

Symbiosis in violence: A case study from Sierra Leone of the international humanitarian law implications of parties to the conflict engaging in organized crime

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Abstract

This article aims to demonstrate that respect for international humanitarian law (IHL) may help reduce the impact of organized crime in areas affected by armed conflict through a case study of the conflict in Sierra Leone (1991–2002). In this conflict, a symbiosis in violence was created, with diamond smuggling being essential to achieve the parties' military objectives, and those objectives being increasingly shaped by involvement in diamond smuggling. This led to further

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violence connected with the conflict and breaches of IHL. Ensuring compliance with IHL may therefore reduce the impact of these activities in armed conflicts. An important tool in securing this compliance is the influence of other States not party to the conflict, further to their obligation to ensure respect for IHL.

Keywords: armed groups, organized crime, international criminal law, international humanitarian law, legal frameworks, Sierra Leone.



Introduction

Organized crime fuels armed conflict, making the situation more protracted, more violent and increasing the hardships of those living in affected areas.¹ This link has been particularly noted since the 1990s² and was keenly demonstrated in the role of diamond smuggling in the armed conflict in Sierra Leone that took place between 1991 and 2002.³ An analysis of this conflict also demonstrates how respect for international humanitarian law (IHL) may contribute to reducing the impact of organized crime in areas affected by armed conflict.

Although IHL is aimed at limiting the effects of armed conflicts rather than addressing organized crime, IHL can be directly applicable to such criminal conduct where there is a sufficient nexus between the conduct and the conflict, especially when perpetrated by the parties to the armed conflict.⁴ In addition, activities connected with organized crime can amount to violations of IHL and other international crimes.⁵ Compliance with IHL therefore has the potential to limit

- 1 Ekaterina Stepanova, “Armed Conflict, Crime and Criminal Violence”, in Stockholm International Peace Research Institute, *SIPRI Yearbook 2010: Armaments, Disarmament and International Security*, Oxford University Press, Oxford, 2010, pp. 37–60. See also Jeremy Weinstein, *Inside Rebellion: The Politics of Insurgent Violence*, Cambridge University Press, Cambridge, 2006.
- 2 Sebastian von Einsiedel, Louise Bosetti, James Cockayne, Cale Salih and Wilfred Wan, *Civil War Trends and the Changing Nature of Armed Conflict*, United Nations University Centre for Policy Research, Occasional Paper 10, March 2017, New York, pp. 4–5. See also James Cockayne, “Chasing Shadows: Strategic Responses to Organised Crime in Conflict-Affected Situations,” *RUSI Journal*, Vol. 158, No. 2, 2013.
- 3 Note, diamond smuggling was not the only illicit trade conducted by the parties to the conflict. Details are included in the judgments of the Special Court for Sierra Leone (SCSL) and Final Report of the Sierra Leone Truth and Reconciliation Commission (TRC Report) relating to trade in drugs, arms and other natural resources, to name a few.
- 4 This connection has been noted in relation to other conduct described as organized crime, such as terrorism. See further, International Committee of the Red Cross (ICRC), *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflicts on the 70th Anniversary of the Geneva Conventions*, Geneva, 2019, pp. 57–64. See further, Tilman Rodenhäuser, “The Legal Protection of Persons Living Under the Control of Non-State Armed Groups”, *International Review of the Red Cross*, Vol. 102, No. 915, 2020.
- 5 See, for example, SCSL, *The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao (the RUF Accused)*, Case No. SCSL-04-15-T, Trial Judgment (Trial Chamber I), 2 March 2009 (*Revolutionary United Front (RUF) Trial Judgment*), on crimes connected with diamond mining in Sierra Leone; and Human Rights Council, “They Came to Destroy”: ISIS Crimes Against the Yazidis, UN Doc. A/HRC/32/CRP.2, 15 June 2016, on slavery and genocide in Iraq.

the impact of organized crime perpetrated by the parties to the conflict on the civilian population in situations of armed conflict. This is based on the fundamental principle of IHL to reduce the suffering of those not participating in the hostilities from the impact of the conflict.⁶

These points will be demonstrated through a case study of the armed conflict in Sierra Leone through the judgments of the Special Court for Sierra Leone (SCSL) and the Final Report of the Sierra Leone Truth and Reconciliation Commission (TRC Report). Although the judgments of the SCSL were marred by failings in the proceedings and management of the court, which impacts the quality and reliability of the factual and legal findings contained, they do form part of the legacy of the conflict analysing the conduct of the parties in relation to the applicable IHL.⁷ The findings of the TRC Report, a further and important part of that same legacy, are included in part as a way to mitigate these shortcomings.⁸

This article will first provide a general background to the armed conflict in Sierra Leone and the role played by diamond smuggling during the conflict. It will go on to demonstrate the symbiosis between the conflict and diamond smuggling, and how diamond smuggling led to further breaches of IHL and international criminal law. The analysis will then turn to the obligations under IHL applicable to diamond smuggling activities, and develop the argument that respect for these obligations may assist in relieving the civilian population from the effects of organized crime. This is especially so when organized crime is perpetrated by the parties to the armed conflict, as IHL is directly applicable to their conduct in relation to the civilian population. Finally, the article will analyse how the duty of other States not party to the armed conflict to ensure respect for IHL may aid in upholding these obligations.

6 ICRC, *Commentary on the Third Geneva Convention: Convention (III) Relative to the Treatment of Prisoners of War*, Cambridge University Press, Cambridge, 2020, paras 151 and 584–5; International Court of Justice (ICJ), *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *ICJ Reports 1996*, p. 136, para. 79.

7 See further, Antonio Cassese, *Report on the Special Court for Sierra Leone. Submitted by the Independent Expert Antonio Cassese*, 12 December 2006, available at: www.rscsl.org/documents.html (all internet references were accessed in August 2022); Human Rights Watch, *Justice in Motion: The Trial Phase of the Special Court for Sierra Leone*, 2 November 2005, available at: www.hrw.org/report/2005/11/02/justice-motion/trial-phase-special-court-sierra-leone; and Wayne Jordash and Scott Martin, “How the Approach to JCE in *Taylor* and the RUF Case Undermined the Demands of Justice at the Special Court for Sierra Leone”, in Charles Chernor Jalloh (ed.), *The Sierra Leone Special Court and its Legacy: The Impact for Africa and International Criminal Law*, Cambridge University Press, Cambridge, 2013.

8 See further, Sierra Leone Truth and Reconciliation Commission, “The TRC and the Special Court for Sierra Leone”, in Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission (TRC Report)*, Vol. Three B, Chapter 6, Freetown, 2004, available at: www.sierraleonetr.com/index.php/view-the-final-report/table-of-contents; Alpha Sesay, “To Compete or to Complement? Assessing the Relationship between the Sierra Leone Special Court and the Truth and Reconciliation Commission”, in C. C. Jalloh, *ibid.*

Background to the conflict

The non-international armed conflict (NIAC) in Sierra Leone, that took place between approximately 1991 and 2002,⁹ was marred by excessive violence and a noted lack of respect for IHL by all parties to the conflict.¹⁰ Alongside the use of child soldiers and amputations of members of the civilian population, “blood diamonds” became synonymous with the conflict.¹¹

The conflict began in 1991 between the Sierra Leone Army and the Revolutionary United Front (RUF),¹² a group led by Foday Sankoh, with significant connections to armed groups fighting in Liberia, as well as with Charles Taylor, who would go on to become President of Liberia in 1997.¹³ The rise of the RUF followed many years of discontent with oppression and abuses of the ruling All Peoples Congress party and rise of revolutionary thinking, inspired by the ideology of Pan-Africanism.¹⁴ After five years of conflict, a peace agreement was signed in Abidjan in November 1996, but broke down in early 1997 and hostilities resumed.¹⁵

Following a *coup d'état* by former and serving members of the Sierra Leonean Armed Forces in May 1997, the Armed Forces Revolutionary Council (AFRC) joined the conflict, led by Johnny Paul Koroma.¹⁶ Part of the reasons behind this coup were the AFRC's discontent with Government failings and support to the Kamajors and other traditional hunter groups that were fighting on behalf of the Government and were formed into the Civil Defence Forces

9 *RUF Trial Judgment*, above note 5, paras 7–44; SCSL, *The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (the AFRC Accused)*, Case No. SCSL-04-16-T, Trial Judgment (Trial Chamber II), 20 June 2007 (*Armed Forces Revolutionary Council (AFRC) Trial Judgment*), paras 155–209; SCSL, *The Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-1-T, Trial Judgment (Trial Chamber II), 18 May 2012 (*Taylor Trial Judgment*), paras 18–70.

10 See further, “Nature of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 4.

11 See further, “Historical Antecedents to the Conflicts”, in TRC Report, above note 8, Vol. Three A, Chapter 1; and “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 1–71.

12 See further, “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 86–113. Prior to the start of the conflict, there had been incursions by the RUF and the National Patriotic Front of Liberia (NPFL) from Liberia in the 1990s, characterized by the TRC as “cross-border raised”. See paras 85 and 122–89.

13 See further, “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 32–54 for history and connection with the conflict in Liberia from 1991, and paras 114–21 for Taylor's link with his strategy in the conflict in Liberia. See also *Taylor Trial Judgment*, above note 9; and *RUF Trial Judgment*, above note 5, paras 722–4.

14 “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 16–23. See also paras 123–6, particularly para. 125. See further, paras 24–31 on early formations of the group and the rise of Foday Sankoh as leader.

15 *AFRC Trial Judgment*, above note 9, paras 162–3.

16 “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 646–93; *RUF Trial Judgment*, above note 5, paras 743 and 745. This followed an earlier coup in 1992 when junior ranks of the Sierra Leone Army staged a coup under the command of Captain Valentine Strasser and established the National Provisional Ruling Council (NPRC) Government. Elections were subsequently held in 1996. The leader of the AFRC, Johnny Paul Koroma had also staged an earlier attempt of a coup in September 1996, but was unsuccessful, and subsequently jailed. See *AFRC Trial Judgment*, above note 9, paras 158 and 161. See further, “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 273–343 and 580–621.

(CDF) in 1997.¹⁷ Shortly after the coup, the AFRC invited the RUF to join them in ruling the country.¹⁸ It is during this period that the exploitation of diamonds expanded significantly. The TRC Report highlights that although the RUF was partly financed through diamond trafficking from the early stages of the conflict, it was not until 1997 that diamonds yielded significant revenues for the RUF, coinciding with the partnership with the AFRC.¹⁹ Even from the start, the relationship between the RUF and AFRC was not easy. As the *AFRC* trial judgment acknowledges, “the coalition between the two factions ... was not based on longstanding common interests”.²⁰ The founders and many members of the AFRC had been fighting against the RUF as members of the Sierra Leone Armed Forces since 1991, and the military structures were never completely integrated.²¹

In response to the coup and joining of the forces of the organized armed groups, the Economic Community of West African States (ECOWAS) authorized the intervention of the ECOWAS Monitoring Group (ECOMOG) into the conflict on behalf of the ousted Government of Sierra Leone led by President Ahmad Tejan Kabbah, adding a further party to the armed conflict. Kabbah’s government was restored to power in March 1998.²² At this stage, the AFRC/RUF launched an attack to retake control of the diamond-rich Kono District.²³

Following the attack on Kono, the relationship between the RUF and AFRC deteriorated, culminating in the arrest of the AFRC’s leader and the split of the groups around the end of April 1998.²⁴ The AFRC subsequently launched a brutal attack on Freetown on 6 January 1999, but was repelled by ECOMOG forces.²⁵ The Sierra Leone government and the RUF signed a peace agreement in Lomé on 7 July 1999, which set out a deal for power sharing between the Kabbah government and the RUF, according to which Sankoh was Vice President.²⁶ The AFRC was not represented in the negotiations.²⁷ However, hostilities between the government side and the RUF resumed shortly thereafter, leading to the United Nations (UN) Security Council authorizing the deployment of a 6000-strong UN peacekeeping mission to Sierra Leone (UNAMSIL) to assist in the implementation of the Lomé Peace Accord.²⁸ A cessation of hostilities was agreed upon by the then interim leader of the RUF, Issa Sesay, and the Kabbah

17 “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 558–79. See further, paras 694–849. See also *RUF Trial Judgment*, above note 5, para. 743; and *AFRC Trial Judgment*, above note 9, paras 159, 161 and 164.

18 *RUF Trial Judgment*, above note 5, para. 747. See also *Taylor Trial Judgment*, above note 9, para. 6749.

19 “Mineral Resources, Their Use and their Impact on the Conflict and the Country”, in TRC Report, above note 8, Vol. Three B, Chapter 1, para. 8.

20 *AFRC Trial Judgment*, above note 9, para. 169. See also *Taylor Trial Judgment*, above note 9, para. 6749.

21 *RUF Trial Judgment*, above note 5, para. 763; *AFRC Trial Judgment*, above note 9, paras 169 and 171–2.

22 “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 850–86. See further, paras 905–9. See also *RUF Trial Judgment*, above note 5, paras 777–8.

23 *RUF Trial Judgment*, above note 5, paras 787–91; *AFRC Trial Judgment*, above note 9, para. 179.

24 *RUF Trial Judgment*, above note 5, para. 820. See further, paras 817–19. See also *AFRC Trial Judgment*, above note 9, para. 189.

25 *RUF Trial Judgment*, above note 5, paras 879–87.

26 *AFRC Trial Judgment*, above note 9, para. 209.

27 *Ibid.*

28 *Ibid.*, para. 43.

government in November 2000, but it was only in January 2002 that a final cessation of hostilities was declared.²⁹

This brief summary is intended to give an overview of the complex and evolving backdrop against which diamond smuggling took place. It does not aim to do justice to the complexities of the events and intrigues that took place during the conflict.³⁰

The role of diamonds in the conflict

Diamond smuggling played a specific and significant role in this conflict. The judgments of the SCSL concerning this relate to the activities conducted by the RUF and AFRC, and Charles Taylor's role in diamond smuggling. Whilst the RUF and AFRC are the most notorious for their involvement in diamond mining and smuggling, allegations were made against members of the CDF and ECOMOG as well.³¹

As the TRC Report succinctly concludes, the conflict was not initiated simply to gain control over diamonds.³² Rather, it was “years of bad governance, endemic corruption and the denial of basic human rights that created the deplorable conditions that made conflict inevitable”.³³ The TRC Report concluded that the narrative attributing the cause of the conflict to control over diamonds fails to capture numerous complexities, including “the reasons for the decay of the state in Sierra Leone and the role minerals played prior to and during the conflict”.³⁴ Diamond smuggling had been a longstanding problem in

29 *Ibid.*, para. 209. Issa Sesay was voted as interim leader after Sankoh was arrested in May 2000 following an incident at his house where his bodyguards killed several civilian protestors. *RUF Trial Judgment*, above note 5, para. 42. See further, *Taylor Trial Judgment*, above note 9, paras 6611–12.

30 See further, “Historical Antecedents to the Conflict”, “Governance” and “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapters 1–3; Lansana Gberie, *A Dirty War in West Africa: The R.U.F. and the Destruction of Sierra Leone*, Hurst, London, 2005; David Keen, *Conflict & Collusion in Sierra Leone*, James Currey, Oxford, 2005; and Charles C. Jalloh, “The Sierra Leone Conflict”, in C. C. Jalloh, *The Legal Legacy of the Special Court for Sierra Leone*, Cambridge University Press, Cambridge, 2020.

31 See “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 751–2; and “Mineral Resources, Their Use and their Impact on the Conflict and the Country”, in TRC Report, above note 8, Vol. Three B, Chapter 1, paras 147 and 148. See also *RUF Trial Judgment*, above note 5, para. 1247. The TRC Report also highlights that in the earliest stages of the conflict, NPFL fighters also engaged in “looting and mining activities, using mostly forced labour” when they first took control of the southern front, Pujehun District: “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 231–2.

32 “Mineral Resources, Their Use and their Impact on the Conflict and the Country”, in TRC Report, above note 8, Vol. Three B, Chapter 1, para. 7.

33 Sierra Leone Truth and Reconciliation Commission, *Summary of the Findings and the Core Recommendations of the Sierra Leone Truth and Reconciliation Commission (TRC)*, para. 1, available at: <https://reliefweb.int/report/sierra-leone/summary-findings-and-core-recommendations-sierra-leone-truth-and-reconciliation>. See further, Sierra Leone Truth and Reconciliation Commission, “Findings”, in TRC Report, above note 8, Vol. Two, Chapter 2.

34 “Mineral Resources, Their Use and their Impact on the Conflict and the Country”, in TRC Report, above note 8, Vol. Three B, Chapter 1, para. 7.

Sierra Leone prior to the outbreak of the conflict.³⁵ As mentioned above, the RUF had a political ideology,³⁶ which the SCSL described as an “integral part of the movement”, according to which they aimed to use weapons to fight to overthrow a “corrupt military Government in order to realise the right of every Sierra Leonean to true democracy and fair governance”.³⁷ To do so, the RUF would “procure arms for a broad-based struggle so that the rotten and selfish government is toppled”.³⁸ The leader of the RUF is even reported to have advised new recruits in the TRC Report that “a fighter without political ideology is a criminal”.³⁹ Although the AFRC did not share the RUF’s ideology, the group had their own purported goals linked to the government’s failings.⁴⁰ When the two groups joined forces in 1997, however, they both declared they were doing so to bring peace and political stability to Sierra Leone.⁴¹

Diamonds did, however, fuel the conflict.⁴² The parties to the conflict used resources gained from diamond smuggling to fund their objectives.⁴³ Control over mining ensured the biggest gain, and, as such, control over diamond mining areas became a critical part of the fighting parties’ strategy. An example of the strategic importance of this can be seen in the events following ECOMOG’s successful intervention in Freetown in February 1998, leading to the withdrawal of AFRC and RUF troops.⁴⁴ Immediately following the retreat from Freetown, the AFRC and RUF planned a joint attack on Kono, an area of major importance for diamond mining. The attack took place in the second half of February 1998.⁴⁵ The capital of Kono District, Koidu, was captured in early 1998.⁴⁶ The timing of the attack, just after losing control of the capital, indicates the importance in controlling this diamond-rich area.

Prior to this, between 1992 and 1997, control over Kono District had seen-sawed between the RUF and government forces. Diamond exploitation and smuggling carried on unabated during that period.⁴⁷ After this, control over

35 *Ibid.*, paras 11–16.

36 *RUF Trial Judgment*, above note 5, paras 652–6. See further, “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 21–31 for history and links with the Pan-Africanism movement. See also “External Actors and Their Impact on the Conflict”, in TRC Report, above note 8, Vol. Three B, Chapter 2, paras 5–13. See also the RUF manifesto, “Footpaths to Democracy: Toward a New Sierra Leone”, published by the group in 1995, available at: www.sierra-leone.org/footpaths.html.

37 *RUF Trial Judgment*, above note 5, paras 652–3.

38 *Ibid.*, para. 652.

39 “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A Chapter 3, para. 171. See also, “The Military and Political History of the Conflict”, paras 225–7, which includes an RUF mantra, “Arms to the People, Power to the People, Wealth to the People”.

40 *RUF Trial Judgment*, above note 5, para. 743; *AFRC Trial Judgment*, above note 9, para.164.

41 *AFRC Trial Judgment*, above note 9, para. 169; *Taylor Trial Judgment*, above note 9, para. 6749.

42 “Mineral Resources, Their Use and their Impact on the Conflict and the Country”, in TRC Report, above note 8, Vol. Three B, Chapter 1, para. 207. See further, UN General Assembly Resolution 57/302, UN Doc. A/RES/57/302, 30 April 2003.

43 *RUF Trial Judgment*, above note 5, para. 23.

44 *Ibid.*, paras 776–82.

45 *Ibid.*, paras 787–91.

46 *Ibid.*, paras 794 and 796.

47 “Mineral Resources, Their Use and their Impact on the Conflict and the Country”, in TRC Report, above note 8, Vol. Three B, Chapter 1, para. 50.

diamonds became fused with the parties' military objectives, smuggling diamonds being a necessity in being able to wage the conflict, and those objectives being increasingly shaped by greater involvement in diamond smuggling.

Violence begets violence

Ensuring control over the diamond mining areas led to further violence in breach of IHL. The symbiosis in violence between the armed conflict and organized crime is perhaps most evident in the order that followed the attack on Koidu in early 1998. Johnny Paul Koroma, the leader of the AFRC, declared Koidu a “no go area” for civilians, ordering that no civilian was permitted to remain in Koidu, and any civilian who was not willing to support the rebel movement was to be executed to prevent them from passing information to the Kamajors. In addition, Koroma ordered that Koidu should be burnt to the ground.⁴⁸

The declaration of a “no go area” for civilians and order of execution on sight was in complete disregard of the obligation to distinguish between civilians and civilian objects and military objectives, and the obligations to abstain from prohibited acts of violence against persons not participating in the hostilities and treat them humanely under IHL.⁴⁹ Displacement of the civilian population in whole or in part in NIACs is only lawful where the security of the civilians involved, or imperative military reasons, so demand.⁵⁰ Restrictions on the free movement of civilians would also have impacts on other obligations under IHL, including the freedom of movement of humanitarian personnel.⁵¹

The symbiosis in violence is further demonstrated by the particularly violent means of regaining and losing control of diamond mining areas. Ensuring control over the diamond mining areas contributed to unlawful attacks against persons not taking part in the hostilities being carried out by the parties to the conflict, and IHL therefore has a role in addressing related conduct. Whilst attacking ECOMOG would very likely fall within the definition of a military objective,⁵² the order to burn all property indicates an indiscriminate attack. The total destruction and devastation of all property within an area fails to adequately distinguish sufficiently between civilians or civilian objects and military objectives.⁵³ The extent of the destruction ordered would also indicate non-compliance with the prohibition of attacking, destroying, removing or rendering

48 *RUF Trial Judgment*, above note 5, para. 799.

49 Article 3(1)(a) common to the Geneva Conventions of 1949; and Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609 (entered into force 7 December 1978) (AP II), Arts 4(1), 4(2)(a) and 13. See also Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. I: *Rules*, Cambridge University Press, Cambridge, 2005, Rule 1.

50 AP II, Art. 17; J.-M. Henckaerts and L. Doswald-Beck, *ibid.*, Rule 129.

51 J.-M. Henckaerts and L. Doswald-Beck, *ibid.*, Rule 56.

52 J.-M. Henckaerts and L. Doswald-Beck, *ibid.*, Rule 8.

53 J.-M. Henckaerts and L. Doswald-Beck, *ibid.*, Rules 11 and 12. See further, Alexander Schwarz and Maria Grigat, “Scorched Earth Policy”, in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, Oxford, 2015, para. 8.

useless objects indispensable to the survival of the civilian population, such as food stuffs, agricultural areas, crops, livestock, drinking water installations and supplies, and irrigation work, as all of these were also encompassed in the order to burn Koidu to the ground.⁵⁴ These methods were also seen in the retreat of the RUF/AFRC when ECOMOG retook control of Koidu in early April 1998,⁵⁵ with the retreating forces being ordered to burn Koidu Town to the ground.⁵⁶

Crime begets crime

The judgments of the SCSL also detail how efforts to control diamonds led to further international crimes, including enslavement of the civilian population to extract the diamonds.⁵⁷ Detailed descriptions are given relating to mining at various locations, with variations in the structure, extent of violations and rules imposed between the different locations.⁵⁸ Broadly, conditions included that civilians were forcibly captured from surrounding villages on certain “government days”, which were days civilians were brought to the mines, including with the use of physical restraints, and forced to work for the armed groups in control of the mines.⁵⁹ Armed guards would be present during the work, and would beat or kill those who attempted to escape or committed perceived breaches of the mining rules, such as private mining.⁶⁰ Miners were forced at times to work naked, and were not permitted to move freely on the mining sites.⁶¹

54 AP II, Art. 14; J.-M. Henckaerts and L. Doswald-Beck, *ibid.*, Rule 54.

55 *RUF Trial Judgment*, above note 5, para. 813. The AFRC and RUF troops managed to maintain control over much of Kono District during this period, however. The RUF made further attempts in August 1998 and December 1998 to retake Koidu from ECOMOG. The attack in December was successful and the RUF regained control of the area. See *RUF Trial Judgment*, above note 5, paras 814, 823 and 861–5.

56 *Ibid.*, para. 813.

57 *Ibid.*, paras 1118–19. See further, J.-M. Henckaerts and L. Doswald-Beck, above note 49, Rules 94 and 95.

58 See, for example, description of mining at Cyborg Pit in Tongo Field, Kenema, one of the largest diamond-producing areas in Sierra Leone at *RUF Trial Judgment*, above note 5, para. 1118, *AFRC Trial Judgment*, above note 9, paras 1280–90; and *Taylor Trial Judgment*, above note 9, paras 1616–22. The same conditions were found to have been implemented throughout Kono District from December 1998 until January 2000: *RUF Trial Judgment*, above note 5, para. 1328. The Trial Chambers findings relating to diamond mining were largely held up on appeal. Two grounds of appeal were granted in relation to Sesay and one in relation to Kallon. See SCSL, *The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, Case No. SCSL-04-15-A, Judgment (Appeals Chamber), 26 October 2009, paras 91–5, 146–51, 662–713, 863–75, 928–34, 998–1022 and 1071–99. See also SCSL, *The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu*, Case No. SCSL-2004-16-A, Judgment (Appeals Chamber), 22 February 2008, paras 82, 170–4 and 260–5; and SCSL, *The Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-A, Judgment (Appeals Chamber), 26 September 2013, paras 260–73.

59 *RUF Trial Judgment*, above note 5, paras 1119, 1243–7 and 1250; *AFRC Trial Judgment*, above note 9, paras 229 and 1291–3; and *Taylor Trial Judgment*, above note 9, para. 1627. There are some differences noted in the judgments of these rules and structure during different timeframes and in different places in the conflict. See, for example, *RUF Trial Judgment*, above note 5, paras 1248 and 1250.

60 *RUF Trial Judgment*, above note 5, para. 1119. See also para. 1248; *AFRC Trial Judgment*, above note 9, paras 1292–3; and *Taylor Trial Judgment*, above note 9, para. 1627. The judgments also include different descriptions of mining rules. See, for example, *Taylor Trial Judgment*, above note 9, para. 1624.

61 *RUF Trial Judgment*, above note 5, para. 1119. See also paras 1129–30 and paras 1251–2. See further, *Taylor Trial Judgment*, above note 9, para. 1627.

These activities involved the parties to the armed conflict using violence and force against persons not directly participating in the hostilities, and thus also engaging the direct application of IHL.⁶² These conditions clearly call into question IHL requirements of humane treatment and forced labour.⁶³ They also constitute outrages upon personal dignity, in particular, humiliating treatment, and inhumane or degrading treatment, prohibited under IHL.⁶⁴ The killing of civilians forced to engage in mining by members of the party to the armed conflict is a violation of the prohibition of violence to life, including murder, prohibited under Article 3(1)(a) common to the Geneva Conventions of 1949, Article 4(2)(a) of Additional Protocol II (AP II) and Customary IHL.⁶⁵ The use of armed guards and lack of compensation also indicates forced labour. These conditions were compounded by a lack of food, medical aid and mining equipment, which the SCSL notes were not provided.⁶⁶

Senior commanders are pointed out in the judgments as having run private mining, using the same model of mining for their own private enterprise by forcing civilians to mine for them and pocketing the proceeds for their personal gain, rather than the resources going to the armed group.⁶⁷ This violence is a symptom of the situation created in the conflict where such unlawful conduct was tolerated⁶⁸ and is a clear example of how criminal conduct related to diamond smuggling led to further crimes. Again, as violent and forceful acts against persons not taking direct part in the hostilities by a member of a party to the armed conflict, IHL is applicable. The critical role of senior commanders in ensuring respect for IHL of their subordinates is explicitly recognized in IHL,⁶⁹ and their criminal conduct will likely have guided others to carry out similarly violent acts in other contexts.⁷⁰

62 See further, T. Rodenhäuser, above note 4, pp. 995–6 and pp. 1001–9. In addition, these events also raise issues relating to the application of international human rights law and international criminal law, to name a few. As the focus of this article is to highlight how IHL may add to this mix of legal protections in relieving the impact of organized crime in armed conflict on those not participating in the hostilities, the application and standards of these other fields will not be considered further.

63 Common Article 3(1); AP II, Art. 4(1); and J.-M. Henckaerts and L. Doswald-Beck, above note 49, Rules 87 and 95.

64 J.-M. Henckaerts and L. Doswald-Beck, above note 49, Rule 90.

65 *RUF Trial Judgment*, above note 5, paras 1106–7. See J.-M. Henckaerts and L. Doswald-Beck, above note 49, Rule 89. See further, International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), Arts 6, 7 and 8; International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), Arts 7, 10(3), 11 and 12; African Charter on Human and Peoples' Rights, 27 June 1981, OAU Doc. CAB/LEG/67/3 rev.5, 1520 UNTS 217 (entered into force 21 October 1986), Arts 4, 5, 6, 15, 16 and 21.

66 *RUF Trial Judgment*, above note 5, paras 1119, 1129–30 and 1251–2; *Taylor Trial Judgment*, above note 9, para. 1625.

67 *RUF Trial Judgment*, above note 5, para. 1259.

68 The judgment also includes details on RUF commanders similarly forcing civilians to work on farms owned by them privately, of which proceeds would go to the commander and not the general RUF. *RUF Trial Judgment*, above note 5, paras 1425–6.

69 J.-M. Henckaerts and L. Doswald-Beck, above note 49, Rule 153. See further, Rule 139.

70 This has been observed in other contexts, such as in the armed conflict in Myanmar, where an environment of impunity leads to further violations of IHL. See Human Rights Council, Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/CRP.2, 17 September 2018, paras 1380–4.

One potential international crime connected with diamond smuggling that was not prosecuted before the SCSL related to the alleged rape of the wife of the AFRC leader.⁷¹ The *RUF*, *AFRC* and *Charles Taylor* judgments all briefly mention this incident, as does the TRC Report, but with few details.⁷² According to the *RUF* judgment, the alleged rape took place in March 1998, shortly after the re-capture of Kono by the AFRC/RUF, in which Johnny Paul Koroma had led the command of the troops.⁷³ Tensions were high between the AFRC and RUF. When large areas of Kono District were under AFRC/RUF control, Koroma announced that he was going to travel abroad, via Kailahun District, a stronghold of the RUF. The purpose of the trip was to organize logistics for the troops.⁷⁴ He had in his possession a large amount of diamonds.⁷⁵ Among his entourage, he travelled with his wife. He was led to believe that he would be welcomed by the RUF in Kailahun. However, when he arrived, he was arrested by the RUF leadership.⁷⁶ Koroma was stripped and searched for diamonds, which were removed from him.⁷⁷

All three judgments state that at this point Mrs Koroma was either raped or sexually assaulted.⁷⁸ The most detail of this alleged crime is given in the *RUF* judgment, which states only that RUF Commander Issa Sesay drove her “to a nearby location and raped her”.⁷⁹

This alleged assault took place in the context of an armed conflict, and has a sufficient nexus to the conflict to potentially constitute a war crime. It was allegedly carried out by a member of the fighting forces, and the conflict clearly played a substantial role in the ability to commit the crime, as well as the manner in which it was allegedly committed.⁸⁰ The fact that the crime took place where no fighting was taking place is irrelevant in determining the nexus.⁸¹ As mentioned

71 *RUF Trial Judgment*, above note 5, paras 801 and 804. See further, J.-M. Henckaerts and L. Doswald-Beck, above note 49, Rule 93.

72 *AFRC Trial Judgment*, above note 9, para. 188; *RUF Trial Judgment*, above note 5, para. 801; *Taylor Trial Judgment*, above note 9, para. 6754; and “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, footnote 535 in para. 1080.

73 *RUF Trial Judgment*, above note 5, para. 801. See further, paras 802 and 804.

74 *AFRC Trial Judgment*, above note 9, para. 184.

75 “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, footnote 535 in para. 1080. See also *RUF Trial Judgment*, above note 5, paras 801 and 804.

76 *AFRC Trial Judgment*, above note 9, para. 188.

77 *Ibid.* Johnny Paul Koroma also informed that AFRC Commander Gullit also possessed diamonds, and Sesay was sent to arrest him, and his diamonds were also seized. Sam Bockarie of the RUF subsequently reorganized the command structure of the AFRC/RUF, appointing himself as the most senior commander for military operations. See *RUF Trial Judgment*, above note 5, paras 803–12.

78 *AFRC Trial Judgment*, above note 9, para. 188; *RUF Trial Judgment*, above note 5, para. 801; *Taylor Trial Judgment*, above note 9, para. 6754; and “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, footnote 535 in para. 1080.

79 *RUF Trial Judgment*, above note 5, paras 801 and 804. “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, footnote 535 in para. 1080 also provides further details on the background to these events. It states that “Koroma and his wife were captured, searched and allegedly brutalised by RUF combatants under the command of Sam Bockarie (alias Mosquito).”

80 International Criminal Tribunal for the former Yugoslavia (ICTY), *The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, Case No. IT-96-23-T & IT-96-23/1-T, Judgment (Trial Chamber), 22 February 2001, paras 568–9.

81 *Ibid.*, para. 568.

above, very few details are included about this alleged crime, and the focus of all three judgments is on the events surrounding Johnny Paul Koroma and the tensions between the RUF and AFRC, rather than on the crime Mrs Koroma was allegedly the victim of. Irrespective, it is obvious that her association with the leader of the AFRC played a part in the alleged assault. The fact that these acts, together with the AFRC leader's arrest, led to the split of the AFRC and RUF further demonstrates the connection with the conflict. The alleged rape does not form part of the charges brought against Sesay. However, it demonstrates the symbiosis between the conflict and diamond smuggling, and how involvement in diamond smuggling led to the perpetration of further international crimes connected to the armed conflict.

The application of IHL to diamond exploitation

The SCSL did not elaborate in depth on IHL in its determinations of the crimes connected to diamond smuggling. These crimes were found by the SCSL to amount to crimes against humanity, rather than war crimes. Even though the context of the conflict was important in establishing the elements of these crimes,⁸² the activities were not prosecuted as war crimes, i.e. breaches of IHL amounting to criminal conduct.⁸³ The reasoning behind this is not detailed in the judgments, but the conclusions that the conduct was part of a widespread and systematic attack against the civilian population gives some indication that the Prosecution was aiming to encapsulate a pattern of conduct in prosecuting the crimes in this way.⁸⁴ A cursory glance might therefore raise the question what IHL had to do with diamond mining and smuggling in Sierra Leone. A more detailed analysis demonstrates how IHL was applicable to conduct related to exploiting diamonds. IHL was applicable to the attacks to gain control of diamond mining areas, such as the attack on Kono in 1998.⁸⁵ IHL was also applicable to the mistreatment of the civilian population by the parties to the conflict in the diamond mines and diamond mining areas.

82 *RUF Trial Judgment*, above note 5, para. 948.

83 Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court – Observers' Notes, Article by Article*, C. H. Beck and Hart Publishing, Munich and Oxford, 2008, 2nd ed., pp. 300–5, 323, 446–88 and 493. Interestingly, the *AFRC Trial Judgment* and *Taylor Trial Judgment* both concluded that the AFRC/RUF were the government of Sierra Leone during the period from the coup in May 1997 until ECOMOG's intervention in February 1998. See *AFRC Trial Judgment*, above note 9, paras 225–66; and *Taylor Trial Judgment*, above note 9, para. 6765. Although trade in diamonds was still done through illicit means, so in no way changing the criminal character of the conduct relating to exploitation of natural resources, this conclusion does have implications for other obligations under international law owed towards the civilian population, namely international human rights law. Such considerations were beyond the scope of the SCSL's jurisdiction and, unfortunately, this article.

84 See Stephen J. Rapp, "The Challenge of Choice in the Investigation and Prosecution of International Crimes in Post-Conflict Sierra Leone", in C. C. Jalloh, above note 7, pp. 25–6.

85 See further, Sandesh Sivakumaran, "Conduct of Hostilities", in S. Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, Oxford, 2014.

IHL norms on obtaining resources

IHL does include norms on how parties to the conflict obtain resources. Most obvious in this is the prohibition against pillage, applicable in both international armed conflicts (IACs) and NIACs.⁸⁶ The SCSL used the definition that pillage involved the unlawful appropriation of private or public property during armed conflict.⁸⁷ The Commentary to Article 4(2)(g) of AP II describes the prohibition applicable in NIACs as of “a general tenor”, applicable to both State-owned and private property, and thus would cover the exploitation of natural resources.⁸⁸ The law applicable in IACs, and particularly under the law of occupation, is more developed in relation to when the exploitation of natural resources amounts to pillage or not.⁸⁹

Under the law of occupation, diamonds together with other natural resources, such as water and oil, constitute public immovable property.⁹⁰ There are limitations under IHL on how the Occupying Power can use public immovable property.⁹¹ For example, the Occupying Power may not use them for their own domestic purposes.⁹² The property can be used to meet the security needs of the Occupying Power to the extent necessary for the current administration of the territory and to meet the essential needs of the population.⁹³ In other words, use of natural resources for the general war effort of the Occupying Power would not be permitted, but it would be permitted to address the specific security situation in the occupied territory. This is consistent with the General Assembly’s Resolution on “Permanent Sovereignty over Natural Resources” which provides that the right must be exercised in the interest of the national development and of the well-being of the people of the State

86 J.-M. Henckaerts and L. Doswald-Beck, above note 49, Rule 52; AP II, Art. 4(2).

87 *RUF Trial Judgment*, above note 5, paras 205–12. See further, International Criminal Court, *Elements of Crimes*, The Hague, 2011, Art. 8(2)(e)(v), p. 36; and Yulia Nuzban, “‘For Private or Personal Use’: The Meaning of the Special Intent Requirement in the War Crime of Pillage under the Rome Statute of the International Criminal Court”, *International Review of the Red Cross*, Vol. 102, No. 915, 2020.

88 Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987, para. 4542.

89 J.-M. Henckaerts and L. Doswald-Beck, above note 49, Rule 51. See further, Yutaka Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and Its Interaction with International Human Rights Law*, Martinus Nijhoff Publishers, Leiden, 2009, pp. 167–82 and 195–260; and Eyal Benvenisti, *The International Law of Occupation*, 2nd ed., Oxford University Press, Oxford, 2012, pp. 122–3.

90 E. Benvenisti, *ibid.*, p. 123.

91 Hague Convention (IV) on War on Land and its Annexed Regulations, 18 October 1907 (entered into force 26 January 1910), Art. 55: “The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”

92 E. Benvenisti, above note 89, p. 123.

93 *Ibid.*

concerned.⁹⁴ Excessive exploitation, through over-mining for example, is forbidden⁹⁵ and may constitute pillage.⁹⁶

Organized armed groups exercising effective control in a NIAC have no similar right to exploit the natural resources found there under IHL or any other body of international law. Whilst it has been suggested that the relevant principles on the exploitation of natural resources applicable in occupation could be developed to apply in NIACs,⁹⁷ such a development is in my view unlikely given the sensitivities around the legality of organized armed groups exploiting natural resources in armed conflict and evidenced use of these resources to fuel conflict. To date, there has been no development in State practice to this end.⁹⁸ Indeed, arguments pertaining to how the law of occupation might be extended to apply before the SCSL were dismissed.⁹⁹ The law of occupation creates an exception to the norm under public international law that the State retains sovereignty over its natural resources, but in doing so, it reinforces the norm that the territorial State has sovereignty by defining limitations on how another State in the exceptional circumstances of occupation can use such property.¹⁰⁰ It does not transfer the sovereign right. Creating an exception for non-State armed actors would run counter to the general principle under public international law that it is the State that has the right to dispose of natural wealth and resources.¹⁰¹

That said, the norms under the law of occupation can be used as interpretative guidance of the norms that are applicable in NIACs, such as in determining whether exploitation of natural resources is excessive so as to

94 UN General Assembly Resolution 1803 (XVII), 14 December 1962, para. 1. Held by the ICJ to be custom in *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *ICJ Reports 2005*, p. 168, para. 244.

95 Hague Regulation (IV), 1907, above note 91, Art. 55.

96 ICJ, *Armed Activities* case, above note 94, paras 246–50.

97 Daniëlla Dam-de Jong, “Between Paradox and Panacea: Legalizing Exploitation of Natural Resources by Armed Groups in the Fight Against Conflict Resources, Armed Groups and International Law Blog”, *Armed Groups and International Law*, 18 June 2019, available at: www.armedgroups-internationallaw.org/2019/06/18/between-paradox-and-panacea-legalizing-exploitation-of-natural-resources-by-armed-groups-in-the-fight-against-conflict-resources/.

98 See Philip Spoerri, “The Law of Occupation”, in Andrew Clapham and Paula Gaeta (eds), *The Oxford Handbook of International Armed Conflict*, Oxford University Press, Oxford, 2014, p. 185. See further, ICRC, *Commentary on GC III*, 2020, above note 6, paras 226 and 362–6. Note that the concept of “protected persons” under GC IV has developed to include persons of the same nationality as the attacking party, but who lack allegiance to the State of their nationality; see ICTY, *The Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72-A, Judgment (Appeals Chamber), 15 July 1999, para. 166; International Criminal Court, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Case No. ICC-01/04-01/07, Decision on the Confirmation of Charges (Pre-Trial Chamber I), 30 September 2008, paras 289–93. Note, however, that nationality is not relevant in determining protected status in NIACs. See further, common Article 3; and AP II, Arts 4(1) and 13(1).

99 *RUF Trial Judgment*, above note 5, paras 982–8.

100 Gael M. Graham, “Protection and Reversion of Cultural Property: Issues of Definition and Justification”, *The International Lawyer*, Vol. 21, No. 3, 1987, p. 759.

101 Note the implications of the conclusions of the AFRC and Taylor judgments that the AFRC/RUF were the “government” during the junta period. Whilst the AFRC/RUF continued to exploit diamonds through illicit trade, it raises an interesting point in relation to when non-State actors exercise State powers. See further, Jean-Marie Henckaerts and Cornelius Wiesener, “Human Rights Obligations of Non-State Armed Groups: An Assessment Based on Recent Practice”, in Ezequiel Heffes, Marcos D. Kotlik and Manuel J. Ventura (eds), *International Humanitarian Law and Non-State Actors: Debates, Law and Policy*, Springer, Sydney, 2020.

constitute pillage.¹⁰² How and what the property was used for, and where the proceeds of the exploitation of the natural resources were spent could be relevant facts in determining whether the conduct amounted to pillage, for example. Where the proceeds of the exploitation are used for the general effort of the party to continue the armed conflict, this could indicate pillage, for example.¹⁰³ This is consistent with the rulings of the International Criminal Tribunal for the former Yugoslavia, such as in the Čelebići judgment that pillage includes acts “committed by individual soldiers for their private gain, and to the organized seizure of property undertaken within the framework of systematic economic exploitation of occupied territory”,¹⁰⁴ and historical precedents following the Second World War.¹⁰⁵ It is also consistent with the exceptions recognized in the law of occupation that permits Occupying Powers to exploit natural resources in the occupied territory for the needs of the civilian population of the occupied territory and administration and security needs of the Occupying Power in relation to the occupied territory outlined above.

Although the SCSL determined that diamonds were exchanged on numerous occasions for arms and ammunition,¹⁰⁶ suggesting that the proceeds from diamond mining were used for the general fighting effort of the group rather than the needs of the civilians in the areas under the group’s control, whether the exploitation of diamonds amounted to pillage was not considered by the SCSL. In the *RUF* case, the Trial Chamber declined to consider whether the systematic and unlawful appropriation of diamonds throughout Kono District was also pillage, as the indictment only referred to pillage of civilian property.¹⁰⁷ However, in future cases the extent of exploitation and what the natural resources are used for could be relevant factors in determining whether or not any war crime was committed in their exploitation.

Conditions of labour

At a minimum, organized armed groups are obliged to respect fundamental guarantees of individuals not participating or no longer participating in the conflict.¹⁰⁸ This requires that people be treated humanely.¹⁰⁹ Whilst conditions of

102 AP II, Art. 4(2)(g); J.-M. Henckaerts and L. Doswald-Beck, above note 49, Rule 52.

103 See, for example, ICTY, *The Prosecutor v. Zejnir Delalić, Zdravko Mucić also known as “Pavo”, Hazim Delić and Esad Landžo also known as “Zenga” (Mucić et al.)*, Case No. IT-96-21-T, Judgment (Trial Chamber), 16 November 1998 (Čelebići judgment), para. 590; and *N.V. De Bataafsche Petroleum Maatschappij and Others v. The War Damage Commission*, Singapore Law Reports, 1956, p. 65. See further, James G. Stewart, *Corporate War Crimes: Prosecuting the Pillage of Natural Resources*, Open Society Justice Initiative, New York, 2011, para. 16.

104 ICTY, *The Prosecutor v. Mucić et al.*, Trial Judgment, 1998, *ibid.*, para. 590. See further, J. G. Stewart, *ibid.*, paras 16–19.

105 See further, J. G. Stewart, above note 103, para. 16.

106 See, for example, *RUF Trial Judgment*, above note 5, paras 828, 1042 and 1088; and *Taylor Trial Judgment*, above note 9, paras 6139–49.

107 *RUF Trial Judgment*, above note 5, para. 1339.

108 AP II, Art. 4.

109 J.-M. Henckaerts and L. Doswald-Beck, above note 49, Rule 87. See further, T. Rodenhäuser, above note 4, p. 1000.

diamond mining were harsh before the armed conflict, there is no doubt that things got worse during the conflict. A lack of food is noted in the judgments and the TRC Report,¹¹⁰ and areas difficult to reach in other circumstances become impossible to reach during the violence. It is exactly these difficult conditions that IHL aims to address in requiring that parties to the conflict do not make things even worse by mistreating the civilian population. Whilst Trial Chamber I acknowledged in the *RUF* judgment that the RUF did provide the civilian population with “certain basic facilities and services”, it emphasized that it relied on forced labour to facilitate its war effort “at the expense of providing for the needs of the civilian population”.¹¹¹

The potential to limit the impact of organized crime in armed conflict through compliance with IHL

The application of IHL during the armed conflict provides a potential mechanism to assist in relieving the impact of the effects of diamond smuggling on the civilian population during that period. Other international legal standards are also relevant in these circumstances, international human rights law, international criminal law and international labour standards being obvious examples in the specific context of diamond smuggling in Sierra Leone. As a tool in this multifaceted toolbelt of those seeking to address the impact of organized crime in armed conflict, IHL adds value in being directly applicable to the activities of the non-State parties to the armed conflict in their treatment of persons not or no longer participating in the armed conflict.¹¹²

It is not suggested here that respect for IHL would have provided any legal basis for the parties to the conflict to engage in forced labour and enslavement of adults and children and illicit diamond extraction and trade, or that compliance would have resulted in the parties to the conflict not engaging in diamond smuggling. However, had there been more humane conditions for labourers and less involvement of armed elements of the groups in supervision of mining activities, certain acts of violence would probably have been reduced, such as killings and physical mistreatment of civilians working in the mines by armed guards. Ensuring compliance with IHL may therefore reduce the impact of organized crime in armed conflicts. This is consistent with other areas of research into broader social, economic and political challenges in conflict areas.¹¹³ In addition, ensuring compliance with IHL is also something all States have a legal interest in, which is explored further in the next section.

110 See, for example, *RUF Trial Judgment*, above note 5, para. 1420; and “Children and the Armed Conflict in Sierra Leone”, in TRC Report, above note 8, Vol. Three B, Chapter 4, paras 126–33 and 149–50.

111 *RUF Trial Judgment*, above note 5, para. 986. See also para. 1093.

112 See further, Jann Kleffner, “The Applicability of International Humanitarian Law to Organized Armed Groups”, *International Review of the Red Cross*, Vol. 93, No. 882, 2011.

113 See, for example, ICRC, *Displacement in Time of Armed Conflict: How International Humanitarian Law Protects in War, and Why it Matters*, Geneva, 2019.

The basic reasoning behind obligations to treat protected persons humanely is to provide a minimum standard of treatment in situations of armed conflict recognizing the inherent human dignity of all persons.¹¹⁴ This is one of the cornerstones of IHL and most basic means in which parties to the armed conflict can reduce the impact of the military operations on those not engaged in the hostilities. The obligation to treat persons not or no longer participating in the hostilities humanely permeates all aspects of how such persons should be treated, including situations where such persons can be obliged to engage in work.¹¹⁵ A detailed analysis of these provisions reveals factors required for treatment in such work to be humane. Again, it is not suggested that compelling or forcing civilians to carry out mining work would have been lawful under IHL or otherwise. There is nothing in AP II, common Article 3 or Customary IHL that provides a legal basis for this. However, even in situations where the use of forced labour is not permitted under IHL, such persons are still protected and still entitled to be treated humanely as a minimum standard of treatment.

The provisions relating to other situations where protected persons may be compelled to work indicate a number of conditions for such work to be humane. Under Article 5(1)(e) of AP II, if persons who are deprived of their liberty for reasons related to the conflict are made to work, they shall benefit from similar working conditions and safeguards as those enjoyed by the local civilian population. Note that the requirement is for “similar” conditions and safeguards, and not “the same”. This can be contrasted with provisions applicable in IACs relating to compelled labour of protected persons that must not be inferior to those enjoyed by the nationals of the Detaining Power employed in similar work.¹¹⁶

Using the interpretive guidance of norms applicable in IACs, a number of factors can be identified as minimum requirements in satisfying the “conditions” and “safeguards” for compelled labour also applicable in NIACs. The provision of payment for works done is one fundamental condition. The requirement that persons compelled to work must receive a fair wage is included in Article 51 of the Fourth Geneva Convention (GC IV). The Third Geneva Convention (GC III) includes detailed provisions on the working pay due to prisoners of war, which must be “a fair working rate of pay” paid by the detaining authorities direct.¹¹⁷ In addition to the requirement that fair wages be paid, Article 51(3) of GC IV lists “hours of work, equipment, preliminary training and compensation for occupational accidents and diseases” as working conditions and safeguards. GC III similarly includes limitations on the hours of work,¹¹⁸ as well as requirements for medical supervision of

114 ICRC, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea*, Cambridge University Press, Cambridge, 2017, paras 1372, 1417 and 1418.

115 *Ibid.*, para. 1418; ICRC, *Commentary on GC III*, 2020, above note 6, para. 1573.

116 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV), Art. 51(1).

117 Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III), Art. 62(1). See further, Arts 54 and 58–68.

118 GC III, Art. 53; and GC IV, Art. 51(3).

workers,¹¹⁹ and the provision of medical care required by any accidents in connection with their work, or disease contracted in the course of or in consequence of their work.¹²⁰ Medical attention, the payment of wages and ensuring that compensation is received for occupational accidents and diseases are similarly included in Article 95 of GC IV, which sets out working conditions for civilian security internees employed by the Detaining Power. Whilst it is acknowledged that the differences between IACs and NIACs mean that these standards cannot be applied *mutatis mutandis* and using the standards in IACs as interpretive guidance must take into account this reality, there are identified working conditions that are within the reach of any organized armed group, such as the limitations on the hours of work. Whilst other standards and conditions may be more difficult for organized armed groups to implement, this incapacity or inability does not make the treatment itself less inhumane.

Humane treatment in conditions of labour is also a limitation on the type of work that can be undertaken. Certain work will be inhumane because it is too unhealthy, dangerous or humiliating.¹²¹ This is consistent with the norms applicable in IACs which on the whole include more detailed limitations on the type of work protected persons can be compelled to engage in.¹²² For example, Article 52 of GC III, applicable in IACs, prohibits the Detaining Power employing prisoners of war for unhealthy or dangerous labour or for labour that is looked upon as humiliating for a member of the Detaining Power's own forces. This again would be a standard that all organized armed groups could implement.

An unfortunate reality in Sierra Leone was that conditions for people working in diamond mining before the conflict were by no means as fair as they should have been, and living up to these standards does not necessarily provide sufficient guidance on what constitutes humane treatment. This was compounded further by the lack of respect for IHL demonstrated by all parties to the conflict. Understanding these factors may, however, assist in identifying alternative strategies to bring about changes in behaviour of the parties to the conflict, and build on current efforts in relieving the suffering of those who do not or are no longer participating in the conflict from the effects of hostilities.¹²³

The obligation of other States to ensure respect as a means of bolstering compliance

The influence of other States on the parties to the conflict can significantly assist in reducing the suffering of those that do not participate in the hostilities brought about by organized crime connected to the conflict.¹²⁴ This is linked to the

119 GC III, Art. 55.

120 GC III, Art. 54(2).

121 See Y. Sandoz *et al.*, above note 88, para. 4579.

122 See further, GC III, Arts 49–57; and GC IV, Arts 51(2), (3) and (4), and 95 and 96. See also GC IV, Art. 52.

123 ICRC, above note 113, p. 40.

124 See further, ICRC, *Allies, Partners and Proxies: Managing Support Relationships in Armed Conflict to Reduce the Human Cost of War*, Geneva, 2021.

external dimension of the obligation to ensure respect for IHL under Article 1 common to the Geneva Conventions of 1949.¹²⁵ This includes ensuring respect for common Article 3 and is therefore also applicable in NIACs.¹²⁶ The obligation to ensure respect requires States not party to an armed conflict to take measures to prevent and address violations of IHL by both State and non-State armed groups that are parties to armed conflicts.¹²⁷ State practice and the findings of the International Court of Justice confirm that this positive obligation is reflective of customary international law.¹²⁸

States must take positive measures to induce parties to armed conflicts to comply with their obligations under IHL where violations have occurred or where the State has knowledge that there is a serious risk that they will occur.¹²⁹ This is an obligation of means and what is adequate to discharge it will vary depending on the context, but should be sufficient to address the breach or potential breach of IHL.¹³⁰ Influence should therefore be interpreted broadly. Factors identified in determining the scope of the obligation in the International Committee of the Red Cross's Commentary include the foreseeability of the violations and the State's knowledge thereof, the gravity of the breach, the means reasonably available to the State, and the degree of influence it exercises over the individuals concerned.¹³¹

Knowledge of actual and potential breaches of IHL will probably arise in different circumstances for different States, and the scope of measures available to address breaches of IHL and influence the group will vary between different States. For example, States that are a long distance from the territory where the NIAC is ongoing with few connections, such as through trade or culture, to the State or the organized armed groups involved are less likely to be aware of breaches of IHL compared with neighbouring States with close connections. Examples of such close connections include through common membership in regional organizations. The influence of Charles Taylor over the conduct of the

125 Common article 1 of the Geneva Conventions of 1949. See further, Robin Geiß, "Obligation to Respect and Ensure Respect", in Andrew Clapham, Paola Gaeta and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford University Press, Oxford, 2015, pp. 120–3. See also Knut Dörmann and Jose Serralvo, "Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations", *International Review of the Red Cross*, Vol. 96, No. 895–896, 2014.

126 ICRC, *Commentary on GC II*, 2017, above note 114, para. 146.

127 R. Geiß, above note 125, pp. 120–3.

128 J.-M. Henckaerts and L. Doswald-Beck, above note 49, Rule 144; ICJ, *Military and Paramilitary Activities in and against Nicaragua Case (Nicaragua v. United States of America)*, Judgment, 26 November 1984, *ICJ Reports 1986*, p. 392, para. 220. See also ICJ, *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007, *ICJ Reports 2007*, p. 43, para. 162. See further, ICRC, *Commentary on GC II*, 2017, above note 114, paras 193–5.

129 R. Geiß, above note 125, pp. 124–30.

130 *Ibid.*, p. 123.

131 ICRC, *Commentary on GC III*, 2020, above note 6, para. 183. See further, Konstantinos Mastorodimos, *Armed Non-State Actors in International Humanitarian and Human Rights Law: Foundation and Framework of Obligations, and Rules on Accountability*, Routledge, London and New York, 2016, pp. 55–137.

parties to the armed conflict in Sierra Leone is an example of such a close connection. The judgments of the SCSL highlight examples of measures aimed at addressing violations of IHL, such as when Taylor used his influence over the leader of the RUF to facilitate the release of UN peacekeepers taken hostage by this group, as well as when he influenced the leader of the AFRC to facilitate the release of UN peacekeepers taken captive by the breakaway AFRC group the “West Side Boys”.¹³² The Trial Chamber’s findings highlight the particular influence that Taylor had over the leadership in the RUF.¹³³ However, whilst engaged in activities to address violations of IHL and bring about peace, Taylor was also trading in diamonds for arms and ammunition with the RUF, as well as calling on the RUF to send forces to help him fight his own enemies in Liberia.¹³⁴ This in itself was a breach of the negative obligation not to encourage, aid or assist violations of IHL under the obligation to ensure respect.¹³⁵

Proximity is not, however, a determining factor in determining the means available to discharge the obligation. For example, other States involved in diamond trading were also aware of obscurities in the trade as a result of diamond smuggling in Sierra Leone.¹³⁶ Proximity is also not relevant when ensuring accountability for international crimes.¹³⁷ The impact of the illicit trade in diamonds in the Sierra Leone armed conflict contributed to the introduction of the Kimberley Process certification scheme as a means to reduce the trade in illicit diamonds by organized armed groups fuelling armed conflict. Whilst this has been praised by some for reducing illicit trade in diamonds, resulting in an increase in official exports of diamonds, it has been criticized by others as failing to address the root causes of the problems in diamond mining industry and trade that themselves fuel conflict.¹³⁸

The Sierra Leone conflict highlights an area of extreme delicacy, but also tension, in States not party to the conflict using influence to address violations of IHL. Whilst those more proximate in relationship and location often have more

132 *Taylor Trial Judgment*, above note 9, para. 6345. See further, *RUF Trial Judgment*, above note 5, paras 40, 44, 556, 896 and 1610–11; and “The Military and Political History of the Conflict”, in TRC Report, above note 8, Vol. Three A, Chapter 3, paras 640, 1031–8, 1111 and 1113 on the West Side Boys.

133 See, for example, *Taylor Trial Judgment*, above note 9, paras 6414 and 6450.

134 *Ibid.*, paras 6139(i), (ii) and (v), and 6140–3 and 6145.

135 ICRC, *Commentary on GC III*, 2020, above note 6, paras 191–6.

136 See further, UN Security Council, Resolution 1306 (2000), S/RES/1306 (2000), 5 July 2000.

137 See, for example, details of a criminal case relating to international crimes connected with diamond smuggling in Belgium: Civitas Maxima, “Michel Desaeleer”, available at: <https://civitas-maxima.org/legal-work/our-cases/michel-desaeleer/>. See, also, prosecution related to arms smuggling in the United States: Jonathan Stempel, “Russian Arms Dealer Viktor Bout’s U.S. Conviction Upheld”, *Reuters*, 27 September 2013, available at: www.reuters.com/article/us-usa-crime-bout-idUSBRE98Q0PG20130927. See further, Jason Ryan, “New Charges Against ‘Merchant of Death’ Viktor Bout”, *ABC News*, 17 February 2010, available at: <https://abcnews.go.com/Blotter/russian-arms-dealer-viktor-bout-charges-merchant-death/story?id=9865996>.

138 See, for example, Global Witness, *Briefing: The Kimberly Process*, 1 April 2013, available at: www.globalwitness.org/en/campaigns/conflict-diamonds/kimberley-process/; and Global Witness, *Return of the Blood Diamond: The Deadly Race to Control Zimbabwe’s New-Found Diamond Wealth*, 2010, available at: www.globalwitness.org/documents/10521/return_of_blood_diamond.pdf. See also Audrie Howard, “Blood Diamonds: The Successes and Failures of the Kimberley Process Certification Scheme in Angola, Sierra Leone and Zimbabwe”, *Washington University Global Studies Law Review*, Vol. 15, No. 1, 2016.

measures at their disposal to influence the parties to the conflict,¹³⁹ they will also have other interests that have an impact on their actions. In Sierra Leone, this led to even further violations of IHL. As an obligation of good faith, other States must therefore be vigilant in ensuring that influence is not exercised counter to this requirement, as part of their own obligation to ensure respect.

Conclusion

What can we learn today from the armed conflict in Sierra Leone that ended over 20 years ago? Much has since changed in the relationship between organized crime and armed conflict. Moving forward in the 2020s, paying heed to historical lessons should give a better understanding of what lies ahead. For one, it is as true today as it was during the armed conflict in Sierra Leone that organized crime in one conflict area also fuels conflict in other areas.¹⁴⁰ Models similar to that implemented by the parties to the conflict in Sierra Leone in carrying out illicit trade remain a feature of conflict situations today.¹⁴¹ Understanding how IHL may apply to conduct related to organized crime, and how it may assist in relieving the suffering of the civilian population from its impact is therefore still relevant. An important tool in this regard is identifying the varying and most effective measures available to States not party to the conflict to influence the parties, further to their obligation to ensure respect for IHL.

There are innumerable ways in which organized crime can thrive in conflict settings, and it is acknowledged that IHL may not be applicable in relation to all these criminal activities. Whilst IHL is by no means the only or even the primary legal framework aimed at addressing activities described as organized crime, where IHL is applicable, the lessons to be learned from the Sierra Leone conflict demonstrate that compliance with IHL can add a further layer of relief to address the impacts on the civilian population. In Sierra Leone, a symbiosis in violence was created with diamond smuggling being essential to achieve the parties' military objectives, and those objectives being increasingly shaped by greater involvement in diamond smuggling. This led to further violence connected with

139 ICRC, *Commentary on GC III*, 2020, above note 6, para. 200.

140 Amado Philip de Andrés, "West Africa Under Attack: Drugs, Organized Crime and Terrorism as the New Threats to Global Security", *UNISCI Discussion Papers*, No. 16, January 2008. See also Ismail Rashid, "Sierra Leone: The Revolutionary United Front", in Michelle Hughes and Michael Miklaucic (eds), *Impunity: Countering Illicit Power in War and Transition*, Center for Complex Operations, National Defense University, Washington, DC, 2016, p. 201, available at: <https://cco.ndu.edu/News/Article/780201/chapter-8-sierra-leone-the-revolutionary-united-front/>, referencing Diane Frost, *From Pit to Market: Politics and the Diamond Economy in Sierra Leone*, James Currey, New York, 2012, p. 76.

141 Such as, for example, following the peace agreement between the Government and the Revolutionary Armed Forces of Colombia (FARC) in Colombia. See Mission to Support the Peace Process in Colombia of the Organization of American States, *Twenty-Third Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia* (MAPP/OAS), 2016, p. 2. See also International Alert, *The Role of the Exploitation of Natural Resources in Fuelling and Prolonging Crisis in the Eastern DRC*, January 2010, available at: www.international-alert.org/wp-content/uploads/2021/09/DRC-Natural-Resources-Conflict-EN-2010.pdf.

the conflict and breaches of IHL, including unlawful attacks, forced labour and mistreatment of the civilian population.

The symbiosis between diamond smuggling and the armed conflict in Sierra Leone also demonstrates an important relationship in the economic and political driving forces to the conflict. These driving forces are apparent in conflicts today and can aid in understanding the conduct of the parties to the conflict, as well as addressing potential violations of IHL. It is not surprising that there is a propensity for organized armed groups in NIACs to engage in organized crime, considering the level of organization required for these actors to classify as a party to the conflict and engagement in violent conduct.

As noted above, even if the RUF/AFRC had treated civilians forced to mine more humanely, it does not change either the criminal conduct of using forced labour or the illicit trade in diamonds. However, it may help address some of the resulting suffering. Updating our understanding is critical to appreciate when IHL may apply. Nevertheless, context is important, and the potential results should not be overemphasized so that unrealistic expectations are not created as to how the problems associated with organized crime in armed conflict might be addressed.