

**THE TAKE DOWN: CASE STUDIES REGARDING “LAWFARE” IN  
INTERNATIONAL CRIMINAL JUSTICE: THE WEST AFRICAN EXPERIENCE**

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*The law is a powerful tool. Some say it can be used as a weapon. That power was used to bring down the most disruptive and evil warlord in Africa and his co-defendants not just by the stroke of a pen on March 3, 2003, but in the execution of two operations, Operation Justice and its follow-on Operation Rope. This Article uses these operations as case studies to show that the law can be used as a powerful weapon.*

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I. THE SITUATION

The civil war in Sierra Leone ripped apart an entire region of West Africa. Spawned by the President of Libya, Colonel Muammar Ghaddafi, and supported by Presidents Blasé Compaore of Burkina Faso and Charles Taylor of Liberia, this take-over of an entire country for their own personal criminal gain was a rare event in conflict not seen since the middle ages. The West African Joint Criminal Enterprise was designed to support the geo-political takeover of West Africa by Ghaddafi where surrogates such as Compaore and Taylor, among others, would control the region on his behalf. Fueled by diamonds, gold, and timber, these commodities were traded for cash to pad the coffers of three heads of state, gun runners, diamond dealers, and boy-generals, and to buy weapons to take down not only Burkina Faso, Liberia, but Sierra Leone, the Ivory Coast, and Guinea.<sup>1</sup>

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<sup>1</sup> The diamond mines provided essential funding for the war, and without access to them, the RUF would be unable to support their troops. *See* Ian Smillie, Lansane Gberie & Ralph

The result of this enterprise was the complete destruction of two countries, Liberia and Sierra Leone, where women and children were brutalized and forced into the rebel forces as either bush wives or child soldiers respectively, and the murder, rape, and maiming of around 1.2 million human beings occurred. The civil war in Sierra Leone was indicative of the horror of a succession of internal armed conflicts, which saw the chopping off of limbs as a way to intimidate and terrorize the populace into submission. The world recoiled in horror.<sup>2</sup>

## II. THE MISSION

In an attempt to stop this horror, the President of Sierra Leone asked for help from the United Nations.<sup>3</sup> A second peace treaty was signed in

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Hazelton, *The Heart of the Matter: Sierra Leone, Diamonds, and Human Security* 6 (2000), available at <http://www.sierra-leone.org/heartmatter.html>; See *infra* Appendix A (presenting a schematic of the West African Joint Enterprise).

<sup>2</sup> The rebel forces committed the most atrocious human rights violations of Sierra Leone's civil war during the invasion on the capital. See, e.g., Jon M. Van Dyke, *The Fundamental Human Right to Prosecution and Compensation*, 29 DENV. J. INT'L L. & POL'Y 77, 78 (2001). The Economic Community of West African States Monitoring Group (ECOMOG) forces were eventually able to regain control over Freetown. However, the fighting was fierce, resulting in the deaths of approximately 7,000 people and two-thirds of Freetown being destroyed. See U.N. Secretary-General, 5th Rep. of the Secretary-General on the U.N. Observer Mission in Sierra Leone, ¶ 1, U.N. Doc. S/1999/237 (Mar. 4, 1999) (describing the RUF attack on Freetown and the resultant effects). As a result of the anarchy, about 600,000 of Sierra Leone's estimated population of four million people sought sanctuary in neighboring nations, and two-thirds of those who remained in Sierra Leone were internally displaced. See U.N. Secretary-General, 6th Rep. of the Secretary-General on the U.N. Observer Mission in Sierra Leone, ¶ 9, U.N. Doc. S/1999/645 (June 4, 1999) (describing the then-current status of the Sierra Leonean refugees and internally displaced persons).

<sup>3</sup> Under the first peace agreement, which lasted several months, Executive Outcomes was forced to leave Sierra Leone to be replaced by Nigerian peacekeepers. Peace Agreement Between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, art. 12, Nov. 30, 1996, available at <http://www.sierra-leone.org/abidjanaccord.html> [hereinafter Abidjan Peace Accord]. The RUF achieved increased political legitimacy under the Abidjan Peace Accord, and it appeared that it would be recognized as a political party. Diane Marie Amann, *Message as a Medium in Sierra Leone*, 7 ILSA J. INT'L & COMP. L. 239 (2001). However in May 1997, Johnny Paul Koroma of the AFRC, which soon after joined with the RUF to form the AFRC/RUF, overthrew President Kabbah. The AFRC/RUF proved an especially brutal regime. Determined to protect innocent civilians, the Economic Community of West African States (ECOWAS), with the support of the U.N. Security Council, increased the number of Nigerian troops stationed in Sierra Leone. See S.C. Res. 1171, U.N. Doc. S/RES1171 (June 5, 1998) (preventing the supply of arms to the RUF and restricting the movement of its military leaders). The AFRC/RUF signed an agreement with Kabbah's deposed government, and with ECOWAS support, President Kabbah was returned to Freetown. The RUF continued to commit war crimes in the East, replenishing its war chest through diamond sales to President Taylor of Liberia. During this time, Foday Sankoh was captured in Nigeria and returned to Freetown, where he was tried and sentenced to death for his role in the civil war. In January 1999, the RUF once again attacked

1999 which abated the conflict somewhat and U.N. peacekeepers were inserted into Sierra Leone to enforce the peace.<sup>4</sup> After a shaky start which saw even the peacekeepers victimized by the rebels, the conflict came to an end in 2002.<sup>5</sup> It was only during those years that the full extent of the crimes committed in Sierra Leone was understood. At the request of the Secretary General of the United Nations, the Security Council gave Kofi Annan the

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Freetown, this time defeating the peacekeepers in “Operation No Living Thing.” Thousands of children were forcibly conscripted into the RUF army, drugged, killed, burned alive, or raped, before the rebels were driven away. See Human Rights Watch, *Getting Away with Murder*, available at <http://www.hrw.org/reports/1999/sierra/SIERLE99.htm>. In early 1999, there was essentially a stalemate. ECOMOG peacekeepers protected the capital (although they also stood accused of summary executions, rapes, and murders), but seemed unable to defeat the RUF and its allies. The RUF seemed content holding only the diamond-mining districts, as they had never seemed as interested in political power as they were in controlling access to the mines.

<sup>4</sup> Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, July 7, 1999, available at <http://www.sierra-leone.org/Loméaccord.html> [hereinafter Lomé Peace Agreement]. Most controversially, the Lomé Accord granted complete amnesty to all combatants. Article IX reads in part:

[2] After the signing of the present Agreement, the Government of Sierra Leone shall also grant 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. [3] To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organizations, since March 1991, up to the time of the signing of the present Agreement. In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality.

*Id.* art. IX, § 2–3. The Lomé Peace Accord also established a Truth and Reconciliation Commission (TRC), created as an instrument for addressing the abhorrent violence to promote and facilitate reconciliation for a deeply fragmented people. *Id.* arts. VI & XXVI. Disregarding the terms of the Accord, the RUF resumed its practice of committing violent acts against the people of Sierra Leone. Daniel J. Macaluso, *Absolute and Free Pardon: The Effect of the Amnesty Provision in the Lomé Peace Agreement on the Jurisdiction of the Special Court for Sierra Leone*, 27 BROOK. J. INT’L L. 347, 350 (2001). Seeking to take power from the AFRC, the RUF did not fully comply with the Lomé Accord.

<sup>5</sup> In May of 2000, rebel forces attracted the international community’s attention by taking 500 U.N. Peace Keepers as hostages. Thereafter, Foday Sankoh, leader of the RUF, was captured and arrested, initiating a dialogue calling for the creation of an international criminal court for Sierra Leone to try those responsible for the grave crimes committed in violation of international law. See INTERNATIONAL CRIMINAL LAW: INTERNATIONAL ENFORCEMENT 198, n. 18 (M. Cherif Bassiouni ed., 3d ed. 2008) (citing Daniel J. Macaluso, *Absolute and Free Pardon: The Effect of the Amnesty Provision in the Lomé Peace Agreement on the Jurisdiction of the Special Court for Sierra Leone*, 27 BROOKLYN J. INT’L L. 347, 350–51 (2001)).

authority to explore various mechanisms to seek justice for the tens of thousands of victims of the civil war in Sierra Leone.<sup>6</sup>

The result was the world's first international hybrid tribunal.<sup>7</sup> It was a bold new experiment in delivering international justice. The war crimes weary international community was loath to create another cumbersome and expensive ad-hoc tribunal such as in Yugoslavia and Rwanda. The Special Court for Sierra Leone was designed to be more efficient and effective. Created by the United Nations and the Republic of Sierra Leone, the court would essentially be *of* the United Nations, but not *in* the United Nations, thus freeing it of the byzantine administrative rules of that body.

The court would be located in Freetown, right at the scene of the crimes. Its mandate would be simple and workable: prosecute those who bore *the greatest responsibility* for war crimes and crimes against humanity during the civil war in Sierra Leone from 1996 to the present.<sup>8</sup> This allowed

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<sup>6</sup> In August 2000, the U.N.'s Security Council adopted Resolution 1315, which requested that the Secretary-General consult with the government of Sierra Leone on the creation of an independent international court that would have jurisdiction over those most responsible for the notorious human rights violations committed during the conflict, such as crimes against humanity and war crimes. Permanent Rep. of Sierra Leone to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2000/786 (Aug. 10, 2000); *see also* Avril McDonald, *Sierra Leone's Shoestring Special Court*, 84 INT'L REV. RED CROSS 121, 124 (2002) (discussing the differences in the creation of this tribunal and other tribunals).

<sup>7</sup> In August 2000, U.N. Security Council Resolution 1315 created a framework for the establishment of an independent special court in Sierra Leone to address "crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law committed within the territory of Sierra Leone." S.C. Res. 1315, ¶ 2, U.N. Doc. S/RES/1315 (Aug. 14, 2000). Resolution 1315 also requested the Secretary-General to "negotiate an agreement with the Government of Sierra Leone to create an independent special court." *Id.* ¶ 1.

<sup>8</sup> Statute of the Special Court for Sierra Leone, art. 1 (Jan. 16, 2002), *available at* <http://www.sc-sl.org/DOCUMENTS/tabid/176/Default.aspx>; *See also* Special Court Agreement, Ratification Act 2002, art. 1 (April 25, 2002), *available at* <http://www.scsl.org/DOCUMENTS/tabid/176/Default.aspx>. Article 1(1) of the Agreement states:

There is hereby established a Special Court for Sierra Leone." Article 21 of the Agreement states: "The present agreement shall enter into force on the day after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with." The notification required under Article 21 took place on April 11, 2002. The Special Court is the first international tribunal to utilize "greatest responsibility" as its standard for prosecution. Although this standard was recommended in the initial U.N. Security Council Resolution, a subsequent report by the Secretary-General suggested replacing it with the more general phrase "persons most responsible."

According to the Secretary-General, this broader mandate would permit the prosecution of "others in command authority down the chain of command" who could be regarded as "most responsible judging by the severity of the crime or its massive scale." U.N. Secretary-General, *Rep. of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, ¶ 30, U.N. Doc. S/2000/915 (October 4, 2000). Ultimately, the Special Court's Sta-

the Prosecutor to narrow the range of possible defendants in the hopes that the investigations, indictments, and trials would take less time than its sister tribunals in Arusha and The Hague.<sup>9</sup>

In the summer of 2002, the Prosecutor and the Registrar started to set up the Special Court and began the justice process for the people of Sierra Leone.<sup>10</sup> Within seven months, the Prosecutor had indicted and arrested

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tute employed the language of the Security Council Resolution, however, the mandate's interpretation is left to the prosecutor's discretion.

<sup>9</sup> The subject matter jurisdiction of the Special Court for Sierra Leone (SCSL) is similar to the Statutes of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY). Article 2 of the Statute of the SCSL lists the crimes against humanity that the SCSL will have the power to prosecute. Statute of the SCSL, art. 2, Jan. 16, 2000, U.N. Doc. 5/2002/246, available at <http://www.scs-l.org/scsl-statute.html>. These include crimes such as murder, extermination, enslavement, imprisonment, torture, rape, or other inhumane acts, if they were committed as "part of a widespread or systematic attack against any civilian population." *Id.* Article 3 covers "Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II." *Id.* art. 3. The crimes in Article 3 are defined exactly the same as those in Article 4 of the Additional Protocol for Non-International Armed Conflict, including mutilation, torture, collective punishments, hostage-taking, terrorism, pillage, summary executions, and outrages on personal dignity. *Id.* Article 4 enumerates "Other Serious Violations of International Humanitarian Law," including intentional attacks on civilian targets, intentional attacks on humanitarian and peacekeeping personnel, and abduction and recruitment of children under the age of fifteen into armed groups. *Id.* art. 4. Not included on this list of crimes is genocide, since the attacks on civilians in Sierra Leone do not appear to have had an ethnic element. *See id.* In addition to the crimes against humanity, war crimes, and other serious violations of international humanitarian law, Article 5 of the Statute provides jurisdiction for "Crimes under Sierra Leonean Law," unlike the ICTR and ICTY for their respective jurisdictions. *Id.* art. 5.

<sup>10</sup> In April 2002, three months after the Government of Sierra Leone and the United Nations signed the agreement establishing the Special Court, U.N. Secretary-General Kofi Annan appointed the Registrar and the Chief Prosecutor. They arrived in Freetown in late July and early August 2002, respectively. They began operations in difficult conditions. An advance planning task force had determined the necessity of the erection of a new facility to house the Court. The Court lacked formal ties to the United Nations. However, assistance from the government of Sierra Leone was forthcoming. An 11.5-acre plot of land in central Freetown, donated by the Government, would serve as the Court's site; to include staff offices, courtrooms, and prison facilities. Until January 2003, the Registry operated in provisional offices owned by the Bank of Sierra Leone, while the Office of the Prosecutor, located in a private residence a few kilometers away, was not relocated to the permanent site until August 2003. One year after the Court began its operations, the Registry was still in the process of formation. By April 2003, because the top priority was getting the Office of the Prosecutor up and running, the Special Court had only hired 55 percent of its expected total personnel of 256. By the time the Court had to deal with its first detainees, with the first wave of indictments and arrests on March 10, 2003, it had made much progress. However, there existed no permanent prison facilities, courtroom, or functional defense office. Rehabilitated buildings on Bonthe Island were used to house the detainees during the initial months. Forty minutes from Freetown by helicopter, the island's remote nature, selected for security reasons, posed accessibility problems for relatives, legal counsel, and journalists. On August 10, 2003, the accused were transferred to the permanent detention facility in Freetown. The President of

the majority of those who bore the greatest responsibility. Within a year, all of the defendants were in custody, arraigned, and the trial process began.

### III. THE EXECUTION

The Prosecutor organized his prosecutorial strategy with a ten-step process with key milestones built-in to ensure proper management and execution of the mandate given to him by the U.N. Security Council. In that strategy was a series of planned operations designed like a military and political operation using the full spectrum of tools in a legal battlefield to include diplomatic initiatives, information operations, and military support culminating in a complete tactical assault on the potential defendants using deception, surprise, and precision of action based on timely and actionable intelligence.

The first operation, Operation Justice, was essentially a deception, information, and military operation, the second, Operation Rope, a psychological and diplomatic/political operation. Both were executed by the Office of the Prosecutor as a legal weapon to bring those who bore the greatest responsibility to justice.

#### A. *Case Study Number One: Operation Justice*

The potential defendants were all living in and around Freetown and surrounding districts. Three defendants of the thirteen contemplated for arrest were in Liberia, including the sitting President Charles G. Taylor. All were the current or former heads of the warring factions in the civil war in Sierra Leone. All were assumed armed and dangerous. One of the defendants was the sitting Minister of the Interior of Sierra Leone who had technical control of the arresting units that would help execute Operation Justice.<sup>11</sup> Organizations involved in the arrest operation were members of the investigations section, Office of the Prosecutor, the Sierra Leonean National

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the Special Court for Sierra Leone, First Annual Report Dec. 2, 2002–Dec.1, 2003 at 5 (2004), <http://www.sc-sl.org/LinkClick.aspx?fileticket=NRhDcbHrcSs%3d&tabid=176>(summarizing the court's activities for the period).

<sup>11</sup> U.N. News Service, *Prosecutor of UN-Assisted Sierra Leone Special Court to Step Down*, U.N. NEWS CENTRE (Feb. 28, 2005), <http://www.un.org/apps/news/story.asp?NewsID=13486&Cr=sierra&Cr1=leone>. Chief Sam Hinga Norman was head of the Civil Defense Forces and the Kamajors during the decade long civil war. Ibrahim Bangoura, and Nhinson Williams, *Sierra Leone: The Pre and Post War Overview; a Combination of Tragedy, Threat and Insecurity*, (April 20, 2003), [http://www.tlcafrica.com/tlc\\_sierraleone.htm](http://www.tlcafrica.com/tlc_sierraleone.htm). He was politically a problem for the Prosecutor as many Sierra Leoneans thought him a national hero for his defense of the country. Michael Nesbitt, *Lessons from the Sam Hinga Norman Decision of the Special Court for Sierra Leone: How Trials and Truth Commissions can Co-Exist*, 8.10 GERMAN L. J. 977, 995 (2007). They would largely change their attitude when the real facts were presented during his trial for war crimes and crimes against humanity.

Police, the United Nations Peacekeepers in Sierra Leone (UNAMSIL), land and naval forces of the United Kingdom, as well as various embassies, to include the United States and the United Kingdom.

The mission given to the organizations and units was the takedown of all of the targeted defendants in Sierra Leone via a surprise arrest operation and transfer to Bonthe Island where the Office of the Registrar, under the cover of a rehabilitation project, had constructed a detention facility.

The planning and execution of Operation Justice took place over several months beginning in late September 2002 and ended a week prior to the take down of the defendants on March 10, 2003. A security group was set up by the Prosecutor under the auspices of the British High Commission, which met as needed, but at a minimum of once a month. Members included the Ambassador from the U.S., Inspector General of the Sierra Leone National Police, Chief of Staff of the Force within UNAMSIL, Commanding General of the British Training Command in Sierra Leone, British High Commissioner, and Prosecutor. No one else knew of the existence of this group. Within the group the information was specifically compartmentalized, each member only kept aware of specific requirements as needed for security purposes.<sup>12</sup>

The Chief of Investigations in the Office of the Prosecutor had overall control of the arrest operation, including its planning and execution. During this planning stage, the Prosecutor initiated an information operation to confuse and distract the various defendants and arrestees from the real operation. Each month the Prosecutor would meet with the local, regional, and international media and tell them truthfully that the case was complex, worldwide in-scope, and he revealed to the public that the anticipated opening of the trials was at least a year away. The intent was to ensure that the various arrestees would not flee or the Minister of Interior, a target, would not hamper the investigation or become aware of the planning for Operation Justice.

While this was ongoing, the normal routine of setting up of an international tribunal continued for all to see. Along with this, an old jail on Bonthe Island was being refurbished under the guise of a legacy project for the Sierra Leone National Police, when in reality the jail was to be the temporary detention for the various defendants taken down in Operation Justice. The Chief of Prosecutions continued to assist in the investigations and began drafting indictments on each of the thirteen defendants. To the outside observer, the Special Court was busy about its work to fulfill its mandate, while just under the surface Operation Justice was in full swing.

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<sup>12</sup> Operational security was very important. A vast majority of individuals working for the Office of the Prosecutor were not aware of the planning for and even the execution of Operation Justice. The office was informed a few minutes after the take-down had taken place.

The Inspector General of Police was a central figure in the planning of Operation Justice. A retired former senior British policeman, he would be in charge of the actual arrest of the defendants the day Operation Justice was executed, sometime in March of 2003. His mission included providing surveillance of all known suspects, riot control trained forces for stability operations, teams in support of the investigation section, and three landing zones for the pickup of detainees on the day of the arrests. The American Embassy would provide the helicopters.

As a military operation, it was important that a sufficient force be in-country to ensure that the country remained stable. In the fall of 2002, the Prosecutor and the British Government entered into an agreement to provide a land and naval force sufficient to ensure that the country would not collapse. It was agreed that these forces would deploy to West Africa under the guise of a routine annual training exercises.<sup>13</sup> Additionally, the Chief of Staff of the U.N. Forces in Sierra Leone would provide their quick reaction force of Pakistani Special Forces on the day of the execution of Operation Justice.<sup>14</sup>

As the planning for Operation Justice proceeded operationally, the Office of the Prosecutor was developing a criminal information network of trusted assets throughout West Africa, over time penetrating the inner circles of the Taylor regime, as well as countries, organizations, and institutions. These assets were critical to providing intelligence and criminal information to the Prosecutor and the security group as Operation Justice moved forward and the follow-on Operation Rope, began to take shape. Coordination with other national intelligence systems worldwide also provided some useful intelligence.

The result of all this planning on the legal, diplomatic, military, intelligence, and practical fronts resulted in a flawless execution of Operation Justice on March 10, 2003. All of the defendants targeted for arrest were taken by surprise within fifty-five minutes, and within two hours, were safely incarcerated on Bonthe Island. From that point on the rules of evidence and procedure kicked in and the pre-trial process began. Operation Justice ended at 4:00 p.m. local time, March 10, 2003.

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<sup>13</sup> The British government was an important operational element to Operation Justice. The Blair government would provide a "spearhead" battalion to land and seize Lungi Airfield, Sierra Leone's only international airport, and the HMS Iron Duke to sail into the harbor at Freetown on the day of the arrests.

<sup>14</sup> It must be noted here that the Chief of Staff did all of his military planning without the knowledge of the Secretary General's Special Representative (SRSG), who was not in support of the Special Court, and who in fact had taken direct action to harm its efforts. The Prosecutor informed the SRSG after the arrests had taken place and all of the indictees were aboard helicopters heading for detention. He was stunned.

*B. Case Study Number Two: Operation Rope*

Following Operation Justice, the Prosecutor sealed the indictment of then President Charles Taylor. It was feared that a publicly released indictment of Taylor would jeopardize Operation Justice and further destabilize the region. During the spring of 2003, the United States invaded Iraq and the world's attention turned to the Middle East. While the world watched the United States stomp around Iraq, the Office of the Prosecutor began to plan for the take down of President Charles Taylor, now an indicted war criminal.

The challenge and eventual mission was to unseal the indictment in a way that had maximum impact legally, diplomatically, and practically. In short, we had to literally “blow him off the map” with little options available to him politically. As the senior leadership contemplated all of this, a plan began to develop.

The core of the plan was a psychological operation against Taylor himself. The intent was to draw him out and corner him politically to a place where he had few options. An additional challenge was to ensure that the international community also had few options regarding the indictment of a sitting head of state, which had taken place only one time before in modern history. It was anticipated that there would be political and diplomatic “blowback,” particularly from the United States, the major support of the Special Court.

The Prosecutor decided to execute what was called by the investigations section Operation Rope, gradually but consistently, building up to a dramatic unsealing of the indictment while Taylor was not in Liberia. However, in the spring of 2003, Taylor was not doing much travelling. To up the ante somewhat, the Prosecutor, as part of the psychological operation, began to issue various press releases regarding the three presidents of Libya, Burkina Faso, and Liberia and their involvement in the West African joint criminal enterprise; the fact that Taylor was harboring war criminals; and that Taylor was using blood diamonds for his personal gain, among other charges and allegations.

At first Taylor did not “take the bait,” but finally he reacted when the Prosecutor accused him of being behind the September 2002 coup attempt in the Ivory Coast, and that one of the indicted, Samuel “the Maskita” Bockerie, was the person in charge of the unrest in that neighboring country working for President Charles Taylor. The Prosecutor demanded that Taylor hand Bockerie over to the Special Court for a fair trial. Taylor announced publicly he did not have Bockerie—or Johnny Paul Koroma, the other indicted in Liberia, for that matter.<sup>15</sup> The next public release declared that the

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<sup>15</sup> One month prior to Operation Justice Johnny Paul Koroma, head of the Armed Forces Revolutionary Council in 1997, fled Sierra Leone to Liberia after trying to start a coup to

presence of Bockerie and Koroma was true and specifically told the world where both Bockerie and Koroma were located in Liberia according to the Prosecutors intelligence assets.

Also at this time, the Chief of Investigations was having his assets in the region send out signals that Taylor was in possible legal trouble. This encouraged the various rebel factions fighting against Taylor in Liberia to start their annual offensive towards the capital Monrovia. The Liberians United for Reconciliation and Democracy (LURD), supported by Guinea, and the Movement for Democracy in Liberia (MODEL), supported by the Ivory Coast, began to move south and west respectively towards Monrovia. The military and political, as well as the psychological pressure on Taylor was mounting.

It was at this point that it was realized that the LURD and MODEL could greatly assist the Prosecutor to bring military pressure on Taylor in the hopes that he would do something or react in a way that would give the Prosecutor the opportunity to unseal the indictment. Unsealing the indictment was going to be used, for all intents and purposes, as a legal club to knock Taylor out of Liberia.

As Operation Rope progressed, all of this activity began to take on international significance and interest, thus drawing the press back to West Africa to cover the building tension in Liberia. The intelligence assets in Liberia working for the Prosecutor began to individually and separately report increased concern by Taylor over rebel activities and the accusations by the Prosecutor that he was harboring indicted war criminals in violation of international law. The pressure continued to build throughout the month of May 2003. The psychological aspects of Operation Rope were starting to work.

Finally, Taylor himself handed us—the prosecution team—the opportunity to execute the final aspects of Operation Rope when he agreed to peace talks with the LURD and MODEL in Accra, the capital of Ghana.<sup>16</sup> With that announcement, the final diplomatic aspect of the operation was finalized. In late May, in order to keep up the media interest in Taylor and

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throw out the current government and the Special Court. The coup was found out and Koroma just escaped arrest. The Prosecutor indicted him for war crimes and crimes against humanity on 3 March 2003.

<sup>16</sup> Sensing weakness, this year's annual military operation to take Monrovia by the various rebel groups took on a certain urgency and intensity. Taylor understood this as well and sought "peace." In fact, he was only using the peace talks as a delaying tactic to consolidate his positions, refit, resupply, and counterattack. He had done this several times before in the give and take of the rebellion against him in the late 1990's. *See generally* EUROPA PUBL'NS, AFRICA SOUTH OF THE SAHARA, 2004, at 610 (33d ed. 2003) (presenting the series of events that took place during and after the peace talks in Ghana that could lead one to infer that the peace talks were no more than a means to strengthen the Liberians United for Reconciliation and Democracy (LURD) position before attacking Monrovia).

his association with the civil war in Sierra Leone, the Prosecutor once again demanded publicly that Taylor turn over Bockerie to the tribunal. Taylor finally agreed to do so, but in a horrific way, by shipping Bockerie to the Prosecutor in a box on his birthday. According to Taylor's story, Bockerie had been killed resisting arrest. The autopsy later revealed he had been murdered by a firing squad.<sup>17</sup>

The final phase of Operation Rope was the unsealing of the indictment of Taylor when he arrived in Ghana for peace talks. Part of the final phase was also to notify the key political players in the region and internationally twenty-four hours before the unsealing of the indictment that a significant event would take place within those twenty-four hours. Then, on the morning of the unsealing of the indictment—the morning when Taylor left Liberia and landed in Ghana—the Registrar would personally serve on the Ghanaian High Commissioner in Sierra Leone a certified copy of the indictment and arrest warrant, and fax and email those documents to the Ghanaian Foreign Ministry in Accra. When that was confirmed, members of the Office of the Prosecutor hand-carried a letter from the Prosecutor to the President of Sierra Leone, the head of the U.N. Peacekeeping Force, the American Ambassadors in Sierra Leone and Liberia, and the British High Commissioner in Sierra Leone. The letter told each of them that at 11:00 a.m. that morning local time, when President Charles Taylor was walking up the stairs to attend the opening of the Accra Peace Accords, the Prosecutor was publicly announcing that Taylor had been indicted on seventeen counts of war crimes and crimes against humanity and would be asking the Ghanaian government to hand him over to the Special Court for Sierra Leone for trial. The Prosecutor also asked that they notify their governments as appropriate.<sup>18</sup>

Then at 11:00 a.m. local time, the Prosecutor read a statement to the press at U.N. headquarters in Sierra Leone that he was unsealing the indictment against the sitting President of Liberia Charles G. Taylor for war crimes and crimes against humanity. Taylor was informed at the location where the opening of the accords would begin that he had been indicted. Several other African leaders were also informed and Taylor was whisked

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<sup>17</sup> The sad and tragic story is that Taylor had Bockerie's family murdered as well. Eric Pape, *Cleaning House*, LEGAL AFFAIRS, Oct. 2003, at 69, available at [http://www.legalaffairs.org/issues/September-October-2003/story\\_pape\\_sepoct03.msp](http://www.legalaffairs.org/issues/September-October-2003/story_pape_sepoct03.msp). Koroma was also murdered in the eastern part of Liberia and our contact reported witnessing his body's dismemberment. *Id.* Koroma has never been found. His indictment has never been withdrawn. He is the only indictee not brought to justice before the Special Court.

<sup>18</sup> At the last minute the United States asked the Prosecutor not to unseal the indictment. He refused. It is important to note that the United States had been given a signed copy of the indictment of President Charles Taylor two months before it was unsealed. The Prosecutor personally gave both the U.S. Ambassador for Sierra Leone and the Ambassador at Large for War Crimes.

back to the airport and Monrovia. The political end to President Charles Taylor had begun. It took several more weeks, but in August of 2003, he was forced to step down and was moved to Calabar, Nigeria in a type of "exile/house arrest" as the international community began to figure out what to do next. Operation Rope had largely succeeded.

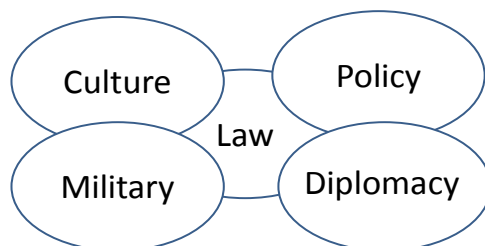
#### IV. REFLECTIONS: THE RULE OF LAW IS MORE POWERFUL THAN THE RULE OF THE GUN!

The term "lawfare" has been viewed somewhat negatively and at best as a clever turn of a phrase. Used in the appropriate context it can be a force for good and positive change. It is hoped that these two case studies will highlight how the law can be used as a tool and a weapon to allow an international prosecutor to execute his mandate in a way that saw justice for the victims of the internal armed conflict that was the civil war in Sierra Leone.

Operation Justice and Operation Rope illustrate the multi-dimensional aspects of justice at the international level. It is a naïve Prosecutor who only focuses or considers the legal dimension. International justice is inherently political in scope and the diplomatic, military/security, and practical ramifications of investigating, indicting, arresting, and prosecuting senior members of various warring factions in an armed conflict are significant. The figure below demonstrates this.<sup>19</sup> These various ramifications can put a prosecutorial strategy at risk and even jeopardize the tribunal or court itself. One could characterize all of this as "lawfare."

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<sup>19</sup> The bright red thread related to international criminal justice is politics. In most instances it will be a political decision to set up an international justice mechanism, to support it, and to turn over indictees to that court for trial.



**"LAWFARE" AND THE PROSECUTION OF INTERNATIONAL CRIMES**

It must be stressed that one should view the term “lawfare” as a descriptive word that carries little legal significance and, in reality, practical importance. It was not considered or even talked about as a viable concept when Operation Justice and Operation Rope were planned and executed. Simply put, from the author’s perspective, “lawfare” is an interesting academic concept, but in reality “lawfare” is just another term for the fact that a Prosecutor at the international level has to be not only an advocate, but also a savvy politician and diplomat to successfully complete one’s mandate. An understanding, background, or experience in military planning enhances that ability for success. Note, however, at the end of the day and whatever you call the execution of a plan or strategy, it has been shown that the rule of law is more powerful than the rule of the gun.<sup>20</sup>



<sup>20</sup> During my three years in Sierra Leone, I walked the countryside in a variation of the classic town hall concept. Part of the Court’s Outreach Program, this concept originated in the Office of the Prosecutor as part of the Prosecutor’s overall strategic plan. It was transferred to the Registry in early 2003. During the early town hall meetings where we literally walked the entire country, I told a skeptical audience that the law is fair, no one is above the law, and that the rule of law is more powerful than the rule of the gun.

