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27 *Mich. J. Int'l L.* 495**LENGTH:** 42706 words**ARTICLE:** ILLEGAL PEACE?: AN INQUIRY INTO THE LEGALITY OF POWER-SHARING WITH WARLORDS AND REBELS IN AFRICA+

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**SUMMARY:**

... Which legal rules, if any, govern peace agreements in internal conflicts? Specifically, which rules regulate power-sharing? Are the aims of peace, justice, and adherence to the rule of law attainable, let alone compatible, with coerced political transitions where warlords force democratically constituted or legitimate governments to share power? Consider this scenario: a rebel group, through brutal force, coerces a democratically elected government into a power-sharing arrangement that not only refashions the constitution of order but confers on the rebels unconditional amnesty, key government positions, and other privileges. ... A rebel awarded amnesty can leave the state immediately (e.g., the speedy departure of Sam "Mosquito" Bockarie, Sierra Leone's notorious senior Revolutionary United Front (RUF) rebel commander, from Sierra Leone to Liberia after the institution of the Lome Agreement); power-sharing, however, is long term and systematic. ... The Accra and Lome accords were born out of similar historical and political contexts, including a legacy of authoritarian rule, acute underdevelopment, warlord politics, internal disorder, perpetual state breakdown, grave human atrocities, UN inaction, intermittent conflict, and subregional intervention. ... Each accord is composed of 37 articles similar in structure and content. ... " Beginning in the 1970s, the OAU's notion of self-determination evolved from one that was purely state-centered and preoccupied with colonial rule to one that recognized, through the Banjul Charter, the expansion of the concept as a fundamental human right. ... Power-sharing under the Accra and Lome agreements also conflicted with the underlying logic of the Grand Bay Declaration, which affirmed the interdependence of the principles of democracy, good governance, and the rule of law and concluded that "unconstitutional changes in governments" often cause human rights violations. ...

**HIGHLIGHT:** The price of apathy towards public affairs is to be ruled by evil men.

- Plato

**TEXT:**

[\*496]

I. Introduction

When warlords use violence to coerce democratically constituted governments to share power, does power-sharing simply become a euphemism for "guns for jobs"?

Which legal rules, if any, govern peace agreements in internal conflicts? n1 Specifically, which rules regulate power-sharing? Are the aims of peace, justice, and adherence to the rule of law attainable, let alone compatible, with coerced political transitions where warlords force democratically constituted or legitimate governments to share power? n2 Consider this scenario: a rebel group, through brutal force, coerces a democratically elected government into a power-sharing arrangement that not only refashions the constitution of order but confers on the rebels unconditional amnesty, key government positions, and other privileges. Although the incumbent government prefers to punish the rebels rather than negotiate with them, it shares power out of political necessity and expediency because it lacks the muscle to defeat the rebels on the battlefield and the status or legitimacy to mobilize international military assistance to impose its political prerogatives. The failure to negotiate a cessation of hostilities inevitably results in prolonged conflict, [\*497] anarchy, and the eventual toppling of the government. Variations on this scenario have been commonplace in Africa for decades. n3

A government that has been violently and successfully challenged from within, but is still recognized as the de jure representative of the state, is faced with the quandary of how best to negotiate peace, n4 maintain security, survive politically, and manage future uncertainties. n5 It is forced to make strategic choices that often create normative friction between what is legal on one hand and what is politically necessary and expedient on the other. To date, political scientists, who tend to be proponents of power-sharing and seem to ignore the rule and role of law in political transitions, have controlled the debate over the legitimacy of power-sharing, which unfortunately has slipped under the radar of international lawyers. For example, in her seminal work on the stability of negotiated settlements to intrastate wars, Caroline Hartzell includes three subsections on the "rules regarding the use of coercive force," "rules regarding the distribution of political power," and "rules structuring distributive policy" but makes no attempt to consider the extent to which rules govern peace agreements, if at all. n6 Timothy Sisk's influential work on power-sharing and international mediation also fails to consider the rule and/or role of law in peace negotiations or peace deals that include power-sharing components. n7 This Article was inspired by the apparent disregard for the sanctity of the rule of law in the literature on power-sharing and among decisionmakers, who seem to discount its relevance all together - especially those responsible for negotiating the Accra and Lome accords, n8 which arguably prescribed illegal power-sharing [\*498] irrespective of long-term social costs. n9 To what extent, if any, does and should the rule of law influence the character of peace negotiations, agreements, and political transitions?

This Article represents the first conscientious attempt to address these questions, present a conceptual framework for examining the legal and political efficacy of coercing democratically constituted governments into sharing power, and define a lawful basis or approach to sharing power when governments are confronted with the aforementioned scenario. n10 The Article is polemical and questions the dominant logic that political power-sharing is lawful, legitimate, and unequivocally serves the public good, arguing that power-sharing deals that ignore controlling rules are unlawful and not viable.

This Article examines the legal and political efficacy of power-sharing in the Accra Agreement (2003) and Lome Agreement (1999) in Liberia and Sierra Leone, respectively. n11 It scrutinizes how little weight law was given in peace negotiations, examines the law relevant to power-sharing, and challenges the well-settled practice of sharing power, which contravenes such law. Power-sharing, as opposed to, for example, amnesty, is the subject here. A burgeoning literature addresses the legality and validity of amnesty in peace agreements when international crimes have been committed, n12 but the author is not familiar with a single comprehensive work that questions the legal efficacy of power-sharing - making this Article original in concept and scope. This is a critically important [\*499] contribution given that power-sharing is more expansive and has a greater impact on sustainable peace than amnesty, which is conceptually and practically more narrow and, typically, a lesser but necessary element of power-sharing. In other words, amnesty may be given without sharing power, but power-sharing without amnesty is atypical. n13 Amnesty applies to certain individuals and/or groups, whereas power-sharing directly affects a state's entire population, as it reconstructs or reorders the framework of

governance and its future disposition.

Power-sharing arrangements are typically long term and systemic, as they determine who will have a seat at the table of power, in what capacity, and for how long. While amnesties are permanent, they are nonetheless specific to the individual; again, in contrast, power-sharing directly affects the entire population of a state, including those who receive amnesty. A rebel awarded amnesty can leave the state immediately (e.g., the speedy departure of Sam "Mosquito" Bockarie, Sierra Leone's notorious senior Revolutionary United Front (RUF) rebel commander, from Sierra Leone to Liberia after the institution of the Lome Agreement);<sup>n14</sup> power-sharing, however, is long term and systematic. It establishes the foundation and framework for governance and forces war victims to live under the rule of alleged war criminals and other abusers. This type of peace raises vital questions about the governance and developmental challenges faced by war-torn states. The logic behind power-sharing assumes that rebels and warlords will behave and act as good citizens once they are given authoritative positions. It presupposes that warlords can become democrats once sanctioned with state authority. Power-sharing with warlords and rebels also sets a negative precedent, as it sends a dangerous message to would-be insurrectionists that violence is a legitimate means to effectuate change and obtain political power. For these reasons, the subject of power-sharing deserves distinct analysis, separate and apart from amnesty – particularly concerning its impact on the rule of law in post conflict societies.

This Article argues that when democratically constituted regimes are forced to choose between negotiating peace and being violently dislodged from power, peace agreements based on the rule of law should prevail over extralegal arrangements born out of political necessity and expediency. This is so because "legal peace" has less adverse impacts on the political order and is more viable and sustainable over the long term [\*500] than "illegal peace."<sup>n15</sup> Those deciding to share power should consider not simply political variables but also legal ones, as the law has an important regulatory role to play: it must constrain the political aspirations of decisionmakers and ensure the lawfulness of peace deals. The point is that the rules governing the legality of peace agreements must be adhered to, particularly when the beneficiaries of power-sharing acquired power undemocratically and unlawfully and are likely responsible for committing human atrocities. As Steven Ratner has aptly noted, atrocities are "those violations of human rights and humanitarian law involving severe assault on the human person, both corporeal and spiritual – what Agnes Heller has called "genuinely heinous crimes" that are "manifestations of evil."<sup>n16</sup> It follows that those who are responsible for committing atrocities and crimes against the state should be barred from "public service."

The logic underpinning this position raises several difficult questions for governments under siege: Who is responsible for internal disorder, repression, and post-conflict justice? Is it immoral for a government to allow deadly conflict to continue until "legal peace" is reached? This position also raises several questions about when, if ever, leaders should accept "illegal peace": Should individual responsibility for repression be excused for the perceived collective good? Should power-sharing and amnesty take precedence over retributive justice? Should the political prerogatives of warlords and rebels supersede the fundamental civil, political, and human rights of their victims?<sup>n17</sup>

[\*501] There is a tension between peace deals that include power-sharing on the one hand and the protection of human rights on the other. As Chester Crocker and Fen Osler Hampson rightly note:

The need to establish power-sharing structures that accommodate rival factions and interests may well clash with the need to root out the perpetrators of human rights abuses. Similarly, the need to reform state and enemy security institutions may be at odds with the practical requirement of bringing those groups who have a monopoly on the instruments of coercion into the peace process. Without peace there can be no justice. Without justice, democratic institutions, and the rule of law, the peace itself will not last.<sup>n18</sup>

Hence, there is no single or simple answer to these questions. Although a negotiated peace may be the only means available to governments in the scenario presented, particularly when the international system of peace and security envisioned in the United Nations Charter is undermined by UN Security Council inaction, the author is not familiar with any viable examples where quick-fix approaches to resolving deep-rooted sociopolitical conflict brought about sustainable peace. Power-sharing with warlords defeats the logic and objective of long-term peace by institutionalizing the predatory behavior of warlords into the body politic, giving them the cloak of state authority to prey on the state and its citizens – a situation that sows the seeds for future conflict, as was the case in Sierra Leone. Extralegal strategies for peace born out of political necessity and expediency also ignore the traumatic impact of conflict on civil society, particularly

women and children, n19 and its devilish effect on the organic political order – not to mention the fact that it is antithetical to the creation of a rule-based political culture.

Post-conflict transitional political arrangements that do not consider the broader sociopolitical and legal impact of power-sharing and amnesty arrangements on civil society, regime transitions, and durable peace create a type of "weak peace" and are unlikely to succeed. n20 As [\*502] Ratner has noted, the "linkage between democracy and accountability is not merely about a relationship between the past and the future, but one that immediately implicates the present and the status of the transition." n21 Internal and external actors' patchwork prescriptions for halting Africa's civil wars – regardless of the long-term social costs – are debatably indicative of the inherent contradiction and geopolitical bias in international responses to conflict in Africa and the developing world generally. Since acceptance of "weak peace" is often the only option for embattled African regimes, the relevance and value of the UN Charter-based system of peace and security must be called into question.

This Article asks whether any "coerced peace" that empowers and rewards warlords rather than punishes, sanctions, or in some way holds them accountable is justified and lawful if it serves the "greater good" of peace. It has been argued that by failing to hold warlords and rebels accountable, decisionmakers undermine the most important element of any sustained transition to peace: respect for and adherence to the rule of law. n22 As the cases of Liberia and Sierra Leone illustrate, ignoring the preeminence of the rule of law in transitional peace agreements may set a dangerous and negative precedent. n23 Transitional political processes derived from coercion debatably institutionalize unlawful practices into peace arrangements, along with the skewed notion that might is right in domestic and international relations. Such arrangements appear to confirm the belief of warlords and rebels that they can bully legitimate governments into lucrative deals with impunity, effectively contracting away the rights of victims of war by denying them any form of effective redress. This type of "illegal peace" seems to create a nexus of circular causation between warlordism and state disorder, with deadly conflict and injustice as permanent features. Should the wants of warlords take precedence over the fundamental civil, political, and human rights needs of their victims for the greater good of peace? If so, does this type of power-sharing subvert or secure democracy? n24

[\*503] This Article, which is divided into six major parts, considers these questions and issues in detail. The first Part examines the major arguments for and against power-sharing. The second Part briefly discusses why the cases of Liberia and Sierra Leone and the Accra and Lome peace accords, respectively, were selected. The third Part details the political circumstances that led to the Accra and Lome peace agreements. The fourth Part examines the sum and substance of those provisions in the accords that concern power-sharing. The fifth Part evaluates the legality and political utility of these power-sharing provisions using the *de lege lata* under domestic, subregional, regional, and international law. The sixth Part concludes.

## II. The Question of Power-Sharing n25

Little scholarly literature discusses the lawfulness of peace agreements, and the author is not familiar with any comprehensive work that addresses the legality of power-sharing. Significant literature does exist, however, on the legality of amnesty provisions in peace agreements or, stated differently, the degree to which international law requires states to prosecute perpetrators of international crimes. n26 This Part and those that follow draw direction and analytic content from this literature. This approach is an appropriate one because amnesty is a necessary prerequisite for almost all peace agreements that include power-sharing. Consequently, rationales behind arguments for and against amnesty inform the question of power-sharing.

The primary question of whether to share power in Africa has thus far been political, subordinate to the goal of appeasing the prerogatives of parties at war in order to stop the conflict and reconstitute order and political authority amid violence and chaos. As previously mentioned, debates on the utility of power-sharing have to date been dominated by political scientists, who seem to believe sharing power is a purely [\*504] political enterprise. n27 In addition, decisionmakers frequently see peace negotiations and processes through political rather than legal lenses; thus, the outcomes of such negotiations are often legally flawed or problematic. This does not mean the law offers a more viable model for resolving protracted conflict and refashioning order in conflict-ridden states; nevertheless, peace agreements guided by legal principles, particularly those drawing on domestic, regional, and international rules, seem more sustainable. n28 Peace brokers should recognize and give due consideration to the rule of law, even in lawless societies grossly affected by warfare. The failure to recognize the important regulatory function of rules in peace negotiations and settlements has resulted in the emergence of weak peace arrangements that failed in the short run. n29 Hence, again, the

question of whether to share power should be as much a legal question as a political one.

#### A. Arguments for Power-Sharing

On its face, power-sharing is an effective way to give all parties at conflict, whether rebels, warlords, or government officials, a stake in [\*505] governance. While social scientists have developed different power-sharing models and approaches, n30 the underlying goal in all is to give warring factions political legitimacy and decision-making authority in government with the hope they will stop fighting and take a vested interest in the vitality of the state. Hartzell asserts that power-sharing institutions "define how decisions are to be made within a divided society and the distribution of decision-making rights within a state [and] have been a central element of recent peace settlements negotiated in Bosnia, the Philippines, and Northern Ireland." n31 The "more extensive the power-sharing," some commentators argue, the more likely that peace will endure, as sharing power promotes "moderate and cooperative behavior among contending groups by fostering a positive-sum perception of political interactions." n32 Advocates of power-sharing contend that by neutralizing violent conflict and opening the political process (i.e., by creating a venue for parties at conflict and other societal groups to participate in governance), it serves a public good and makes an essential contribution to any transition to lasting peace. n33 It follows that power-sharing is necessary in states embroiled in war and is often the only way to forestall conflict, restore the rule of law, strengthen societal support for government, and create the political space for democratic elections and transition. As Timothy Sisk notes, the "principal assumption underlining power-sharing theory is the belief that appropriate political [\*506] engineering can help construct a democratic political system capable of withstanding the centrifugal tendencies that tear deeply divided societies apart." n34 Without power-sharing, rebels and warlords may have no incentive to negotiate peace and will return to the battlefield for fear of political, economic, and social disenfranchisement. In this sense, some scholars argue, weak governments share power to stop unwinnable wars. This assertion supports the popular notion that peace without power-sharing may not be realistic or attainable.

#### B. Arguments Against Power-Sharing

The most fundamental argument against power-sharing appears in domestic, regional, subregional, and international law and policy: rebels, warlords, and other abusers who have sponsored or directed atrocities or sought to capture state power violently and undemocratically for economic rewards, political power, or any other reason have committed domestic and international crimes. It follows that peace agreements, irrespective of amnesty, should not empower these individuals to rule over their victims or wreak further havoc with the legitimacy of state authority. n35 The argument against power-sharing rejects the ludicrous assumption, inherent in the practice, that warlords and rebels are intent on becoming practicing democrats and further asserts that power-sharing sends the signal to other would-be rebels that violence is a viable way to obtain political power.

Hence, just as the failure to prosecute persons who have committed international crimes may encourage further atrocities and eventually vigilantism, power-sharing with rebels in deeply scarred and divided societies may generate more rebellion, random and violent reactions from civil society, or militant opposition from aggrieved citizens. Power-sharing in postwar contexts connotes something far more difficult than sharing power with political opponents; it perhaps unrealistically necessitates a societal psychology of forgiveness and with it the ability of citizens to live and work peacefully with their enemies. As is the case in Liberia and Sierra Leone, power-sharing may generate "feelings of distrust towards the new government and the political system, and encourage cynicism towards the rule of law." n36 The hurdle of legitimacy, particularly as it relates to which factions will acquire authority over key government portfolios (foreign affairs, defense, intelligence, internal security, justice, and natural resources), could undermine a peaceful political [\*507] transition. As one analyst notes, "in civil war contexts, power sharing is equated with making a deal with the devil, and thus such deals, even when they are forged, are unlikely to last. Power-sharing agreements, then, fail where they are most needed." n37 Nowhere was this more apparent than in the Lome Agreement, which awarded Corporal Foday Sankoh, the reviled and brutal leader of the RUF, the status of vice president and chairman of the Board of the Commission for the Management of Strategic Resources, National, Reconstruction, and Development (CMRRD). n38 The Agreement also conferred on the RUF the cabinet posts of finance, foreign affairs, and justice. n39 As the following analysis will show, power-sharing under Lome largely failed because it was an artificial and unstable way to form a government in a violently divided society – artificial power-sharing does not resolve conflict and deep-seated cleavages but rather displaces them or disguises the more iniquitous intentions of contestants. n40 As David Wippman notes in his essay on "ethnic power-sharing," sharing power often proves "inefficient, unstable, and short-lived" and "may interfere with the ability of the population of the state as a whole to determine its form of government and political affiliations." n41

Power-sharing becomes even more problematic when it relates to security. While disarmament and demobilization initiatives are vital to peace and security, the more difficult question concerns the loyalties of ex-combatants. Sharing power with warlords, especially responsibility for the security sector, is dangerous when there are divided loyalties among the ex-combatants, who will, as is the case in Liberia, serve as the backbone of the new military and greatly impact its culture. As is often the case in Africa, combatants have been trained to be loyal to individuals as opposed to the state; hence, power-sharing opens the door for warlords to manipulate, mobilize, and leverage old loyalties for political ends. This in part explains why "since 1945, only one-third of negotiated settlements of so-called 'identity civil wars' – i.e., ethnic conflicts – have resulted in a lasting peace." n42 From this background, [\*508] power-sharing with warlords and rebels may not only be unlawful but also bad policy.

The next Part discusses briefly the rationale behind this Article's examination of the Accra and Lome peace accords of Liberia and Sierra Leone, respectively.

### III. Why Liberia and Sierra Leone?

Few states have as much in common as Liberia and Sierra Leone. They are so similar that the historical and contemporary experiences of each illuminate the other. Liberia and Sierra Leone border one another in West Africa. The states are of similar size – an estimated 43,000 square miles for Liberia and 29,000 for Sierra Leone. They share a similar forest belt environment, climatic conditions, and natural fauna. Liberia has a human population of approximately 3.4 million; Sierra Leone, 6 million. n43

Great Britain established Freetown in Sierra Leone in 1787, and the United States and private interests founded Monrovia in Liberia in 1822. n44 Both states are the product of colonial resettlement schemes where, initially, "free blacks" in the United States and Great Britain and its territories were sent back to West Africa to solve the perceived problem of their existence in slavocratic societies under U.S. and British control. n45 Emigrants from the United States and the Caribbean supplanted these initial populations, as did other blacks the British and U.S. navies captured at sea and liberated once both states outlawed the slave trade. n46

Liberia and Sierra Leone evolved on similar political, economic, and social paths. The populations of both states were originally wholly West African, n47 but enslavement inculcated a western orientation into the black [\*509] settlers of Monrovia and Freetown. The New World emigrants became the ruling elite and were known as Americo-Liberians in Liberia and Creoles in Sierra Leone. This may in part explain why both states had and to some degree still have similar political cultures and developmental paths. Christopher Clapham notes that Liberia and Sierra Leone

share the peculiar legacy of Creolehood, and the late nineteenth-century expansion from the coastal settlements into a hinterland itself divided between numerous ethnic groups; they have analogous administrative hierarchies, and distributions of educational and professional skills; and they have similar economies, based principally on the export of primary materials – especially minerals – by foreign-managed corporations, and only relying to a secondary extent on indigenously-produced cash crops. n48

Thus, Liberia and Sierra Leone share common borders, natural environments, historical origins, ethnic populations, and political, economic, and social structures. n49

Today Liberia and Sierra Leone have as much in common as they did in the past. Unfortunately, their troubled legacy of conflict and underdevelopment is perhaps the most striking similarity. Since the early 1990s, both states have suffered from intermittent warfare and state collapse. Despite their best efforts, neither has been able to establish a "rights conception of democracy," in which, James Crawford notes, "it is not enough that the government of the day has been elected, in the comparatively recent past, at a general election. Democracy implies a range of rights to participate in public life, effective freedom of speech, the opportunity to organize political parties and other groups." n50 Authoritarianism and conflict in both states have stifled the development of a democratic political culture. Liberia was immersed in deadly civil conflict from 1989 to 1997 and 1999 to 2003. n51 Sierra Leone was embroiled in war from 1991 to 1996 and 1999 to 2002. n52 During these periods both [\*510] states were destabilized by warlordism, prolonged and brutally savage insurgencies, democratic elections without democratic transitions, violent coups, poor economic growth, extremely high unemployment, acute poverty, rampant corruption, and perpetual insecurity.

To make matters worse, since the 1990s the character of conflict in Liberia and Sierra Leone has changed into a type of warlord politics where clandestine economic networks and systems compete for state power and "political authority and command over resources come mainly through the decisions of specific individuals who act to serve their private interests, largely without regard for formal government institutions, rules, and processes." n53 Political insecurity in these states prevents those individuals who resist the prerogatives of warlords and their cohorts from relying on any central authority or institutions to impose order and preserve the rule of law, safeguard basic civil and political rights, and arbitrate and resolve conflict. In these situations, those who resist the "politics of the belly" are forced to rely on their own power, n54 tactical advantage, and alliances to ensure security and prosperity. n55 If, as in Liberia and Sierra Leone, governments lack the power to thwart rebellion, they are forced to enter into peace agreements that require, among other things, power-sharing. Liberia and Sierra Leone are among the best examples, then, of states that enter, out of political necessity and expediency, peace agreements involving comprehensive political power-sharing with warlords who have no regard for the rule of law.

From this background, it is evident that the Accra and Lome peace agreements were born out of analogous historical phenomena and political circumstances in like times and in similar environments. Part IV shows that the structure and substance of the accords are nearly identical, as were the affairs that molded them. While this Article's analysis draws on several peace processes inside and outside Africa, it focuses on the Accra and Lome accords because the case studies clarify and complement one another and because comparative analysis is best suited to expose political behavior and normative legal developments over short periods of time. To that end, the following Part examines the state of affairs responsible for birthing the Accra and Lome peace agreements.

[\*511]

#### IV. The Conflicts in Liberia and Sierra Leone

The conflicts that gave rise to the Accra and Lome peace accords are complex and multifaceted. They have been the subjects of countless studies, and it is beyond the scope of this Article to discuss them in detail. n56 It is, however, important to contextualize the circumstances that produced the accords before analyzing them.

The Accra and Lome peace accords were born out of 11 and 18 years, respectively, of unfettered war and state collapse. As was previously mentioned, Liberia was entangled in deadly civil conflict from 1989 to 1997 and 1999 to 2003. Sierra Leone was enmeshed in war from 1991 to 1996 and 1999 to 2002. The conflicts that besieged these states were among the most violent, cruel, and bloody internal wars of the twentieth century. n57 It is estimated that since 1990 there have been over 250,000 war-related fatalities in Liberia and 75,000 in Sierra Leone. n58

While the seeds of conflict in Liberia and Sierra Leone can be traced to historical circumstances, the conflicts that generated the Accra and Lome accords are products of contemporary and complex local, domestic, regional, and international phenomena. n59 The following sections briefly discuss them.

##### A. Conflict and State Collapse

A group of indigenous military elements, led by Master Sergeant Samuel K. Doe of the Krahn ethnic group, permanently altered the Liberian political order in 1980 when it removed the True Whig Party, which had dominated the state's political and economic order since its independence in 1847, from power in a violent coup d'etat. n60 Doe's forces executed Liberian president William R. Tolbert and 27 key government [\*512] officials, particularly those of Americo-Liberian origin. n61 Doe and his advisors established the People's Redemption Council (PRC), which served as the government's new controlling body. n62

Doe instituted a brutal form of military rule and politicized ethnicity in such a manner that it became inculcated into every facet of Liberian society. n63 His Krahn ethnic group quickly dominated Liberia's political, economic, and military sectors, leading to tension and eventually low-intensity conflict with other ethnic groups, in particular the Mano and Gio groups. n64 Doe barred all political opposition and rigged the 1985 elections. n65 As the political situation worsened, so did the quality of life for most Liberians. Increased civil society discontent and protest led to widespread human rights abuses, corruption, and the use of the security services to silence all detractors. n66

After several attempts to topple Doe failed, on December 24, 1989, a small band of rebels led by Charles Taylor, Doe's former director-general of the General Services Agency, invaded Liberia from Cote d'Ivoire. n67 Taylor's group, the National Patriotic Front of Liberia (NPFL), which Libya supported, sought to oust Doe from power and within five

months seized control of 90 percent of the state. n68 The invasion evolved into a popular insurgency composed of a multiethnic coalition of anti-Doe elements. The insurgency initially had some popular support, but as it became bloodier and more destructive, Liberians disavowed it and its shameless leader. The rebellion marked the beginning of what was to become the Liberian Civil War.

The historical circumstances that led to conflict in Liberia mirror the factors that caused violent conflict and state collapse in Sierra Leone. In bitterly contested elections in March 1967, the All Peoples Congress (APC) won the election, and Siaka Stevens, leader of the APC and mayor of Freetown, was declared the new prime minister. n69 Shortly thereafter, Brigadier David Lansana, commander of the Republic of Sierra Leone Military Forces (RSLMF), placed Stevens under house arrest, apparently because he believed the election should await formal approval [\*513] of traditional leaders in Parliament. n70 Over the course of a few weeks two more military coups took place, n71 the last of which is referred to as the Sergeants' Revolt. Stevens eventually assumed the office of prime minister in April 1968 in accordance with the state's constitution. n72 These events, among others, compelled Stevens to rule authoritatively and crush all political opposition. He instituted measures to preserve APC supremacy, including an amendment to the 1978 constitution, and banned all political parties except his own, marking the advent of one-party rule. n73

In October 1985 Stevens's chosen successor, Major General Joseph Saidu Momoh, was elected president in a one-party referendum. n74 Although Momoh made politically insignificant overtures in support of multiparty politics, he sought to rule with an iron fist, curbing political opposition and public dissent. n75 In March 1991 the elitist and exclusionary character of APC rule, among other factors, spawned a small rebel group called the Revolutionary United Front (RUF), led by a former corporal, Foday Sankoh. n76 The exact purpose of the RUF was not known, but after attacking several villages in eastern Sierra Leone along the border with Liberia, the group quickly became notorious for brutal violence. n77 After successfully defeating RSLMF forces on the battlefield numerous times, the RUF acquired a reputation as an efficient fighting force and cashed in on its success by seizing control of several diamond mines in the Kono district. n78 On April 29, 1992, separate and apart from the RUF campaign against Momoh and the APC, Captain Valentine Strasser and a group of junior military officers led a successful coup against Momoh's government, sending him into exile in Guinea. n79 [\*514] Strasser and his cohorts established the National Provisional Ruling Council (NPRC) as the ruling authority in Sierra Leone. n80

Immediately challenged by the RUF, the NPRC was unable to assert effective control over the state. By mid-1995 the RUF had control of most of Sierra Leone, except for Freetown, n81 and its barbarous treatment of Sierra Leoneans earned it an infamous reputation. n82 The NPRC then hired Executive Outcomes, a private security firm (i.e., mercenary company) based in South Africa, to halt the RUF advance and help the government reestablish effective control of the state. n83

The lack of popularity of the NPRC and growing international scrutiny of the Strasser regime ultimately led to presidential and parliamentary elections in April 1996, where Ahmad Tejan Kabbah, a longtime UN diplomat and leader of the Sierra Leone Peoples Party (SLPP), won the presidential election and most parliamentary seats. n84 Kabbah's victory, however, was short-lived; on May 25, 1997, junior soldiers led by Major Johnny Paul Koroma ousted him from power. The junta referred to itself as the Armed Forces Revolutionary Council (AFRC). n85

As the next section will illustrate, violent challenges to the regimes of Doe and Kabbah and ensuing conflict eventually led to peace enforcement operations by the Economic Community of West African States (ECOWAS) in Liberia in 1990 and Sierra Leone in 1997.

#### B. The ECOWAS Interventions

The ECOWAS intervened in Liberia in August 1990 and succeeded in halting Taylor's advance on Monrovia. n86 Prince Yormie Johnson – who had been a member of Taylor's NPFL but broke away because of internal power struggles – created the infamous Independent National Patriotic Front of Liberia (INPFL). On September 9, 1990, Johnson's forces kidnapped [\*515] Doe, who was attending a meeting at the ECOWAS headquarters in Monrovia, and later savagely killed him. n87 Doe's murder created a political vacuum that generated further instability.

With the assistance of ECOWAS, the Organization of African Unity (now the African Union (AU)), and other institutions, an Interim Government of National Unity (IGNU) was formed in The Gambia in October 1990, and Dr. Amos C. Sawyer became its president. n88 Because Taylor had wanted to be president, he refused to work with IGNU and continued to escalate the war. n89 The civil war created many cleavages in Liberian society, and by 1992 several new



warring factions emerged, all of which were gradually incorporated into IGNU. Between 1992 and 1997, after several years of cease-fires and peace accords and three transitional governments, Taylor remained an impediment to peace and would not negotiate in good faith; given the poor prospect of a military solution with the ECOWAS Cease-fire Monitoring Group (ECOMOG) on the ground, Taylor finally agreed to the formation of a five-person transitional government in September 1996. n90 On July 19, 1997, special elections were held. Charles Taylor and his National Patriotic Party (NPP) emerged victorious with 75 percent of the vote. Liberians appear to have voted for Taylor because they feared he would reignite the war if he lost. n91

Unlike the situation in Liberia, where Doe's ouster from power was widely celebrated by nearly all facets of Liberian society, Sierra Leoneans publicly protested against Kabbah's removal from power and it was universally condemned by the UN, n92 the broader international community, and the Organization of African Unity, n93 which set a surprising precedent when it requested ECOWAS to employ force to reverse the coup. n94 In response, ECOMOG intervened and succeeded in permanently [\*516] removing the junta from power in March 1998. n95 Thereafter Kabbah was reinstated as president. n96

Although ECOMOG was successful in ousting the junta, it was not able to fully neutralize the RUF. n97 On January 6, 1999, the RUF attacked Freetown with the objective of overthrowing the government. The ferocity of the attack surprised ECOMOG forces. After weeks of fighting and thousands of deaths, mostly civilian, ECOMOG repelled the group. n98 On July 7, at the behest of the ECOWAS, the UN, and the United States, and after months of peace talks and tense negotiations, the government of Sierra Leone and RUF entered into the Lome Agreement, n99 which most Sierra Leoneans begrudged because of its amnesty and power-sharing provisions.

The fragile settlements achieved in Liberia and Sierra Leone, with their hearty brew of amnesty and power-sharing, did not bring about lasting peace and, as the next section highlights, conflict and violence ultimately resumed.

### C. Resumption of War

In the years following Taylor's accession to power, the political and economic situation in Liberia continued to decline. n100 Liberians remained as poor and disenfranchised as they had been during the war. Taylor used violence to control opposition groups, silence media criticism, and thwart internal NPP challenges to his authority. n101 Endemic corruption, high unemployment, illiteracy, and a lack of government investment in basic infrastructure, including clean water, electricity, schools, hospitals, roads, and agricultural production, made Taylor's regime very unpopular. Moreover, his exploitation of Liberia's natural resources for personal gain and support for the RUF's vicious insurgency in Sierra Leone greatly damaged his credibility. n102

By April 1999 Taylor was faced with a formidable armed insurrection from the northern border area of Guinea. n103 The rebel groups were [\*517] largely composed of former factional elements from the Liberian Civil War. n104 By June 2003 rebel groups calling themselves the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) captured most of the state and successfully neutralized Liberian government forces. n105 During the fighting, the government of Liberia, LURD, and MODEL committed egregious atrocities against one another and the civilian population. n106

Meanwhile Taylor was plagued by other problems, including intense international scrutiny over his support of the RUF in Sierra Leone, continued UN sanctions, and his inability to receive military support or purchase weapons from his closest ally, President Blaise Compaore of Burkina Faso, and from his long-term supporter, Muammar Qadhafi of Libya. n107 These factors ultimately dealt his regime a death blow and forced it to negotiate peace with LURD and MODEL. On July 17, 2003, the government of Liberia, LURD, and MODEL signed a cease-fire agreement that laid the groundwork for the Accra Agreement. n108 Nevertheless, the parties did not honor the agreement, and in the weeks that followed, fighting resumed, reaching the streets of Monrovia.

On August 11, 2003, under severe international pressure from the United States, Europe, and ECOWAS, President Taylor resigned office and departed into exile in Nigeria. n109 This allowed ECOWAS to eventually deploy a 3,600-strong peacekeeping mission in Liberia (ECOWAS Mission in Liberia or ECOMIL). On August 18 the government of Liberia, LURD, and MODEL entered into the Accra Agreement, which provided for de facto amnesty and comprehensive power-sharing and laid the framework for the establishment of the National Transitional Government of Liberia (NTGL). n110 On August 21 the warring parties [\*518] elected Gyude Bryant, a well-known businessman, as chair and Wesley Johnson as vice chair of the NTGL. On September 19 the UN Security Council adopted resolution 1509, establishing

the UN Mission in Liberia (UNMIL) to, among other activities, support the implementation of the Accra Agreement by guaranteeing security and support for humanitarian relief and human rights activities, assist in national security reform, train police, and build a new military. n111 The UNMIL eventually comprised a 15,000-person peacekeeping mission.

The transitional government assumed power on October 14, 2003. The NTGL remained in power until January 2006, when Ellen Johnson-Sirleaf, the winner of the state's November 8, 2005, presidential run-off election, n112 took office alongside the winners of the October 11, 2005, congressional elections.

Circumstances in Sierra Leone paralleled those in Liberia. The state's transition to peace failed, and the resumption of hostilities led to UN intervention and a delicate peace that remains to the present. In Sierra Leone, the Lome Agreement served as the only legitimate framework for peace, providing for, among other things, a general amnesty for and power-sharing with the RUF. The Agreement empowered ECOMOG to enforce the peace until a UN-sanctioned mission replaced it. The UN Security Council established the United Nations Mission in Sierra Leone (UNAMSIL) in 1999, with an initial force of 6,000 troops. n113 Initially the bulk of UNAMSIL troops were "converted" blue helmet ECOMOG forces; later, contingents from outside of Africa joined. n114 The ECOMOG operation in Sierra Leone ceased in April 2000, and immediately thereafter the RUF went on the offensive, attacking villages and assaulting hundreds of UNAMSIL personnel and holding them hostage. n115 The RUF also seized UNAMSIL arms, equipment, and ammunition. After the RUF killed civilian protestors and generally wrought havoc in Freetown, the UN was able to repel the group and calm the situation. n116 On May 19, 2000, the UN arrested Sankoh and other senior RUF members and forbade the group from participating in government. n117 [\*519] All senior RUF government officials were relieved of their positions. n118

In the years that followed, fighting between government forces and the RUF continued unabated, resulting in several additional cease-fire agreements. n119 The government of Guinea also launched several attacks against RUF bases in Sierra Leone to halt RUF attacks against Liberian dissidents in Guinea. By May 2001 the UN and the government of Sierra Leone made significant headway in neutralizing the RUF and stabilizing the state. On January 18, 2002, President Kabbah lifted the four-year state of emergency and declared the civil war officially over. n120

#### D. Conclusion

It is evident that the circumstances that produced the civil wars in Liberia and Sierra Leone were complex, multifarious, and involved a variety of local, subregional, regional, and international actors. The Accra and Lome accords were born out of similar historical and political contexts, including a legacy of authoritarian rule, acute underdevelopment, warlord politics, internal disorder, perpetual state breakdown, grave human atrocities, UN inaction, intermittent conflict, and subregional intervention. In order to understand the foregoing analysis, it is important to situate the accords' power-sharing provisions in context.

#### V. The Accra and Lome Accords

This Part broadly highlights the sum and substance of the Accra and Lome accords, with a special emphasis on their political power-sharing provisions. n121 Each accord is composed of 37 articles similar in structure and content. Although the Lome Agreement (May 25, 1999) served as a template for the Accra Agreement (August 18, 2003), the latter is somewhat more detailed and comprehensive than the former and includes [\*520] special provisions for an international stabilization force, n122 a process for troop disengagement, n123 the restructuring of the Liberian National Police, and the establishment of a Governance Reform Commission. n124 Conversely, the Lome Agreement is more oriented toward the well-being of victims of war than the Accra Agreement; it provides for a special victims' fund, n125 free basic education, n126 and affordable healthcare. n127 Notwithstanding these exceptions, the provisions of both accords can be divided into five substantive categories: cease-fire, military, human rights, implementation, and power-sharing.

##### A. Cease-fire

The Accra and Lome agreements called for an immediate cease-fire, n128 an end to armed conflict between the warring parties, n129 and the establishment of a cease-fire monitoring group and joint monitoring committees. n130 Both agreements sanctioned ECOWAS-ECOMOG to enforce their terms. n131 Finally, based on its peacekeeping experiences in Sierra Leone, Guinea, and Guinea-Bissau, ECOWAS also ensured the Accra Agreement provided for "a zone of separation between the belligerent forces" or "safe corridor ... for the delivery of humanitarian assistance and free movement of persons." n132

## B. Military

The accords have comprehensive military components, including the disbandment of irregular forces; n133 disarmament, demobilization, and reintegration schemes; n134 the restructuring and creation of new national armies and security services composed of former members of warring factions; n135 provisions for the security, safety, and freedom of movement [\*521] of peacekeeping forces; n136 and the establishment of joint monitoring commissions. n137 They also envisaged the UN succeeding ECOMOG after the security situation in both states stabilized. n138 One distinct feature of the Lome Agreement is article 18 on the withdrawal of mercenaries of "any guise," whether domestic or foreign; such an article would also have been useful in the Accra Agreement, given the role of RUF mercenaries in escalating the Liberian Civil War. n139

## C. Human Rights

The Accra and Lome agreements required the warring factions to respect, protect, and guarantee the fundamental human rights of the citizens of Liberia and Sierra Leone in accordance with prevailing national law and broader human rights principles contained in UN, AU, and ECOWAS law. n140 At a minimum, the accords defined basic civil and political rights to include "the right to life and liberty, freedom from torture, the right to a fair trial, freedom of conscience, expression, and association, and the right to take part in the governance of one country." n141 The accords also called for the immediate and unconditional release of prisoners of war and abductees and the voluntary repatriation and reintegration of refugees and internally displaced persons. n142 The Accra and Lome agreements required all warring parties to respect international humanitarian law, especially the prohibition against using child combatants, n143 and provided for "safe and unhindered access by all humanitarian agencies to vulnerable groups throughout the country." n144 Both Accra and Lome provided for the establishment of national human rights and truth and reconciliation commissions and recognized the importance of robust post-conflict rehabilitation and reconstruction [\*522] schemes. n145 In addition, the accords, particularly Lome, also recognized the special needs of women affected by war. n146

The Lome Agreement also obligated the government of Sierra Leone to design and implement a special programmatic fund for the rehabilitation of war victims n147 and created a Commission for the Consolidation of Peace (CCP) "to implement a post-conflict program that ensures reconciliation and the welfare of all parties to the conflict, especially war victims." n148 The CCP was mandated to supervise and monitor the parties' implementation of, and compliance with, the Lome Agreement as it concerned the promotion of national reconciliation and the consolidation of peace. n149 Similarly, the Accra Agreement established the Governance and Reform Commission (GRC) to promote the principles of good governance that ideally help guarantee respect for human rights. n150

The Lome Agreement also provided for the creation of a Council of Elders and Religious Leaders, who supposedly were sanctioned to function in quasi-judicial and conflict mediation roles when there was "any conflicting difference of interpretation ... of any Article" of the "Agreement or its protocols." n151 The Agreement also overzealously provided for unattainable goals such as free compulsory basic education and affordable primary healthcare to all Sierra Leoneans. n152 In contrast, the Accra Agreement did not make any reference to education and healthcare or the role of traditional leaders in the peace process. While it appears that the accords, particularly Lome, sought to provide significant human rights protections, they failed to create any form of criminal or civil remedy for war victims.

## D. Implementation

The Accra and Lome agreements required multifaceted and comprehensive implementation schemes to ensure their respective parties implemented them in good faith. To this end, the Accra Agreement established [\*523] a Joint Monitoring Committee (JMC), n153 the International Implementation Committee (IMC), n154 and the International Contact Group on Liberia (ICGL), n155 and the Lome Agreement set up a Joint Implementation Committee (JIC) for Sierra Leone. n156 All of the committees also called for political support and economic assistance from states (e.g., moral guarantors) and for subregional (e.g., ECOWAS), regional (e.g., AU), and international (e.g., UN) institutions to assist in the implementation of the agreements and serve as its moral guarantors. n157 The Accra and Lome agreements were to be registered and published for public consumption, n158 and they entered into force immediately upon signing by the relevant parties. n159

## E. Power-Sharing

This section details and analyzes the power-sharing provisions in the Accra and Lome accords. Because the agreements addressed a wide spectrum of power-sharing issues, the analysis is divided into three major sections: legal basis and authority of the agreements; governance; and economic-related commissions.

As mentioned above, since political scientists and diplomats have controlled the debate and practice of power-sharing, the standard [\*524] approach to dealing with states embroiled in internal deadly conflict, particularly those involving international crimes, is to grant unconditional amnesty and share political power among all the warring factions. n160 In these situations, amnesty is typically an essential prerequisite but a lesser-included element of power-sharing. n161 As previously stated, however, power-sharing is all-encompassing, broader than amnesty, and more pertinent to long-term peace because it establishes the framework for governance and determines the future constitution of order in states and the potential for sustainable peace within them. Hence, given their weighty impact on society, it is important to understand the legal basis, if any, for the power-sharing provisions under the accords.

### 1. Legal Basis and Authority for Agreements

The Accra and Lome accords did not appear to offer any legal basis or authority to legitimize their power-sharing provisions but rather prescribed extralegal rules and processes for sharing power that abrogated constitutionally-based superior rules. n162 The legitimizing authority for power-sharing seems to have rested solely in the accords themselves. For example, under article 35(1)(a) of the Accra Agreement, the formation of the NTGL had its origins in paragraph 8(i) of the June 17, 2003, cease-fire agreement between the Government of Liberia, LURD, and [\*525] MODEL. n163 The cease-fire agreement required that the peace accord (i.e., the Accra Agreement) provide for the "formation of a transitional government, which will not include the current President in accordance with his June 4, 2003, declaration [to resign] in Accra, made at the inauguration of the "ECOWAS Peace Talks." n164 Furthermore, without referencing any legal basis or authority, article 35 of the Accra Agreement stated that the "parties agree on the need for an extra-Constitutional arrangement that will facilitate its [NTGL] formation and take into account the establishment and proper functioning of the entire transitional arrangement." n165 Article 35 implemented the extra-constitutional arrangement by suspending:

. "provisions of the present Constitution of the Republic of Liberia, the Statutes and all other Liberian laws, which relate to the establishment, composition and powers of the Executive, the Legislative and Judicial branches of the Government" n166; and

. "for the avoidance of doubt, relevant provisions of the Constitutions, statutes and other laws of Liberia which are inconsistent with the provisions of this Agreement." n167

The Accra Agreement also declared that all other provisions of the 1986 Constitution of the Republic of Liberia that were not suspended would remain in force n168 and that all suspended rules (e.g., constitution, statutes, and other laws) under the Agreement would be "restored with the inauguration of the elected Government by January 2006." n169 In this sense, the suspension of the constitution of order under the Accra Agreement was both temporary and permanent - while the 1986 constitution remains relevant and in force, at least in part, the new political order the Agreement established is permanent and irreversible.

The authority for power-sharing under the Lome Agreement is more legally ambiguous than in the Accra Agreement. Article 10 of the Lome Agreement mandated that:

No constitutional or any other legal provision prevents the implementation of the present Agreement, the Government of Sierra Leone shall take the necessary steps to establish a Constitutional Review Committee to review the provisions of the [\*526] present Constitution, and where deemed appropriate recommend revisions and amendments, in accordance with Part V, Section 108 of the Constitution of 1991. n170

In this sense, the Lome Agreement had superior legal authority over the Sierra Leone Constitution, yet paradoxically it recognized and sought to abide by the constitution's terms when "recommending revisions and amendments" to it. n171 In addition, article 10 is the only provision in the Lome Agreement that specifically considers the relation of domestic rules to the implementation of the power-sharing provisions in the Agreement. n172

The only possible legally valid source of authority for the Lome Agreement in domestic law was the retroactive adoption of the Lome Peace Agreement (Ratification) Act of 1999 by the Parliament of Sierra Leone several weeks after the Lome Agreement came into force. n173 The legal problems associated with the timing and substance of this legislation are so abundant that it cannot be considered a legitimate and binding act of Parliament. n174 On the international level, UN Security Council resolutions welcomed the accords but did not expressly sanction their substance. n175

## 2. Governance

The power-sharing provisions in the Accra and Lome agreements contrast in an essential way. The Accra Agreement provided for a robust, comprehensive, and all-encompassing form of power-sharing; it purged the government of all former principal state officials and established a new, albeit transitional, government apparatus composed of representatives of the warring parties, political parties, and civil society groups. [\*527] This may be deemed "hard" power-sharing. In contrast, the Lome Agreement only required the government of Sierra Leone to appoint RUF leaders to senior- and junior-level cabinet positions. n176 It did not require changes at the top levels of political leadership or in the judiciary or legislature, as the senior bureaucracy at every level of government remained intact. This type of arrangement may be deemed "soft" power-sharing. Hence, the manner and extent to which a government shares power determines whether observers can classify power-sharing as either hard or soft. In this sense, the distinctions between hard and soft power-sharing lie beyond the executive to encompass the legislative and judicial branches of government as well.

The Accra Agreement provided for the establishment of a "Transitional Government," which replaced the governing structure of the old regime in entirety, temporarily refashioning the constitution of order. n177 Accra mandated the NTGL to "ensure scrupulous implementation" of the Agreement, including execution of the June 17, 2003, cease-fire agreement; n178 to oversee, coordinate, and implement the "political and rehabilitation programs" agreed on in the Agreement; n179 to promote national reconciliation to restore peace and stability to the state and its population; n180 and to assist in the preparation of the October 2005 elections. n181 Under the Accra Agreement, the NTGL replaced Taylor's regime and established three central branches of government:

1. A 76-member National Transitional Legislative Assembly (NTLA), which took the place of the Liberian Legislature (Government of Liberia: 12 seats; LURD: 12 seats; MODEL: 12 seats; political parties: 18 seats; civil society and special interest groups: 15 seats; counties: 15 seats). n182

2. An executive headed by a transitional chairman and vice-chairman and cabinet, which included 22 ministries and 22 public corporations divided among the warring factions, political parties, and civil society. n183

3. The Judiciary remained structurally intact, although article 27 of the Accra Agreement dismissed the whole of the existing Supreme Court. n184

The Accra Agreement also created the Governance Reform Commission (GRC) to be a "vehicle of the principles of good governance in Liberia." n185 The GRC was mandated to review and, as necessary, modify programs on the promotion of good governance; n186 develop public sector management reforms; n187 "ensure transparency and accountability in governance in all government institutions and activities, including acting as the Public Ombudsman"; n188 "ensure subsidiarity in governance through decentralization"; n189 ensure all appointments are geographically balanced and well qualified; n190 help create a private- and public-friendly investor climate; n191 and report to the NTLA on progress made in the practice of good governance in the state. n192

The Lome Agreement called for a "Broad-based Government of National Unity," which maintained rather than refashioned the existing constitution of order and its key actors, simply incorporating RUF leaders into a slightly enlarged cabinet. The government of Sierra Leone agreed to appoint RUF members to one senior cabinet position, such as minister of finance, foreign affairs, or justice, and to three other cabinet posts. It also consented to giving the RUF four deputy minister positions. n193 This arrangement did not seriously impact the structure of the body politic, although like the power-sharing under the Accra Agreement, it raised several legal, moral, and legitimacy-based questions. n194

One rationale for the dichotomy between hard and soft power-sharing in the Accra and Lome agreements is that the government of Charles Taylor of Liberia, although democratically elected, was considered despotic, a force for evil, and a destabilizing presence in the region – a lawfully constituted government that functioned unlawfully. The government

of Tejan Kabbah of Sierra Leone, however, was and [\*529] arguably is widely considered responsible, democratic, and committed to the development of the state. Kabbah's government also benefited from having an ECOMOG presence during and after peace negotiations. Hence, his government debatably had greater legitimacy, security, and thus negotiating strength with its rebels than Taylor's regime. Furthermore, the LURD and MODEL were widely perceived as having greater legitimacy than the brutal RUF because they fought a despised regime headed by a former warlord and did not have a notorious reputation for malevolence or for brutalizing and butchering civilians.

In spite of this dichotomy, the objective of both accords was to divide or apportion political power among the warring factions, with the hope of serving the public good by fostering peace, security, and stability. Nonetheless, the agreements shared power in dissimilar ways, triggering different legal implications. As previously noted, the Accra Agreement went as far as to dismiss "all cabinet Ministers, Deputy and Assistant Ministers, heads of autonomous agencies, commissions heads of public corporations and State-owned enterprises of the current" government of Liberia. n195 It also dismissed all members of the Liberian Legislature and Supreme Court, replacing the former with the NTLA while empowering the NTGL to appoint new judges. n196 In essence, the Accra Agreement purged the entire senior bureaucratic class of government. Conversely, the Lome Agreement provided for a "broad-based government of national unity through cabinet appointments" in a "moderately expanded cabinet." n197 Still, both agreements permitted rebel groups to transform into political parties and compete for and hold political office. In this sense and to differing degrees, the accords provided a legal platform for warlords and their cohorts to acquire political power through illegal peace.

The phenomenon of power-sharing in Liberia and Sierra Leone occurs not only in the political domain but also in the economic realm. The next section briefly highlights features of the power-sharing accords with economic consequences.

### 3. Economic-related Commissions

The Accra and Lome agreements established the Contract and Monopolies Commission (CMC) and the Commission for the Management of Strategic Resources, National Reconstruction and Development (CMRRD), respectively. These commissions are crucial to governance because strategic natural resources form the backbone of the economies [\*530] of Liberia and Sierra Leone. Factional vying over these resources featured prominently in the peace negotiations that produced the accords.

Accra created the CMC to "oversee" the contracting activities of the NTGL n198 to ensure the government operated in a transparent, non-monopolistic fashion and dealt with all public financial and budgetary obligations according to Liberian law and universally accepted norms of practice. The CMC sought to monitor corruption of public officers and publish "all tenders in the media and on its own website to ensure ... competition and transparency" n199 and "a record of all commercial entities that participated and succeeded in reviewing contracts." n200 The institution of sound macroeconomic policy that would contribute to sustainable development and resource mobilization with international organizations was also an important duty of the CMC. n201 The CMC was composed of five members, which the transitional chairman appointed and the NTLA confirmed. n202

The Lome Agreement established the CMRRD as an autonomous entity to ensure the government exercised full control over the "exploitation of gold, diamonds and other resources, for the benefit of the people of Sierra Leone." n203 It charged the CMRRD with securing and monitoring legitimate utilization of the state's precious resources, which are of "strategic importance for national security," n204 and gave the entity numerous duties; foremost among them were security, n205 licensing, n206 contracting, n207 public redistribution of all proceeds of all transactions of gold and diamonds, n208 and public disclosure of all records concerning its transactions. n209 Ironically, article 7(12) of the Agreement dictated that RUF leader Foday Sankoh chair the board that governs the CMRRD. The CMRRD was composed of nine other members, including two representatives of government, two from the political party apparatus of the RUF, three representatives of civil society, and two from other political [\*531] parties appointed by the Sierra Leonean parliament. n210 What is perhaps most surprising about the Agreement's approach to managing natural resources was the willingness of the government and RUF to support an "amendment to the Constitution to make the exploitation of gold and diamonds the legitimate domain of the people of Sierra Leone." n211

### 4. Conclusion

Thus, the power-sharing provisions in the Accra and Lome accords related to governance, the economy, and other sectors provided for centralized control over the legislature, judiciary, public contracting, and strategic resources. The extent to which the human-rights orientated provisions were implemented (e.g., Lome's special victims fund) remains unclear. The

attempt to use the agreements to rebuild the states' respective political systems and control strategic resources to create peace and maximize revenues for development is laudable; in doing so, however, the accords rewarded warlords and their pundits by placing them in key positions of authority over their victims. These types of arrangements are arguably careless and dangerous; thus, the next Part examines the legality of power-sharing exchanges euphemistically labeled "guns for jobs."

## VI. The Legality of Power-Sharing Under the Accra and Lome Accords

The preambles of the Accra and Lome agreements include all of the bells-and-whistles language of democracy. They make the "people" the subject of their concern, along with the accompanying mixed basket of peace, security, stability, human rights, justice, rule of law, development, democracy, and good governance. n212 An examination of the power-sharing provisions that underlie the preambles, however, raises critical questions about their sincerity, morality, and legality. n213 The stark dichotomy between the luminous preambles and the ominous articles is practically schizophrenic.

[\*532] The most effective way to assess the legality of the power-sharing provisions in the Accra and Lome accords is to measure them against the constitutional frameworks that supposedly govern and control what the Liberian and Sierra Leonean governments can and cannot do. These rules include, first, government powers as determined by domestic laws, including organic constitutions, domestic peace agreements, national legislation, and court rulings, n214 and, second, international or transnational rules such as treaties, protocols, conventions, and general international law. n215 The analysis that follows examines the extent to which the Accra and Lome agreements comported with such rules, employing a textualist interpretive approach with a dose of original intent doctrine. For primary sources, it relies upon domestic constitutions, domestic peace agreements, multilateral constitutive acts and other international treaties, UN resolutions, and official reports and general comments from international bodies; the analysis also gives appropriate attention to supplemental sources such as scholarly writings and electronic and print news media sources.

### A. Domestic Law

Since the constitutions of Liberia and Sierra Leone are applicable to the Accra and Lome accords, respectively, and are similar in structure and content, the analysis that follows is divided into four sections: state authority, fundamental rights, executive and legislature, and judiciary. This section employs a literalist approach more rigidly than in Parts V.B and V.C, as constitutional jurisprudence on the central issues underlying political power-sharing are, to the author's knowledge, virtually non-existent in these states. n216 Moreover, it is not clear that any such jurisprudence would be applicable to modern civil war in Liberia and Sierra Leone; the political culture in both states dictate that on questions of executive authority the judicial branch serves as a proxy for, as opposed to an independent arbiter of, executive prerogatives. Political culture supersedes jurisprudence and the rule of law depending on who is in power. For example, U.S. courts have found that, as a matter of law, Liberia's [\*533] courts were unfair, in a state of disarray, and not constitutive of "a system of jurisprudence likely to secure an impartial administration of justice," particularly during the civil war. n217

The Accra and Lome accords violated no less than 30 provisions in the Liberian and Sierra Leone constitutions. The hard power-sharing provided for in the Accra Agreement is significantly more violative of domestic, regional, and international law than the soft power-sharing in the Lome Agreement. Nonetheless, they are both in serious breach of superior or controlling domestic rules.

The 1986 Constitution of the Republic of Liberia contains 8 chapters and 97 articles and replaces the Liberian Constitution of 1847. n218 It is modeled on the Constitution of the United States. The 1991 Constitution of Sierra Leone contains 14 chapters and 191 articles and replaces the 1978 Constitution of Sierra Leone. n219 It is modeled on the common law of the United Kingdom.

#### 1. State Authority

The constitutions of Liberia and Sierra Leone are by their own terms intended to establish a framework of good governance that guarantees security, freedom, democracy, and justice. The preamble of the Liberian Constitution establishes a system of government "for the purpose of promoting unity, peace, stability, equality, justice and human rights under the law." n220 According to the Sierra Leone Constitution, the state is based on the "principles of Freedom, Democracy and Justice," n221 and the "security, peace, and welfare of the people of Sierra Leone shall be the primary purpose and responsibility of Government." n222

The constitutions of Liberia and Sierra Leone are superior and controlling over any other laws, including the Accra and Lome accords. Article 2 of the Liberian Constitution states that "this Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic." n223 The Sierra Leone Constitution similarly declares that "sovereignty belongs to the people of Sierra Leone from whom Government through this Constitution derives all its powers, authority and [\*534] legitimacy." n224 According to both constitutions, they may only be modified, amended, or suspended by following the expressed provisions and procedures enshrined within them. n225 They sit atop the hierarchy of domestic law and trump and control any and all conflicting rules, including "extra-Constitutional" peace arrangements. Article 2 of the Liberian Constitution states that "any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect." n226 In similar fashion, the Sierra Leone Constitution provides that it "shall be the supreme law of Sierra Leone and any other law found to be inconsistent with any provision of [the] Constitution shall, to the extent of the inconsistency, be void and of no effect." n227 From this background, it is abundantly clear that as "legally binding" agreements that purport to form a part of national law, the Accra and Lome accords must comport with and not violate the constitutions of Liberia and Sierra Leone, respectively. To argue otherwise is to argue into nothingness – a black hole of unsubstantiated authority where the rule of law looms fictitiously.

Despite the fact that the Liberian and Sierra Leonean constitutions are supreme law and superior to any other domestic rules, the Accra and Lome agreements egregiously contravened them. For example, as noted earlier, the Accra Agreement called for an "extra-Constitutional arrangement" that included the suspension of the Liberian Constitution, statutes, and all other Liberian laws that concern government, declaring that any Liberian law, including the constitution, that conflicts with the Agreement is annulled. n228 Furthermore, the Lome Agreement required the government of Sierra Leone to "remove any legal impediments that may prevent the RUF/SL from holding cabinet and other positions"; n229 "take administrative actions to implement the commitments" in the Agreement and "in the case of enabling legislation ... draft and submit to Parliament within thirty days" of the coming into force of the Agreement the "relevant bills for their enactment into law"; n230 execute the "appropriate legal steps" to grant "absolute and free pardon" to Foday Sankoh and all combatants and collaborators for any action in pursuit of their objectives; n231 and ensure that "no constitutional or any other legal [\*535] provision prevents the implementation" of the Agreement. n232 The Lome Agreement also established a Constitutional Review Committee to review the constitution and, "where deemed appropriate, recommend revisions and amendments in accordance with ... the Constitution." n233

Thus, the extent to which the political elites and institutions who negotiated, sanctioned, and "morally guaranteed" the Accra and Lome accords sought to circumvent domestic law, albeit unwittingly and unlawfully, serves as the best evidence of their recognition of its superior standing.

## 2. Fundamental Rights

The Liberian Constitution requires the government of the republic, at the most fundamental element of state governance, to strengthen and unify the people of Liberia into one body politic and enact laws that promote and encourage all Liberians to participate in government. n234 Moreover, the government is obligated to "preserve, protect and promote positive Liberian culture," n235 including a democratic political culture that encompasses traditional values, with a view to creating a viable civic culture. The Sierra Leone Constitution declares that as a fundamental principle of state policy, "the participation of the people in the governance of the State shall be ensured in accordance with the provisions of [its] Constitution." n236 Hence, a core tenet of both constitutions is government by the people and for the people.

The Liberian and Sierra Leone constitutions protect the fundamental rights and freedoms of the individual, including, among others, the right to life, liberty, security of the person, enjoyment of property, privilege, the right to vote, and equal protection before the law of all persons. n237 The Liberian Constitution also guarantees the public the right to "be informed about the government and its functionaries." n238 The Sierra Leone Constitution requires the state to "enforce the rule of law and ensure the efficient functioning of Government services." n239 The Accra and Lome agreements, however, prevented Liberians and Sierra Leoneans from participating in the negotiations that produced the accords – agreements [\*536] that altered the constitution of order and rule of law in contravention of their constitutional rights.

The Liberian Constitution guarantees that if any person or association believes any of their rights guaranteed under the "Constitution or any legislation or directives are constitutionally contravened [by the government], that person or association may invoke the privilege and benefit of court direction, order of writ, including a judgment of unconstitutionality." n240 Similarly, the Sierra Leone Constitution permits any person who believes his or her fundamental



human rights or individual rights have been violated by the government to bring a claim directly before the Supreme Court for redress. n241 Moreover, the Liberian and Sierra Leone constitutions explicitly state and implicitly provide, respectively, that any person who is "injured by an act of Government or any person acting under its authority, whether in property, contract, tort or otherwise, shall have the right to bring suit for appropriate redress." n242

The power-sharing provisions in the Accra and Lome agreements violated the most fundamental principles of state policy enshrined in the constitutions of Liberia and Sierra Leone – namely, those granting people the right to participate in government and foster a democratic political culture. The processes that produced the accords were not democratic or transparent; there were no national referendums or other processes in which people could cast votes or otherwise select their leaders. There were only private negotiations by warlords, political elites in and from governments and international organizations, and nonprofit institutions; the masses of Liberians and Sierra Leoneans were not invited to participate in the peace negotiations. Consequently, Liberians and Sierra Leoneans had their political systems overhauled by legally dubious processes that ultimately forced them to live under the rule of warlords. Again, the modus operandi that produced the Accra and Lome agreements did not provide Liberians and Sierra Leoneans with the opportunity to realize their most fundamental political right: the right to self-determination (i.e., the right to choose the forms of government under which they will live and the persons who will represent them). n243 In addition, the accords violated the constitutional rights of Liberians and Sierra Leoneans to be informed about the workings of government, n244 [\*537] which is particularly troubling given that their governments contracted away this right in the "public good." n245

Another problematic aspect of the Accra and Lome accords was their failure to, in accordance with the constitutions of Liberia and Sierra Leone, provide any mechanism for considering or adjudicating individual criminal and civil claims arising out of the civil wars or challenging the constitutionality of the accords and their infringement of fundamental rights. n246 Both agreements did, however, make provision for rather toothless truth and reconciliation commissions to provide a venue for victims and perpetrators to "share their experiences" or "tell their story" regarding issues of impunity and human rights violations; this would allow, according to the accords, "a clear picture of the past to facilitate genuine healing and reconciliation." n247

Finally, the constitutional and criminal laws of Liberia and Sierra Leone are unmistakably clear about the necessity for individual criminal liability for heinous crimes such as murder, treason, and crimes against the state, as well as the limited powers of the president to pardon such crimes. n248 Yet the Accra and Lome accords did not consider the issue of criminal liability outside the context of amnesty. n249 It is not necessary to recount the innumerable atrocities the warring factions committed in the Liberian and Sierra Leonean civil wars; governments, international organizations, and civil society groups have extensively documented the crimes. n250 It is important, however, to highlight how power-sharing with warlords and rebels responsible for committing atrocities contravenes domestic rules. n251

[\*538] Like most state constitutive instruments, the constitutions of Liberia and Sierra Leone do not include detailed penal law. n252 The relevant and authoritative penal rules of Liberia and Sierra Leone are found in the "Act Adopting a New Penal Law and Repealing Sections 31.3 & 32.1 of the Criminal Procedure Law" and the "Treason and State Offences Act, 1963," respectively. n253 These rules, as well as international humanitarian law, were binding on all of the combatants during the civil wars in Liberia and Sierra Leone.

Setting aside the horrific crimes the warring factions committed against individuals during the civil wars, the various categories of crimes they committed against the state (including treason, making war against the state, armed insurrection, advocating armed insurrection, paramilitary activities, sabotage, and espionage) are also daunting. Yet the Lome Agreement awarded amnesty to all warring factions, and the Liberian government is considering doing the same – of course, given that it has shared power with the LURD, MODEL, and other groups, it has already granted a de facto amnesty. Nevertheless, the constitutional or criminal laws of Liberia and Sierra Leone do not explicitly empower the executive or legislative branches of government to award amnesty, especially for crimes of an international character that necessitate investigation, prosecution, and punishment (e.g., war crimes, crimes against humanity, genocide, and torture) – crimes that do not form a part of domestic penal law. Under what authority can a government award amnesty for crimes that do not form part of its domestic penal law? Moreover, as defined in the constitutions of Liberia and Sierra Leone, the executive pardon may apply only once individuals are prosecuted and convicted of crimes. n254 The awarding of amnesty in advance of any prosecutions or convictions, [\*539] again, exceeds the powers enumerated in the constitutions of Liberia and Sierra Leone and is thus unconstitutional.

The following section discusses these and other issues concerning the legality of the executive and legislature-related power-sharing provisions of the Accra and Lome agreements.

### 3. Executive and Legislative Powers

The constitutions of Liberia and Sierra Leone confer on the executive, legislative, and judicial branches of government immense but limited powers. The constitutional provisions relating to power-sharing concern, among other functions, the presidential powers to appoint cabinet ministers, ambassadors, justices, and military and police officials, conduct foreign affairs, and grant reprieves and pardons; n255 legislative powers to give advice and consent to presidential appointments and make laws for the execution of government; and judicial authority to serve as the final arbiter on constitutional issues.

The "hard" power-sharing provisions in the Accra Agreement that sought to create the NTGL through extra-constitutional means usurped in every respect the executive, legislative, and judicial powers enumerated in the Liberian Constitution. n256 Although the constitution empowers the Liberian president in the conduct of "foreign affairs" to "conclude treaties, conventions and similar international agreements with the concurrence of a majority of each of the House and Legislature," n257 the Accra Agreement is domestic in nature. n258 This remains true irrespective of the international status of the Agreement's moral guarantors. Moreover, Moses Blah, Taylor's presidential successor, did not have the legal authority to enter into any agreement that would contravene Liberia's entire constitutional framework by disbanding and reconstituting in whole or part the executive, legislative, and judicial branches of government. n259 Any refashioning of Liberia's political order, particularly within the [\*540] context of civil conflict, requires sanctioning from the Legislature, which is empowered to "provide for the security of the Republic" and "make other laws" for the execution of all powers vested by the constitution in the government of the republic. n260 No such legislation was adopted.

As described above, the Liberian Constitution vests all judicial power in the Supreme Court, and its judgments are considered "final and binding and ... not ... the subject of appeal or review by any other branch of Government." n261 Furthermore, the Liberian Legislature cannot make any law or create any exceptions that would deprive the Supreme Court of any of its powers. n262 In addition, the justices of the Supreme Court and subordinate courts remain on the bench indefinitely and may be removed from office only "upon impeachment and conviction by the Legislature based on proved misconduct, gross breach of duty, inability to perform the functions of their office, or conviction in a court of law for treason, bribery or other infamous crimes." n263 Nevertheless, the Accra Agreement terminated the Supreme Court, a more than suspicious action given that the court is the only body with the authority to entertain a claim against the government concerning the constitutionality of the Agreement. Additionally, the constitution states that the president must appoint justices of the Supreme Court with the consent of the Senate, yet under the Accra Agreement, "all new judicial appointments shall be made by the Chairman of the NTGL and approved by the NTLA." n264 In this regard, the NTGL and the NTLA unlawfully usurped powers reserved by the constitution for a lawfully constituted government elected by the people, transferring them to an appointed transitional arrangement birthed through an ad hoc negotiation.

Finally, the Accra Agreement's establishment of a new executive (NTGL) composed of the warring factions violated the process and procedure for senior government appointees in the Liberian Constitution. According to the constitution, the president nominates and, "with the consent of the Senate," appoints cabinet-level and other senior government positions. n265 The Agreement wholly disregarded this constitutionally mandated process by simply dividing the executive branch among a combination of warlords, businesspersons, and political elites representing various constituencies, including Taylor's government. There is also a question of whether the formation of the NTGL created a unique type of one-party state, given that its proponents were [\*541] political elites from the warring factions and that it rejected democratic means of forming government and the tripartite system prescribed in the constitution. Thus, the formation of the NTGL arguably offended article 77 of the Liberian Constitution, which states that "laws, regulations decrees or measures which might have the effect of creating a one-party state [e.g., NTGL] shall be declared unconstitutional." n266 The Accra Agreement also blatantly offended the spirit and substance of domestic Liberian law, especially the constitutional principle that the "essence of democracy is free competition." n267

In addition, the Agreement's formation of the NTLA to "replace, within the transitional period, the entire Legislature of the Republic" is legally absurd, considering that the 76-member body was not elected by the Liberian people in accordance with the constitution n268 - thereby subverting the people's constitutional right to participate in government and select their own political representatives. n269

The Lome Agreement's soft power-sharing is seemingly less offensive to domestic law in Sierra Leone than the Accra Agreement's hard power-sharing is to Liberian law, as Lome does not require the complete overhaul of the state's political apparatus but merely power-sharing within the executive branch of government. n270

The Sierra Leone Constitution mandates that the "President is the guardian of the Constitution and guarantor of

national independence" n271 and is responsible for "all constitutional matters concerning legislation" and "the execution of treaties, agreements or conventions in the name of Sierra Leone." n272 Although most common law systems typically limit presidential powers to conclude agreements to the realm of foreign affairs, the Sierra Leone Constitution seems to give the president broader treaty-making powers and the authority to conclude domestic agreements with rebels who have captured the state. n273 Due to the quasi-international nature of the Sierra Leone Civil War, coupled with the Lome Agreement's limited power-sharing provisions, the president's authority to enter into the Agreement was debatably lawful. n274 This does [\*542] not, however, mean that Kabbah had the authority to share power or grant amnesty, nor does it signal that Lome's provisions on power-sharing and amnesty were lawful. The constitution requires that "any" treaty, agreement, or convention that relates to "any matter within the legislative competence of Parliament or that in any way alters the law of Sierra Leone" be subject to ratification through an enactment or supporting resolution of the parliament. n275 As the discussion in the preceding sections demonstrate, and as the following discussion will show, the Lome Agreement did indeed modify the law of Sierra Leone. After its entry into force, the president and the parliament speedily introduced legislation to ratify the Agreement in order to legitimize the "alteration of the law of Sierra Leone" and give maximum effect to the accord. n276 The legal problems with this approach are examined below.

The appointment of Foday Sankoh as vice president and other RUF warlords to senior-level government positions raises further legal and moral questions. The law-related questions are both substantive and procedural and concern the way in which the Kabbah government shared power with the RUF. The moral questions concern the notion of sharing power with warlords and rebels who committed and directed atrocities. n277

The Sierra Leone Constitution confers on the president executive powers to appoint ministers, deputy ministers, and other senior-level public officers; the constitution, however, contains substantive limitations to these powers that bear directly on the Lome Agreement. The Agreement literally appointed Sankoh vice president and made him "answerable only to the President of Sierra Leone," n278 without considering that, to qualify as vice president according to the constitution, "a person shall be designated a candidate for the office of Vice-President by a Presidential candidate before a Presidential election." n279 Moreover, under the constitution, no persons are to be considered as candidates for vice president unless they meet certain qualifications – namely, they must be citizens of Sierra Leone, members of a political party, at least 40 years of age, and qualified to be elected as a member of Parliament. n280 At the time of his appointment, Sankoh was not a member of any political party; it is also questionable whether he met two of the four criteria for membership in the parliament, as he was not "an elector whose name [was] on a register of electors under the Franchise and Electoral Registration Act, [\*543] 1961, or any Act of Parliament amending or replacing that Act." n281 It is also not clear whether he was "able to speak and to read the English Language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of Parliament." n282 Furthermore, the constitution states that no person is qualified to be a member of Parliament if "under any law in force in Sierra Leone he is adjudged to be a lunatic or otherwise declared to be of unsound mind." n283 Given the brutal scourge of ritualistic killing, rape, torture, and cannibalism that Sankoh directed and participated in, one can only surmise that, given the opportunity, any competent authority would have adjudged him to be a lunatic. For these reasons, the power-sharing provisions in the Lome Agreement appeared to be unlawful, as was the government's appointment of Sankoh as vice president.

The logic employed in this analysis is equally applicable to all of the senior and junior cabinet-level positions the Agreement awarded to the RUF. n284 Although the constitution does not require parliamentary approval for vice presidential appointments, it does require that "all" minister and deputy minister appointments be "approved by Parliament." n285 While the Sierra Leone Parliament adopted the Lome Peace Agreement (Ratification) Act (Lome Act) ex post facto, n286 which sanctified the entire Agreement as law, it could not lawfully approve or authorize ministerial appointments because Kabbah did not formally select the appointees until after the adoption of the Agreement. Moreover, the Sierra Leone Constitution requires that separate parliamentary approval is necessary for each "person" appointed; n287 hence, the Agreement's attempt at a one-for-all christening unlawfully abrogated the constitution.

Finally, the legality of the Lome Act is also in question. First, the Act does not amend, repeal, or alter the provisions of the constitution in express terms, as article 108 of the constitution requires, n288 let alone provide any guidance on how to resolve numerous hierarchical conflicts of law arising from the existence of the Lome Agreement as a "superior" [\*544] body of law to the constitution. Second, despite the fact that Parliament can modify the Sierra Leone Constitution, any bill or act seeking to alter certain provisions of the constitution n289

shall not be submitted to the President for his assent and shall not become law unless the Bill, after it has been passed by Parliament and in the form in which it was so passed, has, in accordance with the provisions of any law in that behalf, been submitted to and been approved at a referendum. n290

The Lome Act was not approved through a referendum; thus it became law unlawfully. Moreover, the Act offends certain fundamental human rights enshrined in chapter III (provisions 16–39) of the constitution and directly conflicts with its section 56. n291 The Act violated the fundamental human rights and freedoms of the individuals whom the constitution seeks to protect by politically empowering and granting amnesty. For example, the Act sanctioned the provisions in the Lome Agreement that stifled the rights of Sierra Leoneans to "participate in and defend all democratic processes and practices" by placing RUF officials in sensitive government positions in contravention of the constitution. n292 Furthermore, the Act provided the cover of state authority to persons who participated in the violation of nearly every human right enshrined in the constitution, including, among others, the right to life, liberty, security of the person, the enjoyment of property and protection of law, n293 the right not be "held in slavery" (which encompasses child soldiers and sexual slaves), and the right to be free from torture. n294 It also infringed the constitution by curtailing the rights of victims of the Sierra Leone Civil War to challenge the legality of the Lome Agreement and its ratifying Act, seek penal justice, and pursue civil remedies, in contravention of provision 28 of the constitution, which states:

If any person alleges that any of the provisions of section 16–27 (inclusive) has been, is being contravened in relation to him by any person ... then without prejudice to any other action with respect to the same matter which is lawfully available, that [\*545] person, (or that other person), may apply by motion to the Supreme Court for redress. n295

In addition, the Lome Agreement and Lome Act abrogated the rights of Sierra Leoneans to make a claim against the government in accordance with section 133 of the constitution, which provides that "where a person has a claim against the Government, that claim may be enforced as of right by proceedings taken against the Government for that purpose" and that Parliament shall ensure the "provision for the exercise of jurisdiction under this section." n296 In this respect, the Agreement and Act unlawfully shielded government and those persons who bear the greatest responsibility for the Sierra Leone Civil War from accountability and any form of legal sanction.

Finally, furthermore, according to article 106 of the constitution, "a Bill shall not become law unless it has been duly passed and signed in accordance with [the] Constitution" n297 – which did not occur with respect to the Lome Agreement. As the preceding analysis shows, since the government and Parliament exceeded their powers by violating domestic law and failing to follow the constitutionally mandated procedures for entering into the Lome Agreement and adopting the Act, they acted illegally.

The only possible legal measure that could provide some semblance of validity to the Accra and Lome accords would be the explicit invocation of public emergency powers under the Liberian and Sierra Leonean constitutions. Neither the accords nor related dicta, however, indicate the two governments relied on emergency powers as a basis to enter into the agreements; furthermore, under international law, states "must act within their constitutional and other provisions of law that govern such proclamation and the exercise of emergency powers." n298 Hence, the accords would still have been unlawful even if governments had relied on emergency powers, given that under sections 87 and 29 of the Liberian and Sierra Leonean constitutions, respectively, emergency powers do not include the power to suspend, modify, or abrogate constitutions. n299

[\*546]

#### 4. Conclusion

From this background, it is clear the Accra and Lome agreements are and were unlawfully derived and illegally instituted. Considering there was no legal authority under domestic law that sanctioned the accords' entry into force, how can domestic and international decisionmakers justify their existence? This raises the question, discussed more thoroughly in the Article's conclusion, of whether any legal or political remedies exist under the Lome and Accra accords to redress the consequences of "illegal peace." n300 For now, the Article turns to the legality of the Accra and Lome accords under regional and subregional treaty law and practice.

#### B. Regional and Subregional Law

Liberia and Sierra Leone are member states of both the AU, n301 Africa's foremost political organization, which is composed of all African states with the exception of Guinea-Bissau and Madagascar, and ECOWAS, a subregional organization composed of fifteen West African states. n302 As founding members of the AU and ECOWAS, Liberia and Sierra Leone signed, ratified, and thereby consented to be bound by their respective treaties, regulations, practice, and policy, which form an integral part of the wider corpus of international law.

The power-sharing provisions in the Accra and Lome accords contravene the human rights and democracy and governance-related aims, treaty law, regional custom, and institutional practice of the AU and ECOWAS. For example, power-sharing offends the well-defined law, doctrine, and practice of averting mass human rights violations and protecting, through the use of force if necessary, democratically constituted regimes against unlawful seizures of power. n303 This section examines the legality of [\*547] the Accra and Lome accords under AU and ECOWAS laws (see Table 1) because they, along with universal international law, form the foundational basis of the principal arguments for and against power-sharing. n304

Table 1  
Selected Statutes

African Union (AU)  
 Charter of the Organization of African Unity (OAU) (May 1963)  
 African [Banjul] Charter on Human and People's Rights (June 1981)  
 Grand Bay Mauritius Declaration and Plan of Action of the Organization of African Unity (Grand Bay Declaration) (April 1999)  
 Draft Kampala Document for a Proposed Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) (May 1991)  
 Constitutive Act of the African Union (June 2000)  
 New Partnership for African Development (NEPAD) (October 2001)  
 Protocol Relating to the Establishment of the Peace and Security Council of the African Union (AUPSC Protocol) (July 2002)  
 Economic Community of West African States (ECOWAS)  
 Revised Treaty of the Economic Community of West African States (July 1993)  
 Protocol Establishing the ECOWAS Mechanism for Conflict Prevention, Management and Resolution, Peace-Keeping and Security (December 1999) (ECOWAS Conflict Protocol)  
 Framework Establishing the Economic Community of West African States Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (October 1998)  
 Protocol on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management and Resolution, Peace-Keeping and Security (December 2001) (ECOWAS Democracy Protocol)

In contrast to the vital role the AU and ECOWAS have played in negotiating and keeping peace in Liberia and Sierra Leone, their [\*548] willingness to support power-sharing schemes that coerce lawfully-constituted governments into sharing power with warlords and rebels who committed human atrocities contravenes their law, guiding principles, and "purported" practices. Consequently, the actual practice of the AU and ECOWAS is a mixed bag ranging from hearty adherence to and enforcement of prodemocratic and human rights-related treaty norms and custom (e.g., their protection of democracy in Guinea-Bissau, Mauritania, Sao Tome Principe, and Togo) n305 to the bold abrogation of regional and international human rights law and democratic principles out of political necessity and expediency (e.g., their granting of amnesty and power-sharing for the perceived public good in Liberia and Sierra Leone).

One possible explanation for this dichotomous practice might invoke the principle of *rebus sic stantibus*, which in extraordinary circumstances can provide a lawful basis for states to terminate or suspend a treaty. Under the Vienna Convention on the Law of Treaties (VCLT), states can breach a treaty if there is a "fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by

the parties," where "the effect of the change is radically to transform the extent of obligations still to be performed under the treaty." n306 The civil wars in Liberia and Sierra Leone certainly caused unforeseen changes of circumstances that radically transformed the ability of the Taylor and Kabbah governments to maintain peace and security and protect the human rights and democracy entitlements of Liberians and Sierra Leoneans under regional and universal international law. The VCLT, which seems to permit the temporary derogation of international responsibilities when there is an "outbreak of hostilities between states," n307 may arguably also apply in the context of intrastate war – perhaps providing another justification for why Liberia and Sierra Leone breached their international obligations by entering into the Accra and Lome agreements.

Regardless, this argument fails in the case of Liberia and Sierra Leone because neither the Taylor or Kabbah regimes claimed to invoke a [\*549] right to terminate or withdraw from any treaties to which they there were bound. n308 Furthermore, in both cases the fundamental change (i.e., civil war leading to the peace accords) was, in part, the result of the two governments not honoring their own human rights obligation to refrain from committing atrocities. n309 Moreover, under the VCLT, by entering into the Accra and Lome accords in contravention of governing international law norms, Liberia and Sierra Leone materially breached vital provisions "essential to the accomplishment of the object or purpose" of several treaties. n310 Finally, the VCLT does not permit any derogation from treaty provisions "relating to the protection of the human person contained in treaties of a humanitarian character," which would apply to nearly all of the human rights–and democracy–orientated treaties under examination in this section and below. n311

Another rationale that might justify amnesty and power–sharing under the Accra and Lome agreements appears in the International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts (ILCASR), which state that a government may invoke a state of necessity as a ground for precluding the wrongfulness of an act not in conformity with an international obligation, so long as [\*550] the government acts to safeguard an "essential interest of the State against a grave and imminent peril" and does not "seriously impair an essential interest of the state" toward which the obligation exists. n312 The ILC considers an essential interest of a state one that is "extremely grave" and "imminent," and the wrongful act must be the only way to ward off the grave and imminent peril and "preserve the essential interest threatened." n313

Certainly, the violent insurgencies that forced the Taylor and Kabbah regimes to enter into power–sharing agreements were to some degree designed to safeguard the state from the violence of the LURD and RUF, respectively, and thus served an essential interest. Nevertheless, a wrongful act cannot be precluded if the state claiming necessity – which Liberia or Sierra Leone did not formally do – "provoked, either deliberately or by negligence, the occurrence of the state of necessity." n314 As discussed above, Liberia and Sierra Leone partially provoked the civil wars leading to their states of necessity by violating their human rights obligations – particularly through their corruption, their arguably oppressive treatment of their citizenry, and their unwillingness to refrain from committing atrocities. Moreover, under the ILCASR commentary, it is not clear whether the vital interests the governments sacrificed (e.g., justice for amnesty and democracy for power–sharing) are "obviously" less important than their aims of peace and security. n315 In fact, the forgoing analysis signals that sacrificing justice and democracy at the alter of the perceived public good creates a culture of impunity and is politically untenable over the long–term. The ILCASR further complicates any necessity claims by precluding the invocation of a state of necessity when a state commits a wrongful act that violates its international obligations, particularly those under treaties and peremptory norms of international law. n316 As the following sections will reveal, power–sharing under the Accra and Lome agreements violated treaty–based human rights and prodemocratic norms in AU, ECOWAS, and UN law (and arguably contravened the preemptory norm of self–determination), thereby "excluding the possibility of invoking the state of necessity with respect to that obligation" – namely the responsibility to protect human rights and democracy. n317

[\*551] In addition, member states of the AU and ECOWAS appear to have violated the international principle *pacta sunt servanda*, as they assisted in negotiating and sanctioned power–sharing deals in Liberia and Sierra Leone that clearly contravened the core human rights and democracy and governance principles enshrined in AU and ECOWAS law. n318 Moreover, given that the Accra and Lome accords are internal/domestic law as opposed to external/international law, Liberia and Sierra Leone may not invoke or rely on any provisions in the accords or the circumstances that produced them as a justification for their failure to perform treaty obligations under AU and ECOWAS law. n319 As James Crawford has noted, "It is established that national law, no matter how democratically established, is not an excuse for failure to comply with international obligations." n320 If this assertion is correct, then it goes without saying that unlawful internal law is devoid of authority in relation to a state's international legal obligations. In addition, the AU and ECOWAS are bound to comport with their own statutes; under international law, regional organizations may not take actions inconsistent with or

beyond the scope of their constitutive instruments and related guidelines. Further, as previously noted, member states of the AU and ECOWAS, including Liberia and Sierra Leone, also have a positive duty to abide by the law, principles, and procedure of the organizations in good faith. n321

Unless otherwise stated, all of the statutes in Table 1 apply to Liberia and four apply to Sierra Leone (the others either did not exist or were not in force when the Lome Agreement was adopted). n322 Very few interpretive comments or sources, including travaux préparatoires, exist to illuminate the meaning of the AU and ECOWAS treaties; hence, this Article employs a teleological interpretive approach with a dose of original intent. n323 This approach is especially necessary because several of the applicable treaties are new and no judicial mechanism or other body has interpreted them.

[\*552]

## 1. AU Law and Practice

The AU human rights and democracy and governance regimes have significantly evolved since the founding of the Organization of African Unity (OAU) in 1963. n324 Three major phenomena birthed and shaped the OAU: Africa's struggle against colonization-imperialism, decolonization, and the Cold War. n325 The OAU began in 1963 as a highly state-centric organization with the primary purpose of promoting unity and cooperation among African states while maintaining strict adherence and respect for the international principles of state sovereignty, territorial integrity, and noninterference in internal affairs. n326 At the turn of the twenty-first century, the AU replaced the OAU and evolved from an institution preoccupied with states' rights to one concerned with the plight of African people. As the following analysis will reveal, human rights, democracy, the rule of law, and development have become key objectives of the AU. This commitment is evident in the AU's fashioning of new human rights and collective security-oriented regimes that constrain the behavior of states and their institutions both domestically and transnationally, particularly in their treatment of people.

### i. African Charter on Human and People's Rights (Banjul Charter)

Today, the AU human rights and democracy and governance regimes are unmistakably clear as to the role states should play in promoting and protecting fundamental human rights. n327 Yet the power-sharing provisions in the Accra and Lome accords violated the spirit and substance of AU law and practice. The Banjul Charter states that "every individual shall be equal before the law" and "entitled to equal protection before the law." n328 What does it mean to be equal before the law? The Charter guarantees every individual the right to have his or her "cause heard," including the "right to an appeal to competent national organs against acts violating [...] fundamental rights as recognized and guaranteed by conventions, laws, regulations and custom in force." n329 The power-sharing and amnesty provisions in the Accra and Lome accords contravened [\*553] these rights because they denied equal protection to victims of the conflicts in Liberia and Sierra Leone, particularly women and children, n330 by not providing them any venue to adjudicate their criminal, civil, political, gender, and human rights-related claims.

Moreover, the Banjul Charter assures citizens the "unquestionable and inalienable right to self-determination" n331 and the "right to participate freely in the government of his [her] country," directly or through freely chosen representatives in accordance with the law. n332 The Banjul Charter's strong emphasis on self-determination derives from the OAU's approach to human rights, which placed the "two issues of self-determination and apartheid/racial discrimination in southern Africa" at the core of the organization. n333 In this context, armed struggle was viewed as a legitimate basis of asserting the "right of self-determination of a colonial or oppressed people." n334 Thus, as John Dugard has noted, the OAU Charter was viewed as more than a constitutive act – it was a "charter of liberation." n335 Beginning in the 1970s, the OAU's notion of self-determination evolved from one that was purely state-centered and preoccupied with colonial rule to one that recognized, through the Banjul Charter, the expansion of the concept as a fundamental human right. By the turn of the twentieth century, the OAU viewed self-determination as inseparable from what Thomas Franck has referred to as the [\*554] democratic entitlement. n336 It was this democracy-based notion of self-determination that the Accra and Lome agreements abridged.

### ii. Grand Bay Mauritius Declaration and Plan of Action of the Organization of African Unity (Grand Bay Declaration)

The Grand Bay Declaration built on the Banjul Charter by seeking to assist member states in instituting plans for implementing the charter's human rights provisions. It acknowledged the importance of human rights as a "key tool for promoting collective security, durable peace and sustainable development" and the need to "constructively examine

human rights issues in a spirit of justice, impartiality and non-selectivity, avoiding their use for political purposes [e.g., amnesty]." n337 The power-sharing provisions in the Accra and Lome accords did not serve the interests of justice; n338 rather, they impinged the right to self-determination of Liberians and Sierra Leoneans by empowering warlords and rebels to rule over them without their consent and denying them any venue to challenge the accords' peace prescriptions or adjudicate human rights claims.

In this sense, power-sharing was a political compromise between the protection of human rights and self-determination on one hand and peace as a public good on the other. Thus, as a purely political policy prescription, it breached the spirit and substance of the Grand Bay Declaration. Furthermore, power-sharing undermined the declaration's provisions concerning the perpetration of "acts of genocide, crimes against humanity and other war crimes," which called for African states to ensure that "these serious acts of violation be adequately dealt with" – that is, punished. n339 Power-sharing under the Accra and Lome agreements also conflicted with the underlying logic of the Grand Bay Declaration, which affirmed the interdependence of the principles of democracy, good governance, and the rule of law and concluded that "unconstitutional changes in governments" often cause human rights violations. n340

[\*555]

### iii. Constitutive Act of the African Union

The human rights principles in the Banjul Charter are reinforced by the Constitutive Act of the African Union, which has as one of its core objectives the promotion and protection of "human and people's rights in accordance with the African Charter on Human and People's Rights and other relevant human rights instruments." n341 It also seeks to promote and respect "democratic principles and institutions," "popular participation," "human rights," and the "rule of law and good governance" n342 and rejects and condemns "unconstitutional changes in government." n343 Not only does AU law reject unconstitutional changes in government, it places a duty on the AU to suspend from participation any governments that "come to power through unconstitutional means." n344 This includes political transitions and arrangements precipitated by coups d'etat or other violent means, irrespective of whether such deals are endorsed by governments. How, then, could the AU justify its support for power-sharing in the Accra Agreement? According to the principles of the Constitutive Act, the AU and ECOWAS' formal endorsement of the Accra Agreement clearly violated AU law.

Unlike the Accra Agreement, the Lome Agreement was not bound by the provisions of the Constitutive Act because its entry into force preceded the Act; it was, however, subject to the provisions of the Act's predecessor, the OAU Charter. The preamble of the state-centered charter considered human rights and the "cause of human progress" critical factors for peace and security. Moreover, OAU practice – particularly its human rights-based peace observation missions in, among other places, Chad in 1981 and Burundi in 1993, its condemnation of the coup d'etat against the Kabbah regime in Sierra Leone in 1997, and its precedent-setting request that ECOWAS restore Kabbah to power – demonstrate that well-settled human rights law and an emerging practice of prodemocratic intervention were in existence when the Lome Agreement entered into force. Hence, both accords ran afoul of well-established human rights law and newly established prodemocracy and governance rules of the OAU and AU, respectively.

### iv. New Partnership for Africa's Development

The Peace and Security and Democracy and Political Governance initiatives of the New Partnership for Africa's Development (NEPAD) [\*556] echo the human rights and democracy-related principles in the conventions in Table 1 by acknowledging that development is impossible in the "absence of true democracy, respect for human rights, peace and good governance." n345 If this is indeed true, how can extralegal power-sharing of the kind found in the Accra and Lome agreements be justified, given that they seem to grossly offend democracy, human rights, and good governance? Under the NEPAD, African states agreed to "respect the global standards of democracy," allowing for fair democratic elections to "enable people to choose their leaders freely" and achieve "basic standards of good governance and democratic behavior." n346 Yet, whether working through regional institutions such as the AU or acting individually, Liberia and Sierra Leone shared power out of fear and under coercion in abrogation of prevailing global standards of democracy – and with AU and ECOWAS approval. The NEPAD framework was adopted and applicable before the entry into force of the Accra Agreement; it did not exist when the Lome Agreement was signed into force. Nevertheless, NEPAD's core principles were enshrined in the Draft Kampala Document for a Proposed Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) and accepted by nearly all African states, including Sierra Leone, before the Lome peace process. n347 Hence, the governments of Liberia and Sierra Leone had a positive duty not to violate NEPAD's



democracy principles (in the case of Liberia) or subvert democracy by sharing power unlawfully and undemocratically.

v. Protocol Relating to the Establishment of the Peace and Security Council of the African Union (AUPSC Protocol)

Finally, the AUPSC Protocol, the most current statement of AU law and policy on peace and security matters, receives guidance from the following principles, among others: "respect for the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law." n348 In fact, both the AU Constitutive Act and AUPSC Protocol empower the AU to initiate and/or authorize a military intervention in member states to halt or remedy "grave [\*557] circumstances, namely, war crimes, genocide and crimes against humanity" and to "institute sanctions whenever an unconstitutional change of Government takes place." n349 Hence, under the AUPSC and other AU law, the notion of entering into or sanctioning unlawfully-derived peace deals antithetical to human rights and democracy norms in the region belies lawfulness. The AUPSC Protocol was adopted before the Accra Agreement but after the Lome Agreement and thus was not applicable to the latter; its core objectives, however, with the exception of military intervention, formed a part of the declaration establishing the OAU conflict mechanism. n350 Nevertheless, the Accra and Lome agreements ignored OAU/AU law and doctrine and fashioned political orders adverse to democratic and rule-based societies. Here, the AU, ECOWAS, and the Kabbah and Taylor governments share the taint of unlawfulness. What is the normative value of comprehensive human rights and prodemocracy rules if they can be contracted away by self-interested political elites and regional decisionmakers?

The next section will examine the legality of power-sharing under ECOWAS law.

2. ECOWAS Law and Practice

i. ECOWAS Revised Treaty of 1993

ECOWAS law does not establish an independent human rights regime, although it does provide for a unique collective security system concerned with protecting fundamental human rights and promoting democracy and good governance. According to the law, doctrine, and practice of the African region, ECOWAS, as a subregional organization, is politically and legally subordinate to the AU n351 – hence, its member states are bound to adhere to the AU human rights protective regime. For example, the ECOWAS Revised Treaty of 1993 (Revised Treaty) states that ECOWAS will cooperate with the AU and requires member states to declare their adherence to the "recognition, promotion and protection of human and people's rights in accordance with the provisions of the [\*558] African Charter on Human and Peoples' Rights." n352 Hence, the Accra and Lome agreements are just as unlawful under ECOWAS law as under the Banjul Charter. Of course, under article 58 of the Revised Treaty, ECOWAS does seek the maintenance of "peace, stability, security," the "promotion and consolidation of a democratic system of governance," and the "timely prevention and resolution of intra-state and inter-state conflicts" through public diplomacy and regional peacekeeping. n353 But since, as members of the AU, ECOWAS member states subscribe to the AU human rights regime, the intermittent problem of civil war and state disorder in the region caused ECOWAS to evolve a radical collective security mechanism precisely to protect universal human rights and democracy. The power-sharing provisions in the accords thus ran afoul of the ECOWAS Revised Treaty's recognition of democracy as an entitlement, and accordingly they must be deemed unlawful despite claims of serving the public good.

ii. ECOWAS Framework and Protocol on Conflict Prevention, Management, Resolution, Peacekeeping and Security

The ECOWAS Framework Establishing the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (ECOWAS Framework) and the ECOWAS Mechanism for Conflict Prevention, Prevention, Management, Resolution, Peacekeeping and Security (ECOWAS Conflict Protocol), which are principally concerned with the "protection of fundamental human rights and freedoms and the rules of international humanitarian law," n354 combine to form the most radical regional security framework in the world. The ECOWAS Framework and Conflict Protocol empowered ECOWAS, through ECOMOG, to undertake humanitarian intervention to enforce peace and preserve democratic institutions in internal and interstate conflict situations that "threaten to trigger a humanitarian disaster," "pose a serious threat to peace and security in the sub-region," or "erupt following the overthrow [\*559] or attempted overthrow of a democratically-elected government." n355 Article 46 of the ECOWAS Framework is nearly identical to article 25 of the ECOWAS Conflict Protocol, except that the latter explicitly states that intervention is lawful to halt a "massive violation of human rights and the rule of law" whereas the former mechanism merely implies such a right. n356 The inclusion of the provision to employ force to protect human rights and democracy is novel, making ECOWAS the only regional

organization to codify such rights.

The Accra Agreement was agreed upon after the enactment of the ECOWAS Framework and Conflict Protocol; Liberia and ECOWAS were thus bound by their provisions. At a minimum, they were under a duty not to sanction peace deals that subverted regional human rights and democracy and governance doctrine and practice by sharing power with warlords and rebels. The Lome Agreement entered into force after the ECOWAS Framework was instituted but before the Conflict Protocol was adopted; hence, under the Framework, Sierra Leone and ECOWAS were under a similar duty not to endorse political arrangements that violated universal human rights or prodemocracy law as outlined in ECOWAS law.  
n357

### iii. ECOWAS Protocol on Democracy and Good Governance

Finally, the ECOWAS Protocol on Democracy and Good Governance (ECOWAS Democracy Protocol) recognizes that in order for ECOWAS to be an effective peace broker, it must pay special attention to the inherent linkages between "internal crises, democracy and good governance, the rule of law, and human rights." n358 In this context, the ECOWAS Democracy Protocol requires ECOWAS member states to establish mechanisms that promote, protect, and enforce democracy and human rights as a matter of law and policy and obligates them to enshrine democracy as, in Samuel Barnes's phrase, "an institutionalized process of decision making and societal learning, not a substantive [\*560] formula for a regime." n359 The Protocol also forbids all cruel, inhuman, and degrading treatment of civilians and combatants during times of war and peace. n360 It specifically endorses the notion of empowering the ECOWAS Court of Justice to adjudicate cases "relating to violations of human rights" after domestic remedies have been exhausted n361 and deems as essential the elimination of "all forms of discrimination and harmful and degrading practices against women." n362 Lastly, it confirms that in West Africa, democracy is an entitlement to be respected, promoted, and preserved, by prodemocratic intervention if necessary. The Democracy Protocol came into force after the Lome Agreement was adopted and before the Accra Agreement was implemented; thus, Liberia was under a duty not to grant amnesty to and share power with warlords and rebels who acquired power violently and undemocratically from a democratically-elected regime and are responsible for the commission of atrocities. For these reasons, ECOWAS should not have sanctioned the Accra Agreement; in doing so it acted unlawfully and negligently. Nevertheless, it remains to be seen whether the influence of the ECOWAS Democracy Protocol will sway ECOWAS to institute an approach to negotiating peace that does not allow for coerced power-sharing.

### iv. Conclusion

Given this background, it is abundantly clear that the AU and ECOWAS have advanced comprehensive security-related human rights and democracy and governance regimes that codify existing regional custom (e.g., a right to humanitarian intervention) and fashion new treaty norms (e.g., a right to democracy and prodemocratic intervention). n363 By entering into the Accra and Lome agreements, the governments of Liberia and Sierra Leone, respectively, failed to abide by their international obligations under AU and ECOWAS law to protect and promote settled human rights and democracy norms in the West African region. Moreover, the AU and ECOWAS failed to follow their own rules by christening these peace deals; when political necessity and expediency caused them to sanction the illegal Accra and Lome agreements, these [\*561] organizations operated in a lawless realm where the rule of law is forced to submit to unlawful and unviable political prescriptions.

The next section examines the legality of the Accra and Lome accords under universal international law, particularly UN law and practice and customary international law.

## 3. Universal International Law

As the preceding section discussed, the Accra and Lome accords offended international human rights law and settled democracy and governance norms. Not only have the governments of Liberia and Sierra Leone failed to abide by international law standards; the UN, the AU, and ECOWAS, as moral guarantors of the Accra and Lome agreements, violated these principles as well. This analysis will primarily focus on the following treaties and the customary international law norms found within them: the UN Charter, the Universal Declaration of Human Rights (Declaration); the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

### i. The United Nations Charter and the Universal Declaration of Human Rights

The Preamble of the UN Charter states that "the peoples of the United Nations" are "determined to save succeeding generations from the scourge of war," "reaffirm faith in fundamental human rights, in the dignity and worth of the human person," and "establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." n364 Key objectives of the UN are the prevention and removal of threats to the peace, the suppression of acts of aggression and breaches to the peace, and, in consonance with the "principles of justice and international law," the settlement of "international disputes or situations which might lead to a breach of the peace." n365 The Charter also recognizes the "rights of self-determination of peoples" and the need to "strengthen universal peace" through the promotion and encouragement of respect for fundamental human rights and freedoms. n366 To these ends, UN member states pledge to unite their "strength to maintain international peace and security," n367 which the UN Security Council has broadly construed to include the protection of human rights and democracy and the management of interstate [\*562] and intrastate conflicts. n368 Similarly, the UN Charter's human rights companion, the Declaration, states that the "peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person." n369 The Declaration stresses the pledge made by UN member states, including Liberia and Sierra Leone, to promote "universal respect for and observance of human rights and fundamental freedoms"; n370 asserts that every person has the "right to an effective remedy by the competent national tribunals for acts violating their fundamental rights granted him by the constitution or by law"; n371 and mandates that the will of the people is the basis of the authority of government and that every person has the "right to take part in the government of his country, directly or through freely chosen representatives." n372 W. Michael Reisman considers the Declaration declaratory of customary international law, n373 particularly article 21(3), which provides that "the will of the people shall be the basis of the authority of government." n374 The UN Human Rights Committee has explicitly interpreted the Declaration's descriptive acknowledgement of a right of self-determination as an "essential condition for the effective guarantee and observance of individual human rights." n375

The Accra and Lome agreements violated the spirit and substance of the UN Charter and Declaration. They arguably undermined justice and the rule of law and impinged on the dignity of the human person and fundamental human rights by granting amnesty and power-sharing, thereby denying war victims a venue and effective remedy for human rights abuses. Consequently, the accords failed to promote universal respect for human rights and sent the signal to future warlords, rebels, and abusers that violence is an acceptable way to obtain political power and economic rewards. The power-sharing provisions in the accords abrogated the right of self-determination of the domestic populations of Liberia and Sierra Leone – their right to choose their state's basis of authority, their form of government, and representatives to act on their behalf. It is clear that despite the existence of rules and doctrine to the [\*563] contrary, the governments of Liberia and Sierra Leone contracted for, and the UN and ECOWAS morally guaranteed, coerced peace agreements in derogation of the aforementioned rules.

#### ii. International Covenant on Civil and Political Rights

The ICCPR recognizes that the "inherent dignity" and "equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world." n376 It asserts that the realization of full civil and political rights can be attained only through enabling environments where all facets of society may enjoy them, and it obliges states to "promote universal respect for, and observance of, human rights and freedoms." n377 By seemingly rewarding perpetrators of human atrocities – in effect placing criminals on a higher footing than their victims – the Accra and Lome agreements do not appear to value the dignity and equal rights of the casualties of armed conflict. The accords prevented war victims from gaining an "effective remedy" from a "competent judicial, administrative or legislative authorities" n378 and thus generally impinged on the notion of respecting and observing human rights enshrined in the ICCPR.

The ICCPR places a positive duty on states to conduct impartial human rights investigations and bring perpetrators to justice, regardless of whether public (e.g., government officials in the Taylor and Kabbah regimes) or private persons (e.g., RUF and LURD rebel group members and mercenaries) are responsible for violating rights guaranteed in the Covenant. n379 The failure to do so "could in and of itself give rise to a separate breach of the Covenant." n380 In addition, the ICCPR places a duty on states to prevent a recurrence of breaches, n381 which in the context of Liberia and Sierra Leone would appear to include a duty not to empower perpetrators of atrocities with the authority (e.g., government positions) [\*564] to commit further human rights violations. Stated differently, the ICCPR seems to prohibit states from giving amnesty to and power-sharing with serious human rights abusers.

The ICCPR obligates states parties to effectively protect Covenant rights, particularly the individual right to an effective remedy, which requires governments, including Liberia and Sierra Leone, to "make reparation" to war victims.

n382 In fact, the ICCPR requires both states to provide effective remedies for any violation of the provisions of the Covenant, especially those violations committed by government officials and rebels acting in their territories. n383 Moreover, the provision of an effective remedy constitutes a nonderogable treaty obligation; n384 hence, without reparation "to those individuals whose Covenant rights have been violated," a state cannot discharge its obligation, critical to the ICCPR, to provide a remedy. n385 The failure to provide an effective remedy to war victims, combined with policy determinations that force war victims to live under the rule of their abusers, seemingly violates article 7 of the ICCPR, which seeks to protect the dignity and the physical and mental integrity of the individual. In this sense, power-sharing can be an unusually cruel way to make peace and serve the public good. It follows that the Kabbah and Taylor regimes violated the ICCPR by not ensuring that the Accra and Lome agreements included an effective remedy for victims of atrocities (e.g., torture or cruel, inhumane, or degrading treatment) committed during their respective wars.

Moreover, sharing power under the accords seems to conflict with the ICCPR's principles of democracy and self-determination and hence the freedom of Liberians and Sierra Leoneans to participate in the conduct of public affairs n386 and determine their political futures – rather than see political elites contract them away. n387 David Wippman notes that while power-sharing may be "politically desirable and operationally feasible," it should not be assumed that it is "necessarily compatible with international law or the policies that underlie it." n388 He further states that under contemporary international law, "self-determination has been transformed in a large part into a democratic entitlement – that is, a right to representative government shared by all of the people residing within [\*565] a given state." n389 Moreover, General Comment 25 to the ICCPR recognizes that the right of every citizen to take direct part in the conduct of public affairs "lies at the core of democratic government based on the consent of the people" and must be protected. n390 Political power-sharing arrangements are incompatible with the ICCPR's "right of political participation" when citizens are denied meaningful participation in their creation and thus the "political life of the state." n391

The political elites that entered the accords abrogated the right of self-determination of the peoples of Liberia and Sierra Leone by securing neither their participation nor their consent. n392 Still, the extent to which the Accra and Lome agreements violated the principle of self-determination, arguably a nonderogable right, differed due to the widespread support among Liberians for the insurrection that eventually led to the resignation of Taylor and disbandment of his regime. n393 In contrast, Sierra Leoneans heatedly contested the coup that displaced the Kabbah government. This dichotomy may explain why the "soft" power-sharing in the Lome Agreement does not appear to offend the principle of self-determination to the same extent as "hard" power-sharing under the Accra Agreement. Nevertheless, the ICCPR does not permit states under any circumstance to derogate from norms such as self-determination.

Another troubling aspect of the Accra and Lome agreements was the blatant failure of both the Liberian and Sierra Leonean governments to ensure the accords entitled all persons in their territories to equal protection of the law, which includes, in particular, a right for war victims – as a class – to seek judicial remedies for crimes committed against them during war. n394 All Liberians and Sierra Leoneans are entitled to the protections in the ICCPR without distinction of any kind – which precludes the arrangement that granted amnesty to, and shared power with, warlords and rebels on one hand while politically and legally disenfranchising war victims on the other. As previously noted, not even during public emergencies or situations threatening the "life of the nation" may states parties to the ICCPR derogate from their obligations [\*566] under the treaty if such action would be "inconsistent with their other obligations under international law" (e.g., the ensuring of equal protection before the law). n395 Other obligations stem from treaty law and customary international law, including the governing AU and ECOWAS rules, as well as from nonderogable human rights norms. Moreover, the governments of Liberia and Sierra Leone did not formally declare any state of emergency or a right of derogation from their obligations under the ICCPR. n396 Hence, to the extent power-sharing offends the human rights and democracy and governance-related norms in the ICCPR and in international law generally, the Taylor and Kabbah governments unlawfully entered into, and their institutional patrons (the AU, ECOWAS and the UN) sanctioned, illegal peace deals under the ICCPR.

### iii. International Covenant on Economic, Social and Cultural Rights

Liberia signed the ICESCR before the Accra Agreement and therefore had at least a positive duty not to defeat its object and purpose, and Sierra Leone acceded to the Covenant before the Lome peace process began. n397 The ICESCR recognizes that the "inherent dignity" and "equal and alienable rights" of all people is the "foundation of freedom, justice and peace"; in this respect all states are obligated to "promote universal respect for, and observance of, human rights and freedoms." n398 As previously noted, the amnesty and power-sharing provisions in the accords appear to trample on the dignity of the individual by forcing Liberians and Sierra Leoneans to exist, without an effective remedy, under the rule of

warlords. n399 On this point, article 5 of the ICESCR prohibits any state (Liberia and Sierra Leone), group, or individual (Taylor, Kabbah, and UN, AU, and ECOWAS officials) from engaging in any activity or act aimed at the destruction or limitation of any of the rights or freedoms in the Covenant, n400 which the power-sharing provisions in the accords clearly do.

As previous sections demonstrate, similar to the Declaration and ICCPR, the ICESCR states that all people have a "right of self- [\*567] determination" and hence the right to "determine their political status." States parties may only limit such rights to the extent domestic law allows and only if such limitations are compatible with the "nature of the rights" in the ICESCR and "solely for the purpose of promoting the general welfare in a democratic society." n401 Does sharing power unlawfully with rebel groups responsible for committing human atrocities promote the general welfare in a democratic society? Sharing power extra-constitutionally itself is problematic, but doing so without the explicit consent of Liberians and Sierra Leoneans interferes with their right of self-determination and their freedom to determine their own political status. Since Liberia and Sierra Leone were parties to the ICESCR when the Accra and Lome agreements were adopted, both states were duty-bound to implement or operationalize its provisions. In this sense, forced power-sharing impinges on the inherent dignity and freedom of war victims and others by embracing impunity and denying them the right to choose their own form of government and their representatives.

#### iv. Conclusion

The preceding discussion demonstrates that the Accra and Lome agreements violated the fundamental tenets underpinning international human rights law and corollary democracy and governance norms. The intersection between human rights, democracy, and the rule of law in the UN Charter, the Declaration, the ICCPR, and the ICESCR is critical, as "one common catalyst for democracy is the rule of law – independent and effective judicial systems that can force officials to act within their legal authority" and not exceed it, irrespective of prevailing circumstances. n402 Sharing power with those responsible for directing or committing war crimes and crimes against humanity undermines the essence of the UN Charter, customary international law, and the gamut of human rights conventions that disallow impunity for heinous crimes, requires their investigation, prosecution, and punishment, and obligates states to promote respect for the rule of law, justice, good governance, and self-determination. By entering into the Accra and Lome accords, the governments of Liberia and Sierra Leone contracted away their population's basic human rights and governance entitlements guaranteed in international law. In addition, the UN, the AU, and ECOWAS sanctioned and thereby legitimized these otherwise unlawful peace agreements for the apparent public good, in breach of the spirit and substance of their own constitutive agreements and universal international law. The UN, however, is the most liable of the three institutions, given [\*568] its supreme political standing and uncontested legal obligation to maintain international peace and security, and given its bogus rhetoric about protection and promoting human rights and democracy in Africa.

While the UN has a poor record of keeping the peace in Africa (consider Rwanda in 1994 and Darfur, Sudan from 2003–present), it has occasionally authorized and/or taken enforcement measures in Africa under its Chapter VII powers to curb massive human rights violations and threats to democratically-elected governments. n403 In the wake of the 1997 coup d'etat in Sierra Leone, UN Secretary-General Kofi Annan stated that the "success of Africa's third wave depends equally on respect for fundamental human rights" and democratic rule. n404 He has made the case that

Africa can no longer tolerate, and accept as *faits accomplis*, coups against elected government, and the illegal seizure of power by military cliques, who sometimes act for sectional interests, sometimes simply for their own... . Accordingly, let us dedicate ourselves to a new doctrine for African politics; Where democracy has been usurped, let us do whatever is in our power to restore it to its rightful owners, the people. n405

Annan's comments arguably marked the beginning of a pendulum shift away from the UN's practice of silence and inaction on issues it traditionally considered internal or within the exclusive jurisdiction of states – and to a new doctrine that overrides state sovereignty to protect human rights and democracy. n406 For example, Annan publicly expressed concern over the extraconstitutional transfer of power in Togo in 2005, commenting that it had "not been done in full respect of the provisions of the Constitution." n407 He has also appealed to the international community [\*569] to "ostracize and isolate putschists" and stray away from passive verbal condemnations of illegal seizures of power. n408 Annan has gone as far as to encourage ECOWAS to "deal" with duly elected governments that, again, "violate constitutional norms and flout basic principles of good governance," an attitude that represents a serious departure from the long-standing tradition

of UN nonintervention in the internal affairs of states – even when mass violations of human rights occur. n409 Whether or not Annan's statements and declaration are mere rhetoric or have real import remains to be seen.

A recent Report of the Secretary-General to the UN Security Council on the rule of law and transitional justice in conflict and post-conflict societies considered peace, justice, democracy, and respect for the rights of victims and the accused as "mutually reinforcing imperatives." n410 Nevertheless, under Annan's leadership the UN has morally sanctioned several illegal transfers of power that violated national and international law, including those in Liberia and Sierra Leone. Ironically, while concentrating its efforts on the immediacy of the security needs of at-risk populations in places such as Liberia and Sierra Leone, the UN admits to generally failing to "address the grave injustices of war [and] the root causes of conflict," n411 thereby undermining justice and the rule of law. n412 In the report, the UN stated that the "rule of law" is

a concept at the very heart of the Organization's mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of [\*570] law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. n413

The gap between UN rhetoric and action, particularly as it relates to UN peacemaking prescriptions in Africa, presents a strange contradiction. This rift does not simply present itself in the context of UN speechifying and inaction but also in the realm of UN action and counteraction.

The Credentials Committee of the UN, for example, refused to credit, recognize, and grant UN General Assembly representation to the so-called governments of Charles Taylor in Liberia (until he won elections in 1997) and Johnny Paul Koroma in Sierra Leone in 1997 (after he overthrew Kabbah's democratically elected regime), despite the fact that Taylor and Koroma were in effective control of their states. n414 The Credentials Committee's decision not to credit insurrectionists in Liberia and Sierra Leone seems to have rested primarily "upon whether the applicant government was democratic and whether the applicant government originally came to power by overthrowing a democratic government." n415 Hence, while one body within the UN system took bold stances vis-à-vis the normative value of what Thomas Franck has referred to as the "democratic entitlement," n416 other UN institutions, such as the Office of the Secretary-General and the UN Security Council, sanctioned the Accra and Lome accords – which shared power with many of the same actors that headed the de facto governments the Credentials Committee had originally refused to accredit. n417 In yet another turnaround, the UN later formally backed the creation of the Special Court for Sierra Leone, which was designed to "prosecute persons who bear the greatest responsibility for serious violations of international [\*571] humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996." n418 These persons included, among others, the same individuals whose violent acquisitions of power were rejected by the Credentials Committee (e.g., Taylor in Liberia in 1997 and Koroma and Sankoh in Sierra Leone in 1997) and later sanctioned by, for example, the Lome Agreement in 1999 (e.g., Sankoh in Sierra Leone).

If the UN served as an example to states and other international institutions by consistently complying with its own rules and doctrine, power-sharing would not pose such a dilemma for states immersed in conflict. If it honored its responsibility to maintain international peace and security in Africa, n419 democratically constituted governments would not be forced to make peace and share power with warlords and rebels. In this context, UN inaction has directly and significantly contributed to Africa's culture of impunity, illegal peace, and, consequently, its instability.

The concluding section discusses the major findings of this Article and offers a conceptual way forward and a minimum set of standards that power-sharing arrangements must meet to qualify as lawful.

## VII. Conclusion

This Article exposes inherent legal and policy-related flaws in peace prescriptions that force democratically constituted regimes to share power with warlords and rebels. It reveals that coerced peace agreements that mandate political power-sharing, such as the Accra and Lome accords, blatantly violate domestic, subregional, regional, and international rules, doctrines, and practices. The Accra and Lome agreements each violated at least 30 provisions in the Liberian and Sierra

Leonean constitutions. The accords also offended numerous and prevailing human rights and democracy and governance-related treaty law and norms, as well as regional and international customary law designed to protect human rights and democracy, by force if necessary, and ensure accountability for atrocious crimes. n420 The Accra and Lome agreements offered no legal basis or authority to legitimize their extralegality, let alone their [\*572] power-sharing provisions. It follows that they are derived from a lawless black hole of unsubstantiated authority in which illegally sharing power for the perceived good of peace is acceptable despite the existence of well-established governing rules to the contrary.

Under the Accra and Lome agreements, power-sharing was nothing more than a euphemism for "guns for jobs," despite the fact that, again, there were and are rules that govern peace agreements in internal conflicts – rules that unequivocally prohibit sharing power extra-constitutionally, let alone with warlords and rebels responsible for committing war crimes, crimes against humanity, and other atrocities. Governments and international institutions are obligated to abide by their own rules and those regional and international rules to which they subscribe – rules that in turn play regulatory and determinative roles in influencing the character of organizational and state behavior generally. Accordingly, since the Accra and Lome agreements did not acknowledge the supremacy of domestic and international rules, they did not provide war victims, among others, any legal venues or national organs in which they could pursue criminal and civil complaints arising from the Liberian and Sierra Leonean civil wars and seek effective remedies. As previously noted, the accords also prohibited Liberians and Sierra Leoneans from enjoying their right to self-determination (i.e., their right to choose their own forms of government and leaders through democratic processes rather than through forced power-sharing). Thus, the agreements violated the "democratic entitlement," which, as Franck has explained, is the principle under which governments derive their authority and legitimacy from the consent of the governed; the agreements further contravened the requirement of democracy that has entered international law, particularly in Africa, through new global standards validating governments in the view of the international community. n421

When democratically constituted governments are forced to share power illegally, the resulting agreement has two fundamental and iniquitous consequences: it rewards and pacifies warlords and rebels with political and economic power or prizes, and it creates some semblance of peace and thus the false perception that there is little need for substantial assistance from the international community, particularly the UN. Hence, the only prizewinners of power-sharing are rebels, political elites, and the international donor community – the former two groups reap the rewards of de jure authority and power and the latter is spared from making the vast expenditures needed to manage Africa's civil conflicts. International decisionmakers typically select the most cost-effective route to resolving conflict from their menu of options, and subregional, [\*573] regional, and international organizations, especially the UN, too often sanction quick fix solutions (i.e., power-sharing), despite the fact that governing rules, state practice, and empirical data demonstrate that "power-sharing governments retain the capacity for resorting to civil war." n422 Stated differently, governments are more apt to degenerate into warring factions when they are constituted unlawfully.

This Article argues that in order to make "legal peace," decisionmakers should adhere to several principles when negotiating peace arrangements:

- . Take stock of all governing rules before beginning peace negotiations.
- . Allow governing rules to shape and influence the character of negotiations (i.e., what is legally permissible and what is not).
- . Work within, not outside, the existing legal framework, using governing rules as the minimum standard of acceptability.
- . Be unswerving in mediatory approaches by sending consistent messages to the relevant parties.
- . Seek timely international support for rule-based approaches using affirmative inducements such as recognition, aid, trade, and support in reforming the security sector. n423
- . Ensure peacemakers remain in control of negotiations and the implementation processes and do not allow warlords to retain vetoes and rewards.
- . Realize that the protection of human rights and democracy is integral and not contrary to security and remember that international law prevails over domestic peace accords in any conflict of law. As Crocker and Hampson have noted, "the lesson, then, is to not permit military policies to become unhinged or detached from the broader [legal and] political

purposes they are intended to serve. Also, timidity in the face of armed militias is not effective – especially when the clock is working in their favor." n424 It is the concern over security and a resumption of war that provides the best rationale not to share power with warlords and rebels who will undoubtedly inject criminal and predatory behavior into the political culture.

[\*574] . International donors and multilateral organizations taking part in negotiation processes need to serve as legal guarantors – as opposed to moral guarantors – in order to ensure adherence to governing rules and protect fundamental legal rights. States and multilateral institutions that sanction peace deals have a positive duty to protect human rights and democracy and not subvert them by sanctioning unlawful arrangements.

. Utilize international precedent or doctrine from international bodies, such as the prodemocracy determinations of the UN Credentials Committee, to influence negotiation processes and political outcomes.

The cases of Liberia and Sierra Leone show that power-sharing at the macro level benefits political elites, whether warlords or government officials, by reinforcing Africa's patrimonial political culture of governance "from above" while leaving low-level combatants and traditional structures of authority – under which the majority of Africans live – at the periphery. This occurs largely because peace agreements that include power-sharing components are often made in haste, forged out of political necessity and expediency, and because when a warlord "perceives greater advantages for himself or his group from aggression, he is likely to accept a second-preference solution [to victory] such as power sharing." n425 In this context, for political elites, sharing power is a win-win alternative to unfettered war. Whether warlord or democrat, these elites choose political rewards as opposed to a continuance of war and its harsh impacts on civil society; death and/or defeat on the battlefield; or complete political and economic disenfranchisement at the hands of the prizewinner. The most significant factors driving the need to share power in the Accra and Lome accords were not, as Sisk has noted, an appreciation of a shared destiny or pragmatism n426 but the prospects of a worse outcome – that is, the needs of Taylor and his cohorts to remain unscathed, alive, and wealthy and the needs of Kabbah and his followers to remain in political power. n427

Under international law, states are responsible for resolving internal disorder, curtailing the repressive conduct of their officials, and facilitating post-conflict justice; hence, on one hand, it may be immoral and unlawful for a government to allow deadly conflict, with its disproportionate effect on civilians, to continue until reaching a "legal peace." On the other hand, it may be immoral, irresponsible, and unlawful to offer [\*575] amnesty and share power for the perceived collective good if such action requires placing the political and economic prerogatives of warlords and rebels above the fundamental human rights and democracy entitlements of war victims. The true-to-life tension between relieving the conditions that produce human suffering and illegally sharing power with those who are fundamentally responsible for creating instability and butchering their populations would not exist if the UN honored its Charter-based responsibility to maintain international peace and security. n428

The international community should no longer accept power-sharing as the natural cost of the transition from civil war to nascent democracy. Until decisionmakers stop viewing peace negotiations and processes through solely political – rather than legal – lenses, the outcomes of such negotiations will likely be unlawful and arguably politically infeasible. When parties give law and politics equal consideration in peace negotiations, peace becomes more durable because the rule of law remains unscathed by political prerogatives. This does not mean the law alone offers a more workable model for resolving protracted conflict than purely political approaches, but it does mean viable models of conflict resolution must seek to comply with governing domestic, regional, and international rules. n429 As decisionmakers in Liberia and Sierra Leone have demonstrated, "without institutions to enforce the rule of law, political actors will ignore the public interest in favor of their private goals" of maintaining power, privilege, and wealth through power-sharing, despite the broader societal consequences. n430 While this Article clearly shows there are domestic, subregional, regional, and international rules that govern power-sharing in internal conflicts and proffers a checklist for decisionmakers and peace guarantors, additional research must be conducted that explores under what circumstances, if at all, embattled regimes can make "legal peace" that allows for power-sharing and serves the public good.

In the absence of UN Security Council action, governments must fashion peace in accordance with governing rules. They must, depending [\*576] on the character of their political system, n431 seek to obtain prior approval from their legislatures before entering into any peace deals that abrogate national and international rules and curtail fundamental freedoms. Legislative approval or sanctioning is not difficult to acquire in most African states, particularly those emerging from conflict, given Africa's majoritarian and patrimonial political (spoils) systems that more often than not rubber-stamp



executive prerogatives. n432 In the event legislative sanction is not possible, governments should employ constitutionally-based emergency powers to take whatever lawful actions are necessary to make peace without infringing national and international rules. A state's constitutional framework and prevailing regional and international law should serve as guideposts and allow the negotiation and implementation of peace deals to unfold in a staged process based on the rule of law. At the very least, if governments are unable or unwilling to honor governing rules, any of their actions that exceed their constitutive powers must, under international law, be supported by mass consensus – through, for example, national referendums.

When neither legislative approval nor national consensus-building is possible, governments forced to negotiate extralegal peace agreements should seek to minimize the impact of any constitutionally impermissible action by relying extensively on executive powers. While under the Liberian and Sierra Leonean constitutions emergency powers do not include the power to suspend, modify, or abrogate constitutions, they do grant vast authority to make or suspend, modify, or abrogate any other laws. Again, embattled governments should not violate organic constitutional law or ignore their international obligations to their citizens in a rush to peace but should work within existing legal frameworks for the collective good of long-term peace and the creation of rule-based societies.

Part of the rationale for this approach lies in the fact that extralegal peace agreements with amnesty and power-sharing components typically receive little support from the public and often fail to secure lasting peace. Seven years after the adoption of the Lome Agreement, the political situation in Sierra Leone remains extremely fragile, and socio-political tensions and insecurity in Liberia have made it a powder keg. A study by the Monrovia-based Liberian Transitional Justice Working Group on attitudes about criminal justice for past atrocities found that 59 percent of Liberians "believe that faction leaders and commanders alleged [\*577] to have ordered or committed widespread human rights abuses should be prosecuted in formal legal proceedings." n433 The failure to prosecute these individuals, combined with forced power-sharing, has sown seeds of discontent into Liberia's new sociopolitical order. n434 Warlords and rebels must understand that they will be held criminally and/or civilly accountable or will otherwise be sanctioned for committing atrocities while waging unjust and brutal wars to unseat democratically constituted regimes. When the political dynamics within a state will not permit holding perpetrators of atrocities criminally accountable, decisionmakers should pursue during peace negotiations other noncriminal sanctions for the most serious abusers, including "removal from office, demotion, naming, or some other public recognition that these persons have not achieved impunity for their actions." n435 It follows, at a minimum, that governments should not permit these abusers to hold public office or share power.

Power-sharing in Africa, particularly in Liberia and Sierra Leone, has led to a certain global apathy toward the continent – which explains why evil men have been all too successful in using guns to acquire jobs. If African states and their regional and global institutions and patrons want to reverse the violent conflict, culture of impunity, and blatant disregard for human rights law and democracy norms that have caused massive conflicts, precipitated state collapse, and forced weak governments to share power, steadfast and resilient adherence to the rule of law in peace negotiations is vital. Tyrants must no longer be rewarded for terrorizing the majority.

### **Legal Topics:**

For related research and practice materials, see the following legal topics:

Civil Procedure Alternative Dispute Resolution General Overview Governments Agriculture & Food Processing, Storage & Distribution Public Health & Welfare Law Social Services Institutionalized Individuals Confinement Conditions

### **FOOTNOTES:**

n1. The terms rule, rules, law, and laws are used interchangeably.

n2. The Vienna Convention on the Law of Treaties (VCLT) is not binding on the accords; the definition of coercion in the VCLT, however, is instructive, given that there is not a generally recognized definition of the term in Liberian and Sierra Leone law nor the laws that govern internal conflicts. According to the VCLT, coerced is derived from the word coercion, defined as the threat or use of force or other pressure to gain control over another against his will or interest. Under the VCLT, treaties may be voided if their acceptance was gained by coercion against the state that wished to void the treaty. See Vienna Convention on the Law of Treaties, May 22, 1969, arts.

51-52, U.N. Doc. A/CONF.39/27 (1969), 1155 U.N.T.S. 331, reprinted in 8 *I.L.M.* 679 (1969) [hereinafter VCLT]. Although treaties cannot, per se, be concluded with rebel groups, the governing principles of those arrangements inform the following analysis, given the quasi-international character of the Accra and Lome accords. See *infra* note 8.

n3. See generally Peter Wallensteen & Margareta Sollenberg, *Armed Conflicts, Conflict Termination and Peace Agreements, 1989-1996*, 34 *J. Peace Res.* 339, 350-53 (1997).

n4. The internal challenge may come in the form of, among other things, an armed insurgency that acquires de facto control of the state but stops short of a coup d'etat or one that mounts a successful coup d'etat.

n5. This assertion does not take for granted the fact that governments and rebels are often not interested in making peace but politically and economically thrive off of state chaos and violent conflict. See generally Greed and Grievance: *Economic Agendas in Civil Wars* (Mats Berdal & David M. Malone eds., 2000).

n6. Caroline Hartzell, *Explaining the Stability of Negotiated Settlements to Intrastate Wars*, 43 *J. Conflict Resol.* 3, 7-12 (1999).

n7. See generally Timothy D. Sisk, *Powersharing and International Mediation in Ethnic Conflicts* (1996).

n8. The Accra and Lome accords are domestic (between actors within a state) rather than international treaties because under the VCLT "a 'treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." See VCLT, *supra* note 2, art. 2. Moreover, the accords cannot legally be considered treaties because they were not registered with the UN Secretariat in accordance with article 102 of the UN Charter. Furthermore, the registration of a treaty or international agreement

does not imply a judgment by the Secretariat on the nature of the instrument, the status of a party or any similar question. It is the understanding of the Secretariat that its action does not confer on the instrument the status of a treaty or an international agreement if it does not already have that status and does not confer on a party a status which it would not otherwise have.

Id.

n9. Other important examples of power-sharing in need of constructive analysis include, among others, Angola, Cote d'Ivoire, Ethiopia, Fiji, Colombia, Rwanda, Somalia, and Sudan.

n10. Given the proliferation of internal challenges to democratically constituted authority in Africa, this Article is limited to the study of power-sharing between democratically constituted regimes and the warlords and rebel groups that seek to unseat them violently. It does not consider the legality of power-sharing between

undemocratically constituted regimes and rebels because the arguably normative status of the right to democracy, particularly in Africa, engenders different legal questions – especially as they relate to self-determination as a jus cogens norm.

n11. The discussion will center on states emerging from civil conflict and focus on the issue of power-sharing between democratically constituted governments and warlords and rebels who have committed or participated in the commission of international crimes. See *infra* Part III for background information about the circumstances and histories that led to these accords.

n12. See *infra* note 38. See generally Sarah Williams, *Amnesties in International Law: The Experience of the Special Court for Sierra Leone*, 5 *Hum. Rts. L. Rev.* 271 (2005).

n13. This assertion concerns amnesty under local or domestic law, not international law.

n14. United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Sierra Leone Humanitarian Situation Report*, Dec. 6–19, 1999, at <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/998064e19e72c1f6852568860055ce0d5> (last visited Mar. 28, 2006).

n15. A "legal peace" is one that is derived in accordance with or sanctioned by lawful law (e.g. democratic constitution), whereas "illegal peace" is forged through the application of unlawful rules over lawful ones. This characterization is taken from the definition of "illegal" in *A Dictionary of Modern Legal Usage* 275 (Bryan A. Garner ed., 1987).

n16. Steven Ratner, *New Democracies, Old Atrocities: An Inquiry in International Law*, 87 *Geo. L.J.* 712 (1999). This inquiry is limited to the study of the legality of power-sharing under human rights law and democracy norms and leaves for further investigation the extent to which international humanitarian law, international criminal law, and refugee law can inform the study of the lawfulness of power-sharing.

n17. For purposes of this Article, the term rebels means irregular persons or military forces operating irregularly who take part in armed rebellion (e.g., insurgency) against a constituted authority (i.e., a government). Here, the term warlord

refers to the leader of an armed band, possibly numbering up to several thousand fighters, who can hold territory locally and, at the same time, act financially and politically in the international system without interference from the state in which he is based. In crisis zones around the world, where civil war and humanitarian disasters accompany the struggles of societies in transition, the warlord is the key actor. He confronts national governments, plunders their resources, moves and exterminates uncooperative populations, interdicts international relief and development, and derails peace processes. With only a few exceptions, the modern warlord lives successfully beyond the reach and jurisdiction of civil society. His ability to seek refuge in the crisis zone and the lack of international commitment to take effective action together ensure his survival.

John Mackinlay, *Defining Warlords*, in *Building Stability in Africa: Challenges in the New Millennium* (Center

for Def. Stud., Monograph No. 46, 2000). For more on this issue, see Mark Duffield, Dep't Int'l Dev., Post-modern Conflict, Aid Policy and Humanitarian Conditionality 18 (1997).

n18. Chester Crocker & Fen Osler Hampson, Making Peace Settlements Work, Foreign Pol'y, Autumn 1996, at 68.

n19. See Amnesty International, Stop the Violence Against Women Campaign, at <http://www.amnesty.org/resources/flash/svaw> (last visited Jan. 9, 2006).

n20. The term weak peace may be defined as peace derived out of political necessity and expediency, where decisionmakers do not give the social, political, and legal implications of an agreement for long-term peace and stability due consideration nor derive legitimacy from mass consensus or civil society.

n21. Ratner, *supra* note 16, at 719.

n22. See generally Diane Orenlicher, Swapping Amnesty for Peace and the Duty to Prosecute Human Rights Crimes, 3 *ILSA J. Int'l & Comp. L.* 713 (1997); Robert Quinn, Will the Rule of Law End? Challenging Grants of Amnesty for the Human Rights Violations of a Prior Regime: Chile's New Model, 62 *Fordham L. Rev.* 905 (1994).

n23. Orenlicher, *supra* note 22.

n24. Under international law, democracy may be broadly defined as "the right of all citizens to participate in the political life of their societies"; the "will of the people is to be the basis of the authority of government." James Crawford, Democracy and International Law, 64 *Brit. Y.B. Int'l L.* 113-14 (1993).

n25. The methodological approach in this section was influenced by Diba Majzub, Peace or Justice? Amnesties and the International Criminal Court, 3 *Melbourne J. Int'l L.* 247 (2002).

n26. See generally Roman Boed, The Effect of a Domestic Amnesty on the Ability of Foreign States to Prosecute Alleged Perpetrators of Serious Human Rights Violations, 33 *Cornell Int'l L.J.* 297 (2000); John Dugard, Dealing with Crimes of a Past Regime: Is Amnesty Still an Option? 12 *Leiden J. Int'l L.* 1001 (1999); Richard Goldstone, Past Human Rights Violations: Truth Commissions and Amnesties or Prosecutions, 51 *N. Ireland L.Q.* 164 (2000); Neil Kritz, Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights, 59 *L. & Contemp. Probs.* (1996); Orenlicher, *supra* note 22; Ratner, *supra* note 16; Quinn, *supra* note 22; Michael Scharf, The Letter of the Law: The Scope of the International Legal Obligation to Prosecute Human Rights Crimes, 41 *L. & Contemp. Probs.* 41 (1996).

n27. For example, see generally Caroline Hartzell & Matthew Hoddie, Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management, 47 *Am. J. Pol. Sci.* 318 (2004); Caroline Hartzell, Matthew Hoddie &

Donald Rothchild, *Stabilizing the Peace After Civil War: An Investigation of Some Key Variables*, 55 *Int'l Org.* 183 (2001); Wallensteen & Sollenberg, *supra* note 3; Sisk, *supra* note 7; Barbara Walter, *Designing Transitions From Civil War*, 24 *Int'l Security* 127 (1999).

n28. For example, the Economic Community of West African States (ECOWAS), a small but prominent subregional organization in West Africa composed of 15 states, levied sanctions against Togo in order to ensure a return to constitutional rule after what was termed a military coup, in which the army unlawfully installed Faure Eyadema, son of President Gnassingbe Eyadema, after his father's death. The Constitution of Togo requires that the Speaker of the Parliament take over power in the event of the death of the president, not his "eldest heir." In what has been called Africa's democratic test case, immense pressure to restore the constitutional rule of law and order from ECOWAS and the AU was effective in reversing the coup. *Preventing Constitutional Crisis in ECOWAS After Togo*, *Ghanaian Chron. (Accra)*, Mar. 15, 2005, available at <http://allafrica.com/stories/printable/200503150071.html> (last visited Dec. 9, 2005); ECOWAS Press Release, *Faure Gnassingbe Steps Down, ECOWAS Lifts Sanctions*, Feb. 26, 2005, at <http://www.ecowas.int/> (last visited Mar. 29, 2006); *Togo's Interim Leader Steps Down*, *BBC News*, Feb. 26, 2005, available at <http://news.bbc.co.uk/2/hi/africa/4299731.stm> (last visited Dec. 9, 2005); *Nigeria Holds Firm on Togo "Coup,"* *BBC News*, Feb. 17, 2005, available at <http://news.bbc.co.uk/1/hi/world/africa/4267395.stm> (last visited Dec. 9, 2005); *Annan Calls on Togolese to Respect Own Constitution in Appointing Presidential Successor*, *UN News Service*, Feb. 7, 2005; *Coup in Togo After President Dies*, *Wikinews*, Feb. 6, 2005, available at [http://en.wikinews.org/wiki/Coup\\_in\\_Togo\\_after\\_President\\_dies](http://en.wikinews.org/wiki/Coup_in_Togo_after_President_dies) (last visited Dec. 9, 2005).

n29. For example, as the forgoing analysis will demonstrate, the Lome Agreement (1999), which ended eight years of civil war in Sierra Leone, arguably failed because it ignored controlling domestic, subregional, and regional and international rules that prohibited granting amnesty to and sharing power with warlords and rebels responsible for mass human atrocities. See *infra* Part III for more information.

n30. See generally *Constitutional Design and Power-Sharing in the Post Modern Epoch* (Daniel Elazar ed., 1991); Michael Leifer, *Power-sharing and Peacemaking in Cambodia*, 12 *SAIS Rev.*, Winter/Spring 1992; Arend Lijphart, *Power-sharing, Ethnic Agnosticism, and Political Pragmatism*, 21 *Transformation* 94 (1993); Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (1977); Donald Horowitz, *Ethnic Groups in Conflict* (1985); Walter, *supra* note 27; Suzanne Werner, *The Precarious Nature of Peace: Resolving the Issue, Enforcing the Settlement, and Renegotiating the Terms*, 43 *Am. J. Pol. Sci.* 912 (1999).

n31. Hartzell & Hoddie, *supra* note 27, at 318.

n32. *Id.* at 18, 321.

n33. *Id.* at 330. In the short term, power-sharing worked in Liberia in 1997; thereafter Charles Taylor was elected to the presidency. Sharing power succeeded again as a short-term measure to halt conflict between the Government and LURD and MODEL in the run-up to the October 11, 2005, elections. Nevertheless, power-sharing has not remedied the root causes of Liberia's legacy of conflict. Variants of power-sharing have also been successful in, among other places, Ethiopia, under a system of ethnic federalism, and in Fiji and Sudan. See generally Jeremy I. Levitt, *The Evolution of Deadly Conflict in Liberia: From "Paternalitarianism" to State Collapse* 26 (2005); The Fiji Constitution Review Commission, *Parliament of Fiji, The Fiji Islands: Towards a United Future* (Parliamentary Paper No. 34, 1996) (located in the library of the Lauterpacht Center for Research in International Law, Cambridge, United Kingdom); *The Implementation Modalities of the Protocol Agreement Between the Government of the*

Sudan (GOS) and the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/SPLA) on Implementation Modalities of the Protocols and the Agreements on Power Sharing, Naivasha, Kenya, Dec. 31 2004, available at [http://www.usip.org/library/pa/sudan/cpa01092005/cpa\\_toc.html](http://www.usip.org/library/pa/sudan/cpa01092005/cpa_toc.html) (last visited Sept. 20, 2005).

n34. Sisk, *supra* note 7, at 77.

n35. There should, however, be no bar to amnestied rebel groups lawfully and democratically competing for political power.

n36. Majzub, *supra* note 25, at 251.

n37. Ian S. Spears, Africa: The Limits of Power-sharing, 13 J. Democracy 123, 127 (2002).

n38. Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), Lome, Togo, July 7, 1999, available at <http://www.sierra-leone.org/lomeaccord.html> (last visited Mar. 16, 2006) [Lome Agreement] .

n39. *Id.* See also Spears, *supra* note 37, at 123.

n40. Spears, *supra* note 37, at 123.

n41. David Wippman, Practical and Legal Constraints on Internal Powersharing, in *International Law and Ethnic Conflict* 212-13 (David Wippman ed., 1998).

n42. Crocker & Hampson, *supra* note 18, at 55. See also Roy Licklider, The Consequences of Negotiated Settlements in Civil Wars, 1945-1993, 89 Am. Pol. Sci. Rev. 681, 686 (1995).

n43. Liberia, CIA World Fact Book, at <http://www.cia.gov/cia/publications/factbook/geos/li.html> (last visited July 5, 2005).

n44. Christopher Clapham, *Liberia and Sierra Leone* 6 (1976).

n45. The predominant view at the time was that free blacks were "idle and useless and too often vicious and mischievous" and needed to be relocated outside of the United States; nevertheless, slave rebellions and the pivotal role free blacks played in organizing them seems to have been the central rationale behind recolonization. Levitt, *supra* note 33, ch. 2.

n46. Great Britain and the United States abolished the human trade in 1807 and 1808, respectively. The two states dumped those blacks captured at sea in their respective colonial stations in Sierra Leone and Liberia. In the United States, many black emigrants were also manumitted on the condition that they "immigrate" to Africa; Great Britain coerced many blacks in the Caribbean to immigrate to Sierra Leone.

n47. See generally Cheikh Anta Diop, *Precolonial Black Africa: A Comparative Study of The Political Social Systems of Europe and Black Africa from Antiquity to the Formation of Modern States* (1987); Phillip Curtin, *The African Slave Trade: A Consensus* (1969).

n48. Clapham, *supra* note 44, at 1-2. One novel distinction between Liberia and Sierra Leone was that the United States adopted a racist policy of indifference toward Liberia and had little political and economic interest in the state, which forced Liberia to survive and exist on its own; conversely, Sierra Leone was a colony of Great Britain, governed and maintained by a colonial administration and secured by a British naval base. In this context, while the political culture and development of the two states are similar, they are also distinct – a subject that goes beyond the scope of the present analysis. For more information, see Clapham, *supra* note 44.

n49. For an excellent analysis of the political and historical similarities between the two states, see Clapham, *supra* note 44.

n50. Crawford, *supra* note 24, at 116.

n51. Levitt, *supra* note 33, ch. 7.

n52. See Alfred B. Zack Williams, *Child Soldiers in the Civil War in Sierra Leone*, 28 *Rev. Afr. Pol. Econ.* 73 (2001); Alfred B. Zack Williams, *Kamajors, "Sobel" and the Militarist: Civil Society & The Return of The Military in Sierra Leonean Politics*, 24 *Rev. Afr. Pol. Econ.* 373 (1997); Alfred B. Zack Williams, *The Political Economy of Civil War in Sierra Leone*, 20 *Third World Q.* 143 (1999).

n53. William Reno, *Warlord Politics and African States* ix (1998).

n54. See generally J.M. Bayart, *The State in Africa – The Politics of the Belly* (1993).

n55. *Id.* at x.

n56. See generally Levitt, *supra* note 33; J. Peter Pham, *Liberia: Portrait of a Failed State* (2004); Adekeye Adebajo, *Liberia's Civil War: Nigeria, Ecomog, and Regional Security In West Africa* (2002); Adekeye Adebajo, *Building Peace in West Africa: Liberia, Sierra Leone, and Guinea-Bissau* (2002); International Crisis Group,

Tackling Liberia: The Eye of the Regional Storm, African Report 62 (2003); International Crisis Group, Sierra Leone: The State of Security and Governance, African Report 67 (2003); Human Rights Watch, Sierra Leone, Sowing Terror: Atrocities against Civilians in Sierra Leone, (1998); Human Rights Watch, Human Rights Overview: Liberia (2004), available at <http://hrw.org/english/docs/2004/01/21/liberi6977.htm> (last visited Dec. 19, 2005).

n57. Levitt, *supra* note 33, at 206–44; Human Rights Watch, Sierra Leone, Sowing Terror, *supra* note 56.

n58. Levitt, *supra* note 33; Human Rights Watch, Sierra Leone, Sowing Terror, *supra* note 56.

n59. See generally Adebajo, *supra* note 56.

n60. Liberia, *Afr. Res. Bull.*, Apr. 1–30, 1980, at 5645.

n61. *Id.*

n62. *Id.*

n63. Levitt, *supra* note 33, at 197–202.

n64. *Id.*

n65. *Id.*

n66. *Id.*

n67. *Id.*

n68. *Id.*

n69. Ibrahim Abdullah, Bush Path to Destruction: The Origin and Character of the Revolutionary United Front/Sierra Leone, 36 *J. Modern Afr. Stud.* 203, 206 (1998).

n70. Williams, The Political Economy of Civil War in Sierra Leone, *supra* note 52, at 144.



n71. Id.

n72. A. M. Lavalie, *Government and Opposition in Sierra Leone, 1968-78*, in *Sierra Leone Studies at Birmingham 77-106* (A. Jones & P.K. Mitchell eds., 1985).

n73. Abdullah, *supra* note 69, at 206.

n74. Williams, *supra* note 70, at 145;

n75. Id. at 146.

n76. Williams, *supra* note 70, at 147-49; *Sierra Leone: UN Held Hostage*, *Afr. Res. Bull.*, May 1-31, 2000, at 13982; *The Secretary-General, Report of the Secretary-General to the Security Council on the Situation in Sierra Leone*, 1, U.N. Doc. S/1995/975, Nov. 21, 1995.

n77. *Sierra Leone: The Captain in His Bunker*, *Afr. Confidential*, Feb. 3, 1995, at 1; Williams, *Child Soldiers*, *supra* note 52, at 73-82.

n78. *Sierra Leone: RUF Attacks Precede Peace Talks*, *Afr. Res. Bull.*, March 1-31, 1996, at 12202; *Coup Bid Tarnishes Diamonds' Luster*, *Afr. Analysis*, Oct. 6, 1995.

n79. It appears that unpaid salaries and low morale were key causes of the coup. *Sierra Leone: UN Held Hostage*, *supra* note 76, at 13982; *Sierra Leone: Strasser in Exile*, *Afr. Res. Bull.*, May 1-31, 1996, at 12278.

n80. Report of the Secretary-General, *supra* note 76, at 1.

n81. Id.

n82. The RUF's brutalization of Sierra Leoneans is best evidenced in its apology to the nation, in which it stated:

In the process of cleaning the system, however, we have wronged the great majority of our countrymen. We have sinned both in the sight of our Sierra Leonean brothers and sisters for all the terror and the mayhem we unleashed on you in our bid to make Sierra Leone a country that all Sierra Leoneans would be proud of.

Revolutionary United Front's Apology to the Nation (SLBS radio broadcast, June 18, 1997), available at <http://www.sierra-leone.org/rufapology.html> (last visited Dec. 9, 2005).

n83. Sierra Leone: No Soldier Saviors, *Afr. Confidential*, Oct. 6, 1995, at 5.

n84. Sierra Leone: Falling Out Parade, *Afr. Confidential*, Mar. 29, 1996, at 4.

n85. Levitt, *supra* note 33, at 207.

n86. The ECOWAS Cease-fire Monitoring Group (ECOMOG) operation in Liberia lasted eight years.

n87. Levitt, *supra* note 33, at 208.

n88. *Id.*

n89. Levitt, *supra* note 33, at 208-09.

n90. The leaders of the main warring factions, Charles Taylor, Alhaji Kromah, George Boley, and Roosevelt Johnson selected Ruth Perry as chairperson of the transitional government's State Council – the first African woman to be head of state. *Liberia State Council Chairwoman Ruth Perry*, *Afr. Res. Bull.*, Sept. 1-30, 1996, at 12395.

n91. Levitt, *supra* note 33, at 210.

n92. Sierra Leone: Nigerian Troops Take Freetown, *Afr. Res. Bull.*, Feb. 1-28, 1998, at 12991A; Sierra Leone: Nigerian Intervention Fails, *Afr. Res. Bull.*, June 1-30, 1997, at 12733.

n93. *Id.*

n94. The ECOWAS operation marked the first time a regional organization requested intervention in a member state to end human suffering and promote democracy. Moreover, it was also the first time a regional organization requested and arguably authorized another regional organization to employ force on its behalf.

n95. Sierra Leone: Nigerian Intervention Fails, *supra* note 92, at 12733.

n96. Sierra Leone: Kabbah Returns, *Afr. Res. Bull.*, Mar. 1–31, 1998, at 13055.

n97. Sierra Leone: Rebels Hang On, *Afr. Res. Bull.*, July 1–31, 1998, at 13190.

n98. Sierra Leone: Hundreds Flee Freetown as Fighting Flares, *Afr. Res. Bull.*, Jan. 1–31, 1999, at 13387–88.

n99. Lome Agreement, *supra* note 38.

n100. Endnote Dateline: Liberia, *Afr. Analysis*, Aug. 22, 1997.

n101. Levitt, *supra* note 33, at 212–13; Liberia: Abductions and Accusations, *Afr. Res. Bull.*, July 1–30, 1998, at 13190.

n102. See Levitt, *supra* note 33, at 215–16; Liberia: Taylorland Under Siege, *Afr. Confidential*, Feb. 19, 1999, at 6–7; Liberia: Old Habits Die Hard, *Afr. Confidential*, Nov. 9, 2001, at 1–3.

n103. Levitt, *supra* note 33, at 216–17.

n104. Levitt, *supra* note 33, at 217–18, 223.

n105. UN sanctions against Liberia curbed Taylor's ability to obtain weapons and arm his fighters.

n106. Human Rights Watch, *Youth, Poverty and Blood: The Lethal Legacy of West Africa's Regional Warriors* (2005).

n107. Levitt, *supra* note 33, at 223.

n108. Agreement on Ceasefire and Cessation of Hostilities Between the Government of the Republic of Liberia and Liberians United for Reconciliation and Democracy and the Movement for Democracy in Liberia, Accra, Ghana, June 17, 2003, available at <http://www.sierra-leone.org/liberian ceasefire agreement.html> (last visited Mar. 16, 2006) [hereinafter Agreement on Ceasefire].

n109. Moses Blah, Taylor's vice president, assumed the presidency until the Transitional Government was instituted on October 14, 2003, in accordance with article 20(b) of the Accra Agreement.

n110. Comprehensive Peace Agreement Between the Government of Liberia (GOL), The Liberians United for Reconciliation and Democracy (LURD), The Movement for Democracy in Liberia (MODEL) and the Political Parties, Accra, Ghana, Aug. 18, 2003, available at [http://www.usip.org/library/pa/liberia/liberia\\_08182003\\_cpa.html](http://www.usip.org/library/pa/liberia/liberia_08182003_cpa.html) [hereinafter Accra Agreement].

n111. S.C. Res. 1509, U.N. Doc. S/RES/1509 (Sept. 19, 2003).

n112. Jeremy I. Levitt, First Female President Could Inspire Liberia, Chi. Sun-Times, Nov. 19, 2005, at 26.

n113. Sierra Leone: UN Force Deployed, Afr. Res. Bull., Dec. 1-31, 1999, at 13808; Sierra Leone: "Very Fragile" Peace, Afr. Res. Bull., Jan. 1-31, 2000, at 13842.

n114. Sierra Leone: "Very Fragile" Peace, supra note 113.

n115. Sierra Leone: UN Held Hostage, supra note 76, at 13979.

n116. Id.

n117. Sierra Leone II, Afr. Confidential, June 9, 2000, at 3; Sierra Leone: The Cost of Kabbah, Afr. Confidential, Mar. 9, 2001, at 6.

n118. Id.

n119. Id. See also Sierra Leone: New Ceasefire Agreement, Afr. Res. Bull., May 1-31, 2001, at 14417.

n120. USAMSIL Press Release, President and Special Representative Attend Symbolic Destruction of Weapons in Makeni, Jan. 20, 2002, available at <http://www.un.org/Depts/dpko/unamsil/DB/200102.htm> (last visited Jan. 12, 2006). See also Sierra Leone: Sankoh in Court, Afr. Res. Bull., Mar. 1-31, 2002, at 14791.

n121. It is beyond the scope of the Article to examine all of the provisions in the accords. It should also be noted that the Accra Agreement was not the first accord concerning Liberia to include a form of power-sharing. The earlier Abuja Agreement (Aug. 19, 1995), Akosombo Agreement (Sept. 12, 1994), and Conotou Agreement (July 25, 1993) all included power-sharing components.

n122. Accra Agreement, supra note 110, art. 3.

n123. Disengagement of forces means the "immediate breaking of tactical contact between opposing military forces of the GOL [Government of Liberia], the LURD, and the MODEL, at places where they are in direct contact or within range of direct fire weapons." See Accra Agreement, supra note 110, art. 5(2).

n124. Id., arts. 10,16.

n125. Lome Agreement, supra note 38, art. 29.

n126. Id. art. 31.

n127. Id.

n128. Accra Agreement, supra note 110, art. 2; Lome Agreement, supra note 38, art. 1.

n129. Accra Agreement, supra note 110, arts. 2, 3; Lome Agreement, supra note 38, art. 2.

n130. Accra Agreement, supra note 110, art. 3; Lome Agreement, supra note 38, art. 2.

n131. Accra Agreement, supra note 110, arts. 3, 4; Lome Agreement, supra note 38, art. 3.

n132. Accra Agreement, supra note 110, art. 3(1).

n133. Id. arts. 6-8; Lome Agreement, supra note 38, arts. 13-20.

n134. Lome Agreement, supra note 38, arts. 13-20.

n135. Id.

n136. Accra Agreement, supra note 110, art. 4; Lome Agreement, supra note 38, arts. 13-15.

n137. Accra Agreement, supra note 110, art. 3; Lome Agreement, supra note 38, art. 2.

n138. Accra Agreement, supra note 110, art. 4; Lome Agreement, supra note 38, arts. 13–15.

n139. Lome Agreement, supra note 38, art. 18.

n140. See Accra Agreement, supra note 110, art. 12; Lome Agreement, supra note 38, art. 24.

n141. Accra Agreement, supra note 110, art. 12(1)(b); Lome Agreement, supra note 38, art. 14(2) (emphasis added).

n142. Accra Agreement, supra note 110, arts. 9–11, 14, 15, 30, 31; Lome Agreement, supra note 38, arts. 21–23. The Lome Agreement specifically recognizes the right of asylum of Sierra Leoneans, whereas the Accra Agreement does not.

n143. Lome Agreement, supra note 38, art. 30. The Accra and Lome accords differ in that the former does not make explicit reference to child combatants.

n144. Accra Agreement, supra note 110, art. 14(1)(a); Lome Agreement, supra note 38, art. 27(2).

n145. Accra Agreement, supra note 110, arts. 12, 13, 29; Lome Agreement, supra note 38, arts. 24, 25, 28.

n146. See Accra Agreement, supra note 110, art. 31; Lome Agreement, supra note 38, art. 38.

n147. See Lome Agreement, supra note 38, art. 38.

n148. The CCP was composed of two representatives of civil society and one representative from each of the three warring parties. *Id.* art. 6.

n149. *Id.*

n150. See Accra Agreement, supra note 110, art. 16. There is a more detailed discussion of the GRC in the governance section.

n151. Lome Agreement, *supra* note 38, art. 8. Under this provision, all decisions of the council are binding and public and may be appealed to the Supreme Court.

n152. See *id.* art. 31.

n153. The JMC was established under the June 17, 2003, cease-fire agreement between the Government of Liberia, LURD, and MODEL. It was empowered to supervise and monitor the terms of the cease-fire agreement and thereafter sanctioned under article 3(5) of the Accra Agreement to resolve disputes concerning its implementation, investigate alleged violations of the Agreement, and recommend remedial action for confirmed cease-fire violations. The JMC was chaired by ECOWAS and included equal representation from the parties as well as representatives from the UN, the AU, and the International Contact Group on Liberia (ICGL). The JMC reported daily to ECOWAS Headquarters on its findings. Agreement on Ceasefire, *supra* note 108.

n154. The IMC shared a monitoring role with the JMC, as it was charged with "ensuring effective and faithful implementation of the Peace Agreement" and approving the recommendations of the JMC. IMC members included the ECOWAS, the UN, the AU, the European Union, and the ICGL. Accra Agreement, *supra* note 110, art. 3(5)(b).

n155. The ICGL was established on September 17, 2002, "as part of a new political strategy to address the continuing conflict situation [in Liberia]." The group included representatives of the UN, the European Union, the AU, ECOWAS, United States, United Kingdom, France, Senegal, Nigeria, and Morocco. Liberia: New Contact Group, New UN Representative, United Nations Integrated Regional Info. Network, Sept. 18, 2002, available at <http://www.irinnews.org> (last visited Mar. 22, 2006).

n156. The JIC consisted of members of the CCP, the Committee of Seven on Sierra Leone, the Moral Guarantors as prescribed in article 34 of the Lome Agreement, and other international supporters. It was "responsible for reviewing and assessing the state of implementation of the Agreement" and making "recommendations deemed necessary to ensure effective implementation" of the accord. Lome Agreement, *supra* note 38, art. 32.

n157. Accra Agreement, *supra* note 110, art. 33; Lome Agreement, *supra* note 38, arts. 32-35.

n158. Accra Agreement, *supra* note 110, art. 32(3); Lome Agreement, *supra* note 38, art. 36.

n159. Accra Agreement, *supra* note 110, art. 37; Lome Agreement, *supra* note 38, art. 37.

n160. Conflict resolution approaches of this type do not adequately consider the long-term implications of power-sharing when there are successful insurgencies, rebellions, and coups against lawfully constituted governments.

n161. The Accra and Lome accords include quasi-and full amnesty provisions under articles 34 and 9,

respectively. The Accra Agreement stops short of explicitly granting amnesty but rather empowered the NTGL, which included warlords and rebels who committed or directed atrocities, to consider a recommendation for "general amnesty to all persons and parties" who were "engaged or involved in military activities during the Liberian civil conflict that is the subject of the Agreement." See Accra Agreement, *supra* note 110, art. 34. The Lome Agreement included an independent provision that obligated the government of Sierra Leone to take "legal steps to grant Corporal Foday Sankoh absolute and free pardon." *Id.* art. 9(1). It also 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." *Id.* art. 9(2). Finally, the Agreement states that "for the cause of national reconciliation," Sierra Leone Government must ensure that "no official or judicial action is taken against any member of the RUG/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 signing of the present Agreement." *Id.* art. 9(3). Article 9 also required the government to take legislative and other measures to guarantee the immunity of the warring parties and ensure the "full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality." *Id.* art. 9(3).

n162. The Parliament of Sierra Leone adopted the Lome Peace Agreement (Ratification) Act on July 15, 1999, nearly eight weeks after the coming into force of the Lome Agreement, in order to provide a retroactive veil of legality over the extralegal accord. Nevertheless, the Act seems to be unlawful because it conflicts with Sierra Leone's constitution - a fact that casts further doubt on the lawfulness of the Agreement.

n163. Accra Agreement, *supra* note 110, art. 35. See also Agreement on Ceasefire, *supra* note 108, art. 8(i).

n164. Agreement on Ceasefire, *supra* note 108, art. 8(i).

n165. Accra Agreement, *supra* note 110, art. 35(1)(a).

n166. *Id.* art. 35(1)(b).

n167. *Id.* art. 35(1)(c).

n168. *Id.* art. 35(1)(d).

n169. *Id.* art. 35(1)(e).

n170. Lome Agreement, *supra* note 38, art. 10.

n171. *Id.*



n172. Id.

n173. The Lome Peace Agreement (Ratification) Act, July 15, 1999 (commencing on July 22, 1999).

n174. The legal problems associated with the Act are discussed in Part V.

n175. In fact, it can be argued that the UN did not sanction the Lome Agreement; rather, the special representative of the UN secretary-general attached a reservation to the Agreement stating that it interpreted article 9 concerning unconditional amnesty not to apply to "international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law." Michael Fleshman, *Sierra Leone: Peacekeeping Under Fire*, *Afr. Recovery*, July 2000, at 8, available at <http://www.un.org/ecosocdev/geninfo/afrec/subjindx/142peack.htm> (last visited Dec. 29, 2005). There is also the corollary issue of whether the UN Security Council possesses the legal authority to sanction agreements that violate customary international law or preemptory jus cogens norms. Specifically, does the UN Security Council have the legal authority to sanction peace deals with power-sharing components that override a people's right of self-determination? This is a fertile area of research in need of deep exploration.

n176. Lome Agreement, *supra* note 38, arts. 3-5.

n177. Accra Agreement, *supra* note 110, art. 21.

n178. Id. arts. 22(1), 22(2)(a).

n179. Id. art. 22(2)(b)

n180. Id. art. 22(2)(c)

n181. Id. art. 22(2)(d)

n182. Id. art. 24.

n183. Id. arts. 25-26. For a detailed account of the functional ministries, public corporations, and specific positions allocated to the warring parties, see Allocation of Cabinet Positions, Public Corporations and Autonomous Agencies/Commission Under the NTGL, Annex 4 of the Comprehensive Peace Agreement Between the Government of Liberia (GOL), The Liberians United for Reconciliation and Democracy (LURD), The Movement for Democracy in Liberia (MODEL) and the Political Parties, Accra, Ghana, Aug. 18, 2003, available at [http://www.usip.org/library/pa/liberia/liberia\\_08182003\\_an4.html](http://www.usip.org/library/pa/liberia/liberia_08182003_an4.html) (last visited Mar. 28, 2006).

n184. Accra Agreement, *supra* note 110, art. 27(2).

n185. *Id.* art. 16(1).

n186. *Id.* art. 16(2)(a).

n187. *Id.* art. 16(2)(b).

n188. *Id.* art. 16(2)(c).

n189. *Id.* art. 16(2)(d).

n190. *Id.* art. 16(2)(e).

n191. *Id.* art. 16(2)(f).

n192. *Id.* art. 16(2)(g).

n193. Lome Agreement, *supra* note 38, art. 5.

n194. Telephone Interview with James Jonah, Former U.S. Ambassador to the United Nations (June 5, 2005).

n195. Accra Agreement, *supra* note 110, art. 21(3).

n196. *Id.* art. 27(2).

n197. Lome Agreement, *supra* note 38, arts. 5(1), 5(3).

n198. Accra Agreement, *supra* note 110, art. 17(1).

n199. Id. art. 17(2)(b)(c).

n200. Id. art. 17(2)(c).

n201. Id. art. 17(2)(d)(e).

n202. Id. art. 17(3)(a).

n203. See Lome Agreement, *supra* note 38, art. 7(1). The Lome Agreement seemed to implement a policy of quasi-nationalization, given that it forbade the sale and export of gold and diamonds unless it was sanctioned by the commission and rendered null and void all existing concessions. Id. art. 7(2).

n204. Id. art. 7(1).

n205. Id. art. 7(4).

n206. Id. art. 7(3).

n207. Id. art. 7(5).

n208. Id. art. 7(6).

n209. Id. art. 7(10).

n210. Id. art. 7(12).

n211. Id. art. 7(14). According to the Agreement, profits from gold, diamonds, and other natural resources are should be used for the educational, health, and infrastructural development of Sierra Leoneans and the "compensation of incapacitated war victims." Id.

n212. Accra Agreement, *supra* note 110, preamble; Lome Agreement, *supra* note 38, preamble.

n213. The following analysis is concerned with the legal as opposed to moral questions raised by power-

sharing; since moral dimensions are not necessarily separable from legal ones, however, particularly on the issue of fundamental human rights, moral considerations will inevitably be addressed.

n214. The analysis that follows concentrates primarily on the constitutions of Liberia and Sierra Leone and other rules where relevant. Part of the reason for this approach is the irrelevance of national legislation and court rulings unrelated to the accords.

n215. For analytic purposes, the international rules are divided into two categories: (1) regional and subregional law and (2) international law. Category (1) forms an important part of category (2).

n216. The extent to which, if any, the constitutional jurisprudence of Liberia and Sierra Leone accords the executive branch powers to make "extraconstitutional rules" during times of civil war remains largely unexplored and is in need of research. The author is not familiar with any judicial doctrine in Liberia or Sierra Leone that endows the executive branch with such powers.

n217. *Bridgeway Corp. v. Citibank*, 45 F. Supp. 2d 276, 287 (S.D.N.Y. 1999); *Bridgeway Corp. v. Citibank*, 201 F.3d 134 (2d Cir. 2000).

n218. Constitution of the Republic of Liberia, 1986, preamble.

n219. Constitution of Sierra Leone, 1991, preamble.

n220. Constitution of the Republic of Liberia, 1986, preamble (emphasis added).

n221. Constitution of Sierra Leone, 1991, art. 5(1).

n222. *Id.* art. 5(2)(b).

n223. Constitution of the Republic of Liberia, 1986, art. 2 (emphasis added).

n224. Constitution of Sierra Leone, 1991, art. 5(2)(a) (emphasis added).

n225. Constitution of the Republic of Liberia, 1986, art. 2; Constitution of Sierra Leone, 1991, art. 171(15).

n226. Constitution of the Republic of Liberia, 1986, art. 2 (emphasis added).

n227. Constitution of Sierra Leone, 1991, art. 171(15) (emphasis added).

n228. Accra Agreement, *supra* note 110, art. 35.

n229. Lome Agreement, *supra* note 38, art. 5(5).

n230. *Id.* art. 7(13).

n231. *Id.* art. 9(1).

n232. *Id.* art. 10.

n233. *Id.* art. 10.

n234. Accra Agreement, *supra* note 110, art. 5(a).

n235. *Id.* art. 5(b).

n236. Constitution of Sierra Leone, 1991, art. 5(c).

n237. Constitution of the Republic of Liberia, 1986, arts. 20(a), 11(b), 11(c) (emphasis added); Constitution of Sierra Leone, 1991, art. 6(4), 15(a-d).

n238. Constitution of the Republic of Liberia, 1986, art. 15(c).

n239. Constitution of Sierra Leone, 1991, art. 6(4).

n240. Any claims brought against the government would originate in the Claims Court and on appeal would go to the Supreme Court. Constitution of the Republic of Liberia, 1986, art. 26.

n241. Constitution of Sierra Leone, 1991, art. 28.

n242. *Id.*

n243. *Id.* art. 31.

n244. It is important to reemphasize the point that the Accra and Lome accords were negotiated outside of Liberia and Sierra Leone, respectively, and hence prevented Liberians and Sierra Leoneans from being informed about or participating in the affairs of government.

n245. Such behavior would appear to give Sierra Leoneans a basis upon which to bring an action against the government. Constitution of Sierra Leone, 1991, art. 127(1).

n246. See Constitution of the Republic of Liberia, 1986, art. 26.; Constitution of Sierra Leone, 1991, art. 28. In the wake of the failure of the Lome Agreement to make viable peace, the government of Sierra Leone and the UN jointly created the Special Court for Sierra Leone "to try 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 30 November 1996." About the Special Court for Sierra Leone, <http://www.sc-sl.org/about.html> (last visited July 25, 2005).

n247. Accra Agreement, *supra* note 110, art. 8; Lome Agreement, *supra* note 38, art. 25(1).

n248. The term heinous crimes refers to crimes against the state and the individual that are capital offenses.

n249. See Accra Agreement, *supra* note 110, art. 34; Lome Agreement, *supra* note 38, art. 9.

n250. For example, see Human Rights Watch: Africa, <http://www.hrw.org/doc/?t=africa> (last visited Jan. 31, 2006); Amnesty International: Africa, <http://web.amnesty.org/library/eng-2af/news> (last visited Jan. 31, 2006); International Crisis Group: Africa, <http://www.crisisgroup.org/home/index.cfm?id=1098&l=1> (last visited Jan. 31, 2006); United States Department of State: Country Reports, <http://www.state.gov/g/drl/hr/c1470.htm> (last visited Jan. 31, 2006).

n251. This Article will not address the legality of national amnesties under international law. For more on this issue, see Ben Chigara, *Amnesty in International Law: Legality Under International Law of National Amnesty Laws* (2002).

n252. Interestingly, article 76 of the Liberian Constitution does, however, make provision for the crime of

treason, which is typically classified as a crime against the state. The constitution defines treason as:

(1) levying war against the Republic; (2) aligning oneself with or aiding and abetting another nation or people with whom Liberia is at war or in a state of war; (3) acts of espionage for an enemy state; (4) attempting by overt act to overthrow the Government, rebellion against the Republic, insurrection and mutiny; and (5) abrogating or attempting to abrogate, subverting or attempting or conspiring to subvert the Constitution by use of force or show of force or any other means which attempts to undermine [the] Constitution.

Constitution of the Republic of Liberia, 1986, art. 76.

n253. Act Adopting a New Penal Law and Repealing Sections 31.3 & 32.1 of the Criminal Procedure Law, July 19, 1976 (Liber.); Treason and State Offences Act 1963, Act No. 10 of 1963 (Sierra Leone).

n254. See Constitution of the Republic of Liberia, 1986, art. 59; Constitution of Sierra Leone, 1991, art. 63(1).

n255. See Constitution of the Republic of Liberia, 1986, arts. 54–59; Constitution of Sierra Leone, 1991, arts. 40, 53–70.

n256. See Accra Agreement, *supra* note 110, arts. 24–27, 35. There do not, however, appear to be any constitutional limitations on the power of the president to establish the commissions.

n257. Constitution of the Republic of Liberia, 1986, art. 57.

n258. An important question, however, remains unresolved by this approach: can a rebel group that has significant outside military support and consequently acquires *de facto* control of the state or unquestionable military superiority on the battlefield prior to peace negotiations be considered to have acquired sufficient legal personality to classify the conflict as interstate in character and hence the agreement as a *bonafide* treaty?

n259. See Accra Agreement, *supra* note 110, arts. 21–27. One interesting observation here is that while the constitutionally-mandated line of presidential succession was followed, after Taylor's resignation, all of the constitutional prohibitions against power-sharing were patently ignored.

n260. Constitution of the Republic of Liberia, 1986, art. 34.

n261. *Id.* art. 65.

n262. *Id.* art. 66.

n263. Id. art. 71.

n264. Accra Agreement, *supra* note 110, art. 27(3).

n265. Id. arts. 24-27, 35

n266. Constitution of the Republic of Liberia, 1986, art. 77.

n267. Id. art. 77.

n268. See Accra Agreement, *supra* note 110, art. 24.

n269. See Constitution of the Republic of Liberia, 1986, arts. 45, 48.

n270. Notwithstanding, the Accra Agreement does not appear to limit the power of the president to set up commissions.

n271. Constitution of Sierra Leone, 1991, art. 40 (3).

n272. Id. arts. 40(4)(a),(d).

n273. See *id.* art. 40. See also, Louise Doswald-Beck, The Legal Validity of Military Intervention by Invitation of the Government, 56 *Brit. Y.B. Int'l L.* 189 (1985).

n274. Quasi-international in this context refers to the international dimensions of the war (e.g., Charles Taylor's support of the RUF) as well as the illicit involvement of foreign mining and lumber corporations.

n275. Constitution of Sierra Leone, 1991, art. 4.

n276. Lome Peace Agreement (Ratification) Act, July 15, 1999.



n277. The moral dimension is discussed in the regional and international law sections of the Article.

n278. Lome Agreement, *supra* note 38, art. 5(2).

n279. Constitution of Sierra Leone, 1991, art. 54(2)(a). (emphasis added).

n280. *Id.* arts. 41(a-d).

n281. See *id.* arts. 75(b), 75(d).

n282. *Id.*

n283. *Id.* art. 76(1)(c) (emphasis added).

n284. See Lome Agreement, *supra* note 38, art. 5(3).

n285. Constitution of Sierra Leone, 1991, art. 56(2)(c).

n286. This means that the Lome Agreement was adopted before it was "authorized" by Parliament, in violation of article 108(8), which states that "any suspension, alteration, or repeal of this Constitution other than on the authority of Parliament shall be deemed to be an act of Treason." *Id.* art. 108(8).

n287. *Id.*

n288. Article 108(7) states that "no Act of Parliament shall be deemed to amend, add to or repeal in any way alter any of the provisions of the Constitution unless it does so in express terms." See *id.* art. 108(7).

n289. These provisions include all of Chapter III of the Sierra Leone Constitution, titled, "The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual" and sections 46, 56, 72, 73, 74(2), 74(3), 84(2), 85, 87, 105, 110-119, 120, 121-124, 128, 129, 131-133, 135, 136, 137, 140, 151, 156, and 167.

n290. *Id.* art. 108(3).

n291. Article 56 requires that no person shall be appointed a minister or deputy minister if she is "not qualified to be elected as a Member of Parliament" and her "nomination is [not] approved by Parliament." Id. art. 56.

n292. See id. art. 13(i).

n293. See id. art. 15,16.

n294. See id. arts. 19, 20.

n295. See id. art. 21.

n296. See id. art. 133.

n297. Id. arts. 106(1), 106(2).

n298. UN Hum. Rts. Comm'n, General Comment 29: States of Emergency (Article 4), P 4, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001).

n299. According to article 87, the "emergency powers do not include the power to suspend or abrogate the Constitution, dissolve the Legislature, or suspend or dismiss the Judiciary; and no constitutional amendments shall be promulgated during a state of emergency." Constitution of the Republic of Liberia, 1986, art. 58. Section 29 of the Sierra Leone Constitution extends vast authority to the president to "amend any law, suspend the operation of any law, and apply any law with or without modification" during public emergencies to secure peace, order, and good government, as long as any such "amendment, suspension or modification shall not apply to the Constitution." Constitution of Sierra Leone, 1991, art. 29(5)(d). If, during a public emergency, the presidents of Liberia and Sierra Leone lack the aforementioned authority, how can the power-sharing provisions in the agreements be considered lawful, even under the most liberal interpretation of presidential powers under the constitutions?

n300. For example, under article 28 of the Sierra Leone Constitution, if any person alleges that his or her fundamental human rights and freedoms of the individual have been violated, he or she may apply by motion to the Supreme Court for redress; the amnesty provision in the Lome Agreement, however, stifles this right. Hence, both the government and Parliament created laws that interfere with the protective provisions in the constitution. See Constitution of Sierra Leone, 1991, art. 28(1).

n301. African Union Home Page, <http://www.africa-union.org/root/au/index/index.htm> (last visited Feb. 28, 2006)

n302. Economic Community of West African States Home Page, <http://www.ecowas.int/> (last visited Jan. 31, 2006).

n303. See generally Jeremy I. Levitt, *The African Union Peace and Security Council, United Nations Security Council and the Use of Force: The Case of Darfur, Sudan*, in *The United Nations Security Council and the Use of Force* (Neils Blokker & Nico Schrijver eds., 2005); Jeremy I. Levitt, *Conflict Prevention, Management and Resolution in Africa—Regional Strategies for the Prevention of Displacement and Protection of Displaced Persons: The Cases of the OAU, ECOWAS, SADC and IGAD*, 11 *Duke J. Comp. & Int'l L.* 39 (2001); Jeremy I. Levitt, *African Interventionist States and International Law*, in *African Interventionist States* (Oliver Furley & Roy May eds., 2001); Jeremy Levitt, *Humanitarian Intervention by Regional Actors in Internal Conflicts: The Case of ECOWAS in Liberia and Sierra Leone*, 12 *Temp. Int'l & Comp. L.J.* 333 (1998); Jeremy I. Levitt, *The Peace and Security Council of the African Union*, 13 *J. Transnat'l & Contemp. Legal Probs.* 109 (2003).

n304. The human rights-related customary regional law of the AU and ECOWAS has been codified into nearly all of the statutes in Table 1 and is derived from state practice in the African region, UN law (e.g., the UN Charter, the Universal Declaration on Human Rights, the Genocide Convention, the Torture Convention, and the International Covenant on Civil and Political Rights) and customary international law. Africa's new democracy and governance norms have also been codified into treaty law (e.g., pro-democratic intervention provision in article 25 of the ECOWAS Conflict Protocol) and are derived, for the most part, from state practice since the end of the Cold War.

n305. Kwadwo Boateng Mensah, *Preventing Constitutional Crises in ECOWAS After Togo*, AllAfrica.Com, Mar. 15, 2005; ECOWAS Press Release, *Faure Gnassingbe Steps Down ECOWAS Lifts Sanctions*, Feb. 26, 2005, available at <http://www.ecowas.int/> (last visited June 25, 2006); Sao Tome and Principe: *Coup Leaders Hand Power Back to Civilian President*, Integrated Regional Info. Network (IRIN), July 23, 2003, available at [http://www.irinnews.org/report.asp?ReportID=35580&SelectRegion=West\\_Africa&SelectCountry=SAO\\_TOME\\_AND\\_PRINC](http://www.irinnews.org/report.asp?ReportID=35580&SelectRegion=West_Africa&SelectCountry=SAO_TOME_AND_PRINC) (last visited Aug. 25, 2006); *Sao Tome Coup Condemned*, BBC News, July 17, 2003, available at <http://news.bbc.co.uk/2/hi/africa/3073631.stm> (last visited Aug. 25, 2006); Council on Foreign Relation, *More than Humanitarianism: A Strategic U.S. Approach Toward Africa*, Independent Task Force Report No. 56 90 (2006).

n306. VCLT, *supra* note 2, art. 62 (1).

n307. VCLT, *supra* note 2, art. 73.

n308. VCLT, *supra* note 2, art. 62(2). Although it is not absolutely clear whether a state must make an invocation expressly (e.g., in writing) or can achieve it by implication (e.g., taking action contrary to obligations), state practice favors the former approach.

n309. *Id.* Human rights reports of governmental and nongovernmental organizations cited in earlier sections and the indictments of former President Charles Taylor and senior officials in the Kabbah government (e.g., former Vice-Minister of Defense and Internal Affairs Minister Samuel Hinga Norman) before the Sierra Leone Special Court for war crimes and crimes against humanity speak volumes about the nefarious conduct of each government

during their respective civil wars.

n310. VCLT, *supra* note 2, art. 60(3)(b).

n311. VCLT, *supra* note 2, art. 60(5). The same legal logic applies to and nullifies the "limited" derogation provisions in article 4 of the International Covenant on Civil and Political Rights (ICCPR). Article 4(1) of the ICCPR states:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

International Covenant on Civil and Political Rights art. 4, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. See also U.N. Economic & Social Council [ECOSOC], Sub-Committee on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, U.N. Doc. E/Cn.4/1984/4 (1984). It should be noted that the ICCPR obligates states to immediately notify other states parties and the UN Secretary-General as to the provisions it has derogated from and the reasons for such actions. The Taylor and Kabbah regimes made no such claim of derogation under the VCLT or the ICCPR.

n312. Articles on Responsibility of States for Internationally Wrongful Acts art. 33(1)(a), Official Records of the General Assembly, 56th Session, Supp. No. 10 (A/56/10), ch. V (Dec. 2001).

n313. Int'l L. Comm'n, Commentaries, P 33, in ILC Ann. Rep. 2001, ch. IV.

n314. *Id.* P 34.

n315. *Id.* P 35.

n316. Articles on Responsibility of States for Internationally Wrongful Acts, *supra* note 312, arts. 33(2)(a-b).

n317. *Id.* arts. 33(2)(a-c).

n318. According to article 26 of the Vienna Convention of the Law of Treaties, the international principle *pacta sunt servanda* states that "every treaty in force is binding upon the parties to it and must be performed by them in good faith." VCLT, *supra* note 2, art. 26.

n319. Article 27 of the VCLT states that a "party may not invoke the provision of its internal law as justification for its failure to perform a treaty." VCLT, *supra* note 2, art. 27.

n320. Crawford, *supra* note 24, at 117.

n321. Article 26 of the VCLT indicates that "every treaty in force is binding upon the parties to it and must be performed by them in good faith." VCLT, *supra* note 2, art. 26.

n322. They include the AU Constitutive Act, the AU Peace and Security Protocol, the ECOWAS Democracy Protocol, and the NEPAD.

n323. It has been the author's experience in working with decisionmakers in Africa that the majority of legal officers in African multilateral institutions employ a literalist approach in interpreting their own treaties.

n324. Charter of the Organization of African Unity, reprinted in *Africa: Selected Documents on Constitutive, Conflict and Security, Humanitarian and Judicial Issues 51-52* (Jeremy Levitt ed., 2003).

n325. *Id.*

n326. *Id.*

n327. See generally Rachel Murray, *Human Rights in Africa: From the OAU to the AU* (2004).

n328. African Charter on Human and People's Rights art. 3, June 27, 1981, reprinted in *Africa: Selected Documents*, *supra* note 324, at 354 [hereinafter *Banjul Charter*]. The *Banjul Charter* was adopted on June 27, 1981, and entered force into force October 21, 1986.

n329. *Id.* art. 7.

n330. The African Charter on the Rights and Welfare of the Child (ACRWC) will not be analyzed in this section. Briefly, it seeks to define and protect the rights of children in every facet of human existence from, for example, a right to a birth name and nationality to a right to education and health services. The African Charter also seeks to protect children from, among other things, economic exploitation, child abuse, torture, harmful social and cultural practices, and, most important for the purposes of this analysis, armed conflicts. Under article 22 of the ACRWC, children are not to take part in direct hostilities and governments are to refrain from recruiting them.

African Charter on the Rights and Welfare of the Child art. 22, July 1990, reprinted in Africa: Selected Documents, supra note 324, at 402 [hereinafter ACRWC].

n331. Banjul Charter, supra note 328, art. 20. Self-determination may be defined as the right of a people to determine and live under a type of government they choose free from outside influence.

n332. Banjul Charter, supra note 328, art. 12.

n333. Rachel Murray, supra note 327, at 8. In the years that followed, these issues guided the organization's approach to human rights, which focused on the "protection of the state, not the individual" as the concept of human rights "went little beyond the notion of self-determination in the context of decolonization and apartheid ... ." Id. at 7-8.

n334. Ifeoma Enemo, Self-Determination as the Fundamental Basis of the Concept of Legitimate Governance under the African Charter on Human and People's Rights, in Legitimate Governance in Africa: International and Domestic Legal Perspectives 417 (E.K. Quashigah & O.C. Okafor eds., 1999). See also Murray, supra note 327, at 10.

n335. John Dugard, The Organization of African Unity and Colonialism: an Inquiry into the Pleas of Self-Defense as a Justification for the Use of Force in the Eradication of Colonialism, *16 Int'l & Comp. L.Q.* 157, 158-59 (1967).

n336. Murray, supra note 327 at 16-17, 22-23. See generally Thomas Franck, The Emerging Right to Democratic Governance, *86 Am. Jur. Int'l L.* 46 (1992).

n337. Grand Bay Mauritius Declaration and Plan of Action of the Organization of African Unity (April 1999), reprinted in Africa: Selected Documents, supra note 324, at 374 [hereinafter Grand Bay Declaration].

n338. The function of justice in this context "is to provide a foundation for dismantling institutions and discrediting leaders and their ideology that have promoted war crimes." Michael P. Scharf & Paul R. Williams, The Functions of Justice and Anti-justice in the Peace-building Process, *35 Case W. Res. J. Int'l L.* 161, 171 (2003).

n339. Grand Bay Declaration, supra note 337.

n340. Id. art. 8(16).

n341. Constitutive Act of the African Union art. 4(h), June 11, 2000, reprinted in Africa: Selected Documents,

supra note 324, at 35.

n342. Id. arts. 3(h), 4(m).

n343. Id. art. 4(p).

n344. Id. art. 30.

n345. New Partnership for Afr. Dev., Strategy Document 17 (Oct. 2001). The New Partnership for African Development is a program of action established by African leaders to renew the African continent through a series of initiatives in conflict mitigation, human rights, the rule of law, democracy and governance, security, macroeconomics, fiscal regulation, health, education, and human and social development.

n346. Id.

n347. Draft Kampala Document for a Proposed Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), reprinted in *Africa: Selected Documents*, supra note 324, at 227.

n348. Protocol Relating to the Establishment of the Peace and Security Council of the African Union art. 4(c), reprinted in *Africa: Selected Documents*, supra note 324, at 167.

n349. Protocol Relating to the Establishment of the Peace and Security Council of the African Union, reprinted in *Africa: Selected Documents*, supra note 324, at 169; Constitutive Act of the African Union arts. 4(e), 4(g), 4(h), 4(p), reprinted in *Africa: Selected Documents*, supra note 324, at 41–42.

n350. Declaration of the Assembly of Heads of State and Government on the Establishment within the OAU of a Mechanism for Conflict, reprinted in *Africa: Selected Documents*, supra note 324, at 219. The OAU Conflict Mechanism was concerned with preventing, managing, and resolving civil wars, given their devastating impact on Africa's sociopolitical order and developmental landscape.

n351. This interpretation is implied in AU and ECOWAS law and expressed in African international organizational practice.

n352. Revised Treaty of the Economic Community of West African States arts. 4(g), 83, July 1993, reprinted in *Africa: Selected Documents*, supra note 324, at 68.

n353. Revised Treaty of the Economic Community of West African States arts. 4(j), 58, July 1993, reprinted in Africa: Selected Documents, supra note 324, at 68, 95.

n354. Protocol Relating to the ECOWAS Mechanism for Conflict, Prevention, Management, Resolution, Peacekeeping and Security art. 2(d), December 1999, reprinted in Africa: Selected Documents, supra note 324, at 264. The Framework Establishing the Economic Community of West African States Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security is a binding mechanism that provides for interstate collaboration in the collective management of regional security and served as the framework for, and eventually replaced, the ECOWAS Conflict Protocol. Article 3 of the Conflict Protocol, however, states that paragraph 46 of the ECOWAS Framework remains controlling when addressing internal and interstate conflicts.

n355. Framework Establishing the ECOWAS Mechanism for Conflict, Prevention, Management, Resolution, Peacekeeping and Security art. 46, October 1999, reprinted in Africa: Selected Documents, supra note 324, at 289 (emphasis added); Protocol Relating to the ECOWAS Mechanism for Conflict, Prevention, Management, Resolution, Peacekeeping and Security art. 25, December 1999, reprinted in Africa: Selected Documents, supra note 324, at 274.

n356. Id.

n357. See Framework Establishing the ECOWAS Mechanism for Conflict, Prevention, Management, Resolution, Peacekeeping and Security art. 46, October 1999, in Africa: Selected Documents, supra note 324, at 287.

n358. Protocol A/SP1/12/01 on Democracy and Good Governance, Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, preamble, ECOWAS, Dec. 21, 2001 (unpublished document on file with author).

n359. Samuel H. Barnes, The Contribution of Democracy to Rebuilding Post Conflict Societies, *95 Am J. Int'l L.* 86, 89 (2001).

n360. Protocol A/SP1/12/01 on Democracy and Good Governance, supra note 358, arts. 22(2), 23, 33(1), 34, 35(1).

n361. Id. art. 39.

n362. Id. art. 40.

n363. Levitt, African Interventionist States and International Law, supra note 303; Levitt, Humanitarian Intervention by Regional Actors in Internal Conflicts: The Case of ECOWAS in Liberia and Sierra Leone, supra note 303.



n364. U.N. Charter preamble.

n365. U.N. Charter art. 1(1).

n366. Id.

n367. U.N. Charter art. 2(3).

n368. See generally Levitt, African Interventionist States and International Law, *supra* note 303; Levitt, Humanitarian Intervention by Regional Actors in Internal Conflicts: The Case of ECOWAS in Liberia and Sierra Leone, *supra* note 303.

n369. Universal Declaration of Human Rights, G.A. Res. 217 (III)A, at 71, preamble, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 12, 1948).

n370. Id.

n371. Id. art. 8.

n372. Id. art. 21.

n373. W. Michael Reisman, Sovereignty and Human Rights in Contemporary International Law, *84 Am. J. Int'l L.* 866, 867 (1990).

n374. Universal Declaration of Human Rights, *supra* note 369, art. 21(3).

n375. U.N. Hum. Rts. Comm'n, General Comment 12: The Right of Self-Determination of Peoples (Art. 1), P 1, U.N. Doc. CCPR/C/21/Rev.1 (Mar. 13, 1984).

n376. ICCPR, *supra* note 311, preamble. The Optional Protocol to the ICCPR (Optional Protocol), which was adopted on December 16, 1966 (entry into force on March 23, 1976), does not apply to the Accra Agreement because Liberia only became a signatory to the Optional Protocol on September 22, 2004, after the Agreement came into force. Sierra Leone however did accede to the Optional Protocol on August 23, 1996, nearly three years after the Lome Agreements entered into force; hence, it can be argued that the Government of Sierra Leone's amnesty

provision in the Lome Agreement constituted a breach of the Protocol, particularly its guarantee of the right of the individual to submit claims before it for breaches of the ICCPR.

n377. Id.

n378. Id. arts. 2(3)(a-c).

n379. U.N. Hum. Rts. Comm'n, General Comment 31 [80]: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, P 8, 18, U.N. Doc. CCPR/C/21/Rev.1/Add.13. (May 26, 2004).

n380. Id. P 15.

n381. Id. P 17.

n382. Id.

n383. General Comment 29: States of Emergency (Article 4), supra note 298, P 14.

n384. Id.

n385. Id. P 16. The Committee notes that proper reparation may include restitution, rehabilitation, public apologies, public memorials, guarantees of non-repetition, changes in relevant laws and practices, and most important for this analysis, bringing the perpetrators to justice for human rights violations. Id.

n386. ICCPR, supra note 311, art. 25(a).

n387. Id. art. 1.

n388. Wippman, supra note 41, at 227.

n389. Id. at 228.

n390. U.N. Hum. Rts. Comm'n, General Comment No. 25: The Right to Participate in Public Affairs, Voting

Rights and the Right of Equal Access to Public Service (Art. 25), P 1, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Dec. 7, 1996).

n391. Wippman, *supra* note 41, at 229.

n392. Sharing power under the Accra and Lome agreements also breached the "right and opportunity of citizens to have access on general terms of equality to public service positions" because cabinet-level and other posts were undemocratically awarded to members of the warring parties. ICCPR, *supra* note 311, art. 25.

n393. Conversely, it may be argued that the case for self-determination in this instance is weakened because Liberians democratically elected Taylor before he was forced into exile.

n394. ICCPR, *supra* note 311, art. 26.

n395. *Id.* art. 4(1).

n396. *Id.*

n397. See VCLT, *supra* note 2, art. 18. The International Covenant on Economic, Social and Cultural Rights (ICESCR) was signed and ratified by Liberia on April 18, 1970, and September 22, 2004, respectively, and acceded to by Sierra Leone on August 23, 1996.

n398. International Covenant on Economic, Social and Cultural Rights preamble, Dec. 19, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

n399. See UN Human. Rights Commission, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, para 1, of the Covenant), P 5, U.N. Doc. HRI/GEN/1/Rev.7 (May 12, 2004).

n400. ICESCR, *supra* note 398, art. 5.

n401. *Id.* art. 4 (emphasis added).

n402. Barnes, *supra* note 359.

n403. The Secretary-General, Report of the Secretary-General to the United Nations Security Council on the Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa, para. 35-45, U.N. Doc. A/52/871-S/1998/318 (Apr. 13, 1998); See generally Levitt, *The African Union Peace and Security Council, United Nations Security Council and the Use of Force: The Case of Darfur, Sudan*, supra note 303; Jeremy I. Levitt, *Humanitarian Intervention in Africa: Africa's Pathbreaking Model*, 7 *Global Dialogue*, Winter/Spring 2005; Levitt, *African Interventionist States and International Law*, supra note 303; Levitt, *Humanitarian Intervention by Regional Actors in Internal Conflicts: The Case of ECOWAS in Liberia and Sierra Leone*, supra note 303.

n404. Press Release, Secretary-General, Secretary-General Calls for Efforts to Unleash African "Third Wave" Based on Democracy, Human Rights, and Sustainable Development, U.N. Doc. SG/SM/6245/Rev.1 AFR/9/Rev.1 (June 2, 2002).

n405. *Id.*

n406. See generally Reisman, supra note 373; *The International Commission on Intervention and State Sovereignty, The Responsibility to Protect* (2001).

n407. Annan Calls on Togolese to Respect Own Constitution in Appointing Presidential Successor, UN News Service, Feb. 7, 2005, available at <http://www.un.org/apps/news/printnewsAr.asp?nid=13261> (last visited Mar. 23, 2006).

n408. *Id.*

n409. The Secretary-General, Message to the Summit of Heads of State and Government of the Economic Community of West African States, delivered by Mr. Ahmedou Ould-Abdallah, Special Representative of the Secretary-General and Chief of UN Office for West Africa, Accra, Ghana (Dec. 19, 2003).

n410. The Secretary-General, Report of the Secretary-General to the United Nations Security Council on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, 1-2, U.N. Doc. S/2004/616 (Aug. 23, 2004).

n411. See *id.* P 4.

n412. *Id.* P 6. The UN defines "justice" as an "ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant. The international community has worked to articulate collectively the substantive and procedural requirements for the administration of justice for more than half a century." *Id.*

n413. *Id.*

n414. Matthew Griffin, *Accrediting Democracies: Does the Credentials Committee of the United Nations Promote Democracy Through Its Accreditation Process, and Should It?*, 32 *N.Y.U. J. Int'l L. & Pol.* 725, 725, 726, 748 (2000). In fact, the Credentials Committee accredited representatives of Samuel Doe's government even though it lost power and Doe was killed in 1990, and it also "accredited the delegation of the deposed, democratically-elected government of President Kabbah of Sierra Leone." *Id.* at 747.

n415. *Id.* at 725, 726. According to Griffin, the central consequence of not being accredited is the inability to participate in the business of the General Assembly. *Id.* at 729.

n416. See generally Thomas Franck, *The Emerging Right to Democratic Governance*, 86 *Am. Jur. Int'l L.* 46 (1992).

n417. As previously mentioned, the UN served as moral guarantor to both the Accra and Lome accords and endorsed them through the UN Security Council in, among others, resolutions 1509 and 1260, respectively. These accords empowered senior advisers of Charles Taylor (who, under the agreement, sought asylum in Nigeria) to maintain power in 2003 and likewise empowered Foday Sankoh to violently challenge Kabbah's regime in 1999.

n418. *Agreement Between the United Nations and Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, U.N.-Sierra Leone, Jan. 16, 2002, Appendix II, U.N. Doc. S/2002/246, available at <http://www.sc-sl.org/scsl-agreement.html>.

n419. S.C. Res. 1631, U.N. Doc. S/RES/1631 (Oct. 17, 2005).

n420. As previously noted, because this Article is limited to an examination of the legality of power-sharing under human rights law and democracy norms, additional research is needed to determine the extent to which international humanitarian law and refugee law may inform the study of the legality of power-sharing.

n421. Franck, *supra* note 416, at 46-47 (emphasis added).

n422. Licklider, *supra* note 42, at 681.

n423. Wippman, *supra* note 41, at 218.

n424. Crocker & Hampson, *supra* note 18, at 69.

n425. Sisk, *supra* note 7, at 78.

n426. *Id.*

n427. Charles Taylor resigned as president and fled to asylum in Nigeria – taking with him substantial wealth – to avoid being overthrown and likely killed by rebels.

n428. U.N. Charter ch. VII.

n429. One analyst notes that power-sharing in Angola, Ethiopia, Rwanda, and Somalia has rendered few positive results, arguing that "while power sharing or inclusion has been cited as a necessary direction which African leaders should follow, it remains relatively unproven as a means of conflict resolution. There are, in fact, relatively few examples of successful, formalised power-sharing in Africa which warrant its advocacy." Ian S. Spears, *Understanding Inclusive Peace Agreements in Africa: The Problems of Sharing Power*, 21 *Third World Q.* 105, 106 (2000).

n430. Barnes, *supra* 359, at 92.

n431. Most African states have parliamentary-based common law systems, supposedly with checks-and-balances between the executive, legislative, and judicial branches of government.

n432. The *ex post facto* adoption of the Lome Peace Agreement (Ratification) Act by the defunct Sierra Leone Legislature is a case in point.

n433. Human Rights Watch, *Liberia at a Crossroads: Human Rights Challenges for the New Government* 18 (2005) (citing Rosner Research Inc., *National Consensus on Dealing with War Crimes Report* 11 (2004)).

n434. It is not simply the failure to prosecute that is problematic, but also the failure to investigate serious violations of physical integrity, particularly torture, extrajudicial killings, and forced disappearances, as required in the ICCPR, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights.

n435. Ratner, *supra* note 16, at 746–47.

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