

place *vis-à-vis* a large number of people, even though there are no grave consequences for each individual. In this case it would be the overall effect on the civilian population and the multitude of offences committed that would make the violation serious.³⁸⁰

211. The *mens rea* for pillage is satisfied where it is established that the Accused intended to appropriate the property by depriving the owner of it.³⁸¹

212. The Appeals Chamber has ruled that a necessary element of the crime of pillage is the unlawful appropriation of property. As a result, acts of destruction such as burning cannot constitute pillage under international criminal law.³⁸² The Chamber will not, therefore, take into account acts of destruction by burning for the purposes of determining the individual criminal responsibility of the Accused under Count 14. For the reasons outlined in paragraph 115 and 128, however, such evidence may be considered under Counts 1 and 2 of the Indictment.

3.3.14. Intentionally Directing Attacks Against Personnel Involved in a Peacekeeping Mission (Count 15)

213. The Indictment charges the Accused under Count 15 with intentionally directing attacks against personnel involved in a humanitarian or a peacekeeping mission, another serious violation of international humanitarian law punishable under Article 4(b) of the Statute. This Count relates to the alleged responsibility for attacks against UNAMSIL peacekeepers³⁸³ between about the 15th of April 2000 and the 15th of September 2000 in Bombali District, Port Loko District and Tonkolili District.³⁸⁴ The Chamber notes that the Indictment does not allege that there were any attacks against installations, material, units or vehicles, which are also prohibited under this offence.³⁸⁵

³⁸⁰ *Kordic and Cerkez* Appeal Judgement, para. 83.

³⁸¹ *Kordic and Cerkez* Appeal Judgement, para. 84. See also *Naletilic and Martinovic* Trial Judgement, para. 612, fn. 1498; *Celebici* Trial Judgement, para. 590.

³⁸² *CDF* Appeal Judgement, para. 409. See also paras 389-408.

³⁸³ The Indictment also alleged that there had been attacks against humanitarian assistance workers, but the Chamber found in the RUF Oral Rule 98 Decision that no evidence had been adduced regarding humanitarian assistance workers: RUF Oral Rule 98 Decision, Transcript of 25 October 2006, pp. 39, 44.

³⁸⁴ The Indictment alleged that the attacks happened “within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko, and Kono Districts.” The Chamber found in the RUF Oral Rule 98 Decision that no evidence had been adduced for locations other than those listed above: RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 45.

³⁸⁵ Indictment, para. 83.

214. The offence of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission was first explicitly identified as a war crime in the ICC Statute.³⁸⁶ This Judgement is the first to specifically address the nature and scope of this offence.

215. The prohibition against attacks on peacekeeping personnel does not represent a new crime. Instead, as personnel and objects involved in a peacekeeping mission are only protected to the extent that “they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict”, this offence can be seen as a particularisation of the general and fundamental prohibition in international humanitarian law against attacks on civilians and civilian objects.³⁸⁷

216. It is common knowledge that United Nations observer and peacekeeping missions have traditionally relied on their identification as United Nations representatives to ensure that their personnel and equipment are not targeted.³⁸⁸ As attacks on United Nations personnel have increased, in particular since the 1990s, these attacks have been condemned and criminalised. The Chamber takes cognisance of the observation of the International Committee of the Red Cross (“ICRC”) that “no official contrary practice was found. Attacks against peacekeeping personnel and objects have generally been condemned by States.”³⁸⁹ This

³⁸⁶ Article 8(2)(b)(iii) of the ICC Statute identifies the offence as a war crime in international conflicts.

³⁸⁷ Report of the Secretary-General on the Establishment of the Special Court, para. 16: “Attacks against peacekeeping personnel, to the extent that they are entitled to protection recognized under international law to civilians in armed conflict, do not represent a new crime. Although established for the first time as an international crime in the Statute of the International Court, it was not viewed at the time of the adoption of the Rome Statute as adding to the already existing customary international law crime of attacks against civilians and persons hors de combat. Based on the distinction between peacekeepers as civilians and peacekeepers turned combatants, the crime defined in article 4 of the Statute of the Special Court is a specification of a targeted group within the generally protected group of civilians which because of its humanitarian or peacekeeping mission deserves special protection.”

³⁸⁸ *Note by the Secretary-General, Ad hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel*, UN Doc. A/AC.242/1, 25 March 1994, para. 4: In general, “working under the banner of the United Nations... provided its personnel with safe passage and an unwritten guarantee of protection [...]”

³⁸⁹ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Volume I, p. 113, citing the practice of Australia (Statement before the UN General Assembly, UN Doc. A/50/PV.116, 25 April 1996, p. 6); Finland (Statement before the UN Security Council, UN Doc. S/PV.3367, 21 April 1994, p. 34); Germany (Statement before the UN Security Council, UN Doc. S/PV.3553, 12 July 1995, p. 11); Liberia (UN Secretary-General, Sixteenth Progress Report on UNOMIL, UN Doc. S/1996/232, 1 April 1996, s. 6); Russia (Statement before the UN Security Council, UN Doc. S/PV.3553, 12 July 1995, p. 9); Ukraine (Appeal of the Ministry of Foreign Affairs to the President of the UN Security Council, annexed to Letter dated 10 August 1992 to the President of the UN Security Council, UN Doc. S/24403, 10 August 1992, p. 2); United Kingdom (Statement before the UN Security Council, UN Doc. S/PV.3553, 12 July 1995, p. 11, and Statement before the UN Security Council, UN Doc. S/PV.3621, 25 January 1996, p. 19) and the United States (Former Yugoslavia: Grave Breaches of the

Chamber notes further that they have also been condemned by the United Nations and other international organisations,³⁹⁰ which have in some cases specifically condemned attacks on United Nations personnel in internal conflicts.³⁹¹ We further note that some of these condemnations have explicitly characterised these acts as criminal.³⁹²

217. In addition, the Chamber observes that the *Convention on the Safety of United Nations and Associated Personnel* specifically criminalised attacks against United Nations and associated personnel as an offence subject to universal jurisdiction.³⁹³ Moreover, a rule similar to that set

Fourth Geneva Convention (Third Submission), annexed to Letter dated 5 November 1992 to the UN Secretary-General, UN Doc. S/24791, 10 November 1992, p. 19, and Statement before the UN Security Council, UN Doc. S/PV.3553, 12 July 1995, p. 11).

³⁹⁰ See, for example, UN SC Res. 1828, 31 July 2008, preamble and para. 11; UN SC Res. 1782, 29 October 2007, para. 5; UN SC Res. 1721, 1 November 2006, para. 28; UN SC Res. 1574, 19 November 2004, para. 11; UN SC Res. 1187, 30 July 1998, s. 11; UN SC Res. 1180, 29 June 1998, s. 5; UN SC Res. 1173, 30 July 1998, s. 11; UN SC Res. 1164, 29 April 1998, s. 4; UN SC Res. 1157, 20 March 1998, s. 9; UN SC Res. 1118, 30 June 1997, preamble; UN SC Res. 1099, 14 March 1997, preamble and s. 4; UN SC Res. 1083, 27 November 1996, s. 7; UN SC Res. 1059, 31 May 1996, s. 6; UN SC Res. 1041, 29 January 1996, preamble and s. 4; UN SC Res. 1009, 10 August 1995, preamble and s. 6; UN SC Res. 1004, 12 July 1995, preamble; UN SC Res. 994, 17 May 1995, preamble; UN SC Res. 987, 19 April 1995, preamble and s. 1; UN SC Res. 954, 4 November 1994, preamble and s. 7; UN SC Res. 946, 30 September 1994, preamble and s. 4; UN SC Res. 923, 31 May 1994, preamble and s. 5; UN SC Res. 897, 4 February 1994, preamble and s. 8; UN SC Res. 794, 3 December 1992, preamble; UN SC Res. 788, 19 November 1992, s. 4; UN SC Res. 757, 30 May 1992, preamble; UN GA Res. 50/193, 22 December 1995, s. 14; UN GA Res. 49/196, 23 December 1994, s. 15; UN GA Res. 47/121, 18 December 1992, preamble; UN CHR Res. 1995/89, 8 March 1995, s. 17; UN Res. 1994/72, 9 March 1994, s. 12; UN CHR Res. 1994/60, 4 March 1994, s. 3; UN CHR Res. 1993/7, 23 February 1993, s. 15; UN Secretary-General's Bulletin, ST/SGB/1999/13, 6 August 1999, para. 1.2 [Secretary-General's Bulletin]; ECOWAS, Final communiqué of the first Summit Meeting of the Committee of Nine of ECOWAS on the Liberian Crisis, Abuja, 7 November 1992, annexed to Letter dated 13 November 1992 from Benin to President of the UN Security Council, UN Doc. S/24812, 16 November 1992, s. 9; European Union, Statement before the UN Security Council, UN Doc S/PV.3367, 21 April 1994, p. 13; Organisation of the Islamic Conference (OIC), Conference of Ministers of Foreign Affairs, Res. 1/6-EX, 1-2 December 1992; OIC, Statement before the UN Security Council, UN Doc. S/PV.3367, 21 April 1994, p. 25; Resolution on support to the recent international initiatives to halt the violence and put an end to the violations of human rights in Bosnia and Herzegovina, 88th Inter-Parliamentary Conference, Stockholm, 7-12 September, s. 5.

³⁹¹ UN SC Res. 1633, 21 October 2005, para. 21; UN SC Res. 1615, 29 July 2005, paras 29-30; UN SC Res. 1592, 30 March 2005, preamble; UN SC Res. 1582, 28 January 2005, para. 29; UN SC Res. 1565 (2004), 1 October 2004, para. 20; UN SC Res. 1071, 30 August 1996, para. 8; UN SC Res. 912, 21 April 1994, para. 5; UN SC Res. 802, 25 January 1993, para. 2.

³⁹² UN SC Res. 1099, 14 March 1997, preamble and s. 4; UN SC Res. 865, 22 September 1993, s. 3; UN SC Res. 837, 6 June 1993, preamble; UN SC Res. 587, 23 September 1986, ss. 1 and 2. See also the following, which do not explicitly state that the attacks are criminal, but certainly imply that attacks on peacekeepers are criminal: UN SC Res. 1592, 30 March 2005, preamble; UN SC Res. 1582, 28 January 2005, para. 29; UN SC Res. 1565, 1 October 2004, para. 21; UN SC Res. 912, 21 April 1994, para. 5.

³⁹³ Convention on the Safety of United Nations and Associated Personnel, UN GA Res. 49/59, 9 December 1994, Articles 9-16 [Convention on the Safety of United Nations and Associated Personnel]. Sierra Leone signed on to this Convention on 13 February 1995.

out in the Statute is contained in some military manuals.³⁹⁴ This Chamber notes further that it is an offence to attack personnel and other objects involved in a peacekeeping mission under the legislation of many States.³⁹⁵

218. The Chamber considers the condemnation and criminalisation of intentional attacks against personnel and objects involved in a humanitarian or a peacekeeping mission by States and international organisations, the finding of the ICRC and the inclusion of the offence in the ICC Statute in 1998 demonstrate State practice and *opinio juris*. The Chamber is also of the view that this offence is a particularisation of the general and fundamental prohibition in international humanitarian law, in both international and internal conflicts, against attacking civilians and civilian property. This Chamber is, therefore, satisfied that this offence existed in customary international law in both international and non-international conflicts and entailed individual criminal responsibility at the time of the acts alleged in the Indictment.

219. The Chamber holds that the elements of the offence of intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations are as follows:

- (i) The Accused directed an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations;
- (ii) The Accused intended such personnel, installations, material, units or vehicles to be the object of the attack;
- (iii) Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict; and

³⁹⁴ See, for example, the military manuals of Cameroon (*Instructors' Manual* (1992), p. 110), Germany (*Military Manual* (1992), s. 418), New Zealand (*Military Manual* (1992), s. 1904), Nigeria (*Military Manual* (1994), p. 23, s. 6) and Spain (*LOAC Manual* (1996), Vol. I, s. 7.3.a.(9)).

³⁹⁵ See, for example, the legislation of Australia (*ICC (Consequential Amendments Act* (2002), Schedule I, ss. 268.37 and 268.79); Azerbaijan (*Criminal Code* (1999), Art. 116(3)); Canada (*Crimes against Humanity and War Crimes Act* (2001), ss. 4(B)(c) and (D)(c); Congo (*Genocide, War Crimes and Crimes against Humanity Act* (1998), Art. 4); Georgia (*Criminal Code* (1999), Art. 413(d)); Germany (*Law Introducing the International Crimes Code* (2002), Art. 1, s. 10(1)(1); Mali (*Penal Code* (2001), Art. 31(i)(3)); Netherlands (*International Crimes Act* (2002), Arts. 5(5)(o) and 6(3)(c); New Zealand (*International Crimes and ICC Act* (2000), s. 11(2) and the United Kingdom (*UN Personnel Act* (1997), Article 1).

- (iv) The Accused knew or had reason to know that the personnel, installations, material, units or vehicles were protected.³⁹⁶

220. In the view of the Chamber, the primary object of the attack must be the personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission. There exists no requirement that there be actual damage to the personnel or objects as a result of the attack³⁹⁷ and this Chamber opines that the mere attack is the gravamen of the crime. The Chamber adopts the definition of attack in Article 49(1) of Additional Protocol I as an “act of violence”. Insofar as non-international armed conflict is concerned, the Chamber holds that the same meaning applies to the term “attack” in Additional Protocol II.³⁹⁸ Furthermore, the Chamber notes that attacks are narrower in scope than “military operations.”

221. The Chamber observes that there is no jurisprudence defining a “peacekeeping mission in accordance with the Charter of the United Nations.” The Charter of the United Nations does not make reference to peacekeeping missions. The concept of peacekeeping was developed through the practice of the United Nations as a means of achieving the goals of its Charter regarding the maintenance of international peace and security.³⁹⁹ In the pursuance of these goals, peacekeeping missions have been used by the United Nations for 60 years.

222. Peacekeeping missions are generally formally created by a resolution of the Security Council of the United Nations.⁴⁰⁰ This Chamber is of the view that the legal basis for the

³⁹⁶ RUF Oral Rule 98 Decision, Transcript of 25 October 2006, pp. 37-38.

³⁹⁷ See Daniel Frank, “Article 8(2)(b)(iii)-Attacking Personnel or Objects Involved in a Humanitarian Assistance or Peacekeeping Mission” in Lee, *International Criminal Court*, pp. 145-147; Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court – Sources and Commentary* (Cambridge, UK: ICRC and Cambridge University Press, 2003), Article 8(2)(b)(iii), p. 159 [Dörmann, *ICC Elements of War Crimes*].

³⁹⁸ See ICRC Commentary on Article 13 of Additional Protocol II, where the ICRC notes that at the Diplomatic Conference to the Protocols it was agreed that the same meaning should be given to the term “attack” in both Protocols: ICRC Commentary on Additional Protocols, para. 4783 and fn 19. See also Dörmann, *ICC Elements of War Crimes*, Article 8(2)(e)(ii), p. 448.

³⁹⁹ The UN states that the first peacekeeping mission was the United Nations True Supervision Organization (UNTSO) in 1948. The United Nations Emergency Force (UNEF) deployed in Egypt in 1956 was instrumental in the development of the current doctrine of peacekeeping. See: Department of Peacekeeping Operation, *An Introduction to United Nations Peacekeeping*, Chapter 1: An Evolving Technique, available at <http://www.un.org/Depts/dpko/dpko/intro/1.htm>; Marten Zwanenburg, *Accountability of Peace Support Operations* (Geneva: Martinus Nijhoff Publishers, 2005), pp. 12-13 [Zwanenburg, *Accountability of Peace Support Operations*]; Bruno Simma et al., *The Charter of the United Nations: a Commentary*, 2nd ed., vol. I (Oxford: Oxford University Press, 2002), paras 14-71 [Simma, *Charter Commentary*]; Christine Gray, *International Law and the Use of Force*, 3rd ed., (Oxford: Oxford University Press, 2008), pp. 261-263 [Gray, *International Law and the Use of Force*].

⁴⁰⁰ Peacekeeping missions have also been authorised by the General Assembly of the United Nations on several occasions. See: Simma, *Charter Commentary*, paras 15-71, 88-91. See also *Uniting for Peace*, UN GA Res. 377(V), 3

creation of peacekeeping missions falls either within Chapter VI, which allows the Security Council to take non-binding measures to settle disputes between State parties,⁴⁰¹ or within Chapter VI in conjunction with Chapter VII, which allows the Security Council to adopt binding enforcement measures that are necessary to maintain or restore international peace and security.⁴⁰² It is noteworthy that in practice, the Security Council has never referred to Chapter VI in its resolutions establishing peacekeeping forces.⁴⁰³ Commentators have noted that the legal basis for peacekeeping missions is of no practical significance as peacekeeping missions are deployed with the consent of the parties and their legitimacy is no longer questioned.⁴⁰⁴

223. It is likewise important to mention that in more recent times, the Security Council has referred to Chapter VII in resolutions that establish peacekeeping missions in difficult or unstable situations, typically in relation to internal conflicts, in order to provide more robust mandates to the peacekeepers and to demonstrate the Security Council's resolve.⁴⁰⁵ Further, this Chamber observes that the Security Council has, on occasion, established multidimensional peacekeeping missions under Chapter VII with extremely broad mandates that included civilian administration.⁴⁰⁶

224. Significantly, the Chamber recognises that the United Nations has traditionally defined a peacekeeping mission as "involving military personnel, but without enforcement powers, undertaken by the United Nations to help maintain or restore international peace and security

November 1950. The legitimacy of this practice was upheld by the International Court of Justice: *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, Advisory Opinion, ICJ Reports (1962) 151, 20 July 1962 [*Certain Expenses ICJ Advisory Opinion*].

⁴⁰¹ Chapter VI of the UN Charter is entitled "Pacific Settlement of Disputes" and contains Articles 33 to 38 (Charter of the United Nations, June 26, 1945, UNTS 993, entered into force Oct. 24, 1945 [UN Charter]).

⁴⁰² Chapter VII of the UN Charter is entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression" and contains Articles 39-51. This Chapter allows the Security Council to adopt binding enforcement measures that may include economic sanctions, embargoes or armed force.

⁴⁰³ United Nations, *United Nations Peacekeeping: Meeting New Challenges, Frequently Asked Questions* (United Nations, 2006), p. 14 [*Peacekeeping: Frequently Asked Questions*].

⁴⁰⁴ Zwanenburg, *Accountability of Peace Support Operations*, pp. 11-12; Simma, *Charter Commentary*, paras 84, 86; Gray, *International Law and the Use of Force*, p. 261.

⁴⁰⁵ *Peacekeeping: Frequently Asked Questions*, p. 14; United Nations, Department of Peacekeeping Operations, *United Nations Peacekeeping Operations: Principles and Guidelines* (United Nations, 2008), p. 14 [*Peacekeeping Principles and Guidelines*]; Trevor Findlay, *The Use of Force in UN Peace Operations* (Oxford: Oxford University Press, 2002), pp. 7-8 [Findlay, *Use of Force in UN Operations*].

⁴⁰⁶ This was done with regard to UNMIK in Kosovo, UNTAET in East Timor and with UNMIL in Liberia. See Gray, *International Law and the Use of Force*, pp. 294-298.

in areas of conflict”.⁴⁰⁷ Peacekeeping missions have, however, evolved to be more complex and multifunctional, and the United Nations currently defines peacekeeping as follows:

Peacekeeping is a technique designed to preserve the peace, however fragile, where fighting has been halted, and to assist in implementing agreements achieved by the peacemakers. Over the years, peacekeeping has evolved from a primarily military model of observing cease-fires and the separation of forces after inter-state wars, to incorporate a complex mode of many elements – military, police and civilian – working together to help lay the foundations for sustainable peace.⁴⁰⁸

225. In the Chamber’s considered view, three basic principles are widely understood as the necessary foundation for a peacekeeping operation: consent of the parties, impartiality, and non-use of force except in self-defence and defence of the mandate.⁴⁰⁹

226. In practice, the peacekeeping force will be deployed with the consent of the main parties to a conflict.⁴¹⁰ In non-international conflicts, this consent is obtained from the warring parties, not out of legal obligation, but rather to ensure the effectiveness of the peacekeeping operation.⁴¹¹

227. The peacekeeping force is to remain impartial in their dealings with the parties, which should not be confused with absolute neutrality. This impartiality must involve the “adherence to the principles of the Charter and the objectives of a mandate”⁴¹² and thus the peacekeeping operation “should not condone actions by the parties that violate the undertakings of the peace process or international norms and principles”.⁴¹³

228. The peacekeepers are only authorised to use force in self-defence.⁴¹⁴ It is now settled law that the concept of self-defence for these missions has evolved to include the “right to resist

⁴⁰⁷ United Nations, *The Blue Helmets: A Review of United Nations Peacekeeping*, 2nd ed. (New York: United Nations, 1990), p. 4.

⁴⁰⁸ *Peacekeeping Principles and Guidelines*, p. 18.

⁴⁰⁹ *Peacekeeping Principles and Guidelines*, p. 31; United Nations, Report of the Panel on United Nations Peace Operations, A/55/305-S/2000/809, 21 August 2000 [*Brahimi Report*], para. 48; Report of the Secretary-General, *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, 3 January 1995, A/50/60-S/1995/1, para. 33; Findlay, *Use of Force in UN Operations*, p. 4.

⁴¹⁰ *Certain Expenses Advisory Opinion*, p. 164; Gray, *International Law and the Use of Force*, p. 298; Simma, *Charter Commentary*, para. 84; N. D. White, *Keeping the Peace* (Manchester: Manchester University Press, 1997), pp. 232-233 [White, *Keeping the Peace*].

⁴¹¹ Gray, *International Law and the Use of Force*, pp. 298-302.

⁴¹² *Brahimi Report*, para. 50.

⁴¹³ *Peacekeeping Principles and Guidelines*, p. 33.

attempts by forceful means to prevent the peacekeeping operation from discharging its duties under the mandate of the Security Council.”⁴¹⁵ The Chamber acknowledges that the operative United Nations doctrine on this issue is that peacekeeping operations should only use force as a measure of last resort, when other means have failed.⁴¹⁶

229. The Chamber notes that the *Convention on the Safety of United Nations and Associated Personnel* does not refer to peacekeeping missions, but rather “United Nations operations”:

“United Nations operation” means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:

- (i) Where the operation is for the purpose of maintaining or restoring international peace and security; or
- (ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation. [...] ⁴¹⁷

230. It is noteworthy that peacekeeping should be understood as distinct from enforcement actions authorised by the Security Council under Chapter VII. Article 42 of the United Nations Charter allows the Security Council to “take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.” In practice, the Security Council has authorised member States or coalitions of member States to conduct military enforcement action on a voluntary rather than mandatory basis.⁴¹⁸ By opposition to

⁴¹⁴ White, *Keeping the Peace*, pp. 240-241; Yoram Dinstein, *War, Aggression and Self-Defence*, 3rd ed (Cambridge: Cambridge University Press, 2001), p. 267 [Dinstein, *War, Aggression and Self-Defence*].

⁴¹⁵ *Peacekeeping Principles and Guidelines*, pp. 34. Gray notes that these principles regarding self-defence are usually not expressly stated in the resolutions of the Security Council that establish the mandates of the force, but are affirmed in the reports of the Secretary-General (Gray, *International Law and the Use of Force*, p. 302). See also: Report of the Secretary-General on the Implementation of Security Council Resolution 340 (1973), 27 October 1973, S/11052/Rev.1, para. 5; The preamble to UN SC Res. 467, 24 April 1980, recalls the terms of reference in the report of the Secretary General that “self-defence would include resistance to attempts by forceful means to prevent it from discharging its duties under the mandate of the Security Council.”

⁴¹⁶ *Peacekeeping Principles and Guidelines*, p. 35. It has been noted that peacekeepers have historically been very reticent to use any force, see: Findlay, *Use of Force in UN Operations*, p. 356: “Peacekeepers have continued to fail to use force in self-defence, even in life-and-death situations where it would be universally perceived as legitimate and warranted under the self-defence rule.”

⁴¹⁷ *Convention on the Safety of United Nations and Associated Personnel*, Art. 1(c).

⁴¹⁸ Some examples of when the UN has authorised the use of force in this manner include: Korea (UN SC Res. 83, 27 June 1950; UN SC Res. 84, 7 July 1950); Iraq (UN SC Res. 678, 29 November 1990); the former Yugoslavia (UN SC Res. 770, 13 August 1992; UN SC Res. 771, 13 August 1992; UN SC Res. 816, 31 March 1993; UN SC Res. 836, 4 June 1993; UN SC Res. 1031, 15 December 1995); Somalia (UN SC Res. 794, 3 December 1992); and, Afghanistan (UN SC Res. 1510, 13 October 2003; UN SC Res. 1707, 12 September 2006;

peacekeeping operations, enforcement action does not rely on the consent of the States concerned, but on the binding authority of the Security Council under Chapter VII.

231. This Chamber further observes that the *Convention on the Safety of United Nations and Associated Personnel* expressly excludes from its application those United Nations operations “authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organised armed forces and to which the law of international armed conflict applies.”

232. It is the Chamber’s view that the second element reflects that this offence has a specific intent *mens rea*. The Accused must have therefore intended that the personnel, installations, material, units or vehicles of the peacekeeping mission be the primary object of the attack.

233. The Chamber holds that the third element requires that such personnel or objects be entitled to the protection given to civilians or civilian objects under the international law of armed conflict.⁴¹⁹ In the Chamber’s view, common sense dictates that peacekeepers are considered to be civilians only insofar as they fall within the definition of civilians laid down for non-combatants in customary international law and under Additional Protocol II as discussed above – namely, that they do not take a direct part in hostilities. It is also the Chamber’s view that by force of logic, personnel of peacekeeping missions are entitled to protection as long as they are not taking a direct part in the hostilities – and thus have become combatants - at the time of the alleged offence. Where peacekeepers become combatants, they can be legitimate targets for the extent of their participation in accordance with international humanitarian law. As with all civilians, their protection would not cease if the personnel use armed force only in exercising their right to individual self-defence.⁴²⁰ Likewise, the Chambers opines that the use of force by peacekeepers in self-defence in the discharge of their mandate, provided that it is limited to such use, would not alter or diminish the protection afforded to peacekeepers.

234. In determining whether the peacekeeping personnel or objects of a peacekeeping

UN SC Res. 1776, 19 September 2007; UN SC Res. 1833, 22 September 2008). See also: Dinstein, *War, Aggression and Self-Defence*, pp. 268-273; Gray, *International Law and the Use of Force*, pp. 258, 264-265, 286-292.

⁴¹⁹ See also Secretary-General’s Bulletin, para. 1.

⁴²⁰ Dörmann, *ICC Elements of War Crimes*, Art. 8(2)(b)(iii), p. 159.

mission are entitled to civilian protection, the Chamber must consider the totality of the circumstances existing at the time of the alleged offence,⁴²¹ including, *inter alia*, the relevant Security Council resolutions for the operation, the specific operational mandates, the role and practices actually adopted by the peacekeeping mission during the particular conflict, their rules of engagement and operational orders, the nature of the arms and equipment used by the peacekeeping force, the interaction between the peacekeeping force and the parties involved in the conflict, any use of force between the peacekeeping force and the parties in the conflict, the nature and frequency of such force and the conduct of the alleged victim(s) and their fellow personnel.

235. With regard to the *mens rea* of the offence, the Chamber opines that the Prosecution is obliged to prove that the Accused must have known or had reason to know that the personnel, installations, material, units or vehicles were protected. It is not necessary to establish that the Accused actually had legal knowledge of the protection to which the personnel and objects were entitled under international humanitarian law, but the Accused must have been aware of the factual basis for that protection.⁴²²

3.3.15. Taking of Hostages (Count 18)

236. The Indictment charges the Accused under Count 18 with the taking of hostages, a violation of Common Article 3 of the Geneva Conventions and of Additional Protocol II punishable under Article 3(c) of the Statute. This Count relates to the alleged responsibility for having abducted several hundred peacekeepers⁴²³ who were then held hostage between about 15 April 2000 and 15 September 2000 in Bombali District, Tonkolili District, Port Loko District, Kono District and Kailahun Districts.⁴²⁴

237. The Chamber notes that the prohibition against the taking of hostages is found in

⁴²¹ Daniel Frank, "Article 8(2)(b)(iii)-Attacking Personnel or Objects Involved in a Humanitarian Assistance or Peacekeeping Mission" in Lee, *International Criminal Court*, pp. 146-147.

⁴²² See ICC Elements of Crime, Article 8(2)(b)(iii), element 5, p. 24.

⁴²³ The Indictment also alleged that humanitarian assistance workers had been abducted and held hostage, but the Chamber found in the RUF Oral Rule 98 Decision that no evidence had been adduced regarding humanitarian assistance workers: RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 39.

⁴²⁴ The Indictment alleged that the attacks happened "within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko, and Kono Districts." The Chamber found in the RUF Oral Rule 98 Decision that no evidence had been adduced for locations other than those listed above: RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 45.

- (iii) RUF fighters attacked ZAMBATT peacekeepers in Lunsar, following which attack three peacekeepers were missing, two of whom never returned and were declared dead.³⁶⁴³

1896. The Chamber finds that the attack on ZAMBATT peacekeepers at Lunsar on 4 May 2000 constituted an act of violence.

1897. The abductions of the peacekeepers and their detention at Yengema and in Tombodu similarly constituted acts of violence. Although the Chamber accepts the evidence that the peacekeepers at Yengema were not beaten or physically restrained³⁶⁴⁴ the Chamber emphasises that the absence of physical injury does not negate the existence of the attack, which derives its nature from the deprivation of the peacekeepers' liberty. Moreover, the peacekeepers were kept under constant armed guard; their belongings, including money and passports, were confiscated; they were stripped of their clothing; and some RUF fighters, including individuals armed with guns, threatened the peacekeepers with death.³⁶⁴⁵

1898. The Chamber therefore finds that RUF fighters directed three attacks against UNAMSIL peacekeeping personnel on 3 and 4 May 2000.

11.2.1.3. Attacks against UNAMSIL after 3 May 2000

1899. The Chamber finds that the actions of RUF fighters in firing weapons at a UN helicopter on 7 May 2000, thus impeding it from landing in Makeni,³⁶⁴⁶ constitute an act of violence and therefore an attack directed against UNAMSIL peacekeeping personnel.

1900. The Chamber recalls that on 9 May 2000 RUF fighters pursued UNAMSIL peacekeepers from the Indian QRC and the KENBATT B Company and engaged them in gunfire near Magburaka.³⁶⁴⁷ The Chamber finds that this violent conduct constitutes an attack directed against UNAMSIL peacekeeping personnel.

11.2.1.4. The RUF intended to make UNAMSIL personnel the object of the attacks

³⁶⁴³ *Supra* para. 1843.

³⁶⁴⁴ Transcript 6 March 2008, DIS-310, p. 36. *See also* Sesay Defence Final Trial Brief, paras 1348-1350.

³⁶⁴⁵ *Supra* paras 1840-1841.

³⁶⁴⁶ *Supra* para. 1859.

³⁶⁴⁷ *Supra* paras 1860-1862.

1901. The Chamber is satisfied that the perpetrators recognised and knew the UNAMSIL peacekeepers, who had been deployed in the Makeni-Magburaka area since January 2000. The Chamber recalls that RUF fighters, including Gbao, Kallon and Sesay, had had many interactions with them prior to the events of May 2000.³⁶⁴⁸

1902. The Chamber finds that RUF fighters specifically targeted UNAMSIL peacekeepers in each of the above attacks. Following the assault on Salahuedin and the abduction of Jaganathan, the RUF deliberately captured the three groups of peacekeepers who approached them to negotiate for Jaganathan's release: Maroa's group, Mendy and Gjellesdad, and Odhiambo's group. RUF fighters then succeeded in capturing Rono's group of peacekeepers by inviting them to meet under the false pretence of attempting to resolve the situation, only to forcibly seize and detain them after they accepted the invitation in good faith.

1903. Over the next ten days, RUF fighters committed attacks on UNAMSIL positions at Makump, the Islamic Centre and Waterworks; established roadblocks in order to lure the ZAMBATT contingent en route to Makeni into an ambush in two stages; opened fire on a UN helicopter; and launched offensive operations against UNAMSIL contingents in Lunsar and near Magburaka.

1904. These attacks were initiated in a geographically confined area of Sierra Leone between Lunsar in Port Loko District, Makeni in Bombali District and Magburaka in Tonkolili District. The Chamber has found that the attacks continued in Kono District, with the confinement of peacekeepers at Yengema, Small Sefadu and Tombodu. The Chamber considers that the fact that 14 attacks were committed in a brief period in such close proximity, with the captives transported to Kono District and placed under the command of the RUF Brigade Commander there, demonstrates that the RUF launched a deliberate and concerted campaign of violence against UNAMSIL peacekeeping personnel.

1905. The Chamber therefore finds that it is established beyond reasonable doubt that the RUF intended to make UNAMSIL peacekeepers the object of each of the 14 attacks.

11.2.1.5. Entitlement of UNAMSIL personnel to civilian protection

³⁶⁴⁸ *Supra* paras 1772-1783.

1906. The Chamber recalls that the personnel of a peacekeeping mission are entitled to the protection afforded to civilians only insofar as the peacekeepers are not taking a direct part in hostilities.³⁶⁴⁹ The Chamber will consider in this regard the totality of the circumstances surrounding the establishment, deployment and operation of the UNAMSIL mission in Sierra Leone and the interactions between UNAMSIL and the RUF in order to determine whether the UNAMSIL peacekeepers were taking direct part in hostilities at the time of the RUF attacks.

11.2.1.5.1. The mandate of UNAMSIL

1907. The Chamber finds that UNAMSIL was established by the United Nations Security Council as a peacekeeping mission in the exercise of its powers under Chapters VI of the UN Charter. UNAMSIL was impartial and deployed with the consent of the warring factions in accordance with Article XVI of the Lomé Agreement.

1908. In paragraph 14 of Resolution 1270, the Security Council empowered UNAMSIL pursuant to Chapter VII of the UN Charter to take “necessary action” to ensure the security of its personnel and the freedom of movement of its personnel and to protect civilians under threat of physical violence. We consider this paragraph as the “trigger” which empowered UNAMSIL personnel to use force, but only in these specific and defined circumstances. No other paragraph of this Resolution or the subsequent Resolution 1289 expands or creates additional grounds for the use of force. Indeed, UNAMSIL was not manned, equipped or trained to use force in any but the most limited of circumstances.³⁶⁵⁰

1909. The peacekeepers who testified were emphatic that UNAMSIL was a Chapter VI mission. From this starting point, one witness stated that paragraph 14 of Resolution 1270 functioned as a ‘conditional clause’ for Chapter VII powers, while another described its effect as creating a “chapter six and a half” mission.³⁶⁵¹ In our view, the nomenclature employed to describe the precise legal origin of the mandate to use force in self-defence is immaterial: the content of the mandate is the paramount consideration. Whether the UNAMSIL mandate

³⁶⁴⁹ *Supra* para. 233.

³⁶⁵⁰ *Supra* paras 1759-1760.

³⁶⁵¹ Transcript of 19 May 2008, Mohammed Abdulahi Garbah, pp. 75-81 (CS); Transcript 7 March 2008, DIS-310, pp. 6-8. *See also* Kallon Defence Final Trial Brief, para. 1339 *but see* paras 1358 *ff.*

permitted its peacekeepers to engage in hostilities and if so, in what circumstances, will depend on the proper construction of the terms of its mandate as expressed in relevant Security Council Resolutions.³⁶⁵²

1910. UNAMSIL's mandate was not to engage in hostilities against the parties to the conflict in Sierra Leone, but rather to preserve the ceasefire to which the parties had agreed and to facilitate the creation of lasting peace in Sierra Leone, chiefly but not exclusively through the disarmament, demobilisation and reintegration of the fighters. To this end, the mandate placed an emphasis on cooperation, negotiation and peaceful dispute resolution.³⁶⁵³

1911. We find that the fact that the peacekeepers were empowered under Chapter VII to use force in certain exceptional and restricted circumstances does not alter the fundamental nature of the UNAMSIL mission as a peacekeeping, and not a peace enforcement, mission. Instead, the reference to Chapter VII merely reinforces the right of the peacekeepers to use force in self-defence by grounding it in the binding powers of the Security Council.

11.2.1.5.2. UNAMSIL's Operational Orders and Rules of Engagement

1912. The nature of UNAMSIL's peacekeeping mandate and the scope of the power to use force is further clarified in its Operational Orders and Rules of Engagement (ROE). Operational Order 3, issued by the UNAMSIL Force Commander Major-General Jetley to implement UNAMSIL's mandate, noted that:

In view of the volatility of the security situation and the fragility of the peace process the Force should be capable of operating on the basis of robust ROE as laid down by the UN. Though its functions will fall within the traditional limits of peacekeeping, it should be able to respond rapidly and effectively to any threat to the UN personnel, the implementation of its mandate, including, under specific conditions, the protection of civilians.³⁶⁵⁴

1913. The UNAMSIL ROE, which were distributed and explained to all UNAMSIL peacekeepers, set out the circumstances in which UNAMSIL peacekeepers were permitted to use force:

³⁶⁵² *Supra* para. 234.

³⁶⁵³ Transcript of 23 March 2006, Edwin Kasoma, p. 123.

³⁶⁵⁴ Exhibit 302, Operational Order No. 3, January 2000, para. 23.

1. To defend oneself, UN and other international personnel against hostile act or intent.
2. To resist abduction or detention of oneself, UN and international personnel.
3. To defend designated UN installation, other key designated installations, areas and goods designated by UN, civilian under imminent threat of physical violence in locations where [Government of Sierra Leone] protection is not immediately available.
4. To ensure security and freedom of movement of UNAMSIL personnel against anyone who limits or intends to limit UNAMSIL freedom of movement.
5. To maintain UNAMSIL position when threatened with hostile act/intent [...] ³⁶⁵⁵

1914. Further, the ROE provided the UNAMSIL personnel with specific and detailed instructions on the use of force, which included:

1. Try to resolve the potential hostile confrontation through negotiation or assistance of local authorities.
2. Carry out verbal negotiation and/or visual demonstrations, use unarmed force, display charging of weapons, fire warning shots at single shot as necessary to deter the hostile attack/intent [...]
3. Use force when absolutely necessary to safeguard own soldiers, UN and international personnel, civilians and designated installations, areas and goods in your care.
4. Be sure that you have compelling and sufficient evidence of hostile intent [...] ³⁶⁵⁶

1915. The ROE also provide directions on the proportionate use of force to ensure that the least possible injury is incurred to others and the level of force used is only that necessary to achieve the immediate aim of self-defence. ³⁶⁵⁷

1916. The Chamber is of the opinion that the Security Council Resolutions establishing UNAMSIL as a peacekeeping force whose role was to assist in maintaining peace and not to take part in hostilities, clearly permit the use of force only in limited circumstances. Operational Order No. 3 confirms this position on the ground and the detailed instructions in the ROE further demonstrate that the use of force was a last resort option. The UNAMSIL

³⁶⁵⁵ Exhibit 370, UNAMSIL Rules of Engagement, pp. 3-4.

³⁶⁵⁶ Exhibit 370, UNAMSIL Rules of Engagement, pp. 1-2.

³⁶⁵⁷ Exhibit 370, UNAMSIL Rules of Engagement, pp. 2-3.

peacekeepers were professional soldiers who received training on their mandate as peacekeepers prior to their arrival in Sierra Leone.³⁶⁵⁸

1917. The Chamber is therefore satisfied that comprehensive and rigorous institutional rules governed the discharge by UNAMSIL peacekeepers of their mandate and that principal among these was the rule that the peacekeepers were to use force only in self-defence, defence of civilians or to ensure freedom of movement of UN personnel. We find that the peacekeepers were prohibited from engaging in hostilities.

11.2.1.5.3. Practice of UNAMSIL and interactions with the RUF

1918. The Chamber is satisfied that the UNAMSIL peacekeepers did not engage in hostilities against RUF fighters or any other group in the execution of their duties in Bombali, Tonkolili and Port Loko Districts prior to 1 May 2000. The evidence demonstrates that UNAMSIL Commanders regularly met with the various leaders as part of the disarmament process and endeavoured to build constructive relationships with and among these groups. Particular efforts to facilitate peaceful cooperation had been made in relation to the RUF on account of the tensions present in their interactions with UNAMSIL. We find that these efforts were made both through institutional channels such as the Ceasefire Monitoring Committees and through *ad hoc* meetings arranged to address specific concerns, such as the meetings pertaining to Caritas in Makeni in April 2000.³⁶⁵⁹

1919. The Chamber notes that on 28 April 2000 Gbao reported to Sesay that a number of RUF fighters had recently attended a DDR “Committee Forum” in Makeni, at which:

[T]he new DDR scheme was explained, a guide to the new scheme is enclosed for your information [...] The new scheme which does not required [sic] combatants to be compulsorily encamped, had been negotiated by RUF in consultation with NCDDR. I trust that details will be of interest to you. Should you require any clarification on this matter I am available to meet with you to discuss your concern.³⁶⁶⁰

³⁶⁵⁸ *Supra* para. 1760.

³⁶⁵⁹ *Supra* paras 1775-1776.

³⁶⁶⁰ Exhibit 33, RUF Radio Log Book, p. 8831-8832.

1920. The Chamber therefore finds that UNAMSIL peacekeepers repeatedly and peacefully informed the RUF leadership including Sesay, Kallon and Gbao that the disarmament process was voluntary and that no attempts had been made to forcibly disarm fighters.

1921. Peacekeepers were unanimous in their testimony that their mandate permitted them to use force only in strictly prescribed circumstances: in self-defence, if a civilian's life was threatened, or in order to ensure freedom of movement.³⁶⁶¹ Peacekeepers confirmed that the tasks and duties they carried out with UNAMSIL in Sierra Leone were in accordance with their mandate.³⁶⁶²

1922. The Chamber is therefore satisfied that the ten RUF fighters who disarmed on 27 and 28 April 2000 in Makeni did so voluntarily and that there was no forced disarmament of RUF fighters at either the Makump or the Magburaka DDR camps in May 2000.³⁶⁶³

1923. The Chamber finds that the practice of UNAMSIL in Bombali, Tonkolili and Port Loko Districts in the period leading up to May 2000 and during May 2000 was entirely consistent with its mandate. The Chamber considers that the allegations made by RUF leaders that fighters had been forcibly disarmed or attacked represented a deliberate attempt to foment hostility towards UNAMSIL personnel among the RUF rank and file, thereby preventing the UNAMSIL mission from carrying out its mandate.

11.2.1.5.4. Nature of UNAMSIL's arms and equipment

1924. We recall that we found that UNAMSIL peacekeepers were structured, equipped and organised for a peacekeeping mission and not for peace enforcement. The peacekeepers were lightly armed. The MILOBs were not armed at all. The UNAMSIL mission did not possess the military capability to cause significant damage to the RUF, if open combat were to arise.³⁶⁶⁴

³⁶⁶¹ Transcript of 22 March 2006, Edwin Kasoma, p. 7; Transcript of 20 June 2006, Ganese Jaganathan, pp. 109-116; Transcript of 19 May 2008, Mohammed Abdulahi Garbah, pp. 75-81 (CS); Transcript of 5 June 2008, Mohammed Abdulahi Garbah, p. 44 (CS).

³⁶⁶² Transcript of 28 March 2006, Brigadier Ngondi, p. 127; Transcript of 30 March 2006, Brigadier Ngondi, pp. 17-18; Transcript of 6 March 2008, DIS-310 (DMK-147), p. 72 (CS).

³⁶⁶³ *Supra* paras 1782-1784. See also Transcript of 29 March 2006, Leonard Ngondi, p. 25; Transcript of 20 June 2006, Ganese Jaganathan, pp. 18-20; Transcript of 26 June 2006, Joseph Mendy, p. 98. The Chamber rejects the argument of the Kallon Defence that UNAMSIL peacekeepers adopted an "aggressive" stance which included the unprovoked use of force against RUF fighters: Kallon Final Trial Brief, paras 1356-1366.

³⁶⁶⁴ *Supra* paras 1759-1760.

This is consistent with the prohibition on participation in hostilities in the peacekeepers' mandate, which permitted the use of force only in specific and limited circumstances.

11.2.1.5.5. Use of force by UNAMSIL against the RUF

1925. We have found that the use of force by peacekeepers in self-defence and in the discharge of their mandate was authorised by the Security Council in Resolution 1270. The Chamber recalls that the use of force for these limited purposes does not constitute direct participation in hostilities.³⁶⁶⁵

11.2.1.5.5.1. Attacks on 1 and 2 May 2000

1926. We recall that the peacekeepers did not violently intervene to prevent the assault of Salahuedin or the abduction of Jaganathan.³⁶⁶⁶ Instead, Maroa attempted to negotiate.³⁶⁶⁷

1927. Although the RUF abducted Maroa's group, endangering their lives, three further successive groups of peacekeepers (Mendy and Gjellesdad, Odhiambo's group and Rono's group) were dispatched to attempt a peaceful resolution of the situation. The attack on Rono's group was carefully staged and executed in such a way that they were abducted under the pretence of peaceful discussions. Mendy and Gjellesdad, as MILOBs, were unarmed and Odhiambo's group did not carry arms specifically in order to demonstrate their peaceful intent. KENBATT Commander Ngondi believed that the situation could be defused and resolved, and his men were accordingly instructed to invite the RUF to release the peacekeepers and discuss their grievances with Ngondi himself.³⁶⁶⁸

1928. The peacekeepers responded to the attacks on their bases at Makump DDR camp and the Islamic Centre in Magburaka with the use of force. However, the Chamber is satisfied that this response was proportionate and entirely justified in self-defence. Groups of RUF fighters were assembled outside the Makump DDR camp on the morning of 2 May 2000, blocking the road and creating a hostile environment culminating in the attack in which peacekeepers were killed and injured. The evidence that Private Yusif was shot at point blank range indicates that

³⁶⁶⁵ *Supra* para. 233.

³⁶⁶⁶ *Supra* paras 1791-1793.

³⁶⁶⁷ *Supra* para. 1795.

³⁶⁶⁸ *Supra* paras 1803-1811.

the RUF fighters were acting offensively. Similarly, we find that it was RUF fighters who opened fire on the Islamic Centre in an attempt to capture the UNAMSIL post and its occupants.

1929. In relation to the attack on the DDR camp at Waterworks, the Chamber recalls that following the arrival of RUF fighters at the camp, the peacekeepers attempted to flee and RUF fighters shot at a retreating armoured vehicle and abducted three peacekeepers.³⁶⁶⁹ This evidence establishes that the RUF forces were the offensive party. Although the evidence is unclear as to whether the UNAMSIL peacekeepers responded with force to the encirclement of their camp, the Chamber is of the view that such conduct would be well within their mandate in these circumstances.

1930. We therefore find that the peacekeepers did not resort to the use of force in response to the nine attacks directed against them on 1 and 2 May 2000.

11.2.1.5.5.2. Attacks on 3 and 4 May 2000

1931. The Chamber observes that ZAMBATT were not deployed to Makeni in an offensive mode, but rather their instructions were to defuse tension and stabilize the situation. Although Kasoma organised his troops into a “combat-ready” force, we are of the view that this action was appropriate in the context of the eruption of violence in the previous two days and in light of the information then received that the RUF had established roadblocks.³⁶⁷⁰ The Chamber concludes that the ZAMBATT peacekeepers under the command of Kasoma did not use any force as they were ambushed and disarmed by a group of around 100 RUF fighters before they were able to respond in self-defence. This same pattern was repeated with the group of peacekeepers who followed. The hostile intent of the RUF is further manifested from the fact that Kasoma was forced at gunpoint to write a note to lure the remaining peacekeepers into an armed ambush.³⁶⁷¹

³⁶⁶⁹ *Supra* paras 1828-1830.

³⁶⁷⁰ *Supra* para. 1832.

³⁶⁷¹ *Supra* para. 1835.

1932. While the ZAMBATT peacekeepers employed force in an unsuccessful attempt to repel the RUF attack on their positions at Lunsar,³⁶⁷² the Chamber is satisfied that the peacekeepers were then acting defensively to protect their own lives and that this was a necessary and proportionate response in the circumstances.

11.2.1.5.5.3. Attacks of 7 May and 9 May 2000

1933. The RUF attack on 7 May 2000 on the helicopter rescuing injured UNAMSIL personnel was not in response to any use of force by UNAMSIL peacekeepers.³⁶⁷³ The Chamber is satisfied that any force used by the peacekeepers was necessary in self-defence to clear an area to ensure the safe landing of the helicopter and its occupants. The Chamber is further satisfied that the use of force by UNAMSIL peacekeeping personnel in the fighting which broke out between peacekeepers and the RUF on 9 May 2000 was in self-defence, as the evidence establishes that RUF fighters deliberately pursued the peacekeepers in order to attack them.³⁶⁷⁴

1934. The Chamber observes that following the attacks of May 2000, the Security Council passed Resolution 1313, which condemned “in the strongest terms” the armed attacks against and detention of UNAMSIL peacekeeping personnel as a threat to the security of UNAMSIL and the Republic of Sierra Leone. The Security Council expressed its intention to strengthen further the mandate of UNAMSIL, *inter alia*:

To deter and, where necessary, decisively counter the threat of RUF attack by responding robustly to any hostile actions or threat of imminent and direct use of force.³⁶⁷⁵

1935. The Chamber regards this as further evidence that the actions of RUF fighters in the various attacks constituted a threat to the safety of UNAMSIL personnel to which their limited use of force in response in self-defence was both necessary and well within their mandate.³⁶⁷⁶

³⁶⁷² *Supra* para. 1843.

³⁶⁷³ *Supra* para. 1859.

³⁶⁷⁴ *Supra* paras 1860-1862.

³⁶⁷⁵ Exhibit 170, UN SC Res. 1313, 4 August 2000, para. 3.

³⁶⁷⁶ The Chamber accordingly rejects, on the totality of the evidence, the submission of the Kallon Defence that UNAMSIL peacekeepers had become fighters at the time of the attacks: Kallon Defence Final Trial Brief, paras 1357-1366.

1936. We find that the peacekeepers were at all times acting in self-defence and within the limits of their mandate as a peacekeeping force.

11.2.1.5.6. Finding on UNAMSIL's entitlement to civilian protection

1937. For the foregoing reasons, the Chamber finds that UNAMSIL personnel were not taking direct part in hostilities against the RUF at the time of the attacks. Their use of force in self-defence did not make them combatants. The Chamber is therefore satisfied that the peacekeepers were entitled in these circumstances to the protection guaranteed to civilians under the international law of armed conflict.

11.2.1.6. The RUF knew or had reason to know of UNAMSIL's protected status

1938. We are of the opinion that the Prosecution is not required to establish that the perpetrators had knowledge of the legal protections afforded to peacekeepers under international humanitarian law. Rather, this element of Count 15 will be made out where the perpetrators knew or had reason to know of the factual basis for the protection: that is, that the peacekeepers were not taking a direct part in hostilities at the time of the attack.

1939. Prior to the assault and abductions of 1 and 2 May 2000, UNAMSIL had deployed in the Makeni-Maburaka area as a peacekeeping force with light equipment and no visible capacity to engage in combat. The peacekeepers had repeatedly conveyed their peaceful intent to the RUF by approaching them unarmed; engaging them in discussions with a view to ascertaining the nature of their grievances; endeavouring to persuade them that their actions were not in the interests of peace; and refusing to respond with force to the repeated threats and deliberate acts of violence committed against other peacekeepers. The Chamber is satisfied that in such circumstances the perpetrators knew or had reason to know that the peacekeepers were not taking part in hostilities.

1940. In the abductions of 3 May 2000, the Chamber recalls that the RUF flagrantly deceived the UNAMSIL peacekeeping personnel by inviting peaceful interaction only in order to engage them in combat. Such deception demonstrates awareness on the part of the perpetrators of the peacekeepers' status as persons not taking part in hostilities and their intent to take advantage of this status.

1941. In the attacks of 2 May 2000, 4 May 2000, 7 May 2000 and 9 May 2000 in which the peacekeepers did use force, their actions were in response to aggression on the part of the RUF which endangered their lives and liberty. The evidence indicates that the purpose of the use of force by UNAMSIL personnel was to defend themselves; to defend personnel under their protection (including any disarmed fighters); and to escape from the RUF attack. Accordingly, we find that their conduct cannot reasonably be construed as taking part in hostilities. The fact that RUF fighters were injured and killed as a result of the peacekeepers' exercise of their right to self-defence does not alter this finding.

1942. The Chamber further finds that even if some or all RUF fighters did subscribe to a belief that the UNAMSIL peacekeepers were taking part in hostilities, the RUF fighters had reason to know of the peacekeepers' protected status, on account of UNAMSIL's mandate as originating in the Lomé Agreement; UNAMSIL's practices in Sierra Leone and interactions with the RUF in the preceding months; the nature of UNAMSIL's arms and equipment; and the use of force by peacekeepers only in self-defence. On the totality of the evidence, the actions of the peacekeepers in the circumstances were not reasonably capable of being construed as participation in hostilities.

1943. The Chamber is therefore satisfied that the RUF fighters who staged the attacks on UNAMSIL peacekeepers knew or had reason to know that the peacekeepers were not engaged in hostilities at the time.

11.2.1.7. Findings on Count 15

1944. The Chamber therefore finds that the Prosecution has established beyond reasonable doubt that RUF rebels intentionally directed 14 attacks against personnel involved in a peacekeeping mission conducted in accordance with the Charter of the United Nations, between 1 May 2000 and about June 2000, as charged in Count 15 of the Indictment.

11.2.2. Unlawful Killings (Counts 16 and 17)

1945. The Prosecution alleges that between about 15 April 2000 and about 15 September 2000, AFRC/RUF unlawfully killed UNAMSIL peacekeepers in Bombali, Kailahun, Kambia,