

**An Analysis of the Key Structural and Operational Characteristics of the UN  
Peacekeeping Mission and Transitional Justice in Sierra Leone:  
A Strategy for Future Implementation**

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**ABSTRACT**

There exists an emergent conviction that robust UN peacekeeping missions and various transitional justice strategies exist side by side in conflict and post-conflict societies, both requiring large investments of money, resources and energy. Yet the processes often overlap or compete with one another, thereby thwarting the effectiveness of either process. Looking at the interaction between the UN peacekeeping mission and selected transitional justice strategies in Sierra Leone following its nine-year civil war, it is possible to identify the key structural (i.e. mandate and resources) and operational (i.e. coordination) characteristics that effect the interaction between these two operators in post-conflict settings.

Following a hostage crisis in 2000, the United Nations Mission in Sierra Leone underwent significant changes that ultimately would allow it to create stability and the maintenance of a secure environment. This allowed for the establishment of a mixed - international and national - tribunal to prosecute those most culpable, along side a national truth and reconciliation commission to provide reparative justice for victims. Each of these transitional justice measures has met with some degree of failure as well as succeeding in contributing to the development of Sierra Leone.

The lessons taken from Sierra Leone's experience show that structurally the most important elements impacting interaction involve well-design mandates and the timing of implementing strategies. Operationally, it is imperative that following an armed conflict all actors operate under a comprehensive strategic framework and coordinate efforts. There may also be a place for the new UN Peacebuilding Commission to act as an overarching coordinator in future post-conflict scenarios. Consequently, as intrastate wars continue to dominate armed conflicts threatening the recurrence of an internal war, strategies that provide security and seek reconciliation become evermore important. These findings have both theoretical and practical implications in the fields of peacekeeping and transitional justice in the 21<sup>st</sup> century.

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**CHAPTER I**  
**INTRODUCTION**

Modern UN peacekeeping missions and transitional justice strategies exist side by side in conflict societies, both requiring large investments of money, resources and energy, yet the processes often overlap or compete with one another, thereby thwarting the effectiveness of either process. By examining the situation in Sierra Leone, a key case study involving a mission and transitional justice strategies, I aim to determine how key structural variables (e.g. mandates and resources) and operational characteristics (i.e. comprehensive frameworks and coordination) affect effectiveness. There is a positive relation between peacekeeping operations and transitional justice mechanisms and the lessons that come out of the Sierra Leonean experience help to formulate a framework for the optimal structure and operation that for future conflict and post-conflict situations rendering peacekeeping missions and transitional justice strategies more effective, thus promoting peace and justice.

Throughout most of history, armed conflicts were handled using negotiations and diplomacy. Just as the environments of armed conflicts have rapidly evolved over the past 60 years, so to have the mechanisms evolved from diplomacy to more intrusive instruments such as formal peacekeeping operations. United Nations (UN) peacekeeping as a concept originated in the Middle East acting solely as an observer mission to “supervise the observance” of all terms to a cease-fire.<sup>1</sup> Following the Suez Canal crisis, peacekeeping operations, until the end of the 1970s, acted as armed yet passive interposition forces with the agreement of the parties, under the auspices of a temporary peace.<sup>2</sup> Unlike modern peacekeeping operations, traditional operations did

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<sup>1</sup> S.C. Res. 50, U.N. Doc. S/RES/50 (May 29, 1948) The UN Truce Supervision Organization was an observer mission following the Arab-Israeli war of 1948 lasting little more than a month and acted as a period for each side to reinvigorate their militaries and plan for fighting following the truce.

<sup>2</sup> The UN Emergency Force I would form the classical example of traditional peacekeeping. G.A. Res. 1001 U.N. Doc. A/1001/ES-1 (Nov. 7, 1956); For an elaboration of traditional peacekeeping operations

not take part in the political peace process but rather sought to provide ease of mind for all involved parties that were adhering to the terms of a ceasefire agreement.<sup>3</sup> The Cold War halted peacekeeping operations between 1978 and 1988 as the USSR and the USA had conflicting significant foreign interests.

The decline of Cold War tensions and its ultimate collapse coupled with the rise of US military dominance lead to a general period of increased international stability. Following the collapse of the Berlin Wall there was a shift in wars from predominantly interstate to primarily intrastate civil wars.<sup>4</sup> Coinciding with the decline of the Cold War there was a change in the mindset of global politics that allowed for intervention in civil conflicts. For most of the 20<sup>th</sup> century, a policy of non-intervention into the affairs of other states dominated international law. With the rise of civil conflicts, states found themselves more willing to intervene on state sovereignty.<sup>5</sup> Thus, the rise in conflicts coincided with the changing concept of intervention and increased awareness by the international community towards armed conflict.<sup>6</sup> New attitudes, changing environments and the shift in wars from predominantly interstate conflicts to intrastate civil wars which present new challenges to peacekeeping operations.<sup>7</sup> UN peacekeeping operations with nearly 40

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and outlining the exceptions during this time period of missions to the Congo, Lebanon and Cyprus *see* PAUL DIEHL, *PEACE OPERATIONS* 13 (2008).

<sup>3</sup> Compare the UN Security Force in West New Guinea established in 1962 by agreement between Indonesia and the Netherlands to monitor the ceasefire and aid in the transition process, with the UN Mission in Liberia which worked with the transitional Government and ECOWAS to re-establish a national authority. G.A. Res. 1752, U.N. Doc A/RES/1752(XVII) (1962) and S.C. Res. 1509, U.N. Doc. S/RES/1509 (2003).

<sup>4</sup> Monty G. Marshall & Ted Gurr, *Peace and Conflict*, 2003 CENTER FOR INTERNATIONAL DEVELOPMENT AND CONFLICT MANAGEMENT 43-44. It is important to note that overall interstate conflicts were dwarfed by the number of intrastate conflicts since World War II. However, until around 1990 peacekeeping operations were used overwhelmingly only for interstate conflicts rather than intrastate conflicts.

<sup>5</sup> Diehl, *supra* note 2, at 53.

<sup>6</sup> Heike Spieker, *Changing "Peacekeeping" in the New Millenium? The Recommendations of the Panel on United Nations Peace Operations of August 2000*, in *INTERNATIONAL PEACEKEEPING* (ed. Boris Kondoch 2007).

<sup>7</sup> Marshall, *supra* note 4, at 12 (outlining the rise and fall of global conflicts based on interstate conflicts and societal wars from 1946 through 2002).

years of experience in responding to interstate conflicts, were quickly confronted with the task of adjusting to the societal civil conflicts that would define new duties from 1985 through 2000, including human, economic and political development.<sup>8</sup> Despite the substantive changes in peacekeeping operations they are all created to meet the primary responsibility of the UN of maintaining peace and security.<sup>9</sup>

Once stability has been achieved, even if only minimally, the UN, international and local actors set out to rebuild war torn countries. As part of this rebuilding process, a variety of mechanisms are implemented simultaneously to peacekeeping missions to help ensure long-lasting security and seek some sort of justice for the armed conflict's victims. These mechanisms comprise the transitional justice process which, "embodies an attempt to build a sustainable peace after conflict, mass violence or systemic human rights abuses."<sup>10</sup> Transitional justice is premised on an understanding that domestic stability, security and democratic governance in the aftermath of an atrocity are strengthened by a commitment to accountability and changes in the social dynamic of a country.<sup>11</sup>

Despite the increased for impunity, proliferation of transitional justice mechanisms and a steady growth in resources for specific post-conflict justice initiatives, each new challenge presents obstacles that often result from the interaction of post-conflict justice actors and peacekeepers. Transitional justice strategies consist of an integration of several modalities, including: truth and reconciliation commissions, prosecutions, memorialization, administrative measures, reparations,

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<sup>8</sup> Diehl, *supra* note 2, at 54.

<sup>9</sup> Charter of the United Nations, *Preamble* (June 26, 1945) See also David A. Curran & Tom Woodhouse, *Cosmopolitan Peacekeeping and Peace Building in Sierra Leone: What Can Africa Contribute?* 6 INT'L AFFAIRS 1055, 1059 (2007) (outlining the main responsibilities of peacekeeping operations)

<sup>10</sup> Paul van Zyl, *Promoting Transitional Justice in Post-Conflict Societies*, in SECURITY GOVERNANCE IN POST-CONFLICT PEACEBUILDING, 209 (Alan Bryden & Heiner Hänggi, eds. 2005).

<sup>11</sup> HO-WON JEONG, PEACEBUILDING IN POSTCONFLICT SOCIETIES 22 (2005).

and traditional approaches. Over the past ten years the world has seen varying degrees of integration of transitional justice strategies. Following some armed conflicts there may be minimal modalities use, as was the case in Mozambique, while other post-conflict scenarios witness the integration of all the mechanisms, such as Argentina.

Every conflict is *sui generis*, which results in the inability to apply a “one size fits all” approach to transitional justice. This necessitates a unique combination of mechanisms with varying degrees of integration. Thus, context - something heavily affected by peacekeeping operations - plays a definitive role in establishing any transitional justice mechanism. The demand for accountability requires that these strategies be established and implemented as soon as practicable during the end stages of a conflict rather than in a truly post-conflict state. Consequently, the world of peacekeepers and transitional justice actors collide, thereby requiring varying degrees of structural and operational coordination.

Since 1948, over 300 conflicts worldwide have occurred, more than 90 of which occurred in Africa, during that time the number of UN led peacekeeping operations has dramatically increased. While only sporadically used between 1948 and 1988, there was a drastic increase in UN led missions and from 1992 onwards a rise in non-UN led missions. All-in-all, the UN has deployed 65 peacekeeping missions since 1948, 23 of which took place in Africa. Thus, Africa has hosted more than 30% of the world’s conflicts since 1948 and around 35% of correlating peacekeeping missions.<sup>12</sup> The conflict in Sierra Leone illustrates a good interaction between the demands of a UN peacekeeping operation and transitional justice mechanisms.

From 1991-2002, Sierra Leone witnessed a bloody civil war and a UN peacekeeping mission that lasted six years successfully completing its mission in

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<sup>12</sup> Marshall, *supra* note 4. Peter Wallensteen & Margareta Sollenberg, *Armed Conflict 1989-1998*, 37 J. OF PEACE RESEARCH 638 (2000).

2005. One of the biggest peacekeeping operations, the United Nations Mission in Sierra Leone (UNAMSIL) created stability and maintained a secure environment. However, this success story is a drastic change from 2000 when the mission was viewed as one of the greatest UN failures. Ultimately, UNAMSIL has become the standard and prototype for future successful peacekeeping missions.

Additionally, Sierra Leone embraced the use of several transitional justice mechanisms but the most notably have been the establishment of a mixed tribunal established at the request of her government working alongside with a national truth and reconciliation commission. These institutions were located within Sierra Leone, unlike other situations which saw transitional justice mechanisms implemented outside conflict borders, and both combine national with UN appointed staff. The location and composition of each mechanism gave legitimacy to the institutions leading to positive responses both domestically and internationally. Moreover, with the primary goal of tribunals being accountability and punishment for the worst perpetrators, truth commissions seek broad victim-based justice which exhibits the intended complementing nature of each mechanism. While both transitional justice modalities experienced setbacks they generally are seen as successful and provide a good background for examining their interaction with UNAMSIL. Consequently, Sierra Leone provides the perfect case study for determining the key structural and operational variables for peacekeeping operations and transitional justice mechanisms to help formulate guidelines.

**CHAPTER II**  
**SIERRA LEONE CASE STUDY**

## I. Sierra Leone Civil War Background

Following its independence from Britain in 1961, Sierra Leone was marked by decades of economic decline, government overspending and military corruption under the All People's Congress (APC) one-party state.<sup>13</sup> The downward spiraling nation tried to gain control of its corrupt government through multi-party elections in 1992 which never took place due to a military coup lead by Valentine Strasser of the Sierra Leone Army (SLA). Meanwhile, neighboring Liberia by 1991 was deep in fighting its own raging civil war where elements of the National Patriotic Front of Liberia (NPFL) overflowed into Sierra Leone. Consequently, with support from NPFL leader Charles Taylor, the Revolutionary United Front (RUF), formed under Foday Sankoh, began a campaign to take over Sierra Leone one village at a time beginning with the diamond rich eastern Kono district.<sup>14</sup> By 1995, the RUF were prepared to enter Freetown, Sierra Leone, and achieve their goal of overthrowing the government. Since taking power in 1992, Strasser managed to stabilize the shattered Sierra Leone economy by bringing in foreign aid which was used in March of 1995 to hire 150 dogs of war from the private security firm Executive Outcomes to push the RUF away from Freetown and secure the mineral and diamond districts of Sierra Leone.

With the RUF insurgency contained and multi-party elections scheduled for early 1996, it looked as though Sierra Leone might be back on track. However, while a record numbers of voters went to the polls in February 1996, they were met by the

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<sup>13</sup> See JOE A.D. ALIE, A NEW HISTORY OF SIERRA LEONE 248 (1990) (in-depth history of Sierra Leone in the 20<sup>th</sup> century)

<sup>14</sup> While Charles Taylor provided support for the RUF it would be foolish to say that they existed solely as a result of the NPFL . While there was a mutual pledge of assistance between Sankoh and Taylor, each insurgent group had distinct goals but there were also significant linkages between them. The RUF would use the money from the black market diamond trade to fund operations while Charles Taylor saw the area as an expansion of his own commercial network and desire to control the Mano River region and associated resources. 'FUNMI OLONISAKIN, PEACEKEEPING IN SIERRA LEONE 12 (2008), Montague, Dena, *The Business of War & the Prospects for Peace in Sierra Leone*, 9 BROWN J. OF WORLD AFFAIRS 229, 231 (2002).

brutalities of the RUF designed to subvert the election.<sup>15</sup> Consequently, the relatively peaceful transition from a military to civilian government took place with the appointment of President Ahmad Tejan Kabbah on March 26, 1996 against the backdrop of extreme violence and human rights abuses by the RUF and conflict tensions on the rise.

The new civilian government persuaded the UN to work with the Sierra Leone People's Party (SLPP) and President Kabbah, who had 20 years of service in the UN, to negotiate the Abidjan Peace Accord towards the end of 1996.<sup>16</sup> Despite the accord being noticeably beneficial for the RUF it fell apart almost immediately as some measures were considered too costly to establish and, above all, the accord lacked any real mechanism of enforcing the ceasefire.<sup>17</sup> Moreover, as Executive Outcomes withdrew from Sierra Leone per the agreement, communication between the two parties was all but nonexistent. Thus, bad faith by both parties fostered conspiracy notions and paranoia leading to a military coup in May 1997 replacing President Kabbah with Major Johnny Paul Koroma and forging an alliance between the Armed Forces Revolutionary Council (AFRC) and the RUF.<sup>18</sup> Kabbah was forced to seek refuge in Guinea while the Security Council and ECOWAS began to fight back against the AFRC and RUF.

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<sup>15</sup> In particular, the RUF notoriously mutilated and amputated hands of both would-be voters and as a punishment for those who voted as well as terrorizing through continued attacks and murders of villages throughout Sierra Leone. Additionally, a sizable number of individuals fled seeking refuge in neighboring countries and subsequently did not participate in the election. ABASS BUNDU, *DEMOCRACY BY FORCE?* 54 (2001).

<sup>16</sup> The UN's first political step was when Secretary-General Boutros Boutros-Gali had appointed Special Envoy Bernhau Dinka of Ethiopia in 1995 to aid Strasser in diplomatic relations with the RUF and played a crucial role in the Abidjan peace process.

<sup>17</sup> Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, U.N. Doc. S/1996/1034 (Nov. 30, 1996). The accord was backed by the Organization of African Unity, Commonwealth, Cote d'Ivoire, where the negotiations took place, and the UN. Olonisakin, *supra* note 14, at 21.

<sup>18</sup> Through a series of Security Council statements, the UN publicly deplored the coup, supported the ECOWAS mediation process in Conakry and called for an end of hostilities. *See* President of the Security Council, S/PRST/1997/29 (May 21, 1997), S/PRST/1997/36 (July 11, 1997), S/PRST/1997/42 (Aug. 6, 1997).

## II. The United Nations Peacekeeping Operation in Sierra Leone

### *a. The UN establishes a presence in Sierra Leone*

The international community, lead by the UN, encouraged a diplomatic resolution which prompted a failed meeting of ECOWAS ministers in Conakry in October 1997 to discuss the restoration of the Kabbah government. Subsequently, ECOMOG, using Nigerian troops, was authorized to reinstall Kabbah's government in Freetown that ultimately occurred in April 1998 through the Conakry Agreement.<sup>19</sup> Despite the agreement Koroma failed to influence members of the AFRC and created distrust in the Nigerian ECOWAS troops stationed in Sierra Leone which led to the establishment of the UN Observer Mission in Sierra Leone (UNOMSIL) in July 1998.<sup>20</sup>

UNOMSIL was comprised of no more than thirty unarmed military observers simply mandated to aid in the disarmament process and chronicle human rights atrocities.<sup>21</sup> Despite UNOMSIL's presence in Sierra Leone the force was merely a token to pacify the outcries of the international community, leaving it unable both in mandate and measurement to have a real effect on a country plagued by violence for nearly eight years. The remainder of 1998 saw continued violence and abuse leaving the Kabbah government impotent and powerless to provide security and minimal social services. The prospects of a peace agreement seemed slim yet under these unlikely circumstances President Kabbah met with Sankoh in Togo and at the urging of the UN, signed the

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<sup>19</sup> The Security Council supported President Kabbah's return to Freetown in S.C. Res. 1156, U.N. Doc. S/RES/1156 (Mar. 16, 1998).

<sup>20</sup> S.C. Res 1181, U.N. Doc. S/RES/1181 (July 13, 1998).

<sup>21</sup> *Id.*

Lomé Agreement on July 7, 1999.<sup>22</sup> The Agreement allotted for delicate power sharing between Kabbah's government and the RUF after granting Sankoh and other top RUF leaders amnesty, thus allowing for the transformation of the RUF from rebel group to political party. The AFRC would only gain political weight in October 1999, having been left out of the initial negotiations in Lomé. The peace process's primary objectives were to end the conflict in Sierra Leone followed by establishing a successful peacekeeping operation and post-conflict strategies pursuing justice.

***b. The birth of UNAMSIL***

The precarious atmosphere surrounding the signing of the Lomé Agreement set the perfect stage for the UN to step forth, strengthen its presence in Sierra Leone and assist in the implementation of the peace agreement.<sup>23</sup> In October 1999, the United Nations Mission in Sierra Leone (UNAMSIL) was established which would not only take over UNOMSIL's mandate but undertake several additional duties.<sup>24</sup> As initially envisioned and established, UNAMSIL was limited by mandate to monitor the cease-fire, assist in national elections and disarmament, demobilization and reintegration programs (DDR). With regards to the security sector, UNAMSIL was to reinforce ECOMOG's presence and provide security for the UN mission.<sup>25</sup>

An initial force of 6,000 UNAMSIL blue helmets were on the ground by December 1999, however, an operation of this size was no match for the RUF. Despite the RUF's ability to overpower UNAMSIL forces, the rebel group was fragmented and the DDR program was working across the country leaving Sankoh

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<sup>22</sup> Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (July 7, 1999). (*hereinafter* Lomé Agreement)

<sup>23</sup> The Lomé Agreement implied that external support would be key to maintaining peace and securing the transition through expanded military presence by the UN and ECOMOG.

<sup>24</sup> S.C. Res. 1270, U.N. Doc. S/RES/1270, (Oct. 22, 1999).

<sup>25</sup> *Id.* Letter from the Permanent Representative of Togo to the United Nations Addressed to the President of the Security Council, U.N. Doc. S/1999/585 (May 20, 1999).

with little control over the RUF.<sup>26</sup> Simultaneously, Koroma remained cautious of the RUF's disarmament intentions while actively encouraging the ceasefire agreement. Thus, in May 2000, Sierra Leone was being ravaged by a rebel group operating seemingly without control and was managed by a delicately balanced government supported by a weak peacekeeping force. The demise of UNAMSIL began with an initial abduction of thirty hostages on May 1-2, 2000 totaling forty-nine by the 3<sup>rd</sup> of May. This prompted regional actors, including Nigeria, Mali and Libya to support the UN in demanding the release of UN personnel, which Sankoh seemed to agree to by freeing a few individuals yet by May 10<sup>th</sup>, RUF rebels had kidnapped nearly 500 peacekeepers.<sup>27</sup> Clearly, UNAMSIL did not have a grasp on security in Sierra Leone nor was diplomacy working as Sankoh and the RUF repeatedly and violently broke the ceasefire materializing in utter failure of the Lomé Agreement.<sup>28</sup>

The UK immediately dispatched 900 combat forces to Sierra Leone to evacuate UK personnel and secure the Freetown airport allowing the UN to send further reinforcements.<sup>29</sup> While British troops secured the capital, Foday Sankoh was captured in his Freetown home and the Security Council was left to put the pieces of the shattered UNAMSIL back together.

### ***c. UNAMSIL's Transformation, Exit & Success***

Initially, the limitedly mandated UNAMSIL of October 1999 existed under ECOMOG. However, ECOMOG's withdrawal on May 2<sup>nd</sup>, left the ineffective and small UNAMSIL force vulnerable to the RUF leading to the hostage crisis of 2000.

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<sup>26</sup> Olonisakin, *supra* note 14, at 55. The Secretary-General, *Fourth Report of the Secretary-General on the UNAMSIL*, U.N. Doc. S/2000/455 (May 19, 2000).

<sup>27</sup> Chris McGreal, *Panic Usurps Peace as Rebels Close In*, GUARDIAN, May 11, 2000 at 4

<sup>28</sup> Clifford Bernath & Sayre Nyce, *A Peacekeeping Success: Lessons Learned from UNAMSIL*, 8 INT'L PEACEKEEPING 119, 125 (2004).

<sup>29</sup> As a former colony, the British took particular interest in Sierra Leone, for a full account of the UNAMSIL hostage crisis of May 2000. See Eric G. Berman & Melissa T. Labonte, *Sierra Leone*, in TWENTY-FIRST-CENTURY PEACE OPERATIONS (William J. Durch, ed. 2006).

This UN disaster, which is often seen as one of the darkest moments in both peacekeeping and UN history, marked a turning point for operations. The crisis in Sierra Leone was indicative of the widespread breakdown of peacekeeping operations that prompted Secretary-General Kofi Annan to assemble a group of experts lead by Lakhdar Brahimi, Under-Secretary-General for Special Assignments in Support of the Secretary-General's Preventive and Peacemaking Efforts, to investigate the weaknesses of UN missions.<sup>30</sup> The recent situation in Sierra Leone brought the shortcomings of UNAMSIL to the forefront of the report using it to illustrate common problems such as inadequate troops, lack of coordination and minimal support from headquarters and internationally.<sup>31</sup> Given the prominence of Sierra Leone in the report it was natural that UNAMSIL would be the test case for many of the Brahimi Report's recommendations.<sup>32</sup> Consequently, at a time when the future of UN peacekeeping operations was precarious, UNAMSIL was re-envisioned and transformed from one of the UN's biggest disasters into the poster-child for peacekeeping successes. UNAMSIL saw success due to a reinvigorated mandate, cohesion within the mission, a strengthened and well-equipped force, increased political support and oversight of the peace agreement.<sup>33</sup> It is these characteristics that in 2002, at the height of UNAMSIL, brought stability to Sierra Leone allowing for the establishment of transitional justice mechanisms and a comprehensive transition plan leading to the operations withdrawal in 2005.

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<sup>30</sup> Comprehensive Review of the Whole Question of Peacekeeping in All Their Aspects, U.N. Doc. A/55/305-S/2000/809 (Aug. 21, 2000) (*hereinafter* Brahimi Report). The Special Representative of the Secretary-General Oluyemi Adenji offered three possible options for UNAMSIL – maintain the status quo, shift reliance for security to ECOWAS and amend and update UNAMSIL. Olonisakin, *supra* note 14, at 92.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Bernath, *supra* note 28.

The first step towards UNAMSIL's transformation as taken by the Security Council involved increasing the troop strength to 13,000 with instructions to secure the country's capital and international airport.<sup>34</sup> Over the next seven months UNAMSIL was a force of 12,455 strong and in March 2001 the Security Council endorsed further allotments bringing the operations military to 17,500.<sup>35</sup> The Brahimi Report noted that UN forces are not upholding peace but rather must face rebel forces and continuing violence.<sup>36</sup> Thus, military strength cannot be determined as it had been when the sole purpose of peacekeeping operations was to stand between two warring parties. Moreover, the Brahimi Report goes so far to say that given the situation in Sierra Leone it is unlikely that any other organization would have deployed such a small force.<sup>37</sup>

As UNAMSIL initially grew in size it did not necessarily grow in expertise or efficiency. Bangladesh, Pakistan and Nigeria accounted for more than half of the entire peacekeeping military force and were initially contributed under 'dry lease' agreements.<sup>38</sup> These agreements meant that the contributing country supplied the personnel and the UN would provide training and equipment. This responsibility division often caused significant delays in deploying troops to the field who were often inadequately trained and ill-equipped.<sup>39</sup> The Brahimi Report noted that the first three months following a ceasefire agreement were the most critical and the delay in

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<sup>34</sup> S.C. Res. 1299, U.N. Doc. S/RES/1299 (May 19, 2000). Prior to this mandate amendment, UNAMSIL had only undergone one amendment in February 2000 which increased force size from 6,000 to 11,100. S.C. Res. 1289, U.N. Doc. S/RES/1289 (Feb. 2000). The force would subsequently be enlarged to 17,500 in March 2001. S.C. Res. 1346, U.N. Doc. S/RES/1346 (Mar. 30, 2001).

<sup>35</sup> The Secretary-General, *Eighth Report of the Secretary-General on the United Nations Mission in Sierra Leone*, U.N. Doc. S/2000/1199 (Dec. 15, 2000.), S.C. Res. 1346, U.N. Doc. S/RES/1346 (Mar. 31, 2001).

<sup>36</sup> Bernath, *supra* note 28, at 128.

<sup>37</sup> Brahimi Report, *supra* note 30, at ¶106.

<sup>38</sup> *Twelfth Report of the Security Council on UNAMSIL*, U.N. Doc. S/2001/1195 (Dec. 31, 2001) (three countries contributed 11,867 out of 17,354 total military)

<sup>39</sup> Bernath, *supra* note 28, at 129. Troops were rarely instructed on the guerilla warfare employed by the RUF or the terrain of Sierra Leone leaving them incapable of maintaining security.

troop recruitment and distribution in Sierra Leone crippled UNAMSIL from the beginning.<sup>40</sup>

Simultaneous with the Security Council's authorization of a troop increase to 17,500 in Resolution 1346, the Security Council supported the recommendations of the Secretary-General based on the Brahimi report and a personal visit to Sierra Leone to strengthen the mission's mandate.<sup>41</sup> The Security Council supported the expansion of UNAMSIL to take on stronger roles in civil affairs, police and state administration that would create conditions conducive to free and fair elections and an effective DDR program.<sup>42</sup> Moreover, the mission which previously lacked the ability to fight the RUF now was instructed to "deter and, where necessary, decisively counter the threat of RUF attack by responding robustly to any hostile action or threat of imminent and direct use of force"<sup>43</sup> and supported by the Secretary-General's report stressing the mission was in a position to "allow it to respond robustly to any attack or threat of attack, including, if necessary, in a pre-emptive manner."<sup>44</sup> In order to be effective, a peacekeeping operation must have the ability to use force in rebel areas. In 2000 it was generally engrained in the minds' of peacekeepers that they must remain impartial which translated to the non-use of force.<sup>45</sup> Thus, despite UNAMSIL's strong mandate prior to the hostage crisis, it was not until peacekeepers were explicitly instructed to use force that the mandate's interpretation matched its writing.<sup>46</sup>

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<sup>40</sup> Brahimi Report, *supra* note 30, at ¶87.

<sup>41</sup> S.C. Res. 1346, U.N. Doc. S/RES/1346, The Secretary-General, *Eighth Report of the Secretary-General on UNAMSIL*, U.N. Doc. S/2000/1199 (Dec. 15, 2000) (*hereinafter* Eighth Report).

<sup>42</sup> *Id.*, Olonisakin, *supra* note 14, at 93.

<sup>43</sup> Berman & Labonte, *supra* note 29, at 164. S.C. Res. 1313, U.N. Doc. S/RES/1313 (Aug. 4, 2000).

<sup>44</sup> Eighth Report, *supra* note 41, at ¶60.

<sup>45</sup> Diehl, *supra* note 2, at 57.

<sup>46</sup> Bernath, *supra* note 28, at 128.

Following the May 2000 crisis, the Secretary-General sent a team to Sierra Leone to begin in-depth analysis of the mission itself.<sup>47</sup> After extensive field work and assessment of the mission the Secretary-General reported that the team found “a serious lack of cohesion with the Mission” citing problems of internal communication, lack of planning and logistical support, inadequate equipment and almost no communication or information sharing between organizations, agencies and within the UN itself.<sup>48</sup>

Following the investigations made by the UN into Sierra Leone specifically and the release of the Brahimi Report in August 2000, UNAMSIL began an in-house overhaul in personnel and administration. In large part, this was sparked by the leak of an internal memo written by UNAMSIL Force Commander Vijay Jetley of India that criticized Nigeria’s commitment to the mission. Ultimately, the Secretary-General failed to support Jetley, despite uncertainty regarding his claims, leading to the withdrawal of Indian troops and the opportunity to appoint new high level leadership. Consequently, this controversy cost the mission its most well-trained and experienced troops. While the new leadership calmed tensions and purposeful miscommunication within the operation, the logistical lack of cohesion and integration continued.

Between 2000 and 2001, UNAMSIL’s increasing credibility was acknowledged by the government of Sierra Leone and the RUF through negotiated cease-fire agreements that were held in Abuja. By January 2002, the civil war was formally declared to have ended by the government and the RUF, Kabbah was

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<sup>47</sup> This mission was lead by Manfred Eisele from within the Department of Peacekeeping Operations and was in contrast to the Brahimi Report which focused on all UN peacekeeping operations.

<sup>48</sup> The Secretary-General, *Fifth Report of the Secretary-General on UNAMSIL*, ¶53-54 U.N. Doc. S/2000/751 (July 31, 2000). Berman, *supra* note 29, at 171. Berman & Labonte argue that since the team’s report was never publicly released and these findings are the Secretary-General’s sanitized comments the internal report must be “a scathing indictment of UNAMSIL.”

declared the winner of free and fair elections that took place in May 2002, and security concerns had shifted towards the border where Charles Taylor and the civil war in Liberia took center stage.<sup>49</sup> Over the next few years, UNAMSIL continued to grow in troop size, effectuated important internal coordination and advanced the peace process in Sierra Leone. The UN was eager to shift the focus to Liberia, bring UNAMSIL's mandate to a close and show that the mission had achieved the goals that necessitated its deployment.

By the end of 2004, UNAMSIL began formulating a transitional plan that would transfer authority to peacebuilders in Sierra Leone.<sup>50</sup> The plan outlined five benchmarks that would demonstrate UNAMSIL's success, only one of which, security, was achieved by the time the mission withdrew in December 2005.<sup>51</sup> Although disarmament and demobilization had occurred, the reintegration of former combatants remained impossible given the weakened government of Sierra Leone and a massive lack of funding.<sup>52</sup> Many viewed UNAMSIL and the UN as leaving Sierra Leone a war torn country with minimal infrastructure and heightened poverty. Thus, the Security Council established the United Nations Integrated Office in Sierra Leone (UNIOSIL) that would take over UNAMSIL's peacebuilding duties along with the assumption of Sierra Leone as one of the UN Peacebuilding Commission's (PBC) initial cases.<sup>53</sup> However, the PBC has proven to be little more than a monitoring delegation focusing its efforts on fundraising for a victims' fund.<sup>54</sup>

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<sup>49</sup> Olonisakin, *supra* note 14, at 113-115.

<sup>50</sup> The Secretary-General, *Twenty-fourth Report of the Secretary-General on the UNAMSIL*, ¶12 U.N. Doc. S/2004/965 (Dec. 10, 2004).

<sup>51</sup> UNAMSIL/UNCT, "Transition Strategy: Laying a Foundation for Durable Peace and Sustainable Development in Sierra Leone," revised version (Mar. 1, 2005), Olonisakin, *supra* note 14, at 126.

<sup>52</sup> Olonisakin, *supra* note 14, at 128.

<sup>53</sup> S.C. Res. 1620, U.N. Doc. S/RES/1620 (Aug. 31, 2005), S.C. Res. 1645, U.N. Doc. S/RES/1645 (Dec. 20, 2005).

<sup>54</sup> Olonisakin, *supra* note 14, at 129-130.

UNAMSIL was able to meet the primary responsibility of the UN in establishing and maintaining peace and security in the eyes of the Sierra Leonean public, UN and international actors and states.<sup>55</sup> Moreover, UNAMSIL was able to successfully meet the second responsibility of the UN, development, through restoring wrecked institutions, such as the judiciary, reinvigorating social welfare, and increasing the government's authority. Thus, despite only achieving one of the benchmarks laid out by the transition plan, UNAMSIL as a peacekeeping mission is a success.<sup>56</sup> Sierra Leone in 1998 was a scene of murder, amputees and mutilations and consistent rapes.<sup>57</sup> Whereas, post-2000 painted a different picture of Sierra Leone involving the return of refugees, functioning DDR program and free and fair elections. It is over these last five years that as UNAMSIL gained strength Sierra Leone was able to begin the process of transitional justice.

### **III. Transitional Justice in Sierra Leone**

#### ***a. Creating the Foundation***

The Lomé Peace Agreement signed July 7, 1999 officially ended the conflict setting up a tenuous power-sharing agreement between the government of Sierra Leone and the RUF. Following the conflict, Sierra Leoneans tended to focus forgiveness on an individual level. The nature of the conflict and strong impact on local communities meant that finding peace was more important to Sierra Leoneans than was obtaining justice at a national level.<sup>58</sup> Consequently, the most important transitional justice mechanisms would focus on forgiveness from a local context as

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<sup>55</sup> Curran, *supra* note 9.

<sup>56</sup> While development, which arguably UNAMSIL achieved, is one of the over-arching goals of the UN, it was not one of the benchmarks laid out by the Transition Plan.

<sup>57</sup> Bernath, *supra* note 28.

<sup>58</sup> *Reconciliation Lessons Learned from United Nations Peacekeeping Missions*, 10 INTERNATIONAL IDEA (2004). This is in stark contrast to the trends in Latin and South America where broader reconciliation schemes focused on the national and political level.

established by the Lomé Agreement including a truth and reconciliation commission, amnesty provisions for ex-combatants and a strong DDR campaign. As the Lomé Agreement broke down following the May hostage crisis, President Kabbah officially requested the assistance of the international community in prosecuting RUF perpetrators of international crimes during the war.<sup>59</sup> Consequently, several post-conflict justice mechanisms were implemented simultaneous to the re-establishment of UNAMSIL's credibility.

The transitional justice process began with the Lomé Agreement's amnesty provisions which granted "absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement," assuring the parties that the government would not seek "official or judicial action" against any combatants.<sup>60</sup> Upon signing the Agreement, the Special Representative of the Secretary-General, Francis Okelo, attached a hand-written disclaimer stating that the "UN holds the understanding that the amnesty provisions of the Agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law."<sup>61</sup> It was believed that granting the amnesty and timely deployment of peacekeepers would effectively halt the violence, yet armed fighting continued until May 2001, proving that the hotly negotiated amnesty had failed.<sup>62</sup> While the amnesty provisions failed to maintain

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<sup>59</sup> President of Sierra Leone, *Letter from the President of Sierra Leone to the UN Secretary-General, delivered to the Security Council*, U.N. Doc. S/2000/786 (Jun. 12, 2000).

<sup>60</sup> Lomé Agreement, *supra* note 22, art. IX. Secretary-General Annan reported back to the Security Council that the Lomé Agreement was only endorsed by the UN with this explicit amnesty provision. The Secretary-General, *Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone*, U.N. Doc. S/1999/836 (July 30, 1999).

<sup>61</sup> William Schabas, *Amnesty, the Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone*, 11 U.C. DAVIS J. INT'L L. & POL'Y 145, 148-149 (2004).

<sup>62</sup> Priscilla Hayner, *Negotiating Peace in Sierra Leone: Confronting the Justice Challenge*, 2007 CENTRE FOR HUMANITARIAN DIALOGUE 24.

peace following the Agreement the disclaimer allowed for the subsequent establishment of a tribunal.<sup>63</sup>

***b. A Retributive Response in the Special Court for Sierra Leone***

President Kabbah's official letter to the UN specifically sought assistance to prosecute members of the RUF. The Lomé Agreement was meant "to bring peace and a permanent cessation to those atrocities and the conflict," President Kabbah noted that the government agreed to extensive amnesty provisions in an effort to achieving that peace and the RUF subsequently failed to live up to the agreement.<sup>64</sup> The Security Council agreed with President Kabbah and a UNAMSIL recommendation regarding the establishment of a hybrid tribunal that while nationally based would have a strong international component.<sup>65</sup> Following negotiations with the government of Sierra Leone, Secretary-General Kofi Annan proposed a draft statute in October 2000.<sup>66</sup> The next two years saw further discussions regarding the court's statute, particularly over substantive and temporal jurisdiction, interaction with the truth and reconciliation commission and the controversial amnesty provision until finally the

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<sup>63</sup> It is worth noting that John Dugard argues that past amnesties were used to promote political settlements and advance reconciliation, however, in light of the contemporary legal order, the existence of the ICC, there is no place for unrestricted amnesties. *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?*, 12 LEIDEN J. INT'L L. 1101-1015 (1999).

<sup>64</sup> Letter dated August 9, 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2000/786, annex (Aug. 9, 2000).

<sup>65</sup> S.C. Res. 1315, U.N. Doc. S/RES/1315 (2000). The Secretary-General, *Report of the Secretary-General on the United Nations Mission in Sierra Leone*, ¶9-11, U.N. Doc. S/2000/751 (2000). See van Zyl, *supra* note 10, at 211 (providing background to the use of prosecutions as transitional justice mechanisms).

<sup>66</sup> William A. Schabas, *A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone*, in *Truth Commissions and Courts: The Tension between Criminal Justice and the Search for Truth* 3 (William Schabas & Shane Darcy, eds. 2004) Unlike the ICTY and ICTR, which were established under Chapter VII powers of the UN, the Special Court is a treaty-based court of mixed jurisdiction and composition.

statute was adopted in January, entering into force in April and the court becoming operational in July 2002.<sup>67</sup>

Structurally, the Special Court of Sierra Leone is mixed involving both international and national personnel. With regards to both the judicial and prosecutorial components of the Special Court international and domestic personnel operate side-by-side in an effort to make this tribunal less of an international tribunal than the ICTY, ICTR or ICC.<sup>68</sup> Yet, despite its mixed composition, the Special Court remains more internationalized than other hybrid tribunals due to its treaty-based formation, unlike the ICTY/ICTR which were formed pursuant to UN Chapter VII powers, status relating to the domestic judicial system and *ratione material* including both international and domestic crimes.<sup>69</sup>

Much like the Special Court's cousin *ad hoc* tribunals, it retains primacy over national jurisdictions,<sup>70</sup> yet the *ratione materiae* is tailored to the specifics of the Sierra Leonean Civil War. The Special Court of Sierra Leone's mandate is "to prosecute those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace

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<sup>67</sup> Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Freetown (Jan. 19, 2002). The Statute was endorsed through S.C. Res. 1400, U.N. Doc. S/RES/1400 ¶9 (Mar. 28, 2002) (*hereinafter* Statute).

<sup>68</sup> The prosecution is lead by an international prosecutor appointed by the UN Secretary-General and aided by a deputy designated by the government of Sierra Leone. Statute, *supra* note 67, art. 15. The trial chambers include two international judges, one domestic judge while the appeals chamber is comprised of three international and two local judges. Statute, *supra* note 67, art. 18. Lastly, while the Registrar is appointed by the Secretary-General this occurs only after consultation with the Court's President and much of the Court's staff is Sierra Leonean. Statute, *supra* note 67, art. 16.

<sup>69</sup> Schabas, *supra* note 66, at 6 . See also Prosecutor v. Norman, Case No. SCSL-04-14-T-688, Decision on Interlocutory Appeals against Trial Chamber Decisions Refusing to Subpoena the President of Sierra Leone, ¶13 (Sept. 11, 2006).

<sup>70</sup> Statute, *supra* note 67, art. 8.

process in Sierra Leone.”<sup>71</sup> Arguably, the most controversial aspects of the Statute was Article 10 stating that “[a]n amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the crimes referred to in Articles 2 to 4 of the present Statute shall not be a bar to prosecution.”<sup>72</sup> The Court’s retraction of the amnesty was justified due to the continued violence and the general principle that amnesty provisions could not apply to violations of international law, as endorsed by the Special Representative of the Secretary-General Okelo, and endorsed by Secretary-General Kofi Annan, in the appended hand-written disclaimer to the Lomé Agreement.<sup>73</sup>

With amnesty no longer barring prosecutions, the Court operated under its initial three-year mandate which technically ended in 2005 and continues to operate under continuing resolutions. The Special Court has indicted thirteen people thus far but has incurred serious setbacks including the deaths of Foday Sankoh and Sam Hinga Norman while in custody and the independent killings of Sam Bokarie and Johnny Paul Koroma which reportedly occurred in Liberia. Despite these difficulties, the Special Court enjoyed a massive success with the arrest of Charles Taylor by Nigerian authorities in March 2006 after he sought asylum in Nigerian since his indictment in 2003.<sup>74</sup> Taylor, the President of Liberia, was instrumental in Sierra

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<sup>71</sup> Statute, *supra* note 67, art. 1.

<sup>72</sup> Statute, *supra* note 67, art. 10. Also controversial was the inclusion of jurisdiction over child soldier conscription, juvenile offenders over the age of 15 years old in Articles 4(c) and 10 respectively. As they are outside the scope of this essay, for a detailed analysis of the child conscription and prosecution provisions please see *Post-Conflict Reintegration Initiative for Development & Empowerment, Ex-Combatant Views of the Truth and Reconciliation Commission and the Special Court for Sierra Leone* INT’L C. TRANSITIONAL JUSTICE 13 (2002) stating that it is highly likely that nearly 70% of the combatants were children. See also *Coercion and Intimidation of Child Soldiers to Participate in Violence*, 1 HUM. RTS. WATCH (2008), J. PETER PAHM, CHILD SOLDIERS, ADULT INTERESTS: THE GLOBAL DIMENSIONS OF THE SIERRA LEONEAN TRAGEDY (2005).

<sup>73</sup> Decision on challenge to jurisdiction: Lomé Accord Amnesty in Prosecutor v. Morris Kallon, Brima Bazzy Kamara, Case Nos. SCSL-2004-15-PT-060-I, SCSL-2004-15-PT-060-II, Appeal (Mar. 13, 2004).

<sup>74</sup> Press Release, Special Court for Sierra Leone Office of the Prosecutor, Chief Prosecutor Announces the Arrival of Charles Taylor at the Special Court, (Mar. 29, 2006), available at <http://www.scs-sl.org/Press/prosecutor-032906.pdf>.

Leone's civil war where he is accused of commanding the terrorizing of civilian population, commitment of unlawful killings, sexual and physical violence, use and conscription of child soldiers and looting.<sup>75</sup> As these charges exist under the doctrine of command responsibility the prosecution's case relies not on Taylor's commission of these acts but his responsibility for them. Given the high profile of the defendant the government of Sierra Leone requested that the ICC provide a venue for the trial following security concerns and the delicate peace in Sierra Leone. Thus, by authorization of the Security Council, proceedings against Charles Taylor commenced in June 2007 in the Hague and are expected to last into 2011.<sup>76</sup> Despite the longevity and its placement a continent away from Sierra Leone, the Taylor trial marks a shining moment for the Special Court and the fight against impunity.

In June 2007, the Special Court delivered its first verdicts convicting the former AFRC rebel leaders Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu of war crimes and crimes against humanity.<sup>77</sup> Subsequently, in August 2007, the two surviving CDF defendants, Moinina Fofana and Allieu Kondewa were convicted of war crimes, crimes against humanity and other violations of international law.<sup>78</sup> In February 2009, three RUF defendants were convicted of war crimes as well as forced marriage, the first conviction of its kind for an international tribunal.<sup>79</sup>

Regardless of its success, the Special Court has been plagued by criticisms of its restrictive prosecutorial policy. Since the appointment of David Crane as the

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<sup>75</sup> Prosecutor v. Charles Taylor, Case No. SCSL-2003-01-PT, Second Amended Indictment (May 29, 2007)

<sup>76</sup> S.C. Res. 1688, U.N. Doc. S/RES/1688 (June 16, 2006).

<sup>77</sup> Prosecutor v. Alex Tambe Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, Case No. SCSL-04-16-T, Judgment, (June 20, 2007). Each of the defendants was found guilty of 11 counts of war crimes and crimes against humanity. The judgment marked the first time that an international or hybrid tribunal had ruled on the charge of recruitment of child soldiers into an armed force or the crime of forced marriage in an armed conflict.

<sup>78</sup> Prosecutor v. Moinina Fofana and Allieu Kondewa, Case No. SCSL-04-14-T, Judgment (Aug. 2, 2007).

<sup>79</sup> Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao, Case No. SCSL-04-15-T, Judgment (Mar. 2, 2009).

Court's first Prosecutor, the Court adopted a narrow focus leading Sierra Leoneans to feel that monies received by the Court would have been better spent on education, health care or developing a national functioning judicial system.<sup>80</sup> Moreover, this narrow focus ignored lower level offenders leaving them to co-exist side-by-side with their victims. Subsequent prosecutor, notably Stephen Rapp, encouraged domestic prosecutions but was met with little political motivation by the government and domestic actors.<sup>81</sup> Some scholars believe that the consequences of this restrictive prosecutorial policy have been mitigated by the efforts of the Truth and Reconciliation Commission.<sup>82</sup>

### ***B. A Restorative Approach in the Truth and Reconciliation Commission***

The Lomé Agreement contained provisions for the establishment of a truth and reconciliation commission, however, these provisions are skeptically viewed as an effort to counter the granting of a general amnesty despite a truth commission being discussed for several years prior to 1999 and even having been proposed in the Abidjan talks of 1996.<sup>83</sup> It was not until February 22, 2000 that the Truth and Reconciliation Commission (TRC) Act was adopted by Sierra Leone's Parliament. The May hostage crisis and renewed violence of 2000 postponed the TRC's launch for nearly two years, coinciding with the opening of the Special Court. During this time, the negotiations regarding each institutions establishment involved different actors from within the UN and varying degrees of consultation with nongovernmental

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<sup>80</sup> Craig Timberg, *Sierra Leone Special Court's Narrow Focus*, WASH. POST, Mar. 26, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/25/AR2008032503156.html>

<sup>81</sup> Jane Stromseth, *Pursuing Accountability for Atrocities after Conflict: What Impact on Building the Rule of Law?*, 38 GEO. J. INT'L L. 251, 302 (2007).

<sup>82</sup> See *The Jury is Still Out: a Human Rights Watch Briefing Paper on Sierra Leone* HUM. RTS. WATCH (July 11, 2002).

<sup>83</sup> Lomé Agreement, *supra* note 67, Art. 26. PRISCILLA HAYNER, UNSPEAKABLE TRUTHS (2000). Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, U.N. Doc. S/1996/1034 (Nov. 30, 1996). Schabas, *supra* note 66, at 3. See also *va Zyl*, *supra* note 10, at 212 (providing background to the use of truth commissions as transitional justice mechanisms).

organizations and civil society. Throughout the establishment process, the Secretary-General urged that “care must be taken to ensure that the Special Court for Sierra Leone and the Truth and Reconciliation Commission will operate in complementary and mutually supportive manner, fully respectful of their distinct but related functions” which created an artificial boundary between the two institutions leaving them to operate in a parallel manner.<sup>84</sup> The United Nations’ Office of the High Commissioner for Human Rights (OHCHR) was highly involved in the formation of the TRC, which prior to the resurgent violence in 2000 was meant to be an alternative to the Special Court rather than its companion, giving this national institution a strong international element.<sup>85</sup> This international dimension is reflected throughout the TRC’s mandate, implementation and even the final report

The mandate of the TRC was to “create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.”<sup>86</sup> Thus, the TRC operated as both a fact-finding reparative institution with an exceedingly broad mandate. Professor William Schabas cites Solomon Berewa, the Sierra Leonean Attorney General at the time of the TRC’s enactment as stating

“far from being fault-finding and punitive, it is to serve as the most legitimate and credible forum for victims to reclaim their human worth; and a channel for the perpetrators of atrocities to expiate their guilt and chasten their consciences. The process has been

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<sup>84</sup> Schabas, *supra* note 66, at 4. The Secretary-General, *Letter dated January 21, 2001 from the Secretary-General addressed to the President of the Security Council*, ¶9 U.N. Doc. S/2001/40 (Jan. 21, 2001).

<sup>85</sup> Schabas, *supra* note 66, at 3.

<sup>86</sup> Truth and Reconciliation Commission Act, Supplement to the Sierra Leone Gazette Vol. CXXXI, No. 9. ¶6 (2000).

likened to a national catharsis, involving truth telling, respectful listening and above all, compensation for victims in deserving cases.”<sup>87</sup>

Specifically, the knowledge of the atrocities associated with the civil war was well known from public discourse; thus, the TRC became important as a cathartic process for victims that would result in a historical record of the country from 1991 through 1999.

From December 2002 through March 2003, the TRC took more than 8,000 statements from witnesses across the country. Following this initial intake phase the TRC held week-long sessions throughout 2003 in each province throughout Sierra Leone. Each session consisted of four days of open public hearings followed by one closed day session dedicated to ex-combatants, victims of sexual violence and children. The hearings yielded 53 witnesses in Freetown and one to two dozen in each province, 40% of the testimonials were from women and more than 13% of the testimonies were confessions from perpetrators.<sup>88</sup> The TRC also held thematic hearings to obtain testimony focusing on a particular topic, gender, youth, civil society, good governance; pivotal events in the civil war; institutional hearings, looking at the role of the military, police or the media in the conflict. The hearings brought the highest profiled individuals in Sierra Leone, including President Kabbah and members of the opposition, together with the victims located throughout the country.<sup>89</sup>

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<sup>87</sup> Schabas, *supra* note 66, at 8, citing Solomon Berewa, *Addressing Impunity using Divergent Approaches: The Truth and Reconciliation Commission and the Special Court*, in TRUTH AND RECONCILIATION IN SIERRA LEONE 59 (1999).

<sup>88</sup> Beth K. Dougherty, *Searching for Answers: Sierra Leone's Truth and Reconciliation Commission*, 8 AFRICAN STUD. Q. (2004). *The Sierra Leone Truth and Reconciliation Commission: Reviewing its First Year* INT'L CENTER TRANSITIONAL JUSTICE (2004).

<sup>89</sup> The high profile individuals included President Kabbah, former military ruler Valentine Strasser, members of the All People's Congress and Civil Defense Forces. Yet many of those called by the TRC failed to appear until threatened with subpoenas.

The final report of the TRC was released in mid-2005, despite being ready internally a year prior, and published thematically arranged recommendations and divided categories including ‘imperative’, ‘work towards’ and ‘seriously consider.’<sup>90</sup> The recommendations included ways to improve human rights, reform Sierra Leone’s judiciary, provide victims with reparations and promote reconciliation. The report also endorsed community based reparations and good governance. Specifically, notable recommendations included – abolition of the death penalty; disclosure of public officials financial dealings; repeal of sedition and libel laws; prohibition of corporeal punishment; naming January 18<sup>th</sup> as a national day of reconciliation; publicity campaign to fight the status quo of rape victims marrying their attackers; and massive electoral reforms. At the regional level, the report called on external contributors to the conflict, Liberia and Libya, to provide monetary donations to a victims’ fund.

In general, the TRC’s report and recommendations were received well by the government of Sierra Leone, victims and even the RUF; partly due to the fact that the TRC Commissioners consciously promoted recommendations that would now pose a significant economic burden to Sierra Leone and the non-binding nature of all the recommendations.<sup>91</sup> Despite its warm reception, the recommendations contained with the TRC were never fully committed to by the government of Sierra Leone. President Kabbah vowed to give careful study to the recommendations but most never saw full implementation until 2006 when the United Nations Peacebuilding Commission selected Sierra Leone as one of its initial focus countries. Disappointingly, the first year of the Sierra Leonean Peacebuilding Commission delegation performed few

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<sup>90</sup> *Final Report of the Truth and Reconciliation Commission of Sierra Leone*, Vol. 2, Chapter 3 – Recommendations, available at <http://www.trcsierraleone.org>. (*hereinafter* Final Report).

<sup>91</sup> William A. Schabas, *Conjoined Twins of Transitional Justice? The Sierra Leone Truth and Reconciliation Commission and the Special Court*, J. INT’L CRIM. JUSTICE (2004.)

functions more than mere monitoring and documenting the progress of the work of other agencies.<sup>92</sup>

In addition to the government's lack of commitment to implementing the TRC recommendations, the public, while supportive of the TRC, failed to understand the process leading to uneven turnout to the public hearings unless a notable ex-combatant was to testify.<sup>93</sup> Notwithstanding the extensive outreach efforts of the TRC, radio broadcasts and weekly television updates, most victims felt the TRC fell short of what they expected. Victims saw the slow moving and short lived TRC as taking a back seat to the DDR campaigns thus rendering the TRC incapable of altering the material lives of victims.<sup>94</sup> That is to say, that without the earnest support of the government, the Commissioners merely stated ideal requests for reconciliation rather than formulating a comprehensive reparations scheme. In the final report, the TRC revealed that a victims' fund was needed and provided extensive guidelines on victim eligibility and other forms of compensation, but this was too little too late.<sup>95</sup>

Many of the shortcomings of the TRC are attributable to the unclear relationship between it and the Special Court for Sierra Leone. The interaction between the TRC and the Special Court remained unclear from the beginning as they originated from differing points and were carried out on independent time frames. In fact, in late 2001 the OHCHR noted that in form the two institutions complemented each other, one focusing on accountability and the other on restorative justice, while in function they would be mutually supportive yet wholly respective of the other's

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<sup>92</sup> *Report of the second mission of the Peacebuilding Commission to Sierra Leone*, UN. Doc. PBC/2/SLE/7 (June 16, 2008).

<sup>93</sup> Edward Sawyer & Tim Kelsall, *Truth vs. Justice? Popular Opinions on the Truth and Reconciliation Commission and the Special Court for Sierra Leone*, 7 ONLINE J. PEACE & CONFL. RES. (2007).

<sup>94</sup> This probably was due to the fact that the disarmament, demobilization and reintegration programs were viewed as crucial to maintaining stability without which reparations would have been impossible.

<sup>95</sup> Final Report, *supra* note 90, at chapter 4.

independence.<sup>96</sup> This unclear relationship between the two institutions led to poor information sharing and lack of coordination, heated competition for qualified personnel and an inability to engage with local civil society. Moreover, while both institutions set new international standards for their outreach campaigns, the foggy relationship caused overlaps and gaps in the knowledge disseminated causing further public confusion.

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<sup>96</sup> U.N. Doc. E/CN.4/2002/3, ¶70. This followed a consultative meeting meant to determine the relationship between the two institutions. See Schabas, *supra* note 66, citing *Situation of human rights in Sierra Leone*, ¶41 UN Doc. E/CN.4/2001/35.

**CHAPTER III**  
**CONCLUSION & A WAY FORWARD**

The aftermath of the civil war in Sierra Leone and efforts taken by the United Nations help to provide the world with insights into the interaction of those efforts and a way forward. In hindsight, it is easy to see the flaws and mistakes made by UNAMSIL, the Special Court and the TRC. The key is to learn from the lack of structural cohesion in their inception and the lack of coordinated operational elements that would have not only made them more effective but set the standard internationally for peacekeeping and transitional justice mechanisms. To date, the UN is the largest player in armed conflicts and as such it is imperative to understand past practices and alter them accordingly for future execution to help realize peace and justice.

The implementation of peacekeeping operations and transitional justice strategies following an armed conflict is meant to cause long-term societal change that would ultimately lead to a modern state.<sup>97</sup> If we learn from the past and design future missions and mechanisms in harmony, achieving this goal remains feasible.<sup>98</sup> Therefore, success rests on the interaction of key structural elements such as the doctrine establishing operations and the resources laid out to implement them.

From a doctrinal viewpoint, it remains vitally important to provide for sufficient planning such that well designed mandates are established. The initial design, whether for a peacekeeping or transitional justice operation, is crucial because once begun, it becomes exponentially harder for policy makers to review priorities and allow for suitable modifications. Having a clear and solid foundation is essential to all efforts taking in a post-armed conflict setting. In any peacekeeping operation there is the overarching aim of providing security but this should be done within a context

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<sup>97</sup> Jarat Chopra & Tanja Hohe, *Participatory Peacebuilding*, in BUILDING SUSTAINABLE PEACE 241-261, 256 (Tom Keating & W. Andy Knight, eds. 2004).

<sup>98</sup> Angès Hurwitz & Kaysie Suddard, *Rule of Law Programs in Peace Operations*, 2005 IPA POLICY PAPER, 4 available at [http://www.ipacademy.org/Programs/Research/ProgReseSecDev\\_Pub.htm](http://www.ipacademy.org/Programs/Research/ProgReseSecDev_Pub.htm).

cognizant of transitional justice strategies. This type of integrated mission structure has been endorsed by the Secretary-General but has yet to truly translate into practice.

When applied, an integrated structure would have indicated that UNAMSIL's mandate been drafted to include direct support for the Special Court of Sierra Leone and the Truth and Reconciliation Commission. Direct support would have allowed for assistance in the investigation of atrocities, protection of institutional buildings, aiding in the apprehension of indictees and providing security for detainees.<sup>99</sup> This would have aided the institutions in fulfilling their mandate's providing them with law enforcement expertise support while simultaneously increasing UNAMSIL's visibility in Sierra Leone making it more efficacious. With UNAMSIL's support, the Special Court would have been able to focus resources on prosecutions allowing for a broader interpretation of its mandate.<sup>100</sup> Additionally, the very broad mandate the TRC operated under would have been more easily achievable if investigators and public hearings took place under the security of the peacekeeping operation.<sup>101</sup> Alternatively, UNAMSIL can only gain credibility within the country by having a strong presence in Sierra Leone. The mission's ability to pose a credible deterrent threat increases the operation's ability to enforce the peace agreement, assist in the DDR campaign, promote reconstruction and complete other mission components.

The direct support of transitional justice mechanisms by a peacekeeping operation is predicated on the fact that they co-exist, thus, timing proves as doctrinally important as a well-designed mandate. Similar to difficulties in reviewing and modifying strategic priorities, so to is the near impossibility of pausing and restarting or speeding up the process of a peacekeeping operation or transitional justice strategy

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<sup>99</sup> Jury is Still out, *supra* note 82, at 4.

<sup>100</sup> *See supra* note 80.

<sup>101</sup> *See supra* note 86. It is imperative to ensure a distinguish the two to increase credibility of the TRC as a national institution and not as operated by the UN.

once set in motion.<sup>102</sup> Once a peacekeeping mission has been outlined the speed of deployment becomes critical. In Sierra Leone, the mission suffered from delays due to training, personal tensions between troop contributing countries and logistical difficulties.<sup>103</sup>

Delays in establishing transitional justice strategies further complicated both UNAMSIL's ability to maintain security and their ability to achieve their goals. Security is maintained as victims, perpetrators and states go through the process of reconciliation.<sup>104</sup> The nearly two year delay in operation of the Special Court and TRC translated to an additional two years of difficulty for UNAMSIL in providing stability. Additionally, the need for a victims' reparations scheme was announced only in the TRC's final report. Had proper planning taken place it is likely that a reparations program would be established in 2000, or early 2001 at the latest, facilitating the reconciliation.

One of the key structural elements influencing missions and post-conflict modalities in their ability to successfully fulfill their mandates are the resources allotted to them. In Sierra Leone, UNAMSIL, the Special Court and the TRC suffered from massive shortages in funding and difficulties in personnel. Lack of resources greatly contributed to each component's ability to design and commence their mandates on the best timeline.

While the international community vocalized its support for measures taken in Sierra Leone, it was not matched by the international purse. Specifically, Brahimi notes in his report that the Security Council has a tendency to take decisions and authorize undertakings without providing the necessary funding or resources to ensure

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<sup>102</sup> Hurwitz, *supra* note 98, at 11.

<sup>103</sup> Personal tensions between Jetley and others in UNAMSIL delayed troops. *See, supra* note 36.

<sup>104</sup> Virginia Page Fortna, *Inside and Out: Peacekeeping and the Duration of Peace after Civil and Interstate Wars*, 5 INT'L STUDIES REV. 97-114 (2003)

implementation.<sup>105</sup> Initially, UNAMSIL faced serious financial problems, weakening the institution ultimately leading to the crisis in 2000. Despite insufficient funds leading to the delays to establishing the TRC and Special Court, the Special Court has not seen one year where the amount of money pledged is what was received by the court and is now operating in its fifth year beyond its initial mandate. While renewed violence additionally played a large role in the delay, but it is hard to imagine that had the funds been available UNAMSIL would have provided security and both transitional justice institutions would have begun operation sooner.

Funding is not the only area where the Security Council may fail to provide enough resources. UNAMSIL was not only unable to fulfill its initial mandate due to a lack of funding but also to inadequate troop size as mandated by the Security Council.<sup>106</sup> As evidenced, UNAMSIL initially had a strong, albeit misinterpreted mandate, yet lacked sufficient troops prepared for Sierra Leone. Specifically, just prior to the hostage crisis, the Security Council had authorized 10,000 troops while only 4,800 were on the ground in Sierra Leone. Moreover, those troops that were present lacked the training necessary to understand the guerilla warfare used by rebel forces.<sup>107</sup> The small number of troops was only exacerbated by the lack of a clear interpretation of UNAMSIL's mandate. Thus, it falls on the shoulders of the UN's Member States to supply a well-trained force and the shoulder's of the Security Council to allow for a force of sufficient size to meet the mission's mandate.<sup>108</sup> The mismatching of mandates and resources effects peacekeeping operations and

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<sup>105</sup> David T. Malone & Ramesh Thakur, *UN Peacekeeping: Lessons Learned?*, 7 GLOBAL GOVERNANCE 11,13 (2001).

<sup>106</sup> The Brahimi report famously pointed out that “[a] mission such as UNAMSIL would probably not have faced the difficulties it did...had it been provided with forces as strong as those currently keeping the peace in Kosovo. Brahimi report, *supra* note 18, at ¶106.

<sup>107</sup> See *supra* note 39.

<sup>108</sup> Member States should shift from providing ‘dry lease’ agreements whereby personnel arrive untrained to ‘wet lease’ where troop contributing countries are responsible for training thus decreasing the burden on peacekeeping operations.

transitional justice strategies as significantly as a poorly designed or ill-timed mandate does.

Structural elements provide the backbone for peacekeeping missions and transitional justice strategies which then require implementation under a comprehensive strategic framework and intensive coordination amongst actors to ensure maximum efficacy. The international community's lack of an overarching plan in Sierra Leone fragmented each operation, the right hand truly had no idea what the left hand was doing. While the Special Court and TRC were able to complement each other they failed to operate in concert with UNAMSIL and vice versa.

From a security and reconciliation perspective there was seemingly no cohesion whatsoever between the actions of UNAMSIL and transitional justice actors in Sierra Leone. A coherently outlined alignment of political will and assessment of peacekeeping and justice institutions would prove more effective. Operationally, there should have been more coordination between UNAMSIL and the tribunal and truth commission. Conversely, coordination would have been more feasible if operating under an organized framework rather than as piecemeal entities without integrated missions.

The Special Court indicting members of all parties to the conflict, the TRC obtaining testimony from government officials and UNAMSIL working closely with the government of Sierra Leone created a complex political environment in Sierra Leone following the armed conflict. Thus, a comprehensive strategic framework would have been the best option to consolidate political support both domestically and internationally. Internationally, this would have helped ensure the support necessary to provide for the structural elements outlined above which rely on the expertise of the international community. Additionally, a comprehensive framework

would align personality and political differences which might prevent a recurrence of the Jetley incident that UNAMSIL underwent.

Domestically, such a framework would have pushed politicians who claimed success for short-term strategies (such as the TRC) establish long-term programs continuing that legacy (such as a more robust reparations scheme).<sup>109</sup> Additionally, garnering the combined support of international and domestic actors in Sierra Leone would have given strength to UNAMSIL increasing the mission's effectiveness as a credible deterrent.

One of the biggest failings of the UN in Sierra Leone was its inability to accurately assess the actions of processes. For UNAMSIL, this meant that despite endorsing the peace agreement and feeling that all parties acknowledged the Lomé Agreement, the operation was blind as the RUF failed to adhere to the cease fire rendering it crippled to respond in 2000. Similar assessment failings did not torment the TRC and Special Court as they complemented each other but better assessment would have shown how integration with the peacekeeping mission may have furthered both institutions. Ironically, if these operations were all working under a comprehensive strategic framework then they would have been in a better position to provide accurate assessments. It would have been more likely that the Special Court and the TRC would have been able to provide an outside assessment to UNAMSIL and allow them access to their specialists. Again, this is predicated on the timing and overlap between the peacekeeping mission and transitional justice strategies.

In addition to a comprehensive strategic framework to operate under peacekeeping missions and transitional justice strategies must function with added coordination.

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<sup>109</sup> Laurence Juma, *The Human Rights Approach to Peace in Sierra Leone: The Analysis of the Peace Process and Human Rights Enforcement in a Civil War Situation*, 30 DENV. J. INT'L L. & POL'Y 325, 331 (2002).

Failure to do so leaves these components in disjointed implementation. Increased coordination should occur through consultation and participation in the planning and implementation phases and encouraging local ownership with the end goal of turning over remaining mechanisms to national actors. Increased operational coordination between UNAMSIL, the tribunal and the TRC would have provided more opportunities for enforcement of a comprehensive framework thus facilitating each component's mandate.<sup>110</sup>

If acting in concert, each component would be in a better position to perform ongoing consultations with victims' groups to determine how best to help them and provide security. This would have helped alleviate the problems of the disconnect between the Special Court and the TRC such as the incongruent outreach programs and unclear relationship. It would also have put transitional justice actors in touch with individuals where only UNAMSIL could reach to help determine what local needs were and how best to meet them. This is particularly important in the early stages of transitional justice.

Additionally, UNAMSIL's support and coordination with the Special Court and TRC would have aided in encouraging local ownership of the processes.<sup>111</sup> The Secretary-General has pointed out that transitional justice strategies often fail to include local communities which is likely due in part to a lack of political will but also due to realistic security concerns.<sup>112</sup> Moreover, involving a peacekeeping operation in the logistical aspects of a transitional strategy may aid in the turning over of peacebuilding processes to national actors. However, missions must be cautioned

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<sup>110</sup> Juma, *supra* 109, at 327.

<sup>111</sup> Hurwitz, *supra* 98, at 4.

<sup>112</sup> See The Secretary-General, *Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies*, ¶25 U.N. Doc. S/2004/616 (Aug. 23, 2004).

not to confuse assistance with taking over which may harm the justice strategies by associating them solely with international actors.

Lastly, Sierra Leone was fortunate to catch the attention of the newly forming UN Peacebuilding Commission yet the delegations have done little more than minimally coordinate and monitor the progress within the war torn country. Since 2006, the Peacebuilding Commission has acted as a focal point for coordination focusing on reviewing progress of peacebuilders, broadening the donor base and aiding in new initiatives.<sup>113</sup> Moreover, the delegation to Sierra Leone from the PBC has recently concentrated its efforts towards the humanitarian needs of the country.<sup>114</sup> The PBC is limited as an advisory body rendering it minimally effective. However, if the UN were to provide it with a sufficient mandate it is feasible that the PBC could act as the common denominator between peacekeeping and transitional justice. The PBC delegation has the ability to access international experts in all fields, recommend a comprehensive strategic framework, be involved in the planning stages of a peacekeeping mission to provide insight into possible future coordination with transitional justice strategies, facilitate coordination between international and national actors in both missions and post-conflict justice arenas, garner the political will necessary to effectuate long-term change. Given the comparative youth of the PBC it will take several years to see how it further develops.

Until the PBC has proven itself capable and willing to take on these coordination tasks, peacekeeping missions and transitional justice strategies must forge their relationship forward together. With the lessons taken from Sierra Leone, future

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<sup>113</sup> Report of the Peacebuilding Commission in its Third Session, U.N. Doc. A/64/341-S/2009/4444 (Sept. 8, 2009).

<sup>114</sup> Report of the second mission of the Peacebuilding Commission to Sierra Leone, U.N. Doc. PBC/2/SLE/7 (June 16, 2008).

peacekeeping missions and transitional justice strategies should bear the following in mind:

- Early analysis of strategic priorities and outcomes should take place prior to establishing a peacekeeping operation, tribunal or truth commission.
- Peacekeeping operations should undergo extensive planning which includes involvement of transitional justice experts.
- Peacekeeping operations and transitional justice mechanisms should be mandated to include direct support for the other.
- Peacekeeping operations and transitional justice modalities require clear mandates that provide them with the legal foundation, strength and knowledge to complete their tasks.
- The UN should consciously match mandates of operations and post-conflict strategies with the resources allotted to them.
- All components operating in an armed conflict context require sufficient resources in terms of funding and personnel to fulfill their mandate which requires the commitment of the international community and local actors.
- Troop contributing countries for peacekeeping operations should provide well-trained troops without delay.
- In establishing peacekeeping missions, tribunals and truth commissions actors should reach a consensus regarding a comprehensive strategic framework, which includes a component for consolidate political support.
- UN peacekeeping operations and transitional justice strategies should coordinate with each other and national actors during the establishment and implementation phases.

These guidelines will help future peacekeeping operations and transitional justice strategies achieve their goals of providing security, reaching some form of reconciliation and justice and helping to transform a country from an internal civil war into a strong developed state. Without security, there cannot be justice and without either there cannot be development. Therefore, in the wake of an armed conflict peacekeeping mission are deployed to maintain peace and security. Once established, transitional mechanisms, such as tribunals and truth commissions, serve to meet the justice needs of victims. The two are inextricably bound and to prevent a return to armed conflict they must support and enhance each other. That is the only way to meet the founding goal of the United Nations and “save succeeding generations from the scourge of war.”<sup>115</sup>

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<sup>115</sup> UN Charter, *supra* note 9.

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