



**CLASSIFICATION OF NON-INTERNATIONAL ARMED
CONFLICTS: LESSONS FROM THE SIERRA LEONE CONFLICT**

BY

**MUHAMMAD ADAM
(20797878)**

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Supervisor: Dr Thomas Probert

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DEDICATION

DEDICATED TO MY FAMILY

AND

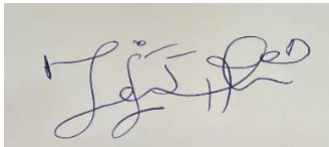
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LIST OF ABBREVIATIONS

AFRC	Armed Forces Revolutionary Council
CA3	Article 3 Common to the Four Geneva Conventions of 12 August 1949

CDF	Civil Defence Forces
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
EO	Executive Outcomes
IAC	International Armed Conflict
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDU	Internal Defence Unit
IHL	International Humanitarian Law
NIAC	Non – International Armed Conflict
NIFAG	Nigerian Forces Assistance Group
PNDC	Provisional National Defence Council
RUF	Revolutionary United Front
SOFA	Status of Forces Agreement
UNITA	<i>Uniao Nacional para Independencia Total de Angola</i>

CHAPTER ONE: INTRODUCTION

1.1 Introduction

This study, at its core, provides an analysis of what constitutes a non-international armed conflict, the mixed nature of the armed conflict in Sierra Leone, looks at parallel conflicts and addresses the consequences of these conflicts as relates to classification. In doing this, the study seeks to illustrate how particular situations and conditions could provide the basis or the necessary evidence for a conflict to be classified as a non-international armed conflict or otherwise. This

study further highlights the various limitations that serve as challenges in classifying conflicts with legal certainty.

Some of these challenges in the classification of non-international armed conflicts consist of the application of the law of non-international armed conflict to organised armed groups including alliances and splinter groups and the application of the law of non-international armed conflicts in various situations that involve conflicts of less organised armed groups operating on the same territory with differing or similar objectives¹. There are also issues such as assessing the territorial coverage of non-international armed conflicts as well as determining when a non-international armed conflict could be viewed as having run its course.² The link between non-international armed conflicts and international armed conflicts as well as what is termed mixed conflicts is also analysed with due consideration to the Sierra Leone conflict.

This chapter introduces the study and gives an overview of the study. It presents an introduction to the study, gives the background of the study, states the research problem and reviews the existing literature. The chapter also discusses the scope of the study, its significance, the research methodology and indicates its limitations.

1.2 Background of the Study

Armed conflicts that have taken place in various parts of Africa can be seen as a major factor for Sub-Saharan Africa's developmental challenges and inability to chart a consistent development trajectory over the decades since the independence of the various countries. Conflicts across the African continent have caused significant death and devastation, population displacement, and social capital degradation.³ The causes of conflicts across the continent are many and varied. Some conflicts could be traced to the arbitrary nature of the colonial boundaries created by the colonial powers during the Berlin Conference.⁴ The cold war era rivalries in which the countries found themselves on different sides also played a role in conflicts across Africa, coupled with the use of political-military groups by foreign powers.⁵ Ethnic and tribal issues, improper management of religious differences, bad governance and misuse of public resources by officials entrusted them, lack of economic development, inadequate level of adherence to human rights

¹ OS Adeleke 'The challenges of classifying armed conflicts in international humanitarian law' (2023) *Ajayi Crowthwer University Law Journal* 9

² As above, 11

³ X Fang et al 'The Economic Consequences of Conflicts in Sub-Saharan Africa' International Monetary Fund Working Paper 2020 4

⁴ David Pratt, Nepean-Carleton, Special Envoy to Sierra Leone 'Sierra Leone: The Forgotten Crisis' <http://www.sierra-leone.org/Other-Conflict/pratt042399.html> (accessed 20 February 2022)

⁵ As above.

and democratic principles, and high levels of corruption are also some of the underlying causes of conflict across the continent .⁶

The Sierra Leone conflict had a number of remote causes amongst which were the marginalisation of the youth and state collapse.⁷ The conflict which spanned eleven years, left behind some lingering questions concerning the nature of the conflict and how it should have been classified under international law. The classification of armed conflicts is of abiding importance because it has a bearing on which rules of international humanitarian law is applicable as well as the rights and crimes of an accused person for the purposes of international criminal law.⁸

There are two categories of armed conflict consisting of international armed conflict⁹ and non-international armed conflict.¹⁰ While the term ‘armed conflict’ is not defined in the body of international humanitarian treaty law, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) outlined features of an armed conflict in *Prosecutor v Dusko Tadić a/k/a “Dule”*.¹¹ The main characteristics the Appeals Chamber identified could be gleaned from the following:

“An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”¹²

An international armed conflict arises when there is fighting between the armed forces of states that are high contracting parties¹³ or in circumstances provided in article 1(4) of Additional

⁶Asa above.

⁷ K Peters *War and the crisis of youth in sierra leone* (2011) 18.

⁸ G Checlimo ‘Defining Armed Conflict in International Humanitarian Law’ (2011) 3 *Inquiries Journal/Student Pulse* (04), <http://www.inquiriesjournal.com/a?id=1697> (accessed 20 February 2022).

⁹ Common Article 2 gives content to the notion “international armed conflict” determining that “[t]he present Convention shall apply to all cases of declared war or of any other *armed conflict* which may arise *between two or more of the High Contracting Parties*, even if the state of war is not recognised by one of them”.

¹⁰ The opposing sides in a non-international armed conflict must be either the armed forces of the territorial state opposing a non-state fighting unit or non-state fighting units opposing one another in the absence of state involvement. Opinion and Judgment, *Prosecutor v Dusko Tadic a/k/a ‘DULE’*, supra note 27, para 561.

¹¹ Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, *Prosecutor v Dusko Tadic aka ‘Dule’*, (IT-94-1-A), Appeals Chamber, 19 July 1998, para 70.

¹² As above.

¹³ In the *Ntaganda* decision of Trial Chamber VI of the International Criminal Court delivered on 8 July 2019, it defined an international armed conflict to exist “whenever there is a resort to armed force between states”; Judgment, *Situation in the Democratic Republic of the Congo, In the Case of The Prosecutor v Bosco Ntaganda* (ICC-01/04-02/06), Trial Chamber VI, 8 July 2019, at para 700. For a better understanding of the construct “international armed

Protocol I to the Geneva Conventions.¹⁴ The *Tadić* formulation for the existence of a non-international armed conflict is two-fold.¹⁵ First, the notion of organisation¹⁶ and, second, the notion of intensity.¹⁷ The notion of organisation requires that the military wing of a non-state actor party to the conflict meets a demand to display a minimum degree of organisation, and the notion of intensity is to the effect that the intensity of the fighting between parties to the conflict must reach the level of protracted armed violence.¹⁸ It is only when the *Tadić* threshold is met that a situation goes beyond a law enforcement one to the other involving the application of the law of non-international armed conflict.¹⁹

Conflict classification is important as it determines whether the law of international armed conflict or the law of non-international armed conflict applies to the parties in the conflict. The clearer and more accessible the law of conflict classification is to all involved, the better the chance that those affected will be in a position to apply international humanitarian law correctly in urgent or borderline situations. Classification is furthermore relevant to international criminal law because the existence of an armed conflict informs the two contextual elements inherent in war crimes, and the type or categorisation of armed conflict determines the category of crimes under which the alleged war criminal is charged.²⁰ Conflict classification does not have only a legal purpose, it can, for example, trigger the protective mandate of the ICRC and its application might be deemed by non-state actors as a legitimating mechanism.

Research has shown that there were more than fifty non-international armed conflicts spread across fifty states by the middle of the year 2020.²¹ The majority of contemporary non-

conflicts”, see M. Sassòli, *International humanitarian law: Rules, controversies, and solutions to problems arising in warfare* (2019), at 169–180.

¹⁴ See Additional Protocol I which expands the notion of international armed conflict to include armed conflicts in which peoples oppose colonial governments, racist regimes, alien occupation or assert a right to self-determination. Art 1(4) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts 8 June 1977, 1125 UNTS 3.

¹⁵ Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, *Prosecutor v Dusko Tadic aka ‘Dule’* para 70.

¹⁶ For a discussion concerning the minimum threshold of organisation demanded by the *Tadic* criterion see T. Rodenhäuser, *Organizing rebellion: Non-state armed groups under international humanitarian law, human rights law, and international criminal law* (2018), at 61-96; N. Zamir, *Classification of Conflicts in International Humanitarian Law: The Legal Impact of Foreign Intervention in Civil Wars* (2017), at 63-69.

¹⁷ Opinion and Judgment, *Prosecutor v Dusko Tadic a/k/a ‘DULE’*, para 561; Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, *Prosecutor v Dusko Tadic aka ‘Dule’*, *supra* note 11, para 70.

¹⁸ For an introduction to the notion of intensity see Bradley, ‘Additional Protocol II: Elevating the minimum threshold of intensity?’ 102 *International Review of the Red Cross (IRRC)* (2020) 1125, at: 1125-1152.

¹⁹ Opinion and Judgment, *Prosecutor v Dusko Tadic a/k/a ‘DULE’*, *supra* note 9, para 561; Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, *Prosecutor v Dusko Tadic aka ‘Dule’*, *supra* note 11, para 70.

²⁰ *Ntaganda*, *supra* note 13, para. 698.

²¹ Demeyere, ‘Editorial’, 102 *International Review of the Red Cross (IRRC)* (2020) 979, at 979.

international armed conflicts, especially in Africa, include complex conflicts.²² Complex conflicts²³ span from manifold conflicts within the borders of a one state²⁴ to conflicts that move into the territory of neighbouring states²⁵ or become internationalised, which refers to the point when an ‘armed conflict not of an international character’ loses its non-international character owing to the involvement of a second state or multiple foreign states.²⁶ International and non-international armed conflicts may be concurrent occurrence in a single territory.²⁷

A further frustration for those tasked with conflict classification is that conflict settings often involve various violent engagements in which multiple parties are locked in fighting during the same period and in the same territory.²⁸ Such fighting is not restricted to opposing forces

²² A Bellal, *The War Report: Armed Conflict in 2018*, April 2019, available at <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202018.pdf> (accessed 22 January 2020), read together with A Bellal, *The War Report: Armed Conflict in 2017*, March 2018), available at <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202017.pdf> (accessed 23 January 2020); and A Bellal, *The War Report: Armed Conflict in 2016*, March 2017, available at <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202016.pdf> (accessed 23 January 2020) for a summary of situations that continued through 2018.

²³ The term ‘complex conflicts’ is used to refer to conflicts where a purely single traditional non-international armed conflict is not what is taking place on a state’s territory but to one where multiple conflicts co-exist or where conflicts spill over into neighbouring territories. The author refers to a ‘mosaic’, indicating the complexity in providing a category to match these complex conflicts.

²⁴ Multiple non-international armed conflicts often co-exist on the same territory, for example, the ongoing conflicts in the Central African Republic (for an overview of the nature of the conflict in the Central African Republic and the parties involved, see Bellal, *The War Report 2018*, *supra* note 22, at 82-92); the Democratic Republic of the Congo (for an overview of the nature of the conflict in the Democratic Republic of the Congo and the parties involved, see Bellal, *The War Report 2018*, *supra* note 22, at 93-101); Mali (for an overview of the nature of the conflict in Mali and the parties involved, see Bellal, *The War Report 2018*, *supra* note 22, at 102-116); and South Sudan (for an overview of the nature of the conflict in South Sudan and the parties involved, see Bellal, *The War Report 2018*, *supra* note 22, at 116-123). Such complex conflicts exist outside the African continent, for instance, the situation in Syria. For a description of the situation in Syria as at the end of 2018, see Bellal, *The War Report 2018*, *supra* note 22, at 123-135 and Gill, ‘Classifying the conflict in Syria’ 92 *International Law Studies* (2016) 353.

²⁵ This often is referred to as ‘spill-over non-international armed conflicts’, a descriptive but not a legal term.

²⁶ Stewart, ‘Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict’ 85 *International Review of the Red Cross (IRRC)* (2003) 313, at 323 and Schindler, ‘Humanitarian Law and Armed Conflicts: Toward the Definition of International Armed Conflict’ in M.N. Schmitt and W.H. von Heinegg (eds), *The Scope and Applicability of International Humanitarian Law* (2012) 53. For an in-depth interrogation of the internationalisation of armed conflicts, see K. Mačák, *Internationalized Armed Conflicts in International Law* (2018), at 31-128.

²⁷ In the *Tadic* case Trial Chamber I recognises the category of mixed armed conflict: ‘In an armed conflict of an internal or mixed character, these closely-related criteria are used solely for the purpose, as a minimum, of distinguishing an armed conflict from banditry, unorganised and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law.’ Opinion and Judgment, *Prosecutor v Dusko Tadic a/k/a ‘DULE’*, *supra* note 9, para 561 (emphasis added). For a discussion of mixed armed conflicts, see Akande, ‘Classification of Armed Conflicts’ in B Saul and D Akande(eds), *The Oxford Guide to International Humanitarian Law*(2020) Chapter 2

²⁸ For a discussion of mixed armed conflicts, see Akande, *supra* note 19; Geiß, ‘Armed violence in fragile states: Low-intensity conflicts, spill-over conflicts, and sporadic law enforcement operations by third parties’ 91 *International Review of the Red Cross (IRRC)*, (2009) 127, at 133; Radin, ‘Global armed conflict? The threshold of extraterritorial non-international armed conflicts’, 89 (2013), *International Law Studies* 696, at 724. Such complex conflict situations include the mosaic of violence that raged in Yemen in the period around 2017 and the ongoing situation in the DRC.

engaged in a non-international armed conflict, but may involve non-state actors purposefully launching simultaneous attacks against civilian populations.²⁹ These territories are breeding grounds for gang-related activities and organised crime, adding to the sum of violence.³⁰ Case law supports a conclusion that mixed armed conflicts and multiple armed conflicts can exist in a single territory.³¹ Complex conflict settings ongoing at the time of writing this thesis include situations in Myanmar³², the Central African Republic³³, Syria³⁴ and the Democratic Republic of Congo.³⁵ Owing to the complex landscape of armed conflict, classification frequently poses a challenge and calls for legal certainty.³⁶ This author rejects the denomination of these conflicts as ‘new wars’ which demand under international humanitarian law the creation of novel treaty law and, in the interest of legal certainty, asserts that achieving clarity as to which situations qualify as non-international armed conflicts is crucial and the best way forward.

For an overview of the situation in Yemen up to 2017, see Arraf, The Geneva Academy of International Humanitarian Law and Human Rights, *The war report 2017: The armed conflict in Yemen: A Complicated Mosaic* (October 2017), available at [The Armed Conflict in Yemen.pdf \(geneva-academy.ch\)](https://www.geneva-academy.ch/en/publications/2017-war-report) (accessed 25 February 2021). For a mapping of the multiplicity of non-international armed conflicts co-existing in the DRC during 2019, see RULAC, *DRC: A mapping of non-international armed conflicts in Kivu, Kasai and Ituri* (5 February 2019), available at [https://www.rulac.org/news/democratic-republic-of-the-congo-a-mapping-of-non-international-armed-conf](https://www.rulac.org/news/democratic-republic-of-the-congo-a-mapping-of-non-international-armed-conflicts) (accessed 25 February 2021).

²⁹ The ongoing situation in Cabo Delgado, Mozambique serves as an example. Islamic insurgents continuously attack the civilian population. For monthly reports on the evolving situation in Mozambique, see the International Crisis Group, *Crisis Watch Database on Mozambique* (January 2021), available at <https://www.crisisgroup.org/crisiswatch/february-alerts-and-january-trends-2021#mozambique> (accessed 25 February 2021).

³⁰ See the Armed Conflict Location and Event Data Project (ACLED) conflict tracker report, *Layered insecurity in North Kivu: Violence and the Ebola response* (26 October 2018), available at <https://acleddata.com/2018/10/26/layered-insecurity-in-north-kivu-violence-and-the-ebola-response/> (accessed 25 February 2021).

³¹ In *Prosecutor v Dusko Tadic a/k/a "Dule": Opinion and Judgment* Trial Chamber 1 of the International Criminal Tribunal for the Former Yugoslavia confirmed that mixed armed conflicts or multiple armed conflicts can co-exist on a single territory: “In an armed conflict of an internal or *mixed character*, these closely-related criteria are used solely for the purpose, as a minimum, of distinguishing an armed conflict from banditry, unorganised and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law.” *Opinion and Judgment, Prosecutor v Dusko Tadic a/k/a 'DULE'*, supra note 9, para 561 (emphasis added).

³² See RULAC, *Non-international armed conflicts in Myanmar* (2 February 2022), available at <https://www.rulac.org/browse/conflicts/non-international-armed-conflict-in-myanmar> (accessed 26 February 2022)

³³ See RULAC, *Non-international armed conflicts in the Central African Republic* (19 October 2020), available at <https://www.rulac.org/browse/conflicts/non-international-armed-conflict-in-the-central-african-republic> (accessed 26 February 2022).

³⁴ See RULAC, *Non-international armed conflicts in Syria* (7 February 2022), available at <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-syria> (accessed 26 February 2022). For a scholarly analysis of the classification of the situation in Syria up until 2016 see Gill, supra note 24.

³⁵ For an overview of the ongoing armed conflict in the DRC see RULAC, *Non-international Armed Conflicts in Democratic Republic of Congo* (22 April 2021), available at <https://www.rulac.org/browse/conflicts/non-international-armed-conflict-in-democratic-republic-of-congo> (accessed 26 February 2022).

³⁶ Graham, ‘Defining Non-International Armed Conflict: A Historically Difficult Task’ 88 *International Law Studies US Naval War College (Int L Stud Set US Naval War Col)*, (2012) 43, at 43-55.

The general approach taken by most international tribunals is simply to classify a conflict as an armed conflict and then proceed to apply a set of rules in that regard.³⁷ Some scholars disagree with the classification of the conflict in Sierra Leone because of some of the international elements that were at play which make it lean more towards a mixed conflict or an 'internationalized internal armed conflict'.³⁸ The expression 'internationalized internal armed conflict' currently does not mean a third category of armed conflict but rather a non-international armed conflict with international elements or dimensions.

The Rebel Revolutionary United Front of Sierra Leone (R.U.F./S.L.) invaded Sierra Leone from Liberia in 1991, after years of mismanagement and corruption in Sierra Leone that supplied the impetus for the conflict. President Momoh enlisted soldiers to combat the insurgents, but his efforts were unsuccessful. The National Provisional Ruling Council (N.P.R.C), led by Army Captain Valentine Strasser, which overthrew President Momoh, proclaimed a revolution and vowed to stop the war, restore democracy, and improve upon the economy.³⁹

The NPRC began negotiations with the R.U.F to stop the war and restore democracy but they were unsuccessful.⁴⁰ Young military commanders grew more corrupt, and citizens were unable to distinguish between them and the rebels so a term emerged, "Sobel," a mix of "soldiers" and "rebels."⁴¹ In January 1996, Captain Strasser was deposed by his deputy, Brigadier Julius Maada Bio, and this placed a great deal of pressure on the NPRC since they were scheduled to conduct elections in February so the change was regarded by some as a ploy to buy them more time in power.⁴² The R.U.F continued to negotiate with the government both before and after President Ahmed Tejan Kabbah was sworn into office.

It is worth noting that the Revolutionary United Front (R.U.F./S.L.) and the Republic of Sierra Leone Military Forces were the principal parties to the conflict in Sierra Leone.⁴³ The other parties to the conflict include the Armed Forces Revolutionary Council (A.F.R.C.), the Civil Defense Forces, fighters from other countries, and the regional peacekeeping force, Economic Community of West African States Monitoring Group (E.C.O.M.O.G.) were also involved.⁴⁴

³⁷Bartels R 'The classification of armed conflicts by International Criminal Courts and Tribunals' 20 International criminal law review (2020) 595.

³⁸Akinrinade B 'International Humanitarian Law and the Conflict in Sierra Leone' 15 Notre Dame Journal of Law Ethics & Public Policy 391 (2001) 413.

³⁹ As above, 398.

⁴⁰ As above.

⁴¹ As above.

⁴² As above.

⁴³As above

⁴⁴ As above

1.3 Problem Statement

In order to pursue accountability for the crimes committed by the different parties involved in the Sierra Leone war, it is important to have an appropriate classification of the nature of the conflict. Armed conflicts under international law may be either international or non-international, or combination of both.⁴⁵ There exists tensions, riots and internal disturbances, that do not amount to an armed conflict due to their level of severity, hence do not activate the international humanitarian law requirements applicable to armed conflicts.⁴⁶ In instances where the conflict is not classified as an armed conflict, the broad norms of human rights legislation and domestic criminal law are used to pursue accountability.

An internationalised conflict is one which is characterised by the intervention of one or more third States; distinct from a non-international armed conflict.⁴⁷ This type of conflict combines characteristics which may be seen from both international armed conflict and non-international armed conflict perspectives. Depending on the types of the parties involved, the armed conflict may be between the forces of the territorial State and those of an intervening State, between intervening States taking action on both sides of the conflict, between government forces (of the territorial State or of a third State) and non-governmental armed groups or between armed groups only.⁴⁸ Conflicts of this nature raise issues concerning the legal definition of those situations that do not fit neatly into the categories of armed conflicts established and recognised by international humanitarian law.

The classification of a situation to be an armed conflict means that international humanitarian law comes into force immediately. Accordingly, it provides a framework for the conduct of belligerent parties and the protection of non-combatants and the respect of the environment and the property of civilians.⁴⁹ The failure to classify a situation as an 'armed conflict' has grave legal and humanitarian consequences. International humanitarian law has a close relationship with human rights law that aims to protect the rights and dignity of civilians during peace and armed conflict, with parties of the conflict having legally binding obligations concerning the rights of persons not involved in the conflict.

⁴⁵ S Vite 'Typology of armed conflicts in international humanitarian law: legal concepts and actual situations' (2009) 91 *International Review of the Red Cross* 69

⁴⁶J Stewart 'Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict' (2003) 85 *International Review of the Red Cross* 313.

⁴⁷A Duxbury 'Drawing Lines in the Sand - Characterising Conflicts for the Purposes of Teaching International Humanitarian Law' (2007) 14 *Melbourne Journal of International Law* 259

⁴⁸ Vite (n 12 above) 85

⁴⁹ A Cullen *the Concept of Non-International Armed Conflict in International Humanitarian Law* (2010) 14.

The Sierra Leone conflict was one that had different dimensions that were of importance to the criminal responsibility attributable to the various parties. However, the issue of classification was not adequately dealt with although it presented an opportunity for classification of armed conflicts to be broadened in scope.⁵⁰ In the case of *Prosecutor v. Fofana* decided before the Special Court for Sierra Leone, the defence challenged the classification of the conflict as non-international in nature, which would then mean that the court lacked material jurisdiction to hear the matter.⁵¹ The Court held however that, the classification of the conflict had no bearing on the jurisdiction of the court and proceeded with the matter. The issue of classification was, therefore, not adequately dealt with by the Special Court and the Trial Chamber went ahead to take judicial notice that the armed conflict took place between March 1991 until January 2002.⁵²

When an armed conflict is categorised as an international armed conflict, the full force of the international rules is triggered. If the war is a non-international armed conflict, the norms of international humanitarian law in Common Article 3 of the Geneva Conventions and Protocol II may apply, with consideration to the intensity of the conflict as well as whether or not the State is a party to Protocol II.⁵³ However, it is a matter of contention if all elements of the law of armed conflict or international humanitarian law will apply in that situation. Moreover, where the conflict is classed as a mixed one, the appropriate rules of law is uncertain, since the law in this area is not fully developed.

1.4 Objectives of the study

The primary objective of this study is to ascertain the nature of the legal regime that can be used in respect of mixed conflicts. In order to ascertain this, this study seeks to examine the classification of armed conflicts under international law and the prospects of creating a legal regime for mixed conflicts.

1.5 Research question

1. What are the classifications of armed conflicts under international law and how are they defined?

⁵⁰ *Prosecutor v. Fofana*, Case No. scsl-2003-11-PT, Fofana Defence, Reply to the Prosecution Response to the Preliminary Defence Motion on Lack of Jurisdiction *Materiae: Nature of the Armed Conflict*, 30 November 2003, paragraph 1.

⁵¹ As above.

⁵² *Prosecutor v. Norman, Fofana and Kondewa*, Case No. scsl-04-14-PT, Trial Chamber, Annex i to the Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 2 June 2004, para 2.

⁵³ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), U.N. Doc. A/32/144.

2. What are the legal implications of the classification of armed conflicts?
3. What legal regime applies to conflicts of a mixed nature?
4. What lessons can be drawn from the Sierra Leone conflict for the purposes of future classifications of armed conflicts?

1.6 Literature Review

The topic of classification or typology of armed conflicts has been dealt with by many scholars and students alike, but the conflict in Sierra Leone as relates to this subject has not received much attention, probably because at face value it looks settled. This however is not the case due to some elements that are not typical of a non-international armed conflict simpliciter.

Bartels speaks to the classification of armed conflicts by international criminal courts and tribunals with due regard to its relevance for the purposes of international criminal law.⁵⁴ He observes that in the first cases of International Criminal Tribunal for the Former Yugoslavia (ICTY) like the *Tadić and Aleksovski* case, there was the tendency to classify a situation of armed conflict as international but subsequently, various Trial Chambers took the approach of not classifying the armed conflict, indicating that it was irrelevant to classify. It simply found an armed conflict and proceeded to apply Additional Protocol II.⁵⁵ He describes the tribunal's approach to classification as lax using the *Kvočka et al* and *Simić et al* cases to show how the tribunals simply took judicial notice of the existence of an armed conflict and proceeded with the case.⁵⁶ In the case of the Special Court for Sierra Leone (Special Court), the statutes and jurisdiction was based on the violation of common article 3 of the Geneva Conventions, which made it impossible to find anything other than a non-international armed conflict, although the conflict had international aspects.⁵⁷

⁵⁴ Bartels R 'The classification of armed conflicts by International Criminal Courts and Tribunals' 20 *International Criminal Law Review* (2020) 595

⁵⁵ As above, 605

⁵⁶ As above, 606

⁵⁷ As above, 616.

Akinrinade engages the issue of classification and the Sierra Leone conflict by analysing the parties in the conflict and, concluding that it is best classified as a mixed conflict.⁵⁸ He first deals with whether indeed the conflict was an armed conflict and not an internal disturbance and concludes that it was the former because the parties were organised under one command with sustained military operations over a period, despite the appearance of a fizzling out of the rebellion.⁵⁹ In arriving at the conclusion that the conflict was a mixed one, he posits that although it had internal elements, there were factors such as the involvement of troops of Liberia, Burkina Faso and (ECOMOG) after 1997.⁶⁰

As per article 38(1)(d) of the ICJ Statute subsidiary sources are determinative of the rules of law.⁶¹ Teachings and judicial decisions are considered useful in determining the content of law embodied in the primary sources. They are described as ‘law determining agencies’, where determination may involve seeking to confirm whether those rules exist and provide the basis for confirming the proper interpretation of the rules of law.⁶²

Special Rapporteur Sir Michael Wood dealt with the relationship between customary international law and subsidiary sources of law while commenting on conclusions 13 and 14 of the Fifth ILC Report and made the point that the use of the phrase ‘subsidiary means’⁶³ does not necessarily undermine the relevance of judicial decisions in interpreting and clarifying the primary sources of law. Thus, while not on the same footing as customary international law, the subsidiary sources are nonetheless important in the interpretation of the former, amongst other factors.

⁵⁸ Akinrinade B ‘International Humanitarian Law and the Conflict in Sierra Leone’ 15 *Notre Dame Journal of Law Ethics & Public Policy* 391 (2001) 409

⁵⁹ As above.

⁶⁰ As above, 419

⁶¹ For insight into the value of teachings see Sivakumaran, ‘The Influence of Teachings of Publicists on the Development of International Law’, 66 *International and Comparative Law Quarterly (Int Comp Law Q)*, (2017) 1, at 1–37.

⁶² Aldo, ‘A Formal Approach to Article 38 (1)(d) of the ICJ Statute from the Perspective of the International Criminal Courts and Tribunals’, 24 *European Journal of International Law (EJIL)* (2013) 649, at 650.

⁶³ ILC, ‘Fifth report on the identification of customary international law by Michael Wood, Special Rapporteur’, Doc No. A/CN.4/717, 14 March 2018, at 42-45.

It may be worth noting in this connection that while not in themselves sources of customary international law, scholarly writing for instance, may be useful in offering pointers to the existence and determination of the content of customary international law.⁶⁴

1.7 Significance of the Study

This research seeks to contribute to the existing literature on the classification of armed conflicts in international law, focusing specifically on the gaps relating to mixed conflicts. This study builds on the existing literature and creates a foundation for further studies in the area of mixed conflicts and the applicable legal regime, where there is a dearth of literature.

1.8 Methodology

The study adopts a qualitative approach informed by desktop review of both primary and secondary data. The primary sources reviews the relevant law of international humanitarian law from treaties and conventions. The research also analyses secondary data in the form of a literature review. The qualitative approach is employed because the study seeks to assess the value of the existing legal framework as well as to investigate its ability to deal with conflicts of a mixed nature. The qualitative approach therefore works best in facilitating this assessment exercise. The primary data provides the actual content of the law in review whereas the secondary data provides qualitative commentary of the primary data all of which contribute to the research objectives.

The selected methodology was done with due consideration to the law of non-international armed conflict which forms part of public international law. Primary sources of law consisting of treaty law dealing with non-international armed conflict and customary international humanitarian law are interpreted to determine the content and limits inherent in the notion of 'non-international armed conflict'. The *chapeaux* of Common Article 3 which broaches the terminology 'armed conflict not of an international character' and article 1(1) of Additional

⁶⁴ *Ibid.*, at 44-45.

Protocol II is looked at within the context of the law of treaty interpretation embodied in articles 31 to 33 of the Vienna Convention on the Law of Treaties.⁶⁵

Besides the primary rules, subsidiary sources of public international law consisting of judicial decisions and scholarly writings are used to provide the necessary support in the interpretation.⁶⁶ Moreover, customary international law are used to examine and clarify issues where appropriate. The *Tadić* definition of armed conflict for instance constitutes customary international law and is employed as such.⁶⁷ Thus, the methodology used in this dissertation is informed by the relationship between customary international law as a primary source of public international law⁶⁸ and judicial decisions and teachings which constitute subsidiary sources of public international law.⁶⁹

1.9 Limitation of Study

This study focuses on two key eras in Sierra Leone's recent history: the period between 1991 and 2002, during which the Civil War was fought; and the period between 2002 and 2018, during which the country saw two electoral revolutions. It focuses on the lessons learned during and after the conflict, as well as the implications of those lessons for the classification of the Sierra Leonean armed conflict. This is a limitation because the Sierra Leone conflict can be studied from

⁶⁵ Vienna Convention on the Law of Treaties, 1155 UNTS 331 (hereinafter the Vienna Convention).

⁶⁶ Article 38(1)(d) ICJ Statute. Statute of the International Court of Justice 1945, TS No 993 (hereinafter ICJ Statute).

⁶⁷ Judicial practice supports the customary status of the *Tadic* formula. Not only did each judgment of the ICTY employ the *Tadic* formula as its starting point (International Committee of the Red Cross Opinion Paper, *How is the Term "Armed Conflict" Defined in International Humanitarian Law?* (2008), available at <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf> (accessed 27 February 2022)) but subsequent International Criminal Tribunals including the International Criminal Tribunal of Rwanda, the Special Court for Sierra Leone and the International Criminal Court also employ the *Tadic* formula to determine the existence of war crimes. The inclusion of *Tadic* in the war crime provisions of the Rome Statute is of further significance as the drafters of the Rome Statute codified existing custom only. The *Tadic* formula has further been endorsed by the ICRC itself (International Committee of the Red Cross, Commentaries, *Updated Commentary on the Third Geneva Convention: Convention (III) Relative to The Treatment of Prisoners of War* (2020), paras 458 and 469). A close reading of the 2020 Commentaries to Common Article 3 reveals that the ICRC considers the *Tadic* formula to confirm the definition of non-international armed conflict extensively reflected by other institutions, the ICRC itself as well as state practice as early as 1962 (ICRC 2020 Commentaries, paras 457-459). Military manuals as valuable sources of customary international humanitarian law further endorse the *Tadic* formula. Scholarship too subscribes to the *Tadic* formula.

⁶⁸ *Ibid.*, article 38(1)(b).

⁶⁹ *Ibid.*, article 38(1)(d).

various angles including the period preceding the war and how those events had an effect on the conflict and the parties to the conflict.

1.10 Structure of the study

The dissertation consists of six chapters. The first chapter is the introductory part of the research and outlines the background of the research, the research problem and questions, reviewing the existing literature on classification of armed conflicts in general and non-international armed conflicts specifically. The chapter also discusses the limitation of the study and the research methodology.

The second chapter examines in detail the definition and legal effect of the classification of armed conflicts as international, non-international, and conflicts of a mixed nature or 'internationalized internal armed conflict'.

The third chapter discusses the legal regime applicable to mixed conflicts and what a legal regime for such conflicts should take into account.

The fourth chapter discusses in **the existence of Additional Protocol II on non-international armed conflicts and its consequences as pertains to the Sierra Leone conflict.**

The fifth chapter deals with the changing nature of armed conflicts through internationalisation. The final chapter sets out the conclusion and provide suggestions and recommendations.

CHAPTER TWO: THE CLASSIFICATION OF INTERNATIONAL ARMED CONFLICTS

2 Introduction

This chapter examines the definition, classification and legal implications of classification of armed conflicts under international law.

The Common Article Three of the Geneva Conventions of 12 August 1949, even though it fails to explicitly define what an international armed conflict is, gives a broad range of situations which can be described or seen as examples of international armed conflict. Amongst these situations are instances of declared war or any armed conflict which may arise between two or more states even if one party does not recognise the state of war and when there is a partial or total occupation of one state by another even if the occupation is not met with armed resistance. In such cases where there is recognised international armed conflict, the full force of international humanitarian law applies. It is important, in this connection, to first look at what an armed conflict is under international law.

2.1 Definition and Classification of Armed Conflicts under International Law

There exists no treaty law definition for armed conflicts, including the text of the Geneva Convention. In an attempt to define what constitutes an armed conflict, the International Criminal Tribunal for Rwanda (ICTR) in *The Prosecutor v. Jean-Paul Akayesu* posited that an armed conflict is said to exist when two or more organised armed forces are involved in protracted armed confrontation.⁷⁰ This definition adopted by the ICTR was based on the decision of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) in *The Prosecutor v. Tadić* which defined an armed conflict as a “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”⁷¹

Armed Conflict refers to military conflicts between two or more states, a state and a non-state entity, a state and a dissident group, and two ethnic factions inside a state.⁷² The term "armed conflict" is also defined as hostile military engagement between two or more States that may or

⁷⁰ ICTR-96-4-A, International Criminal Tribunal for Rwanda (ICTR), 1 June 2001
<https://www.refworld.org/cases,ICTR,4084f42f4.html> (accessed 28 February 2022)

⁷¹ IT-94-1-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 15 July 1999
<https://www.refworld.org/cases,ICTY,40277f504.html> (accessed 28 February 2022)

⁷² Akinrinade (n 25 above) 409

may not constitute a state of war, or a civil war characterised by hostilities between the State and an opposing faction or between opposing factions.⁷³

Armed conflicts are generally classified into two categories under the treaty law; international armed conflicts (IAC) occurring between two or more States; and non-international armed conflicts (NIAC) which occurs between State and non-governmental armed groups, or only between armed groups. The distinction between these two broad categories have been described as arbitrary, broad and difficult to justify since it frustrates the humanitarian purpose of the law of war in most of the instances in which war occurs presently.⁷⁴

Mixed conflicts, another type of armed conflict, combines characteristics of both international and non-international armed conflicts. They include situations where more than one type of armed conflict exists.

2.2 International Armed Conflict

In order for an armed conflict to be classified as an international armed conflict, it would basically necessitate the involvement of the armed forces of at least two sovereign states. International armed conflicts have been defined as the use of force in a warlike manner between States, whether or not they recognise themselves to be at war; all "measures short of war," regardless of whether or not they are compatible with Article 2(4) of the UN Charter.⁷⁵ The Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) in Article 1(4) expands the definition of international armed conflicts to include armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination.

⁷³ Conde HV *A Handbook of International Human Rights Terminology* (1999) 23

⁷⁴ J Stewart 'Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict' (2003) 85 *International Review of the Red Cross* 313.

⁷⁵ Akinrinade (n 25 above) 410

International law considers the exchange of hostilities between two or more states to be sufficient to automatically activate the applicability of international humanitarian law.⁷⁶ Therefore, when parties to a war commit atrocities, their acts are evaluated by the standards of international humanitarian law, especially the Four Geneva Conventions of 1949.⁷⁷

2.3 Non-International Armed Conflict

This sort of armed conflict entails the involvement of the military forces of a state and other forces inside the same state, including those fighting liberation wars and rebels for various reasons, but does not include internal disturbances or tensions.⁷⁸

Non-international armed conflict or internal armed conflict is an armed conflict that takes place solely within one State and between Parties from that State, whether between the government and a faction or between factions.⁷⁹ Common Article 3 of the 1949 Geneva Conventions refers to a "non-international armed conflict taking place within the territory of one of the High Contracting Parties."⁸⁰ This dissertation subscribes to characterization of armed conflicts by declaring what they are not; it does not provide any substantive or procedural identifiers.⁸¹ However, defining a civil war, which is closely tied to internal armed conflicts, has not posed a comparable challenge. A civil war, according to Hans Kelsen, is "the conflict between a revolutionary organization and a legitimate government."⁸² According to Michael B. Akehurst:

⁷⁶ Chelimo n 13 above.

⁷⁷ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114 [First Geneva Convention]; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217 [Second Geneva Convention]; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316 [Third Geneva Convention]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516

⁷⁸ Akinrinade (n 25 above) 409

⁷⁹ Mccoubrey H, *International Humanitarian Law: The Regulation of Armed Conflicts* (1990) 121.

⁸⁰ 1949 Geneva Conventions; The Convention for the Protection of Cultural Property in the Event of Armed Conflict, Art. 19(1) (1954) (referring to "armed conflict not of an international character"), Convention for the Protection of Cultural Property in the Event of Armed Conflict, Protocol for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 387.

⁸¹ Georges Abi-Saab, Non-International Armed Conflict, in *International Dimensions of International Humanitarian Law* 222 (Henry Dunant Inst. & UNESCO eds., 1988).

⁸² Hans Kelsen, *Principles of International Law* 28 (2D ED. 1966) (1952).

A civil war is a conflict between two or more groups of citizens inside the same nation. A civil war may be waged for the control of a state's government, or it may be precipitated by a portion of the population's desire to secede and create a new State. These two sorts of civil war are the most prevalent, but there are other types as well. For example, rebels may attempt to compel the government to make concessions (such as the granting of regional autonomy) without attempting to topple the government or build a new state. It is even feasible for groups to wage civil war while the government stays neutral and powerless (e.g., the Lebanese civil war of 1975-1976, or the hostilities between the Smith regime and the Patriotic Front in Rhodesia between 1972 and 1979, at a time when Rhodesia was legally still a British colony).⁸³

Protocol II clarifies the international law requirements applicable to non-international armed conflicts. The Protocol's material scope of application is stated as:

All armed conflicts not covered by Article 1 of [Protocol I] that occur on the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise sufficient control over a portion of its territory to conduct sustained and concerted military operations and to implement Protocol II.⁸⁴

This provision seeks to broaden Common Article 3 to the Geneva Conventions. However, there are some challenges with the provision. It has several limitations that were not included in the original proposal presented by the International Committee of the Red Cross (ICRC) to the 1974-1977 Diplomatic Conference. The ICRC draft offered a positive definition of non-international armed conflict, but the final version included additional conditions that exacerbated the situation. Article 1 (1) of the ICRC draft Protocol II stated, "The present Protocol shall apply to any armed situations not protected by Article 2 of the 1949 Geneva Conventions involving armed forces or other organized armed groups under responsible direction."⁸⁵ In addition, Protocol II now requires that rebels have sufficient territorial control to conduct prolonged and coordinated

⁸³ Michael B. Akehurst, *Civil War*, in *Encyclopedia of Public International Law*, 597.

⁸⁴ Protocol II

⁸⁵ n 32 above

military operations. This may need not just a high-intensity military battle, but also territory control sufficient to enable rebels to revert to conventional warfare.⁸⁶

Non-international armed conflicts are primarily controlled by Common Article 3 of the Geneva Conventions of 1949 and Protocol II.

2.4 Internationalized (Internal) Armed Conflict

An internationalized domestic armed conflict is a civil war in which foreign military forces engage.⁸⁷ This definition is not comprehensive, though. According to Pietro Vierri, a non-international military conflict might become internationalized if the following conditions are met:

A State victim of an uprising recognizes the insurgents as belligerents; (2) one or more foreign States help one of the parties with their military forces; or (3) the armed forces of two foreign States intervene, each in support of a different side.⁸⁸

The expression “internationalized armed conflict” is, in essence an emerging legal terminology that intends to address the gap between the two traditional characterisation of armed conflicts, and does not represent a third category of armed conflict besides the two earlier identified. It rather refers to a situation which is a “non- international armed conflict”, having an international dimension. The international involvement may take one of the following forms:

- a) one or more third states or a regional or international organization using a multinational force intervenes to support a state involved in an armed conflict against an organized group,⁸⁹

⁸⁶ As above

⁸⁷ Hans-Peter Gasser, Internationalized Non-International Armed Conflicts: Case Studies of Afghanistan, Kampuchea, and Lebanon, 33 AM. U.L. Riv. 145, 145 (1983).

⁸⁸ As above

⁸⁹ International Committee of the Red Cross ‘Internationalized internal armed conflict’ https://casebook.icrc.org/a_to_z/glossary/internationalized-internal-armed-conflict (accessed 23 October 2023)

- b) one or more third states or a regional or international organization using a multinational force intervenes to support an armed group involved in an armed conflict against a state and⁹⁰
- c) other possible combinations between the foregoing two scenarios.⁹¹

From a legal perspective, the above situations can be observed as evolving into any of following three specific cases:

- a) They may continue to be “non—international armed conflict”
- b) They may become an “international armed conflict” or
- c) They may become “mixed” conflicts, having a combination of the above two.

In these types of conflicts, depending on the nature of the parties concerned, either International humanitarian law of non-international armed conflicts would apply to the relations between some of the parties, for example between armed groups and intervening foreign forces, while international humanitarian law of international armed conflicts would apply to other relations such as between a state intervening militarily in support of two adverse parties in a non-international armed conflict. This could be observed in the Sierra Leone situation to be analysed in the next chapter.

Having examined the definition, classification and legal implication of classification of armed conflict under international law in this chapter, the next chapter looks at the legal effect of Common Article 3 to the Geneva Conventions as it relates to non-international armed conflicts with due regard to the conflict in Sierra Leone.

⁹⁰ As above.

⁹¹ As above.

CHAPTER THREE: THE RELEVANCE OF COMMON ARTICLE THREE TO THE GENEVA CONVENTIONS ON NON-INTERNATIONAL ARMED CONFLICTS

3 Introduction

This chapter discusses in detail the legal effect of Common Article 3 to the Geneva Conventions as relates to non-international armed conflicts with due consideration of the conflict in Sierra Leone. Common Article 3 is the term used for the identical language of Article 3 of the four Geneva Conventions of August 12, 1949.

3.1 The Rules Applicable

It is debatable how international humanitarian law should be applied to the crisis in Sierra Leone. Some scholars would argue that all of the legislation indicated in the previous chapter should apply, despite the fact that the issue is at best a complex one. Some scholars and the ICRC have suggested that a single legal regime is applicable in all cases of armed conflict.⁹² The Appeals Chamber in *The Prosecutor v. Delalic* posited that the difference between international and non-international armed conflicts was "losing its validity" in terms of human beings.⁹³ The Tribunal stated further:

Why protect civilians from belligerent violence, prohibit rape, torture, and the wilful destruction of hospitals, churches, museums, and private property, and prohibit weapons that cause unnecessary suffering when two sovereign states are at war, but refrain from enacting the same bans or providing the same protection when armed violence has erupted "only" within the territory of a sovereign state? If international law, while dutifully protecting the legitimate interests of states, must eventually shift to the protection of human beings, then it is only logical that the aforementioned contradiction would gradually lose significance.⁹⁴

⁹² International Committee of the Red Cross, Report on the Work of the Conference of Government Experts, Geneva, 1971, paragraph 284; International Committee of the Red Cross, Report on the Work of the Conference of Government Experts, Geneva Volume 1, paragraph 2.332.

⁹³ T Meron 'The Humanization of Humanitarian Law' (2000) 94 *American Journal of International Law* 262

⁹⁴ As above

International humanitarian law as pertains to internal armed conflicts is not yet sufficiently evolved, however; some provisions of international humanitarian law can be applied to mixed conflicts. Common Article 3 of the 1949 Geneva Conventions, Protocol II Additional to the Four Geneva Conventions, and the whole of international humanitarian law subject to a separate agreement between the Parties are the laws that form the legal regime for mixed conflicts.

Regardless of the degree of development of the rules, it is fair to assume that the standards of international humanitarian law established to protect civilians should apply to mixed conflicts.

3.1.1 Article 3 Common to the 1949 Geneva Conventions

Common Article 3 is sometimes referred to as a "Convention inside the Conventions" or a "miniature Convention". It stipulates that in the event of a non-international armed conflict happening on the territory of one of the parties, each party to the conflict is obliged to respect some minimal conditions. Common Article 3 states:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Though Common Article 3 to the 1949 Geneva Conventions makes provisions for what constitutes just and fair conduct in armed conflicts not of an international character, it fails to elucidate what an armed conflict entails and what makes it non-international in nature. This has

sometimes led to what can be viewed as an uneven and inconsistent application of some international treaties. The question of state sovereignty casts yet another dark shadow on the interpretation and application of international conventions and treaties. This, therefore, calls for a universally or at the very least a largely agreed upon definition of what constitutes a conflict not of an international character. The word “not” is used in understatements to suggest that the opposite of a following word or phrase is true. It thus follows that an armed conflict not of an international character would indicate the opposite of an armed conflict of an international character, i.e., an armed conflict between two or more states. Following this logic, some scholars hold the view that any armed conflict that does not fall under the definitions in Common Article 2 should be categorised as a non-international armed conflict and therefore the rules of Common Article 3 of the 1949 Geneva Conventions should apply.

This provision further stipulates an international minimum standard of protection to persons who are not taking active part in hostilities. The 1949 Geneva Conventions have been ratified by a majority of states and Common Article 3 has attained the status of customary international law according to the International Court of Justice (ICJ) as established in the case of *Nicaragua v United States of America*.⁹⁵ Meron, while agreeing that Article 3 expresses the “quintessence of humanitarian rules found in other substantive provisions of the Geneva Conventions” is not sure that the rules of Article 3 have necessarily attained the character of customary rules of international law.⁹⁶ He further notes that the ICJ in the *Nicaragua* case failed to enquire whether *Opinio juris* and state practice support the position of the crystallisation of Article 3 into customary law.⁹⁷

Common Article 3 applies to "low intensity, open, and armed conflicts involving reasonably organised armed forces or armed groups that occur only on the territory of a single State."⁹⁸ The

⁹⁵ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) Merits, Judgment. I.C.J. Reports 1986, paragraph 14.

⁹⁶ T Meron *Human Rights and Humanitarian Norms as Customary Law* (1989) 27

⁹⁷ As above

⁹⁸ RK Goldman ‘International Humanitarian Law: Americas Watch’s Experience in Monitoring Internal Armed Conflicts’ (1993) 9 *American University International Law Review* 57

provisions do not apply to simple lawlessness or ephemeral, unorganized insurrection.⁹⁹ It also regulates when several armed groups inside a nation engage in combat without the participation of government troops.

Once it can be objectively noted that a situation amounts to an armed conflict, common Article 3 immediately applies. The terms of Common Article 3 bind all parties to war, including both government and rebel troops.¹⁰⁰ The fact that rebel forces are not parties to the Conventions does not exempt them from adhering to its norms.¹⁰¹ This is evident from the interpretation of the wording of Common Article 3, which states that "in the event of a non-international armed conflict occurring on the territory of one of the High Contracting Parties, each party to the conflict is obligated to adopt at a minimum the following provisions."¹⁰²

Thus, the obligation to adhere to the provisions of Common Article 3 is unconditional and operates independently of the other party's obligation. As such, a breach of Article 3 by one party cannot be cited by the other party as a reason for its failure to comply with the provisions of the article.

The ambiguity surrounding the article had been used by states to further limit its applicability.¹⁰³ The problem with the article is that it is applicable only to a situation, which is an "armed conflict". However, as stated earlier, the term "armed conflict" has not been defined in any of the Conventions. Therefore, in the absence of the definition of armed conflict, it is left to the state to determine whether an armed conflict exists or not.¹⁰⁴ In practice, low intensity conflicts are not considered as armed conflict.¹⁰⁵

⁹⁹ As above, 59

¹⁰⁰ As above, 58

¹⁰¹ As above, 57

¹⁰² 1949 Geneva Convention

¹⁰³ Gandhi M 'Common Article 3 Of Geneva Conventions, 1949 In The Era Of International Criminal Tribunals' (2001) 11 *ISIL Year Book of International Humanitarian and Refugee Law*
http://www.worldlii.org/int/journals/ISILYBIHRL/2001/11.html#Footnote_auth (accessed 6 March 2022)

¹⁰⁴ As above

¹⁰⁵ As above

In internal armed conflicts, governments are not obligated to provide the freedoms embodied in the Common Article, such as prisoner of war status, to their adversaries. Waldman A. Soft observes that many governments are loath to grant rebellious fighters' prisoner of war status since doing so would prohibit them from implementing their treason laws. These governments fear that international protection for combatants in internal armed conflicts would elevate the status of insurgents, encourage rebellion by reducing the individual costs to rebels, and give dissidents "a license to kill, maim, kidnap, and destroy, subject to only honourable detention as prisoners of war."¹⁰⁶

Article 3 of the Common Convention emphasises fundamental humanitarian treatment and minimal procedural safeguards.¹⁰⁷ In accordance with the wording of the article, persons who have either laid down their weapons or been made *hors of battle* for whatever reason, must be treated in a humane manner.¹⁰⁸ Murder, mutilation, brutal treatment and torture, kidnapping of hostages, outrages against human dignity, and sentencing and execution without due process of law are all prohibited under Article 3. Additionally, the provision mandates the collection and care of injured and ill and encourages Parties to a conflict to enact the Conventions' provisions.¹⁰⁹

3.2 The *Prosecutor v Tadić* and Non-International Armed Conflicts

Although it made no attempt to clarify what non-international armed conflict was, the Appeals Chamber in the *Tadić* case defined an armed conflict as 'armed conflict exists whenever there is resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.' The Trial Chambers, in applying the definition of armed conflict as postulated by the Appeals Chamber in the Tadic Case, further elaborated on the definition, focusing "on two aspects of a conflict, the intensity of the conflict and the organization of the parties to the conflict." The Appeals Chamber

¹⁰⁶ Goldman (n 52 above) 59.

¹⁰⁷ Abi-Saab M 'The "General Principles" of humanitarian law according to the International Court of Justice' *International Review of the Red Cross* <https://international-review.icrc.org/sites/default/files/S0020860400025833a.pdf> (accessed 6 March 2022)

¹⁰⁸ As above

¹⁰⁹ Article 3(2) of Common Article 3

also took advantage of this case, being the first case that came before it, to explore the whole of the substantive law applicable to internal armed conflicts. It focused especially on the evolution of customary international law rules relating to the conduct of hostilities in internal conflicts, drawing especially from the Spanish Civil War, the Biafran conflict and, the conflict between Iraq and the Kurdish insurgents. It also made use of certain UN General Assembly resolutions such as Resolution 2444 (1968) and 2675 (1970) in coming out with an elaborate body of rules to govern internal armed conflicts which went beyond the Common Article 3 and Additional Protocol II.

3.3 Entire Body of International Humanitarian Law

In some circumstances, it may be feasible to apply all of the standards of international humanitarian law.

3.3.1 Recognition of Belligerency by the Government

One exception to the concept that war may only occur between states, according to Kelsen, when rebels in a civil war are acknowledged as a belligerent force.¹¹⁰ In such circumstances, the whole of international humanitarian law is relevant.

According to Conde, belligerency is a non-international or international military confrontation that is controlled by international law. When this phrase is used to a non-international armed conflict, it indicates that the intensity of the conflict has grown to the point that the state recognises a condition of belligerency, as opposed to insurgency or revolt. When used in an international military conflict, it signifies that the concerned states have acknowledged that the conflict has reached the level of belligerence, hence triggering the application of international law.¹¹¹

¹¹⁰ According to Oppenheim: In the proper sense of the term a civil war exists when two opposing parties within a State have recourse to arms for the purpose of obtaining power in the State, or when a large portion of the population of a State rises in arms against the legitimate Government. As war is an armed contention between States, such a civil war need not be war from the beginning, nor become war at all, in the technical sense of the term. But it may become war through the recognition of the contending parties, or insurgents, as a belligerent Power. Oppenheim's International Law: A Treatise, Disputes, War and Neutrality (H. Lauterpacht Ed., 7th Ed. 1948-52).

¹¹¹ Conde (n 31 above)13.

The Nigerian Civil War is an example of the aforementioned circumstance. In May of 1967, when separatist insurgents proclaimed the "Republic of Biafra," the Nigerian government acknowledged a state of war. The Nigerian government created a "Operational Code of Conduct" for the conduct of the battle against the insurgents to lead its troops, it was effectively a restatement of the 1949 Geneva Conventions' principles.¹¹² Without this acknowledgment, the war would have been governed by the few customary international law norms applicable to internal armed conflicts.¹¹³ Even though Nigeria was a party to the Geneva Conventions of 1949, it was obligated to implement only the provisions of Common Article 3 pertaining to internal armed conflicts, and if practicable, the whole Geneva Conventions subject to an agreement between the government and separatist forces. Such an agreement was, however, highly unlikely at that point in time.¹¹⁴

In every war when a state of belligerency is recognised, the parties are obliged to have their conduct assessed by the whole of the international humanitarian law applicable to armed conflicts. In *Prosecutor v. Tadic*, the International Court of Justice held that it is an established principle of customary international law that the rules of war may become applicable to non-international armed conflicts of a particular severity under the notion of "recognition of belligerency."¹¹⁵

3.3.2 Special Agreement among the Parties

Parties to an internal armed conflict might also agree to fully apply international humanitarian law during the fight. According to Common Article 3, parties to an internal armed conflict should seek to implement, by specific agreements, all or a portion of the remaining articles of the 1949 Geneva Conventions.¹¹⁶ An example is the Memorandum of Understanding of November 27,

¹¹² Operational Code of Conduct for The Nigerian Army, <https://casebook.icrc.org/case-study/nigeria-operational-code-conduct> (accessed 15 April 2022); 1949 Geneva Conventions.

¹¹³ James-Eluyode J 'Enforcement of international humanitarian law in Nigeria' (2003) 2 *African Human Rights Law Journal* 264.

¹¹⁴ As above.

¹¹⁵ *Prosecutor v. Tadic*, No. IT-94-1-T (I.C.T.Y. May 7, 1997) (Opinion and Judgment), 36 I.L.M. 908 (1997) [Tadic Opinion].

¹¹⁶ 1949 Geneva Conventions.

1991, between Yugoslavia and Croatia.¹¹⁷ The memorandum was drafted with the aid of the ICRC while the war in the former Yugoslavia was still regarded as a non-international military conflict.¹¹⁸ The Parties, however, omitted Common Article 3 from the wording of the agreement. In *Prosecutor v. Tadić*, The International Criminal Tribunal for the Former Yugoslavia took notice of the agreement between the major groups in the Bosnia and Herzegovina war.¹¹⁹ This agreement was based on Common Article 3 to the Geneva Conventions, and it obligated the Parties to comply with the substantive principles of internal armed conflict contained in Common Article 3. In addition, on the basis of Common Article 3, paragraph 3, the Parties decided to adopt certain Geneva Conventions rules pertaining to international armed conflicts.

What must be understood though is that with the levels of interconnectedness and mutual reliance engendered by globalisation, there is usually no clear distinction between the different types of armed conflict. This is clearly exemplified in the proceedings from the Appeals Chamber of *The Prosecutor v. Tadić*, in the International Criminal Tribunal for the former Yugoslavia.

Against the background of the international and non-international armed conflicts and the application of and the fact that international humanitarian law as pertains to internal armed conflicts is not yet sufficiently evolved, as analysed in this chapter. With due consideration to the fact that Common Article 3 of the 1949 Geneva Conventions, Protocol II Additional to the Four Geneva Conventions, and the whole of international humanitarian law subject to a separate agreement between the Parties are the laws that form the legal regime for mixed conflicts, the next chapter examines Additional Protocol II within the context of non-international armed conflicts.

¹¹⁷ Yugoslavia/Croatia, Memorandum of Understanding Of November 27, 1991 <https://casebook.icrc.org/case-study/former-yugoslavia-special-agreements-between-parties-conflicts> (accessed 15 April 2022)

¹¹⁸ As above.

¹¹⁹ As above.

CHAPTER FOUR: THE EXISTENCE OF ADDITIONAL PROTOCOL II ON NON-INTERNATIONAL ARMED CONFLICTS AND ITS CONSEQUENCES

4 Introduction

This chapter discusses Additional Protocol II, its application, significance and legal consequences as pertains to non-international armed conflicts.

4.1 Protocol Additional to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

Additional Protocol II has been described as the most significant and comprehensive treaty when it comes to the regulation of non-international armed conflicts, although it is supplementary to Common Article 3.¹²⁰ Some rules of Additional Protocol II have achieved the status of customary international law.¹²¹ Once the threshold in the *Tadić* case has been met, the need for application of Additional Protocol II under treaty law remains with regard to those provisions that fall outside the realm of customary international humanitarian law.¹²²

Additional Protocol II applies to non-international armed conflicts:

‘which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.’¹²³

This article defines the scope of application of the instrument. However, Common Article 3 applies more widely because of its status as customary international law, the Protocol applies in

¹²⁰ Bradley M Additional Protocol II: Elevating the minimum threshold of intensity? *International Review of the Red Cross* (2020) 102

¹²¹ As above

¹²² As above

¹²³ Article 1(1) of Article 4 of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

conjunction with it.¹²⁴ However, this instrument does not apply to wars of national liberation, by virtue of Article 1(4) of Additional Protocol I.

As in the case of common Article 3, a non-international armed conflict within the meaning of Additional Protocol II can only exist if the situation attains a degree of violence that sets it apart from cases of internal tensions or disturbances.¹²⁵ Protocol II has a higher application threshold. It specifies some objective requirements, such as the rebel forces' control over a certain region and the ability to conduct "sustained and coordinated operations."¹²⁶ Therefore, the rebels must have the capacity to keep detainees humanely and provide proper medical treatment for the injured and ill.¹²⁷

The Protocol stipulates that "wounded, ill, and shipwrecked persons shall be respected, treated humanely, and cared for without difference other than medical reasons."¹²⁸ Protocol II extends the basic provisions of Protocol I regarding the protection of civilian populations from the effects of hostilities to non-international armed conflicts.¹²⁹ This is done by comparison and to interpret the duties of Protocol II, which also states that "neither the civilian population as a whole nor individual civilians may be the target of assaults..."¹³⁰

Physical punishment, terrorism, enslavement and the slave trade, crimes previously outlawed by Common Article 3, as well as threats to do any of these acts are prohibited under Protocol II.¹³¹ The Protocol prohibits the use of child soldiers. As such, children under the age of fifteen

¹²⁴ Goldman (n 60 above) 60.

¹²⁵ S Vite 'Typology of armed conflicts in international humanitarian law: legal concepts and actual situations' (2009) 91 *International Review of the Red Cross* 79

¹²⁶ As above

¹²⁷ As above

¹²⁸ Article 4 of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

¹²⁹ n 65 above 63

¹³⁰ Article 13 of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

¹³¹ Article 4 of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

should neither be enlisted in the armed forces or organisations nor be permitted to participate in hostilities."¹³²

Article 5 of Protocol II addresses the issue of individuals whose freedom have been constrained. This rule may be contrasted with the customary humanitarian law provisions applicable to international armed conflicts.¹³³ The Third Geneva Convention governs the treatment of prisoners of war in international armed conflicts, and the Fourth Geneva Convention relates to the treatment of civilians and civilian internees, among others.¹³⁴ Article 5 of Protocol II deals with all people who are deprived of their liberty or restrained for conflict-related causes.

Article 6 of Protocol II outlines the provisions for criminal prosecutions of armed conflict-related acts.¹³⁵ Only courts providing the requisite safeguards of independence and impartiality impose sentences.¹³⁶ The accused must be provided with the appropriate rights and defenses¹³⁷ and the act or omission must have been a violation of the law at the time it was performed.¹³⁸ There is a restriction on the use of the death sentence for persons under the age of eighteen at the time of the crime, as well as for pregnant women and young mothers.¹³⁹ Article 6 suggests providing "the fullest feasible amnesty" to people who have engaged in the armed conflict and to those imprisoned or jailed because of the armed conflict.¹⁴⁰

¹³² Article 4(3)(c) of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

¹³³ N Quéniwet 'Applicability Test of Additional Protocol II and Common Article 3 for Crimes in Internal Armed Conflict' in D Jinks, S Solomon & J Maogoto (eds) *Applying international humanitarian law in judicial and quasi-judicial bodies: International and domestic aspects* (2014) 36

¹³⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949

¹³⁵ Article 6(1) of of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

¹³⁶ Article 6(2) of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

¹³⁷ Article 6(2)(a) of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

¹³⁸ Article 6(2)(c) of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

¹³⁹ Article 6(4) of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

¹⁴⁰ Article 6(5) of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

Having analysed Additional Protocol II, looked at its application and legal significance as well as legal consequences in relation to non-international armed conflicts in this chapter, the next chapter deals with the changing nature of non-international armed conflicts through 'internationalisation'.

CHAPTER FIVE: CHANGING NATURE OF NON-INTERNATIONAL ARMED CONFLICTS THROUGH INTERNATIONALISATION

5.1 Introduction

This chapter discusses the term 'Internationalisation' of a NIAC. This chapter discusses this concept by establishing how a NIAC can be transformed into an IAC or a conflict with international dimensions. The chapter then identifies various examples of internationalisation of conflicts then looks at the specific example of Sierra Leone and the factors that the author believes internationalised the conflict.

5.2 Internationalisation

Internationalisation of a non-international armed conflicts means the transformation of a *prima facie* non-international armed conflict into an international one, which in essence renders the laws applicable to NIACs insufficient to govern the conflict in question.¹⁴¹ There are two forms that the internationalisation of a NIAC can occur, first through 'standard internationalisation' and secondly through 'complementary internationalisation'.

Standard internationalisation occurs when independent subjects of international law engage in a conflict against one another and as the conflict develops, either as the result of an intervention by an *external* actor such as a third state or an international organisation, or by an *internal* development if the territorial state dissolves into two or more successor states during the conflict.¹⁴² The Complementary internationalisation as it is so called refers to situations in which the state/non-state asymmetry of the parties is maintained, yet the situation transforms into an international armed conflict in law.¹⁴³ This process may either be *absolute*, as with wars of national liberation, or it may be *relative*, as in internationalisation through recognition of belligerency, special agreements, or unilateral declarations.¹⁴⁴

¹⁴¹ M Kubo, Internationalization in *Internationalized Armed Conflicts in International Law* Oxford, 2018 online edn, Oxford Academic 20 Sept. 2018 <https://doi.org/10.1093/oso/9780198819868.003.0002>, accessed 1 December 2022.

¹⁴² As above

¹⁴³ As above

¹⁴⁴ As above

Common Article 2 of the Geneva Conventions defines IACs as conflicts between states. Hence, for a conflict to be governed by the laws of IACs through internationalisation of a NIAC, there must also be the presence of a treaty and/or principle of customary international law that expands the definition of an IAC to include as parties of state-like entities, or for the non-state actor which is a party to a NIAC with a state to be considered as acting on behalf of a third state.¹⁴⁵ There are some jurists who argue that most of the rules that apply to IACs should apply to NIACs as well.

A classic example of a standard internationalisation is the Syrian conflict. Though the Syrian conflict started in the context of the wider Arab Spring, the hostilities have now grown to include various rebel forces with their foreign allies and support fighting against the government and amongst themselves.¹⁴⁶ Currently, the factions involved in the war include the Syrian Arab Republic represented by the Syrian Armed Forces being supported by Iran, Russia and Hezbollah, with Russia conducting airstrikes and ground operations since 2015, the Syrian Interim Government with its fighting force being the Syrian National Army and the Free Syrian Army with other competing factions such as the Islamic State.¹⁴⁷ The United States of America also in its war against terror launched a number of airstrikes targeting the Islamic State forces in the country. In other cases, a NIAC can be said to have been internationalised even when there is no direct combat of foreign forces in the conflict. This is exemplified by the ruling of the ICTY Appeals Chamber in *Tadić*, where it considered that the acts of the Bosnian Serbs had to be attributable to the FRY/Serbia in order for the conflict to become international, and fashioned the 'overall control' test of responsibility in order to do so.

As far as complementary internationalisation is concerned, the Sierra Leone conflict fits the description. From the start, the Sierra Leone conflict had international elements in that the RUF

¹⁴⁵ M Milanovic What Exactly Internationalizes an Internal Armed Conflict? <https://www.ejiltalk.org/what-exactly-internationalizes-an-internal-armed-conflict/> accessed 1 December 2022.

¹⁴⁶ Centre for Preventive Action 'Conflict in Syria' <https://www.cfr.org/global-conflict-tracker/conflict/conflict-syria> accessed 1 December 2022

¹⁴⁷ As above

fighters had been trained in Libya and were receiving support from Liberia and possibly Burkina Faso and Ukraine. The government however, viewed it as an insurrection and engaged in combat to quell the rebellion which did not culminate in sustained success. This led to the signing of the Lomé Agreement in 1999 between the Government of Sierra Leone and the Revolutionary United Front, a special agreement, the terms of which I believe internationalised the conflict and made applicable the use of international humanitarian law in dealing with the former rebels.

5.3 Examining the Sierra Leone conflict as an internationalised conflict

Republic of Sierra Leone Military Forces and the Revolutionary United Front (R.U.F. /S.L.) were the primary players in the war in Sierra Leone. Other Parties participated in diverse degrees at different times. These include the Armed Forces Revolutionary Council (A.F.R.C.), the Civil Defense Forces (the best known of which is the Kamajo militia), foreign fighters, and the regional peacekeeping group, Economic Community of West African States Monitoring Group (E.C.O.M.O.G.).¹⁴⁸

5.3.1 Parties to the conflict- The Republic of Sierra Leone Military Forces

The primary components of Sierra Leone's armed forces were the army and navy. Before the battle, it was thought that between 3,000 and 4,000 soldiers comprised the army.¹⁴⁹ In February 1998, the number reached 14,000.¹⁵⁰ Following the first invasion of the RUF in March 1991, the army rapidly increased from 3,000 to over 6,000 men, with the Momoh dictatorship recruiting the vast majority of them from Freetown vagrants.¹⁵¹ After the April 1992 *coup* by young army officers, the number of recruits increased substantially, notably due to the regime's popularity among young people. Many young persons joined the Sierra Leone army as fresh recruits in 1992, and by 1993, the number of young soldiers under the age of fifteen was estimated to have reached 1,000.¹⁵² The initial estimated strength of the Sierra Leonean army and navy was 3000

¹⁴⁸ Akinrinade B 'International Humanitarian Law and the Conflict in Sierra Leone' 15 *Notre Dame Journal of Law Ethics & Public Policy* 391 (2001) 413.

¹⁴⁹The Momoh Years: 1985-92. In 1990, the figure for active members of the armed forces of Sierra Leone was 3,150, with 3,000 in the army and 150 in the navy.

¹⁵⁰ Akinrinade (n 92 above) 427

¹⁵¹ Abdullah & Muana 'The Military Balance 1994/1995'(1995) *International Journal for Strategic Studies* 248

¹⁵² Akinrinade (n 94 above) 427

and 200, respectively.¹⁵³ As a result of the 1999 peace deal made in Lomé, Togo, continuous efforts were made to boost the size of the army to 5,000 personnel.

5.3.2 The Revolutionary United Front of Sierra Leone (R.U.F/S.L)

In March 1991, the R.U.F. declared war against the government of Sierra Leone. Alfred Foday Saybana Sankoh, a former Sierra Leone army corporal who had allied with the Liberian warlord Charles Taylor, founded the group. Before the R.U.F. launched its guerilla warfare, some of its members had received military instruction in Libya. Foday Sankoh, who had been arrested and imprisoned in 1971 for preparing a coup against Siaka Stevens, was among those who travelled to Libya in the 1980s for instruction in the art of revolution.¹⁵⁴

When Sankoh, Abu Kanu, and Rashid Mansaray arrived in Sierra Leone in 1988 from Libya, he started recruiting members for his planned organization around the nation to prepare for a revolution. The three also travelled around Liberia to get support for their cause.¹⁵⁵

In 1988, Sankoh met Taylor in Liberia, beginning a relationship that continued to the time of the rebelling. The R.U.F. had an appearance of the structure of a movement. At the group's formation, Sankoh claimed the position of "head of philosophy" and functioned as a spokesperson for the organization on many occasions.¹⁵⁶ The R.U.F. was structured into several units. Its "battalions" consisted of the following types of combatants:

1. "Vanguards": instructors of R.U.F. doctrine made up of guerrilla trainers, senior combat group leaders, and junior battle front commanders;
2. Special Forces: sometimes known as "Liberians," mostly of Liberian ancestry but with Sierra Leonean familial ties (they comprised a considerable proportion of R.U.F. top leaders);
3. Salon wenchens. Primarily captured recruits who were converted to the cause, trained, and authorized to carry weapons;
4. "Standbys" were unproven prisoners;

¹⁵³ As above

¹⁵⁴ Abdullah & Muana, 176.

¹⁵⁵ As above 177.

¹⁵⁶ As above 187.

5. "Recruits" were fresh entrants.¹⁵⁷

A "CO" was any soldier selected to lead an operation. Lieutenants or captains directed attacks on important R.U.F. targets as "battlefront commanders". "Battle group commanders" had a rank of Major or higher, Battle group leaders had at least the rank of Major, coordinated and directed battle front commanders within their sectors, and had a voice on the War Council.¹⁵⁸

Although the "vanguard" and "wosu" units had some female troops, the majority of women in the R.U.F belonged to the Combat Support Unit and the Combat Wives Unit and were recruited mostly via capture. The Combat Wives Unit, armed with "*sista berettas*" (mainly Beretta submachine guns), policed captive population gatherings and sometimes performed bodyguard services. Later, some of these ladies participated in "special operations," which required them to enter "enemy territory" and go beyond enemy lines on "survival missions" to get necessary goods and medications.¹⁵⁹

The Internal Defense Unit (I.D.U) was the RUF's intelligence arm. The I.D.U conducted reconnaissance operations, target assessment, general military intelligence, liaisons between commanders of combat units and battlefronts, and liaisons with the RUF ideology chief. In R.U.F. controlled enclaves, they monitored the movement of people, R.U.F. soldiers, and captured civilians.¹⁶⁰

Despite Sankoh's position as "head of ideology" for the R.U.F., the rebels lacked a coherent philosophy.¹⁶¹ According to Abdullah and Muana, the R.U.F. defied all existing guerrilla movement typologies. It was neither a separatist insurrection founded on a particular demand, as in Eritrea nor a reformist insurgency with a more radical agenda than the state it tried to destroy. It was a movement that lacked considerable national support or ethnic backing.¹⁶²

¹⁵⁷ As above 188.

¹⁵⁸ As above.

¹⁵⁹ As above 189.

¹⁶⁰ As above

¹⁶¹ As above

¹⁶² Abdullah & Muana, 190.

Before 1995, it was unknown what the R.U.F. and Foday Sankoh desired. Although the BBC had periodically conducted radio-telephone interviews with Sankoh, no coherent ideology was stated until 1995, when the R.U.F. propaganda tract "Footpaths to Democracy: Toward a New Sierra Leone" was published.¹⁶³ The leaflet, which has been described as "a poor and worn-out attack of the APC administration," supposedly originated from the efforts of expelled Ghanaian students.¹⁶⁴ There were differing estimates of the R.U.F.'s strength. Some estimates placed the number of troops at 8,000 and 10,000.¹⁶⁵ Before 1998, the number ranged between 3,000 and 5,000.¹⁶⁶

5.3.3 The Armed Forces Revolutionary Council (A.F.R.C)

The elected government of President Tejan Kabbah was overthrown by a military coup on May 25, 1997.¹⁶⁷ Junior officers of the Sierra Leone Armed Forces took control and liberated Major Johnny Paul Koroma, who was facing trial for conspiring to topple the Kabbah government in September 1996. Koroma was instantly appointed Chairman of the new A.F.R.C., and one of his first actions upon entering office was to prohibit all political parties, public gatherings, and protests.¹⁶⁸ In addition, he urged the RUF to join the AFRC in controlling the nation and announced the end of the civil war.¹⁶⁹ Foday Sankoh was appointed Vice-Chairman of the A.F.R.C. when the R.U.F. accepted the offer and became a significant member of the government. At the time, Sankoh was still under house arrest in Nigeria for allegedly possessing weapons and ammunition even though he had gone to Nigeria for peace-making purposes.¹⁷⁰

¹⁶³ Akinrinade (n 96 above) 399

¹⁶⁴ Abdullah & Muana, 192.

¹⁶⁵ The Coalition to Stop the Use of Child Soldiers, Africa Report: Sierra Leone 12.

¹⁶⁶ The International Institute for Strategic Studies, *The Military Balance* 1997/1998 257 (1997) 29.

¹⁶⁷ According to UN Secretary-General Kofi Annan, "the chance to plunder natural resources and loot Central Bank reserves was a key motivation of those who seized power from the elected Government in May 1997; The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa, Report by the Secretary-General, U.N. SCOR, 52d Sess., U.N. Doc. S/1998/318 (1998).

¹⁶⁸ Akinrinade (n 107 above) 401

¹⁶⁹ As above

¹⁷⁰ As above

In 1998, after the ECOMOG intervention, President Kabbah was restored to power.¹⁷¹ At this point, it was difficult to differentiate between the A.F.R.C. and the R.U.F. In 1997, the A.F.R.C. had a sizeable number of fighters, between 8,000 to 10,000.¹⁷²

5.3.4 Civil Defence Forces (C.D.F) / Kamajo Militia

After the R.U.F. rose from obscurity in 1991, the local community felt considerable hostility. Despite the estrangement of certain areas from the government, the R.U.F. was unable to garner acceptability in such communities.¹⁷³ Looting and indiscriminate brutality by the Liberian "special forces," who were an essential component of the first invading army, squelched any potential goodwill the R.U.F. could have received. Rather than denouncing these actions, Foday Sankoh defended them as a reward. Consequently, it was simple for the civilian public to dislike the R.U.F.¹⁷⁴

This, along with the incapacity of Sierra Leone's military forces to safeguard the whole nation's territory, prompted residents in certain sections of the country to organize themselves into civil defence teams to combat RUF invasions.¹⁷⁵ The popular Kamajo militia was the most powerful of the C.D.F.; other C.D.F. included the Temne Kapras and the Koranko Tamaboros.¹⁷⁶

The Kamajo troops consisted of local adolescents backed by the local populace, whose collective knowledge of local bush paths and ambush locations was often greater than that of the adversary.¹⁷⁷ This group's mass mobilization started in 1993-1994 with the founding of the Eastern Region Defence Committee and lasted until 1996 when their Commander-in-Chief, Captain Hinga Norman, was named Deputy Minister of Defence.¹⁷⁸

¹⁷¹ As above, 402

¹⁷² As above

¹⁷³ Abdullah & Muana, 180.

¹⁷⁴ As above

¹⁷⁵ Akinrinade (n 116 above) 403

¹⁷⁶ United States Department of State *105th Congress Country Reports on Human Rights and Practices for 1997* 298

¹⁷⁷ Abdullah & Muana, 185.

¹⁷⁸ As above

In several areas of the nation, the local inhabitants attempted to occupy settlements previously abandoned by the R.U.F. escorted by Kamajo militia, several communities started to relocate their chiefdoms. Youth were nominated and supported for Kamajo initiation and instruction. To assure loyalty, discipline, and "bush knowledge" superior to that of the R.U.F., units were structured such that soldiers were only sent to their chiefdoms. In addition, the famed and mystical Mende cult of invincible and heroic hunters was resurrected as a community militia, selected, trained, and accountable to the people.

Even though the Kamajo militia had only shotguns, knives, and the rare seized AK-47, they were equipped with social and technical fighting abilities, which enabled them to launch counterattacks against RUF troops going through jungle pathways to conduct raids or obtain supplies. Thus, they started to restrict the R.U.F.'s ability to coordinate and trade supplies.¹⁷⁹

As with the other forces involved in the conflict, there are differing figures for the combatants in the Kamajo militia. The 1997 estimate was 17,000,¹⁸⁰ while the figure for 1998 was around 30,000.¹⁸¹ Another estimate puts the size of the Kamajo militia as between 20,000 and 37,000.¹⁸²

5.3.5 Economic Community of West African States (E.C.O.W.A.S) Monitoring Group (E.C.O.M.O.G)

In response to the Liberian civil war, the Economic Community of West African States (E.C.O.W.A.S.) established a cease-fire monitoring committee in 1990. The objective was to stop the "wanton devastation of human life and property and the immense harm to the stability of the whole Liberian country caused by the armed war."¹⁸³ In the midst of E.C.O.W.A.S. activities

¹⁷⁹ As above

¹⁸⁰ The Military Balance 1997/1998, 257.

¹⁸¹ Akinrinade (n 119 above) 403

¹⁸² United Brethren Church Missionaries in Freetown, Chronology of The Evacuation Of Sierra Leone, at <http://www.realworldrescue.com/>

¹⁸³ E.C.O.W.A.S. Standing Mediation Committee, Decision A/DEC.I/8/ 90, on the Cease-fire and Establishment of an E.C.O.W.A.S. Cease-fire Monitoring Group for Liberia, Banjul, Republic of Gambia (August 7, 1990), J Levitt, 'Humanitarian Intervention by Regional Actors in Internal Conflicts: The Case of E.C.O.W.A.S. in Liberia and Sierra' Leone (1998) 2 *Temple International & Comparative Law Journal* 343

in Liberia, the violence in neighbouring Sierra Leone broke out, and the organization quickly got embroiled in the fighting.

Following the May 25, 1997, military *coup*, ousted President Tejan Kabbah, formally petitioned Nigeria and E.C.O.W.A.S. to return him to office.¹⁸⁴ In compliance with a Status of Forces Agreement (S.O.F.A.), the Nigerian government sent additional forces to Sierra Leone shortly after the coup to restore law and order.¹⁸⁵ In Sierra Leone, these extra soldiers joined the Nigerian Forces Assistance Group (N.I.F.A.G). E.C.O.M.O.G. soldiers were also present in Sierra Leone, utilizing the nation as a base for their peacekeeping actions in neighbouring Liberia. During the coup, N.I.F.A.G. and E.C.O.M.O.G. soldiers were the targets of a pre-emptive attack by the A.F.R.C.¹⁸⁶

With the attack by the R.U.F. /A.F.R.C., the N.I.F.A.G. soldiers were forced to retire after encountering stiff opposition. E.C.O.W.A.S. formally mandated E.C.O.M.O.G. to execute sanctions on the Government of A.F.R.C./R.U.F. on August 30, 1997, in addition to restoring order in Sierra Leone.¹⁸⁷ On October 8, 1997, the UN Security Council passed Resolution 1132 in favour of this move.¹⁸⁸ The resolution put travel restrictions and weapons and fuel embargo on the military junta in Sierra Leone.¹⁸⁹

Thus started E.C.O.M.O.G.'s participation in the Sierra Leone war. The N.I.F.A.G. and E.C.O.M.O.G. contingents consolidated their activities after the coup. On February 5, 1998, E.C.O.M.O.G. said it was reacting to an attack by A.F.R.C. / R.U.F. troops when it began a military assault on them. This action of E.C.O.M.O.G. led to the removal from power of the A.F.R.C./R.U.F. Government on

¹⁸⁴ Sierra Leone: Military Coup, 1997 Africa Research Bulletin 12695 (June 1997); Panafrikan News Agency 'Kabbah Urges E.C.O.W.A.S. Leaders to Restore Him To Power', September 2 1997.

¹⁸⁵ Levitt n 65, at 366 (citing Military Coup, supra note 66, at 12734).

¹⁸⁶ E.C.O. W.A.S. Intervenes to Restore Democracy, Africa Today, July/ Aug. 1997, at 24; Levitt n 65, at 365.

¹⁸⁷ Paul Ejime, 'Tougher Measures Against Junta in Freetown' Panafrikan News Agency, August 31 1997; Levitt n 65, at 366. Levitt notes that in early August 1997, pursuant to requests by E.C.O.W.A.S. Member States, former Nigerian Head of State and E.C.O.W.A.S. Chairman General Sani Abacha appears to have issued an "executive directive" authorizing an economic blockade against Sierra Leone to be enforced by E.C.O.M.O.G. Id. at 366 n.183.

¹⁸⁸ UN. SCOR, 52nd Session, 3822d mtg., Resolution 1132 at U.N. Doc. S/RES/ 1132 (1997).

¹⁸⁹ Levitt (n 65 above), 366.

February 12, 1998. On March 10, 1998, President Kabbah returned to Freetown to resume his post as Sierra Leone's head of state.¹⁹⁰

5.3.6 Other Groups

At various points of the complicated conflict in Sierra Leone, major roles were played by other parties. One of them was the South African private security firm Executive Outcomes (E.O.). As the R.U.F. insurrection expanded and rebels attacked Freetown, the N.P.R.C. government under Valentine Strasser resorted to E.O. in May 1995. E.O. had previously repelled U.N.I.T.A. rebels on behalf of the Angolan Government.¹⁹¹

The first Executive Outcomes (E.O) contingent arrived in Sierra Leone in May 1995. Within 10 days of its operational launch, they expelled the RUF from Freetown, and within one month, the diamond-rich regions were devoid of insurgents.¹⁹² E.O. operated with few combat soldiers, but they possessed the requisite fighting abilities as well as outstanding air support, first-rate communications technology, and skilled trainers. With these resources, they helped track down R.U.F. rebels, and by early 1996, the R.U.F. had been seriously damaged and driven away from the diamond mining areas.¹⁹³

However, after the peace accord signed by President Kabbah and RUF commander Sankoh at the end of November 1996, E.O. was ejected from Sierra Leone. The R.U.F. sought the removal of E.O. during peace negotiations, and the accord provided that E.O. would leave the nation within five weeks of the signing of the peace agreement.¹⁹⁴ While E.O. was in Sierra Leone, it assisted in training the Kamajo militia and fought against insurgents. Life Guard, an outgrowth of E.O., stayed behind to safeguard diamond mining regions and train the Kamajo militia after E.O. was evicted.¹⁹⁵

¹⁹⁰ As above

¹⁹¹Pratt: The N.P.R.C. Regime: 1992-96.

¹⁹²Akinrinade (n 125 above) 407.

¹⁹³ Abdullah & Muana, at 185.

¹⁹⁴ As above

¹⁹⁵ African Research Bulletin 'Sierra Leone: Mining Policy Needed1998' 13446, 13446 (June 1998).

There is also proof of Burkina Faso's military intervention on behalf of the RUF. Both the Government of Sierra Leone and E.C.O.M.O.G. asserted that Ukrainian mercenaries were engaged in training rebel fighters. Events and evidence suggest, according to one account, that small weaponry was transported from Eastern Europe (possibly Bulgaria or Ukraine) through Libya, Burkina Faso, and Liberia to rebels along the Liberia-Sierra Leone border.¹⁹⁶ Nonetheless, according to the same research, Libya seemed to have been more of a conduit than a supplier of small guns.¹⁹⁷ Sankoh, like Charles Taylor, was trained in Libya but, considering that there was an easy source of cash, it seemed improbable that Libya was giving these services for free.¹⁹⁸

Under the N.P.R.C., Ukrainian weaponry and ammunition providers got engaged, and this engagement grew under the dictatorship of Brigadier Maada Bio. During the attack in January 1999, armed white males battled alongside and commanded R.U.F. members. In April 1999, the ECOMOG Force Commander openly accused the Presidents of Burkina Faso and Liberia of supplying the RUF with Ukrainian-registered aircraft and pilots. Several foreign troops and pilots were engaged by the government of Sierra Leone to fly, man, and maintain E.C.O.M.O.G assault helicopters.¹⁹⁹

All of these external factors helped to exacerbate the conflict. Since they had no interest in Sierra Leone's domestic affairs, the only possible reason for their engagement was the presence of natural resources, which were being exploited without Sierra Leone receiving any revenue. The actions of the rebels were funded by the selling of diamonds mined by the rebels.²⁰⁰

¹⁹⁶ Pratt, *supra* note 1, at Part II-The Security Situation: Trafficking in Small Arms. At some point, the arms shipments were in violation of the provisions of a UN Security Council resolution (U.N. Security Council Res. 1132 (Oct. 8, 1997)), which called on all Member States to observe an arms embargo on Sierra Leone.

¹⁹⁷ Pratt, Part II-The Security Situation: Trafficking in Small Arms.

¹⁹⁸ As above

¹⁹⁹ As above

²⁰⁰ According to the Stockholm International Peace Research Institute, "in Sierra Leone control of the diamond mines is a key to power and wealth. Liberian soldiers in Sierra Leone, fighting alongside the R.U.F. / A.F.R.C., are paid in diamonds." SIPRI YEARBOOK 1999, 25.

5.4 Obligations of the parties to the conflict

Sierra Leone ratified the Four Geneva Conventions of 1949 in 1965 and the two Additional Protocols of 1977 in 1986. Regarding the disagreement, the applicability of the requirements of Common Article 3 cannot be contested. The government remained bound by its commitments under the Geneva Conventions for the remainder of the battle. The government never sought to disclaim its duties or restrict the application of the treaties. Protocol II also applied, since it is applicable to non-international armed conflicts.²⁰¹

The relevant laws throughout the war, which may include Common Article 3 and Additional Protocol II, may not extend to the totality of the Geneva Conventions of 1949.²⁰² There was no official acknowledgment of belligerency by the government throughout the course of the war, nor was there any agreement between the parties to implement the whole corpus of international humanitarian law.²⁰³ That notwithstanding, at various phases of the conflict, the ICRC urged the parties to adhere to the relevant rules of international humanitarian law, stressing the adherence of Sierra Leone to the 1949 Geneva Conventions and the Additional Protocols.²⁰⁴

Even though it cannot be asserted that the entirety of international humanitarian law applies to the conflict in Sierra Leone, the rules in Common Article 3 and Additional Protocol II, if complied with in their entirety, provide certain protections for civilians who were neither parties to the conflict nor combatants. Consequently, individuals responsible for violations of these fundamental norms ought to be held accountable for their actions.

Regarding the ability of the other groups, the R.U.F. had the organisational capacity necessary by Protocol I to execute the standards of humanitarian law. Some regions of the nation, especially the east, were under the authority of the R.U.F., and their acts were not limited to cross-border incursions.²⁰⁵ At one time, the R.U.F. was unable to maintain momentum, but they eventually

²⁰¹ Akinrinade (n 136 above) 410.

²⁰² As above

²⁰³ As above

²⁰⁴ As above

²⁰⁵ Abdullah & Muana(n 117 above) 182

acquired the upper hand in the fight, almost invading Freetown before E.O.'s 1995 onslaught.²⁰⁶ The combined R.U.F. and A.F.R.C. troops reached the capital city of Freetown in January 1999, wreaking havoc until being repulsed by E.C.O.M.O.G.²⁰⁷

The A.F.R.C. also had the ability to execute Protocol II's stipulations. The A.F.R.C. mostly comprised personnel of the military forces who revolted against President Kabbah's government, and many of them had battled the R.U.F. prior to the formation of the alliance. Individuals within the organisation who breach international humanitarian law were liable for their actions.²⁰⁸

With due consideration having been given to the changing nature of armed conflicts through internationalisation and examined it in the context of the role of the various parties involved in the Sierra Leone conflict in this chapter, the concluding chapter draws upon this and the preceding chapters in reaching its findings.

²⁰⁶ As above

²⁰⁷ Akinrinade (n 145 above) 411.

²⁰⁸ As above

CHAPTER SIX: CONCLUSION

EXAMINING THE SIERRA LEONE CONFLICT AS A MIXED CONFLICT AND DRAWING LESSONS FROM THE SPECIAL COURT

6 Introduction

The preceding chapters of this dissertation covered armed conflicts, the various classifications and applicable laws. This chapter seeks to conclude our examination of the Sierra Leone conflict in the light of the various definitions and classifications previously discussed as well as the lessons learnt. It also looks at the peculiarities of the Special Court in Sierra Leone, and offers another perspective as to the classification of the conflict given its historical context.

6.1 The Special Court for Sierra Leone

In October 2000, the Government of Sierra Leone and the United Nations entered into a bilateral agreement, establishing a Special Court for Sierra Leone.²⁰⁹ The agreement had as part of it the Statute of the Special Court, which was an independent special court for trying those bearing the greatest responsibility for crimes against humanity, war crimes and other violations of international humanitarian law, and crimes under the relevant Sierra Leonean Law.²¹⁰ The Special Court represents the first treaty based *ad hoc* criminal court given that the ICTY and ICTR were based on Security Council Resolutions 827 and 955 respectively. The Court additionally had jurisdiction over violations of Common Article 3 of the Geneva Conventions and Additional Protocol II.

The Court had jurisdiction over crimes against humanity, violations of Common Article 3 and Additional Protocol II. Flowing from this, it can be argued that the Special Court was a mixed tribunal exercising mixed jurisdiction.²¹¹

²⁰⁹ M Frulli The Special Court for Sierra Leone: Some Preliminary Comments EJIL1 (2000) 857

²¹⁰ As above

²¹¹ As above.

6.2 Lessons from the Special Court

One crucial lesson that can be learnt from the setting up of the court is that due to the complex nature of armed conflicts, it is important that the mandate of the courts are not limited as to the areas they can tackle. This does not mean that the courts be given unbridled powers as that could also lead to abuse.

The silence of the courts about what constitutes an internal armed conflict as well as a non-international armed conflict was quite glaring. The case of the Sierra Leonean conflict presented a pristine opportunity for the court to adequately define what constitutes a non-international armed conflict, thus filling this conspicuous gap in international humanitarian law. This was however not done as evidenced in the case of *Prosecutor v. Fofana*.

6.3 Lessons on internationalisation from the Sierra Leone conflict

There abounds a multitude of lessons on internationalisation from the Sierra Leone conflict. To begin with, the Sierra Leone conflict much like other modern day non-international armed conflicts shows that given the interwoven connection of modern-day society where the imaginary lines that border countries blur and distances melt away, the concept of non-international armed conflicts becomes much more complex.

Even though the conditions that might necessitate a non-international armed conflict can be local in nature, its effects, as well as the “opportunities” it is perceived to present draw international interest and in most cases, international meddling. This can be seen in the form of a physical fighting force from another State, technical support in the form of trainings and provision arms and intelligence briefs, or in some cases, direct instructions from high-ranking government and military officials from other sovereign states and even international bodies as in the case of ECOMOG in the Sierra Leone conflict.

This sometimes occur overtly but, in many cases, nuances exist and the dichotomy is not so clear. It therefore engenders some degree of difficulty and complications in defining which laws should apply and what conventions should be adhered to.

Some might argue that to avoid such difficult situations, it is best to look at all armed conflicts through the same lens and apply a group of set humanitarian law because the individual citizen in a conflict-ridden area has no use for the complex distinction between an international armed conflict and a non-international armed conflict. I however believe that that simple approach will encroach unnecessarily on the sovereignty of individual states and render national laws, based on the peculiar socio-political and historical context in which each country is situated, useless.

What I believe is the best way to handle such internationalised armed conflicts is to have clear definitions of what constitutes a non-international armed conflict, even if said definitions are not exhaustive thus allowing for the changing nature of how conflicts are fought. Regional bodies, such as the ECOWAS and its peacekeeping forces in the case of Sierra Leone, also have a crucial role to play in ensuring that while respecting the sovereignty of member states, the rights of the citizens in a country that is embroiled in an armed conflict are respected with due consideration to the relevant rules of international humanitarian law.

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