

**'THE SINS OF THE SAVIOURS':
FORMULATING A COMPREHENSIVE AND EFFECTIVE RESPONSE
TO VIOLATIONS OF HUMAN RIGHTS AND HUMANITARIAN LAW
COMMITTED BY ECOMOG PEACEKEEPERS**

Submitted in partial fulfilment of the requirements for the degree LL.M
(Human Rights and Democratisation in Africa)

by

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DECLARATION

I, Patrick Michael EBA, declare that the work presented in this dissertation is original. It has never been presented at any other university or institution. Where other people's works have been used, references have been provided, and in some cases, quotations made. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree in Human Rights and Democratisation in Africa.

Signature:.....

Date:.....

DEDICATION

To the memory of my brother and sister Landry and Alida Opportune who left us prematurely.
You will be always missed. *Ab imo pectore...*

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All my gratitude goes to the Centre for Human Rights for allowing me to take part in this wonderful and worthwhile programme for the edification of human rights and dignity in Africa. The quality of the formation and the administration of the LLM programme reflect the excellence and dedication of the Centre for Human Rights. I will be eternally grateful.

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It was not always easy but we made it. *Labor improbus omnia vincit...*

TABLE OF CONTENTS

Title page	i
Declaration	ii
Dedication	iii
Acknowledgements	iv
Table of contents	v
List of abbreviations	viii
Chapter 1: Introduction	1
1.1 Background of the study.....	1
1.2 Statement of research problem.....	2
1.3 Significance of the study.....	2
1.4 Research questions.....	3
1.5 Literature review.....	3
1.6 Methodology.....	4
1.7 Limitation of the study.....	4
1.8 Summary of chapters.....	4
Chapter 2: ECOMOG: its birth and evolution	6
2.1 Introduction.....	6
2.2 ECOMOG: From an <i>ad hoc</i> body.....	7
2.2.1 Creation of ECOMOG.....	8
2.2.2 Structures of ECOMOG.....	8
2.2.3 Mandate of ECOMOG: unclear line between peacekeeping and peace enforcement.....	9
2.2.3.1 From peacekeeping.....	9
2.2.3.2 ...to a peace enforcement mandate.....	11
2.3 ...to a permanent ECOWAS organ.....	12
2.3.1 The Revised Treaty.....	12

2.3.2 The protocol of 1999.....	13
2.4 Conclusion.....	14

Chapter 3: Violations of humanitarian law and human rights committed by ECOMOG peacekeepers..... 15

3.1 Introduction.....	15
3.2 The applicability of human rights and IHL to peacekeeping operations.....	15
3.2.1 The applicability of IHL to peacekeeping operations.....	15
3.2.2 The applicability of Human rights to peacekeeping operations.....	18
3.3 Violation of IHL and human rights committed by ECOMOG peacekeepers.....	19
3.3.1 Violations of IHL committed by ECOMOG peacekeepers.....	20
3.3.1.1 Violations of means and methods of warfare.....	20
3.3.1.2 Violation of the protection recognised to ‘protected persons or property’.....	21
a. Violation of the protection recognised to civilians.....	21
b. Violation of the protection recognised to sick and wounded combatants.....	22
c. Violation of the protection of civilian medical personnel, humanitarian workers and hospitals.....	22
d. Violation of the protection of civilian property.....	23
e. Rape and sexual violence against women.....	23
3.3.2 Violations of Human rights committed by ECOMOG peacekeepers.....	24
3.3.2.1 Violation of the prohibition of arbitrary deprivation of the right to life.....	24
3.3.2.2 Violation of freedom from torture, cruel, inhuman and degrading treatment.....	25
3.3.2.3 Rape and gender based violence.....	26
3.4 Conclusion.....	27

Chapter 4: Responses to violations of human rights and humanitarian law committed by ECOMOG peacekeepers..... 28

4.1 Introduction.....	28
4.2 Accountability mechanisms.....	29
4.2.1 Inadequacy of national accountability mechanisms.....	29
4.2.1.1 The exclusive jurisdiction of the contributing States.....	30
4.2.1.2 The lack of political will and jurisdictional gaps of contributing States.....	31
4.2.2 Other accountability mechanisms.....	32
4.2.2.1 ECOWAS and ECOMOG mechanisms.....	33

4.2.2.2 Universal jurisdiction, the Special Court for Sierra Leone and the International Criminal Court.....	34
a. Universal jurisdiction.....	34
b. The Special Court for Sierra Leone.....	35
c. The International Criminal Court.....	36
4.2.2.3 State and ECOWAS responsibility.....	38
a. State responsibility as accountability mechanism.....	38
b. Can ECOWAS be held responsible?.....	40
4.3 Prevention mechanisms.....	41
4.3.1 Inadequate prevention mechanisms.....	42
4.3.1.1 Lack of awareness and political will.....	42
4.3.1.2 Inadequacy of training.....	42
4.3.2 The UN as a model.....	44
4.3.2.1 Creating awareness and political will.....	44
4.3.2.2 Improvement of training.....	45
4.3.2.3 Cooperation with other actors.....	45
4.3.2.4 Gender perspective.....	46
4.4 Conclusion.....	46
Chapter 5: Conclusion and recommendations	47
5.1 Conclusion.....	47
5.2 Recommendations.....	48
5.2.1 Improving accountability mechanisms.....	48
5.2.2 Improving prevention mechanisms.....	49
Bibliography	51

LIST OF ABBREVIATIONS

ACOTA	African Contingent Operations Training Assistance
ACRI	African Crisis Initiative
AFL	Armed Forces of Liberia
AP	Additional Protocol to the Geneva Conventions of 12 August 1949
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
ECOMOG	Economic Community of West African States cease-fire Monitoring Group
ECOWAS	Economic Community of West African States
EFC	ECOMOG Force Commander
GC	Geneva Conventions of 12 August 1949
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	International Humanitarian Law
INPFL	Independent National Patriotic Front of Liberia
IO	International Organisation
NPFL	National Patriotic Front of Liberia
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PMAD	Protocol relating to Mutual Assistance in Defence
PNA	Protocol on Non-Aggression
RECAMP	Reinforcement of African Peacekeeping Capacities
RUF	Revolutionary United Front
SMC	Standing Mediation Committee
UDHR	Universal Declaration of Human Rights
ULIMO	United Liberation Movement for Democracy
UN	United Nations
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
WFP	United Nations World Food Programme

CHAPTER 1

INTRODUCTION

1.1 Background of the study

Peacekeepers are alleged to have sexually exploited children in exchange for money and food. It is claimed that even some very young children have been asked to pose naked in exchange for biscuits, cake powder and other food items. *“When ma asked me to go to the stream to wash plates, a peacekeeper asked me to take my clothes off so that he can take a picture. When I asked him to give me money he told me, no money for children only biscuit.”*¹

The publication by the United Nations High Commission for Refugees (UNHCR) and Save the Children-United Kingdom of a report on sexual violence and exploitation of children,² which extract is mentioned above, has resulted in an international outcry on human rights violations committed by peacekeepers and humanitarian workers.

Ideally, peacekeeping operations demonstrate the concern of the international community in situations of instability or conflict arising between or within States. They are conceived to bring about peace and ‘ensure the effective promotion and protection of [human] rights’.³ As a result, peacekeeping operations as well as peacekeepers are expected to comply with standards of human rights and humanitarian law. With respect to the Economic Community of West African States cease-fire Monitoring Group (ECOMOG),⁴ its intervention in Liberia, Sierra Leone, Guinea Bissau, and Côte d’Ivoire have been generally welcomed as a response to barbaric and devastating wars in West Africa.⁵

¹ UNHCR and Save the Children-UK (2002) ‘Note for implementing and operational partners on sexual violence and exploitation: The experience of refugee Children in Guinea, Liberia and Sierra Leone’. Available at <[www.savethechildren.org.uk/temp/scuk/cache/cmsattach/1550_unhcr-scuk%20w africa%20report.pdf](http://www.savethechildren.org.uk/temp/scuk/cache/cmsattach/1550_unhcr-scuk%20w%20africa%20report.pdf)> (accessed on 21/07/04). This report provides well-documented allegations of sexual abuses by aid workers, humanitarian workers and UN peacekeepers in West Africa (Liberia, Sierra Leone and Guinea).

² UNHCR and Save the Children-UK (as above).

³ B Boutros-Ghali ‘Introduction’ in United Nations United Nations, Department of public information (1995) *The United Nations and human rights 1945-1995* 113.

⁴ ECOMOG was established on 7/08/90 by the Standing Mediation Committee on the Liberian Conflict of the Economic Community of West African States. Discussed in chapter 2 section 2.2.1 below.

⁵ Civil wars in West Africa particularly in Liberia and Sierra Leone have been pointed out as being among the most brutal that have ever waged. The mutilation of thousands of civilians by the Revolutionary United Front is very expressive of these awful conflicts. See Amnesty International (1998) ‘Annual Report on the Republic of Sierra Leone’. Available at <www.amnesty.org/ailib/aireport/ar98/afr51.htm> (accessed on 21/07/04) and Human Rights

However, the observation of ECOMOG missions reveals several instances of violations of human rights and humanitarian law committed by ECOMOG peacekeepers.⁶ These violations include attacks against civilians, summary executions, rapes, torture, looting, etc. In other words, the saviours have turned into violators of rights.⁷ While these violations have provoked concern and indignation,⁸ few measures have been taken to address the problem, hold peacekeepers accountable and prevent abuses in the future.

1.2 Statement of research problem

Peacekeeping operations can contribute to restore order, the rule of law and respect for human rights in conflict areas. However, it is important to ensure that peacekeepers comply with the rules international humanitarian law (IHL) and do not take advantage of their position to violate the human rights of the population they are expected to protect. Accordingly, this study seeks to address the problem concerning what system shall be established to prevent the commission of abuses by ECOMOG peacekeepers and ensure accountability for violations of human rights and humanitarian law committed by ECOMOG peacekeepers when they occur.

1.3 Significance of the study

The relevance of this study might be questioned particularly because many international organisations (IOs) are generally seen as transparent and human rights oriented. Their peacekeeping initiatives also benefit from this presumption. However, it is important to move away from mere presumptions and examine the compliance by peacekeepers with human rights and IHL. As rightly stated by Foucault:

the real political task in a society such as ours is to criticize the working of institutions which appear to be both neutral and independent; to criticize them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight them.⁹

Watch (1990) 'Liberia: a human rights disaster: violations of the laws of war by all the parties to the conflict'. Available at <www.hrw.org/reports/1990/liberia> (accessed on 03/06/04).

⁶ Human Rights Watch (1993) 'Waging war to keep the peace: the ECOMOG intervention and human rights' June 1993 Vol. 5 Issue No 6. Available at <www.hrw.org/reports/1993/liberia> (accessed on 3 July 2004) and Human Rights Watch (1999) 'Sierra Leone: getting away with murder, mutilation, rape'. Available at <www.hrw.org/reports/1999/sierra> (accessed on 15/07/04).

⁷ Human Rights Watch (1993) and (1999) (as above).

⁸ 'U.N. Monitors accuse Sierra Leone peacekeepers of killings' *New York Times* 12 February 1999. Available at <www.globalpolicy.org/security/issues/sierra7.htm> (accessed on 17/08/04).

⁹ Foucault in *Human Nature* quoted by B Harrel-Bond 'Can humanitarian work with refugees be humane?' (2002) *Human Rights Quarterly* Vol. 24 53.

Moreover, by addressing the issue of abuses committed by ECOMOG peacekeepers, this study is in line with the need to improve peacekeeping standards and ensure compliance by peacekeepers with international law. This study constitutes a sub-regional perspective to the efforts of the international community to respond to abuses committed by peacekeepers. This research is inspired by the lack of comprehensive mechanism to tackle abuses committed by ECOWAS peacekeepers.

Finally, although this study concentrates on the case of ECOMOG peacekeepers, some of its arguments and recommendations can also be useful for other regional and sub-regional peacekeeping initiatives in Africa.

1.4 Research questions

This study is informed by the following research questions: Are the rules of IHL and human rights applicable to peacekeepers and particularly to ECOMOG peacekeepers? Did ECOMOG peacekeepers actually committed violations of human rights and IHL? What have been the responses given by the national, regional and international actors and bodies to these violations? Are the actions taken, so far, sufficient and comprehensive enough to address these abuses in terms of prevention and accountability? What recommendations shall be made to ensure accountability of peacekeepers, and prevent the commission of abuses in the future?

1.5 Literature review

Peacekeeping operations initiated by ECOMOG have inspired several studies. Khobe,¹⁰ Ero,¹¹ and Hutchful¹² have generally acclaimed ECOMOG operations while Kufuor¹³ has formulated criticisms concerning, among other issues, the legality of the operations. On the contrary, few attention have been given to the violations of human rights and IHL committed by ECOMOG peacekeepers which

¹⁰ M M Khobe 'The evolution and conduct of ECOMOG operations in West Africa' in M Malan (ed) (2000) *Boundaries of peace operations: the African dimension*. Available at <www.iss.co.za/Publications/Monographindex.html> (accessed on 10/09/04).

¹¹ C Ero 'ECOMOG: a model for Africa?' in J Cilliers and A Hilding-Norberg (eds) (2000) *Building stability in Africa: Challenges for the new millennium*. Available at <www.iss.co.za/Pubs/Monographs/No46> (accessed on 8 March 2004) also C Ero 'ECOWAS and Sub-regional peacekeeping in Liberia' (2000) *The Journal of International Assistance*. Available at <www.jha.ac/articles> (accessed on 8 March 2004).

¹² E Hutchful 'The ECOMOG experience with peacekeeping in West Africa' in M Malan (ed) (1999) *Whither peacekeeping in Africa* Available at <www.iss.co.za/Publications/Monographindex.html> (accessed on 10/09/04).

¹³ K O Kufuor 'The Legality of the Intervention in the Liberian Civil War by the Economic Community of West African States' (1993) *African Journal of International and Comparative Law* 525-559.

were generally dealt with in report of human rights organisations.¹⁴ Unfortunately, these reports do not focus on the responses to the violations committed by ECOMOG peacekeepers. This lacuna contrasts with the important number of studies dedicated to the responses to abuses committed by UN peacekeepers.¹⁵

1.6 Methodology

This study is an analysis and assessment of the response to abuses committed by ECOMOG peacekeepers, thus the methodology employed is analytical and critical of various sources including treaties, books, articles and reports. This study is exclusively a desk-oriented research. It draws inspiration from experiences in other peacekeeping operations and makes suggestions for the improvement of the response to abuses committed by ECOMOG peacekeepers.

1.7 Limitation of the study

This study assesses both prevention and accountability mechanisms designed to address abuses committed by ECOMOG peacekeepers. Accordingly, it does not concentrate in detail on any peacekeeping operations of ECOMOG. Again, it does not specifically discuss the legality of the peacekeeping role of ECOMOG. This study addresses the issue of accountability for, and prevention of, human rights and humanitarian law violations committed by ECOMOG peacekeepers. It also only focuses on abuses committed by ECOMOG peacekeepers and excludes from its scope any act committed by civilian personnel of ECOMOG.

1.8 Summary of chapters

This study is divided into five chapters. Chapter one provides, among other, the background of the study, the statement of the research problem and the significance of the study. Chapter two gives an insight into the creation, structure, mechanisms and evolution of ECOMOG as the peacekeeping organ of ECOWAS. Chapter three examines the basis for the applicability of human rights and IHL to peacekeepers and shows the violations committed by the ECOMOG peacekeepers since 1990. Chapter four analyses the responses to abuses committed by ECOMOG peacekeepers. It discusses

¹⁴ See e.g. Human Rights Watch (1993) and (1999) (n 6 above).

¹⁵ E.g. J Murray 'Who will police the peace-builders? The failure to establish accountability for the participation of United Nations civilian police in the trafficking of women in post-conflict Bosnia and Herzegovina' (2003) 34 *Colum. Hum. Rts. L. Rev.* 475 and J Peck 'The UN and the laws of war: how can the world's peacekeepers be held accountable?' (1995) 21 *Syracuse J. Int'l L. & Com.* 283.

the national, regional and universal responses to these abuses. It investigates both prevention and accountability mechanisms existing to address abuses committed by ECOMOG peacekeepers. It also explores some potential accountability and prevention mechanisms. Finally, chapter five makes some concluding remarks and suggests specific recommendations for the improvement of the existing responses.

CHAPTER 2

ECOMOG: ITS BIRTH AND EVOLUTION

2.1 Introduction

Launched on 28 May 1975, the Economic Community of West African States (ECOWAS)¹⁶ was assigned an economic and development mandate. Indeed, the Treaty of Lagos establishing ECOWAS (Original Treaty) stated that the objective of ECOWAS is:

to promote cooperation and development in all fields of economic activities and in social and cultural matters for the purpose of raising the standard of living of its peoples.¹⁷

Consequently, the Original Treaty does not expressly mention security issues or peacekeeping.¹⁸ Nevertheless, it has been argued that the Original Treaty implicitly allows for the involvement of ECOWAS in security issues in general and peacekeeping in particular.¹⁹ Although the original treaty was silent on conflict issues, ECOWAS was not totally deprived of instruments relevant to security. Prior to 1990, it had adopted the Protocol on Non-Aggression²⁰ (PNA) and the Protocol relating to Mutual Assistance in Defence²¹ (PMAD).²²

¹⁶ ECOWAS is a sub-regional grouping of West African states established on 28/05/75 by the signature in Lagos (Nigeria) of the treaty for an Economic Community of West African States. Its fifteen current members are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Niger, Nigeria, Mali, Togo, Senegal, and Sierra Leone. Organisation of African Unity, Direction of Foreign Affairs (2000) 'Profile: Economic Community of West African States (ECOWAS)'. Available at <www.africa-union.org> (accessed on 1/09/04).

¹⁷ Original Treaty, art. 2.

¹⁸ See Original Treaty.

¹⁹ K van Walraven (1999) 'Containing conflicts in the Economic Community of West African States: Lessons from the intervention in Liberia, 1990-1997' 15. Available at <www.Clingendael.nl/cru/pdf/ecomog.pdf> (accessed on 17/07/04). Van Walraven argues that 'as conflicts could easily jeopardise the goals of closer ties [and economic development] it is not difficult to construct arguments that could justify ECOWAS concern with, and involvement in, mediation or intervention in conflicts'.

²⁰ Adopted in Lagos on 22/04/78. The PNA entered into force in 1982. All ECOWAS member States have ratified it.

²¹ Adopted on 29/05/81. The PMAD entered into force in 1986.

²² Both instruments were irrelevant to the intervention in Liberia and Sierra Leone. The PNA only applies to inter-State conflicts while the organs provided for under the PMAD were never created.

However, the legal and institutional *vacuum* in ECOWAS concerning security issues changed in 1990 with the outbreak of the Liberian civil war which provided the scene for the creation and operation of ECOMOG.

From 1990 to date, ECOWAS has taken several measures relevant to peacekeeping and aimed at increasing the competences of ECOMOG. These measures include the revision of the Original Treaty²³ and the adoption of the Protocol relating to the mechanism for conflict prevention, management, resolution, peacekeeping and security (Protocol of 1999).²⁴ This legislative revival in the area of peacekeeping was motivated by the need for ECOWAS to establish a more coherent framework for its new security objectives. This chapter discusses the creation and evolution of ECOMOG from 1990 to date. It will analyse ECOMOG metamorphose from an *ad hoc* body to an organ of ECOWAS.

2.2 ECOMOG: From an *ad hoc* body

When Charles Taylor, on the eve of Christmas 1990 attacked the government of Monrovia (Liberia), nothing could have predicted the military intervention of ECOWAS or the creation of ECOMOG. However, the intensification of the Liberian conflict, attacks on West African nationals and the activation of secret pacts in the sub-region,²⁵ coupled with other factors led to the concern and latter involvement of ECOWAS in the conflict.²⁶

The involvement of ECOWAS in security issues was first diplomatic through the Standing and Mediation Committee (SMC).²⁷ However, this diplomatic approach was followed by a 'stick approach' through the creation and intervention of ECOMOG. This section will analyse the creation, structure and mechanisms of ECOMOG from 1990 to 1999, which correspond to the intervention in Liberia (1990-1999), Sierra Leone (1997-2000) and Guinea-Bissau (1999).

²³ The Treaty of ECOWAS was revised in Cotonou (Benin) on 23/07/93. One important feature of the Revised Treaty is article 58 entitled 'Regional security'.

²⁴ Adopted on 10/12/99 in Lomé (Togo).

²⁵ Ero in Cilliers and Hilding-Norberg (n 11 above). Ero argues that 'Nigeria, with the support of other regional allies, used ECOMOG ... for protecting an ailing head of State, Samuel Doe'.

²⁶ Kufuor (n 13 above) 529. Kufuor analyses the arguments raised by ECOWAS to justify its intervention in Liberia and their validity in international law. These arguments are a) the existence of a legally binding treaty amongst member States b) the re-establishment of law and order in neighbouring State c) self-defence and d) humanitarian intervention. The same arguments were used by ECOWAS to justify its later interventions in Sierra Leone and Guinea-Bissau.

²⁷ ECOWAS Authority at its Banjul Summit formally established the SMC in May 1990. The SMC was composed of five ECOWAS member States and entrusted with a general mandate concerning conflicts mediation. Decision A/DEC. 9/5/90 in *Official Journal of the Economic Community of West African States*, Vol. 21 November 1991.

2.2.1 Creation of ECOMOG

ECOMOG was not provided for in the Original Treaty, in the PNA or in the PMAD. It was established by a decision of the SMC on 1 August 1990,²⁸ as part of the 'ECOWAS peace plan' which provides, among other, for the observance of an immediate cease-fire and the formation of ECOMOG.²⁹ The Authority³⁰ endorsed the decision of the SMC creating ECOMOG on 1st November 1990,³¹ roughly four months later. This situation gives rise to some questions concerning the power of the SMC to establish ECOMOG and consequently, the legality of ECOMOG activities from August to November 1990 when the authority officially endorsed its creation.³²

2.2.2 Structures of ECOMOG

The structures of ECOMOG can be divided into two categories. The first category is composed of the internal organs of ECOMOG and the second category is made up of the Special Emergency Fund created to support ECOMOG operations.

The internal structures of ECOMOG were the Special representative of the Secretary General of ECOWAS, the ECOMOG Force Commander (EFC) and the troops from contributing states.³³ The special representative of the Secretary General was the institutional link between the EFC and the ECOWAS. The special representative and its supporting staff were to be stationed in Liberia and facilitate the operation of ECOMOG in that country.³⁴ The EFC appointed by the SMC was the commander of ECOMOG troops. ECOMOG troops were originally supposed to be composed of military contingents from the five members of the SMC namely, Nigeria, Ghana, Gambia, Mali and Togo plus Sierra Leone and Guinea-Conakry.³⁵

²⁸ Decision A/Dec. 1/8/90 in *Official Journal of the Economic Community of West African States*, Vol. 21 November 1991.

²⁹ Decision A/Dec. 1/8/90 (as above).

³⁰ The Authority is the composed of Head of States and Government of ECOWAS.

³¹ Decision A/Dec. 1/11/90 in *Official Journal of the Economic Community of West African States*, Vol. 21 November 1991.

³² For further discussion see Van Walraven (n 19 above) 20.

³³ Decision A/Dec. 1/8/90 (n 28 above).

³⁴ Decision A/Dec. 1/8/90, art. 2(6) (n 28 above).

³⁵ However, the Authority later appealed to other member States to send troops and actually other States sent troops to participate in the intervention. See van Walraven (n 19 above) 13.

The Special Emergency Fund was created to support the intervention in Liberia and its initial capital targeted fifty million United States (US) dollars. ECOMOG members were asked to contribute but the contribution was not made mandatory. A call for contribution was also made for institutions beyond the sub-region and the continent.³⁶ If the structures of ECOMOG raise few questions, it is not the same for its mandate.

2.2.3 Mandate of ECOMOG: unclear line between peacekeeping and peace enforcement

The mandate of ECOMOG will be analysed with reference to its interventions in Liberia and Sierra Leone. These two interventions lead to a discussion on the nature of ECOMOG mandate. Was it a peacekeeping or a peace enforcement mandate? The examination of the decision establishing ECOMOG and the operations its troops in Liberia and Sierra Leone show the confusion between these two mandates.

2.2.3.1 From peacekeeping

Boutros-Ghali notes that:

peacekeeping is the deployment of a ... presence on the field, hitherto with the consent of all the parties concerned normally involving ... military and/or police personnel and frequently civilians as well.³⁷

Draman and Carment explain that:

The concept of peacekeeping is derived from certain principles: the consent of the parties to the conflict; the use of force only in self-defence and, more importantly, claims to impartiality.³⁸

The discussion on the peacekeeping mandate of ECOMOG will be informed by the application of these definitions and criteria to the law and practice of ECOMOG. The decision establishing ECOMOG provides it with the mandate to:

³⁶ Decision A/DEC. 3/8/90 in *Official Journal of the Economic Community of West African States*, Vol. 21 November 1991.

³⁷ B Boutros-Ghali (1992) 'An agenda for peace: Preventive diplomacy, peacemaking and peace-keeping, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992'. Available at <<http://www.un.org/Docs/SG/agpeace.html>> (accessed on 25/06/04).

³⁸ R Draman and D Carment (2001) 'Managing chaos in the West African sub-region: Assessing the role of ECOMOG in Liberia' 6. Available at <www.carleton.ca/~dcarment/papers/ECOMOG.pdf> (accessed on 17/07/04).

conduct military operations for the purpose of monitoring the cease-fire [...], create the necessary conditions for free and fair elections to be held in Liberia.³⁹

Two elements of this provision are relevant for the definition of the mandate of ECOMOG: first, the reference to a cease-fire and secondly the creation of ECOMOG as a peacekeeping force. Concerning the conclusion of a cease-fire prior to a peacekeeping operation, it appears that at the time of the intervention of ECOMOG in Liberia on 24 August 1990 there was not a complete cease-fire.⁴⁰ On this regard, Draman and Carment note that:

The 'peacekeepers' went into Liberia without any cease-fire on the ground and in fact, without any peace to keep, yet they were assigned peacekeeping duties.⁴¹

Secondly, ECOMOG did not obtain the consent of all the parties to the Liberian conflict, prior to its intervention. Charles Taylor, 'the warlord' who controlled a sizeable portion of the Liberian territory, expressed its opposition to the intervention of ECOMOG.⁴² Thirdly, the peacekeeping force is defined by the use of force only in self-defence. Although, ECOMOG has acted sometimes in self-defence, it also appears that it conducted offensive military operations in both Liberia and Sierra Leone. Finally, it is difficult to see ECOMOG as an impartial or neutral peacekeeping force. In fact, in coalition with other warring factions namely the Independent National Patriotic Front of Liberia (INPFL), the United Liberation Movement for Democracy (ULIMO) and Armed Forces of Liberia (AFL) in Liberia and the Kamajors in Sierra Leone, ECOMOG launched attacks against the National Patriotic Front of Liberia (NPFL) and the Revolutionary United Front (RUF). These alliances and attacks against some of the parties to the conflicts show that ECOMOG was not an impartial or neutral force.

From this analysis, it appears that ECOMOG did not always act in conformity with the element defining a peacekeeping force. The justification for the non-compliance by ECOMOG to its peacekeeping mandate can be found in the nature of the conflicts particularly in Liberia and Sierra Leone, where it was difficult to reach agreement with the warring factions and also by the necessity to intervene expeditiously to stop acts 'contrary to all standards of civilised behaviour and international ethic and decorum'.⁴³ This position is reinforced by arguments that 'the key principles informing conventional,

³⁹ Decision A/Dec. 1/8/90, art. 2(2) (n 28 above).

⁴⁰ See Kufuor (n 13 above) 527.

⁴¹ Draman and Carment (n 38 above) 9.

⁴² Draman and Carment (as above) 11.

⁴³ Ibrahim Babangida, Head of State of Nigeria quoted in Kufuor (n 13 above) 529.

essentially peaceful, peacekeeping missions are anachronistic and no longer applicable to today's situations'.⁴⁴ Indeed, the law and practice of ECOMOG show that it was also recognised an enforcement role.

2.2.3.2 ...to a peace enforcement mandate

Unlike peacekeeping, peace enforcement operations 'have a clear combat mission and are empowered to use coercive measures to carry out their mandate'.⁴⁵ In the light of this definition one can say that ECOMOG was also an enforcement force. In fact, the nature of the operations in Liberia and Sierra Leone reveals its direct involvement in the fighting. Alone or in alliance with other parties to the conflicts in Liberia and Sierra Leone, ECOMOG launched military attacks and used force outside the context of self-defence.

The enforcement operations of ECOMOG raise an important question: does the mandate of ECOMOG provide for peace enforcement activities?

The Decision establishing ECOMOG states that ECOMOG mandate includes 'restoring law and order and ensuring that the cease-fire [is] respected'.⁴⁶ This formulation can be interpreted as providing for an enforcement mandate of ECOMOG. The expression 'restore law and order' suggest a more active mandate than peacekeeping and calls, among other, for the use of force as one of the means to achieve the objective of the operation. Thus, ECOMOG was granted an enforcement mandate in addition of its peacekeeping mission.

This mandate can be justified by the need to provide ECOMOG with a broad mandate which enables it to confront the hostile and confused situation in Liberia and later in Sierra Leone. The Cotonou Agreement will later recognise explicit enforcement powers to ECOMOG.⁴⁷

⁴⁴ See Draman and Carment (n 38 above) 7.

⁴⁵ D Shraga and R Zacklin 'The applicability of International humanitarian law to United Nations peacekeeping operations: conceptual, legal and practical issues' in U Palwankar (ed) (1994) 'Symposium on humanitarian action and peacekeeping operations report' 40.

⁴⁶ Decision A/Dec. 1/8/90, art. 2(2) (n 28 above).

⁴⁷ Van Walraven (n 19 above) 22.

The above description tried to capture ECOMOG from its creation in 1990 to 1999. ECOMOG has evolved since then from an *ad hoc* body to a permanent ECOWAS organ. The following section gives an overview of this evolution.

2.3 ...to a permanent ECOWAS organ

Two major instruments marked the transformation of ECOMOG from an *ad hoc* body to an ECOWAS organ. This evolution goes along with the establishment of clearer structures and mandates in security issues for both ECOWAS and ECOMOG. The instruments characteristics of ECOMOG evolution are the Revised ECOWAS Treaty of 23 July 1993 (Revised Treaty) notably its article 58 and the Protocol of 1999. Each of these instruments calls for some comments.

2.3.1 The Revised Treaty

The lack of explicit security and peacekeeping agenda of ECOWAS in its Original Treaty undermined its involvement in West African conflicts and the legitimacy of ECOMOG.⁴⁸ To overcome this congenital difficulty and reach a wider agreement between member States on the involvement of the organisation in security issues the ECOWAS treaty was revised on 23 July 1993 roughly three years after the intervention of ECOMOG in Liberia.

The Revised Treaty, unlike the Original Treaty, contains specific provisions relevant to the security role of ECOWAS in West Africa. Article 58(1) of the Revised Treaty states that: '[m]ember States undertake to work to safeguard and consolidate relations conducive to the maintenance of peace, stability and security within the region.' This provision emphasises the need for member states to collaborate in order to maintain peace and security. This collaboration encompasses both internal and inter-state conflicts.⁴⁹ The Revised Treaty constitutes a real evolution because it expressly provides for the intervention of ECOWAS in internal conflicts. The means of intervention of the ECOWAS include good offices, mediation, and the establishment of regional peace and security observation system and peacekeeping forces.⁵⁰

⁴⁸ Van Walraven (n 19 above) 25-26. The Liberian intervention was on this basis criticised inside and outside the sub-region for being inconsistent with the Original Treaty.

⁴⁹ Revised Treaty, art. 58(2).

⁵⁰ Revised Treaty, art. 58(2)(E) and (f).

Although very progressive in the area of security, the Revised Treaty (article 58(3)) leaves to forthcoming protocols the task of establishing and defining 'the detailed provisions governing political cooperation, regional peace and stability'. In a bid to give effect to this provision, ECOWAS adopted the Protocol of 1999.

2.3.2 The protocol of 1999

The adoption of the protocol of 1999 is an important step that affects the nature, structures and mandate of ECOMOG. Firstly, the protocol makes ECOMOG a permanent organ of ECOWAS,⁵¹ It places ECOMOG under a hierarchy composed, from top to down, of the Authority, the Mediation and Security Council,⁵² the Executive Secretariat, the Special Representative of the Secretary General, the ECOMOG force Commander and troops from contributing States.⁵³ Secondly, the mandate of ECOMOG under the protocol is broadly defined and encompasses observation and monitoring activities as well as peacekeeping and restoration of peace.⁵⁴ Finally, the mandate of ECOMOG should be read together with article 10(c), which provides that the Mediation and Security Council shall: 'authorise all forms of intervention and decide particularly on the deployment of political and military missions'.⁵⁵

The expression 'all forms of intervention' mentioned in the protocol includes enforcement intervention by ECOMOG. The conformity of this provision with the UN Charter can be questioned. In fact, article 10(c) allows the Mediation and Security Council to take enforcement action without the authorisation of the Security Council. On this point, article 10(c) contravenes article 53(1) of the UN Charter which mandates regional arrangements to first obtain the approval of the Security Council before any enforcement action.⁵⁶

⁵¹ Protocol of 1999, art. 17.

⁵² Protocol of 1999, art. 4. The Mediation and Security Council is composed by 9 member States of ECOWAS and shall take 'decisions on issues of peace and security in the sub-region on behalf of the Authority'.

⁵³ These two organs are not new. They are the borrowed from the former ECOMOG structure.

⁵⁴ Protocol of 1999, art. 22.

⁵⁵ Protocol of 1999, art. 10(c).

⁵⁶ UN Charter, art. 53(1) stresses that: 'no enforcement action shall be taken under regional arrangements or by regional agencies without the authorisation of the Security Council'. UN Charter adopted on 26/06/45, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force on 24/10/45.

This irregularity seems to be redressed by article 52(3) of the Protocol of 1999 which imposes on ECOWAS, the obligation to 'inform the United Nations of any military intervention undertaken in pursuit of the objectives of the mechanism'. However, this provision is not enough to comply with the requirements of article 53(1). Indeed, article 53(1) clearly imposes on regional institutions an obligation not only to inform the Security Council, but also to obtain its authorisation.⁵⁷

2.4 Conclusion

ECOMOG was created by ECOWAS on an ad hoc basis, in the context of the Liberian crisis. Since then, ECOMOG has evolved to constitute today an important organ of ECOWAS in charge of peacekeeping operations in West Africa. This evolution is characterised by the revision of the ECOWAS treaty and the adoption of the Protocol of 1999. ECOMOG exercises both peacekeeping and peace enforcement mandate. Since its creation ECOMOG has intervened in Liberia, Sierra Leone, Guinea-Bissau and Cote d'Ivoire. Some of these interventions have been marked by atrocities committed by ECOMOG peacekeepers which will be discussed in the following chapter.

⁵⁷ In practice, for its intervention in Côte d'Ivoire, ECOWAS sought the authorisation of the UN.

CHAPTER 3

VIOLATIONS OF HUMANITARIAN LAW AND HUMAN RIGHTS COMMITTED BY ECOMOG PEACEKEEPERS

3.1 Introduction

Against the background of gross human rights violations and disregard for basic humanitarian law principles that characterised conflicts in West Africa,⁵⁸ the military intervention of ECOMOG has contributed to end brutal conflicts and restore peace. However, the achievements of ECOMOG cannot veil the violations of human rights and IHL committed by ECOWAS peacekeepers.

Analysing the violations committed by peacekeepers leads to a preliminary discussion of the applicability of human rights and IHL to peacekeeping operations and particularly to peacekeepers. Thus, the following lines will first establish the applicability of the principles of human rights and IHL to ECOMOG peacekeeping operations and secondly demonstrate how these principles have been violated by ECOMOG peacekeepers.

3.2 The applicability of human rights and IHL to peacekeeping operations

The applicability of IHL and human rights to peacekeeping operations faces conceptual and practical difficulties. In fact, human rights and IHL as branch of international law are originally designed to bind States. Thus, their applicability to peacekeeping operations organised by IOs becomes problematic. Albeit these difficulties, several arguments exist for the applicability of IHL and human rights to peacekeeping operations. This section will examine successively the applicability of IHL and human rights to peacekeeping operations.

3.2.1 The applicability of IHL to peacekeeping operations

The applicability of IHL to peacekeeping operations organised by an IO such as the UN or ECOWAS raises two main difficulties. First, an IO exercising a peacekeeping mandate can hardly be considered

⁵⁸ The Liberian and Sierra Leonean conflicts have been pointed out as being among the most brutal that have ever waged. The mutilation of thousands of civilians by the Revolutionary United Front is very expressive of these wrongs. See generally on the violations committed in Sierra Leone, Amnesty International (n 5 above) and in Liberia, Human Rights Watch (n 5 above).

as a 'party' to the conflict or a 'power' within the meaning of the Geneva Conventions⁵⁹ (GC).⁶⁰ IHL only applies to the party of an armed conflict whether international or non-international. Therefore, because an IO cannot be regarded as a party to the conflict or a power, IHL should not be applied in principle to its peacekeeping operations.

Secondly, despite its international legal personality,⁶¹ an IO is not a State and as a result cannot become a party to the Geneva Conventions. IOs also lack the juridical and administrative powers required to discharge the obligations laid down in the Geneva Conventions.⁶² These arguments constitute the position of the UN concerning the applicability of IHL to its peacekeeping operations. They are also valid in the case of ECOMOG operations.

In spite of these arguments, the applicability of IHL to peacekeeping operations lies upon three bases. First, the principles of IHL recognised as part of customary international law are binding not only upon States but also upon any 'organisation established by States and recognised by them as an independent subject of International law'.⁶³ Secondly, contributing states to peacekeeping operations have to ensure that their forces comply with IHL. This argument derives from the obligation on States: 'to respect and to ensure respect for [the Geneva Conventions and Additional Protocol I] in all circumstances.'⁶⁴ Lastly, the applicability of IHL to peacekeeping operations is based on the undertaking by IOs to comply with the rules of IHL. This undertaking is, for instance, expressed through the ECOMOG Regulations which states that ECOMOG 'shall observe the principles and spirit of the general international Conventions applicable to the conduct of military personnel'.⁶⁵ It therefore

⁵⁹ The Geneva Conventions are composed of four Conventions: The first Geneva Convention (GC I) for the Amelioration of the conditions of the Wounded and Sick in Armed Forces in the Field, the second Geneva Convention (GC II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the third Geneva Convention (GC III) relative to the Treatment of Prisoners of War and the fourth Geneva Convention (GC IV) relative to the Protection of Civilian Persons in Time of War. The Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21/04/49 to 12/08/49, adopted the four Geneva Conventions on 12/08/49.

⁶⁰ R Murphy 'United Nations Military Operations and International Humanitarian Law: What rules apply to peacekeepers?' (2003) *Criminal law forum* Vol 14 No. 2 154.

⁶¹ See *Reparation for injuries suffered in the service of the United Nations*, ICJ, Advisory Opinion of 11 April 1949.

⁶² Shrags and Zacklin (n 45 above) 43.

⁶³ Shrags and Zacklin (n 45 above) 42. Pursuant to this argument, only the rules of IHL forming part of international customary law applies to peacekeeping operations because not all the rules of IHL are accepted constituting international customary law.

⁶⁴ GC, Common article 1 and AP I, art 1(1).

⁶⁵ ECOMOG Regulations, art 45. The UN has also agreed that international forces acting under its authority would comply with the 'the principles and spirit' of the Geneva Convention. See Secretary-General's Bulletin 'Observance by United Nations forces of international humanitarian law', ST/SGB/1999/13, 6 August 1999. Available at <www.un.org/peace/st_sgb_1999_13.pdf> (accessed on 17/10/04).

appears that peacekeepers are subjected to IHL. Greenwood further notes that 'such forces are subjected to humanitarian law, whether they were established as peacekeeping forces or for the purpose of engaging in enforcement action.'⁶⁶

The affirmation of the obligation on peacekeeping operations to comply with IHL raises a further question: which rules of IHL are applicable to ECONOG peacekeeping operations?

Although all the interventions of ECOMOG in West Africa, took place in context of internal conflicts,⁶⁷ the international nature of the ECOMOG force and the international character of its mandate introduce an international element to the conflicts. Albeit this international element does not affect the nature of the conflicts, which remain internal,⁶⁸ it leads to the applicability of a different regime to peacekeepers who are submitted to the rules applicable to international armed conflicts.⁶⁹ This position seems to be in line with the position adopted by the International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Tadic* case.⁷⁰

To conclude that the rules of international armed conflicts are applicable means that the four GC and the First Additional Protocol to the Geneva Conventions (AP I)⁷¹ should apply to ECOMOG operations pursuant to common article 2 of GC and article 1 of AP I.

⁶⁶ C Greenwood 'Scope of application of humanitarian law' in D Fleck (ed) (1995) *The handbook of humanitarian law in armed conflicts* 45-46.

⁶⁷ The conflicts in West Africa opposed governmental forces to rebels groups which controlled several part of the territory. Thus, they meet the definition of internal conflict under article 1(1) of the Second Additional Protocol to the GC.

⁶⁸ T Pfanner 'Application of international humanitarian law and military operations undertaken under the United Nations Charter' in Palwankar (n 45 above) 55.

⁶⁹ Pfanner (as above).

⁷⁰ *Prosecutor v Tadic a/k/a "DULE"*, Case No. IT-94-1-AR72, October 2, 1995, para. 72. The ICTY found in that case that different regimes can be applied to the same conflict. The ICTY stated that a conflict can be 'characterised as both internal and international, or alternatively, as an internal conflict alongside an international one, or as internal conflict which has become internationalised because of external support'.

⁷¹ The first Additional Protocol to the Geneva Conventions of 12/08/1949 and relating to the Protection of Victims of International Armed Conflicts (AP I) was adopted on 8/06/77 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.

3.2.2 The applicability of human rights to peacekeeping operations

Although the applicability of human rights to IOs raised the same difficulties outlined above concerning the applicability of IHL,⁷² three arguments can justify the applicability of human rights to their peacekeeping operations. First, human rights conventions such as the Universal Declaration of Human Rights (UDHR)⁷³, article 30 and the International Covenant on Civil and Political Rights (ICCPR),⁷⁴ article 5 put a clear obligation on any 'states, group or person' not to derogate from the rights recognised in those instruments. The reference in article 5 of the ICCPR to 'groups' should be interpreted broadly as including peacekeeping operations organised by IOs. Therefore, these instruments oblige ECOMOG to comply with human rights despite the fact that neither ECOMOG nor, its mother institution, ECOWAS is party to human rights instruments.

Secondly, IOs have expressed their commitment to the respect of human rights instruments. ECOWAS for instance has expressed its commitment to respect 'the principle contained in the Charter of the United Nations...the Universal Declaration of Human Rights as well as the African Charter on Human and Peoples' Rights'.⁷⁵ Therefore, ECOWAS should respect and ensure respect by its organs with the principles enshrined in those instruments.

Lastly, human rights instruments are constituted of a number of rights and entitlements recognised to individuals. Those rights benefit the individual against any other actor including IOs and their peacekeepers.⁷⁶ Therefore, ECOMOG peacekeepers have an obligation to respect the rights recognised to the individual under national and international human rights instruments.

The admission of the applicability of human rights to peacekeeping operations raises a further question: Are all human rights applicable to peacekeeping operations?

⁷² See chapter three section 3.2.1 above.

⁷³ UDHR, adopted on 10/12/48; UDHR, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

⁷⁴ ICCPR, art 4 provides for derogation in 'time of public emergency'. ICCPR, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

⁷⁵ Protocol of 1999, art 2.

⁷⁶ R Wilde 'Quis custodiet ipsos custodes?: why and how UNHCR governance of 'development' refugee camps should be subject to international human rights law' (1998) 1 *Yale Hum. Rts. & Dev. L.J.* 107.

This question is informed by the fact that peacekeeping operations generally take place in crisis or emergency situation. In fact, the enjoyment of certain human rights can be limited in time of public emergency threatening the life of the nation. Both universal and regional human rights instruments allow for the derogation of rights in emergency times. Consequently, the ICCPR,⁷⁷ the Convention for the Protection of Human Rights and Fundamental Freedom (European Convention)⁷⁸ and the American Convention on Human Rights⁷⁹ contains provisions allowing for derogation in emergency or war situation.⁸⁰

The argument that only certain human rights are applicable in emergency situation leads to the identification of those human rights, generally described as the 'hard core' or non-derogable rights, which shall be complied with in all circumstances including during armed conflict. According to Article 4 of the ICCPR, the 'hard core' or non-derogable rights includes, among other, the right to be free from arbitrary deprivation of the right to life, the right to be free from torture, cruel, inhuman and degrading treatment and the prohibition of slavery and forced labor.⁸¹

After establishing the applicability of IHL and human rights to peacekeeping operations, the following lines will show the violations of IHL and human rights committed by ECOMOG peacekeepers.

3.3 Violation of IHL and human rights committed by ECOMOG peacekeepers

At this juncture, it is important to state that the following analysis will focus on the intervention in Liberia and Sierra Leone. The rationale for this choice is that the interventions of ECOMOG in Guinea-

⁷⁷ ICCPR, art. 4 provides for derogation in 'time of public emergency'.

⁷⁸ European Convention, art. 15 provides for derogation in 'time of war and other public emergency'. European Convention, adopted on 04/11/50, 213 U.N.T.S. 222, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on 21/09/70, 20/12/71, 1/01/90, and 1/11/98 respectively.

⁷⁹ American Convention on Human Rights, Art. 27 provides for 'suspension of guarantees' in 'time of war, public danger, or other emergency'. See American Convention, adopted on 22/11/69. O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123, reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82 doc.6 rev.1 25 (1992).

⁸⁰ Unlike those instruments, the African Charter on Human and People's Rights does not provide for the derogation of rights even in emergency situation. Therefore, the African Commission on Human and Peoples' Rights is of the position that a conflict cannot be used as an excuse to violate or permit violation of the African Charter. See Communication 55/91 *International PEN v Chad* para. 21. Despite this position of the Commission, it appears that the activation of article 27(2) together with articles 60 and 61 of the African Charter can allow for derogation in emergency situation and correct the lack of explicit derogation clause, which Heyns refers to as 'a weakness of the African Charter'. See C Heyns 'Civil and political rights in the African Charter' in M Evans and R Murray (eds) (2002) *The African Charter on Human and Peoples' Rights: the system in practice, 1986-2000* 139.

⁸¹ These rights are also pointed out as non-derogable by arts 15 of the European Convention and 27 of the American Convention.

Bissau and in Côte d'Ivoire have not given rise to reports of abuses by ECOMOG peacekeepers. The violations of IHL will be discussed before the infringements of human rights.

3.3.1 Violations of IHL committed by ECOMOG peacekeepers

Two categories of violations of IHL will be examined: first, the violations of the means and method of warfare, and secondly the violation of the protection recognised to 'protected persons and property'.

3.3.1.1 Violations of means and methods of warfare

Article 35(1) of AP I states that 'in any armed conflict, the right of the parties to the conflict to choose methods and means of warfare is not unlimited'. Among the methods of warfare prohibited in IHL is indiscriminate warfare. The prohibition of indiscriminate attacks outlaws any 'attacks which may be expected to cause incidental loss of civilian life, injury to civilians'.⁸²

In the conduct of its military operations in Liberia and Sierra Leone, ECOMOG used Alpha jets to bomb indiscriminately military objectives as well as civilian population and civilian objects. For instance, in December 1992, ECOMOG planes bombed the main commercial street in the middle of the day and strafed people indiscriminately in Kakata (a Liberian town controlled by the NPFL).⁸³ On 7 January 1999, ECOMOG planes bombed a march organised by RUF rebels and composed of several hundreds of civilians forced to join the march as human shields.⁸⁴ These bombing which affect indiscriminately civilians and combatants constitute a violation of IHL particularly article 51(5) b of the AP I.

ECOMOG claimed that the air strikes were 'very, very carefully limited to strategic locations'⁸⁵ and that the casualties on civilians resulted from the use of the population as human shields by the rebels. Although, the use of the civilian population as human shield is prohibited,⁸⁶ its violation 'shall not release the parties to the conflict from their legal obligations with respect to the civilian population and

⁸² AP I, art. 51(5) (b).

⁸³ Human Rights Watch (1993) (n 6 above). This report contains many other cases of indiscriminate attacks launched by ECOMOG forces.

⁸⁴ Human Rights Watch (1999) (n 6 above).

⁸⁵ Major-General Adetunji Olurin, ECOMOG Field Commander quoted in Human Rights Watch (1993) (n 6 above).

⁸⁶ AP I, art. 51(7).

civilians'.⁸⁷ Therefore, the indiscriminate bombing of ECOMOG in Liberia and Sierra Leone constitute a breach of IHL.

3.3.1.2 Violation of the protection recognised to 'protected persons or property'

IHL protects certain categories of persons who are not or are no longer taking part in the hostilities. This protection is also extended to some properties. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has defined the notion of protected person or property in *The Prosecutor v Tadic* as covering the civilian population, civilian property, the sick or wounded combatants, civilian medical personnel, fixed medical establishment and mobile medical units, humanitarian workers as well as children and women who benefit of 'special protection'.⁸⁸ The protection recognised to all these categories of persons and property have been violated by ECOMOG peacekeepers.

a. Violation of the protection recognised to civilians

In addition to the protection against indiscriminate attacks, the civilian population as such, as well as individual civilians shall not be object of attacks' in terms of Article 51(2) of the AP I. In Liberia and Sierra Leone, ECOMOG launched attacks against civilians. It planes bombed markets and villages occupied by the civilian population. Human Rights Watch reveals that '[m]any reports about the strafing of civilians or civilian targets indicate that ECOMOG planes chase civilians'.⁸⁹ These bombing targeting specially the civilian population violate the protection recognised to civilians.

Furthermore, ECOMOG alpha jets were used to terrorise the civilian population who 'often panic at the mere sound of the jets'.⁹⁰ These acts whose 'primary purpose is to spread terror among the civilian population are prohibited'.⁹¹

⁸⁷ AP I, Art. 51(8).

⁸⁸ *Tadic* case (n 70 above).

⁸⁹ Human Rights Watch (1993) (n 6 above).

⁹⁰ Human Rights Watch (1993) (n 6 above).

⁹¹ AP I, art 51 (2).

b. Violation of the protection recognised to sick and wounded combatants

Articles 12 of the GC I and 10 of the AP I ensure respect and protection of sick and wounded combatants. The respect and protection recognised to sick and wounded combatants protects them against attempts to their lives, murder or any violence to their persons. ECOMOG peacekeepers executed sick and wounded rebels and also bombed hospitals receiving sick and wounded rebels.⁹² The killing of wounded and sick rebels by ECOMOG peacekeepers is a violation of articles 12 of the GC I and 10 of the AP I.

c. Violation of the protection of civilian medical personnel, humanitarian workers and hospitals

Articles 20 of the Fourth Geneva Convention (GC IV) and 12 of the AP I protect civilian medical personnel or unit against attacks. Articles 26 of the First Geneva Convention (GC I) and 81 of the AP I state the obligation on belligerents to respect, protect and facilitate the humanitarian functions of humanitarian organisations. Articles 18 of the GC IV and 12 of the AP I protect civilian medical units against attacks.

Violating these interdictions, ECOMOG launched attacks against hospitals despite the obligation to respect and protect civilian medical personnel and civilian medical units.⁹³ Although, the protection of medical unit is not absolute, this protection 'shall not cease unless they are used to commit ... acts harmful to the enemy'.⁹⁴ However, in the case of Liberia and Sierra Leone there is no report of the use of medical units to commit harmful acts against ECOMOG forces. Even if such acts were committed, the protection granted to medical units does not cease until 'a warning has been given, setting whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded'.⁹⁵ In the case of the bombing by ECOMOG, these requirements were not respected.

⁹² Human Rights Watch (1993) (n 6 above).

⁹³ E.g. attack of Phebe Hospital (Liberia) on March 10, 1993 by ECOMOG planes. See Human Rights Watch (1993) (n 6 above).

⁹⁴ AP I, art. 13(1). Art. 13(2) (d) further states that the fact that members of the armed forces or other combatants are in the unit for medical reasons shall not be considered as an act harmful to the enemy.

⁹⁵ AP I, art 13(1).

In addition, attacks against medical units hosting medical personnel constitute a violation of the obligation on ECOMOG forces to respect and protect civilian medical personnel. Furthermore, according to Human rights Watch:

[t]here were reports of mistreatment by ECOMOG soldiers of members of some international nongovernmental organizations, particularly the International Committee of the Red Cross (ICRC), who were accused of being rebel collaborators'. Members of ECOMOG confiscated property, including vehicles and radios, and several ICRC expatriate staff were deported after being detained and interrogated⁹⁶.

The mistreatment of humanitarian workers violates the obligation on ECOMOG forces to respect, protect and facilitate the humanitarian functions of humanitarian organisations as provided under articles 26 of the GC I and 81 of the AP I.

d. Violation of the protection of civilian property

Articles 33 and 53 of the GC IV prohibit pillage and reprisals against the property of civilians. This interdiction is reiterated in article 52 of the AP I. ECOMOG peacekeepers in Liberia committed pillage and violation of civilian property. Van Walraven notes that the violations ranged from 'bullying and other forms of heavy-handed behaviour vis-à-vis the civilian population to corruption, profiteering, extortion and outright looting.'⁹⁷

The extent of looting perpetrated by ECOMOG forces against civilian property led cynical Liberians to claim that ECOMOG stood for 'Every Car Or Moving Object Gone'.⁹⁸ The looting of civilian property committed by ECOMOG peacekeepers constitutes a violation of civilian property.

e. Rape and sexual violence against women

Article 27 of the GC IV states that 'women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.' Article 76 of the AP I restate that women shall be protected in particular 'against rape, forced prostitution, and any other form of indecent assault'. Article 147 of the GC IV further notes that 'torture or inhuman treatment' and 'willfully causing great suffering or serious injury to body or health' constitute grave

⁹⁶ Human Rights Watch (1999) (n 6 above).

⁹⁷ Van Walraven (n 19 above) 44.

⁹⁸ Van Walraven (n 19 above) 47.

breaches of the conventions.’ Human Rights Watch reveals that ECOMOG peacekeepers were responsible for rape and sexual exploitation of women.⁹⁹

Rape and sexual violence against women constitute a violation of the protection recognised to women and amount to grave breaches of the Geneva Conventions. This conclusion opens the debate concerning the qualification of rapes and sexual violence committed by ECOMOG peacekeepers as crimes against humanity and crimes of war. In fact, the Statutes of the ICTY, International Criminal Tribunal for Rwanda (ICTR) and International Criminal Court (ICC) include rape in the list of crimes constituting crimes against humanity and war crimes.¹⁰⁰

Furthermore, the analysis of the jurisprudence on crimes against humanity shows that an important element in the qualification of rape or sexual violence as crimes against humanity is ‘to show that the act took place in the context of an accumulation of acts of violence which, individually, may vary greatly in nature and gravity’.¹⁰¹ Therefore the acts of rape committed by ECOMOG peacekeepers can amount to crimes against humanity and war crimes.

3.3.2 Violations of Human rights committed by ECOMOG peacekeepers

The observation of ECOMOG operations illustrates that ECOMOG peacekeepers have violated several human rights namely the right to life, the right to be free from torture, cruel, inhuman and degrading treatment. ECOMOG peacekeepers have also committed rape and gender based violence. These violations will be analysed successively.

3.3.2.1 Violation of the prohibition of arbitrary deprivation of the right to life

Armed conflicts suppose casualties among fighters or belligerents. However, even during armed conflicts some guarantees of the right to life exist in the form of the prohibition of arbitrary deprivation of the right to life. The European Convention, for instance, prohibits deaths resulting from unlawful acts

⁹⁹ Human Rights Watch (2003) ‘“We will kill you if you cry”: sexual violence in the Sierra Leone conflict’ 28. Available at <www.hrw.org/reports/2003/sierraleone/sierleon0103.pdf> (accessed on 2/09/2004).

¹⁰⁰ See ICTY Statute, art. 5(g); ICTY Statute adopted on 25/5/93. See ICTR Statute, arts. 3 and 4(e); ICTR Statute, adopted 8/11/94. See ICC Statute, arts. 7(1)(g) and 8(2)(b)(xxii); ICC Statute adopted on 17/07/98.

¹⁰¹ *Prosecutor v. Kunarac, Kovac and Vukovic*, Case No. IT-96-23 and IT-96-23/11 (Trial Chamber), February 22, 2001 para. 432 discussed in Human Rights Watch (2004) *Genocide, war crimes and crimes against humanity: topical digests of the case law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia*. Available at <www.hrw.org/reports/2004/ij/index.htm> (accessed on 24/09/04).

of war.¹⁰² The International Court of Justice (ICJ) in the advisory opinion on *Nuclear Weapons* stressed that:

The right not arbitrarily to be deprived of one's life applies in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the appropriate *lex specialis*, namely, the law applicable in armed conflict.¹⁰³

Instances of arbitrary deprivation of the right to life or death resulting from unlawful act of war might include the killing of an enemy who has surrendered, the killing of a sick or wounded combatant, or the execution of civilians. The practice of ECOMOG in Liberia and Sierra Leone shows several instances of execution of sick, wounded combatants or combatants who have surrendered.¹⁰⁴ Moreover, ECOMOG peacekeepers have also executed members of the civilian population accused of being sympathisers of the rebels.¹⁰⁵ These acts violate the right to be free from arbitrary deprivation of life.

The execution of children arrested as child soldiers or sympathisers of the rebels raise particular concern.¹⁰⁶ In fact, the Convention on the Rights of the Child (CRC)¹⁰⁷ in its article 37 prohibits arbitrary execution of children at any time. Again, article 38 of the CRC prohibits the violation of IHL applicable to children in conflict situation. Therefore, by executing children, ECOMOG peacekeepers have violated the CRC.

3.3.2.2 Violation of freedom from torture, cruel, inhuman and degrading treatment

Torture, cruel, inhuman and degrading treatment are prohibited under article 7 of the ICCPR,¹⁰⁸ articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)¹⁰⁹ and 5 of the African Charter on Human and Peoples' Rights

¹⁰² European Convention, art. 15.

¹⁰³ *Legality of the threat or use of nuclear weapons*, 8 July 1996, ICJ, para. 25.

¹⁰⁴ Human Rights Watch (1999) (n 6 above).

¹⁰⁵ Human Rights Watch (1999) (n 6 above).

¹⁰⁶ Human Rights Watch (1999) (n 6 above). This report mentions instances of execution of child soldiers and other children suspected of being sympathisers of the rebels.

¹⁰⁷ The CRC was adopted on 20/11/89, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989). Sierra Leone and Liberia ratified the CRC respectively on 18/06/90 and on 4/06/93.

¹⁰⁸ Sierra Leone ratified the ICCPR on 23/08/96. Liberia is only a signatory to the ICCPR since 18/04/96.

¹⁰⁹ CAT adopted on 10/12/84. G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)]. Sierra Leone ratified the CAT on 25/04/01. Liberia is not party to the CAT.

(ACHPR).¹¹⁰ These articles do not only prohibit torture, they also proscribe cruel, inhuman and degrading treatment. Therefore, the prohibition in the wording of the African Commission includes:

not only actions which cause serious physical or psychological suffering, but which humiliate the individual or force him or her to act against his will or conscience.¹¹¹

Human Rights Watch reveals brutality against civilians as well as humanitarian workers committed by ECOMOG peacekeepers.¹¹² These acts, committed to inflict physical and psychological suffering and humiliate the victims, amount to torture as well as cruel, inhuman and degrading treatment.

3.3.2.3 Rape and gender based violence

International human rights protect women against rape and gender base violence in all circumstances including in armed conflicts. The protection of women against rape and gender based violence first takes the form of the prohibition of torture, cruel, inhuman and degrading treatment. Article 7 of the ICCPR, articles 2 and 16 of the CAT and article 37 of the CRC state in different wordings that ‘no one’ shall be subjected to torture or cruel, inhuman and degrading treatment.

Although, these instruments do not specifically refer to rape or gender based violence, one can admit that rape and gender base violence constitute torture or cruel, inhuman and degrading treatment. The justification for this argument is that rape and gender based violence cause physical and psychological damage to women, humiliate them and force them to act against they will.¹¹³ This position is that of the United Nations special rapporteur on torture who stated that ‘rape is a traumatic form of torture for the victim’.¹¹⁴ The ICTY and ICTR have also adopted the same position. In *Prosecutor v. Anto Furundžija*, the ICTY noted that “[i]n certain circumstances ... rape can amount to torture and has been found by

¹¹⁰ ACHPR adopted on 27/06/81, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force on 21/10/86. Liberia and Sierra Leone ratified the ACHPR respectively on 04/08/82 and on 21/09/83.

¹¹¹ Communication 137/94, 139/94, 154/96 and 161/97 *International PEN, Constitutional Rights Project, Interights and Civil Liberties Organisations (on behalf of Ken Saro Wiwa Jnr.) v Nigeria*.

¹¹² Human Rights Watch (1999) (n 6 above).

¹¹³ *International PEN and others v Nigeria* (n 111 above).

¹¹⁴ United Nations Commission on Human Rights (1995) ‘Report of the U.N. Special Rapporteur on Torture, Mr. Nigel S. Rodley, submitted pursuant to the Commission on Human Rights Resolution 1992/32’ para. 19. Available at <<http://ods-dds-ny.un.org/doc/UNDOC/GEN/G95/100/85/PDF/G9510085.pdf?OpenElement>> (accessed on 24/09/04).

international judicial bodies to constitute a violation of the norm prohibiting torture.¹¹⁵ In *Prosecutor v. Jean-Paul Akayesu*, the ICTR found that:

like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.¹¹⁶

Secondly, the prohibition against rape and gender based violence against women take the form of the interdiction of discrimination. In fact, rape and gender based violence violate the inherent right of women and girl child to be free from discrimination based on sex as provided under the ICCPR, the ACHPR and CRC.¹¹⁷ Furthermore, the definition of discrimination includes gender-based violence precisely because 'gender-based violence has the effect or purpose of impairing or nullifying the enjoyment by women of human rights'¹¹⁸ on equal basis with men.

Human Rights Watch reveals that ECOMOG peacekeepers were responsible for rape and sexual exploitation of women. The report also mentions that ECOMOG peacekeepers have 'solicited child prostitutes'.¹¹⁹ These rapes and the sexual exploitation of women constitute a violation of women right to be free from discrimination.

3.4 Conclusion

Human rights and IHL apply to peacekeeping operations. Therefore, ECOMOG peacekeepers are bound to respect human rights and IHL and refrain from violating them. Despite these obligations, ECOMOG peacekeepers have committed several abuses that constitute violations of the rules and customs of the war as enshrined in the four GC and the AP I. In addition, ECOMOG peacekeepers have infringed a wide range of human rights. All these violations raised the need to respond to atrocities committed by ECOMOG peacekeepers.

¹¹⁵ *Prosecutor v. Anto Furundžija*, Judgement, IT-95-17/1-T, December 10, 1998, para. 171 discussed in Human Rights Watch (n 101 above).

¹¹⁶ *Prosecutor v. Jean-Paul Akayesu*, Judgement, ICTR-96-4-T, September 2, 1998 para. 687 discussed in Human Rights Watch (n 101 above).

¹¹⁷ ICCPR, arts 2(1) and 26; ACHPR, arts 2,3 and 18(3); CRC, art 2.

¹¹⁸ Women, Law and Development International (1998) *Gender Violence: The Hidden War Crimes* quoted in Human Rights Watch (n 99 above) 57.

¹¹⁹ Human Rights Watch (n 99 above) 28.

CHAPTER 4

RESPONSES TO VIOLATIONS OF HUMAN RIGHTS AND HUMANITARIAN LAW COMMITTED BY ECOMOG PEACEKEEPERS

4.1 Introduction

The report of the UNHCR and Save the Children¹²⁰ has prompted the United Nations and the international Community as a whole in a quest for the improvement of the mechanisms aimed at responding to atrocities committed by peacekeepers. This quest was manifested at the UN level by the establishment, among other measures, of a Special Committee on peacekeeping operations, which made recommendations to enhance UN peacekeeping operations and addressed specifically the issue of abuses committed by peacekeepers.¹²¹

The recent commitment of the UN to address abuses committed by its peacekeepers contrasts with the denial that followed the reports of atrocities committed by ECOMOG peacekeepers in Liberia and Sierra Leone.¹²² These denials cannot veil the obligation on both ECOMOG contributing States and ECOWAS to respond to abuses committed by peacekeepers.

Responding to the violations of human rights and humanitarian law committed by peacekeepers raises an important question pointed out by Wilde through the Latin expression: '*Quis custodiet ipsos custodiet?*',¹²³ which means who will keep guard other the guards themselves. Moreover, the question of who will 'police' the peacekeepers raises a further question: how to respond to atrocities committed by peacekeepers? The answers to these questions are dealt with through both accountability and prevention mechanisms, which will be analysed successively.

¹²⁰ See UNHCR and Save the Children-UK (n 1 above).

¹²¹ See UN General Assembly (2004), Resolution A/58/19, 'Report of the Special Committee on Peacekeeping Operations and its Working Group at the 2004 substantive session' (New York, 29 March-16 April 2004). Available at <www.Peacewomen.org/un/pkwatch/Events/C34/C34finalreport04.pdf> (accessed on 10/09/04).

¹²² See Human Rights Watch (1993) (n 6 above). This report reveals, for instance, the denial of allegations of indiscriminate bombing by Major-General Adetunji Olurin, ECOMOG Field Commander in Liberia.

¹²³ Juvenal, The Sixteen satires quoted in Wilde (n 76 above).

4.2 Accountability mechanisms

As defined by Reinisch:

Accountability can mean different things to different people. The legal profession may be tempted to equate it with liability or responsibility - terms that denote consequences of harmful or wrongful behaviour-...However, as political scientists justly remind them, accountability signifies a concept broader than that. It encompasses political, administrative, and various informal, non-legal mechanisms by which someone may be held answerable for something.¹²⁴

Accountability mechanisms, in the context of abuses committed by peacekeepers, should thus be understood broadly as encompassing both legal and non-legal mechanisms. These mechanisms are affected by certain agreements and norms regulating peacekeeping missions and peacekeepers. The ECOMOG Regulations for the ECOWAS Cease-fire Monitoring Group in Liberia (ECOMOG Regulations), for instance, provide for the exclusive jurisdiction of the troop contributing State over its peacekeepers.¹²⁵ These regulations were also applied in subsequent ECOMOG interventions.

ECOMOG Regulations give jurisdiction only to national accountability mechanisms in case of abuses committed by peacekeepers. As a result, the examination of the accountability framework for atrocities committed by ECOMOG peacekeepers will focus on the national mechanisms before analysing other accountability mechanisms. Both existing and potential accountability mechanisms will be discussed together. Such an approach has the merit to identify the flaws of the existing accountability framework and investigate potential means to foster the accountability of peacekeepers.

4.2.1 Inadequacy of national accountability mechanisms

ECOMOG peacekeepers are submitted to the exclusive jurisdiction of their sending State in case they commit any violations of human rights or IHL.¹²⁶ This provision should be read together with article 10 of the ECOMOG Regulations, which provides for the application of the ECOWAS General Convention

¹²⁴ A Reinisch 'Governance Without Accountability?' (2001) 44 *German Yearbook of International Law* 273 quoted in V Seesurrun (2003) 'The Price of peace: the case of sexual exploitation in UN peacekeeping Missions' 30. Available at <www.univie.ac.at/bim/download/Thesis_Veena_Seesurrun.pdf> (accessed on 20/09/04).

¹²⁵ ECOMOG Regulations for the ECOWAS Cease-fire Monitoring Group in Liberia, art. 35(a) in *Official Journal of the Economic Community of West African States* November 1991 Vol. 21. This provision is not particular to ECOMOG. The UN model Status-of-Forces Agreement for peacekeeping operations in its article 47(b) also provides for the exclusive jurisdiction of contributing States over abuses committed by their peacekeepers. See UN General Assembly Resolution A/54/594 (1990).

¹²⁶ ECOMOG Regulations, art 35(a) (n 125 above).

on Privileges and Immunities (ECOWAS privileges Convention) to ECOMOG peacekeepers.¹²⁷ The ECOWAS Privileges Convention reinforces the protection afforded to peacekeepers from prosecutions by the courts of the host country.

The objective of these provisions is certainly not to waive the responsibility of peacekeepers but to give the opportunity to each sending state to exercise jurisdiction over its national. These provisions also appear as a political concession to States which contribute to peacekeeping efforts.

However, despite the wide range of violations of human rights and IHL committed by ECOMOG peacekeepers, none of the contributing States to both missions in Liberia and Sierra Leone has tried any peacekeepers.¹²⁸ The failure of national accountability mechanisms can be attributed to the exclusive jurisdiction given to contributing States, the lack of political will and jurisdictional gaps of contributing States.

4.2.1.1 The exclusive jurisdiction of the contributing States

ECOMOG Regulations and the ECOWAS General Convention on Privileges and Immunities give exclusive jurisdiction to the contributing State over abuses committed by their soldiers during ECOMOG operations.

These provisions can obstruct accountability in cases where the contributing State is not willing to prosecute its peacekeepers accused of abuses. In that situation, the host State cannot exercise jurisdiction over the perpetrator of abuses because ECOMOG Regulations clearly state that '[peacekeepers] shall not be subjected to the...jurisdiction of the courts of the Host State.'¹²⁹ In addition, international accountability mechanisms cannot always provide alternative for the punishment of abuses committed by peacekeepers because their material jurisdiction covers only grave crimes.¹³⁰

¹²⁷ ECOMOG Regulations, art. 10 (n 125 above).

¹²⁸ The only instance of trial of ECOMOG peacekeepers was related to the mutiny in Egypt of some Nigerian soldiers wounded while serving in Sierra Leone. See 'Injustice On ECOMOG Soldiers' 9 January 2001 *The Guardian* Available at <www.crp.org.ng/or090101.htm> (accessed on 10/10/04).

¹²⁹ ECOMOG Regulations, art. 35(a) (n 125 above).

¹³⁰ For instance, the International Criminal Court currently has only jurisdiction over genocide, war crime and crime against humanity. See ICC statute adopted on 17/07/98. Rome statute of the ICC, U.N. Doc. 2187 U.N.T.S. 90, entered into force on 1/07/02.

Again, the exclusive jurisdiction is contentious because it does not provide for follow-up measures of ECOWAS to ensure that peacekeepers are actually tried and, when convicted, punished in their home countries for the violations committed while serving under ECOMOG. The failure of ECOMOG Regulations to provide for follow-up measures in case of prosecution of peacekeepers in their home State is a flaw that needs to be corrected.¹³¹

The exclusive jurisdiction afforded to contributing State has also the negative effect of taking away the perpetrator from the State where the abuse was perpetrated. Thus, even in case where peacekeepers are indeed tried and punished, the victims are unlikely to know that justice has been done or gain compensation.

These flaws in the exclusive jurisdiction established by ECOMOG Regulations can be improved in light of the Status-of-Forces Agreement (SOFA) of the North Atlantic Treaty Organisation (NATO). In fact, in addition to the primary jurisdiction of the contributing State, the NATO SOFA provides for host states to exercise secondary jurisdiction over national of a contributing State when that State declines to prosecute.¹³² This provision of the NATO SOFA has the potential of reducing impunity if the contributing State fails to prosecute. The insertion of such clause, providing for the secondary jurisdiction of the host State over abuses committed by ECOMOG peacekeepers, in the ECOMOG Regulations will enhance the accountability of ECOMOG peacekeepers.

However, one should admit that this innovation faces several difficulties. First, the inclusion of such provision will make States more reluctant to involve their troops in ECOMOG operations. Secondly, host governments generally consider ECOMOG peacekeepers as saviours or as allies and will not engage in an enterprise which can deteriorate their relations with contributing States or ECOMOG. Lastly, with the collapse of legal structures and government structures that characterises West African conflicts, it is uncertain if the host State will have the means to investigate and punish abuses committed by ECOMOG peacekeepers.

¹³¹ International Alert (2004) 'Gender, Justice and accountability in peace support operations: closing the gaps' 23. Available at <www.international-alert.org/pdf/pubgen/gender_justice_accountability_peace_operations.Pdf> (accessed on 15/08/04). However, the potential of such provision should not be overestimated. In fact, although such measure is provided for in case of UN peacekeeping, the UN failed to follow-up in several cases including the widespread abuses committed by its peacekeepers in Somalia.

¹³² NATO SOFA article VII (2) and (3) reprinted in Amnesty International (2002) 'International Criminal Court: US efforts to obtain impunity for genocide, crimes against humanity and war crimes' 13-14. Available at <web.amnesty.org/library/index/engIOR400252002?OpenDocument> (accessed on 15/08/04).

4.2.1.2 The lack of political will and jurisdictional gaps of contributing States

A major reason for the impunity of ECOMOG peacekeepers lies in the lack of political will of contributing States to prosecute or investigate allegations of violations committed by their troops. For instance, the publication of reports alleging abuses by Nigerian troops in Liberia and Sierra Leone has not given rise to a single investigation or prosecution by Nigerian authorities. The failure of Nigeria to investigate the allegations of atrocities committed by its troops is characteristic of the lack of political will of ECOWAS members States to hold their troops accountable.

The prosecution of peacekeepers in their home countries is also hampered by the jurisdictional gaps of some contributing States. The lack of adequate laws to prosecute certain abuses can actually prevent the prosecution of certain peacekeepers. For instance, Seesurrin cites the case of a US International Police Task Force monitor who was arrested for purchasing a woman and was repatriated to face prosecution in the US.¹³³ However, the US Department of Justice determined that US laws do not provide for the prosecution of monitors for abuses committed in UN missions.¹³⁴ These types of difficulties are likely to occur in case of prosecution by ECOMOG contributing States.

In addition, the investigation and prosecution of abuses committed by peacekeepers in their home countries will lead to costly procedures including gathering of evidences, trips for witnesses and other costs that may appear difficult to afford for West African States facing terrible economic and social challenges.

4.2.2 Other accountability mechanisms

Although ECOMOG Regulations give exclusive jurisdiction to contributing States over abuses committed by their peacekeepers, this cannot preclude the applicability of certain accountability mechanisms to ECOMOG peacekeepers. These mechanisms are, first, internal to ECOWAS and ECOMOG. A second level of accountability mechanisms includes the universal jurisdiction, the Special Court for Sierra Leone (Special Court) and the International Criminal Court (ICC). A third level of mechanism is an indirect procedure, which advocates for the responsibility of contributing States and ECOWAS as a mean to ensure accountability for abuses committed by peacekeepers.

¹³³ Seesurrin (n 124 above) 37.

¹³⁴ Seesurrin (n 124 above) 37.

Although none of these mechanisms have been effectively used in the particular case of violations committed by ECOMOG peacekeepers, this study is of the view that they have the potential to solve the lack of accountability of ECOMOG peacekeepers. They need to be analysed in order to know what role they can play in the quest for accountability of ECOMOG peacekeepers.

4.2.2.1 ECOWAS and ECOMOG mechanisms

Reports of atrocities committed by ECOMOG peacekeepers in Liberia did not give rise to investigations or action by ECOMOG or ECOWAS despite the fact that ECOMOG Regulations specifically provide that the ECOMOG Force Commander (EFC) shall establish and ensure procedures for the reporting and investigation of death, injury or damage of property to persons not belonging to the ECOMOG committed by members of ECOMOG.¹³⁵

In Sierra Leone, the reaction of ECOWAS and ECOMOG to reports of atrocities committed by peacekeepers was different. While ECOMOG generally denied the allegations,¹³⁶ ECOWAS, at its April 1999 Summit in Abuja, pledged to conduct investigation into the abuses committed by ECOMOG after the January 1999 rebel offensive in Sierra Leone.¹³⁷ This promise was materialised by the establishment in April 1999 by the ECOMOG force commander Felix Mujakperuo of a Civil/Military Relations Committee to investigate allegations of human rights violations by individual members of ECOMOG and recommend appropriate action to the high authorities.¹³⁸ However, the starting date for complaints to be investigated was 1st April 1999, thus none of the atrocities committed in January and February 1999 was eligible for investigation under this committee.¹³⁹ Therefore, ECOMOG peacekeepers escaped investigation and prosecution.

The failure of ECOMOG and ECOWAS to investigate cases of atrocities committed by peacekeepers undermines the whole accountability mechanism provided for under the ECOMOG Regulation. In fact, investigation by ECOMOG or ECOWAS is determinant because it is on the basis of these investigations that the peacekeeper will be tried in its home State. Therefore, addressing the failure of

¹³⁵ ECOMOG Regulations, Art 14 (n 125 above).

¹³⁶ See Human Rights Watch (1993) (n 6 above).

¹³⁷ See Human Rights Watch 'ECOWAS: troops to Liberia must respect human rights, letter to President John Kufuor'. Available at <www.hrw.org/press/2003/07/liberia071803-ltr.htm> (accessed on 5/5/04).

¹³⁸ Human Rights Watch (1999) (n 6 above).

¹³⁹ Human Rights Watch (1999) (n 6 above).

ECOMOG or ECOWAS to investigate allegations of abuses by peacekeepers is instrumental to ensure accountability of ECOMOG peacekeepers.

4.2.2.2 Universal jurisdiction, the Special Court for Sierra Leone and the International Criminal Court

Although, these mechanisms rely on different criteria concerning the events that they cover (for instance, the Special court for Sierra Leone is only competent for crimes committed in Sierra Leone and the ICC is only relevant for acts committed after 2002), they are related because their material jurisdiction only covers certain crimes 'recognised by the international community as the more serious'.¹⁴⁰ Some of these mechanisms are already in place and can be effectively used to ensure accountability of ECOMOG peacekeepers who perpetrated atrocities in Sierra Leone and Liberia while others present great potential for future atrocities.

a. Universal jurisdiction

International Law recognises that certain crimes are so heinous and threaten the international legal order so significantly that all States have jurisdiction over their perpetrators who are declared *hostis humani generis* or 'enemies of all mankind'.¹⁴¹

Unlike traditional basis of jurisdiction, universal jurisdiction does not require any nexus linking the prosecuting State to the crime. Universal jurisdiction actually provides every nation with the jurisdiction over certain crimes recognised universally regardless of the place of the offence and the nationalities of both offender and victim.¹⁴² Thus, universal jurisdiction allows for the prosecution of crimes on the sole basis of the presence of the perpetrator in the territory of the prosecuting State.

The sources for the exercise of universal jurisdiction can be found in both customary and conventional law. Materially, universal jurisdiction covers a wide range of crimes including piracy, slave trading, war crimes, genocide, hijacking, torture and terrorism.¹⁴³

¹⁴⁰ In addition to these crimes, the Special Court pursuant to article 5 of its Statute has jurisdiction over 'crimes under Sierra Leonean law'. Statute of the Special Court for Sierra Leone, adopted by S.C. Res. 1315, U.N. SCOR, 4186th mtg., U.N. Doc. S/RES/1315 (2000).

¹⁴¹ Restatement Third of Foreign Relations Law para. 404 (1987) quoted in J B Jordan 'Universal jurisdiction in a dangerous world: a weapon for all nations against international crime' (2000) 9 *MSU-DCL J. Int'l L.* 1.

¹⁴² Jordan (n 141 above) 1.

¹⁴³ Jordan (n 141 above) 3.

The exercise of universal jurisdiction concerning abuses committed by ECOMOG peacekeepers is only relevant with regard to certain crimes. In fact, not all abuses committed by ECOMOG peacekeepers fall in the category of crimes covered by the exercise of universal jurisdiction. However, certain crimes committed by ECOMOG forces such as torture and war crimes can lead to the exercise of universal jurisdiction.

The International Court of Justice in the *Congo v Belgium* case stated that persons protected by official immunities could be subjected to universal jurisdiction once they are out of office.¹⁴⁴ This decision reinforces the potential of universal jurisdiction as an instrument of accountability. This finding of the Court means that no immunity can protect ECOMOG peacekeepers from prosecution in accordance with universal jurisdiction.

However, a major weakness of universal jurisdiction is that it essentially relies on the will of sovereign countries to activate it or not. Thus, only States that have a particular interest will engage prosecution on the basis of universal jurisdiction.

b. The Special Court for Sierra Leone

The Special Court for Sierra Leone (Special Court) was established by 'an agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315'.¹⁴⁵ Thus, the Special Court differs from the ICTR and ICTY, which have been created by the Security Council, and the ICC established by treaty.

The Special Court is characterised by the fact that only the State of Sierra Leone is bound to comply with its the directives. The obligation on all States to cooperate with the ICTY and ICTR does not apply to the Special Court.¹⁴⁶ Furthermore, the Special Court is characterised by its material jurisdiction which includes in addition to crimes against humanity¹⁴⁷ and violations of 'Common article 3 to the Geneva Conventions and Additional Protocol',¹⁴⁸ crimes under Sierra Leonean law.¹⁴⁹

¹⁴⁴ *Democratic Republic of the Congo v. Belgium*, (Arrest Warrant of 11 April 2000) - Judgment - [2002] ICJ (14 February 2002) para 61.

¹⁴⁵ Statute of the Special Court, preamble.

¹⁴⁶ This argument can explain the reluctance of Nigeria to surrender Charles Taylor to the Special Court.

¹⁴⁷ Statute of the Special Court, art. 2.

¹⁴⁸ Statute of the Special Court, art. 3.

The Special Court is competent to ‘prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law’.¹⁵⁰ This provision clearly encompasses violations committed by ECOMOG peacekeepers in Sierra Leone. However, the Statute of the Special Court further states that peacekeepers and related personnel including ECOMOG peacekeepers are placed under ‘the *primary jurisdiction* of their sending State’.¹⁵¹ Although this provision does not implicitly recognise the secondary jurisdiction of the Special Court over abuses committed by ECOMOG peacekeepers, one can wonder if the Court will effectively exercise this jurisdiction.

This cautious attitude is based upon the fact that the secondary jurisdiction recognised to the Special Court over abuses committed by peacekeepers is not immediate. The Special Court can only prosecute atrocities committed by peacekeepers when ‘the sending State is unwilling or unable genuinely to carry out an investigation or prosecution ... and [when such prosecution is] authorized by the Security Council on the proposal of any State’.¹⁵² In fact, these conditions have the effect of impeding prosecution of ECOMOG peacekeepers by the Special Court.

c. The International Criminal Court

Expression of the determination of the international community to ‘put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes’,¹⁵³ the Rome Statute of the International Criminal Court (ICC Statute) establishes a permanent criminal Court competent in cases of war crimes, crimes against humanity and genocide.¹⁵⁴

In relation to the accountability of ECOMOG peacekeepers, the International Criminal Court (ICC) raises two points, namely, the temporal jurisdiction of the ICC and the immunity granted to peacekeepers in terms of Resolution 1422 (2000) of the Security Council.¹⁵⁵

¹⁴⁹ Statute of the Special Court, art. 5.

¹⁵⁰ Statute of the Special Court, art. 1(1).

¹⁵¹ Statute of the Special Court, art.1(2) (emphasis added).

¹⁵² Statute of the Special Court, art. 1(3).

¹⁵³ ICC Statute, preamble, para. 5.

¹⁵⁴ ICC statute, art. 5. The crime of aggression also provided for under the treaty has not yet been defined thus the Court cannot exercise jurisdiction over this crime.

¹⁵⁵ United Nations Security Council Resolution 1422 (2002) adopted by the Security Council at its 4572nd meeting on 12 July 2002.

Firstly, the temporal jurisdiction of the ICC is limited to acts committed from the 1st July 2002, thus all acts committed before this date fall out of the jurisdiction of the ICC. Consequently, the ICC cannot try the atrocities committed by ECOMOG peacekeepers in Liberia and Sierra Leone although –as argued in chapter 3 of this study- some of them amount to war crimes and crimes against humanity. However, it remains that the ICC can be instrumental for future abuses committed by ECOMOG peacekeepers.

Secondly, the aptitude of the ICC to exercise jurisdiction over future abuses committed by ECOMOG peacekeepers is undermined by Resolution 1422 (2002). In fact, this Resolution provides that:

if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, [the ICC] shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise.¹⁵⁶

Resolution 1422 exempts peacekeepers of States not parties to the ICC Statute from prosecution by the ICC if they commit abuses in the territory of a State party to the ICC Statute.¹⁵⁷ The legality of this resolution is discussed elsewhere,¹⁵⁸ thus, the following lines will focus on its effects concerning ECOMOG peacekeepers. Before analysing the effects of this resolution, it is appropriate to consider its applicability to ECOMOG peacekeeping operations.

Resolution 1422 applies to ‘United Nations established or authorised operation’,¹⁵⁹ thus it will only apply in the case of ECOMOG missions that have been specifically authorised by the Security Council. It is important to note that the mere information of the Security Council as provided under the Protocol of 1999¹⁶⁰ does not constitute an authorisation by the Security Council.

Concerning the effect of Resolution 1422, two remarks can be made. First, Resolution 1422 hampers any investigation or prosecution by the ICC concerning issues involving peacekeepers. In the case of

¹⁵⁶ Resolution 1422, art 1.

¹⁵⁷ In principle, pursuant to ICC statute art. 12(2)(a), the ICC has jurisdiction over crimes committed on the territory of a State party to the ICC Statute if that State is unable or unwilling to prosecute.

¹⁵⁸ See e.g. C Stahn ‘The ambiguities of Security Council Resolution 1422 (2002)’ (2003) 14 *Eur. J. Int’l L.* 85 and S Zappalà ‘Are some peacekeepers better than others? UN Security Council Resolution 1497 (2003) and the ICC’ (2003) *I. J. Int’l Crim. Just.* 671.

¹⁵⁹ Resolution 1422, art. 1.

¹⁶⁰ Protocol of 1999, art. 52(3).

ECOMOG peacekeepers, this provision reduces the accountability mechanisms to the exclusive jurisdiction of the sending States, which have so far a blank record of investigation.

Secondly, Resolution 1422 discriminates among peacekeepers involved in the same peacekeeping operation. In fact, while some peacekeepers are subjected to the jurisdiction of the ICC if they commit acts prohibited by its Statute, others are protected against any prosecution or investigation. For example, if Nigerian, Ivorian, Burkinabè and Bissau Guinean peacekeepers are accused of committing atrocities while participating in a peacekeeping operation of ECOMOG authorised by the UN Security Council in Benin, Nigerian and Burkinabè may be subjected to prosecution by the ICC while Ivorian and Bissau Guinean peacekeepers would only be subjected to the 'hypothetical' jurisdiction of their home countries.¹⁶¹

4.2.2.3 State and ECOWAS responsibility

Unlike the previous accountability mechanisms, which provide for the responsibility of individual peacekeepers, this section is based on the argument that the responsibility of States and IOs particularly ECOWAS can be an indirect mechanism to ensure accountability for atrocities committed by ECOMOG peacekeepers. If this argument is easy to sustain in the case of States, it raises conceptual and practical difficulties concerning ECOWAS, which is an IO.

a. State responsibility as an accountability mechanism

International human rights law is instrumental to pursue State responsibility because it allows individual to act in international proceedings against States.¹⁶² One can find two bases for State responsibility in relation to peacekeeping operations. First, the sending State can be held accountable for failure to investigate or prosecute its peacekeepers who are accused of committing atrocities. Secondly, member States of IOs can be held accountable for wrongdoing of those organisations.¹⁶³

¹⁶¹ Nigeria, Benin, Burkina Faso are parties to the ICC Statute while Côte d'Ivoire and Guinea-Bissau are not.

¹⁶² On this point it is different from other proceedings such as the one offered by the ICJ which provides a contentious forum only for States. See UN Charter, Chapter XIV, ICJ Statute, art. 34(1).

¹⁶³ International Law Association (2002), Committee on accountability of International Organisations, (2002) 'Third report consolidated, revised and enlarged version of recommended rules and practices'15. Available at <<http://www.ila-hq.org/pdf/Accountability/Accountability%20Of%20International%20Organisations%202002.pdf>> (accessed on 12/09/04).

Concerning the responsibility of sending states for failure to prosecute, it is based upon the obligation to protect, which is enshrined in all human rights.¹⁶⁴ The obligation to protect entails that State parties to human rights conventions should protect right holders against interference by other actors and investigate or prosecute cases of human rights violations when their occur.¹⁶⁵

The obligation to protect applies even though the violations occurred outside the territory of the sending State. The Human Rights Committee rightly stated that the extra-territoriality of human rights violations cannot serve as an obstacle for States obligations.¹⁶⁶

With regard to ECOMOG peacekeeping operations, a sending State will be in breach of its obligation to protect if it fails to investigate and prosecute cases of human rights violations committed by its peacekeepers. As clearly stated by the Inter-American Court on Human Rights:

An illegal act which violates human rights and which is initially not directly imputable to a State can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the convention.¹⁶⁷

Therefore, the failure of ECOMOG contributing States to ensure accountability of their peacekeepers violates their obligations under various human rights conventions including the African Charter.

Secondly, Brownlie justifies the accountability of member states for wrongdoing of IOs as follows:

States cannot by delegation (even if this be genuine) avoid responsibility for breaches of [their] duties under international law ... This approach of public international law is not *ad hoc* but stems directly from the normal concept of accountability and effectiveness.¹⁶⁸

¹⁶⁴ A Eide 'Economic, social and cultural rights as human rights' in A Eide, C Krause and A Rosas (eds) (2001) *Economic social and cultural rights: a textbook* 23. All human rights impose four obligations on States namely the obligations to respect, to protect, to promote and to fulfil.

¹⁶⁵ See *Velasquez Rodriguez v Honduras*, Judgment of July 19, 1988, Series C, No 4. See also Communication 155/96 *The Social and Economic Right Action Center and the Center for Economic and Social Rights v Nigeria*.

¹⁶⁶ See Communication No 52/1979, *De Lopez v Uruguay*. U.N. Doc. CCPR/C/OP/1 (1985).

¹⁶⁷ Velasquez Case (n 165 above) para. 172.

¹⁶⁸ I Brownlie 'State Responsibility: the problem of delegation' in *Völkerrecht zwischen normativem Anspruch und politischer Realität*, K Ginther et. Al. (Eds) (1994) 300-301 quoted in International Law Association (n 163 above) 13.

This argument is supported by the fact that states do not only have an obligation to respect human rights but also to ensure or secure such respect. There is a conventional obligation on States to ensure through supervision that organ or agents of IO to which they are parties comply with human rights.¹⁶⁹ Thus, the failure of member states of an IO to ensure compliance by that IO with human rights standards is a violation by them of their conventional obligations.¹⁷⁰ Applied to the members States of ECOWAS, these arguments mean that their failure to ensure respect for human rights by ECOMOG peacekeepers and to investigate atrocities committed by peacekeepers in Liberia and Sierra Leone infringes their obligation to supervise and monitor compliance by ECOWAS with human rights standards.

b. Can ECOWAS be held responsible?

Arguments for the responsibility of IOs, and ECOWAS in particular, for abuses committed by peacekeepers are faced with conceptual, legal and practical difficulties. At the conceptual level, IOs are not parties to international conventions, therefore, it is difficult to apply these conventions to them. At a legal level, IOs are recognised jurisdictional immunities that hamper remedial actions for non-States claimants.¹⁷¹ From a practical point of view, there is no international court where individual complainants can lodge their claims.

Despite these difficulties, it is arguable that IOs as subject of international law, which have rights,¹⁷² should also be bound by certain rules of international law. These rules encompass general international customs and peremptory norms of international law.¹⁷³ IOs are bound to respect the rules of IHL enshrined in the Geneva Conventions, which have the status of peremptory norms. In the case of ECOWAS this obligation is reinforced by its commitment to respect ‘the principle contained in the

¹⁶⁹ International Law Association (n 163 above) 13.

¹⁷⁰ *Matthews v. the United Kingdom*, Application no. 24833/94, Judgment of 18 February 1999. This case was concerned with whether the United Kingdom could be held responsible for the lack of elections to the European Parliament in Gibraltar. The European Court for human rights stated that notwithstanding the transfer of competences to the European Community, Contracting States remained responsible for ensuring that Convention rights were guaranteed. As result, the Court found the UK in breach of the European Convention for failure to secure the rights set out in article 3 of Protocol No. 1.

¹⁷¹ Seesurrun (n 124 above) 49.

¹⁷² *Reparation for injuries* case (n 61 above).

¹⁷³ Seesurrun (n 124 above) 49.

Charter of the United Nations...the Universal Declaration on Human Rights as well as the African Charter on Human and Peoples' Rights'.¹⁷⁴

The responsibility of ECOWAS for abuses committed by ECOMOG peacekeepers can be based on the idea that 'an IO is responsible for the conduct of one of its organ acting in that capacity'.¹⁷⁵ This responsibility is based on the overall control exercised by the IO over the peacekeeping operation in accordance with the view of the Appeal Chamber in the *Tadic* case.¹⁷⁶

In spite of these arguments, one shall admit that the responsibility of IOs is still a prospective and unsettled issue. A recent confirmation of these difficulties can be found in the decision of China to treat the US and not the NATO as responsible of the joint NATO and US bombing of the Chinese embassy in Belgrade.¹⁷⁷

4.3 Prevention mechanisms

Opening a seminar on international peacekeeping organised in Accra in May 2004, the Deputy Foreign Affairs Minister of Ghana, Akwasi Osei-Adjei, acknowledged the need to prevent human rights and IHL abuses by ECOMOG peacekeepers.¹⁷⁸ He pointed out that:

From the perspective of International Humanitarian and International Criminal Law, it is crucial as [p]eacekeepers to measure our actions in line with what was reasonably acceptable in the eyes of the international community.¹⁷⁹

This objective is only achievable through the implementation of an effective framework to prevent the commission of abuses by peacekeepers. However, up to date, no clear and effective preventive framework has been established for ECOMOG peacekeeping operations. The existing prevention mechanisms are insufficient to address the challenges of the compliance with human rights and IHL in peacekeeping operations.

¹⁷⁴ Protocol of 1999, art. 2.

¹⁷⁵ International Law Association (n 163 above) 15.

¹⁷⁶ *Prosecutor v. Dusko Tadic*, Judgment, Case No. IT-94-1, Appeals Chamber, 15 July 1999, para. 117.

¹⁷⁷ International Law Association (n 163 above) 18.

¹⁷⁸ 'International Peacekeeping Seminar Opens In Accra'. Available at <www.ghanaweb.com/GhanaHomePage/NewsArchive/printnews.php?ID=58396> (accessed on 17/09/04).

¹⁷⁹ As above.

Although inappropriate and insufficient, the mechanisms set up to prevent abuses by ECOMOG peacekeepers need to be analysed. This analysis will be followed by the examination of recent mechanisms set up by the UN to prevent the commission of abuses by its peacekeepers, which can be used as model by ECOWAS.

4.3.1 Inadequate prevention mechanisms

The mechanisms for the prevention of abuses by ECOMOG peacekeepers have evolved from 1990 to date. In spite of this evolution, these mechanisms are still inadequate to prevent abuses by peacekeepers. This inadequacy is due to the lack of awareness, the lack of political will and the inadequacy of training programmes.

4.4.1.1 Lack of awareness and political will

The implementation of an efficient mechanism to prevent atrocities by peacekeepers is based upon the recognition of human rights and IHL abuses as an actual challenge in peacekeeping operations. In the case of ECOMOG this challenge has not been fully realised. Instances of atrocities committed by peacekeepers have been dealt with by both ECOWAS and ECOMOG with little interest and commitment. The lower scale of violation committed by ECOMOG peacekeepers compare to the widespread atrocities committed by rebels in Liberia and Sierra Leone can justify this attitude.

However, such an attitude trivialises the abuses committed by ECOMOG peacekeepers and underestimates the potential risk of abuses in the future. This attitude should be changed in order to establish an effective and coherent programme aimed at preventing abuses by peacekeepers.

The lack of political will is also a major obstacle to the implementation of prevention mechanisms. The lack of political will is linked to lack of awareness about the necessity to implement prevention mechanisms. The lack of political exists at both ECOWAS and contributing States level.

4.3.1.2 Inadequacy of training

The training of ECOMOG peacekeepers has improved from 1990 to date. During the first ECOMOG intervention in Liberia, ECOMOG troops were trained in their home countries.¹⁸⁰ The study of the

¹⁸⁰ F Olonisakin (2000) *Reinventing peacekeeping in Africa: Conceptual and legal issues in ECOMOG operations* 147. Olonisakin questions the quality of this training from an operational point of view. She points out the lack of preparedness of ECOMOG troops.

peacekeeping training capacities in selected African countries shows that little attention is paid to human rights and humanitarian law issues.¹⁸¹ In Ghana, during the 6 weeks pre-deployment training for peacekeepers much attention is given to operational issues like geography of the country, background history of the conflict, weapons and equipment identification while human rights and IHL as such remain marginal.¹⁸²

In a bid to enhance ECOMOG troops capacities, ECOWAS has designated three countries, namely Ghana, Nigeria, and Côte d'Ivoire, to specialise in the training of its peacekeepers. Each country has a different specialisation: the Kofi Annan International Peacekeeping Training Centre in Ghana concentrates on operational issues; the National War College in Nigeria offers training to officers on strategic issues; while the Zambakro Peacekeeping School in Côte d'Ivoire focuses on tactical issues.¹⁸³ However, these training centres are unlikely to significantly improve the capacities of ECOMOG in terms of IHL and human training due to a lack of adequate funding, personnel, and expertise.

The subsequent ECOMOG operations benefited from external cooperation in training mainly from the African Contingent Operations Training Assistance (ACOTA) (formerly African Crisis Response Initiative (ACRI)) and the Reinforcement of African Peacekeeping Capacities (RECAMP).¹⁸⁴ However, the training scheme of these programmes focuses more on operational issues than clearly and comprehensively on human rights and IHL.¹⁸⁵ These trainings with insufficient focus on human rights and humanitarian law do not constitute an appropriate mechanism for the prevention of abuses. In addition, there is no coherent human rights or IHL training during ECOMOG operations. The implementation of these trainings will create of a conducive environment for the respect of human rights and IHL during ECOMOG operations. The absence of appropriate training can be attributed to

¹⁸¹ See M Malan, W Nhara and P Bergevin (1997) *African capabilities for training for peace operations* Monograph No 17. Available at <www.iss.co.za/Publications/Monograph_index.html#1997> (accessed on 10/10/04).

¹⁸² Malan, Nhara and Bergevin (as above).

¹⁸³ International Peace Academy and the Economic Community of West African States (2002) 'Operationalizing the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, peacekeeping and Security'¹⁵. Available at <www.ipacademy.org/PDF_Reports/OPER_ECOWA.pdf> (accessed on 23/09/04).

¹⁸⁴ ACOTA and RECAMP are respectively US and French initiatives for the improvement of peacekeeping capacities in Africa.

¹⁸⁵ For instance RECAMP training programme includes individual and field peacekeeping training without a clear focus on human rights or IHL.

lack of funds¹⁸⁶ and also to the lack of appropriate personnel in ECOMOG peacekeeping operation to implement human rights and humanitarian law training.¹⁸⁷

All these problems need to be addressed in order to establish a coherent prevention mechanism in ECOMOG peacekeeping operation. Thus, the recent measures taken by the UN to prevent abuses by peacekeepers can be used as model.

4.3.2 The UN as a model

Following the publication of the UNHCR and Save the Children Report¹⁸⁸, the UN has adopted several measures to prevent the commission of abuses by peacekeepers. These measures include the creation of awareness and political will, the improvement of training, the cooperation with other actors and instilling a gender perspective to peacekeeping.

4.3.2.1 Creating awareness and political will

In order to create awareness and political will for the prevention of abuses committed by peacekeepers, UN organs and agencies have organised several conferences. For instance, on 9 and 10 May 2002, the UN Interregional Crime and Justice Research Institute and the Transnational Crime and Corruption Center organised in Turin a conference on 'Trafficking, Slavery and Peacekeeping: The Need for a Comprehensive Training Program' which made concrete recommendations for the improvement of training as a method of prevention of abuses committed by peacekeepers.¹⁸⁹

The UN has also set up working groups and committees on peacekeeping including the Special Committee on Peacekeeping Operations, which submitted its Report on 26 April 2004.¹⁹⁰ These initiatives have the potential to raise awareness, political will and concern about the issue of abuses committed by UN peacekeepers.

¹⁸⁶ The lack of fund is a major weakness in ECOMOG peacekeeping operations. See International Peace Academy and the Economic Community of West African States (n 183 above) 14.

¹⁸⁷ Olonisakin (180) 200. Olonisakin notes that during ECOMOG intervention in Liberia, the posts of legal and political advisers created at the start of the operation were not filled.

¹⁸⁸ UNHCR and Save the Children-UK (n 1 above).

¹⁸⁹ UN Interregional Crime and Justice Research Institute and the Transnational Crime and Corruption Center (2002) 'Trafficking, Slavery and Peacekeeping: The Need for a Comprehensive Training Program'. Available at <http://www.unicri.it/TraCCC%20docs/TIP&PKO_EWG_Report_Final.PDF> (accessed on 10/10/04).

¹⁹⁰ See UN General Assembly (n 121 above).

4.3.2.2 Improvement of training

Training is an important element in preventing the commission of abuses by peacekeepers. Acknowledging the importance of training, the UN Secretary General has established a training advisory group.¹⁹¹ The creation of this advisory group is a step towards the establishment of a 'single multidimensional training unit'. Both pre-deployment and on-field training are afforded the same importance. To foster its training efforts, the UN has published the *Handbook on United Nations Multidimensional Peacekeeping Operations* which includes, among other issues, the rule of law, gender mainstreaming, human rights and IHL.¹⁹² The focus on human rights and IHL issues shows the particular place afforded to the prevention of abuses in recent UN peacekeeping training.

4.3.2.3 Cooperation with other actors

The cooperation with other actors particularly contributing States, NGOs and other IOs is characteristic of the effort of the UN to prevent abuses committed by ECOMOG peacekeepers. For instance, the cooperation with NGOs and IOs was materialised by the creation of the Inter-Agency Standing Committee Task Force on Sexual Exploitation and Abuse (IASC) in March 2002. The IASC was co-chaired by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the United Nations Children's Fund (UNICEF) and comprises, among other, the World Food Program (WFP), the United Nations High Commission for Refugees (UNHCR), InterAction and SCHR (Oxfam and Save the Children/UK).¹⁹³

The activities of the IASC include recommendation aiming to prevent sexual exploitation and sexual abuses in peacekeeping operations, the collection of training materials, the preparation of model complaints mechanisms and investigation procedures. The IASC completed its work and presented its final report in June 2004.¹⁹⁴

¹⁹¹ UN General Assembly (n 190 above).

¹⁹² UN General Assembly (n 190 above).

¹⁹³ OCHA 'Activities of the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse'. Available at <www.ochaonline.un.org/webpage.asp?Page=1139> (accessed on 24/09/04).

¹⁹⁴ OCHA (n 193 above).

4.3.2.4 Gender perspective

In preventing abuses committed by peacekeepers, in particular gender related crimes, the UN has adopted a gender perspective to peacekeeping. The gender perspective to peacekeeping was formally introduced into the activities of the UN Department for Peacekeeping Operations pursuant to Security Council resolution 1325 and General Assembly Resolution 55/71 of 4 December 2000.

The gender perspective to peacekeeping is based on the incorporation of gender components into fields operations and ensures that peacekeeping operations are both gender balanced and oriented. This perspective has been materialised since the year 2000 by the establishment of staff dedicated to gender issues in four of the fifteen UN peacekeeping operations.¹⁹⁵ For instance, in the Democratic Republic of Congo, the work of the gender unit has developed ways to address crimes of sexual abuse, gender violence and exploitation in the monitoring of human rights, and also developed a gender strategy to support governance and communications projects related to the peace process.¹⁹⁶

4.4 Conclusion

Although, accountability and preventions provisions exist to respond to atrocities committed by ECOMOG peacekeepers, these measures and mechanisms have not yet been used. In a bid to end the impunity enjoyed by ECOMOG peacekeepers, the existing response mechanisms should be activated. In addition to the existing mechanisms some potentials response mechanisms need to be explored to ensure the prevention of atrocities by ECOMOG peacekeepers and held them accountable when they violate human rights or IHL.

¹⁹⁵ Seesurrun (n 124 above) 62.

¹⁹⁶ UN General Assembly (2003) Resolution A/57/731 'Gender mainstreaming in peacekeeping operations, Report of the Secretary General' para. 47(d). Available at <[www.peacewomen.org/resources/Peacekeeping/DPKOGender mainstreaming 03.pdf](http://www.peacewomen.org/resources/Peacekeeping/DPKOGender%20mainstreaming%2003.pdf)> (accessed on 10/10/04).

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

In the context of great instability in West Africa and in the light of the reluctance of Western States to engage their troops in African conflicts, the creation of ECOMOG appears as an important initiative. The interventions of ECOMOG in Liberia, Sierra Leone, Guinea Bissau and Cote d'Ivoire have contributed to the re-establishment of order and the creation of a favourable climate for human rights in crisis areas.

ECOMOG peacekeepers like any other peacekeepers are bound to respect human rights and IHL regardless to their mandate as a peacekeeping or a peace enforcement force. Unfortunately, these requirements have been ignored by many ECOMOG peacekeepers who engaged in violations of IHL as well as human rights of the populations they were expected to protect.

Despite the atrocities committed by ECOMOG peacekeepers (some of which can be qualified as war crimes and crimes against humanity), the peacekeepers responsible are still enjoying impunity due mainly to the exclusive jurisdiction granted in terms of ECOMOG Regulations to the contributing States. ECOMOG contributing States lack political will to ensure accountability for atrocities committed by their peacekeepers during ECOMOG missions. In addition, judicial gaps and financial constraints existing in these countries can hamper the accountability of ECOMOG peacekeepers in their home States. Finally, the lack of accountability can be attributed to the failure of the international community to activate relevant accountability mechanisms such as the universal jurisdiction or the Statute of the Special Court to ensure accountability of ECOMOG peacekeepers.

The deficiency of the responses to abuses committed by ECOMOG peacekeepers also lies in the absence of a comprehensive training and awareness programme for peacekeepers on IHL and human rights. Albeit the improvement of the operational training of ECOMOG peacekeepers in the recent years, human rights and humanitarian law training before and during ECOMOG missions remains marginal. This situation illustrates the risk of commission of abuses in future ECOMOG operations.

The foregoing, thus, calls for the implementation of comprehensive and effective responses to human rights and humanitarian law violations committed by ECOMOG peacekeepers.

5.2 Recommendations

The implementation of a comprehensive and effective response to atrocities committed by ECOMOG peacekeepers should be dealt with through the establishment of both preventive and accountability mechanisms.

5.2.1 Improving accountability mechanisms

Concerning accountability mechanisms, the first level of measures should be aims to address the exclusive jurisdiction accorded to contributing States. Provisions allowing for the secondary jurisdiction of host States should be included in ECOMOG Regulations and in agreements concluded by ECOWAS with both contributing and host States.

ECOMOG Regulations should also provide for follow-up measures in cases of atrocities committed by peacekeepers to ensure that peacekeepers responsible are actually and genuinely tried in their home States.

Furthermore, in a bid to end impunity, ECOWAS and ECOMOG should establish for all past violations committed by peacekeepers in Liberia and Sierra Leone an investigation commission to establish the nature of abuses committed and identify the peacekeepers responsible. The findings of this commission should be put at the disposal of the contributing States which should ensure the accountability of the peacekeepers responsible. Again, ECOWAS should establish for all future ECOMOG operations an independent and transparent committee in charge of all issues concerning abuses committed by ECOMOG peacekeepers. This committee should have an accessible, and confidential complaint procedure allowing for victims to lodge complaints against ECOMOG peacekeepers.

The second level of measures should be the activation of alternative accountability mechanisms such as universal jurisdiction, the Special Court and the ICC. These mechanisms could contribute to address past and future abuses committed by ECOMOG peacekeepers.

The universal jurisdiction is based on the will of particular States to activate their national legal system and persons responsible for some particular crimes. Therefore, all States should implement the necessary laws allowing for the exercise of universal jurisdiction and be willing to hold accountable all persons who commit certain crimes including peacekeepers. As argued by Sassòli, one can read in

the duty to ensure respect of IHL enshrined in common article 1 of the GC an obligation on States parties to investigate and prosecute violations of IHL through several mechanisms including universal jurisdiction.¹⁹⁷

The Statute of the Special Court gives jurisdiction to the Court over abuses committed by ECOMOG peacekeepers. Nevertheless, the jurisdiction of the Special Court over peacekeepers can only be exercised when authorised by the Security Council. Thus, given the failure by ECOMOG peacekeepers sending States to ensure accountability of their peacekeepers for violations committed in Sierra Leone, the Security Council should authorise the Special Court to try ECOMOG peacekeepers.

The jurisdiction of the ICC over future atrocities committed by peacekeepers is undermined by the Resolution 1422 of the Security Council which excludes the peacekeepers of States not party to the ICC Statute from the jurisdiction of the Court.¹⁹⁸ Therefore, the ratification of the ICC Statute by all ECOMOG members States could correct the inconveniences inherent to Resolution 1422.

Lastly, indirect accountability mechanisms are also available. Victims of violations committed by ECOMOG peacekeepers could lodge complaints against the contributing States for the failure to hold their peacekeepers accountable. The accountability of ECOWAS should also be investigated as a means to ensure accountability for violations committed by ECOMOG peacekeepers.

5.2.2 Improving prevention mechanisms

While the accountability mechanisms seek to address violations when they occur, the prevention mechanisms aim to avoid instance of atrocities. The strategy to effectively prevent atrocities committed by ECOMOG peacekeepers should encompass three elements namely, training, the adoption of clear and enforceable code of conduct and an increased cooperation with the UN, NGOs and the civil society.

Both pre-deployment and in-field training of ECOMOG troops should have a clear component on human rights and IHL. Human rights and IHL training should be carried out by well-trained and

¹⁹⁷ See M Sassòli 'State responsibility for violations of international humanitarian law' (2002) *International Revue of the Red Cross* Vol. 84 No 846.

¹⁹⁸ As at September 2004, three among the fifteen members States of ECOWAS were still not party to the ICC Statute.

experienced personnel and should focus on practical situations. The training should include a gender awareness programme that deals particularly with issues of rape and sexual exploitation of women and children.

The adoption of a clear and enforceable code of conduct for ECOMOG peacekeepers will have the potential of revealing to peacekeepers the conduct to be adopted during the mission. The code of conduct should be widely distributed to peacekeepers before and during ECOMOG operations.

Finally, the cooperation with the UN, NGOs and the civil society can contribute to improve the prevention of atrocities committed by ECOMOG peacekeepers. ECOMOG can benefit from the experience of the UN in the establishment of a preventive mechanism for violations committed by its peacekeepers. The cooperation with NGOs such as the International Committee of the Red Cross (ICRC) could enhance the capacities of ECOMOG concerning IHL training of its troops. The cooperation with the civil society in the host country can allow for greater understanding about ECOMOG interventions and facilitate its mandate. NGOs and the civil society should create awareness among the host population and act as external monitor for the compliance by peacekeepers with human rights and IHL.

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