viqayet, which forbids the killing of women, children, old people, sick, monk and hermits, blind and insane. But humanitarian norms were only applied to believers of Islam, thus reducing the scope of application of humanitarian customs. The Caliph Abubakar, the first Islamic governor after the death of Prophet Mohammad (PBUH), proclaimed “do not mutilate. Do not kill little children or old men or women. Do not cut off the heads of palm trees or burn them. Do not cut down fruit tree. Do not slaughter livestock except for food”³⁰.

Under the Jewish law as set forth in the book of Deuteronomy contains prescription for the mitigation of warfare notably prohibition against killing of women and children³¹ Buddhism is another religion mainly practiced by Indo-Asian people, as the society began to stabilize and become more and more politically and socially organized during the Vedic period, the Vedas, the

²⁷ Freamon, B.K., (2003), Martyrdom, Suicide, and the Islamic Law of War: A Short Legal History, *Fordham International Law Journal*, Vol. 27, p. 313. Retrieved September 14, 2009 from <http://ir.lawnet.fordham.edu>.

²⁸ Van Engeland, A., (2008), The differences and similarities between International Humanitarian Law and Islamic Humanitarian Law: Is there ground for reconciliation? *Journal of Islamic Law and Culture*, Taylor and Francis Group, Volume 10, Issue 1, p. 82. Retrieved September 14, 2009, from <http://www.tandfonline.com>.

²⁹ *Ibid*

³⁰ *Ibid*

³¹ The International Law, Retrieved September 14, 2009 from <http://theinternationallaw.Colorado.edu/way2/e64/content/files/lawandcourt/internationalltd.html>.

Sastra and the epics of Ramayana and Mahabharata started prescribing or assuming the existence of laws and customs of wars³².

Hence forth, each civilization has formed island of humanity which certain rules that limits violence, by imposing restrictions on the use of force and an obligation of solidarity towards violence. Indigenous people of all continents have aimed to avoid excesses that would turn conflict in to collective suicides. Customs of Melanesians, Inuit and Nilotic peoples, Buddhism, Hinduism, Taoism, Confucianism and Bushidon in Asia, Judaism, Christianity, and Islam in the middle east, Customary Humanitarian Law in Africa and mutual restriction imposed by Chivalry and Military honor in Europe contain example of rules of “Life Affirmative Societies” in which the main emphasis of ideals, customs and institutions advocates for the preservation and growth of life.³³

2.3 Contemporary Evolution of International Humanitarian Law

The modern International Law is made up of two historical streams namely; The Law of The Hague or the Law of War and the Law of Geneva or Humanitarian law. The two streams took their names from a number of international conferences which drew up treaties relating to war and conflict, in particular the Hague conventions of 1899 and 1907 and Geneva Conventions, the first which was drawn up in 1863³⁴.

The Hague Convention concentrates on the limitation of the effect of hostilities and regulating the combatants’ behavior and the conduct of military operations. While the Geneva Conventions aims at developing and extending the protection of victims of armed conflicts. Both laws followed a parallel route marked by successes, failures and gaps before fusing together and being

³² Mani, V.S.(2001) ‘International humanitarian law: An Indo-Asian Perspective’, International Review of the Red Cross No. 841, Retrieved September 14,2009 from <http://www.irc.org/eng/resources/document/misc/57jq2m-htm>.

³³ *Ibid*

³⁴ Michael, V.(2002), ‘International Humanitarian Law and Spiritually’, p.6 Retrieved September 16,2009 from <http://www.scribd.com/doc/61414965/International-Humanitarian-Law-and-Spiritually>

practically integrated in 1977 with the adaptation of the Protocols Additional to the Geneva Conventions.³⁵

The weight of events and codification of International Humanitarian Law began in the second half of the 19th century that more systematic way approach was initiated. In the United States a German immigrant, Frances Lieder, drew up a Code of Conduct in 1863, which come to be called the Lieder Code in his honor, for the Northern army. The Lieder Code included the humane treatment of civilian populations in areas of conflict, and also forbade the execution of Prisoners of Wars.³⁶

Henry Dunant, a Swiss businessman who had worked with wounded soldiers at the Battle of Solferino³⁷, led to more systematic efforts to try and prevent the suffering of war victims. Dunant wrote a book he titled ‘A memory of Solferino’, and in which he described the horrors he had witnessed. His report were so alarming that they led to the founding of the International Committee of the Red Cross (ICRC) in 1863 and the Convention of Conference in Geneva in 1864 which drew up the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field³⁸.

The Geneva Conventions are the result of a process that developed in a number of stages between 1864 and 1949. As a result of the Second World War, all the Four Conventions were partly of the 1907 Hague Convention and re-adopted by the international community in 1947. Later conferences have added provisions prohibiting certain methods of warfare and addressing

³⁵Michael, V.(2002),*International Humanitarian Law and Spiritually*, p.6 Retrieved September 16,2009 from.<http://www.scribd.com/doc/61414965/International-Humanitarian-Law-and-Spiritually>

³⁶ Meurant, J. (1987), *Op Cit*, p.239

³⁷ This battle took place on 24th June, 1859, in struggle for the unification of Italy. Retrieved August 23,2011 from <http://www.icrc.org/eng/resources/documents/misc/57jnvr.htm>.

³⁸*Ibid*

issues of civil wars. Find below the enumeration of the Geneva Conventions and the Additional Protocols.

- (a) First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field” (first adopted in 1864, last revision in 1949).
- (b) Second Geneva Convention “for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Force at Sea” (First adopted in 1949, successor of the 1907 Hague convention X)
- (c) Third Geneva Convention “relative to the Treatment the Prisoners of War” (First adopted in 1929, last revision in 1949).
- (d) Fourth Geneva Convention “relative to the protection of Civilian Person in Time War” (First adopted in 1949, based on parts of the 1907 Hague Convention IV)

In addition, there are three Additional Amendment Protocols to the Geneva Conventions:

- i. Protocol I (1977): Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict. As of 12 January, 2007 it had been ratified by 167 countries.
- ii. Protocol II (1977): Protocol Additional to the Geneva Conventions of 12 august 1949, and relating to the Protection of Victims of Non- International Armed Conflicts. As of 12 January 2007 it had been ratified by 163 countries.
- iii. Protocol III (2005): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating the adoption of an additional distinctive emblem. As at June 2007 it

had been ratified by 17 countries and signed but not yet ratified by an additional 68 countries.³⁹

While the Geneva Conventions of 1949 can be seen as a result of a process which began in 1864, today, they have “achieved universal participation with 194 parties” .This means that they apply to almost any International and Internal Armed Conflicts⁴⁰.

Hence, the historical convergence between the Geneva Conventions and Hague law began with the adoption of 1977 Additional Protocols to the Geneva, although provisions focusing on humanity could already be found in Hague law (i.e. the protection of certain prisoners of war and civilians in occupied territories). However, the 1977 Additional Protocols relating to the protection of victims in both International and Internal Armed Conflict are not only incorporated aspects of both the Law of The Hague and the Law of Geneva but also important human rights provisions⁴¹.

2.4 Conceptual Clarification of Key Terms

International Humanitarian Law is defined by Black’s Law Dictionary, as “Law dealing with such matters as the permissible use of weapons and other means of warfare, the treatment of prisoners of war and civilian populations in armed conflicts and generally the direct impact of war on human life and liberty...”⁴² According to an author Ladan M.T, he defined IHL as “international rules, established by treaties or custom, which limits the right of parties to a conflict to use the methods or means of warfare of their choice, or which protect states not party

³⁹ICRC,(2004 January) *What is the origin of International Humanitarian Law* Publication International Humanitarian Law answers to your questions, January1,2004.ICRCorg./eng/resources/documents/misc/sk2fr8.hmt.R etrieved on August 15, 2009.

⁴⁰ Most Treaties relevant to International and Non- International Armed Conflict may be found on-line in the ICRC humanitarian law data base. Retrieved August 15, 2009 from www.icrc.org.com.

⁴¹ *Ibid*

⁴² Garner, B. A (2004), *Black’s Law Dictionary (8th ed.)*, West Thomson Business, 6 Cooperman Drive, U.S.A p.758

to the conflict or persons and objects that are, or may be affected by the conflict”.⁴³ ICRC described Humanitarian Law in ICRC Advisory Service on International Humanitarian Law as “a set of rules which seek, for humanitarian reasons to limit the effects of armed conflict”.⁴⁴

Going by the following definitions, the research work is at liberty by drawing a description of international humanitarian law as the law that regulates hostilities in time of extreme violence in any circumstance. The Law did not define the term “Armed Conflict. However according to an author Smith, D. “Armed Conflict” is defined as “an open, armed clashes between two or more centrally organized parties, with continuity between clashes, in disputes about power over government and territory”⁴⁵.

Common Article 3 of the Four Geneva Conventions defines Internal Armed Conflict as “armed conflicts not of an international character occurring in the territory of one of the High contracting parties...”⁴⁶ While Article 1 of the Additional Protocol II adopted a more restrictive definition of Internal Armed Conflict as;

which takes place in the territory of a High contracting party between its armed forces and dissident armed forces or other organized armed groups which under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this protocol.⁴⁷

⁴³ Ladan, M.T,(2007), *Materials and Cases on Public International Law*, Ahmadu Bello University Press Limited, Zaria Kaduna State ,Nigeria p. 200

⁴⁴ICRC ,(2004),*Advisory Services on International Humanitarian Law* ,Retrieved April 2, 2009, from www.ICRC.org/eng/review.

⁴⁵Smith, D. (2004), *Trends and Causes of Armed Conflicts*. Bergrhof Research Centre for Constructive Conflict Management entitled version Retrieved August 16,2009 from <http://handbook.net/document/smith-handbook-fit>

⁴⁶ICRC,(2007), *The Geneva Conventions* August 12, 1949 19, Avenue de ca Paix, 102 Geneva, Switzerland, Retrieved April 2,2009 from www.icrc.org

⁴⁷ *Ibid*

Again, the Rome Statute of the International Criminal Court defined Internal Armed Conflicts as conflict “that takes place in the territory of a state when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups”.⁴⁸

Case law has also brought important elements to the definition of Internal Armed Conflict. In the case of Dusko Tadic,⁴⁹ It was defined as “whenever there is... protracted armed violence between governmental authorities and organized armed groups or between such groups within a state”.

According to an author Gasser, H.P., he defined Internal Armed Conflicts as “armed confrontations that takes place within the territory of a state between the government on the one hand and armed insurgent groups on the other hand”.⁵⁰The International Committee of the Red Cross ICRC gave the following definition of internal armed conflicts which reflect the strong prevailing legal opinion, thus internal armed conflict;

...are protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups or between such groups arising on the territory of a state (party to the Geneva Conventions). The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organization.⁵¹

Going by the second definitions given above the research work draws a conclusion that an armed conflict which is of an internal character must have certain key points to be described as an internal armed conflict. The conflict must be,

⁴⁸Article 8 paragraph 2(f), Rome Statute of the International Criminal courts 1998. ICRC Humanitarian Law Database www.icrc.org– Treaties relevant to non-international armed conflict.

⁴⁹ *ICTY, The Prosecutor v. Dusko Tadic* (1995), Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, IT – 94-1-A, 2 October, Para. 70, Retrieved April 13,2009 from www.icty.org.

⁵⁰ Gasser, H.P.,(1993) *International Humanitarian Law: an Introduction, in: Humanity for All: the International Red Cross and Red Crescent Movement*, Haug. H(ed).Paul Haupt Publishers, Berne, p.555

⁵¹‘How is the term “Armed conflict” Defined in International Humanitarian Law?’ICRC Opinion Paper, March 2008, p. 5. Retrieved March23, 2009 from www.icrc.org/web/eng/siteeng/.nsf/html/armedconflictarticles.

- (a) Between state armed forces and non-state armed groups or only non-state armed group,
- (b) Conflict must be within a territory of a state,
- (c) Hostilities must be intensive and protracted,
- (d) The non-state party must be organized to carry out a intensive military operation.

2.5 International Armed Conflict (IAC)

While the concept of war already exist in the oldest treaties of International Humanitarian Law, the 1949 Geneva Conventions introduced the concept of armed conflicts into this legal regime for the first time. What is International Armed Conflict of International Humanitarian Law? By virtue of Common Article 2 (1), the 1949 Geneva Conventions IAC is defined as “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”⁵² This same definition was also retained in Additional Protocol I⁵³. The situation referred to here are conflicts between states; “the High Contracting Parties” mentioned in the text are sovereign entities.⁵⁴

The relevant rules of IHL may be applicable even in the absence of open hostilities; therefore no formal declaration of war or recognition of the situation is required.⁵⁵ The existence of an IAC and as a consequence, the possibility to apply International Humanitarian Law to a situation, depends on what actually happens on the ground, it is based on factual conditions.

In the majority of cases, the existence of an International Armed Conflict within the meaning IHL can hardly be denied. Moreover, the threshold for violence to qualify as an armed conflict is

⁵² The Geneva Convention of August 12 1949. Op Cit

⁵³ See Article 1(3) Additional Protocol I of July 1977. International Committee of the Red Cross. 19 avenue paix 1202 Geneva Switzerland. www.icrc.org. Retrieved on August 16,2009.

⁵⁴Vite, S. (2009), ‘Typology of Armed Conflict in International Humanitarian Law. Legal Concept and Actual Situations’. *International Review of the Red Cross Cambridge University Press, Vol. 19 Number 873*, 2009, p.71

⁵⁵‘How is the term Armed Conflict Defined in International Humanitarian Law?’ *ICRC Opinion Paper*, March 2008. p.1. Retrieved March23, 2009 from www.icrc.org/web/eng/siteeng/.nsf/htmail/armedconflictarticles.

relatively low; even short lived cross borders armed clashes may trigger the existence of an international armed conflict. However, recent state practice suggests that mere incidents, in particular an isolated confrontation of little impact between members of different armed forces, do not qualify as international armed conflict⁵⁶.

2.6 Types of International Armed Conflict

(a) Transnational Conflicts

These international armed conflicts occur across borders⁵⁷ that it is neither international armed conflict nor non- international armed conflict in nature. In case of **Hamdan**⁵⁸, the United State Supreme Court ruled that the minimum rules of Common Article 3 of Geneva Convention apply to a conflict with a transnational enemy of a non-state character. However, in the case of **Tadic**,⁵⁹ a comprehensive definition of armed conflict in both international and non international armed conflict was proposed thus; “an armed conflict exist whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.”

The distinction between the two Armed Conflicts is the harboring state’s military level of retaliation. If, in the attacks against the non-state group are limited to strictly their military infrastructure, the conflict is considered to be Internal Armed Conflict. But if the retaliatory attacks target the surrounding territory of the harboring state, the conflict escalates to an international level.⁶⁰ In another situation, Internal Armed Conflict occurs when the harboring

⁵⁶‘How is the term Armed Conflict Defined in International Humanitarian Law?’, *ICRC Opinion Paper*, March 2008. p.1. Retrieved March23, 2009 from www.icrc.org/web/eng/siteeng/nsf/html/armedconflictarticles

⁵⁷*Ibid*

⁵⁸*Hamdan vs. Rumsfeld, Secretary of Defense* (2006) Certiorari to the United States Court of Appeals for the District of Columbia Circuit. pp.65 and 68.<http://supreme.justia.com/cases/federal/us/548/05-184>.Retrieved on September7,2011.p.7

⁵⁹Paulus. A and Vashkmadze, M.(2009) , ‘Asymmetrical War and the notion of armed conflict-a tentative Conceptualization’. *International Review of the Red Cross*, Vol.91, Number 873, p. 99

⁶⁰ *Prosecutor v. Dusko Tadic* (Supra), ICTY, Para. 70

state raises no objection to military action. Therefore, the conflict becomes international when, objection are raised, or if the harboring state initiates military action.

(b) Internationalized Armed Conflict⁶¹

This is a new phenomenon. The situation of an internationalized armed conflict can occur when a war occurs between two different factions fighting internally but supported by two different states. The most visible example of an internationalized armed conflict here was conflict in the Democratic Republic of Congo in 1998 when the forces in Rwanda, Angola, Zimbabwe and Uganda intervened to support various groups in Democratic Republic of Congo⁶².

2.7 Forms of International Armed Conflict

(a) Intervention

This is a situation where conflict between states occurs by intervening in a previously existing internal conflict of a state. That is the case where (i) if a foreign power send troops into a territory to support a movement opposing the local government⁶³ or alternatively if (ii) some of the participants in internal armed conflict act on behalf of that other state. Intervention may also take place by proxy when that foreign power merely supports and guide the uprising from a distance.⁶⁴In the latter case, it is then vital to determine the level of control that makes it possible to classify conflict as international.

⁶¹Chelimo, G.O., (2011), 'Defining Armed Conflict in International Humanitarian Law'. *Students Pulse, LLC*
Retrieved from September 13, 2009 from. <http://studentpulse.com/article/508/defining-armed-conflict-in-international-humanitarian-law>

⁶²*Ibid*

⁶³*Ibid*

⁶⁴Vite S. (2009), 'Typology of Armed Conflict in International Humanitarian law .Legal Concept and Actual Situations'. *International Review of the Red Cross Cambridge University Press, Vol. 19 Number 873, March, p.71*

In case of **Tadic**⁶⁵ ICTY propose a criterion namely “overall control” this can be achieved when the foreign power has a role in organizing, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group”

The Additional Protocol 1, stipulates that the situations targeted by Articles 2 Common to the Geneva Conventions include armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercises of their right of self-determination as enshrined in the Charter of the United Nation and Declaration on Principles of National Law concerning Friendly Relation and Co-operation among states in accordance with the Charter of the United Nation⁶⁶

(b) Occupation

When one of belligerents succeeds in gaining the upper hand over its adversary, an international armed conflict may take the form of occupation.⁶⁷ Article 42 of the 1907 Hague regulations provided that territory is considered occupied when it is actually placed under the authority of the hostile army or occupation in the meaning of this provision to exist, two conditions must be fulfilled (a) the occupier is able to exercise effective control over a territory that does not belong to it; (b) its intervention has not been approved by the legitimate sovereign.

Effective territorial control which is at the heart of the concept of occupation implies that substitution of power may take effect. This condition can be fulfilled when first; the overthrown government is unable to exercise its own power. This condition implies in principles that enemy troops should be deployed in the territory concerned and succeeds in imposing the minimum

⁶⁵ *Prosecutor v. Dusko Tadic (Supra)*, ICTY, para 137.

⁶⁶ The Geneva Convention of August 12 1949, *Op Cit*

⁶⁷ Vite, S. (2009), ‘Typology of Armed Conflict in International Humanitarian law. Legal Concept and Actual Situations’. *International Review of the Red Cross Cambridge University Press, Vol. 19 Number 873*, p.73.

⁶⁷ *Ibid*, p. 74

stability that will allow them to exercise their responsibilities deriving from the law of occupation. As for the second criterion, the absence of consent, it must be understood in fairly broad terms. In particular, it is not limited to cases in which power is seized as a result of hostilities. Article 2(2) of the Fourth Geneva Convention of 1949 complements the 1907 definition by clarifying that the relevant rules apply even if the occupation ‘meets with no armed resistance’⁶⁸.

The research work is of the view that the definition provided by Common Article 3 is preferable for the determination of Internal Armed Conflict and should be applicable in any circumstance. The reason is that the requirements needed in its application is lower so much so that any kind of internal armed conflict could fit in to satisfy its requirements. The next chapter shall discuss on the incidences of non international armed conflict of IHL with a view to show how International Humanitarian Law was applicable in some internal armed conflicts that had occurred.

⁶⁸ The Geneva Convention of August 12 1949. *Op Cit*

CHAPTER THREE

THE CONCEPT OF INTERNAL ARMED CONFLICTS

3.1 Introduction

Having defined Non-International Armed Conflict (NIAC) in the previous chapter; this chapter will discuss the concept of NIAC by examining the key instruments of IHL i.e. Common Article 3 of the Four Geneva Conventions, the Additional Protocol II of 1977 and the Rome Statute which have specifically prescribed which rules applies to the situation of NIAC.

3.2 Internal Armed Conflicts under Common Article 3 of the Four Geneva Conventions 1949

This article indicates that NIACs that are not of an international character and are those in which at least one of the parties involved is not governmental. The thresholds to meet this law applicable to NIAC are:

- (a) There must be an armed conflict with hostilities between armed opposition groups on one side against the armed forces of the government on the other side or an armed conflict between non-state actors of a single state.
- (b) The armed conflict must be a declared war similar to international armed conflict, but taking place within the confines of a single state.
- (c) Each party must be in possession and control of a portion of the national territory.
- (d) That a non-state party to a NIAC means an armed group with a certain level of organization that would essentially enable it to implement international humanitarian law.⁶⁹

⁶⁹ Jelena, P. (2011), 'The Protective Scope of Common Article 3: More than Meets the Eye', *International Review of the Red Cross*. Vol. 93, Number 881, p. 192

- (e) There is a territorial limitation that an armed conflict must take place within the territory of a single state (whether between its armed forces and one or more organized non-state armed groups or between such groups themselves).⁷⁰

The thresholds of intensity required in that case is higher for Internal Tensions and Disturbances. Common Article 3 does not apply to situation of internal disturbances and tensions like riots, isolated and sporadic acts of violence and other acts of a similar nature even though they are not specifically mentioned by the article. The reason is that they are handled under the domestic laws; the states deliberately don't want to admit that some tensions have turned out to be Non-International Armed Conflict. For example, the Boko Haram sect in Nigeria, the Premium Times report quoted the purported spokesman for the sect, Abul Qaqa after the Thisday bomb blast in Abuja and Kaduna;

We have repeatedly cautioned reporters and media houses to be professional and objective in their reports. This is a war between us and the Government of Nigeria; unfortunately the media have not been objective and fair in their report of the ongoing war, they chose to take side.⁷¹

The Nigerian government regard the Boko Haram insurgency as ordinary Internal Tensions and Disturbances, whereas the group has declared war against the government.

Another threshold that could be added to the notion of NIACs is the motive of the non-governmental armed groups involved. This type of conflict would thus cover only groups endeavoring to achieve a political objective. However, in the current State of Humanitarian Law, this additional threshold has no legal basis because motives of armed groups are never uniform

⁷⁰Jelena, P. (2011), 'The Protective Scope of Common Article 3: More than Meets the Eye', *International Review of the Red Cross*. Vol. 93, Number 881, p. 198

⁷¹ Hassan Abdul, Ronald Mutum *et al*, (27th April, 2012,), How Suicide Bomber Hit Thisday Office, *Daily Trust*, Retrieved May 8, 2012 from <http://dailytrust.com.ng>.

and cannot always be clearly identified. For example, in the case of **Limaj**,⁷² the defense had challenged the idea that fighting could constitute an armed conflict, arguing that the operations carried out by the Serbian force were not intended to defeat the enemy but to carry out ‘ethnic cleansing’ in Kosovo. The tribunal rejected the argument by pointing out, in particular that the determination of the existence of an armed conflict is based only on the conditions defined by Common Article 3.⁷³

The meaning of the phrase, “occurring in the territory of one of the High Contracting Parties” provided in the definition of Internal Armed Conflict by Common Article 3 of the Geneva Conventions may be controversial. It is argued that the phrase is included in order to make it clear that Common Article 3 may only be applied in relation to the territory of the states that have ratified the 1949 Geneva Conventions⁷⁴. Again, as affirmed by the Court of Justice in 1986, the provisions of Common Article 3 reflect Customary International Law and represent a minimum standard from which the parties to any type of armed conflict must not depart.⁷⁵ Protocol II to the Geneva Conventions, pertaining to internal armed conflict, arguably resolved much of the controversies surrounding the definition of armed conflict in Common Article 3. Because of clear deficiencies in the international legal machinery regulating NIAC, the International Committee of the Red Cross (ICRC) and many States Party to the Geneva Conventions undertook efforts to “reaffirm and develop” the scope and substance of humanitarian law. These efforts culminated in two additional protocols to the Geneva Conventions. Protocol I expanded the definition of International Armed Conflict to include international ‘wars of national

⁷² *Prosecutor vs. Fatmir Limaj* (2005) Judgment, IT 03-66- T 30, ICTY paras. 94 and 134 p.175, Retrieved April 28, 2012 <http://www.icty.org/x/cases/limaj/tjug/e/lim-tj051130-e.pdf>.

⁷³ *Ibid*

⁷⁴ Schindler, D. (1979) ‘The Different Types of Armed Conflict According to Geneva Conventions and Protocols’ *Recueil des Cours de l’Academie de Droit International (RCAID)*, Vol. 163, Number II, p.147. For more detailed analysis of the criteria see *Prosecutor vs. Fatmir Limaj* Judgment ICTY, *Supra*, para.175

⁷⁵ *Military and Paramilitary Activities in and against Nicaragua*, (1986) I.C.J. Reports, para. 218 and 219, p.114, Retrieved April, 28 2012 from <http://www.ilsa.org/jessup08/basicmats/icjnicaragua.pdf> ..

liberation;’ and clarified many important substantive provisions of the Geneva Conventions. In an effort to “develop and supplement” Common Article 3, Protocol II expanded the rules applicable in internal armed conflicts.

3.3 Internal Armed Conflicts under Additional Protocol II 1977

The definition of NIAC by Article 1 of the Additional Protocol II provided thus;

An Internal Armed which takes place in the territory of a High contracting party between its armed forces and dissident armed forces or other organized armed groups which under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this protocol

This definition provided above is narrower than that of Common Article 3 in two aspects, which are High Level of Organization and Intensity of Violence.⁷⁶ But have a higher threshold than the Article 3. The following are the postulated thresholds;

- (a) The Protocol requires non-governmental force to have a particularly high level of organization, in the sense that they must be placed ‘under responsible command and exercises territorial control, allowing them to carry out sustained and concerted military operations and to implement this protocol.’ Although Common Article 3 also presumes that armed groups are able to demonstrate a degree of organization, it does not stipulate that these groups should be able to control part of a territory.⁷⁷ The Government of states normally refuse to recognize the organized nature of the dissident armed group.
- (b) That either of the parties have control of a part of the territory as to enable them to “carry out sustained and concerted military operations” and to “implement the Protocol”. Territorial control, in a broad interpretation means the concept of non international armed

⁷⁶‘How is the term Armed Conflict Defined in International Humanitarian Law?’, *ICRC Opinion Paper*, March 2008. p.5. Retrieved March 23, 2009 from www.icrc.org/web/eng/siteeng/nsf/htmail/armedconflictarticles

⁷⁷*Ibid*

conflict within the meaning of Common Article 3. Therefore, even Temporary Control, that is geographically limited would suffice in this case to justify the application of Additional Protocol II. In more restrictive interpretation, the non-governmental force could exercise control similar to that of a state and the nature of the conflict is similar to that of an international armed conflict.⁷⁸ ICRC gave an intermediate interpretation that territorial control can be 'relative'. For example, when urban centres remain in the governmental hands while rural areas are in the hands of an armed opposition group.⁷⁹

- (c) Additional Protocol II, also restricts its application to armed conflict between governmental force and dissident armed groups.⁸⁰
- (d) The phrase already provided by Common Article 3 "occurring in the territory of one of the High Contracting Parties" is the same with Additional Protocol II. Also the phrase "its armed forces" should cover not only the troops of the territorial state, but also those of any other state intervening on behalf of the government.⁸¹
- (e) The scope of Protocol II is further clarified in Article 1(2), which provided: "This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts." Because Protocol II purports, on its face, to supplement Common Article 3 "without modifying its existing conditions of application," the rigidly defined field of application in the Protocol arguably clarifies as a formal matter the situations in

⁷⁸Vite, S. (2009), 'Typology of Armed Conflict in International Humanitarian Law: Legal Concept and Actual Situations'. *Op Cit*, pp.76 and 77.

⁷⁹RULAC (2011) '*Qualification of armed conflict*' *Rule of Law in Armed Conflict Project*, Retrieved May 4, 2012 http://www.adh-geneva.ch/RULAC/qualification_of_armed_conflict.php.

⁸⁰ Vite, S. (2009), 'Typology of Armed Conflict in International Humanitarian Law: Legal Concept and Actual Situations'. *op cit*, pp.76 - 77

⁸¹*Ibid*

which Common Article 3 applies. In short, Protocol II arguably provides a positive, concrete definition thus; “armed conflict not of an international character.”⁸²

In practice, a conflict may therefore fall within the material field of application of Common Article 3 without fulfilling the thresholds determined by Additional Protocol II. All armed conflict covered by Additional Protocol II are also covered by Common Article 3, this is because Additional Protocol II expands and supplements Common Article 3, it does not change the thresholds of its application. Therefore the additional restrictions of the Additional Protocol II only defines the field of application and do not extend to the entire law of Non International Armed Conflict. Common Article 3 thus, preserves its autonomy and covers a large number of situations.

Another point here is if a conflict may fall within the material field of application of Common Article 3 without fulfilling the thresholds determined by Additional Protocol II, Common Article 3 shall apply. And where a conflict does not fulfill one of the thresholds of both Common Article 3 and Additional Protocol II, it becomes Internal Tensions and Violence. That means the two legal regimes do not recognize Internal Tensions and Disturbances. Again for a NIAC to meet the thresholds postulated by the two legal regimes it must meet at least 80% of the thresholds. Thus, in situations in which the thresholds for the application of Protocol II are fulfilled, both Protocol II and Common Article 3 apply simultaneously, because the scope of Protocol II is included in the wider scope of Common Article 3. On the other hand, in a low-intensity conflict, which does not fulfill the thresholds for the application of Protocol II, only Common Article 3 applies. In fact, Article 3 retains an autonomous existence; its applicability is neither restricted

⁸²Jinks, D. (2003, January) ‘The Temporal Scope of Application of International Humanitarian Law in Contemporary Conflicts’. *Background Paper Prepared for the Informal High-Level Expert Meeting on the Reaffirmation and Development of International Humanitarian Law Cambridge, Published by International Humanitarian Law Research Initiative. p5*, Retrieved April 24, 2012, from <http://www.hpcrresearch.org/sites/default/files/publication/session3>.

nor subjected to the scope of Protocol II. This legal complex situation has the advantage of assuring that there can be no regression of the long-standing protection granted by Common Article 3. The specific mention of Article 3 in the Protocol was one of the key elements that permitted agreement on the establishment and scope of the Protocol.⁸³

3.4 Internal Armed Conflicts under Rome Statute of International Criminal Court

This statute of the International Criminals Court (ICC), in Article 8 (2) (f)⁸⁴ confirms the existence of Non International Armed Conflict without fulfilling the criteria of Additional Protocol II. Article 8(2)(f) made reference to duration by using the word ‘Protracted’ so as to prevent the restrictive notion of Additional Protocol II and adds time as a criterion to Common Article 3⁸⁵. There were pressing questions at the Rome Conference over the scope of the court’s jurisdiction which necessitated the Rome Statute to provide a definition of the Non-International Armed Conflict. This definition conferred on the court jurisdiction over war crimes committed during Non-International Armed Conflict.⁸⁶

In the of case **Lubanga Dyilo**,⁸⁷ the ICC pre-trial Chambers referred to Additional Protocol II in order to interpret Article 8 (2) (f) of the Statute. The Chamber made it clear that this threshold is characterized by two conditions:

- (a) The violence must achieve certain intensity and is protracted;⁸⁸
- (b) An armed group with a degree of organization; particularly the ability to plan and carryout military operations for a long period of time must be involved.⁸⁹

⁸³ Junod, S. (1983), ‘Additional Protocol II: History and Scope’, *The American University Law Review. Vol.33:* 29.p35. Retrieved May 9, 2012 from <http://www.wcl.amerian.edu/journal/lawrev/33/jonod.pdf?rd=1>

⁸⁴ How is the term Armed Conflict Defined in International Humanitarian Law?’, *ICRC Opinion Paper*, March 2008. p.7. Retrieved March23, 2009 from www.icrc.org/web/eng/siteeng/nsf/htmail/armedconflictarticles

⁸⁵ Vite, S. (2009), ‘Typology of Armed Conflict in International Humanitarian Law: Legal Concept and Actual Situations’. *op cit*, pp.79 and 80

⁸⁶ *Ibid*

⁸⁷ *Prosecutor vs. Lubanga Dyilo* (2007) Case No.ICC-01/04-01/06-803, Decision on the Confirmation of Charges (Pre-trial Chamber I), paras. 237-299 @234 Retrieved May 2, 2012. from www.icrc.org.

⁸⁸ *Ibid*.

The definition under the Statute therefore requires the fighting to take place over a certain period of time. It is however, broader than that of Additional Protocol II as it does not require the armed groups concerned to exercise territorial control and must not be under a responsible command. The Non-International Armed Conflicts under this Statute is therefore half way between the categories as referred to in Common Article 3 and in Additional Protocol II.⁹⁰ Again, this statute does not recognize Internal Tensions and Disturbances, because it is assumed that they do not take long time to satisfy the condition “protracted”. However some of these tensions could take time longer than is expected, and if governments of states do not want to address it, despite they are consuming the lives of civilians and properties. Therefore the word ‘protracted could be an excuse on the part of the government’.

3.5 Internal Armed Conflicts under Case Law

This sub-heading will only analyze the definition drawn by the International Criminal Tribunal for former Yugoslavia (ICTY) for the purpose of understanding the concept of Internal Armed Conflict under the Case of **Tadic**. Before the analysis of the thresholds on the definition, the following is a brief fact of the case. On 2nd October 1995 the Appeals Chamber in the **Tadic** case delivered its decision on the Defense Motion for Interlocutory Appeal on Jurisdiction. The context of this decision was the trial of **Duško Tadic**, a Bosnian Serb charged with crimes against humanity, grave breaches of the Geneva Conventions and violations of the customs of war under Articles 2, 3 and 5 of the ICTY Statute. The Decision addressed, inter alia, a challenge that the Tribunal lacked subject matter jurisdiction to try **Tadic** for war crimes. That before allegations relating to violations of the laws and customs of war under Article 3 of the ICTY

⁸⁹*Prosecutor vs. Lubanga Dyilo* (2007) Case No. ICC-01/04-01/06-803, Decision on the Confirmation of Charges (Pre-trial Chamber I), paras. 237-299 @234 Retrieved May 2, 2012. from www.icrc.org.

⁹⁰Vite, S. (2009), ‘Typology of Armed Conflict in International Humanitarian Law: Legal Concept and Actual Situations’. *op cit*, p. 80

Statute could be considered, the Tribunal first needed to determine the existence of an armed conflict. This preliminary issue concerned the status of the situation in Bosnia and Herzegovina from around 24th May until 30th August 1992, the period of time during which it was alleged **Tadic** committed war crimes including murder, forcible sexual intercourse and abuse of prisoners. The defense for **Tadic** contended that ‘there was no legally cognizable armed conflict – either internal or international – at the time and place that the alleged offences were committed’⁹¹.

This argument was based on the fact that ‘the conflict in the Prijedor region (where the alleged crimes are said to have taken place) was limited to a political assumption of power by the Bosnian Serbs and did not involve armed combat (although movements of tanks are admitted)’. The Appeals Chamber rejected the argument of the appellant on the grounds that ‘the temporal and geographical scope of both internal and international armed conflicts extends beyond the exact time and place of hostilities’⁹².

At this juncture, it is submitted that the decision of the Appeal Chambers of the International Criminal Tribunal for former Yugoslavia, provided guidelines on distinguishing features of NIACs are as follows:

- (i) There must be an armed conflict between two or more states.⁹³
- (ii) Civil war between a state on the one hand, and a non-state entity on other.⁹⁴
- (iii) The armed conflict in which no government part is involved, but two or more non-state entities are fighting each other.
- (iv) The armed conflict must be “protracted” armed violence.⁹⁵

⁹¹ *Prosecutor vs. Dusko Tadic*, (supra), para 70

⁹² *Ibid*

⁹³ This is out rightly an international armed conflict.

⁹⁴ This condition is also provided by Common Article 3 to the Four Geneva Conventions of 12 August, 1949

- (v) The intensity of violence⁹⁶
- (vi) The organization of parties⁹⁷

This above guidelines distinguishes broadly the thresholds determining the existence of an armed conflict, as distinct from situations of Internal Tensions and Disturbances. The thresholds are also lower than that required by Additional Protocol II. The definition is also broader in scope than Common Article 3 and Additional Protocol II. The Last two conditions i.e. intensity of violence and organization of parties, were used as a test for the existence of armed conflict and hence also for the applicability of Common Article 3. These two fundamental conditions propounded by the ICTY cases are explained thus;

- (a) The level of intensity of violence is looking at the duration of the conflict, the frequency of the act of violence and military operations, the nature of the weapons used, displacement of victims, territorial control by opposition force, the number of civilians (dead, wounded, displaced persons etc.) are pieces of informations that may be taken into account. However these factors need not exist concurrently.⁹⁸
- (b) The organization of parties is those involved in the armed violence must have a minimum level of organization. For government forces, it is presumed that they meet that requirement without carrying out an evaluation. As for non-governmental armed groups, the indicative elements that need to be taken into account includes, the existence of an organizational chart indicating a command structure, the authority to launch operations

⁹⁵ This threshold was also adapted by Rome Statute Article 8(2) (f) to confer subject matter jurisdiction on the International Criminal Court.

⁹⁶ Cullen, A. (2010), *The Concept of Non-International Armed Conflict in International Humanitarian Law*. Cambridge University Press, p.119, Retrieved April 4, 2012, from [.http://books.google.com.n/books](http://books.google.com.n/books).

⁹⁷ *Ibid*

⁹⁸ *Ibid*

bringing together different units, the ability to recruit and train new combatants or the existence of internal rules.⁹⁹

The trial Chamber went further to say that “an armed conflict of an internal or mixed character, these closely related criteria (intensity of violence and organization of parties) are used solely for a purpose, as minimum, of distinguishing an armed conflict from banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject matter to International Humanitarian Law.”¹⁰⁰ That is to say ICTY never recognizes Internal Disturbances and Tensions. Hence, ICTY guidelines have been used in reports of independent experts like International Commissions of Enquiries (ICE).¹⁰¹ It was also found in the cases of ICTR,¹⁰² ICJ,¹⁰³ ICC,¹⁰⁴ and the Special Court for Sierra Leone (SCSL).¹⁰⁵ The ICTR trial chambers stated in the case of **Rutaganda**,¹⁰⁶ the definition of armed conflict offered by the ICTY is still termed in abstract and whether or not a situation can be described as an “armed conflict” meeting the criteria of Common Article 3; is to be decided upon case-by-case basis. The concept of Non-International

⁹⁹Cullen, A. (2010), *The Concept of Non-International Armed Conflict in International Humanitarian Law*. Cambridge University Press, p.119, Retrieved April 4, 2012, from <http://books.google.com.n/books>.

¹⁰⁰*Prosecutor v. Dusko Tadic*, (1995) Case No. IT-94–1-AR72), Second Amended Indictment, 14 December, para. 562; Cullen, A. (2010) *The Concept of Non-International Armed Conflict in International Humanitarian Law*. Cambridge University Press, p.122. Retrieved April 4, 2012 from <http://books.google.com.n/books>.

¹⁰¹Reports of Sierra Leone Truth and Reconciliation Commission,(2004)Vol.1, para.57. Retrieved May 10,2012 from www.tricsierraleone.org.

¹⁰²*Prosecutor v. Jean Akayesu* (1998) Case No. ICTR9647, para 619. Retrieved May 15, 2012 from <http://www.ictrcaselaw.org/docs/doc15345.pdf>; *Prosecutor v. George Rutaganda* (1999), Case No.ictr-96-3-T,para.92. p.42 Retrieved May 15, 2012 from <http://www.unict.org/Portals/0/case/English/Rutaganda/judgement/991206.pdf>.

¹⁰³*Democratic Republic of Congo vs. Uganda*, (2005), ICJ Case concerning Armed Activities on the Territory of Congo, Separate opinion of Judge Simma, para.23, p.177. Retrieved May 10, 2012. from www.icjci.org/icjwww/idocket/ico/ico_judgements/ico-judgement_opinion_simma_20051219.pdf.

¹⁰⁴*Prosecutor vs. Thomas Lubanga Dyilo* (2007), Case No.ICC-01/04-01/06-795. Decision on the confirmation of charges, para.233, p.79/157. Retrieved May 2, 2012 from <http://www.icc-cpi.int/iccdocs/doc266175.PDF>.

¹⁰⁵*Prosecutor vs. Fofana et al.* (2005) Case No. SCSL-2004-14-PT-068, Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’, Appeal Chambers Decision of the Special Court for Sierra Leone. Special Opinion of Justice Robertson, para.32, p.10. Retrieved May 15, 2012 from <http://www.scsl.org/CASES/ProsecutorvsFofanaandKondewaCDFCase/TrialChamberDecisions/tabid/153/Default.aspx>.

¹⁰⁶*Prosecutor vs. George Rutaganda* (2000) (supra) para 91, p.42; Moir, L.(2004) *The Law of Internal Armed Conflict*, Cambridge University Press, p.45. Retrieve May 15, 2012 from <http://books.google.com.n/books>.

Armed Conflict provided by ICTY and adaptation in Article 8(2) (f) of Rome Statute arguably represents progress developments in International Humanitarian Law.

3.6 Other Types of Internal Armed Conflicts

(a) Exported Non- International Armed Conflicts

This is a situation where the government forces involved are pursuing the armed group seeking refuge in the territory of a neighboring state¹⁰⁷. However, the question here is how can Common Article 3 and Additional Protocol II apply to this situation?

It is applicable by looking at the parties involved; the conflict must exist between government forces and armed groups as defined by the two legal regimes. However from the territorial point of view, it is nonetheless not certain whether a constitutive factor on non-international armed conflict is applicable. It may actually be maintained that the reference to the territory of High Contracting Party in Common Articles 3 and in Additional Protocol II was simply intended to ensure that the application of the relevant rules is linked to the jurisdiction of a state that has ratified the treaties¹⁰⁸.

(b) Cross-Boarder Internal Armed Conflicts.

This is a situation where state force enters into conflict with a nongovernmental armed groups located in the territory of a neighboring state.¹⁰⁹ An example of this is the war in 2006 between Israel and Hezbollah, an armed group in Lebanon.

Additionally, Article 1 and 7 of the Statute of International Criminal Tribunal for Rwanda (ICTR) extended jurisdiction of the tribunal to include its neighboring countries. This confirms that when a conflict is spreading across border, it remains a Non-International Armed Conflict.

¹⁰⁷ Vite, S. (2009), 'Typology of Armed Conflict in International Humanitarian Law: Legal Concept and Actual Situations'. *op cit*, p. 80-82

¹⁰⁸ *Ibid*

¹⁰⁹ *Ibid*

In conclusion, internal armed conflicts are distinguished from international armed conflict by the parties involved rather than by the territorial scope of the conflicts.

(c) Terrorism

Terrorists as such cannot be a party to a conflict, but clearly identifiable terrorist groups can. For example, on 29th June 2006 the US Supreme Court held that Common Article 3 is applicable to a ‘conflict not of an international character between the United States and Al-Qaeda’. It decided that the term ‘conflict not of an international character’ in article 3 is used in contradistinction to a conflict between states¹¹⁰. The use of armed forces by state to combat terrorist may be seen as one important indication of the existence of an armed conflict. The intensity and degree of organization of the parties involved in hostilities should be taken into account¹¹¹.

3.7 Forms of Internal Armed Conflicts

(a) Occupation

Although occupation is a case of an international armed conflicts that is 1907 Hague Regulations and 1949 Geneva Conventions, it is not always easy in practice to identify the situation that are covered by this concept. For example, the Israeli in the Palestinian territories against a non-state actor, the Hamas. Another example is Israeli occupation in the Lebanon territories against Hezbollah a non-state actor.

(b) Intervention

There are two forms of intervention namely;

- (i) Mixed Conflict
- (ii) Peace Keeping

¹¹⁰*Hamdan v. Rumsfeld*, (2006), Secretary of Defense, *et al*, *Certiorari* to the United States Court of Appeals for the District of Columbia Circuit, pp.6568. No.0518. Argued and Decided in June, p.7 Retrieved September 24, 2012 from <http://supreme.justia.com/cases/federal/us/548/05-184>.

¹¹¹Paulus.A. and Vashkmadze. M, Paulus. A and Vashkmadze, M.(2009) , ‘Asymmetrical War and the notion of armed conflict-a tentative Conceptualization’. *International Review of the Red Cross*, Vol.91, Number 873, p. 115

(i) Mixed Conflict

This is a situation where one state or more states become involved in a NIAC in support of one or other of the parties to the conflict for example fighting in the field may be between the force of the territorial state and those of an intervening state, between intervening state taking action on both sides of the front line, between government force (of the territorial state or of a third state) and non-governmental armed groups or between armed groups only. A recent example is intervention of Hezbollah a non-state actor in Lebanon in support of Syrian government against Syrian rebels. In its works, ICRC considers that, depending on the warring parties, the law that applies in such situations varies from one case to the next. Interstate relations are governed by the law of international armed conflict, whereas other scenarios are subject to law of non-international armed conflict¹¹².

(ii) Peace keeping

Usually troops in this context are not in a state to participate in the fight, but are deployed with the aim of conventional peace keeping¹¹³. The Peace Keeping troops may only resort to using armed force in the case of self defense when attacked by the warring parties. However, Peace Keeping troop may part directly in ongoing hostilities by supporting one of the warring parties. For example, the United Nations Organization Mission in Democratic Republic of Congo (MONUC) provided military support for the government of the Democratic Republic of Congo in order to repel the offensives launched by the armed opposition.

Peace keeping troops may in another circumstance be deployed without supporting one of the warring camps, their status is determine in accordance with criteria normally used to evaluate existence of a non-international armed conflict. Those troops must be considered as a party to the

¹¹²Vite, S. (2009), 'Typology of Armed Conflict in International Humanitarian Law: Legal Concept and Actual Situations'. *op cit*, pp. 85,86 and 87.

¹¹³*Ibid*,p.87

conflict if their level of involvement reaches the required intensity, for example Economic Community of West African States Monitoring Group (ECOMOG) forces in Sierra Leone and Liberia.¹¹⁴ Reports showed instances where the forces participated in the states civil wars.

3.8 Protection under Internal Armed Conflict Law

Generally, the Geneva Conventions mentioned the following persons that are protected during Internal Armed Conflicts, namely;

- (i) Persons taking no active part in hostilities
- (ii) Wounded, sick and shipwrecked
- (iii) Prisoners of war
- (iv) Civilians
- (v) Medical and religious personnel.¹¹⁵

3.8.1 Protection under Common Article 3 of the Four Geneva Conventions 1949

The article protects the following, namely;

- (i) Persons taking no active part in hostilities, including military persons who have ceased to be active as a result of sickness, injury or detention, should be treated humanely.
- (ii) The wounded and sick shall be collected and cared for. Now, what are the acts that the persons mentioned above should be protected from? With respect to above mentioned persons, the following acts are and shall remain prohibited at any time and in any place whatsoever protected from;
 - (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

¹¹⁴Vite, S. (2009), 'Typology of Armed Conflict in International Humanitarian Law: Legal Concept and Actual Situations'. *op cit*, p.87

¹¹⁵ The Four Geneva Conventions of 12 August 1949 particularly Article 27 of Convention IV, Common Article 3 of the Conventions, and Protocols I and II.

- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.¹¹⁶

It should be noted that the terms “respect” and “protection” do not occur in Common Article 3 as was provided in Article 27 of the Fourth Geneva Conventions. The provision of ‘humane treatment’ is the only keyword. Who then ensures that persons are protected during and after an Internal Armed Conflict? The answer is the ‘Protecting Power’. With regards to Internal Armed Conflict in particular, Common Article 3 assisted by providing in its paragraph 2 that “an impartial humanitarian body such as the International Committee of the Red Cross (ICRC), may offer its services to the parties to the conflict.”¹¹⁷ Although not formulated as a formal mandate, it serves to prevent any accusation that by offering its services, the ICRC is interfering in domestic affairs of the state involved. It’s functioning is incontestably and impartial.

3.8.2 Protection under Additional Protocol II 1977

Protection is guaranteed under the personal field of application of Protocol II in Article 2(1) as;

This protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or any other similar criteria (hereinafter referred to as ‘adverse distinction’) to all persons affected by an armed conflict as defined in Article 1.

Hence, Common Article 3 categorized persons affected by armed conflict as ‘combatants and non-combatants’ and makes provision for their protection. This is not the same with Protocol II

¹¹⁶The Four Geneva Conventions of 12 August 1949 particularly Article 27 of Convention IV, Common Article 3 of the Conventions, and Protocols I and II.

¹¹⁷*Ibid*

which stated that "... all persons affected by an armed conflict". However, the only persons who take part in hostilities, is found in the opening and closing sentences of Article 4(1) and (3) of the Protocol. Article 4(1) provided "All persons who do not take a direct part or who have ceased to take part in hostilities; and Article 4(3) provided "it is prohibited to order that there shall be no survivors". Protocol II have terms similar to those usually found in Human Rights Conventions, by providing essential guarantees like the Rights to Liberty and Fair hearing to all persons affected by an armed conflict.

The question here is, who are these persons protected under Protocol II?

Those protected persons mentioned in Additional Protocol II are similar to that of Common Article 3 of the Geneva Conventions with a slight difference of 'civilian population' which is given a whole part and not mentioned in Common Article 3. That is to say Protocol II is wider in this context, even though, the material field of application of this Protocol II is to develop and supplement Article 3 of the Geneva Conventions without modifying its existing conditions of application.

Furthermore, Protocol II did provide certain acts of prohibitions with respect to protected persons as enumerated in Common Article 3. However, Common Article 3 provided the term 'treated humanely', which Protocol II afforded a whole part and titled it "Human Treatment". The list of acts prohibited by Common Article 3 to the Geneva Conventions is similar to that of Additional Protocol II. Article 4(3) also provided that 'children shall be provided with the care and aid they require'.¹¹⁸ Attention is also drawn in particular to the provision that children who have not attained the age of fifteen years shall neither be recruited on armed forces or groups nor allowed

¹¹⁸ Article 4 (3) Part II of Addition Protocol II to the Geneva Convention 1977.

to take part in hostilities.¹¹⁹ Therefore Protocol II provided more explicit protection for humanitarian protection in Internal Armed Conflicts, although it has a higher threshold of application than Common Article 3.¹²⁰

3.9 Crime under Internal Armed Conflicts Law

Serious violations of IHL or body of rules are called war crimes. Since World War II, violations of IHL have been referred to include crime against humanity in so far as that category of crime has emerged from war crimes, even though it is now unrelated to war crime and is applicable in time of war and peace. Again, genocide was given the reference but now is originally a broader extension of crimes against humanity, which also applies in times of war and peace.¹²¹

These serious violations under the Four Geneva Conventions are referred to as ‘grave breaches’. That is to say not all violations of the Conventions are treated equally. The most serious crimes are termed ‘grave breaches’. Now, there is need to understand the key terms. That is ‘crime’ and ‘breach’ and ‘grave breach’? ‘Crime’ is difficult to define as its meaning varies in different legal systems. ‘A crime’ is an act or omission that the law makes punishable. A ‘breach’ is merely an act or omission that is contrary to legal obligation.¹²² All crimes stem from breaches of the Law, but not all breaches amounts to crime.¹²³

What is a grave breach? The Third and Fourth Geneva Conventions provided certain acts, if committed amounts to ‘grave breach’ namely;

¹¹⁹ Kalshoven, F. and Zegveld, L.(2001), *Constraints on the Waging of War. An Introduction to International Humanitarian Law*, op.cit, p.135

¹²⁰ Barber, F. (2009), *Facilitating Humanitarian Assistance in International Humanitarian and Human Rights Law, Humanitarian Debate; Law, Policy, Action War Victims*, International Review of the Red Cross. Volume 91, Number, 874, June, p.385

¹²¹ Bassiouni, M.C.(2009) ‘Genocide and Crime against Humanity’, Retrieved September 9,2011 from <http://www.enotes.com/genocide-encyclopedia/genevaconventions-protection-victims-war>.

¹²² Oberg, M.D. (2009,) *The Absorption of Grave Breaches in War Crimes law in Typology of Armed Conflict*. International Review of Red Cross, Volume 91 Number 873, p.164

¹²³ *Ibid*

- (a) Willful killing, torture or inhumane treatment, including biological experiments;¹²⁴
- (b) Willfully causing great suffering or serious injury to body or health;¹²⁵
- (c) Compelling someone to serve in the force of a hostile power;¹²⁶
- (d) Willfully depriving someone of the right to a fair trial;¹²⁷
- (e) Taking of hostages;¹²⁸
- (f) Extensive destruction and appropriate of property not justified by military; necessity and carried out unlawfully and wantonly.¹²⁹
- (g) Unlawful deportation, transfer or confinement.¹³⁰

Furthermore, the 1949 Geneva Conventions and Protocol I of 1977¹³¹ established certain consequences for ‘grave breach’, which include the duty for states to criminalize these violations in their domestic law, to prosecute or extradite those who commit such violations, and to provide other states with judicial assistance in the investigation or prosecution of such ‘grave breach’. The Conventions also established basis for universal jurisdiction so that state parties to the Geneva Conventions can prosecute such offenders, and remove statutes of limitation for such offences.

Hence, any violations that falls short of the above enumerated as ‘grave breach’ are termed as ‘violations’ only. Henceforth, whenever breaches are committed against Common Article 3 and its Additional Protocol II are termed ‘violations’. This is because Common Article 3 and its Protocol II do not contain the same specific or list containing acts to mean ‘grave breach’.

¹²⁴ Articles 3,45,51 Geneva Convention I. August 12 ,1949

¹²⁵ Articles 3,50,51 Geneva Convention II, *ibid*

¹²⁶ Articles 129-131 Geneva Convention III, *ibid*

¹²⁷ *Ibid*

¹²⁸ Article 11 paras, 2,3 and 85 Additional Protocol I, 1977

¹²⁹ 50 Geneva Convention I and Article 147 Geneva Convention IV, 1949

¹³⁰ Articles 146-148 Geneva Convention IV and Article 50, 51, 57, 85 para. 4 I Additional Protocol I, *Ibid*

¹³¹ See Also Articles 49,50 Geneva Convention I; Articles 50,51 Geneva Convention II; Articles 3,129,130 Geneva Convention III; Articles 146 Geneva Convention IV and Article 85 of Additional Protocol I.

Common Article 3 refers to offense of its prohibitions as ‘violations’ and not ‘grave breach’.¹³² More so, Common Article 3 of the 1949 Geneva Conventions and its Additional Protocol II of 1977 do not provide explicit legal obligations as consequences for ‘grave breach’ on state parties. However, the obligations to prevent and suppress ‘violation’ of Common Article 3 and Protocols II should be treated in the same manner and with the same legal consequences as the ‘grave breach’ of the 1949 Geneva Conventions and Protocol I 1977.

The ICTY ruled in **Tadic’s**, that grave breaches apply not only to International Armed Conflict, but also to Non-International Armed Conflict. Furthermore, those provisions are considered customary international law allowing war crimes prosecution even on groups that have not formally accepted the terms of Geneva Conventions.¹³³ Another important statute on the issue of war crime is the Rome Statute that established the International Criminal Court (ICC) in July 1998.

3.9.1 State Criminal Responsibility under Internal Armed Conflicts Law

The state party to the conflict is the first entity to come into mind as who is to be held responsibility for violations of International Humanitarian Law, whether in an International or Internal Armed Conflicts.¹³⁴ Again, it is now firmly established that states can be held responsible for both criminal and civil cases i.e. wrongful acts. Liability exists not only in cases where the state itself is the perpetrator, but also in situation where the conduct of a person or body can be imputed to the state. The conduct of a state body will be considered as an act of that state under international law, whether that body belongs to any of the constituents namely, legislative

¹³²Bassionu, M.C.,(2009) ‘Genocide and Crime against Humanity’. Retrieved August from 12,2011 <http://www.enotes.com/genocide-encyclopedia/genevaconventions-protection-victims-war>.

¹³³ *Prosecutor vs. Dusko Tadic*(1995) Case No. 17-19-1-A-ICTY, para 65, Retrieved November 16, 2010 from www.icty.org.

¹³⁴Kalshoven, F. and Zegveld, L., (2001), *Constraints on the Waging of War. An Introduction to International Humanitarian Law*, *op cit*, p.142

executive, judicial or other authorities, whether its functions are of an international or internal character and whether it holds a superior or subordinate position in the organization of the state.¹³⁵

In the case of **Prosecutor v. Radavon Karadzic and Rosco Mladic**,¹³⁶ this is a case brought before the U.S Court under the Alien Tort Claims Act by the Bosnian nationals. The accused persons were held responsible for the planning of genocide and for the failure to prevent this and other crimes, as commanders. The reason is as a superior who has knowledge of atrocities of his or her troops, the state and he can be held responsible.

However, there is need to note this point, that a state only become liable of an unlawful act or omissions committed by its citizens where there is link between the state and the citizen committing the unlawful acts or omissions. The responsibilities exist even in situations where actions are directly contrary to orders given by superior authorities. The state as an abstract legal entity cannot, of course, in reality 'act itself'. It can only do through authorized officials and representative.¹³⁷

To buttress on this point, it is the considered view of this research work to provide the provision of Article 33 of the ICC statutes for emphasis. It provided that

An act committed under a superior order ,the fact that a crime within the jurisdiction of the international criminal court (ICC) has been committed by a person pursuant to an order of a government or of a superior, whether military or civilian shall not relieve that person of criminal responsibility unless,

- a) The person is under a legal obligation to obey orders of the governor or the superior in question;
- b) The person did not know that the order was unlawful;

¹³⁵ Usman, I.B, (2008). *A Critical Appraisal of the Evolution of International Criminal Law and Doctrine of Individual Criminal Responsibility*, (Unpublished LL.M, Thesis), Faculty of Law, A.B.U, Zaria, September, p.43

¹³⁶ *Prosecutor vs. Radavon Karadzic and Rosco Mladic* Case No. IT 95 -5-R-61/IT-95-18-R.Retrieved October 12,2011 from www.icty.org

¹³⁷ Usman, I.B, (2008), *A Critical Appraisal of the Evolution of International Criminal Law and Doctrine of Individual Criminal Responsibility*, *op cit*, p.44

- c) And orders was no manifestly unlawful if any one of the above three things happened, then it can be attributed to the state.¹³⁸

Where the conditions under section 33 are fulfilled, a valid defense could be established for the freedom of the accused from criminal responsibility.¹³⁹

As a general rule however, International Human Rights Law addresses the question of individual criminal responsibility only in an indirect manner, holding that states are bound to ensure respect for human rights by, for example, enacting and enforcing criminal law.¹⁴⁰

However, a consequence of recent events in the former Yugoslavia and Rwanda and elsewhere, it has been realized that states' criminal laws and rules on jurisdiction must enable the prosecution and trial of serious violations of humanitarian law committed by nationals of another state, who is consequently found in their territory (as Tadic was in Germany and Charles Taylor in Nigeria)¹⁴¹ At the moment of writing, an order by the Rwanda Court was made to France for extradition of Agather Habyarimana, the widow of ex-president of Rwanda for her alleged role in the 1994 Genocide. The French Court rejected the request.¹⁴²

Again, a state can directly commit an unlawful act or omission by breach of a treaty, violate a rule in the territory of another state or damage its property. It is the views of this research work that if state violates the Geneva Conventions it goes to violate Common Article 3 and its Additional Protocol II in any way or form on the protected persons under the above mentioned legal regimes.

¹³⁸ Article 33 of ICC Statute 17th July 1998.

¹³⁹Kalshoven, F. and Zegveld, L.(2001), *Constraints on the Waging of War. An Introduction to International Humanitarian Law*, *op cit*, p.194.

¹⁴⁰Schabas, W.A(2010). 'Punishment of Non-state Actors in Non-International Armed Conflict' p. 908 Retrieved September 15,2011 from www.irlawnet.fordham.edu/cgi?article=1888&context=ilj .

¹⁴¹Kalshoven, F. and Zegveld, L. (2001), *Constraints on the Waging of War. An Introduction to International Humanitarian Law*, *op cit*, p.196
(2001) *Op Cit*, p. 196

¹⁴² Aljazeera News Bar at 11:09am, 29th September, 2011.

3.9.2 Individual Criminal Responsibility under Internal Armed Conflict Law

Common Article 3 of the Geneva Conventions and its Additional Protocol II does not provide for individual criminal responsibility in Internal Armed Conflict. So also, the Geneva Conventions only provided for liability for the commission or ordering of procedural grave breaches.¹⁴³

Attempts was made by Article 86 of Protocol I by introducing liabilities for failure to act when under a duty to do so, and for liability of a superior in a state for failure to take all feasible measures to prevent or repress a breach committed by a subordinate where the superior knows or should have known about the breach.

However, individual criminal liabilities for crimes committed in Internal Armed Conflict was developed by the International Criminal Tribunal for former Yugoslavia and International Criminal Tribunal for Rwanda (ICTY and ICTR) respectively, further expanded upon in Article 25 of the International Criminal Court Statute, which is much more comprehensive.¹⁴⁴ The provisions of Article 25 of the International Criminal Court Statute are reproduced in extensor below:

1. The court shall have jurisdiction over natural persons pursuant to this statute.
2. A person who commits a crime within the jurisdiction of the court shall be individually responsible and liable for punishment in accordance with this statute.
3. In accordance with this statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the court if that person⁷
 - a. Commits such as a crime, whether that other person is criminally responsible.
 - b. Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - c. For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or

¹⁴³ Articles 49, 50, 129 and 146 of Geneva Conventions. See also, the Hague Conventions of 1899 and 1907 on land warfare are silent on the matter of International Criminal Law for violations of the annexed regulations.

¹⁴⁴ Article 7 of ICTY Statute and Article 6 of ICTR Statute.

- its attempted commission, including providing the means for its commission.
- d. In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting within a common purpose. Such contribution shall be intentional and shall either;
 - i. Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the court; or
 - ii. Be made in the knowledge of the intention of the group to commit the crime
 - e. In respect of the crime of genocide, directly and publicly incites others to commit genocide.
 - f. Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose¹⁴⁵

In the case of **Akayesu**¹⁴⁶, the ICTR made a good analysis of individual criminal responsibility in Internal Armed Conflict despite that it is not found in the two legal regimes governing internal armed conflicts.¹⁴⁷ The Rwanda Tribunal which tried individuals that committed violations of Common Article 3 and parts of Article 4 of Additional Protocol II which comprises the subject matter jurisdiction of Article 4 of the Rwandan Statute does not form part of International Customary Law even though Article 6 of the same Rwanda Statute provided for individual criminal responsibility for crimes contained against Article 2, 3, and 4 of the Statute.

¹⁴⁵ Article 25 of ICC Statute of 17th July, 1998.

¹⁴⁶ Prosecution v. Jean Akayesu (1998) (*Supra*) Paras 611 to 617

¹⁴⁷ Common Article 3 of the Four Geneva Conventions 1949 and Article 4 of Additional Protocol II of 1977.

The chamber is of the opinion that these instruments (Common Article 3 and Additional Protocol II) only state norms applicable to states and parties to a conflict, without creating crimes for which individuals may be tried.

3.9.3 Punishment under Internal Armed Conflicts Law

It is true that neither Common Article 3 nor Protocol II provided anything about penalties. Again, those provisions of the Geneva Conventions whose violations constitute grave breaches also provided nothing about penalties and they incontestably establish a basis for the perpetrator's individual criminal responsibility, and even for universal jurisdiction.¹⁴⁸ The Geneva Conventions defined offences but left it to the contracting states to determine penal sanctions.¹⁴⁹

Although Rwandan law allows for capital punishment, the penalty imposed by the tribunal is limited to imprisonment. Article 23 of the ICTR Statute stated that in determining the terms of imprisonment, the trial chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

Meanwhile, Article 24 of the ICTY Statute also provided penalties for the perpetrators of the crimes committed in former Yugoslavia. It provided that;

- i. The penalties imposed by the trial chamber shall be limited to imprisonment; the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
- ii. In imposing the sentences, the Trial Chambers should take into account such factors as to the gravity of the offence and the individual circumstances of the convicted person.
- iii. In addition to imprisonment, the Trial Chambers may order the return of any property and proceedings acquired by criminal conduct including by means of duress, to their rightful owner.

¹⁴⁸ Meron, T.(1995), International Criminalization of Internal Atrocities, *American Journal of Law*, Vol.89, No.3 p.566

¹⁴⁹ *Ibid*

The above provisions have explicitly shown how perpetrators of Internal Armed Conflict should be punished even though not provided by Common Article 3 and its Additional Protocol II.

3.9.4 Enforcement of Sentence

Common Article 3 and its Additional Protocol II did not provide for how its violators are to be punished let alone how to serve the punishment. However, both the ICTY and ICTR Statutes in Article 27 and Article 26 respectively provided that imprisonment shall be served for Rwanda Statute in Rwanda and for Yugoslavian Statute in a state listed by the International Tribunal. Again, both of them stated that prison term can be served in “any other state which has indicated to the UN Security Council their willingness to accept convicted person and in accordance with the applicable law of the state concerned” but “subject to the supervision of the international tribunals”. This means that a state is not bound as a matter of duty and obligation to receive such convict. It is the view of the research work that there will be a time when no state will be willing to accept the convicts in their prisons. However, for now all the International Court imprisonment sentences imposed, states do offer to accept convicts in their prisons.

The International Criminal Court which served as a guide to the Special Court for Sierra Leone did so well for the development of International Humanitarian Law and the Law of Internal Armed Conflict, despite their temporal jurisdiction and limited resources. The Secretary-General recognized in his Report on the Establishment of a Special Court for Sierra Leone that the armed conflict in Sierra Leone officially began on March 23, 1991, when the Revolutionary United Front (RUF) invaded Sierra Leone from Liberia, the Court was given temporal jurisdiction that extended only as far back as November 30, 1996, the date of the signing of the Abidjan Peace

Agreement.¹⁵⁰ This latter date meant that the Court's jurisdiction would encompass the period during which the most serious crimes were committed. This next chapter shall discuss on the armed conflicts of Sierra Leone and Liberia, crimes committed and the application of international Humanitarian Law particularly Common Article 3 of the Four Geneva Conventions 1949 and Additional Protocol II of 1977 relating to Internal Armed Conflicts.

¹⁵⁰ *Study Guides and Lesson Plans* (2011), Retrieved September 12,2011. from <http://www.endes.com/sierra-leone-special-court-reference/sierra-leone-special>.

CHAPTER FOUR

CASE STUDY OF SIERRA LEONE AND LIBERIA

4.1 Introduction

Liberia and Sierra Leone are West African Countries. The Conflict in Sierra Leone started from Liberia in 1989. The Sierra Leone Civil War started in 1991 until 2002. At the same period in 1989, there was internal armed conflict in Liberia until 1996, referred to as the First Liberian Civil War, there was attempt to make peace which did not last long, and in 1999, the Second Liberian Civil War broke out. The Actors to both conflicts are the Government of Sierra Leone and Liberia, the Sierra Leone Rebel Group- Revolutionary United Front (RUF), the Liberian Rebel Group – National Patriotic Front of Liberia (NPFL), UN Mission in Sierra Leone (UNAMSIL) and Liberia (UNMIL), the Economic Community of West African States Military Observers Group (ECOMOG), Cote d’Ivoire, Guinea.¹⁵¹ This chapter shall extensively discuss on the Internal Armed Conflict of Sierra Leone and Liberia respectively to show how Internal Armed Conflict slowed the development of these countries and better understanding of Internal Armed Conflicts.

4.1.1 Internal Armed Conflict in Sierra Leone

(a) Geographical Location

Sierra Leone is located on the West Coast of Africa, between the 7th and 10th parallels north of the Equator. It is bordered by Guinea to the North and Northeast, Liberia to South and South East, and the Atlantic Ocean to the West. The state has four distinct geographical regions: Coastal Guinea Mangroves, the wooded hill country, an upland plateau, and the eastern mountains. The capital is called Freetown.

¹⁵¹ *Diamond Trade in Sierra Leone* (2009) Retrieved November 12, 2010 from www.american.edu/TED/ice/chamano.htm.

(b) Historical Background

It was a Portuguese Sailor, Pedro da Cintra who on a visit to Sierra Leone land in 1462, named the place he saw as Sierra Lyoa (Lion range or Lion Mountain). Sierra Leone is an important center of the Transatlantic trades in slaves until March 11, 1792 when Freetown was found by Sierra Leone Company as a home for former enslaved from (or freed by) the British Empire. In 1808, Freetown became a British Crown colony and in 1896 the interior of the country became a British Protectorate. In 1961, the two regions combined and gained independence.¹⁵²

Sierra Leone is home of fifteen ethnic groups, each with its own language and customs. The two largest and most influential are Mende and Temme. The Mende are predominantly in the South-East and Temme in the North. English is the official language. The Krio language (derived from English and several indigenous African languages) is the most widely spoken language. Sierra Leone is a predominantly Muslim nation, though with a large Christian minority. Sierra Leone relies on mining, especially diamonds, for the economic base. It is among the top 10 diamond producing nations in the world, and mineral exports remain the main foreign currency earner. Sierra Leone is also among the largest producers of titanium and bauxite and a major producer of gold.

(c) Governmental Structure

Sierra Leone is now a Constitutional Republic, with a directly elected President and a Unicameral Legislature, known as House of Parliament. The President is the Head of State and Head of Government. The Judiciary of Sierra Leone is independent of the Executive and Legislature and consists of Supreme Court, Court of Appeals, High Court of Justice and Magistrate. The country's fourteen districts have its own directly elected local government called

¹⁵² Kingfisher Geography Encyclopedia,(2000) p.180, Retrieved November 12, 2010 from www.kingfishergeographyencyclopedia.org.

district council, headed by a council chairman. The country's six municipalities of Freetown, Bo Kenema, Koidu Town, Makeni and Island of Bonthe in turn have directly elected city councils headed by mayors.¹⁵³ Since Independence in 1961, Sierra Leone's politics have been dominated by two major political parties: the Sierra Leone People's Party (SLPP) and the All People's Congress (APC). Other political parties have also existed throughout but with no significant supports.¹⁵⁴

4.1.2 Causes of the Sierra Leone Internal Armed Conflict

(a) Political Causes

After the death of their first Prime Minister Sir Milton Margai in 1964, politics in Sierra Leone was characterized by corruption, mismanagement and electoral violence that led to a weak civil society. The collapse of education system and by 1991, an entire generation of dissatisfied youth members were attracted to the rebellious message of the Revolutionary United Front (RUF). Albert Margai unlike his half-brother Milton, did not see the state as a custodian Republic, but instead as a tool for personal gain and self-enrichment and used the military to suppress multi-party elections that threatened to end his rule.

In 1968 Siaka Stevens entered politics, his rule was sometimes called 'the 17 year plague of locusts'. He saw the destruction and pervasion of every state institution. Parliament was undermined, judges were bribed and the treasury was bankrupted to finance petty projects that supported insiders. When Stevens failed to select his opponents, he often sanctioned them with execution or exile.¹⁵⁵

¹⁵³ Kingfisher Geography Encyclopedia,(2000) p.180, Retrieved November 12, 2010 from www.kingfishergeographyencyclopedia.org

¹⁵⁴ *Ibid*

¹⁵⁵ *Ibid*

In 1985, Stevens stepped down and handed the nation's paramount position to Major General Joseph Momoh, a notoriously incompetent leader, who maintained the status quo. During his seven year tenure, civil servants were not paid; those anxious enough ransacked and looted government offices and property.¹⁵⁶ Important commodities like gasoline were scarce. School teachers were not paid and the education system collapsed, Sierra Leone youths during the late 1980s roamed the streets aimlessly.¹⁵⁷

(b) Economic Causes

The presence of diamonds in Sierra Leone invited and led to civil war in several ways. First, highly unequal benefits resulting from diamond mining made ordinary Sierra Leoneans frustrated. For example, during the Siaka Steven's regime, diamonds were being smuggled and traded illicitly with revenue going to hands of private investors particularly the Lebanese. While during Joseph Momoh's regime, it shifted to the hands of the Israelis. Momoh tried to put some control over smuggle and corruption of the diamond but he lacked political power to enforce the law.¹⁵⁸

Even after the National Provisional Ruling Council (NPRC) took power in 1992 with the aim of reducing corruption and returning revenues to the state, still high ranking members of the government sold diamonds for their personal gain and lived extravagantly. The most important nexus between diamond and the civil war was the presence of easily extractable diamonds which provided an incentive for violence. RUF rebels found it easy to extract diamonds in exchange with weapons and ammunition from neighbouring Guinea, Liberia and even Sierra Leone Army-SLA.

¹⁵⁶Kingfisher Geography Encyclopedia,(2000) p.185, Retrieved November 12, 2010 from www.kingfishergeographyencyclopedia.org

¹⁵⁷*Ibid*

¹⁵⁸ Hirsch, J.L. (2000), *Sierra Leone: Diamonds and the Struggle for Democracy*, Boulder, Co: Lynne Rienner Publishers, pp.27-28.

Other means of profit were gold mining, cash crops, and farming through the use of forced labour. However, the economic benefits was not the only attribute factor for the civil war, the frustrations and grievances were due to that twenty years of poor governance, poverty, corruption and oppression created the circumstances for the rise of RUF, as ordinary people yearned for change.¹⁵⁹

(c) Social Causes

Sierra Leone Civil War resulted in the destruction of 1,270 primary schools and 67% of all school age children were out of schools.¹⁶⁰ This was due collapse of the education system and lack of employment. By 1991, an entire generation of unsatisfied youths had no option than to join the RUF. As stated earlier, school teachers were not paid, only wealthy families could afford to pay private tutors for their children. As said earlier, the bulk of Sierra Leone's youth during the late 1980s roamed the streets aimlessly.¹⁶¹

Other social amenities and infrastructures such as medical care, good water supply, roads were inadequate. And as a result of the Liberian civil war, refugees fled to neighbouring Sierra Leone which the population composes of many children. The large number of these refugees and the internal displaced Sierra Leoneans, helped to provide the manpower for the RUF's insurgency. At the same time the RUF took advantage of the refugees' poor condition by promising to provide them with food, shelter and medical care.

Furthermore, the youth culture and notion of disqualified intellectuals have also been expounded as key factors in explaining the war. While youths are commonly defined as aged 15-25, it was

¹⁵⁹Abdullah. I,(2004), 'Between Democracy and Terror: The Sierra Leone Civil War'. *Council for the Development of Social Science Research in Africa(CODESRIA)*,Dakar. p.99, Retrieved November 12,2010 from <http://www.coderia.org/spip.php?article916>.

¹⁶⁰Bureau of International Labour Affairs, US Department of Labour (2002).*Sierra Leone, (2001),Findings on the Worst Forms of Child Labour*.

¹⁶¹*Ibid*

found in Sierra Leone that people up to the age 35 were considered as youth by virtue of socio-economic statutes.¹⁶² The marginalization of youths in Sierra Leone came about as a result of political and economic factors that eventually led to Sierra Leonean crisis. The youths have an interest in joining any process that would contribute to improving their living condition.¹⁶³

(d) External Factors

That the conflict and subsequent collapse of Sierra Leone can be attributed to the campaign terror launched in Liberia in 1989 by Charles Taylor. Taylor became unhappy over Sierra Leone's role in the setting up of the ECOWAS Ceasefire Monitoring Group (ECOMOG). As a result of that, he used the unsatisfied Sierra Leoneans, particularly the RUF to destabilize Sierra Leone. This assertion is supported by the fact that the invasion of Sierra Leone in 1991 was launched on the Liberian border with many NPFL fighters assisting the Sierra Leonean rebels. Taylor may have eyed Sierra Leone's diamonds and other resources as a ready source of funding his own war.¹⁶⁴ There were reports that the rebel leader Foday Sankoh was exchanging Sierra Leone's diamonds, Cocoa and Coffee for arms from Taylor. This practice was not only weakening Sierra Leone's economy, but also rebuilding Taylor's weak military in Liberia.¹⁶⁵ Thus, the war engendered by a combination of interrelated economic, social, cultural, political and external factors. To attribute it to any one single factor will obviate any objective analysis of its true nature and manifestations. The following paragraph shall discuss extensively on the entire civil war, the abuses committed against civilians and humanitarian law violations for better understanding of an Internal Armed Conflict.

¹⁶²McIntyre, A. Kwesi Anina, E. Nortey, N., (2002), Politics, War and youth Culture in Sierra. An Alternative Interpretation, *Published in African Society Review Vol. II No.3*. Retrieved September 10,2012 from www.iss.co.za/pubs/ASR/11NO3/McIntre.html.

¹⁶³*Ibid*

¹⁶⁴Rugumamu, S. and Gbla, O. (2003) Studies in Reconstruction and Capacity Building in Post-Conflict Countries in Africa. Some lessons and Experience from Sierra Leone. *An ACBF Operation Based Study. Revised Report African Capacity Building Foundation*. p.23

¹⁶⁵*Ibid*

4.1.3 Nature of the Sierra Leone Internal Armed Conflict

The civil war in Sierra Leone started in 1991. At the same time, there were series of Coup d'état in 1991. President Joseph Momoh was the Head of State that was not serious about his promises on political reforms. Momoh was sent on an exile to Guinea as a result of coup by a group of seven young military officers led by Captain Valentine Strasser, on 29th April 1992. Strasser justified the coup by the establishment of the National Provisional Ruling Council (NPRC). This Council made reference to the corrupt Momoh regime and its inability to resuscitate the economy, provide for the yearnings of the people of Sierra Leone, and prevents the rebel invaders. At this time the rebels had waged war in the Eastern and Southern parts of the country led by Captain Foday Sankoh and his group the Revolutionary United Front (RUF) posing an increasing burden on the country. These two parts of the country were controlled by RUF because they are rich in diamonds. The primary reason of this RUF was to overthrow the government of the country who has been making them suffer for many years with inadequacies and bad governance.

Charles Taylor the President of Liberia took this advantage and encouraged the RUF using his National Patriotic Front of Liberia (NPFL) by providing the rebels with arms and ammunitions in exchange with diamonds. By the end of 1993, the RUF were temporarily forced to move out of the country. Some moved to a Liberian border Kono, others towards the centre of the country, approaching Freetown. RUF were denied opportunity to negotiate for peace because National Provisional Ruling Council (NPRC) maintained that the organization was a front for Charles Taylor and not an indigenous Sierra Leonean movement.¹⁶⁶

¹⁶⁶ *Sierra Leone: Background Note* (2008), Retrieved November 12, 2010 from www.state.gov/r/pa/ei/bgn/5475.htm.

The groups involved in the conflict are the RUF, NPRC Government for Sierra Leone and NPFL from Liberia. At end of 1993, the Sierra Leone Army (SLA) was another group of armed soldiers for Sierra Leone government, who captured military bases belonging to the RUF with the help of ECOMOG troops provided by Nigeria. This was successful due to loss of supply of weapons from Liberia. More so, the United Liberation Movement of Liberia for Democracy (ULIMO) at that time gained inside Liberia, restricting the ability of Charles Taylor's NPFL to trade with the RUF. However, the SLA who civilians referred to as 'sobels' were not helping them. They were still brutal and indiscriminate in their search for rebels or sympathizers among the civilians. The SLA's dirty behavior inevitably led to alienation of many civilians and posed some Sierra Leones to join the rebel cause. The civilians started relying on another armed groups called the Kamajors, a Civil Defense Force (CDF). The Kamajors, a grass root militia force who were displaced and unprotected Sierra Leoneans. Joining the Kamajors enabled the civilians to take up arms to defend their family and home, due to the SLA perceived incompetence and active coalition with the rebel enemy.¹⁶⁷ However, the Kamajors became corrupt and deeply involved in extortion, murder and kidnappings.

The SLA and Kamajors even clashed on a number of occasions in looting and mining. The NPRC Senior government officials neglected the SLA soldiers which made them resentful of their poor conditions and began helping themselves to Sierra Leone rich natural resources. The NPRC government motivated the war so that they would not hand over the military government rule to the democratically – elected civilian government and so that they continue their corrupt practices and mismanagement. The war dragged until 1995 when the RUF and SLA seized the

¹⁶⁷*Sierra Leone: Background Note* (2008), Retrieved November 12, 2010 from www.state.gov/r/pa/ei/bgn/5475.htm

SIERMCO (bauxite) and Sierra Leone Rutile (titanium dioxide) mines in Moyamba and Borthé districts in the country's South West.¹⁶⁸

In March 1995, with RUF within twenty miles of Freetown. The Executive Outcomes (EO), a paramilitary group for South Africa came into Sierra Leone. They were financed primarily by the International Monetary Fund (IMF) for \$1.8 per month. They were sent to accomplish three goals. These were, return the diamond and mineral mines to government, locate and destroy RUF headquarters and operate a successful propaganda program that would encourage local Sierra Leoneans to support the government of Sierra Leone.¹⁶⁹

In Just ten days, EO was able to drive RUF back sixty miles into the interior of the country. EO within seven months with support from loyal SLA and Kamajors battalion recaptured the diamond mining district and Kangari Hills, a major RUF Stronghold. They destroyed the RUF main base operations near BO. The RUF admitted defeat and signed the Abidjan Peace Accord in Abidjan Cote D'Ivoire on 30th November 1996.¹⁷⁰

This period of relative peace allowed the country to hold Parliamentary and Presidential Elections in February and March 1996, Ahmed Tejjan Kabbah of the Sierra Leone People's Party (SLPP), a diplomat who had worked with United Nations for more than 20 years, won the election.¹⁷¹ The Abidjan Peace Accord mandated EO to pull out for a neutral Peacekeeping Force. The main reason that prevented Foday Sankoh from signing the agreement sooner was the number and type of peacekeepers that were to monitor the ceasefire. Additionally, continued

¹⁶⁸Gberie, L. (2005), *A Dirty War in West Africa: the RUF and the Destruction of Sierra Leone*, Indiana University Press, pp.88- 106.

¹⁶⁹*Ibid*,p.90

¹⁷⁰*Ibid*,p.92

¹⁷¹*Ibid*,p.100

Kamajors attacks and the fear of disciplinary tribunals kept many rebels in the bush despite their terrible situation.¹⁷²

However, in January 1997, the Kabbah's government overwhelmed by demands to reduce expenditure by the IMF ordered EO to leave. The departure of EO opened up an opportunity for the RUF to regroup for renewed military attacks. The March 1997 arrest of RUF leader Foday Sankoh in Nigeria also angered RUF members, who reacted with escalated violence. By the end of March 1997, the Abidjan Peace Accord collapsed.¹⁷³

As a result of that, a group of disgruntled SLA Officers Freed and Armed 600 Prisoners from Pademba road prison in Freetown. One of the Prisoners, Major Jonny Paul Karoma formed and led the Armed Forces Resolution Council (AFRC), who launched a coup attack on the Sierra Leone government. Armed Forces Resolution Council (AFRC) proclaimed itself as new government of Sierra Leone. That is to say the RUF and dissident SLA then proceeded to parade peacefully together. Foday Sankoh in absence became the Deputy Chairman of AFRC. The joint AFRC/RUF leadership then proclaimed that the war has been won and a great wave of looting and reprisals against civilians in Freetown called "Operation Pay Yourself" followed. President Kabbah went on exile to Guinea. The UN, ECOMOG and AU condemned the coup which caused a lot of sanctions from these bodies.¹⁷⁴

In October 1997, ECOMOG in Sierra Leone brought AFRC/RUF rebels to negotiating table. They agreed to a tentative peace, called 'Conakry Peace Plan'. Despite the RUF/AFRC agreed to this peace plan the fight still continued. In March 1998, ECOMOG forces retook the capital Freetown and reinstated Kabbah. However, ECOMOG's forces suffered some several

¹⁷²Gberie, L. (2005), *A Dirty War in West Africa: the RUF and the Destruction of Sierra Leone*, Indiana University Press, pp.88- 106.

¹⁷³*Ibid*,p.100

¹⁷⁴*Ibid*,p.103

weaknesses, such as poor command and control, low morale, poor training to counter insurgency, low manpower, limited air and sea capacity and poor funding. As a result, in January 1999, the AFRC/RUF again set upon Freetown in a bloody assault known as “Operations No Living Thing” in which rebels entered neighborhoods to loot, rape and kill indiscriminately.¹⁷⁵ In 1999, ECOMOG recalled the Nigerian Military Forces since they were not able to achieve victory over AFRC/RUF. Then International community decided to intervene in a diplomatic manner. The Lome Peace Accord was signed on 7th July 1999.¹⁷⁶ Ironically, this Peace Accord pardoned Sankoh RUF rebel leader for treason, granted him with the position of Vice President and Chairman of the Commission that oversaw Sierra Leone’s diamond mines. In return the RUF was ordered to demobilize and disarm its armies under the supervision of an International Peacekeeping Force which would be under the ECOMOG and United Nations. The Lome Peace Agreement was a subject of protests both in Sierra Leone and International Human Rights abroad, mainly because of the amnesty given to Sankoh.

Despite the Lome Peace Agreement, Security was still unstable. There was Initiation of Disarmament, Demobilization and Reintegration (DDR) Programme in Camps. This Programme tried to convince the rebels in exchange with their weapons for food, clothing and shelter. By 2002 DDR had collected over 45,000 weapons and hosted 70,000 former combatants.¹⁷⁷ Again United Nations Mission to Sierra Leone (UNAMSIL) was established in October 1999, with the main objective to assist the disarmament process and enforce the terms under Lome Peace Agreement. However, the RUF rebuffed and humiliated the UNAMSIL forces, in fact in May 2000, over 500 peacekeepers were captured by RUF rebels and held hostage. RUF held

¹⁷⁵Gberie, L. (2005), *A Dirty War in West Africa: the RUF and the Destruction of Sierra Leone*, Indiana University Press, pp.88- 106.

¹⁷⁶*Ibid*, p.106

¹⁷⁷*Ibid*, p.187

UNAMSIL weapons and armored personnel carriers and advanced to Freetown, taking over Lunsar to its North East.¹⁷⁸

For over a year UNAMSIL avoided intervening RUF controlled running areas. To that end a call for new military intervention was made to save the UNAMSIL hostages and the government of Sierra Leone. In May 2000, the situation on the ground had deteriorated to such an extent that British Royal Marines were deployed in ‘Operation Palliser’ to evacuate foreign nationals and establish order.¹⁷⁹ They stabilized the situation and were the catalysts for a ceasefire that helped to end war. Several factors led to the end of the war, First, Guinean Government raided villages believed to be bases used by the RUF working in conjunction with Guinean dissident rebels. Secondly, a UN Resolution that demanded that the government of Liberia expel RUF, end financial support of the RUF and stop the illicit diamond trade.¹⁸⁰ Finally, the Kamajors felt less threatened now that RUF was disintegrated in the face of a robust opponent made them to stop their violence too.¹⁸¹ RUF/AFRC and Kamajors forces signed a Peace Treaty within a matter of weeks. On 18th January, 2002, President Kabbah declared the 11 year long Sierra Leone Civil War officially over.¹⁸²

4.1.4 Sierra Leone Internal Armed Conflict and International Humanitarian Law

Over 50,000 people had lost their lives during the war¹⁸³ and about 2 million were displaced.¹⁸⁴

The war in Sierra Leone was waged through attacks on the Civilian Population. AFRC/RUF soldiers’ abuses involved physical mutilation, torture and murder. These include amputations by

¹⁷⁸Gberie, L. (2005), *A Dirty War in West Africa: the RUF and the Destruction of Sierra Leone*, Indiana University Press, p.187

¹⁷⁹ *Ibid*

¹⁸⁰ *Ibid* p.170

¹⁸¹ *Ibid*.

¹⁸² Abdullah, I., (2004), ‘Between Democracy and Terror: The Sierra Leone Civil War. Dakar?’ *Council for the Development of Social Science Research in Africa* p.229 Retrieved on November 12, 2010 from <http://www.coderia.org/spip.php?article916>.

¹⁸³Gberie, L. (2005), *A Dirty War in West Africa: the RUF and the Destruction of Sierra Leone*, op cit, p.6

¹⁸⁴ *Ibid*

machetes which the civilians refer to as “cutlass” of one or both hands, arms, feet, legs ears and buttocks and one or more fingers, laceration to the head, neck, arms, legs, feet and torso; the plucking out of one or both eyes, rape, gunshot wounds to head, torso and limbs; burns from explosives and other devices, injections with acid; Human Rights Watch also received unconfirmed reports of sexual mutilation such as the cutting off of breast and genitalia among other atrocities.¹⁸⁵

The AFRC/RUF used abused civilians to ‘send messages’ to its opponents. Victims of amputations or other mutilation are frequently told that they should take their amputated limb and a verbal or written message to ECOMOG or the Kabbah government. The message typically demanded that ECOMOG should “leave Sierra Leoneans” or that Kabbah should replace the limbs of amputees. And they called for the release of RUF leader Foday Sankoh imprisoned in Nigeria. According to testimonies from their victims and witnesses, many victims died from complications related to their wounds before their message of horror can be heard.¹⁸⁶ Men of voting and fighting age are particularly targeted in order to discourage them from giving political and military support to President Kabbah. While women and girls were subjected to rape and other sexual violence like sex slavery. Pregnant women and nursing mothers were also targeted.¹⁸⁷

In February 1998, attacks on civilians had occurred in almost all the regions. The vast majority victims were males between the ages of 16 to 45, women, children and elderly persons were not spared too. For example, testimonies collected by Human Rights Watch included male and

¹⁸⁵ *Sierra Leone Sowing Terror, Atrocities against Civilians in Sierra Leone*, (1998) Vol. 10, No. 3 (A) Retrieved March 19, 2011 from www.globalissues.org/articles/88/sierraleone.

¹⁸⁶ *Ibid*

¹⁸⁷ *Ibid*

female amputees over the age of 60 as well as a three year-old-boy with a gunshot wound.¹⁸⁸ The AFRC/RUF's "Operation No Living Thing" and "Operation Pay Yourself" were the most terrible campaign carried by the rebels. These two campaigns of terror both originated in Kouduarea and spread throughout the country. They were designed to loot, destroy, or kill anything in their path. The 'Operation Pay Yourself' was described by a witness in Koidu, that roadblocks were placed by Ten AFRC/RUF in a van with weapons like AK47s rifles. They were searched from their bags, shirts to pants. They were told to make piles and put all the best of what they had such as money, rice into one pile and the rest in another. They took all best and gave them what was not good. While 'Operation No Living thing,' involved murder, mutilations and kidnapping.¹⁸⁹

The AFRC/RUF appeared to use this campaign of fear as a means of exerting political and military control. On the other hand, the supporters of President Kabbah – the Kamajor were protecting themselves from AFRC/RUF Forces; most of them are farmers, miners or small merchants with no history of political activity. One witness to atrocities near Koidu said "They don't ask you if you're a Kabbah supporter; they just kill randomly... they just kill anyone. But if they know you are a Kabbah supporter they will kill you faster".¹⁹⁰

The actual supporters of President Kabbah for example, civil administrators, paramount chiefs, traditional section chiefs, catholic priest, other religious figures and other community leaders are actively sought out by AFRC/RUF intimidation, extortion or abuse. One catholic priest who was captured by the AFRC/RUF and later escaped stated that his captors planned to execute him.

¹⁸⁸ *Sierra Leone Sowing Terror, Atrocities against Civilians in Sierra Leone*, (1998) Vol. 10, No. 3 (A) Retrieved March 19, 2011 from www.globalissues.org/articles/88/sierraleone

¹⁸⁹ Human Rights Watch Interview, (1998, June), *Fandonyema, II Refugee Camp, Gueckedou, Republic of Guinea*, Retrieved March 19, 2011 from www.globalissues.org/article/88/sierra-leone.

¹⁹⁰ Human Right Watch Interview, (1998 June), *Koundou Bengo Refugee Camp, Republic of Guinea*, Retrieved March 19, 2011 from www.globalissues.org/article/88/sierraleone.

They told him, “Look! Here’s one Kamajor to take care of. You priests are supporting the SLPP government and the Kamajor, stand here! Because we are going to kill you, the AFRC/RUF took whatever money and property these individuals have and brutalized them to show the population how they will treat their opponents’”.¹⁹¹

After examining the abuses or hostilities perpetrated on the victims of Sierra Leone Civil War, the important question here is what type of war is it and what is the applicable law? The hostilities committed in Sierra Leone constituted crime against humanity and was an Internal Armed Conflict under the International Humanitarian Law. Sierra Leone is a party to the Geneva Conventions and their Additional Protocols¹⁹². As stated earlier, Common Article 3 to the Four Geneva Conventions sets out fundamental rules applicable to Internal Armed Conflicts that are not subject to suspension under any circumstance, and that are widely accepted as constituting Customary International Law. Common Article 3 is virtually a convention within a convention¹⁹³ and it provided that in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the law to regulate hostilities during the conflicts.

Both Common Article 3 and Protocol II provided for protection of civilians as the core of both provisions and indeed, are fundamental to all humanitarian laws. For the purposes of the conflict in Sierra Leone, a civilian is anyone who is not a member of the armed forces or of an organized armed group of a party to the conflict.¹⁹⁴

¹⁹¹Human Right Watch Interview (June 9, 1998) *Guekedou, Republic of Guinea*, Retrieved March 19, 2011 from www.globalissues.org/article/88/sierraleone.

¹⁹²Sierra Leone ratified Geneva Conventions of August 1949 on July 10, 1965. Retrieved September 7,2012 from <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P>. And ratified Additional Protocols on October 21,1986. Retrieved on September 7,2012 from <http://icr.org/ihl.nsf/WebSign?ReadForm&id=475&ps=P>.

¹⁹³*Ibid*

¹⁹⁴ The AFRC/RUF, Kamajors, SLA are organized armed groups fighting against the government which qualifies the Sierra Leone Civil War as a typical non-international armed conflict under common Article 3 and Protocol II.

The International Committee of the Red Cross, Commentary on the Additional Protocols of 1977 states that the commitments of a State to these provisions i.e. Common Article 3 and Additional Protocol II also applies to private individuals in that State's territory who are bound by the same right and obligations.¹⁹⁵ The Government's application of these provisions does not confer on the organized armed groups any international recognition because Common Article 3 and Protocol II does not provide any special status for them such as the combatants privilege to kill or capture enemy troops or prisoner of war status when captured.¹⁹⁶

Subsequently, the Sierra Leonean Government asked the United Nations to assist in the establishment of a special court for Sierra Leone, which would try those who "bear the greatest responsibility for the commission of crimes against humanity, war crimes and serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law committed in the territory of Sierra Leone since 30th November 1996". Both the Truth and Reconciliation Commission and Special Court for Sierra Leone began operating in the summer of 2002.¹⁹⁷

4.1.5 Special Court for Sierra Leone (SCSL)

The Statute of Special Court for Sierra Leone outlines four types of crimes with which the court can charge individuals. They are crimes against humanity, violation of Article 3 common to Geneva Conventions and of Additional Protocol II (war crimes), other serious violations of International Humanitarian Law and Crimes under Sierra Leonean Law.¹⁹⁸

¹⁹⁵Common Article 3 Geneva Conventions I II III IV 12 August 1949. *International Humanitarian Law-Treaties & Development, International Committee of the Red Cross*. Retrieved January 10,2011 from <http://www.icrc.org/ihl.nsf/FULL/375>

¹⁹⁶*Ibid*

¹⁹⁷International Centre for Transitional Justice(ICTJ),(May, 2011)*Sierra Leone Sierra Leone Submission to Universal Periodic Review of the UN Human Rights Council*, p13. Retrieved December 12, 2011 from <http://www.ictj.org/sites/default/files/ICTJ-SierraLeone-Periodic-Review-2010-English.pdf>.

¹⁹⁸ Articles 2, 3, 4 and 5 of the Statute of Special Court for Sierra Leone(2003)

The Statute provided that the Special Court share jurisdiction with the national Court of Sierra Leone that is a concurrent jurisdiction. However, the Special Court enjoys primacy over the National Courts. And at any stage of the proceedings, the Special Court may formally request a National Court of Sierra Leone to defer its competence.¹⁹⁹ However, Article 9 of the Statute of Special Court for Sierra Leone provided the principle of Non bis in idem (double jeopardy; which clearly stated “that no person who has been tried before the national courts can later be tried by the special court in respect of the same acts”). But there are exceptions. Retrial is possible if: (1) the acts for which the defendant was tried in a national court were characterized as ordinary crimes; (2) the national proceedings were not impartial or independent; or (3) the national proceedings were designed to shield the accused from international criminal responsibility or were not diligently prosecuted.

The jurisdiction of the Special Court for Sierra Leone was limited. That is a “temporal jurisdiction”. What made it have a temporal jurisdiction was because the Special Court was given a limited budget, there was a need to limit its case load. However, this was partly achieved, because, conflict in Sierra Leone officially began on March 23, 1991, when RUF invaded Sierra Leone from Liberia, and the Court was given temporal jurisdiction that extended only as far back as November 30, 1996, the date the Abidjan Peace Agreement was signed. This date meant that the Court’s jurisdiction would encompass the period during which the most serious crimes were committed. The Courts jurisdiction was an open-ended.²⁰⁰

The amnesty granted in the Lome Peace Agreement also has an impact on the temporal jurisdiction of the Special Court for Sierra Leone. That is, if the amnesty were considered legal and enforced, the Special Court’s jurisdiction would then extend only to crimes committed after

¹⁹⁹ *Ibid.* Article 8.

²⁰⁰ Special Court for Sierra Leone, Study Guides and Lesson plan.(2000) Retrieved July, 30 2010 from <http://www.enotes.com/sierra-leone-special-court-reference/sierra-leone-special.htm>

July 7, 1999 – whereas if that amnesty was illegal, the Court would also enjoy jurisdiction over crimes committed before that date. However, the UN Secretary General stated in a Report in October 2000 that; “The United Nations has consistently maintained the position that amnesty cannot be granted in respect of International Crimes such as genocide, crimes against humanity, or other serious violations of International Humanitarian law.”²⁰¹

Furthermore, Article 10 of the Statute of Special Court for Sierra Leone therefore rejected amnesty in respect of International Crimes, but leaves open the question of whether national crimes can be prosecuted by the Special Court in instances where an amnesty has been granted. It can be argued that the court’s temporal jurisdiction concerning national crimes begins only on July 7, 1999.²⁰²

The personal jurisdiction over persons of Special Court for Sierra Leone is another important issue. Two questions always come up; firstly, whether the Courts should have had jurisdiction over children who were suspected of having committed atrocities. Secondly, whether the Statute itself should have placed restrictions on who was and was not a prosecutable defendant or whether this should be left to the discretion of the prosecutor?²⁰³

Answer to the first question can be found in the Secretary-General’s Original Draft Statute which provided that special court should have jurisdiction over “persons most responsible for serious violations of international humanitarian law and Sierra Leone Law”. Subsequently, the Security Council changed thus to “persons who bear the greatest responsibilities”. The Security Council added to the Secretary – General’s draft the word: “including those leaders who, in committing such crimes, have threatened the establishment and implementation of the peace

²⁰¹ Section 5, *the Report of the Secretary- General on the establishment of a Special Court for Sierra Leone*, (2000), Retrieved July, 30 2010 from www.special_court_for_sierra_leone.htm

²⁰² Special Court for Sierra Leone, Study Guides and Lesson plan.(2000) *Ibid*

²⁰³ *Ibid*

process in Sierra Leone”. This removes ambiguity as to whether the Court had jurisdiction over crimes that were committed after the signing of the Lome Peace Agreement.²⁰⁴ The above served as guidance to the Prosecutor too. At the same time, the inclusion of this phrase “having to do with the Court’s ultimate discretion in respect of jurisdiction over persons” in the final version of the Statute of the Special Court in combination with the Court’s limited financial resources suggested that the Court’s main focus would be rebel leaders.²⁰⁵ While for violations of IHL by persons other than rebel leaders’ for example members of peacekeeping forces, the Security Council specified that their prosecutions fall under the primary responsibility of the state that sent them²⁰⁶.

Answer to the second question can be found in Article 7 of the Statute of the Special Court for Sierra Leone which deals with jurisdiction of the Special Court over persons who are 15 years of age or older at the time of the alleged commission of the crime. It allows the Court to prosecute minors if they are judged in accordance with Article 1. However, the Statute provided a number of safeguards which included separate trials from adults, protective measure and provisional release pending trial.

The Statute also stipulated that any juvenile who is tried and found guilty by the Special Court should not be subject to imprisonment. It further provided that the Court may order any of the following as alternative to imprisonment; care, guidance and supervision orders, community service orders, counseling, foster care, correctional, educational and vocational training programmes in approved schools and, as appropriate, any programme of disarmament,

²⁰⁴ Article 1 of the Special Court for Sierra Leone(2003) Retrieved July, 30 2010 from www.special_court_for_sierra_leone.htm

²⁰⁵ Special Court for Sierra Leone, study Guides and Lesson plan,(2000) *Op Cit*

²⁰⁶ *Ibid*

demobilization and reintegration or programmes of child protection agencies.²⁰⁷ Article 15 also provided that, in the prosecution of juvenile offenders, the Prosecutor shall ensure that the child rehabilitation programmes are not endangered, and that, where appropriate, resort shall be made to the Truth and Reconciliation Commission.²⁰⁸ Moreover, several articles stipulate that Judges, Prosecutors, Investigations and Registry Staff shall have experience in juvenile matters and justice.²⁰⁹

At this point, an argument came up on the issue of 15 years of age for Criminal responsibility. This is considerably less than the eighteen years stipulated in the Statute of the International Criminal Court. However, criminal responsibility of the age 15 is not contrary to customary international law. In addition, the UN Convention on the Rights of the Child (1989) has provisions in respect of the prosecution of children and the legitimate detention of children, but does not specify a minimum age of criminal responsibility. However, it provided that capital punishment should not be imposed on anyone below the 18 years at the time of the alleged offence.²¹⁰ In relation to this, the criminal codes of many states allow prosecutions of every young child. In fact, the age of criminal responsibility under Sierra Leone law is ten years of age, and persons over 17 can be given death penalty.²¹¹ Section 28 of Sierra Leone Child Rights Act 2007 stipulated that the minimum age for recruitment into armed forces is 18 years, and

²⁰⁷ *Ibid.* Article 7(a) Statute of the Special Court for Sierra Leone(2003)

²⁰⁸ *Ibid*

²⁰⁹ *Ibid.* Articles 13, 15 and 16 of the Statute of Special Court for Sierra Leone. .

²¹⁰ Special Court for Sierra Leone Study Guides and lesson plan,(2000)*Op Cit.*

²¹¹ Sierra Leone government affirmed in 2006 in its Second Report to UN Committee on the Rights of the Child stated its declaration on ratifying the Additional Protocol II on increment on the age of recruitment into armed forces had raised from 17.5 to 18years. Retrieved September 14,2012 from www.childsoldiers.org/user_uploads/pdf/sierraleone6155860.pdf.

recruitment into the Armed Forces is on voluntary basis. Also the State Parliament amended the Sierra Leone Armed Forces Law to this effect.²¹²

The territorial jurisdiction of the Special Court refers to its powers to prosecute individuals only for crimes committed in the “territory of Sierra Leone,” while the Special Court can indict and prosecute persons other than Sierra Leoneans. Such prosecutions would only be for crimes committed in territory of Sierra Leone. However, during the trial of Charles Taylor, many witnesses testified about atrocities which took place in Liberia but were directly a part of the events that took place in Sierra Leone. For example, if a witness testifies about a meeting in Liberia relating to RUF activities, where Mr. Taylor was present, then such issues will be considered as part of events in Sierra Leone.²¹³

In addition, another legal action was instituted in Nigeria against Charles Taylor by two Nigerians who were directly affected by the Sierra Leone war in the matter of **Emmanuel Egbuna and David Anyaele v. Charles Taylor and Others**²¹⁴. The Applicants challenged the decision of the Nigerian Government for granting asylum to Charles Taylor and asked the Court in Nigeria to review this decision. The suit was brought against Charles Taylor, the Federal Commission for Refugees, the National Commission for Refugees, the President of the Federal Republic of Nigeria, and the Attorney General of the Federal Republic of Nigeria.

The Government filed preliminary objections arguing that the Court does not have jurisdiction to hear the Applicants because they lack locus standi. The Nigerian Government also argued further that the question in issue was a political non-justiciable one and the action was barred by the

²¹²The Child Right Act (2007). *Act Supplement to the Sierra Leone Gazette Extraordinary* Vol. CXXXVIII, No.43, p. 16. Retrieved September 14, 2012 from <http://www.sierra-leone.org/Laws/2007-7p.pdf>.

²¹³ Article 1 of the Statute of the Special Court of Sierra Leone (2003)

²¹⁴ *Emmanuel Egbuna and David Anyaele vs. Charles Taylor and Others* Suit No.FHC/ABJ/M/216 and Suit No.FHC/ABJ/M/217/4 Challenging Charles Taylor’s Political Asylum in Nigeria. Babatunde Fagbohunlu. *Human Rights and Justice Sector Reform in Africa*. pp. 62-65 Retrieved February 24, 2012 from <http://www.soros.org/initiatives/justice/litigation/taylor/fagbohunlu.pdf>.

statute of limitations. The Applicants argued, inter alia, that they challenged an administrative act of granting refugee status and that this was not a political issue. As to the Statute of Limitation, the Applicants submitted that “a well-known exception to the Limitation period is where it can be shown that a public officer had breached or abused his office”.²¹⁵

The Court held that the Statute of Limitation had not run, because the granting of asylum “constitutes an ongoing damage or injury to applicants and in such situation their statutory right of action has not yet come to an end”. Dismissing the Government’s locus standi argument, the Court noted that, according to the Applicant’s affidavit, which alleged that the Applicants were mutilated “there is no other conclusion to reach ... than the fact that these Applicants are not pursuing any public right but rights that are personal to them”. The Court also affirmed that the applicants have a reasonable cause of action. In conclusion, the Court held that “this matter is properly before the court and it is a competent action. The court said that ‘this court therefore has jurisdiction to hear it’.²¹⁶

4.2 Internal Armed Conflict in Liberia

(a) Geographical Location

Liberia, officially called the Republic of Liberia is located on the West Coast of Africa bordering the North Atlantic ocean to the country’s Southwest. It is also bordered by Sierra Leone on the West, Guinea on the North and Cote D’ivoire on the East. The capital city is called Monrovia named after James Munroe, the fifth U.S President.²¹⁷

²¹⁵*Ibid*

²¹⁶International Judicial Monitor (March, 2006). ‘An International Law Resource for Judiciaries, Justice Sector Professionals and Rule of Law Community around the World’. *American Society of International Law and International Judicial Academy*, , Volume 1, Issue 1. Retrieved on February 24, 2012 from <http://www.judicialmonitor.org/archive>

²¹⁷Adebajo, A. (2002) *Liberia’s Civil War; Nigeria, ECOMOG and Regional Security in West Africa*. Rienner Publishers Inc.USA p.21. Retrieved 26th March, 2011 from www.books.google.com.

(b) Historical Background

Liberia has a unique history, it was never a colony of any European power, but from time to time foreign governments have managed its financial affairs.²¹⁸ No further settlements by non-African colonists occurred along the Grain Coast (an alternative name for Liberia) until the arrival in 1821 of free blacks from the United States.²¹⁹

This was the same time when slavery was abolished. Some abolitionists and slaveholders collaborated on the idea to set up a colony in Africa for freed African – American slaves. Between 1821 and 1847, by a combination of purchase and conquest, American “societies” developed the colony “Liberia”. On July 26, 1847, Liberia declared its independence.²²⁰ The research work compares this history/origin with that of Sierra Leone, to that end, Liberia owns the freed slaves of America while Sierra Leone owns freed slaves of Britain. However, Sierra Leone came into being much later after Liberia, the former came into being in 1891 while the latter came into being in 1847.

Liberia is a home of 16 indigenous ethnic groups and various foreign minorities. Kpelle is the largest with 95% of the population in Central and Western Liberia.²²¹ The Americo-Liberians, who are descendants of African-American settlers, Congo people, Afro-Caribbean’s slaves who arrive in 1825 estimates 5%.²²² Again, Liberia has 31 indigenous languages spoken within Liberia, none of which are a first language to more than a small percentage of the population.²²³

²¹⁸Kranz, R.W. (2000), *A Brief History of Liberia*. Retrieved February 27, 2011 from Bong-town'.de/bang-town/Liberia/lib-history.htm.

²¹⁹*Ibid*

²²⁰*Ibid*

²²¹ Smith, J.D.,(2004), *Liberia’s Ugly Past: Re-writing Liberian History. Others are Bassa, Belle, Del, Gbandi, Gio, Gola, Grebo, Kissi, Krahn, Kru, Loma, Mandingo, Mano, Mende, Sapo and Via*. Retrieved on February 26, 2011 from <http://www.theperspective.org/rewriting-history.html>.

²²²*Ibid*

²²³Ethnologue Languages of the World. (2009), *Languages of Liberia*. Retrieved July 22, 2011 from <http://www.ethnologue.com/show-country.asp?name=liberia>.

English is the official language and serves as the lingua franca of the country.²²⁴ Liberia is predominantly Christian nation of about 85.5% and 12.2% of Muslims practice by Mandingo and Via Ethnic groups. Traditional religions are practiced by 0.5%, while 1.5% practices no Religion.²²⁵

Liberia is one of the world's poorest countries, with a formal employment rate of 15%.²²⁶ Historically, the Liberian economy has depended heavily on foreign direct investments and exports of natural resources such as iron, rubber and timber.²²⁷ While official commodity exports declined during the 1990s as many investors fled from the civil war. Liberia's wartime economy featured the exploitation of the region's diamond wealth.²²⁸ The country acted as a major trader in Sierra Leonean blood diamond, exporting over US\$300 million in diamonds in 1999.²²⁹

(c) Government Structure

Liberia is now a unitary constitutional republic. The Government of Liberia has three co-equal branches of government. The Executive, headed by the President, Legislative, consisting of the Bicameral Legislature and the Judiciary, made up of the Supreme Court and several Lower Courts. Liberian Government was dominated by the True Whig Party between 1877 and 1980.²³⁰ However, today over 20 political parties are registered in the country, based largely around

²²⁴ Moore, J.(2009) Liberia: Ma Ellen talk plenty- plenty Liberian English. *Pulitzer Center on Crisis Reporting*. Retrieved on July 22, 2011 from <http://pulizercerter.org>.

²²⁵ International Religious Freedom Report Liberia, (November, 2010), *U.S Department of State*. Retrieved on January 30, 2011 from <http://www.state.gov/g/drl/rls/irf/2010/148698.htm>.

²²⁶ Bureau of African Affairs, United States Department of State.(March 2011). *Background Note: Liberia*. Retrieved November, 22, 2011 from <http://www.state.gov/r/palei/bgn/6618.htm>.

²²⁷ Bateman, Graham, Egan V., Gold, F. and Gardner (2000) *Encyclopedia of World Geography*, New York Barnes & Noble Books, p.161

²²⁸ Liberia's diamond Links. *BBC News* (July 1, 2000). Retrieved December 30, 2011 from <http://news.bbc.co/k/2/hi/africa/839206.stm>

²²⁹ 'In depth: Liberia Land of the free' *CBC News*. (March 29, 2006). Retrieved December, 30 2011 from www.cbc.ca/news/background/Liberia/.

²³⁰ The True Whig Ascendancy Global Security (1985) Retrieved January 3, 2012 from http://www.globalsecurity.org/military/library/report/1985/Liberia_1_truewhigascend.htm

personalities and ethnic groups.²³¹ The 15 counties are administered by superintendents appointed by the President. The Constitution calls for the election of mayors and various chiefs at the county and local level.²³²

4.2.1 Causes of the First Internal Armed Conflict in Liberia

It should be noted that Liberia witnessed two Internal Armed Conflicts. The first Liberian Internal Armed Conflict took place in 1989 to 1996 and second Liberian Internal Armed Conflict took place in 1999 to 2003.

(i) Ethno-Political Causes

The Liberian became an established democratic State in 1847. The Americo-Liberian freed slaves dominated the political, social and economic goodies in the country. Political opponents were harassed, intimidated, exiled and imprisoned. They failed to grant equal treatment, freedom and political inclusion to the native tribes of the interior and monopolized power from 1871-1980 before their last President, William Tolbert was overthrown on 12th April 1980 by Samuel Doe via coup d'état.²³³ But before Samuel Doe's coup, Tolbert had suffered opposition from the Movement for Justice in Africa (MOJA) 1973 by lecturers; and students of University of Liberia and Progress Alliance of Liberians (PAL) 1975²³⁴

Samuel Doe, a 28 year old indigenous Krahn, and a military with a rank of sergeant in the Liberian army created a governmental system that benefited one ethnic group; in this case the Krahns have only 4% of the population.²³⁵ When Doe took over, he knew nothing about how to run a government. He was illiterate, and he had little education, He was surrounded by some

²³¹UNHCR (July 2011), *Freedom in the World 2011 Liberia*. Freedom House. Retrieved January 3, 2012 from <http://www.unhcr.org/refworld/publisher,FREEHOU,,LBR,4e16b8f91a,0.html>.

²³²'Liberia cannot afford local polls'. *BBC News*. (January 14, 2008). Retrieved on January 3, 2012 from www.bbcnews.com.

²³³ Liberia's First Civil War 1989-1997. Retrieved on March 26, 2011 from <http://liberian.tripod.com/post24.html>.

²³⁴Adebayo, A. (2002) *Liberia's Civil War; Nigeria, ECOMOG and Regional Security in West Africa*. *op cit*, pp. 21-22

²³⁵*Ibid*

Americo- Liberian elites, but some became his adversaries as he slowly tried to dispense with them.

Doe under the People's Redemption Council (RRC), which he was the leader, failed to fulfill the initial post-coup d'état promises of establishing a 'new society' instead he implemented policies of inclusion and political procedures that established patterns of ethnic seclusion.²³⁶ As a result of that, Coup attempts to remove Doe failed in 1985 and 1988 by military leaders with bases of support in Nimba county, mainly dominated by the Gio and Mano ethnic groups; for example Doe's close ally, General Thomas Quiwonkpa, Commander of Armed Forces of Liberia (ALF).²³⁷ By 1989, Doe's Government had become recognized for its economic mismanagement, brutality and ethnic bias, primarily in favour of the Krahn and Mandingo ethnic groups. His administration bankrupted Liberia.²³⁸

On December 24, 1989 the National Patriotic Front of Liberia (NPFL) led by Charles Taylor, crossed into Liberia from Cote d'Ivoire, igniting a conflict.²³⁹ The hostilities initiated by NPFL spawned other armed factions. Doe was captured and murdered in September 1990 by the Independent NPFL, a NPFL breakaway faction led by a battle commander Prince Johnson.²⁴⁰ The Death of Doe brought the beginning of the First Liberian Civil War which shall be discussed later.

(ii) Socio-Economic Causes

As earlier stated, Americo-Liberians became the elites of Liberia, therefore the practice of systemized political exclusion led to a disintegration of the society. Many indigenous Liberians

²³⁶Adebayo, A. (2002), *Liberia's Civil War; Nigeria, ECOMOG and Regional Security in West Africa*. *op cit*, p.22

²³⁷*Ibid*, p.23

²³⁸Cook, N. (2003) 'Liberia: 1989-1997 Civil War, Post War Developments and US Relations'. *Congressional Research Service Report RL 30933*. p. 2, Retrieved March 20, 2011 from [http://wikileaks.org/wiki/CRS-RL 30933](http://wikileaks.org/wiki/CRS-RL_30933).

²³⁹*Ibid*

²⁴⁰*Ibid*

could not afford education to increase their share in the national cake. Many were living far below the poverty line prior to the civil war. Many Liberians became unhappy of their economic lost.²⁴¹ Liberian President Ellen Johnson Sirleaf while delivering a keynote address at ECOWAS Conference at SKD Sports Conference in Paynesville, identified causes of Liberia's Civil Wars as

... First significant portions of our society were systematically excluded and marginalized from institutions of political governance and access to key economic assets. The over concentration of power bred corruption, restricted access to the decision making process and limited the space for civil society, participation in governance process, second, economic collapse helped to propel the crisis.²⁴²

Again, Liberia's conflict is indistinguishably related to poverty, particularly lack of human capital, joining a rebel army became a viable employment opportunity since job markets do not incorporate the youths. As a result of this poverty, national resource endowments were not managed equitably, this is also due to undemocratic governance.²⁴³

4.2.2 Nature of the First Internal Armed Conflict in Liberia

As earlier mentioned the death of Samuel Doe brought the beginning of the first Liberian Internal Armed Conflict. Both Taylor and Johnson claimed power as indication of peace was far off in Liberia. But before then, the armed conflict in Liberia started on December 24, 1989, when Charles Taylor and a small group of rebels trained in Libya called, the National Patriotic Front of Liberia (NPFL). They entered Nimba County from Cote D'Ivoire, attacking the village of Butuo. The raid, mounted by a small group of men, managed to capture some weapons, and then went

²⁴¹Cook, N. (2003) 'Liberia: 1989-1997 Civil War, Post War Developments and US Relations'. *Congressional Research Service Report RL 30933*. p. 2, Retrieved March 20, 2011 from [http://wikileaks.org/wiki/CRS-RL 30933](http://wikileaks.org/wiki/CRS-RL_30933).

²⁴²Ellen Identifies Cause of Civil War, Cites Bad Governance, and Others. Retrieved on March 30, 2011 from www.publicagenda.com.

²⁴³Amoakwo, K.Y. (1999) 'The Economic Causes and Consequences of Civil Wars and Unrest in Africa'. Address to 70th Ordinary Session of the Council of Ministers of the Organization of African Unity, Algeria 8th July. Retrieved on January 30, 2012 from <http://www.afbis.com/analysis/africa>.

back into the jungle.²⁴⁴ Taylor and his force of 100 rebels gained support by thousands of Gio and Mano and other ethnic backgrounds joined them.

Then Samuel Doe responded by sending two Armed Forces of Liberia (AFL) battalions, including the 1st Infantry Battalion to Nimba under the command of Colonel Hezekiah Bowen.²⁴⁵

Tribal affiliations played a key role in the splitting, the Krahn of Doe and most of his allies belonged to Gio and Mano people who formed the bulk of the rebels' forces. Thousands of civilians were killed and hundreds of thousands fled their homes.

By May 1990, the AFL was forced back to Gbanga and they left the town to NPFL on 28th of May 1990.²⁴⁶ By June 1990, Taylor's forces were laying siege to Monrovia. In July 1990, Prince Yormie Johnson separated from Taylor's (NPFL) and formed the Independent National Patriotic Front of Liberia (INPFL). Therefore, by the middle of 1990, a civil war ensued in Liberia. Charles Taylor's (NPFL) controlled much of the country, while Prince Johnson took most of capital Monrovia, while AFL defended on the other side; which as a result of this conflict, Samuel Doe the then President of Liberia was killed by the group of Johnson's (INPFL).

As a result of this battle, in August 1990, the 16 member Economic Community of West African States (ECOWAS) agreed to deploy a Joint Military Intervention Force (JMIF), the Economic Community Monitoring Group (ECOMOG) and placed it under Nigeria's leadership. The mission later included troops from Non-ECOWAS countries like Tanzania and Uganda.²⁴⁷ ECOMOG's objectives were to impose a ceasefire, help Liberians establish an interim government until elections could be held; stop killing of innocent civilians and ensure the safe

²⁴⁴Duyvesteryn, I. (2005), *Clausewitz and African War*, Frank Cass, London/New York, p.27

²⁴⁵Huband, M.(1998),*The Liberian Civil War*, Frank Cass, London pp.115,118 and 119.Retrieved on March 26,2011 from www.books.google.com.

²⁴⁶ *Ibid*

²⁴⁷ Cook, N. (2003) 'Liberia: 1989-1997 Civil War, Post War Developments and U.S. Relations'. *Congressional Research Service Report. RL30933 updated December, 31* p.3.Retrieved on March 20,2011 from <http://wikileaks.org/wiki/CRS-RL30933>.

evacuation of foreign residents. ECOMOG also sought to prevent the conflict from spreading into the neighbouring states, which share a complex history of state, economic and ethno-linguistic social relations with Liberia.²⁴⁸

To that end ECOMOG could not achieve its objectives for reason including political difference between the member nations of ECOWAS, lack of operational resources and related differences, allegations of corruption concerning some ECOMOG forces particularly certain Nigerian elements; and the formation of unofficial and covert political and economic alliances with the armed Liberian factions.²⁴⁹ However, ECOMOG eventually succeeded in bringing Taylor and Johnson to agree to its intervention.

In November, 1990 ECOWAS invited the principal leaders of the Rebel Groups in Banjul, Gambia to form a government of National Unity. The settlement established an Interim Government of National Unity (IGNU) led by Dr. Amos Sawyer; leader of LPP and Bishop Ronald Diggs of Liberian Council of Churches became the Vice President. However, Taylor refused to attend the conference, and within days, hostilities began, which made ECOMOG to reinforce its troops in order to protect the Interim Government. Monrovia was under the authority of Sawyer while the remaining parts of Liberia were under NPFL or other local gangs.²⁵⁰

Hostilities still continued as factions grew higher than it was. An ethnically – mixed group of NPFL opponents led a group of predominantly Krahn and former officers of Armed Forces of Liberia (AFL), called the Liberian United Defense Force (LURD) emerged in 1991.²⁵¹ It later

²⁴⁸Cook, N.(2003) ‘Liberia: 1989-1997 Civil War, Post War Developments and U.S. Relations’ . p.3, we must say Sierra Leone as it is part of the thesis case study and being a good neighbor of Liberia, which also had civil war.

²⁴⁹ *Ibid*, p.4

²⁵⁰ *Ibid*

²⁵¹ *Ibid* p.3

formed an alliance with a small Mandingo – dominated group, giving birth to the United Liberation Movement of Liberia (ULIMO).²⁵²

In 1993, ULIMO splitted, giving birth to ULIMO-K, a Mandingo Faction led by Alhaji G.V. Kromah²⁵³ and ULIMO-J, a Krahn-dominated group led by Roosevelt Johnson,²⁵⁴ The two factions engaged in periodically heavy fighting against one another. Other key factions included Politician George Boley’s Liberia Peace Council (LPC) and the remnants of AFL, led by General Hezekiah Bowen. Several small factions including the Bong Defense Front; the Lofa Defense Force which itself splitted into pro and anti-NPFL elements and the Central Revolutionary Council (CRC-NPFL), a breakaway faction of NPFL – were also active in the conflict.²⁵⁵

ECOMOG tried to reinforce the city and negotiated the Cotonou Agreement, a treaty between the NPFL, IGNU and ULIMO. A coalition government was formed in August 1993. In September 1994, the Akosombo Agreement attempted to replace the coalition with moves towards a democratic government, but IGNU rejected this.²⁵⁶ The Abuja Accord of August 1995 finally achieved this, but in April 1996 the NPFL and ULIMO again began fighting in Monrovia, leading to the evacuation of most international non-governmental organizations and the destruction of much of the city.²⁵⁷ As a direct result, fighting that erupted in Monrovia was between government forces and LPC, AFL and ULIMO-J fighters loosely allied under Johnson

²⁵²Cook, N.(2003) ‘Liberia: 1989-1997 Civil War, Post War Developments and U.S. Relations’ .p.3

²⁵³*Ibid*, A Former Ministry of Information Official.

²⁵⁴*Ibid*, A Former Ministry of Finance Official.

²⁵⁵ The factions tended to be unstable; combatants and their leaders were known to change sides according to shifting local security conditions, changing tactical and political alliances, financial inducement and opportunities to loot or trade.

²⁵⁶*Ibid*

²⁵⁷*Ibid*

and based at Barclay Training Centre. Johnson's forces took 600 civilians as "human shields". Some 1,500 people were killed in the clashes that lasted seven weeks.²⁵⁸

On 17th August 1996, after 134 days of killing and turmoil, Nigeria and other West African states brokered a cease fire between the warring factions. Taylor emerged the dominant power, winning the 1999 Presidential Election, under his National Patriotic Party (NPP) in July after disarmament and demobilization captured in the Abuja Accord.²⁵⁹ Liberians had voted for Taylor in the hope that he would end bloodshed. The bloodshed subsided but did not end. Taylor was also accused of backing guerillas in neighboring countries like Sierra Leone and funneling diamond monies into arms for the rebel armies he supported and into luxuries for himself.

However, Taylor's victory subsided the fighting which made the refugees began to return. This is because other rebel leaders were forced to leave the country and some members ULIMO force reformed and joint the Liberians United for Reconciliation and Democracy (LURD). LURD began fighting with the aim of destabilizing the government and gaining control of the local diamond fields, leading to the Second Liberian Civil War.²⁶⁰ The US Agency for International Development (USAID) estimated that during the war at least 740,000 of Liberia's pre-war 2.5 million inhabitants became refugees , 1.2 million internally displaced persons (IDPs) and that between 150,000 and 200,000 persons and as many as 300,000 were killed or maimed as a direct result of the civil war.²⁶¹

²⁵⁸ Liberia – First Civil War – 1989 – 1996. Retrieved on February 26,2011 from <http://www.globalsecurity.org/military/world/war/liberia>.

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ Cook, N.(2003) 'Liberia: 1989-1997 Civil War, Post War Developments and U.S. Relations'.p.9.

4.2.3 Nature of the Second Internal Armed Conflict in Liberia

The First Liberian Civil War was violent and tragic; it was regarded as one of Africa's bloodiest civil wars.²⁶² Taylor ruled for like two years in that serious challenge until 1999. The Second Internal Armed Conflict started in April 1999 to 2003. The conflict resulted due to an already existing ethnic group crisis and Taylor's continuation of old practices of corruption, repression of rebels, and exploitation of ethnic division and abject poverty for most Liberians.

The Second Internal Armed Conflict comprised of two rebel armies, the Liberians United for Reconciliation and Democracy (LURD) from its base in Guinea across the Northern border and the Movement for Democracy in Liberia (MODEL) from Cote d'Ivoire in the Eastern border both against Taylor's government.²⁶³ The LURD's the first group based in Guinea under the banner of organization of Displaced Liberians were led under Sekou Conneh²⁶⁴. They were mostly Mandingo and Krahn (Samuel Doe's tribe); and fighters of the former ULIMO-J and ULIMO-K. Alliance to LURD was a brokered of ECOMOG-SL. by Nigerian Chief General Maxwell Khobe, Liberian dissidents and Sierra Leonean Kamajors hunter militia, including Chiefs Sam Hinga Norman and Eddie Massally.

These dissident groups fight against Taylor's irregular armed groups, Ex-National Patriotic Front of Liberia (NPFL) fighters with more privileged unit – called Anti-Terrorist Unit (ATU) led by his son Chuckie Taylor. Other actors that worked for Taylor were Armed Forces of Liberia (AFL) and Liberian National Police (LNP) including the State Security Forces (SSS).²⁶⁵

Conditions deteriorated for people in Liberia; there was no functioning economy and no

²⁶² 'Liberia: Descent into Hell; The Liberia's Civil War 1989-1996' p.169. Retrieved on March 24, 2011 from <http://www.theadvocatesforhumanrights.org>.

²⁶³ Kiteh Jr, Klay, G. (2009) 'The Root of the Second Liberian Civil War'. *International Journal on World Peace*, p.1

²⁶⁴ International Crisis Group, *Liberia: The Key to Ending Regional Instability*, 24 April 2002, p.8 Retrieved on July 22, 2011 from www.crisisgroup.org.

²⁶⁵ 'Liberia's Second Civil War 1997-2003' pp.183 and 184. Retrieved on March 24, 2011 from <http://www.theadvocatesforhumanrights.org>

infrastructure including no water and no electricity.²⁶⁶ Taylor and his men, however, plundered the Liberian treasury and had plenty of money, luxury cars, and other excesses. Taylor maintained many girl friends and tortured or killed people who opposed him. As a result, the rebel groups arose to fight him.²⁶⁷

The insurgencies started in April and August 1999 in Lofa County which was the single largest-refugee (Sierra Leoneans) relief zone in Liberia as well as single largest county of return for Liberian refugees, mainly from Guinea.²⁶⁸ The disturbances were looting, theft and destructions of infrastructure in Lofa. At the same time in December 1999, Sam Bockarie one of the leading member of RUF and several hundred of his supporters took refuge in Liberian fighters by supplying them with arms, which he denied and claimed that ECOWAS permitted the arrangements in order to advance peace implementation in Sierra Leone.²⁶⁹ However pressure groups asked Taylor to expel the RUF and encouraged UN Security Council to impose travel ban on Liberian top government officials.²⁷⁰ In the same 1999 there were series of attacks between security forces and dissident groups based in Guinea which made the Sierra Leone refugees to migrate to north (Sinje) in Liberia.²⁷¹

There were counter attacks that simultaneously took place at Lofa County in September 2000 on Guinea from Liberia and Sierra Leone by RUF still loyal to Taylor. The Guinean dissidents won the battle and by January 2001, Taylor's forces were pushed back inside Sierra Leone and

²⁶⁶ Liberia's Second Civil War 1997-2003' p.185. Retrieved on March 24, 2011 from <http://www.tehadvocatesforhumanrights.org>

²⁶⁷ *Ibid*

²⁶⁸ Liberia-Civil War- 199.2003 www.globalsecurity.org/military/world/war/liberia/1997.htm. Retrieved on February 26, 2011.

²⁶⁹ *Ibid*

²⁷⁰ *Ibid*

²⁷¹ *Ibid*

Liberia.²⁷²In this same 2001, Liberia was engaged in a complex three-way conflict in Sierra Leona and Guinea Republic²⁷³.

By the beginning of 2002, Sierra Leone and Guinea governments were both supporting LURD, while Taylor was supporting various opposition factions in both countries i.e. RUF and Rally of Democratic Forces of Guinea (RFDG) respectively. By middle of February 2002, LURD troops were just 44 kilometers from Monrovia, Klay junction and Taylor was forced to declare a State of Emergency.²⁷⁴ The Government continued its practice of targeting suspected rebel members using sweeps that specifically targeted supporters of them.²⁷⁵ Throughout that first half of 2002 LURD mounted raids in Bomi, Bong and Montserrado Counties, hitting in addition to Klay junction, Gbaringa and Tubmanburg, each time temporarily seizing control from the Government Fighters.²⁷⁶In May 2002, an attack on Arthington, less than 20 kilometers from the capital, apparently prompted panic in Monrovia.²⁷⁷ The State of Emergency was lifted in September 2002, after the Government had taken the township of Bopolu²⁷⁸.

In March 2003, the Second Rebel emerged. This was a rivalry towards the LURD's Leader, Sekou Damate Conneh, led to the group's split into a separate faction namely, MODEL – Movement for Democracy in Liberia.²⁷⁹ MODEL comprised of approximately 1,000 fighters, MODEL received support from Cote d'Ivoire, and it took control of the Southern and Eastern

²⁷² 'Second Liberian Civil War' www.absoluteastronomy.com/topics/second-liberian-civil-war. Retrieved on February 26, 2011. Lofa county residents with NDPL affiliations or of Mandingo or Krahn ethnicity were particularly vulnerable in hands of Taylor's forces.

²⁷³ *Ibid*

²⁷⁴ Adebayo, A. *op cit*, p.235

²⁷⁵ 'Liberia's Second Civil War, 1997-2003', Chapter Eight, p.191, Retrieved on February 26, 2011 from <http://www.theadvocatesforhumanright.org>

²⁷⁶ *Ibid*

²⁷⁷ *Ibid*.

²⁷⁸ BBC News Africa, 'Liberia Ends State of Emergency', Saturday, 14th September, 2002', Retrieved on January 28, 2012 from www.bbc.co.uk/news/world-africa

²⁷⁹ 'Liberia's Second Civil War, 1997-2003', *op cit*, p.193.

Parts of Liberia.²⁸⁰ Some sources reported that MODEL was responsible for human rights violations, such as harassment at checkpoints, detention, torture, killings, and forced labour, the looting of property, force recruitment, rape and sexual violence.²⁸¹

By early May 2003, LURD and MODEL had gained control of nearly two thirds of the country and were threatening Monrovia. In early June 2003, rebels were engaged in clashes with government troops in a number of areas throughout the country. This made Taylor to call for the resignation of his cabinet, which led to further instability.²⁸² As a result, ECOWAS convened a conference in Accra Ghana under the then Chairman of ECOWAS, John Kufor of Ghana on the 4th June 2003.²⁸³ It was on this same 4th June 2003, that the UN-backed Court in Sierra Leone announced that it had indicted Liberian President Charles Taylor for War crimes and issued an international warrant for his arrest. Taylor managed to leave Ghana and fled back to Liberia following the announcement.²⁸⁴

By June 2003, tensions increased, rebels advanced on Monrovia. Rebel forces demanded that Taylor resigned within three days or else the rebels would renew and set up attacks on Monrovia.²⁸⁵ As a result of this, ECOWAS dispatched mediators, and by 11th June, 2003, tensions seemed to ease, both Taylor and rebel forces agreed to a ceasefire.²⁸⁶ A cease fire was arranged on 17th June 2003, by representatives of Liberia's Government and the two rebel groups, as a forerunner to a Transitional Government which would exclude Taylor. Despite an earlier pledge to step down, Taylor eventually announced his continuation until the end of his

²⁸⁰ 'Liberia's Second Civil War, 1997-2003', Chapter Eight, p.191, Retrieved on February 26, 2011 from <http://www.theadvocatesforhumanright.org>

²⁸¹ *Ibid*

²⁸² 'Second Liberian Civil War', Retrieved on February 26, 2011 from www.globalsecurity.org/military/world/war/liberia-1997.htm.

²⁸³ *Ibid*

²⁸⁴ *Ibid*

²⁸⁵ *Ibid*

²⁸⁶ *Ibid*

tenure which was due to expire in January 2004.²⁸⁷ Due to the collapse of the cease-fire on June 24, 2003, violent clashes between government and opposition forces engulfed Monrovia.²⁸⁸ And on 29th July, 2003 LURD declared ceasefire. And on 11th August 2003, President Taylor resigned, ahead of the Accra Comprehensive Peace Agreement (CPA) which formed the negotiated end to the war and Taylor went into exile in Nigeria and handed over the Presidency to his vice Moses Blah.²⁸⁹

On the 18th August 2003, MODEL, LURD and Taylor's Forces signed a Comprehensive Peace Accord in Accra, Ghana, and an agreement to form a new Transitional Government was established. Gyude Bryant was elected to head the National Transitional Government of Liberia, which was inaugurated on October 14, 2003.²⁹⁰ However, the Transitional Government exercised no real authority in the country, because 80% of it was controlled by the rebel groups. As a result of that UN Secretary General Kofi Annan on September 11, 2003 recommended the deployment of the Peace Keeping Mission.²⁹¹ That is United Nation Mission in Liberia (UNMIL) approved by UN Security Council in September 19, 2003 in Resolution 1509.²⁹² And at the same time ECOMOG forces were still there. Despite all these, instability in neighbouring countries, an incomplete disarmament process, and general discontent threatened Liberia's fragile Peace.

The National Transitional Government of Liberia was made up of Members of Taylor's government, LURD, MODEL and Civil Societies representatives formed the National

²⁸⁷'Second Liberian Civil War', Retrieved on February 26, 2011 from www.globalsecurity.org/military/world/war/liberia-1997.htm

²⁸⁸*Ibid*

²⁸⁹Second Liberian Civil War, Retrieved on February 26, 2011 from www.absoluteastronomy.com/tropics/second-liberia-civil-war.htm.

²⁹⁰'Bryant Takes Power in Liberia', (2003). Retrieved on January 20, 2012 from <http://www.guardian.cok/world/2003/oct/14/westafrika>.

²⁹¹United Nations Security Council. S/2003/895, *Report of the Secretary-General to the Security Council on Liberia*. Retrieved on September 21, 2012 from <http://daccess-dds-ny.un.org/doc/undoc/gen/NO3/49>.

²⁹²Adopted by the Security Council at its 4830th Meeting, on 19 September, 2003.S/RES/1509(2003) Retrieved on September 21, 2012 from [http://www.un.org/ga/search/view-doc.asp?symbol=S/RES/1509\(2003\)](http://www.un.org/ga/search/view-doc.asp?symbol=S/RES/1509(2003)).

Transitional Government (NTGL) which governed until 2005 elections.²⁹³ Unity Party (UP) candidate Ellen Johnson-Sir Leaf won the 2005 Presidential run off vote, defeating the first-round winner, Congress for Democratic Change (CDC) Candidate George Weah.²⁹⁴ By the conclusion of second civil war, more than 250,000 people had been killed and nearly one million displaced. Half that number remain to be repatriated in 2005, at the election of Liberia's first democratic President since the initial 1980 coup d'état of Samuel Doe.²⁹⁵

4.2.4 Some Abuses Committed During Internal Armed Conflicts in Liberia

Widespread and gross abuses against unarmed civilians, including women and children in Liberia were committed by all the armed groups involved in the fighting. This included the Government Forces, ECOMOG and other rebel groups in the country's neighbouring countries like the RUF from Sierra Leone. Below is discussion of some abuses committed in first and second Liberian Internal Armed Conflict committed by some the significant violators/armed groups.

(A) Some Abuses Committed During the First Internal Armed Conflict

During the First Internal Armed Conflict, the significant rebel groups were NPFL, INPFL, ULIMO, splitted into ULIMO-K and ULMOJ, LPC and Government Forces i.e Armed Forces of Liberia AFL and ECOMOG Forces.

(a) Indiscriminate Killing of Civilians

The NPFL rebels entered Grand Gedeh, a refugee camp in Cote d'Ivoire on June 27th 1990. One refugee Harris B., (A junior high school teacher and a former Commissioner (Superintended) of his district in Liberia) testified:

²⁹³Freedom World 2011Liberia'.freedomhorse7July2011,<http://www.unhr.org/refworld/docid/4e16b8fa/a.htm>Retrieved 3rd January 2012

²⁹⁴*Ibid.* Johnson Sir leaf is also currently the President of Liberia and she emerged as the winner of Liberia's 2011 election.

²⁹⁵*Ibid*

The rebels entered Grand Gedeh on June 27, they killed everybody in the area – Kharn, Mandingo and Bassa... they thought there were all Krahn in Grand Gedeh. I saw them kill a mother and her three year old twins, and two others. My two brothers are missing, three other members of my family. I don't know where they are because we fled in all different directions... so many people died....²⁹⁶

The above crime is a great violation of Common Article 3 to the Geneva Convention of 1949.

(b) Torture, ill-Treatment and Execution of Detainees

A young woman testified to representatives of International Humanitarian Law at Cote d'Ivoire refugee camp how she was captured by the NPFL rebels.

NPFL in Grand Gedeh along with an unidentified number of other Krahn civilians. They attempted to determine which of their captives as Krahn by beating them to see if they would cry out in Krahn language. When they did, they slain you on the spot if other captives express emotions at the sight of the killings, this was taken as evidence that they also were Krahn, and they too were killed, She was beaten every day.²⁹⁷

This crime is also a gross violation of laws of Internal Armed Conflict particularly Article 3 common to the Four Geneva Convention 1949 and it additional Protocol II 1977.

(c) Conscripting of Children

A Kenyan nun-sister Josephine testified that she was ordered to operate four schools in Buchanan for elementary and secondary students with over 3,000 students. By June 1990 it was only 1,000 that were left in school. The remaining ones all joined the NPFL. She reported that the children as young as 10 years old, fifth and sixth grade enthusiastically joined the rebels. Those that are too small to carry guns carried grenade. She also reported that, Charles Taylor was

²⁹⁶Liberia: A Human Rights Disaster. Violations of Laws of War by All Parties to the Conflict'. Human Rights Watch October, 26, 1990 p.4. Retrieved on September 30, 2012 from <http://www.universaljurisdiction.org>.

²⁹⁷*Ibid*, p.5

not recruiting, the children joined voluntarily because of fear of torture and other inhuman treatments.²⁹⁸

Now, whether or not the children joined the rebels voluntarily, their presence with the fighting force is a serious violation of humanitarian norms concerning children in warfare. IHL prohibits the conscription or recruitment of children under the age of 15 as a soldier as provided by Article 4(3) (c) of Additional Protocol II of the 1977.

(d) Taking of Hostages and Abduction

NPFL took at least 1,000 Nigerians, Ghanaians and Guineans hostage in Buchanan, where according to some reports were kept in terrible conditions. Charles Taylor prevented them from leaving the country.²⁹⁹ Several witnesses testified that Taylor's rebels abducted people in exchange for ransom, or else you will be kept in jail. This kind of crime is strictly prohibited by Common Article 3 to the Geneva Convention. Protocol II which provided that "the taking of hostages and threats thereof are prohibited at any time and in any place whatsoever during non-international armed conflicts".³⁰⁰

(e) Some Abuses against Women

One man interviewed by African Watch said that his cousin, a woman named Della, was picked up by NPFL fighters in late July 1990 on her way from the Market. She was forced to spend three days with a fighter before she finally escaped. African watch has had many stories about problems faced by women during the war; particularly rape. However it was difficult to get information about specific cases of rape, because of the shame associated with it.³⁰¹ This type of

²⁹⁸ Liberia: A Human Rights Disaster. *op cit*, p.5

²⁹⁹ *Ibid*

³⁰⁰ See Article 4(2) (c), Protocol Additional II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict.

³⁰¹ 'The Cycle of Abuse: Human Rights Violations since November Ceasefire in Liberia', *Human Rights Watch October 21, 1991*, Retrieved on September 30, 2012 from www.hrw.org/legacy/reports

crime is a gross violation of Common Article 3 to the Geneva Conventions 1949 and its additional Protocol II.

(f) Other Crimes Committed by NPFL were Pillaging and Extortions.

A Witness said they steal any and everything they could get their hands on. When NPFL forces arrived in the village according to a witness, he said, “They asked a man to provide them with cows, goats, and sheep. He could not provide what was demanded of him. He was killed because he could not provide that, they demanded”. This kind of crime is a gross abuse of Common Article 3 of Geneva Conventions and its Additional Protocol II. NPFL, also restricted movements in Liberia, one need to obtain a pass from G-2, a Taylor’s Intelligence and Administrative Centre or else one can never travel. Another, ‘price of gain passage’ without harm was, there was a ‘wall running with blood’, a witness said, people coming through the checkpoints were ordered to drink from the pool of blood’, ‘and if you don’t drink the blood, they kill you’.³⁰² The crime is against Common Article 3 and its Additional Protocol of the Geneva Conventions 1949. Also the International Covenant on Civil and Political Rights (ICCPR) provided that “Everyone lawfully within the territory of a state shall, within the territory, have the right to liberty of movement and freedom to choose his residence”³⁰³ Other rebels groups also committed similar atrocities as discussed above.

(B) Some Abuses Committed During the Second Internal Armed Conflict

Humanitarian abuses committed during the Second Internal Armed Conflict were mainly committed by LURD and MODEL against Charles Taylor’s government and the ATU on the civilians.

³⁰²‘Liberia’s, First Civil War, 1989-1997’. Chapter Seven p.133 www.theadvocatesforhumanrights.org. Retrieved on March 24, 2011

³⁰³Article 12(1) International Covenant on Civil and Political Rights(1976), *United Nations Humans Rights, Office of the High Commissioner for Human Rights*, General Assembly Resolution 2200A(XXI). Retrieved on May 12, 2011 from www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

(i) Liberians United for Reconciliation and Democracy (LURD)

(a) Summary Execution

An example of a young woman described how her husband and seven other civilians were summarily executed in October 2009 in Foya district of Lofa County, “they collected eighteen of us from the bushes... they beat us and accused us of giving food and information to the government troops... they separated the men from women ... my husband, his father and brothers were told to lie down face up and they were shot one after the other...”³⁰⁴

(b) Rape

A woman from Foya in Lofa County, 17 years of age described how she was captured by LURD in mid – 2001.

I was caught after I ran away with my grandmother. My grandmother was killed and I was captured by two LURD rebels.... They told me that they would kill me if I resisted them, and then both raped me. After raping me, they left me bleeding. I was sick for a long time and did not have my period for six months. Even now I have pain in my stomach.³⁰⁵

This example describes the definition of ‘war crimes’ as given by Rome Statute. Article 8(2)(b) (xxii).³⁰⁶

(c) Looting and Torture

A man from Masanbalahun described the abusive practices of LURD Commander Blackie, who forced men to carry ammunition and looted goods, and then shot two of them for walking too slowly. His twelve year old son was forcefully abducted by some commanders.³⁰⁷

³⁰⁴Liberia: Killing, Torture and Rape Continued in Lofa Country’. *Amnesty International 1st August, 2001*. 41 Index: AFR 34/009/2001. Retrieved on November 26, 2011 from www.amnestyorgnlibrary.pdf.

³⁰⁵*Ibid*

³⁰⁶ Defines “War Crimes” – in non-international armed conflicts include the commission of rape, sexual slavery, enforced position, forced pregnancy... enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions”.

(iv) Destruction of Properties:

A woman testified when LURD invaded Monrovia in August 19, 2003 which they launched three attacks called “World War I, II and III”. She testified;

...the commander came to our house. They beat everyone. I stayed with my brother and uncle but then ran to my father. My sisters, brothers and mother ran away. The LURD men kicked me and I fell to the floor. Five LURD men raped me. My uncle tried to rescue me and they shot and killed him... they burnt our house. While they were raping me, the LURD men took my father. I have had no news of my father, mother or brothers and sisters since them.³⁰⁸

(ii) Movement for Democracy in Liberia (MODEL)

The group was against LURD and the Government Forces as well. And their disparity with LURD is that they did not form a recognized fighting force until early 2003, just months before the Comprehensive Peace Agreement and Taylor’s exile.³⁰⁹ They also got support from Cote d’Ivoire government. MODEL was also responsible for human rights violations such as harassment at checkpoints, detentions, torture, killings, forced labour, the looting of property, forced recruitment, rape and sexual violence.³¹⁰

However, few testimonies were collected by Human Rights Watch relative to other armed groups. Human Rights Watch reported an example of a witness who survived MODEL summary killing. The witness stated

³⁰⁷ Back to the Brink-War Crimes by Liberian Government and Rebels. *A call for Greater International Attention to Liberia and the Sub-Region. May 2002, Volume 14, No. 4 (A)* pp.6 and 7. Retrieved on September 30, 2011 from <http://www.hrw.org/legacy/reports/1994/liberia>.

³⁰⁸ Liberia’s Second Civil War, *op cit*, pp.192 and 193

³⁰⁹ *Ibid*

³¹⁰ *Ibid*

In April 2003, the MODEL rebels came with a list of the people they were targeting. They were looking for my mother and family. The names of all the adults in my family were on their list. When MODEL reached the town, I saw them kill people. Other rebels arrived and some were taking off their uniforms. The rebels were chasing, attacking and killing the refugees. The rebel killed my cousins, uncle, grandfather, grandmother and great aunt.³¹¹

Another witness testified that in July 2003, MODEL soldiers stopped him, his wife and his children at a checkpoint. The soldier did not touch his wife, but took her bag containing her belongings. He also described how they tied his arms behind his back, hit him on the back and sides, and then released him. He said up till today he still feels the pains. He finally reported that MODEL destroyed his house.³¹²

(c) Some Abuses by Liberian Government Armed Forces (AFL)

The Liberian Government Forces have committed widespread abuses against civilians particularly in Lofa and Cape Mount Counties in North Western Liberia. The significant among the Government Forces were the AFL and ATU.

(i) Anti-Terrorist Unit (ATU)

This State's Security Force was responsible for torture, assault, rape, beating, burning civilians' alive, extrajudicial killing, abduction and recruitment of child soldiers which was led by Taylor's son, Chuckie.³¹³ This security force violations paralleled with that of rebel forces i.e. LURD and MODEL. And the reason why Charles Taylor created ATU and other securities forces was because he does not want the assistance of ECOMOG and some members of the already existing AFL that had opposed him even right from the first Civil War. Therefore the new security agents are the ones he trusted and must report directly to him. ATU had their base in Gbatata and they

³¹¹Liberia's Second Civil War, *op cit*, pp.192 and 193

³¹²*Ibid*,p194.

³¹³ U.S: Investigation Ex-Liberian President's Son for Atrocities, June 30, 2006. *Human Rights Watch* Retrieved on April 3,2012 from <http://www.hrw.org/en/news/2006/06/30US-investigate-ex-Liberian-president-s-son-atrocities>.

were not established by any law, nor are their operational costs included in the state budget. Therefore there was no effective mechanism for abused victims to lodge their complain with, in order to obtain redress, since such Government structures were involved in the violence.

(a) Extrajudicial Execution

It was reported by Amnesty International that in late June 2011, ATU officers and members of a vigilante groups in plain clothes entered Gilima, a village in upper Lofa County located between the towns of Kalahun and Foya Kamala. They rounded up and screened about 50 villagers. More than 25 villagers were accused of backing the rebels (LURD). They were blindfolded and taken away by the security forces. Villagers left behind subsequently had gunshots and as they fled Gilima, saw the bodies of at least 10 of these previously arrested on the main road to Kalahun³¹⁴.

(b) Torture and deaths in custody

Amnesty international has obtained testimonies of civilians arrested by the security forces at checkpoints while fleeing upper Lofa County. They all reported being tortured to make them confess to links with dissidents (LURD). The method of torture used include: being forced to walk on broken glasses with bare feet, being forced to eat hot pepper, being forced to look at the sun for a protracted time or being tied up.³¹⁵

(c) Rape of Women and Girls

Victims of rape arrested in war zones, including Valun and Kalahun on suspicion of backing the dissidents, being related to dissidents or spies. If they refuse, the soldiers would stab them with spear. A 25 year old woman testified to Amnesty International that in late June 2001. She was

³¹⁴ ‘Liberia: Killing, Torture and Rape continued in Lofa County’ (2001) *Amnesty International. A.1 index: AFR/34/009/2001*, p.3. Retrieved on November 26, 2011 from www.amenstyorgenlibrary.pdf.

³¹⁵ *Ibid* pp.4 and 5

captured by ATU in Valun district in Lofa County, on suspicion of helping the LURD. She was gang raped for four days and that, on the fifth day, while semi-conscious, she felt a long piece of metal or a stick being inserted in her vagina which caused profused bleeding and pains. She was subsequently released.³¹⁶

(ii) Armed Forces of Liberia (AFL)

Human Rights Watch extracted testimonies from eye-witnesses, and victims of abuses committed by the AFL. Here are some examples in April 2001, AFL troops raided a small clinic in Sasahun and executed six adults, including one patient recovering from an appendicitis operation.³¹⁷ In July 2001, AFL troops rounded up hundreds of civilians and burnt at least fifteen of them to death in Kamatehun.³¹⁸ In September 2001, a number of ethnic Gbandi Civilians who had been captured by AFL forcibly confined some thirty of them in four hours and burned them to death and cut the throats of fifteen in Kamatehun.³¹⁹ In December 2001, AFL soldiers who had driven LURD forces from Kalahun fired indiscriminately into houses in the town, killing civilians and gang-raped six women and girls, including a twelve-year old girl and a pregnant woman. When the soldiers left the town, they forced civilians to carry the goods they had looted to foya two and a half hours walk away.³²⁰

AFL has been responsible for widespread looting, both in towns and villages that they occupied and at checkpoints on the road. Local residences are often forced to carry looted belongings and captured weapons long distances by the army. As civilians flee conflicts areas, they are

³¹⁶‘Liberia: Killing, Torture and Rape continued in Lofa County’ (2001) *Amnesty International. A.1 index: AFR/34/009/2001, op cit*, p.6

³¹⁷‘Back to the Brink-War Crimes by Liberian Government and Rebels’, (2002). *A call for Greater International Attention to Liberia and the sub-Region.*, Vol. 14, No. 4 (A) pp.6 and 7. Retrieved on September 30, 2011 from <http://www.hrw.org/legacy/reports/1994/liberia>.

³¹⁸*Ibid*

³¹⁹*Ibid*

³²⁰*Ibid*

repeatedly made to pay government soldiers in order to pass through checkpoints to safety and in order to cross the border into Sierra Leone.³²¹

Both AFL and ATU were reported to have forcibly conscripted young men and boys to fight for the government. There are no publicly established and clear criteria and procedures governing conscription, while recruits are not given any advance warning of conscription, any indication of how long they will be forced to serve, or any idea of where they will be taken for training or for combat. These forced recruitment of boys and young men, was often accompanied by abuses, such as arbitrary detention and mistreatment and recruits are then often deployed without any prior notification to themselves or their families and with little or no training.³²²

(iii) Some Abuses Committed by ECOMOG Soldiers

Right from the first civil war, Charles Taylor and his NPFL saw ECOMOG's intervention as a threat to their objectives and as an adversary. Taylor's hostility towards ECOMOG was on foreign nationals. The NPFL targeted citizens of ECOWAS countries in retaliation for ECOMOG's role in the conflict. In a widely reported massacre of foreigners, the NPFL killed two hundred ECOWAS nationals.³²³ ECOMOG played an important role in preventing rebels from committing further human rights violations and humanitarian crimes. ECOMOG at times assisted Liberians with the health and other basic needs. A lot of statements were given by victims rescued by ECOMOG to Human Right Watch.³²⁴ However, there are reports of ECOMOG soldiers committing human rights violations against civilians. Human Rights Watch reported witnesses statement on how family members and friends told stories about how

³²¹ *Ibid*

³²² Back to the Brink-War Crimes by Liberian Government and Rebels', (2002). *A call for Greater International Attention to Liberia and the sub-Region. , Vol. 14, No. 4 (A)* pp.6 and 7. Retrieved on September 30, 2011 from <http://www.hrw.org/legacy/reports/1994/liberia>

³²³ 'Nigeria: Descent into Hell the Liberian Civil War' *Chapter Seven and Chapter Eight*. Retrieved on March 24, 2011 from www.theadvocatesforhumanrights.org.

³²⁴ *Ibid*

ECOMOG troops violated people, raped girls, demanded bribes and generally “took advantage of their power to treat poorly” ECOMOG were involved in looting, which was so widespread that “Every Car or Moving Object Gone”.³²⁵

A victim of ECOMOG described how a Ghanaian ECOMOG soldier commanded her to pick up a wrapper dropped by a child she was accompanying: “when I did not immediately pick it up, he slapped me very hard in the ear when I spoke back to him, he pointed his gun at my face... but he took his gun and left. I could still hear a high pitched noise in my ear as a result of the slap”.³²⁶

ECOMOG also carried out summary execution and extrajudicial killings. A witness testified to Human Rights Watch that the Senegalese Contingent ECOMOG near Paynesville, a Monrovia suburb, would inspect youths for rebel marks; “if they found such marks, the soldiers arrest and killed them”. This witness was compelled to join NPFL for fear of his life.³²⁷ Another witness stated to Human Rights Watch, that ECOMOG soldiers shot a man in the foot, felling him, and then shot him again because he took food and money. In addition, many witnesses testified that ECOMOG troops were humiliating, torturing and killing rebels whom they had captured and taken into custody.³²⁸ The above few examples of abuses committed by all the perpetrators of crimes indicated that the International Humanitarian Law was grossly violated. At the end, the civil wars came to an end when the current President Ellen Johnson Sirleaf was elected as the president of Liberia.

³²⁵“Every car or moving object – gone” The ECOMOG Intervention in Liberia African Quarterly. *The Online Journal for African studies*.p.158 Retrieved on March 23, 2012

<http://web-africa.ufi.edu>.

³²⁶ *Ibid* p. 159

³²⁷ *Ibid*

³²⁸ *Ibid*

4.2.5 Aftermath of Liberian Internal Armed Conflicts and Liberia's Court

Liberia considered trying perpetrators of the worst crimes committed during 1989 – 2003 Civil Wars. The President Ellen Johnson Sirleaf set up a committee to advise on whether prosecutions should go ahead. The committee included the Justice Minister and the head of a law reform, Christiana Tah.³²⁹ However, Liberia chose to forego prosecution and opted instead for a Truth and Reconciliation Commission (TRC). Since all parties were guilty of employing child soldiers, rape and extreme violence, the country chose to prioritize internal relations and stability over prosecution and conviction.³³⁰ TRC delivered a bulky Report containing testimony from victims and perpetrators alike, aimed at forgiveness and reconciliation. However, it also recommended the prosecution of those suspected of the worst crimes, including gross human rights violations and crimes against humanity.³³¹

ICC considered as the universal court, only has jurisdiction over crimes committed after 2002, and therefore cannot take on cases relating to the Liberian Civil War. Liberia, asked the UN General Assembly to support a Special Court of its own, modeled after the one in Sierra Leone.³³² TRC President Jerome Verdier said, however, even if the Liberian Government were to install a Special Court, “it would take the next ten years to put all the resources in place to do the prosecutions”. Still he added, prosecutions are vital “we cannot, claim to have ended the conflicts in the absence of justice.”³³³

³²⁹Wechem, R.V. (2010), ‘Liberia Investigates Possibility of War Crimes Tribunal’, Retrieved on March 23, 2012 <http://www.rnwn.l/international-justice/article/libera-investigates-possibility-war-crimes-tribunal>.

³³⁰ *Ibid*

³³¹ *Ibid*

³³² *Ibid*

³³³ *Ibid*

Finally, TRC calls for the establishment of “extraordinary criminal court for Liberia”, “an internationalized domestic criminal court”.³³⁴ In effect, the TRC proposes a form of hybrid International National War Crimes Tribunal, similar to the Special Court for Sierra Leone, ICTY and ICTR, all of which tried serious crimes and have varying degrees of international involvement in their operations.³³⁵ To date, no Court is established to this effect. It should be noted that such kinds of Courts were sponsored by both the Government of the States and United Nations.

4.2.6 Reasons why International Criminal Court cannot be established in Liberia

(a) Use of Liberian Domestic Courts

Liberian Courts comprises of the Supreme Court as the apex court, Appeal Courts and Magistrate and Traditional Courts situate in the fifteen counties. On a good day and if not for the war, it would be preferable for prosecution to take place in Liberian Court for reasons like;

- (i) The courts are located in the country.
- (ii) Easy prosecution investigations.
- (iii) Facilitates the collection of evidences.
- (iv) Reduce the cost of prosecution and eventually secure justice for everyone.
- (v) Courts being in the country will increase participation of everyone which will lead to accountability, understanding and confidence in the outcome of trials.
- (vi) It will increase public support and legitimacy for trials, both of which are vital for long-term societal healing and reconciliation.

³³⁴The Truth and Reconciliation Commission’s Recommendation for an International Domestic War Crimes (2009). *Justice for Liberia*. Retrieved on March 24, 2012 from <http://www.hrw.org/en/news/2009/12/10/Liberia-supprot-war-crimes-prosecution>.

³³⁵*Ibid*

However, the Liberian courts in real sense could not be used to try human rights or humanitarian law violators or abusers, for reasons below:

- (1) Due to long time civil war, the country is already weak and dilapidated in her entire judicial system.
- (2) The court lacked human, financial and infrastructural resources necessary to render the rights of accused, under international human rights law or international humanitarian law.
- (3) Some judges and magistrates lacked legal training on international law cases though the country's constitution requires legal education and membership into Liberian bar. A lawyer must at least have three years experience as a legal practitioner for judicial appointment. For example, prosecutors may choose to charge perpetrators of war crime with murder than genocide or crimes against humanity. The difficulty with such "ordinary law" charges is that, while they may be more familiar to local actors, they do not capture the complexity or magnitude of the atrocities committed, thereby minimizing the wrong's suffered. And even when perpetrator are charged with the more serious international law offences, Liberian lawyers are not familiar with the elements of such crimes, therefore may find it difficult to understand how best to prove them, and judges are often not sure of how to evaluate such charges despite the potentially useful case law of the ICTY and ICTR.³³⁶
- (4) The Courts are not safe or secured in a free environment and free from intimidation to perform their judicial functions. Moreover, judges and magistrate were reported that most

³³⁶ Jalloh C. C. and Marong A.(2005). 'Ending Impurity: The case for War Crimes Trials in Liberia', *African Journal of Legal Studies, University of Pittsburgh Legal Studies Research Paper Series, Vol. 1*, p.211. Retrieved on January 21,2009 from www.insightonconflict.org

of them have not been paid by the government for years and they extract fees from parties appearing before them to cover living and operating expenses.³³⁷

- (5) At the same time, defense bar, which normally acts as an additional protection against trampling upon the rights of accused persons by state, or errant judges, apparently routinely will encourage their clients to buy favourable decisions.³³⁸
- (6) Another problem the domestic courts may face if they had been used is the bulk of cases, nature and severity of the crimes committed, the timing of prosecutions and so many political and civil issues the new elected government was facing coupled with the urgent economic crises in the country, the domestic court would have been suitable for prosecutions of the kinds of egregious crimes committed during the civil wars.

(b) The International or Hybrid Court for Liberia

There are three types under this kind of court;

- (1) Ad hoc tribunals like that of Rwanda and former Yugoslavia.
- (2) Independent hybrid court like the Special Court for Sierra Leone.
- (3) Panels like that of East Timor and Kosovo or an Extraordinary Chamber like that of Cambodia

(1) Use of Ad-Hoc Tribunals Like

Rwanda and Former Yugoslavia is quite expensive for Liberia and United Nations. It is reported by the United Nations that ICTR and ICTY Project consumed almost about a quarter of a billion dollars every year. (Representing about 15% of the UN Budget).³³⁹ Also International

³³⁷Jalloh C. C. and Marong A.(2005). 'Ending Impurity: The case for War Crimes Trials in Liberia', *African Journal of Legal Studies, University of Pittsburgh Legal Studies Research Paper Series, Vol. 1*, p.211. Retrieved on January 21,2009 from www.insightonconflict.org

³³⁸*Ibid*

³³⁹Merton, T. (1994), 'Crimes in Yugoslavia and the Development of International Law'. *The American Journal of International Law*. Vol. 88 No. 1, pp.78-87. Retrieved on March 25, 2012 from <http://linkjstor.org/journals/asil.html>.

Community was disturbed about the pace and number of prosecutions on ICTY and ICTR, that it was apparently slow. As a result this UN precisely established the panel for Kosovo because ICTY could not handle the volume of atrocities cases from the region.³⁴⁰

(2) Independent Hybrid Court

The TCR for Liberia called for an “Independent Nationalized Tribunal for Liberia”. As earlier noted, this type of Court is jointly financed by the state involved and United Nations.³⁴¹ Liberia has no adequate finances to tackle her domestic problems let alone to contribute to the establishment of a mixed Court in the country. Meanwhile UN is already facing ‘tribunal fatigue’, including the scarcity of resources for existing tribunals like that of Sierra Leone, Cambodia etc.

Another problem that may arise here is just like that of Special Court for Sierra Leone which has moved from the State to Hague as a result of challenges from certain parties within the court and various civil society groups concerning security about holding Taylor and other trials in Freetown. These groups argued that the perpetrators still have their loyalists in the countries (Sierra Leone and Liberia) who could pose a threat to the Special Court.³⁴²

Hence, the movement of SCSL to The Hague is facing problem like poor logistical planning by the Registry, incarcerating the accused in an ICC detention facilities, renting courtroom space and administering a satellite office in The Hague has been an expensive undertaking, especially for a court that was designed to work on a “shoe-string budget”.³⁴³ Again, movement of the court will not allow the victims and others affected by the conflict to watch the proceedings unfold and

³⁴⁰ Dickinson, L.A. (2003), ‘Promise of Hybrid Courts’. *The American Journal of International Law*, Vol. 98 – No. 2, p.308 Retrieved on March 25, 2012 from <http://links.jstor.org/journals/asil.html>.

³⁴¹The Truth and Reconciliation Commission’s Recommendation for an International Domestic War Crimes (2009). *Justice for Liberia. op. cit.*

³⁴² Easter Day, J. (2010), ‘The Trial of Charles Taylor Part 1: Prosecuting Persons who Bear the Greatest Responsibility’ *UC Berkeley War Crimes Studies Centre 7331 Dwinelle Hall #2670 Berkeley, C.A 94720-2670*, p.7. Retrieved on April 2, 2012 from <http://warcrimescenter.berkeley.edu>.

³⁴³ *Ibid*

directly engage with a tribunal located in the post-conflict zone, just as the case in Sierra Leone.³⁴⁴ And for this kind of independent nationalized court would effectively function, there must be an effective and adequate resourced judicial system in Liberia, which is not available.

(c) A Panel such as that of East Timor, Kosovo or an Extraordinary Chamber such as Cambodia.

These kinds of Courts are sometimes called “Internationalized national courts”. For their operation the same argument under the hybrid court applies. For example Kosovo and East Timor lacked functional domestic institutions; physical infrastructure of the legal systems had been severely damaged by the conflict.³⁴⁵ This is the same problem with Liberia, a judicial system, which was still tainted by the former oppressive regimes, undermining public confidence and broad societal legitimacy of legal processes. Some of these problems are enumerated below;

- (i) For this type of court, it is only staffed by foreigners or even the local justice system was operated exclusively by UN transitional administration, therefore cannot hope to train local judges in Liberia.
- (ii) Since this type of court is staffed by foreigners it will attract a lot of finances. These foreign judges and judicial personal most be comfortable to carry out the trial, including with their travelling expenses; which Liberia cannot afford neither is United Nations.
- (iii) Finally, coupled the financial difficulties in the establishment of this type of court in Liberia, even after the judgments are given it will be difficult for Liberians to absorb, apply, interpret, criticize and develop them, since the citizens are not involved in anyway.

³⁴⁴Easter Day, J. (2010), ‘The Trial of Charles Taylor Part 1: Prosecuting Persons who Bear the Greatest Responsibility’, *op cit* p.8

³⁴⁵ Dickinson, L.A. Op Cit, (2003), ‘Promise of Hybrid Courts’. *The American Journal of International Law, Vol. 98* – No. 2, p.308

(d) Use of International Criminal Court (ICC)

The essence of ICC created by the international community is to prosecute human right violators and perpetrators of war crimes where states are unable or unwilling to pursue human right abuses, as is arguably the case in Liberia. In the preceding paragraphs different kinds of abuses committed in Liberia were provided. This we can conclude at least three crimes namely Crime against Humanity, War Crimes and Genocide. And this mentioned crimes can be handled under the jurisdiction of the ICC.³⁴⁶

However, the following problems could be faced in Liberia's situation at hand;

- (i) Liberia only became a party to the Rome Statute in September 2004; long after member of the respective armed groups committed the bulk of crimes.
- (ii) The temporal jurisdiction of the ICC is limited to crimes committed after the entry into force of the Rome Statute that is 1st July 2000, again long after the commission of the egregious crimes in Liberia.
- (iii) Even the UN Security Council was not ready to facilitate the ICC to investigate and prosecutor on the Liberian matter, but rather focused on working with the parties through the UN Mission in Liberia (UNMIL) to restore order, to facilitate the transition of peace through the conduct of democratic election and to establish programmes to assist in rebuilding basic infrastructures. Indeed, Human Right bodies such as Human Rights Watch and Amnesty International have consistently called for the prosecution of crimes committed in Liberia as was done to its neighbouring state, Sierra Leone.

However, it is concluded on this issue that UN is not ready to facilitate prosecution of perpetrators of the war crimes in ICC due to the financial problems involved. Again, on the side of Liberian government policy makers also seem to fear the possible security fallout that will

³⁴⁶ See Article 6, 7 and 8 of Rome Statute 1998.

follow in case certain veteran warlords, who are still enjoying the support of their fighters, are indicted. According to one African writer he said “if they Haul Ropes, Ropes will Haul Bush” and the only available option is to treat the war crime noise of Liberia with conspiracy of silence.³⁴⁷

4.2.7 Can United Nations use Special Court for Sierra Leone to Prosecute Violators of IHL in Liberia?

The answer is in the affirmative for the following reasons:

- (a) UN Security Council entered an agreement with Sierra Leone government to establish the Special Court for Sierra Leone. Thus in this agreement, the court is empowered to utilize its resources and prosecute accused persons for masterminding the crimes committed in Sierra Leone Civil War. This mandate is given under Article 1 of the Court’s statute “to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law”.

This is what enabled the Court to indict Charles Taylor as the former Liberian head, who supported Sierra Leone rebels. And this shows that Charles Taylor is charged only on the offences committed in Sierra Leone not Liberia. Also if not for Sierra Leone court indicted him, he would have been a freeman. And as argued earlier Liberia Government or United Nations Security Council is not ready to establish a court to prosecute violators of International Humanitarian law in Liberia.³⁴⁸

³⁴⁷ Dennis, A.B., (2010) ‘War Crimes Controversy in Post-War, Liberia. The Liberian Dialogue’, Wednesday, June 2, www.theliberiandialogue.org/andkorso2006@msn.com. Retrieved on April 2, 2012

³⁴⁸The son of the warlord Charles Taylor, Chuckie Emmanuel Taylor Jr. was also prosecuted and convicted for 97 years in Prison by a Federal Court in Miami, Florida, USA ,for alleged offence of armed trafficking in Liberia to support his father’s (Charles Taylor Jr.) oppression of rebels. He is also convicted for torture he committed while he was the head of ATU. The U.S Court applied a 1994 law allowing the prosecution of citizens (nationals) who commit torture on another country. BBC News 19:24 GMT, Friday 9 January 2009. Retrieved on 22 February, 2012.

- (b) The subject matter jurisdiction which could be used to meet the needs of Liberia that is for the use of international and domestic law of Liberia will be easy for the Special Court of Sierra Leone to gather relevant information's and facts.
- (c) The temporal jurisdiction will not suffer limitations as argued earlier in the use of ICC. And since it was an agreement between Sierra Leone government and United Nations Security Council, for the creation of SCSL, it could be amended to be Special Court for Liberia Statute, including crimes that go as far back as the first Liberian war in 1989.
- (d) The nexus between the two states conflicts is another reason. Since both states conflict started within two years of each other (Liberian War began 1989-2003 while Sierra Leone war began in 1991-2002) and they have similar causes like struggle to control the natural resources by few greedy individuals. Also they both used child soldiers, same weaponry, burning tactics, and rape during the armed conflicts etc. Therefore, having this similarities, the court will easily collect and prescribe evidence since they have similar war crimes.
- (e) Again the United Nations Security Council could increase the work force by creating additional trial and appeal chambers to the Special Court for Sierra Leone to handle the bulk of cases. Hence it will help to train Liberians in the proper administration of justice, especially if a certain percentage of the staff positions, including judicial ones, are Liberian nationals, as a way of rebuilding the capacity of the local legal system.
- (f) We have seen that the most challenging factor for establishment of special court for Liberia is finance; it will be cheaper United Nations to use special court for Sierra Leone to handle the cases for Liberian Crime Perpetrators.

At this juncture, there should be huge concerns on the cumulative effects of the long civil wars in Liberia and Sierra Leone for social societies in the two states, and beyond. It is clear that the states Internal Armed Conflict have left in their wake a lot of problems that may be difficult to resolve, even in the long run, due to lack of capacity and resources by their successor governments. Again United Nation through the United Nations Security Council can engage in Military Intervention under the Chapter VII of the Charter of United Nations, the use of force may be authorized to maintain or to restore international peace and security when all other measures, peaceful and coercive, have failed. It also recognized the inherent right of self defense of states under threat of imminent attack. However, the post-war reconstruction has helped the citizens of the both states to regain peace and national reconciliations despite their lack capacities and resources, peace still exist. The following chapter shall round up the whole thesis with the summary, findings and suggestions of the research work for the benefit of readers to benefit and understand more the way internal armed conflicts can be handled.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Introduction

This chapter concludes the research work with summary, findings and recommendations on the Internal Armed Conflict in Sierra Leone and Liberia applying the ‘minimum standard of rules’ of International Humanitarian Law that is Common Article 3 to the Geneva Conventions 1949 and its Additional Protocol II of 1977.

5.2 Summary

The research work is primarily concerned with how possible is an International rule of law could be applicable to a matter or conflict that is purely and basically a state affair. This work tried to look at the constituents of these international rules of law and how they apply in any circumstance. It is the International Community that thought of coming together and found a solution for armed conflicts that emanates only from an individual state. And this individual state may not be willing to handle the crisis itself, due underdevelopment and corruption. As a result of that the defaulters will freely go unpunished and the non-defaulters will also go without compensation for what the conflict has caused them.

International Humanitarian Law is the applicable International Rule of Law that applies to armed conflict that occurs in the territory of an individual state. This International Humanitarian Law is one of the International Rules of Law that provided provisions of rules applicable to an armed conflict arises in an individual state. The reason is that states do not have any such law in their bulk of laws enacted for the governance and guidance of the states. And that is why International Humanitarian Law only applies to Armed Conflicts not Internal Tensions and Disturbances.

The research work went further to dive into the fabulous space of International Humanitarian Law enshrined in the Four Geneva Conventions of August 12, 1949, which contains popularly called Common Article 3 of these Four Geneva Conventions.³⁴⁹ Later on, the International community discovered that there was need to extend and supplement the Common Article 3 with Additional Protocol II of June 8 1977. This Additional Protocol II is related to Armed Conflicts that exist only in an individual state's territory even if there is an involvement of a third party. Sierra Leone and Liberia have ratified the Geneva Conventions and their Additional Protocols and are bound by their provisions³⁵⁰.

The courts were established through their statutes. For example, ICTY, ICTR, ICC, Special Court for Sierra Leone etc. The Statutes give them mandate to try and adjudicate on cases related to the armed conflicts. The courts are provided with geographical location, temporal and subject matter jurisdiction. To that end, the courts have the power to give punishments by way of sentencing the perpetrators to a prison term. These courts abide by the rules in the statute that established them in adjudicating on their subject matters. For example, Genocide was not included as a subject matter in Special Court for Sierra Leone Statute which is found in ICTR and ICC Statutes. Again, the Special Court for Sierra Leone has power to try children which was not provided in the statute of other courts. Other subject matters uniformly found are War crimes, Crime against Humanity, Genocide and Other Serious Violations of International Humanitarian law. All these crimes are violations of Common Article 3 and as Additional Protocol II as enshrined in the crimes found in the International Criminal Court, International Tribunals, Panel, Hybrid and Extraordinary Courts.

³⁴⁹ Sometimes scholars call it a miniature treaty or convention within a convention.

³⁵⁰ Liberia ratified the Geneva Conventions on March 29, 1954 and Sierra Leone ratified on July 6, 1965. Retrieved on September 20, 2012 from <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P>. Again Liberia ratified Additional Protocol II in July 30, 1988 and Sierra Leone ratified on October 21, 1986. Retrieved on September 20, 2012 from <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=457&ps=P>.

The primary aim of IHL is to protect the victims of armed conflict and to regulate the conduct of hostilities based on a balance between military necessity and humanity. At the heart of IHL lies the principle of distinction between the armed forces, who conduct the hostilities on behalf of the parties to an armed conflict and civilians who are presumed not to directly participate in hostilities and must be protected against the dangers arising from military operations. Throughout history, the civilian population has always contributed to the general war effort of parties to armed conflicts, for example through the production and supply of weapons, equipment, food and shelter, or through economic, administrative and political support. However, such activities typically remained distant from the battle field and traditionally; only a small minority of civilians became involved in the conduct of military operations.

Then, there is need to protect and provide refugee camps for civilians who do not take part in hostilities or who are no longer taking part in hostilities i.e. non-combatants and prisoners of war. There are international organizations that see the protection of civilians and whoever is not taking part in hostilities of the armed conflict to be protected from. Already the Common Article 3 and Additional Protocol II had given ICRC a mandate to be a protecting power of victims of war. More so, NGOs and Civil society groups like Amnesty International and Human Rights Watch play a vital role when it comes to protection of victims of civil wars.

The United Nations had been a body that makes contributions to the development of International Humanitarian Law. IHL particularly the Common Article 3 and Protocol II of the Geneva Conventions 1949 was extensively used by the Adhoc Tribunals of Rwanda and Former Yugoslavia. These two International Tribunals tried to meet “minimum standard of rules of law” provided by the Law of IHL of Internal Armed Conflict (Common Article 3 and Protocol II) to adjudicate on the cases of these two states civil wars. They also acknowledged the existence of

customary international law being the Universal Legal Regime applicable to all types of conflicts. The recognition of the existence of the Customary International Law was to allow them treat serious violations of Common Article 3 and Protocol II as “grave breaches” of Geneva Conventions and their Additional Protocols amounting to War Crimes, Crimes against Humanity and Genocide.

This research work used an already existed Internal Armed Conflict of Sierra Leone and Liberia in order to express better on the importance of abiding by the rules of IHL in Internal Armed Conflicts. The bottom line remains that the parties to the conflicts in both Sierra Leone and Liberia generally do not respect humanitarian principles on the battlefield or in practice. Hundreds of thousands of Sierra Leoneans and Liberians felt victims to the violations of the most basic humanitarian guarantees with little legal protections or resources during the armed conflicts. Such abuses and constant threat from all the armed groups participating in the conflict converted the Sierra Leone and Liberian Civil Conflicts into a fully fledged humanitarian crisis. The worst perpetrators by and large, go free and even some considered heroes by their sympathizers for example, in Liberia no other person was indicted by any international criminal court apart from Charles Taylor who was only tried by the court specially established for Sierra Leone defaulters. In light of the prevailing situation, one might well ask; why does acceptance of International Humanitarian Law Matter?

The research work argued that despite the harsh and undeniable realities of the wars in Sierra Leone and Liberia, there has been progress made in the advancement of the Special Court for Sierra Leone. The court had contributed a lot to the victims of the Sierra Leone and Liberian Internal Armed Conflict particularly the indictment of the war lord, the former President of Liberia, Charles Taylor. Even though the special court charged him on crimes only committed in

Sierra Leone, at least Liberians who had suffered injuries physically and psychologically during the war which Charles Taylor was the Champion. Liberians would be glad to see him punished for the pains he had caused them. Up till, today Liberia had not made an effort to punish other crime partners of Charles Taylor.

5.3 Findings

- (a)** The research work observed that the rules of International Humanitarian Law are applicable in situations of Internal Armed Conflicts found in both treaty and customary laws. The part of the treaty laws that are applicable to Internal Armed Conflicts are Common Article 3 of the Four of 12 August 1949 Geneva Conventions and Protocol II Additional to the Four Geneva Conventions of 8th June 1977 and are the most recognized ones. For example, distinction between civilian objects and that of military, prohibition against indiscriminate attacks, violation of the principle of proportionality etc.
- (b)** We also observed that Common Article 3 is a much broader in application than Protocol II because there is no requirement of state involvement and has a much lower requirements covering Internal Armed Conflict. That is to say, it must be an armed conflict because mere internal tension and disturbances such as rioting would be insufficient to trigger the application of Common Article 3.
- (c)** The research work observed that the Armed Conflicts of Sierra Leone and Liberia have all the prerequisite conditions postulated by Common Articles 3 and Additional Protocol II to be applicable.
- (d)** It is also observed that crimes committed international armed conflict such as crimes against humanity (rape, torture, indiscriminate killing) and genocide are committed during Internal Armed Conflict are likely committed during Internal Armed Conflict.

Despite that these crimes are found under the law of Internal Armed Conflict and other International Conventions. The law of Internal Armed Conflict i.e. Common Article 3 and Protocol II did not specifically enumerate them as crimes. However, the International Tribunals of Former Yugoslavia and Rwanda, so also the International Criminal Court, Special Court for Sierra Leone, Special Panels for Serious Crime for East Timor and Kosovo and the Extraordinary Chambers in the courts of Cambodia (ECCC) adjudicated for such crimes and imposed punishments for perpetrators of these crimes. Hence, violations of Common Article 3 and Protocol II amounts to such crimes, because in any of the crimes contains acts which are prohibited by Common Article 3 and Protocol II. Again, the Common Article 3 recognized only War Crimes and Crimes against Humanity

- (e) The research work also observed that, despite the crimes imposed during Internal Armed Conflicts are heinous and egregious. But no death penalty is imposed, rather imprisonment terms. This is contrary to the states penal laws where culpable homicide is punishable for killing one person. While in civil wars you find one person killing 20 and above persons, but end gets prison term as punishment.
- (f) The research work also observed that in the Nigerian case for Charles Taylor's, invokes a duty on states to refuse indicted criminals any 'refugee statuses. This Nigerian case educates the citizens that they have the right to challenge any warlord granted asylum in the country. And that a state has the right to extradite the offender or if given an international mandate to even try and punish him under its laws just as was done to Charles Taylor's son in United States.

5.4 Recommendations

- (a) **Dialogue and Negotiation:** Common Article 3 and Additional Protocol II have laid down the minimum standard of rules that determines a conflict to be an internal armed conflict. With this development the research work recommends that the state whether part of the conflict or not should engage into dialogue or negotiations with opposition armed groups than refuse to listen to the yearnings of the opposition groups.
- (b) **Ceasefire Agreement:** In situations where the parties in the armed conflict are unable to implement and comply with the rules of IHL. This research work recommends that there should be ceasefire from both parties as first attempt. In a ceasefire arrangement, parties to the conflict primary aim are to suspend hostilities. This helps parties to be committed to implement specific IHL obligations and avoid violating IHL. And even if hostilities resumes, it will help to remind the parties their obligations under IHL.
- (c) **Domesticate Internal Armed Conflict Rules:** The research work recommends that states parties to Geneva Conventions and Additional Protocols domesticate in their laws the rules of Common Article 3 and its Additional Protocol II and to observe their implementation. This ties the states to international obligations. This will avoid states from denying that Internal Armed Conflict exists in their territory.
- (d) **Encourage awareness through seminars and conferences:** The research work recommends that states should enlighten the general public particularly the youths on the significance of the rules of IHL. With this the society will have the knowledge of those that are most vulnerable in the society in order to minimize hostilities during armed conflict. That is to say non-state parties in an armed conflict could have the knowledge of IHL as a result would respect the rules of IHL.

- (e) The research work recommends that the military in a state should enlighten the Political arm of the government the rules governing armed conflict in every situation. This will enhance respect on the part of the political arm by showing them the consequences of violating the rules of IHL and that failure to oblige with those rules would amount to war crime.
- (f) The research work also recommends that death penalty should be part of punishment for the perpetrators of crimes committed during internal armed conflict, rather than only the prison term.

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